

COURT FILE NO. 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, as amended  
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Gowling WLG (Canada) LLP**  
1600, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9  
Attn: **Tom Cumming/Caireen E. Hanert/Alex Matthews**  
Phone: 403.298.1938/403.298.1992/403.298.1018  
Fax: 403.263.9193  
File No.: A163514

**SUPPLEMENTAL AFFIDAVIT OF JEFF BUCK**  
**sworn April 30, 2020**

I, **JEFF BUCK**, of the City of Edmonton, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am the President and Chief Executive Officer of the Applicant JMB Crushing Systems Inc. ("**JMB**") and a director of the Applicant 2161889 Alberta Ltd. ("**216**") and have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.
2. I am authorized to swear this Affidavit as corporate representative of the Applicants.
3. On April 16, 2020, I swore an Affidavit in this Action (the "**First Affidavit**"). This Supplemental Affidavit is sworn to update this Honourable Court on developments that

have occurred since the date of my First Affidavit. All capitalized terms that are used but not defined herein are intended to bear their meanings as defined in my First Affidavit.

4. All references to dollar amounts contained herein are to Canadian Dollars unless otherwise stated.
5. This Affidavit is sworn in support of the Applicants' Amended Originating Application.

**I. EVENTS SINCE APRIL 16, 2020**

***ATB Bulge Facility***

6. Since April 16, 2020, there have been ongoing negotiations between JMB and ATB with respect to the terms on which ATB would not oppose the Applicants' application under the CCAA. These negotiations included the assumptions underlying the cash flow statements prepared by the Applicants with the assistance of the proposed Monitor, the degree to which the proposed Monitor would review the financial reporting, cash flows and entering of new contracts during the CCAA proceedings, whether one or both of ATB and CARC would provide interim financing to the Applicants during the CCAA proceedings and on what terms, and on the structure of the sale and investment solicitation procedures.
7. On April 29, 2020, ATB's counsel communicated to JMB's counsel that they would not be opposing the CCAA proceedings of the Applicants.
8. On April 17, 2020, ATB amended the ATB Loan Agreement to: (a) cap the operating loan revolving facility at the existing outstanding balance as of April 16, 2020; and provide a non-revolving bulge facility in the amount of \$900,000 to assist with payables critical to JMB's ongoing business operations (the "ATB Bulge Facility"). Advances under the ATB Bulge Facility are permitted only upon ATB providing prior written approval and with confirmation from FTI that such funds are necessary for critical payables. The ATB Bulge Facility expires April 29, 2020. The letter amending the ATB Loan Agreement and creating the ATB Bulge Facility is attached hereto as **Exhibit "A"**.
9. The Applicants and ATB agreed to request the Court to permit advances under the ATB Bulge Facility to be repaid from advances under ATB DIP Facility, since but for the

extended negotiations between ATB and the Applicants, those advances would in fact have been under the ATB DIP Facility (as defined in paragraph 15(a)).

10. Also on April 17, 2020, the ATB Debt Cap was further amended to be set at \$11,500,000 from April 15, 2020 to April 29, 2020, and will be reduced to \$10,000,000 thereafter. A copy of the letter agreement indicating same is attached hereto as **Exhibit "B"**.

#### ***Advance from CARC***

11. As noted in my First Affidavit, the CARC Advance was paid to JMB with the intent of covering the JMB payroll. However, funds came in from accounts receivable, which were then used to cover the JMB payroll.
12. However, the CARC Advance was left in the JMB bank account, and since being deposited, has been used for an interest payment owed to Fiera, fuel costs, property rent and miscellaneous expenses. Of the \$200,000 deposited, \$31,350 remains in the JMB account.
13. The Applicants believe that in the circumstances, it is fair that the CARC Advance be repaid out of cash flow, which is reflected in the draft Initial Order.

#### ***Interim Financing***

14. As can be seen from the Cash Flow Projections found at Exhibit "S" of my First Affidavit, the Applicants require working capital financing during their CCAA proceedings in order to continue their operations during these proceedings and to pursue restructuring options. The Applicants have executed two letter loan agreements dated as of April 30, 2020 providing interim financing during the CCAA proceedings, one being from ATB (the "**ATB Commitment Letter**"), and one being from CARC (the "**CARC Commitment Letter**").
15. A copy of the ATB Commitment Letter is attached hereto as **Exhibit "C"**. The key terms of the ATB Commitment Letter are:
  - (a) ATB shall provide a first priority demand revolving interim credit facility to a maximum amount of \$900,000 (the "**ATB DIP Facility**"). Amounts outstanding



under the ATB DIP Facility bear interest at a rate of 10% per annum, calculated and compounded daily and payable monthly on the last business day of each month;

- (b) The ATB DIP Facility is to be secured by the Interim Lenders' Charge, which shall rank in priority to all other mortgages, charges, security interests, liens, trust claims, or other encumbrances, other than the Administration Charge for up to \$300,000;
  - (c) The ATB DIP Facility is to be used to fund the working capital requirements, general corporate purposes, and other ordinary course expenditures of the Applicants during these CCAA proceedings and must not be used to pay indebtedness of the Applicants that arose prior to the commencement of the proceedings, except as permitted by this Honourable Court and agreed to by ATB; and
  - (d) The term of the ATB DIP Facility terminates on the earlier of: (i) the last banking day of the twelfth month following the commencement of these CCAA proceedings; (ii) the implementation of a plan of arrangement or compromise; (iii) the completion of a recapitalization or sale of substantially all of the Applicants' assets pursuant to the SISP; (iv) the termination of these CCAA proceedings; or (v) the date that ATB demands the repayment in full of the Applicants' indebtedness to ATB under the ATB DIP Facility, whether or not such demand is a result of an event of default as defined in the ATB Commitment Letter.
16. Because the ATB DIP Facility is provided on a demand basis and may therefore be terminated at any time, CARC has agreed to provide a "back-up" first priority revolving interim credit facility (the "**CARC DIP Facility**") in the maximum amount of \$900,000 pursuant to the CARC Commitment Letter, which will be available in the event that ATB terminates or is unwilling to make advances under the ATB DIP Facility. A copy of the CARC Commitment Letter is attached hereto as **Exhibit "D"**.
17. The key terms of the CARC Commitment Letter are as follows:
- (a) CARC shall provide the CARC DIP Facility to a maximum amount of \$900,000, less any amounts outstanding under the ATB DIP Facility, if any. Amounts

outstanding under the CARC DIP Facility bear interest at a rate of 10% per annum, calculated and compounded daily and payable monthly on the last business day of each month;

- (b) The CARC DIP Facility is to be secured by the Interim Lenders' Charge, which shall rank in priority to all other mortgages, charges, security interests, liens, trust claims, or other encumbrances, other than the Administration Charge for up to \$300,000;
  - (c) The CARC DIP Facility is to be used to fund the working capital requirements, general corporate purposes, and other ordinary course expenditures of the Applicants during these CCAA proceedings and may not be used to pay indebtedness of the Applicants that arose prior to the commencement of the proceedings, except as permitted by this Honourable Court and agreed to by CARC;
  - (d) The term of the CARC DIP Facility terminates on the earlier of: (i) the last banking day of the twelfth month following the commencement of these CCAA proceedings; (ii) the implementation of a plan of arrangement or compromise; (iii) the completion of a recapitalization or sale of substantially all of the Applicants' assets pursuant to the SISP; (iv) the termination of these CCAA proceedings; or (v) the occurrence of an event of default as defined in the CARC Commitment Letter; and
  - (e) Upon the Applicants' indebtedness to CARC under the CARC Commitment Letter becoming due, any amounts realized under the Interim Lenders' Charge are to be applied first in repayment in full of the Applicants' indebtedness to ATB under the ATB DIP Facility, then to the Applicants' indebtedness to CARC under the CARC DIP Facility.
18. The Applicants anticipate that the aggregate maximum amount required from time to time until the end of the initial ten (10) day stay of proceedings under the Interim Financing Agreements will not exceed \$500,000, with such amount not to be increased until further order of this Court. In addition, the Applicants will not draw funds from CARC under the

CARC DIP Facility unless ATB has terminated or is unwilling to permit advances under the ATB DIP Facility.

**Directors' Charge**

19. As noted in my First Affidavit, the Applicants maintain a D&O Insurance Policy. As of this the date of my Supplemental Affidavit, the current D&O Insurance Policy has been extended and will expire as of June 30, 2020. The Applicants and their insurer are negotiating the terms of renewal or further extension.

**II. ADDITIONAL RELIEF SOUGHT**

20. The relief set out below is in addition to the relief sought set out in my First Affidavit.

**A. Sale and Investment Solicitation Process**

21. The Applicants, in conjunction with the proposed Monitor, have prepared the SISP, a copy of which is attached to the Amended Originating Application as Schedule "B". In essence, the SISP provides that steps will be taken on the following timelines. Capitalized terms used below that are not otherwise defined herein shall have the meaning given to such terms in the SISP:

As soon as possible after Initial Order granted	Solicitation of interest through Teaser Letter to Known Potential Bidders and publication of Notice  Preparation of Data Room
June 19, 2020	Deadline for receipt of LOIs from Phase 1 Qualified Bidders
July 20, 2020	Deadline for receipt of binding offers from Phase 2 Qualified Bidders
As soon as is reasonably practicable after Successful Bid(s) identified	Sale Approval Application (assuming Successful Bid(s))

22. The Applicants are seeking the Court's approval of the SISP. The Applicants believe that in the circumstances it is appropriate at this time to proceed with the SISP to seek to identify a potential sale or restructuring transaction that would maximize the value of the Applicants' business for the benefit of the Applicants and their stakeholders. The Applicants also believe that this process will allow full exposure of their Business and Property to the market and identify potential strategic alternatives or acquirers, as the case may be.
23. I swear this Affidavit in support of the Amended Originating Application, to be filed, and for no other or improper purpose.
24. I was not physically present before the Commissioner for Oaths, but was connected to him by video technology and followed the process for remote commissioning.

SWORN (OR AFFIRMED) BEFORE ME )  
at Calgary, Alberta, this 30<sup>th</sup> day of April, )  
2020. )  
)  
)  
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)  
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\_\_\_\_\_  
A Commissioner for Oaths/Notary Public )  
in and for the Province of Alberta )

  
\_\_\_\_\_  
JEFF BUCK

THIS IS EXHIBIT "A" REFERRED TO IN  
THE SUPPLEMENTAL AFFIDAVIT OF JEFF BUCK  
SWORN BEFORE ME

THIS 30<sup>TH</sup> DAY OF APRIL, 2020

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A Commissioner of Oaths and Notary Public  
in and for the Province of Alberta



April 17, 2020

JMB Crushing Systems Inc.  
9046 22 Avenue SW  
Edmonton, AB T6X 0J9

**Attention: Jeff Buck, President**

Dear Sir:

Reference is made to the Commitment Letter dated October 16 2019 as amended, supplemented, restated or replaced from time to time (the "**Original Commitment Letter**"). All capitalized terms used herein but not defined shall have the meaning given to them in the Original Commitment Letter.

Please be advised that ATB Financial has amended the following items as outlined in the Original Commitment Letter:

1. Amendment to Section 1 as follows:

a. Facility #1 - Operating Loan Facility (Revolver)

i. Amount and Type

Facility #1 is capped at the existing outstanding balance as of April 16, 2020. No further amounts may be drawn by the Borrower whatsoever on Facility #1, including in the event that the Borrower pays down, in full or in part, the indebtedness in relation to Facility #1, and each such payment shall be irrevocable and shall permanently reduce Facility #1. For clarity, the Borrower has no further access to funds whatsoever in relation to Facility #1, and shall be entitled to only make payments to permanently reduce the amounts outstanding thereunder.

d. Facility #2 – Bulge Facility (non-revolving/unmargined) - \$900,000.00

i. Amount and Type

Facility #2 is available by way of prime based loans in Canadian Dollars and advances under Facility #2 shall not exceed \$900,000.00.

Facility #2 is to be used to assist with payables critical to the Borrower's ongoing business operations.

Advances shall be permitted by the Lender on this facility only upon request by the Borrower and only upon the Lender providing prior written approval. The Lender reserves the right to not advance funds under Facility #2 in its sole and unfettered discretion.

Prior to the Lender advancing funds under Facility #2, as pre-approved by the Lender in its sole discretion, FTI Consulting (in its capacity as the Borrower's

financial advisor) shall review any request by the Borrower for an advance of funds under Facility #2 and FTI Consulting shall confirm in writing to the Lender the nature of the request, that the Borrower's request relates to a payable critical to the Borrower's ongoing business operations and an explanation as to why the payment is critical.

Any advance of funds by the Lender under Facility #2 shall be used by the Borrower for the sole purpose of paying the critical payment as confirmed by FTI Consulting and previously approved by the Lender. FTI Consulting shall confirm in writing that the advance of funds was applied in accordance with the Borrower's request.

Any advance of funds by the Lender under Facility #2 in relation to a critical, due and lienable payable of the Borrower shall be repaid in full, and in priority, from revenue generated by the Borrower on the specific project from which the critical, due and lienable payable is attributable. All funds received by the Borrower in relation to a specific project on which the Lender advanced funds under Facility #2 for payment of a critical, due and lienably payable shall be deposited with the Lender and applied to the indebtedness under Facility #2 until such time as the advance is repaid in full.

Facility #2 shall automatically expire on April 29, 2020, after which no further advances will be permitted under Facility #2.

ii. Interest Rates

Pricing applicable to Facility #2 is the Lender's prime rate of interest, from time to time, plus 3.75%.

iii. Repayment

Facility #2 is repayable on demand and the Lender may terminate the availability thereof (including any undrawn portion) at any time without notice.

e. Amendment to Section 2(a) as follows:

Non-refundable extension fee of \$15,000.00 is payable upon acceptance of this Amendment whether or not any Borrowing is extended.

f. Amendment to Section 11 as follows:

All demand Facilities are subject to review by Lender at any time in its sole discretion and at least annually without limiting Lender's right to make demand at any time. The next review date has been set for April 29, 2020 but may be set at an earlier or later date at the sole discretion of the Lender.

All other terms and conditions of the Original Commitment Letter remain unchanged and in full force and effect.

atb.com

ATB

The Borrower certifies that the representations and warranties set forth in the Original Commitment Letter are true and correct in all material respects on the date hereof.

Thank you.

Yours Truly,

ATB Financial

Please return the enclosed duplicate letter signed as indicated below on or prior to April 2, 2020. This letter may be executed electronically; this letter may be delivered by email, facsimile or other functionally-equivalent electronic means.

Per:  
Andrew Burnett, Director

Per:  
Claudia Yu, Associate Director

Acknowledged and accepted this \_\_\_\_\_ day of April, 2020.

JMB Crushing Systems Inc.

Per:  
Name:  
Title:

Each of the undersigned, in their capacity as Guarantor of Borrower, acknowledges and agrees to this Agreement as of this \_\_\_\_\_ day of April, 2020 and acknowledges that Lender has made no representation or warranty of any kind as to the realization on the undersigned's guarantee (or any collateral security therefor) other than as expressly set forth in this Agreement and that such guarantee is confirmed. Each of the undersigned further acknowledges that this Agreement and the documents referred to in this Agreement may be amended, supplemented, restated, modified, or renewed without the undersigned's consent and without reducing, restricting or otherwise limiting the undersigned's liability in any way.

Eastside Rock Products, Inc.

DocuSigned by:  
*Byron J Leukovich*  
Per: DA7FAEE8A770408...

atb.com

ATB

Name:  
Title:

2161889 Alberta Ltd.

DocuSigned by:

Byron J Levkultich

Per:

DATAFACE6A770408

Name: Byron J Levkultich  
Title: Director



THIS IS EXHIBIT "B" REFERRED TO IN  
THE SUPPLEMENTAL AFFIDAVIT OF JEFF BUCK  
SWORN BEFORE ME  
THIS 30<sup>TH</sup> DAY OF APRIL, 2020

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A Commissioner of Oaths and Notary Public  
in and for the Province of Alberta



atb.com

ATB

April 17, 2020

Fiera Private Debt Fund V LP  
20 Adelaide Street East, Suite 1500  
Toronto, ON M5C 2T6

Attention: Stephen Zagrodny

-and-

JMB Crushing Systems Inc.  
c/o Resource Land Holdings, LLC  
1400 16th Street, Suite 320  
Denver, CO 80202

Attention: Byron Levkulich

Dear Sirs:

Re: Notice of Amendment to ATB Debt Cap pursuant to the Amended and Restated Priority Agreement Specified Collateral made effective as of November 5, 2019 (as amended, the "**Agreement**") among ATB Financial ("**ATB**"), Fiera Debt Fund GP Inc., for itself and as collateral agent of Fiera Private Debt Fund VI LP by its general partner, Fiera Private Debt Fund GP Inc. (the "**Secured Party**"), JMB Crushing Systems Inc., Eastside Rock Products, Inc. and 2161889 Alberta Ltd. (collectively, the "**Debtors**")

ATB hereby requests the amendment of the definition of ATB Debt Cap, as defined in the Agreement to the following:

"**ATB Debt Cap**" means an amount equal to: (i) Eleven Million Five Hundred Thousand (\$11,500,000.00) Dollars for the time period from April 15, 2020 until April 29, 2020, and (ii) Ten Million (\$10,000,000.00) Dollars for all times thereafter, or such other amount as may be amended from time to time in accordance with the terms of this Agreement. For greater certainty, the ATB Debt Cap shall only apply to principal obligations owed by the Debtors to ATB."

Upon acceptance by the Secured Party and each of the Debtors, this letter shall be read and interpreted with the Agreement so that the Agreement, as amended by this letter, shall be construed as one document. The Agreement as amended by this letter shall remain in full force and effect as of the date hereof. This amendment shall be governed by the laws of the Province of Alberta.

DocuSign

**ATB**

Please acknowledge receipt and acceptance of this amendment by signing and returning a copy to ATB. This amendment may be executed in counterpart and delivered by fax or other electronic transmission.

Yours truly,

**ATB Financial**

By: \_\_\_\_\_  
Andrew Burnett  
Director

By: \_\_\_\_\_  
Claudia Yu  
Associate Director

Acknowledged and accepted this \_\_\_\_\_ day of April, 2020

**FIERA PRIVATE DEBT FUND V LP,  
by its general partner,  
INTEGRATED PRIVATE DEBT FUND GP INC.**

By: \_\_\_\_\_  
Name:  
Title:

**JMB CRUSHING SYSTEMS INC.**

DocuSigned by:  
*Byron J Levkovich*  
Per: \_\_\_\_\_  
DA7FAEE6A770408...  
**Authorized Signatory**

**EASTSIDE ROCK PRODUCTS, INC.**

DocuSigned by:  
*Byron J Levkovich*  
Per: \_\_\_\_\_  
DA7FAEE6A770408...  
**Authorized Signatory**

atb.com

ATB

2161889 ALBERTA LTD.

DocuSigned by:

Byron J Leukovich

Per: DA7FAEE6A770408...

Authorized Signatory





THIS IS EXHIBIT "C" REFERRED TO IN  
THE SUPPLEMENTAL AFFIDAVIT OF JEFF BUCK  
SWORN BEFORE ME  
THIS 30<sup>TH</sup> DAY OF APRIL, 2020

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A Commissioner of Oaths and Notary Public  
in and for the Province of Alberta



April 30, 2020

JMB Crushing Systems Inc. and  
2161889 Alberta Ltd.  
PO Box 6977  
Bonnyville, AB T9N2H4

Attention: Jeff Buck, President  
jeffb@jmbcrush.com

Dear Sirs:

Subject to the terms, covenants and conditions set out in this letter agreement (the "*DIP Letter Loan Agreement*"), ATB Financial has agreed to make available to JMB Crushing Systems Inc. and 2161889 Alberta Ltd. a revolving, demand, senior, secured, super-priority, debtor-in-possession credit facility in the maximum principal amount of CAD \$900,000.00 for the purposes set out below. ATB Financial will do so on the terms and subject to the conditions set out in this letter.

**Borrower:** JMB Crushing Systems Inc. and 2161889 Alberta Ltd., jointly and severally (each a "*Borrower*" and collectively the "*Borrowers*")

**Lender:** ATB Financial (the "*Lender*").

**CCAA Case:** The Borrowers (collectively, the "*CCAA Applicants*") intend to apply to the Court of Queen's Bench of Alberta (the "*CCAA Court*") for an initial order (which, as it may be amended and restated from time to time, is referred to herein as the "*Initial Order*") commencing proceedings (the "*CCAA Case*") under the *Companies' Creditors Arrangement Act* (Canada) (the "*CCAA*").

**Additional Definitions:** Terms not otherwise defined herein shall have the meaning ascribed to them in Article 1 of Schedule 1.

**Type of DIP Credit Facility:** Senior secured super-priority debtor-in-possession demand revolving credit facility of up to CDN\$900,000.00 (the "*DIP Credit Facility*").

Despite anything else contained in this DIP Letter Loan Agreement, all of the Borrower's Obligations under the DIP Credit Facility are repayable immediately on demand by the Lender and the DIP Credit Facility may be terminated in whole or in part by the Lender at any time in its sole discretion.

**Maximum Amount of DIP Credit Facility:** The maximum credit amount available under the DIP Credit Facility is CDN\$900,000.00 (the "*Maximum Amount*"); provided that at no time shall the aggregate amount outstanding under the DIP Credit Facility exceed: (a) for the period between the date that the Initial Order is first made and the date of the Come-Back Hearing, the lesser of CDN\$500,000.00, the applicable forecast borrowing requirements of the Borrowers during such period as set forth in the 10 Week Cash Flow Projection, and the amount of the DIP Charge approved in the Initial Order (the "*Initial Advance*"); and (b) after the Come-Back Hearing, the lesser of the Maximum Amount and the then applicable forecast borrowing

requirements of the Borrowers after such date as set forth in the Rolling 10 Week Cash Flow Updates plus such other amount in excess thereof as may be approved in writing by the Monitor and the Lender (the "*Facility Availability*").

**Availment:**

Each Advance will be denominated in Canadian currency and deposited directly into the Borrower's current bank account with the Lender (the "*Account*") unless otherwise agreed in writing by the Lender and the Monitor upon such terms as may be approved by them in writing and agreed to by the Borrower.

Either Borrower may request an Advance upon delivery of notice in writing to the Lender of an Advance Request by no later than 11:00 a.m. one Business Day prior to the requested date of the Advance, in form and substance satisfactory to the Lender, which notice shall include (i) the proposed amount of the requested Advance, (ii) the date the Advance is required, (iii) the specific use for the proceeds of the Advance as confirmed to the Lender by the Monitor in writing, and (iv) such other matters required by the Lender.

Advances are subject to the following limitations: (a) an Advance may only occur if no Default or Event of Default is then subsisting; (b) all conditions set out herein have been satisfied or waived by the Lender; and (c) the Lender may terminate the DIP Credit Facility (including any undrawn portion) at any time without notice.

**Termination Date:**

The DIP Credit Facility matures, and the Obligations are repayable on the earlier of (the "*Termination Date*"):

- (a) the last banking day of the twelfth (12th) month following the date of the granting of the Initial Order;
- (b) the effective date of any confirmed plan of reorganization or arrangement by the CCAA Court;
- (c) the effective date of a full recapitalization of the Borrowers pursuant to the SISP and confirmed by the CCAA Court;
- (d) the completion of a sale of all or substantially all of the Borrowers' assets pursuant to the SISP;
- (e) the date on which the Initial Order expires without being extended or on which the CCAA Case is terminated or dismissed; and/or
- (f) the date the Lender declares all Obligations to be immediately due and payable and demands the repayment in full thereof (including but not limited to as a result of the occurrence of an Event of Default).

All Obligations shall be due and payable in full on the Termination Date without notice or demand by the Lender.

**Permitted Uses of Proceeds:**

The DIP Credit Facility is to be used solely for the following purposes:

- (a) to fund the working capital requirements, general corporate purposes, and other ordinary course expenditures of the Borrowers during the CCAA Proceedings, as confirmed by the Monitor to the Lender in writing, and in accordance with (i) until the Further Availability Conditions shall have been satisfied, the 10 Week Cash Flow Forecast, and (ii) subsequent to the Further Availability Conditions having been satisfied, the Rolling 10 Week Cash Flow Updates;
- (b) to pay Permitted Fees and Expenses.

**PROVIDED HOWEVER**, no advances under the Interim Facility will be used to pay indebtedness of the Borrowers which arose prior to the commencement of the CCAA Proceedings except as may be permitted by CCAA Court and agreed to by the Lender in its sole discretion.

**Interest Rates:**

Interest shall accrue at the rate of ten percent (10%) per annum on the balance outstanding under the DIP Credit Facility together with any other Obligations owing to the Lender hereunder (including accrued and unpaid interest), both before and after maturity, default or judgment, which shall be payable by the Borrowers to the Lender in cash monthly (in arrears), on the last day of each month (beginning on last day of the month in which the Closing Date occurs) until and including the date of payment in full of all amounts owing hereunder.

Interest shall be calculated in arrears as well after and before maturity, default and judgment, with interest on overdue interest at the same rate as on principal, computed on the daily balance of the Obligations outstanding at the aforementioned rates based on the actual number of days lapsed divided by 365 or 366, as the case may be, and shall be payable as herein set forth.

**Security and Priority:**

All Obligations shall be secured by a first-ranking super-priority charge created by the CCAA Court in the Initial Order (the "**DIP Charge**") against all of the existing and after-acquired real and personal, tangible and intangible, assets, property and undertaking of the CCAA Applicants (collectively, the "**Collateral**") in favour of the Lender.

The DIP Charge will rank in priority to all Liens, statutory or otherwise (including without limitation, construction and builders liens and trust claims whether or not perfected or preserved), other than the Administration Charge (provided that the Administration Charge shall be subordinate in priority to the DIP Charge for unpaid CCAA Expenses in excess of CDN\$300,000.00) and Permitted Liens. The CCAA Charges will rank in the following order of priority:

- First, the Administration Charge, for up to CDN\$300,000.00
- Second, the DIP Charge
- Third, the Directors' Charge, for up to CDN\$250,000.00

All present and future liabilities and obligations of each of the Borrowers to the Lender, including the Obligations, shall be secured and evidenced, as the case may be, by certain security documents as requested by the Lender in form and substance satisfactory to the Lender and its counsel (collectively, the "*DIP Lender Security*") and the DIP Charge together with such further documentation that the Lender and its counsel may reasonably require.

**Additional Consideration:**

As additional consideration and security for the DIP Credit Facility, the Borrowers will and hereby acknowledge and confirm that all existing security granted or given to or in favour of the Lender prior to the Initial Order forms a valid and enforceable security interest against the Collateral in favour of the Lender and secures all direct and indirect debts and liabilities of the Borrowers to the Lender howsoever incurred, including but not limited to the DIP Credit Facility and the Obligations, and in the case of any mortgage, to the lesser of the full extent of the value to be realized from the mortgage security and the amount of the indebtedness of the Borrowers outstanding to the Lender prior to the date of the Initial Order.

**Covenants:**

So long as the Obligations remain outstanding each Borrower covenants and agrees, on a joint and several basis, in favour of the Lenders to be bound by and perform all of the covenants set out in Article 2 of Schedule 1.

**Reporting:**

So long as the Obligations remain outstanding, each Borrower covenants and agrees with the Lender as follows:

- (a) it will deliver to the Lender no later than Tuesday of each week, Rolling 10 Week Cash Flow Updates (in respect of the immediately following 10 Week period), prepared on an unconsolidated and consolidated basis, including variance reports and such other information as the Lender may require, updated weekly on a 10-week rolling basis, all in form and substance reviewed and approved by the Monitor and satisfactory to the Lender, together with a compliance certificate signed by a senior officer of the Borrower stating that such updated Rolling 10 Week Cash Flow Updates disclose that the Borrower will have sufficient funds to meet its obligations as they become due during such period;
- (b) it will forthwith provide the Lender with written notice of the occurrence of any event or occurrence which could with the giving of notice, lapse of time or both result in a material adverse change in (i) any receipts or disbursements by the Borrowers from those forecast in any cash flow forecasts delivered by the Borrowers to the Lender (whether weekly or monthly) or (ii) the expected overall recovery or profitability, timing or cost (including cost of administration) in connection with any particular contract, job or project; and
- (c) it will forthwith provide the Lender with such other information, in electronic format whenever and wherever possible, as the Lender may reasonably request.

**Events of Default and**

The occurrence of any one or more of the following events or conditions will be an event of default under this DIP Letter Loan Agreement (each an "*Event of*



**Remedies:**

**Default<sup>(1)</sup>:**

- (a) the issuance of an order staying, reversing, vacating or otherwise modifying the Initial Order in any manner that is prejudicial to the rights and interests of the Lender without the prior written consent of the Lender;
- (b) the issuance of an order terminating or dismissing the CCAA Case or lifting the stay of proceedings in the CCAA Case to permit the enforcement of a Lien or the exercise of a right or remedy against a CCAA Applicant, the termination or expiry of the Initial Order without being extended without being extended or the appointment of a receiver, receiver and manager, interim receiver or similar official against any of the CCAA Applicants;
- (c) the entry of any order staying, amending, reversing, vacating or otherwise modifying, in each case without the prior consent of the Lender, the DIP Credit Facility, including granting a charge ranking in priority to, or on a pari passu basis with, the DIP Charge or altering the priority of the DIP Charge or any other order is made in respect of any of the CCAA Applicants which is or may be prejudicial to the Lender's interests;
- (d) a Borrower undertakes any actions with respect to their business operations which would, in the determination of the Lender, result in a Material Adverse Change to one or both of the Borrowers or the other CCAA Applicants including ceasing to carry on business;
- (e) if there occurs a Material Adverse Change;
- (f) there is a change to either or both of the Borrowers' existing senior management that is not acceptable to the Lender;
- (g) any of the Borrowers makes any payments of any kind not permitted by the Initial Order (as it may be amended from time to time) or not permitted under the DIP Loan Documents;
- (h) any of the Borrowers fails to make punctual payment when due of any principal amount, interest, fees or other amount payable under any of the DIP Loan Documents;
- (i) any representation or warranty made or given in any DIP Loan Document is false or erroneous when made;
- (j) any of the Borrowers breaches, fails to observe or to fails to perform any covenant or obligation under any DIP Loan Document or there occurs a default or event of default under any of the other DIP Loan Documents; or
- (k) if any Borrower sells material assets outside the ordinary course of business and in a manner not permitted by an Order of the CCAA Court.



Upon the earlier of the Termination Date and the occurrence of an Event of Default, whether or not there is availability under the DIP Credit Facility, without any notice or demand, the right of the Borrowers to receive any Advance or other accommodation of credit from the Lender shall be terminated.

Without detracting from the demand nature of the DIP Credit Facility or limiting or restricting in any manner whatsoever the right of the Lender at any time to declare terminate the DIP Credit Facility and demand immediate repayment of the Obligations (whereupon the Obligations shall be immediately due and payable), upon the occurrence of an Event of Default, the Lender may do any one or more of the following, all of which is authorized by the Borrowers: (a) by written notice to the Borrower, declare the DIP Credit Facility to be terminated, whereupon the DIP Credit Facility will terminate immediately and the Lender will have no further obligation to make any Advance available to either or both of the Borrowers under the DIP Credit Facility; (b) by written notice to the Borrower, declare all of the Obligations to be immediately due and payable without further demand, presentation, protest or other notice of any kind, all of which are expressly waived by the Borrower; (c) apply to the CCAA Court to enforce the DIP Charge and/or for the appointment of any receiver or receiver and manager of the undertaking, property and assets of the Borrowers; and (d) subject to obtaining the leave of the Court or the Monitor, exercising any other action, suit, remedy or proceeding authorized or permitted by the DIP Loan Documents or by Applicable Law, including specifically performing any covenant or agreement contained in the DIP Loan Documents, applying any amounts outstanding in cash accounts maintained by the Lender on behalf of any Borrower to repayment of the Obligations, enjoining any violation of any of the terms of the DIP Loan Documents, exercising any power granted by the DIP Loan Documents or by Applicable Law, or obtaining judgment for and recovering the Obligations.

**Conditions to  
Availability**

Initial Advance: In addition to the Advance Conditions, the obligation of the Lender to make the Initial Advance under the DIP Credit Facility shall be subject to and conditional upon the satisfaction of the following conditions precedent (the "*Initial Availability Conditions*"):

- (a) the due execution and delivery of this DIP Letter Loan Agreement and the other DIP Loan Documents, as applicable, by the Borrowers;
- (b) the issuance of the Initial Order in form and substance satisfactory to the Lender, which, among other things: (i) approves the DIP Credit Facility and this DIP Letter Loan Agreement in respect of borrowings in an amount up to the Initial Advance; (ii) orders and grants the DIP Charge securing an amount equal to or greater than the amount of the Initial Advance that either or both of the Borrowers has requested, having the priority contemplated herein, and (iii) orders the stay of proceedings under the Initial Order for not less than ten (10) days until the Comeback Hearing, which Initial Order shall be in full force and effect and shall not have been amended, modified or stayed except as agreed to by the Lender in writing;



- (c) no Default or Event of Default shall have occurred or be continuing, which shall be certified by the Borrower's chief financial officer;
- (d) the Lender shall be satisfied with the 10 Week Cash Flow Projections which shall have been reviewed favourably by the Monitor; and
- (e) other than the CCAA Case and the Initial Order, no Material Adverse Change shall have occurred since the date of this DIP Letter Loan Agreement.

Advances Subsequent to the Initial Advance: In addition to the Advance Conditions, the obligation of the Lender to make any Advance subsequent to the Initial Advance shall be subject to and conditional upon the satisfaction of the following conditions precedent (the "*Further Availability Conditions*"):

- (a) due authorization, execution and delivery by the Borrowers of such DIP Loan Documents as are required by the Lender including the DIP Lender Security;
- (b) notice of the Initial Order shall have been provided to each party that has a registered Lien against any of the Borrowers promptly following the date of the Initial Order;
- (c) the Monitor shall publish a notice in the Daily Commercial News within two (2) days following the issuance of the Initial Order advising of the CCAA Case and the Initial Order;
- (d) issuance of an order by the CCAA Court (the "*Extension Order*") not later than ten (10) days after the entry of the Initial Order, among other things: (i) approving the SISP; (ii) confirming the availability of the Maximum Amount in accordance with this DIP Letter Loan Agreement; and (iii) extending the term of the stay of proceedings against the Borrowers beyond the term initially set out in the Initial Order, which Extension Order shall be in form and substance satisfactory to the Lender (including the form of SISP and confirming the priority of the DIP Charge as contemplated herein) and shall be in full force and effect and not have been vacated, reversed, modified, amended or stayed; and
- (e) no Event of Default shall have occurred or be continuing, which shall be certified by the Borrower's chief financial officer.

**Conditions to Each Advance:**

In addition to the Initial Availability Conditions and the Further Availability Conditions, the obligation of the Lender to make any and all Advances under the DIP Credit Facility shall be subject to the satisfaction of the following conditions (the "*Advance Conditions*"):

- (a) the Borrowers shall have submitted an Advance Request that has been duly executed by the Borrower's chief financial officer, in a form acceptable to the Lender; which, in addition to any other requirement herein the request for Advance shall, among other





things, include certifications as to the matters described below and specify such matters as are referred to herein under the heading "Availment";

- (b) each request for Advance made by the Borrowers shall have been reviewed and approved by the Monitor;
- (c) no Event of Default shall have occurred or be continuing or would result from the proposed advance;
- (d) the Lender shall be satisfied with the Rolling 10 Week Cash Flow Updates which shall have been reviewed favourably by the Monitor;
- (e) no notice shall have been received or filed of a motion or application to stay, modify, vary, amend, reverse, amend, or vacate in whole or in part the Initial Order, the Extension Order or the DIP Charge or which in any way seeks to impair, limit or lessen the security, priority, protections, rights, or remedies of the Lender, whether under the Initial Order or the Extension Order, as the case may be, with respect to the DIP Charge, or under any of the DIP Loan Documents.

The conditions precedent set out herein are for the sole benefit of the Lender and may be waived by the Lender, in whole or in part and with or without terms or conditions, relating to all or any portion of any Advance, without affecting the right of the Lender to require that those conditions be satisfied in whole or in part relating to any other Advance.

**CRO:**

The Lender, in its sole discretion, may seek the appointment of a CRO at any time. Each Borrower hereby consents to an order approving and authorizing the appointment of a CRO acceptable to the Lender upon terms and conditions acceptable to the Lender. Neither Borrower shall directly or indirectly or in any manner whatsoever oppose, delay or hinder in any manner whatsoever such appointment.



**Mandatory  
Repayment:**

The Borrowers shall pay to the Lender all proceeds received on account of the settlement of any outstanding litigation claims, which proceeds will be applied to reduce, on a dollar-for-dollar basis, the amount of the indebtedness of the Borrower outstanding to the Lender prior to the date of the Initial Order.

**Expenses:**

The Borrowers will reimburse the Lender for all reasonable fees (including legal fees on a solicitor and own client full indemnity basis and professional fees), disbursements and out-of-pocket expenses incurred by the Lender in any manner in connection with the CCAA Case and the DIP Loan Documents, the Advances made under this DIP Letter Loan Agreement or any Security required by this DIP Letter Loan Agreement including, without limitation, all reasonable fees and disbursements incurred by the Lender in connection with the preparation and negotiation of the DIP Loan Documents, the registration of the Security, due diligence, ongoing maintenance and administration, review of application materials in the CCAA Case and the attendance at hearing during the CCAA Case and in the protection and enforcement of any right or remedy of the Lender under the DIP Loan Documents or the DIP Charge or otherwise available at law or equity. All such amounts will be payable by the Borrowers whether or not any Advances are made under the DIP Credit Facility.

**Other Matters:**

Unless otherwise expressly stated herein, if reference is made to any action or matter which requires the consent of the Lender or which is required to be completed to the satisfaction of the Lender or which otherwise requires a determination by, or a decision of, the Lender, the discretion of the Lender to give such consent or to confirm its satisfaction with such action or matter shall be absolute and unfettered and in its sole discretion and any such determination or decision of the Lender shall be made in its absolute and unfettered sole discretion.

Any failure or delay by the Lender in exercising any right or privilege with respect to the non-compliance with any provisions of this DIP Letter Loan Agreement by any Borrower and any course of action on the part of the Lender, shall not operate as a waiver of any rights of the Lender unless made in writing by the Lender. Any such waiver shall be effective only in the specific instance and for the purpose for which it is given and shall not constitute a waiver of any other rights and remedies of the Lender with respect to any other or future non-compliance.

Any deliverable hereunder by any Borrower to or in favour of the Lender shall be in form and substance satisfactory to the Lender.

This DIP Letter Loan Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterpart together shall constitute one and the same DIP Letter Loan Agreement. This DIP Letter Loan Agreement may be executed by email PDF, and any signature contained hereon by email PDF shall be deemed to be equivalent to an original signature for all purposes.

This DIP Letter Loan Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns; "successors" includes any corporation resulting from the amalgamation

of a party with any other corporation. None of the Borrower may assign any of their respective rights and obligations hereunder without the prior written consent of the Lender. The Lender may assign all or any part of its rights under the DIP Credit Facility and may have its obligations in respect of the DIP Credit Facility assumed.

Without prejudice to any other method of giving notice, all communications provided for or permitted hereunder shall be in writing and delivered to the addressee by prepaid private courier, email or functionally equivalent electronic means of transmission, charges (if any) prepaid. Any such communication must be sent to the intended recipient at its address as follows:

(a) to the Borrowers:

JMB Crushing Systems Inc. and  
2161889 Alberta Ltd.  
PO Box 6977  
Bonnyville, AB  
T9N2H4

Attention: Jeff Buck, President  
E-Mail: [jeffb@jmbcrush.com](mailto:jeffb@jmbcrush.com)

(b) to the Lender:

ATB Financial  
Suite 2500, 10020 100 Street  
Edmonton, AB  
T5J 0N3

Attention : Andrew J. Burnett  
Email : [aburnett@atb.com](mailto:aburnett@atb.com)

or at any other address as any party may at any time advise the others by communication given or made in accordance with this provision. Any communication transmitted by prepaid private courier shall be deemed to have been validly and effectively given or delivered on the Business Day after which it is submitted for delivery. Any communication transmitted by e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the communication is transmitted on a day which is not a Business Day or after 5:00 p.m. (local time of the recipient), the communication will be deemed to have been given or made and received on the next Business Day.

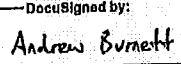
**Governing Law:**


This DIP Letter Loan Agreement shall be governed by the laws of the Province of Alberta and the laws of Canada applicable therein, and the parties irrevocably hereby attorn to the jurisdiction of the CCAA Court.

Please acknowledge acceptance of this DIP Letter Loan Agreement by signing and returning a signed copy to the Lender no later than 5:00 p.m. May 1, 2020, the expiry date of this offer.

Yours truly,

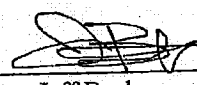
**ATB Financial**

Per:   
DocuSigned by:  
Name: Andrew Burnett  
Title: Director


Per:   
DocuSigned by:  
Name: Claudia Yu  
Title:

For good and valuable consideration, the foregoing is hereby acknowledged and agreed as of this \_\_\_\_ day of April, 2020.

**JMB CRUSHING SYSTEMS INC.**

Per:   
Name: Jeff Buck  
Title: President  
I have authority to bind the corporation

**2161889 ALBERTA LTD.**

Per:   
Name: Jeff Buck  
Title: President  
I have authority to bind the corporation



**Schedule 1 to the DIP Letter Loan Agreement dated April 30, 2020  
between ATB Financial as lender and JMB Crushing Systems Inc. and 2161889 Alberta Ltd. as  
borrowers**

**1. INTERPRETATION**

**1.1 Definitions**

Unless otherwise defined in this DIP Letter Loan Agreement, the following capitalized terms have the following meanings:

- (a) "*Administration Charge*" means a charge created by the CCAA Court in the CCAA Case to secure payment of the CCAA Expenses.
- (b) "*Advance*" means advances made or deemed to be made under the DIP Credit Facility.
- (c) "*Advance Request*" means a written notice from a Borrower to the Lender.
- (d) "*Applicable Law*" means (i) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise), (ii) any judgment, order, writ, injunction, decision, ruling, decree or award, (iii) any regulatory policy, practice, guideline or directive, or (iv) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of that Person.
- (e) "*Business Day*" means any day other than a Saturday, Sunday or day on which banks are authorized to be closed in the Province of Alberta.
- (f) "*CCAA Charges*" means the Administration Charge, the DIP Charge and the Directors' Charge.
- (g) "*Comeback Hearing*" a hearing in the CCAA Case subsequent to the Initial Order of an application to approve the Maximum Amount and the terms and provisions of the DIP Credit Facility, the amount of the DIP Charge and this DIP Letter Loan Agreement.
- (h) "*CRO*" means a chief restructuring officer of the CCAA Applicants that the Lender has approved in writing prior to its appointment.
- (i) "*Default*" means any event or condition that would constitute an Event of Default except for satisfaction of any condition subsequently required to make the event or condition an Event of Default, including the giving of any notice, the passage of time, or both.
- (j) "*DIP Loan Documents*" means collectively, this DIP Letter Loan Agreement, the DIP Lender Security and all documents, agreements, instruments and certificates delivered from time to time to the Lender by any Borrower or an officer thereof in connection with, relating to or arising from the DIP Credit Facility and "DIP Loan Document" shall mean any one of the DIP Loan Documents.
- (k) "*Directors' Charge*" means a Charge created by the CCAA Court in the CCAA Case in favour of the directors of the CCAA Applicants.



- (l) “*Environmental Laws*” means all Applicable Laws with respect to the environment or environmental or public health and safety matters contained in statutes, regulations, rules, ordinances, orders, judgments, approvals, notices, permits or policies, guidelines or directives whether or not having the force of law.
- (m) “*Environmental Orders*” includes all applicable orders, directives, judgments, decisions or the like rendered by any Governmental Authority or court of competent jurisdiction pursuant to Environmental Laws or Environmental Permits.
- (n) “*Environmental Permits*” includes all permits, certificates, approvals, registrations, licences or other instruments issued by any Governmental Authority and relating to or required for each Borrower to carry on its business, activities and operations in compliance with all Environmental Laws and Environmental Orders.
- (o) “*Governmental Authority*” means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.
- (p) “*Lien*” means any security interest, lien (statutory, common law, equitable or otherwise), privilege, charge, trust deemed to exist under any Applicable Law or other encumbrance of any kind, or any other agreement or arrangement creating in favour of any claimant or creditor a right relating to any particular property that is in priority to the right of any ordinary creditors relating to that property, and including the right of a lessor under a capital lease or operating lease.
- (q) “*Material Adverse Change*” means any action, event, effect or change that results in or causes, or which could reasonably be expected to result in or cause, a material adverse change in any of (i) the condition (financial or otherwise), business, performance, prospects, operations or property (including the Collateral) of each Borrower, (ii) the ability of the Borrowers or to fully and timely perform its obligations under any DIP Loan Document to which it is a party, or (iii) the validity or enforceability of any DIP Loan Document or the DIP Charge or the rights and remedies of the Lender thereunder.
- (r) “*Material Contract*” means contract of any Borrower that is material to the business or financial performance of any Borrower or the termination of which would result in a Material Adverse Change.
- (s) “*Monitor*” means FTI Consulting Canada Inc., in its capacity as monitor in the CCAA Case, or such other firm that is acceptable to the Lender and is appointed as a replacement monitor in the CCAA Case.
- (t) “*Obligations*” means all debts, liabilities and obligations of the Borrowers under the DIP Loan Documents, whether present, future, direct, indirect, liquidated, unliquidated or contingent, in connection with the DIP Credit Facility, including all outstanding principal amounts under the DIP Credit Facility, together with all accrued and unpaid interest and



all fees (including legal fees on a solicitor and own client full indemnity basis) and other amounts due, owing or payable under any of the DIP Loan Documents.

(u) "*Permitted Liens*" means:

- (i) inchoate or statutory liens or trust claims for taxes, assessments and other governmental charges or levies which are not delinquent or the validity of which are currently being contested in good faith by appropriate proceedings, provided that there will have been set aside a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto;
- (ii) the right reserved to, or vested in, any municipality or Governmental Authority by the terms of any lease, license, franchise, grant, or permit acquired by the Borrower, or by any statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition of its continuance;
- (iii) inchoate or statutory liens of builders, contractors, subcontractors, mechanics, suppliers, materialmen and others in respect of construction, maintenance, repair or operation of assets or properties, or other like possessory liens and public utility liens provided the same are not registered as encumbrances against the title to any real or personal property of the Borrower;
- (iv) a Lien granted by a Borrower to a public utility or other Governmental Authority when required by that utility or municipality or other authority in connection with the operations of a Borrower in the ordinary course of business;
- (v) title defects which are of a minor nature and in the aggregate will not materially impair the value or the use of property for the purposes for which it is held;
- (vi) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the Crown;
- (vii) Liens securing appeal bonds or similar Liens arising in connection with court proceedings (including surety bonds, security for costs of litigation where required by law and letters of credit) or any other instrument serving a similar purpose.

(v) "*Permitted Fees and Expenses*" means, collectively:

- (i) all of the reasonable and documented fees and expenses (including the fees and expenses of its counsel and advisors) incurred by the Lender in connection with, relating to or arising from the CCAA Case (including preparation for, and attendance at, the CCAA Court from time to time), due diligence, negotiation and documentation of the DIP Credit Facility, whether incurred prior to or after the date of the Initial Order, as well as all expenses of the Lender in connection with the ongoing monitoring, maintenance, interpretation and administration of the DIP Credit Facility and the enforcement of any of rights of the Lender including pursuant to the DIP Loan Documents (collectively, the "*DIP Expenses*");



- (ii) all reasonable and documented fees and expenses (including the fees and expenses of its counsel) of any CRO;
- (iii) all reasonable and documented fees and expenses for the counsel for the Borrowers in connection with the DIP Credit Facility and the CCAA Case (whether incurred prior to or during the pendency of the CCAA Case); and
- (iv) all reasonable and documented fees and expenses incurred by the Monitor and its counsel,

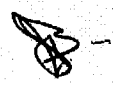
where the fees and expenses in subparagraphs (i) to (iv), inclusive, are collectively referred to as the "*CCAA Expenses*".

- (w) "*Rolling 10 Week Cash Flow Updates*" means the statements prepared by the Borrowers, on a consolidated basis, that are required under the CCAA and set out the rolling 10-week cash flow forecasts of receipts and disbursements of the CCAA Applicants, which will be in form and content satisfactory to the Monitor and the Lender.
- (x) "*SISP*" means a sale, refinancing and investment solicitation process (the "*SISP*") satisfactory to the Lender and approved by the CCAA Court.
- (y) "*10 Week Cash Flow Projections*" means the statement, prepared by the Borrowers on a consolidated basis, that is required under the CCAA and that sets out the projected cash flow forecasts of receipts and disbursements of the CCAA Applicants for a period of 10 weeks following the date of the Initial Order, which will be in form and content satisfactory to the Monitor and the Lender.

## 1.2

### Rules of Interpretation

- (a) In this DIP Letter Loan Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words "including" or "includes" in this DIP Letter Loan Agreement is to be construed as meaning "including, without limitation" or "includes, without limitation", respectively.
- (b) The division of this DIP Letter Loan Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this DIP Letter Loan Agreement.
- (c) Wherever in this DIP Letter Loan Agreement reference is made to a calculation to be made in accordance with IFRS, the reference is to the generally accepted accounting principles in Canada, applied on a consistent basis, and statements and interpretations (if applicable) issued by the Canadian Institute of Chartered Accountants or any successor body from time to time, including International Financial Reporting Standards.
- (d) References in this DIP Letter Loan Agreement to an Article, Section or Schedule are to be construed as references to an Article, Section or Schedule of or to this DIP Letter Loan Agreement unless otherwise specified.
- (e) Time is of the essence in all respects of this DIP Letter Loan Agreement.





- (f) All amounts referred to in this DIP Letter Loan Agreement are denominated in, and all amounts payable under this DIP Letter Loan Agreement are payable in, Canadian currency.
- (g) Unless otherwise specified in this DIP Letter Loan Agreement, time periods within which or following which any calculation or payment is to be made, or action is to be taken, will be calculated by excluding the day on which the period begins and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- (h) Unless otherwise specified, any reference in this DIP Letter Loan Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

## 2. COVENANTS

Until the DIP Credit Facility has been terminated and the Obligations repaid in full, the Borrower covenants and agrees as follows:

- (a) the Borrowers shall ensure that, as of any date, the aggregate borrowings then outstanding under the DIP Credit Facility will not exceed the then applicable forecast borrowing requirements of the Borrowers for such date as set forth in the 10 Week Cash Flow Projections or the Rolling 10 Week Cash Flow Updates, as the case may be;
- (b) the Borrowers shall not make or permit to be made any payment that are not contemplated in the then applicable forecast borrowing requirements of the Borrowers for such date as set forth in the 10 Week Cash Flow Projections or the Rolling 10 Week Cash Flow Updates, as the case may be, without the prior consent of the Monitor and the Lender, subject to variances in actual cash receipts being up to 10% less than projected on an aggregate basis, and actual disbursements being up to 10% greater than projected;
- (c) the Borrowers shall not permit actual ending cash, tested as of the last Business Day of any measurement period, to be less than the amount set forth for such date in the 10 Week Cash Flow Projections or the Rolling 10 Week Cash Flow Updates, as the case may be, with a permitted variance of 20% without the consent of the Monitor and the Lender;
- (d) the Borrowers shall not, and shall not permit any other CCAA Applicant to, without the prior written consent of the Lender, after the date of the Initial Order incur any indebtedness, liabilities or obligations other than the Obligations, indebtedness permitted by the Initial Order, trade payables incurred in the ordinary course after the date of the Initial Order and other indebtedness permitted by the Lender;
- (e) the Borrowers shall not, and shall not permit any other CCAA Applicant to, without the prior written consent of the Lender, make any payment of any indebtedness, liabilities or obligations outstanding on the date of the Initial Order other than as may be permitted by the Initial Order and contemplated by the 10 Week Cash Flow Projections or the Rolling 10 Week Cash Flow Updates, as the case may be, or otherwise as may be permitted by the Lender;

- (f) the Borrowers will take any steps necessary to ensure that the Lender is at all times considered an unaffected creditor in the CCAA Case in respect of the DIP Credit Facility and the Obligations, and the Obligations will not be subject to any compromise or arrangement under any plan of compromise or arrangement filed in the CCAA Case;
- (g) the Borrowers shall ensure that any plan of compromise or arrangement filed by one or more of the CCAA Applicants will provide for or be conditional upon the repayment in full of the Obligations upon such plan becoming effective;
- (h) the Borrowers shall comply with all orders made in the CCAA Case except to the extent such orders have been in whole or in part stayed, reversed, modified or amended;
- (i) the Borrowers shall, after the Initial Order is issued and on or before the Comeback Hearing, apply to the CCAA Court for the approval of a commercially reasonable form of SISF;
- (j) the Borrowers shall not create a key employee retention plan in favour of its employees without the consent of the Lender and the approval of the Court;
- (k) the Borrowers shall not cease to carry on the business currently being carried on by it on the date hereof;
- (l) the Borrowers shall ensure that its senior management team cooperates fully with the Monitor and the Lender and is available to meet with and promptly respond to enquiries and information requests from the Monitor, the Lender and their advisors;
- (m) the Borrowers shall not make any material change to its existing senior management, without the prior written consent of the Lender and the Monitor;
- (n) the Borrowers shall not use the proceeds of any advance under the DIP Credit Facility for any purposes other than those expressly contemplated in this DIP Letter Loan Agreement and in the 10 Week Cash Flow Projections and Rolling 10 Week Cash Flow Updates, as applicable;
- (o) the Borrowers shall not amend the terms of, terminate or otherwise disclaim, in whole or in part, any Material Contract, without the prior written consent of the Lender and the Monitor;
- (p) none of the Borrowers shall request, obtain or consent to a variation of the Initial Order or the Extension Order, as the case may be, without the prior written consent of the Lender;
- (q) the Borrowers shall, to the extent reasonably practicable, provide the Lender with at least five (5) business days advance notice of all court filings made by it, together with copies of all related court materials, and shall provide the Lender with notice of all court filings that any other person or entity intends to make, as indicated in any way to any of the Borrowers by such person or entity, as soon as reasonably practicable after obtaining knowledge of such intended filings;
- (r) the Borrowers shall maintain the current insurance coverage over the its assets and property and designate the Lender as loss payee as its interest may appear;



- (s) the Borrowers shall pay when due all statutory liens, trusts and other Crown claims including employee source deductions, GST and workplace safety, wages, vacation pay and insurance premiums;
- (t) each of the Borrowers shall maintain its corporate existence, comply in all material respects with all applicable statutory laws and regulations (including, all applicable construction or builders lien related legislation in all jurisdictions in which it carries on business) and obtain and maintain in good standing in all material respects all material leases and licences and permits;
- (u) the Borrowers shall permit the Lender and its employees and agents to enter upon and inspect its property, assets, books and records from time to time upon reasonable notice and during regular business hours and conduct environmental investigations of its properties and assets; and it shall execute and deliver all consents and further assurances as may be necessary or desirable in order for the Lender and its agents to obtain information from governmental authorities and other persons or entities with respect to such matters.

## 2.2 Lender Consents

The Lender may consent in writing (upon such terms and conditions as it may require) to any particular matter which is otherwise the subject of a prohibition, restriction or negative covenant contained in this DIP Letter Loan Agreement, in which case, the particular matter specified in such consent shall not be subject to such prohibition, restriction or negative covenant provided that such terms and conditions as may be required by the Lender in connection with such consent, if any, are fully complied with.

## 3. REPRESENTATIONS AND WARRANTIES

### 3.1 Representations and Warranties

To induce the Lender to make the DIP Credit Facility available to the Borrowers and make Advances under this DIP Letter Loan Agreement, each of the Borrowers hereby represents and warrants to the Lender the following (which representations and warranties will be deemed to be repeated upon each Advance being made to a Borrower):

- (a) the 10 Week Cash Flow Projections and Rolling 10 Week Cash Flow Updates (when delivered) include all payments that are secured by or could be secured by statutory Liens ranking in priority to the DIP Charge;
- (b) each Borrower is a corporation duly incorporated, and validly existing under the laws of the Province of Alberta and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary;
- (c) subject to the Initial Order, each Borrowers has all requisite power and authority to own and operate its properties, assets and business, and to enter into and perform its obligations under the DIP Loan Documents;
- (d) the execution and delivery of the DIP Loan Documents by each Borrower party thereto and the performance by each Borrower of its obligations thereunder have been duly authorized by the Initial Order, and no authorization under any Applicable Law, and no



registration, qualification, designation, declaration or filing with any Governmental Authority, is necessary therefor;

- (e) pursuant to the Initial Order, each DIP Loan Document has been duly executed and delivered by each Borrower party thereto and constitutes legal, valid and binding obligations of such Borrower, enforceable against it in accordance with its terms, subject only to applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or creditors rights generally, and the discretion that a court may exercise in granting equitable remedies;
- (f) subject to the Initial Order, the execution and delivery of the DIP Loan Documents by the Monitor on behalf of each Borrower and the performance by each Borrower of its obligations thereunder and compliance with the terms, conditions and provisions thereof, will not conflict with or result in a breach of (i) its constating documents or by-laws; (ii) any Applicable Laws; or any Material Contract;
- (g) each Borrower has good and valid title to all of its real property, a valid leasehold interest in all property leased by it, and a valid license to all property licensed by it, and owns all personal property that is purported to be owned by it (including any personal property reflected on its most recent financial statements), and no such property is subject to any Lien other than Permitted Liens;
- (h) no Default or Event of Default has occurred and is continuing;
- (i) the information prepared or furnished by or on behalf of the Borrowers in connection with any DIP Loan Document and the CCAA Case, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances when made, not misleading; provided, however, that projections contained therein are not to be viewed as factual and that actual results during the periods covered thereby may differ from the results set forth in such projections by a material amount. All projections that are part of such information (including those set forth in any 10 Week Cash Flow Projections and Rolling 10 Week Cash Flow Update provided to the Lenders) are based upon good faith estimates and stated assumptions believed to be reasonable and fair as of the date made in light of conditions and facts then known and, as of such date, reflect good faith, reasonable and fair estimates of the information projected for the periods set forth therein. All facts known to either or both of the Borrowers and material to an understanding of the financial condition, business, property or prospects of either or both of the Borrowers have been disclosed to the Lender;
- (j) except as disclosed to the Lenders in writing, (i) each Borrower and its property, assets and undertakings taken as a whole comply in all respects, and the business, activities and operations of such Borrower and the use of such property, assets and undertakings, and the processes and undertakings performed thereon, comply in all respects with all Environmental Laws except to the extent that failure to so comply would not have a Material Adverse Change; and (ii) such Borrower (1) has not received written notice and, except as previously disclosed to the Lender in writing, such Borrower has no knowledge, of any facts which could give rise to any notice of non-compliance with any Environmental Laws, which non-compliance has or would have a Material Adverse Change and (2) has not received any notice from any Governmental Authority that such Borrower is a potentially responsible party for a clean-up order or for corrective action in

connection with its property, assets and undertakings where such clean up order or corrective action would have a Material Adverse Change;

- (k) each Borrower has made available to the Lender copies of all existing environmental reports, reviews and audits and all documents pertaining to actual or potential environmental liabilities of the Borrowers, in each case to the extent such reports, reviews, audits and documents are in their possession, custody or control; and
- (l) all federal, provincial, local and foreign income and franchise and other tax returns (or information returns), reports and statements (collectively, the "Tax Returns") required to be filed have been filed by the Borrowers with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of each Borrower in accordance with GAAP and for which no collection action has been undertaken or threatened by any Governmental Authority. No Tax Return is under audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by either or both Borrowers for payments to its employees and any person which is non-resident for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable requirements of law and such withholdings have been timely paid to the respective Governmental Authorities.

### 3.2 Nature of Representations and Warranties

All representations and warranties, when repeated or deemed to be repeated under this DIP Letter Loan Agreement, will be construed with reference to the facts and circumstances existing at the time of repetition, unless they are stated herein to be made as of a specific date only. The representations and warranties set out in, or deemed to be made pursuant to, this DIP Letter Loan Agreement will survive the execution and delivery of this DIP Letter Loan Agreement and the making of any Advance, notwithstanding any investigations or examinations that may be made by the Lender or their counsel. Such representations and warranties will survive until this DIP Letter Loan Agreement has been terminated and the Obligations have been repaid in full.



#### 4. ADDITIONAL MATTERS

##### 4.1 Interest

- (a) For purposes of the *Interest Act* (Canada), the principle of deemed reinvestment of interest will not apply to any interest rate calculation under this DIP Letter Loan Agreement, and the rates of interest stipulated in this DIP Letter Loan Agreement are intended to be nominal rates and not effective rates or yields.
- (b) In the event that any provision of this DIP Letter Loan Agreement would oblige either or both of the Borrowers to make any payment of interest or any other payment which is construed by a court of competent jurisdiction to be interest in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lender of interest at a criminal rate (as those terms are construed under the *Criminal Code* (Canada)), then notwithstanding that provision, that amount or rate will be deemed to have been adjusted *nunc pro tunc* to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lender of interest at a criminal rate, that adjustment to be effected, to the extent necessary, as follows:
  - (i) first, by reducing the amount or rate of interest required to be paid under this DIP Letter Loan Agreement; and
  - (ii) second, by reducing any fees, commissions, premiums and other amounts which would constitute interest for the purposes of Section 347 of the *Criminal Code* (Canada);
- (c) If, despite giving effect to all adjustments contemplated by clause (b) of this Section, the Lender has received an amount in excess of the maximum permitted by that clause, then that excess will be applied by the Lender to the reduction of the principal balance of the Obligations and not to the payment of interest, or if that excessive interest exceeds that principal balance, that excess will be refunded to the Borrower.

##### 4.2 General Indemnity

In addition to any other indemnity provided for in this DIP Letter Loan Agreement, the Borrowers agree to indemnify the Lender on demand against any loss, expense or liability which the Lender may sustain or incur as a consequence of the action or inaction of the Borrowers or any other Borrower in connection with:

- (a) any default in payment of the principal amount of any Obligations or any part thereof or interest accrued thereon, as and when due and payable;
- (b) the occurrence of any Default or Event of Default;
- (c) any misrepresentation made by either or both of the Borrowers or any other Borrower in this DIP Letter Loan Agreement or in any instrument in writing delivered to the Lender in connection with this DIP Letter Loan Agreement;
- (d) any failure to comply with any Environmental Law; or

- (e) any default in the payment or performance of any covenant to pay or remit present or future Taxes, or to make and remit withholdings or deductions with respect to any Taxes or Priority Payables.

The Borrower's obligations under this Section continue even after all DIP Credit Facility has been repaid and this DIP Letter Loan Agreement has terminated.

#### 4.3 Further Assurances

Each Borrower will from time to time promptly upon request by the Lender do and execute all acts and documents as may be reasonably required by the Lender to give effect to the DIP Credit Facility and the DIP Loan Documents, and to any assignment or participation made by the Lender pursuant to this DIP Letter Loan Agreement.

#### 4.4 Non-Merger

Obtaining any judgment, or taking any action or proceeding, by the Lender under any DIP Loan Document will not operate as a merger of any of the Obligations, or in any way suspend payment or affect or prejudice the powers, rights and remedies, legal or equitable, which the Lender may have in connection with the Obligations. The surrender or cancellation of, or any other dealings with, any security will not release or affect the Obligations.

#### 4.5 Lenders May Perform Covenants

If either or both Borrowers fails to perform any covenant on its part in this DIP Letter Loan Agreement, the Lender may, but is not required to, perform that covenant if it is capable of being performed by the Lender and, if that covenant requires the payment of money, the Lender may, but is not required to, make that payment with its own funds. All amounts paid by the Lender under this Section will be repaid by either or both of the Borrowers on demand for payment, will bear interest at the rate applicable to the DIP Credit Facility, commencing on the day of payment of those amounts by the Lender, and form part of the Obligations and be secured by the DIP Charge.

#### 4.6 Remedies Cumulative

The rights, powers and remedies under the DIP Loan Documents and the DIP Charge are cumulative and are in addition to and not in substitution for any other rights, powers and remedies available at law or in equity or otherwise. No single or partial exercise by the Lender of any right, power or remedy precludes or otherwise affects the exercise of any other right, power or remedy to which the Lender may be entitled.

#### 4.7 Entire Agreement

This DIP Letter Loan Agreement and the other DIP Loan Documents constitute the entire agreement between the parties pertaining to the subject matter thereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no representations, warranties or other agreements between the parties in connection with the subject matter thereof except as specifically set out herein and therein. Neither Borrower has been induced to enter into this DIP Letter Loan Agreement or any other DIP Loan Document in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this DIP Letter Loan Agreement or in any of the other DIP Loan Document.

#### 4.8 Conflicts

In the event of a conflict in or between the provisions of this DIP Letter Loan Agreement and the provisions of any other DIP Loan Document, then, despite anything contained in that other DIP Loan Document, the provisions of this DIP Letter Loan Agreement will prevail and the provisions of that other DIP Loan Document will be deemed to be amended to the extent necessary to eliminate the conflict. If any act or omission is expressly prohibited under a DIP Loan Document (other than this DIP Letter Loan Agreement) but this DIP Letter Loan Agreement does not expressly permit that act or omission, or if any act is expressly required to be performed under a DIP Loan Document (other than this DIP Letter Loan Agreement) but this DIP Letter Loan Agreement does not expressly relieve either or both of the Borrowers from that performance, that circumstance will not constitute a conflict in or between the provisions of this DIP Letter Loan Agreement and the provisions of that other DIP Loan Document.

#### 4.9 Severability

Each Section of this DIP Letter Loan Agreement is distinct and severable. If any Section of this DIP Letter Loan Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect the legality, validity or enforceability of the remaining Sections of this DIP Letter Loan Agreement, in whole or in part, or the legality, validity or enforceability of that Section, in whole or in part, in any other jurisdiction.

#### 4.10 Amendment and Waiver

No amendment, discharge, modification, restatement, supplement, termination or waiver of this DIP Letter Loan Agreement or any Section of this DIP Letter Loan Agreement is binding unless it is in writing and executed by the Party to be bound. No waiver of, failure to exercise, or delay in exercising, any Section of this DIP Letter Loan Agreement constitutes a waiver of any other Section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

#### 4.11 Assignment

- (a) None of this DIP Letter Loan Agreement, the other DIP Loan Documents or any rights, remedies or obligations under them may be assigned by either or both of the Borrowers without the prior written consent of the Lender.
- (b) The Lender will have the right to assign, sell or participate its rights and obligations in the DIP Credit Facility to one or more Persons ("**Participants**") without the consent of the Borrower. For this purpose, the Lender may disclose, on a confidential basis, to a potential Participant any information concerning the Borrower as the Lender considers appropriate. Each Borrower will execute any documentation and take any actions as the Lender may reasonably request in connection with any assignment or participation.

#### 4.12 Enurement

This DIP Letter Loan Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.





**4.13 English Language**

It is the express wish of the parties that this DIP Letter Loan Agreement and any related documents be drawn up and executed in English. Il est la volonté express des parties que cette convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

**4.14 Limitations**

Each Borrower agrees to extend the limitation period otherwise applicable under the *Limitations Act, 2000* (Alberta) to any demand loan obligation payable under this DIP Letter Loan Agreement, and agrees that the right of the Lender to commence a legal proceeding to enforce the Borrower's demand loan obligations will continue for a period of ten years after the date on which demand is made under this letter



THIS IS EXHIBIT "D" REFERRED TO IN  
THE SUPPLEMENTAL AFFIDAVIT OF JEFF BUCK  
SWORN BEFORE ME

THIS 30<sup>TH</sup> DAY OF APRIL, 2020

---

A Commissioner of Oaths and Notary Public  
in and for the Province of Alberta

April 30, 2020

JMB Crushing Systems Inc. and  
2161889 Alberta Ltd.  
PO Box 6977  
Bonnyville, AB T9N2H4

Attention: Jeff Buck, President  
jeffb@jmbcrush.com

Dear Sirs:

Subject to the terms, covenants and conditions set out in this letter agreement (the "**DIP Letter Loan Agreement**"), Canadian Aggregate Resource Corporation has agreed to make available to JMB Crushing Systems Inc. and 2161889 Alberta Ltd. a revolving, senior, secured, super-priority, debtor-in-possession credit facility in the maximum principal amount of CAD \$900,000.00 for the purposes set out below, in the event that ATB Financial ("**ATB**") terminates or is unwilling to make advances under the credit facility (the "**ATB Facility**") created by a commitment letter dated April 30, 2020 (the "**ATB Commitment Letter**") in favour of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. Canadian Aggregate Resource Corporation will do so on the terms and subject to the conditions set out in this letter.

**Borrower:** JMB Crushing Systems Inc. and 2161889 Alberta Ltd., jointly and severally (each a "**Borrower**" and collectively the "**Borrowers**")

**Lender:** Canadian Aggregate Resource Corporation (the "**Lender**").

**CCAA Case:** The Borrowers (collectively, the "**CCAA Applicants**") intend to apply to the Court of Queen's Bench of Alberta (the "**CCAA Court**") for an initial order (which, as it may be amended and restated from time to time, is referred to herein as the "**Initial Order**") commencing proceedings (the "**CCAA Case**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**").

**Additional Definitions:** Terms not otherwise defined herein shall have the meaning ascribed to them in Article 1 of Schedule 1.

**Type of DIP Credit Facility:** Senior secured super-priority debtor-in-possession revolving credit facility of up to CDN\$900,000.00 (the "**DIP Credit Facility**").

**Maximum Amount of DIP Credit Facility:** The maximum credit amount available under the DIP Credit Facility is CDN\$900,000.00, less the amounts outstanding under the ATB Facility (the "**ATB Obligations**"), if any (the "**Maximum Amount**"); provided that at no time shall the aggregate amount outstanding under the DIP Credit Facility exceed: (a) for the period between the date that the Initial Order is first made and the date of the Come-Back Hearing, the lesser of CDN\$500,000.00, less the ATB Obligations, the applicable forecast borrowing requirements of the Borrowers during such period as set forth in the 10 Week Cash Flow Projection, and the amount of the DIP Charge approved in the Initial Order (the "**Initial Advance**"); and (b) after the Come-Back Hearing, the lesser of the Maximum Amount (less the ATB Obligations) and the then applicable forecast borrowing requirements

of the Borrowers after such date as set forth in the Rolling 10 Week Cash Flow Updates plus such other amount in excess thereof as may be approved in writing by the Monitor and the Lender (the "*Facility Availability*").

**Availment:**

Each Advance will be denominated in Canadian currency and deposited directly into the Borrower's current bank account with ATB (the "*Account*") unless otherwise agreed in writing by the Lender and the Monitor upon such terms as may be approved by them in writing and agreed to by the Borrower.

Either Borrower may request an Advance upon delivery of notice in writing to the Lender of an Advance Request by no later than 11:00 a.m. one Business Day prior to the requested date of the Advance, in form and substance satisfactory to the Lender, which notice shall include (i) the proposed amount of the requested Advance, (ii) the date the Advance is required, (iii) the specific use for the proceeds of the Advance as confirmed to the Lender by the Monitor in writing, and (iv) such other matters required by the Lender.

Advances are subject to the following limitations: (a) an Advance may only occur if no Default or Event of Default is then subsisting; and (b) all conditions set out herein have been satisfied or waived by the Lender.

**Termination Date:**

The DIP Credit Facility matures, and the Obligations are repayable on the earlier of (the "*Termination Date*"):

- (a) the last banking day of the twelfth (12<sup>th</sup>) month following the date of the granting of the Initial Order;
- (b) the effective date of any confirmed plan of reorganization or arrangement by the CCAA Court;
- (c) the effective date of a full recapitalization of the Borrowers pursuant to the SISP and confirmed by the CCAA Court;
- (d) the completion of a sale of all or substantially all of the Borrowers' assets pursuant to the SISP;
- (e) the date on which the Initial Order expires without being extended or on which the CCAA Case is terminated or dismissed; and/or
- (f) the date the Lender declares all Obligations to be immediately due and payable and demands the repayment in full thereof as a result of the occurrence of an Event of Default.

All Obligations shall be due and payable in full on the Termination Date without further notice or demand by the Lender other than as provided for in this DIP Letter Loan Agreement. Upon all of the Obligations becoming due and payable, any amounts realized under the DIP Charge shall be applied first in repayment in full of the ATB Obligations, and then in repayment of the Obligations.

**Permitted Uses of**

The DIP Credit Facility is to be used solely for the following purposes:



**Proceeds:**

- (a) to fund the working capital requirements, general corporate purposes, and other ordinary course expenditures of the Borrowers during the CCAA Proceedings, as confirmed by the Monitor to the Lender in writing, and in accordance with (i) until the Further Availability Conditions shall have been satisfied, the 10 Week Cash Flow Forecast, and (ii) subsequent to the Further Availability Conditions having been satisfied, the Rolling 10 Week Cash Flow Updates; and
- (b) to pay Permitted Fees and Expenses.

**PROVIDED HOWEVER**, no advances under the Interim Facility will be used to pay indebtedness of the Borrowers which arose prior to the commencement of the CCAA Proceedings except as may be permitted by CCAA Court and agreed to by the Lender in its sole discretion.

**Interest Rates:**

Interest shall accrue at the rate of ten percent (10%) per annum on the balance outstanding under the DIP Credit Facility together with any other Obligations owing to the Lender hereunder (including accrued and unpaid interest), both before and after maturity, default or judgment, which shall be payable by the Borrowers to the Lender in cash monthly (in arrears), on the last day of each month (beginning on last day of the month in which the Closing Date occurs) until and including the date of payment in full of all amounts owing hereunder.

Interest shall be calculated in arrears as well after and before maturity, default and judgment, with interest on overdue interest at the same rate as on principal, computed on the daily balance of the Obligations outstanding at the aforementioned rates based on the actual number of days lapsed divided by 365 or 366, as the case may be, and shall be payable as herein set forth.

**Security and Priority:**

All Obligations shall be secured by a first-ranking super-priority charge created by the CCAA Court in the Initial Order (the "**DIP Charge**") against all of the existing and after-acquired real and personal, tangible and intangible, assets, property and undertaking of the CCAA Applicants (collectively, the "**Collateral**") in favour of the Lender.

The DIP Charge will rank in priority to all Liens, statutory or otherwise (including without limitation, construction and builders liens and trust claims whether or not perfected or preserved), other than the Administration Charge (provided that the Administration Charge shall be subordinate in priority to the DIP Charge for unpaid CCAA Expenses in excess of CDN\$300,000.00) and Permitted Liens. The CCAA Charges will rank in the following order of priority:

First, the Administration Charge, for up to CDN\$300,000.00

Second, the DIP Charge

Third, the Directors' Charge, for up to CDN\$250,000.00

All present and future liabilities and obligations of each of the Borrowers to the Lender, including the Obligations, shall be secured and evidenced, as the case may be, by certain security documents as requested by the Lender in form and substance satisfactory to the Lender and its counsel (collectively, the "**DIP Lender Security**") and the DIP Charge together with such further documentation that the Lender and its counsel may reasonably require.

**Additional Consideration:**

As additional consideration and security for the DIP Credit Facility, the Borrowers will and hereby acknowledge and confirm that all existing security granted or given to or in favour of the Lender prior to the Initial Order forms a valid and enforceable security interest against the Collateral in favour of the Lender and secures all direct and indirect debts and liabilities of the Borrowers to the Lender howsoever incurred.

**Covenants:**

So long as the Obligations remain outstanding each Borrower covenants and agrees, on a joint and several basis, in favour of the Lenders to be bound by and perform all of the covenants set out in Article 2 of Schedule 1.

**Reporting:**

So long as the Obligations remain outstanding, each Borrower covenants and agrees with the Lender as follows:

- (a) it will deliver to the Lender no later than Tuesday of each week, Rolling 10 Week Cash Flow Updates (in respect of the immediately following 10 Week period), prepared on an unconsolidated and consolidated basis, including variance reports and such other information as the Lender may require, updated weekly on a 10-week rolling basis, all in form and substance reviewed and approved by the Monitor and satisfactory to the Lender, together with a compliance certificate signed by a senior officer of the Borrower stating that such updated Rolling 10 Week Cash Flow Updates disclose that the Borrower will have sufficient funds to meet its obligations as they become due during such period;
- (b) it will forthwith provide the Lender with written notice of the occurrence of any event or occurrence which could with the giving of notice, lapse of time or both result in a material adverse change in (i) any receipts or disbursements by the Borrowers from those forecast in any cash flow forecasts delivered by the Borrowers to the Lender (whether weekly or monthly) or (ii) the expected overall recovery or profitability, timing or cost (including cost of administration) in connection with any particular contract, job or project; and
- (c) it will forthwith provide the Lender with such other information, in electronic format whenever and wherever possible, as the Lender may reasonably request.

**Events of Default and Remedies:**

The occurrence of any one or more of the following events or conditions will be an event of default under this DIP Letter Loan Agreement (each an "**Event of Default**"):

- (a) the issuance of an order staying, reversing, vacating or otherwise modifying the Initial Order in any manner that is prejudicial to the rights and interests of the Lender without the prior written consent of the Lender;
- (b) the issuance of an order terminating or dismissing the CCAA Case or lifting the stay of proceedings in the CCAA Case to permit the enforcement of a Lien or the exercise of a right or remedy against a CCAA Applicant, the termination or expiry of the Initial Order without being extended without being extended or the appointment of a receiver, receiver and manager, interim receiver or similar official against any of the CCAA Applicants;
- (c) the entry of any order staying, amending, reversing, vacating or otherwise modifying, in each case without the prior consent of the Lender, the DIP Credit Facility, including granting a charge ranking in priority to, or on a pari passu basis with, the DIP Charge or altering the priority of the DIP Charge or any other order is made in respect of any of the CCAA Applicants which is or may be prejudicial to the Lender's interests;
- (d) a Borrower undertakes any actions with respect to their business operations which would, in the determination of the Lender, result in a Material Adverse Change to one or both of the Borrowers or the other CCAA Applicants including ceasing to carry on business;
- (e) if there occurs a Material Adverse Change;
- (f) there is a change to either or both of the Borrowers' existing senior management that is not acceptable to the Lender;
- (g) any of the Borrowers makes any payments of any kind not permitted by the Initial Order (as it may be amended from time to time) or not permitted under the DIP Loan Documents;
- (h) any of the Borrowers fails to make punctual payment when due of any principal amount, interest, fees or other amount payable under any of the DIP Loan Documents;
- (i) any representation or warranty made or given in any DIP Loan Document is false or erroneous when made;
- (j) any of the Borrowers breaches, fails to observe or to fails to perform any covenant or obligation under any DIP Loan Document or there occurs a default or event of default under any of the other DIP Loan Documents; or
- (k) if any Borrower sells material assets outside the ordinary course of business and in a manner not permitted by an Order of the CCAA Court.

Upon the earlier of the Termination Date and the occurrence of an Event of Default, whether or not there is availability under the DIP Credit Facility, without any notice or demand, the right of the Borrowers to receive any Advance or other accommodation of credit from the Lender shall be terminated.

Upon the occurrence of an Event of Default, the Lender may do any one or more of the following, all of which is authorized by the Borrowers: (a) by written notice to the Borrowers and the Monitor, declare the DIP Credit Facility to be terminated, whereupon the DIP Credit Facility will terminate immediately and the Lender will have no further obligation to make any Advance available to either or both of the Borrowers under the DIP Credit Facility; (b) by written notice to the Borrowers, declare all of the Obligations to be immediately due and payable without further demand, presentation, protest or other notice of any kind, all of which are expressly waived by the Borrowers; (c) apply to the CCAA Court to enforce the DIP Charge and/or for the appointment of any receiver or receiver and manager of the undertaking, property and assets of the Borrowers; and (d) subject to obtaining the leave of the Court or the Monitor, exercising any other action, suit, remedy or proceeding authorized or permitted by the DIP Loan Documents or by Applicable Law, including specifically performing any covenant or agreement contained in the DIP Loan Documents, applying any amounts outstanding in cash accounts maintained by the Lender on behalf of any Borrower to repayment of the Obligations, enjoining any violation of any of the terms of the DIP Loan Documents, exercising any power granted by the DIP Loan Documents or by Applicable Law, or obtaining judgment for and recovering the Obligations.

**Conditions to  
Availability**

Initial Advance: In addition to the Advance Conditions, the obligation of the Lender to make the Initial Advance under the DIP Credit Facility shall be subject to and conditional upon the satisfaction of the following conditions precedent (the "Initial Availability Conditions"):

- (a) the due execution and delivery of this DIP Letter Loan Agreement and the other DIP Loan Documents, as applicable, by the Borrowers;
- (b) ATB shall have terminated or refused to make advances under the ATB Facility, or shall have demanded repayment of the ATB Obligations;
- (c) the issuance of the Initial Order in form and substance satisfactory to the Lender, which, among other things: (i) approves the DIP Credit Facility and this DIP Letter Loan Agreement in respect of borrowings in an amount up to the Initial Advance; (ii) orders and grants the DIP Charge securing an amount equal to or greater than the amount of the Initial Advance that either or both of the Borrowers has requested, having the priority contemplated herein, and (iii) orders the stay of proceedings under the Initial Order for not less than ten (10) days until the Comeback Hearing, which Initial Order shall be in full force and effect and shall not have been amended, modified or stayed except as agreed to by the Lender in writing;
- (d) no Default or Event of Default shall have occurred or be continuing, which shall be certified by the Borrower's chief financial officer;
- (e) the Lender shall be satisfied with the 10 Week Cash Flow Projections





which shall have been reviewed favourably by the Monitor; and

- (f) other than the CCAA Case and the Initial Order, no Material Adverse Change shall have occurred since the date of this DIP Letter Loan Agreement.

Advances Subsequent to the Initial Advance: In addition to the Advance Conditions, the obligation of the Lender to make any Advance subsequent to the Initial Advance shall be subject to and conditional upon the satisfaction of the following conditions precedent (the "*Further Availability Conditions*"):

- (a) due authorization, execution and delivery by the Borrowers of such DIP Loan Documents as are required by the Lender including the DIP Lender Security;
- (b) notice of the Initial Order shall have been provided to each party that has a registered Lien against any of the Borrowers promptly following the date of the Initial Order;
- (c) the Monitor shall publish a notice in the Daily Commercial News within two (2) days following the issuance of the Initial Order advising of the CCAA Case and the Initial Order;
- (d) issuance of an order by the CCAA Court (the "*Extension Order*") not later than ten (10) days after the entry of the Initial Order, among other things: (i) approving the SISF; (ii) confirming the availability of the Maximum Amount in accordance with this DIP Letter Loan Agreement; and (iii) extending the term of the stay of proceedings against the Borrowers beyond the term initially set out in the Initial Order, which Extension Order shall be in form and substance satisfactory to the Lender (including the form of SISF and confirming the priority of the DIP Charge as contemplated herein) and shall be in full force and effect and not have been vacated, reversed, modified, amended or stayed; and
- (e) no Event of Default shall have occurred or be continuing, which shall be certified by the Borrower's chief financial officer.

**Conditions to Each Advance:**

In addition to the Initial Availability Conditions and the Further Availability Conditions, the obligation of the Lender to make any and all Advances under the DIP Credit Facility shall be subject to the satisfaction of the following conditions (the "*Advance Conditions*"):

- (a) the Borrowers shall have submitted an Advance Request that has been duly executed by the Borrower's chief financial officer, in a form acceptable to the Lender, which, in addition to any other requirement herein the request for Advance shall, among other things, include certifications as to the matters described below and specify such matters as are referred to herein under the heading "Availment";

- (b) each request for Advance made by the Borrowers shall have been reviewed and approved by the Monitor;
- (c) no Event of Default shall have occurred or be continuing or would result from the proposed advance;
- (d) the Lender shall be satisfied with the Rolling 10 Week Cash Flow Updates which shall have been reviewed favourably by the Monitor;
- (e) no notice shall have been received or filed of a motion or application to stay, modify, vary, amend, reverse, amend, or vacate in whole or in part the Initial Order, the Extension Order or the DIP Charge or which in any way seeks to impair, limit or lessen the security, priority, protections, rights, or remedies of the Lender, whether under the Initial Order or the Extension Order, as the case may be, with respect to the DIP Charge, or under any of the DIP Loan Documents.

The conditions precedent set out herein are for the sole benefit of the Lender and may be waived by the Lender, in whole or in part and with or without terms or conditions, relating to all or any portion of any Advance, without affecting the right of the Lender to require that those conditions be satisfied in whole or in part relating to any other Advance.

**Expenses:**

The Borrowers will reimburse the Lender for all reasonable fees (including legal fees on a solicitor and own client full indemnity basis and professional fees), disbursements and out-of-pocket expenses incurred by the Lender in any manner in connection with the CCAA Case and the DIP Loan Documents, the Advances made under this DIP Letter Loan Agreement or any Security required by this DIP Letter Loan Agreement including, without limitation, all reasonable fees and disbursements incurred by the Lender in connection with the preparation and negotiation of the DIP Loan Documents, the registration of the Security, due diligence, ongoing maintenance and administration, review of application materials in the CCAA Case and the attendance at hearing during the CCAA Case and in the protection and enforcement of any right or remedy of the Lender under the DIP Loan Documents or the DIP Charge or otherwise available at law or equity. All such amounts will be payable by the Borrowers whether or not any Advances are made under the DIP Credit Facility.

**Other Matters:**

Unless otherwise expressly stated herein, if reference is made to any action or matter which requires the consent of the Lender or which is required to be completed to the satisfaction of the Lender or which otherwise requires a determination by, or a decision of, the Lender, the discretion of the Lender to give such consent or to confirm its satisfaction with such action or matter shall be in its reasonable discretion and any such determination or decision of the Lender shall be made in its reasonable discretion.

Any failure or delay by the Lender in exercising any right or privilege with respect to the non-compliance with any provisions of this DIP Letter Loan Agreement by any Borrower and any course of action on the part of the Lender, shall not operate as a waiver of any rights of the Lender unless made in writing by the Lender. Any such waiver shall be effective only in the specific instance

and for the purpose for which it is given and shall not constitute a waiver of any other rights and remedies of the Lender with respect to any other or future non-compliance.

Any deliverable hereunder by any Borrower to or in favour of the Lender shall be in form and substance satisfactory to the Lender.

This DIP Letter Loan Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterpart together shall constitute one and the same DIP Letter Loan Agreement. This DIP Letter Loan Agreement may be executed by email PDF, and any signature contained hereon by email PDF shall be deemed to be equivalent to an original signature for all purposes.

This DIP Letter Loan Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns; "successors" includes any corporation resulting from the amalgamation of a party with any other corporation. None of the Borrower may assign any of their respective rights and obligations hereunder without the prior written consent of the Lender. The Lender may assign all or any part of its rights under the DIP Credit Facility and may have its obligations in respect of the DIP Credit Facility assumed.

Without prejudice to any other method of giving notice, all communications provided for or permitted hereunder shall be in writing and delivered to the addressee by prepaid private courier, email or functionally equivalent electronic means of transmission, charges (if any) prepaid. Any such communication must be sent to the intended recipient at its address as follows:

(a) to the Borrowers:

JMB Crushing Systems Inc. and  
2161889 Alberta Ltd.  
PO Box 6977  
Bonnyville, AB  
T9N2H4

Attention: Jeff Buck, President  
E-Mail: [jeffb@jmbcrush.com](mailto:jeffb@jmbcrush.com)

(b) to the Lender:

Canadian Aggregate Resource Corporation  
1400 16<sup>th</sup> Street, Suite 320  
Denver CO 80202

Attention: Byron Levkulich  
Email: [Byron.levkulich@rlhholdings.com](mailto:Byron.levkulich@rlhholdings.com)

or at any other address as any party may at any time advise the others by communication given or made in accordance with this provision. Any communication transmitted by prepaid private courier shall be deemed to have

been validly and effectively given or delivered on the Business Day after which it is submitted for delivery. Any communication transmitted by e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the communication is transmitted on a day which is not a Business Day or after 5:00 p.m. (local time of the recipient), the communication will be deemed to have been given or made and received on the next Business Day.

**Governing Law:** This DIP Letter Loan Agreement shall be governed by the laws of the Province of Alberta and the laws of Canada applicable therein, and the parties irrevocably hereby attorn to the jurisdiction of the CCAA Court.

Please acknowledge acceptance of this DIP Letter Loan Agreement by signing and returning a signed copy to the Lender no later than 5:00 p.m. May 1, 2020, the expiry date of this offer.

Yours truly,

**CANADIAN AGGREGATE RESOURCE CORPORATION**

*Byron J Levkulich*

Per:

\_\_\_\_\_  
Name: Byron Levkulich  
Title: Director  
I have authority to bind the corporation

**ACCEPTANCE**

For good and valuable consideration, the foregoing is hereby acknowledged and agreed as of this 30<sup>th</sup> day of April, 2020.

**JMB CRUSHING SYSTEMS INC.**

Per:



Name: Jeff Buck

Title: President

I have authority to bind the corporation

**2161889 ALBERTA LTD.**

Per:



Name: Jeff Buck

Title: President

I have authority to bind the corporation



**Schedule 1 to the DIP Letter Loan Agreement dated April 30, 2020  
between Canadian Aggregate Resource Corporation as lender  
and JMB Crushing Systems Inc. and 2161889 Alberta Ltd. as borrowers**

**1. INTERPRETATION**

**1.1 Definitions**

Unless otherwise defined in this DIP Letter Loan Agreement, the following capitalized terms have the following meanings:

- (a) “*Administration Charge*” means a charge created by the CCAA Court in the CCAA Case to secure payment of the CCAA Expenses.
- (b) “*Advance*” means advances made or deemed to be made under the DIP Credit Facility.
- (c) “*Advance Request*” means a written notice from a Borrower to the Lender.
- (d) “*Applicable Law*” means (i) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise), (ii) any judgment, order, writ, injunction, decision, ruling, decree or award, (iii) any regulatory policy, practice, guideline or directive, or (iv) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of that Person.
- (e) “*Business Day*” means any day other than a Saturday, Sunday or day on which banks are authorized to be closed in the Province of Alberta.
- (f) “*CCAA Charges*” means the Administration Charge, the DIP Charge and the Directors’ Charge.
- (g) “*Comeback Hearing*” a hearing in the CCAA Case subsequent to the Initial Order of an application to approve the Maximum Amount and the terms and provisions of the DIP Credit Facility, the amount of the DIP Charge and this DIP Letter Loan Agreement.
- (h) “*CRO*” means a chief restructuring officer of the CCAA Applicants that the Lender has approved in writing prior to its appointment.
- (i) “*Default*” means any event or condition that would constitute an Event of Default except for satisfaction of any condition subsequently required to make the event or condition an Event of Default, including the giving of any notice, the passage of time, or both.
- (j) “*DIP Loan Documents*” means collectively, this DIP Letter Loan Agreement, the DIP Lender Security and all documents, agreements, instruments and certificates delivered from time to time to the Lender by any Borrower or an officer thereof in connection with, relating to or arising from the DIP Credit Facility and “*DIP Loan Document*” shall mean any one of the DIP Loan Documents.
- (k) “*Directors’ Charge*” means a Charge created by the CCAA Court in the CCAA Case in favour of the directors of the CCAA Applicants.



- (l) "*Environmental Laws*" means all Applicable Laws with respect to the environment or environmental or public health and safety matters contained in statutes, regulations, rules, ordinances, orders, judgments, approvals, notices, permits or policies, guidelines or directives whether or not having the force of law.
- (m) "*Environmental Orders*" includes all applicable orders, directives, judgments, decisions or the like rendered by any Governmental Authority or court of competent jurisdiction pursuant to Environmental Laws or Environmental Permits.
- (n) "*Environmental Permits*" includes all permits, certificates, approvals, registrations, licences or other instruments issued by any Governmental Authority and relating to or required for each Borrower to carry on its business, activities and operations in compliance with all Environmental Laws and Environmental Orders.
- (o) "*Governmental Authority*" means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.
- (p) "*Lien*" means any security interest, lien (statutory, common law, equitable or otherwise), privilege, charge, trust deemed to exist under any Applicable Law or other encumbrance of any kind, or any other agreement or arrangement creating in favour of any claimant or creditor a right relating to any particular property that is in priority to the right of any ordinary creditors relating to that property, and including the right of a lessor under a capital lease or operating lease.
- (q) "*Material Adverse Change*" means any action, event, effect or change that results in or causes, or which could reasonably be expected to result in or cause, a material adverse change in any of (i) the condition (financial or otherwise), business, performance, prospects, operations or property (including the Collateral) of each Borrower, (ii) the ability of the Borrowers or to fully and timely perform its obligations under any DIP Loan Document to which it is a party, or (iii) the validity or enforceability of any DIP Loan Document or the DIP Charge or the rights and remedies of the Lender thereunder.
- (r) "*Material Contract*" means contract of any Borrower that is material to the business or financial performance of any Borrower or the termination of which would result in a Material Adverse Change.
- (s) "*Monitor*" means FTI Consulting Canada Inc., in its capacity as monitor in the CCAA Case, or such other firm that is acceptable to the Lender and is appointed as a replacement monitor in the CCAA Case.
- (t) "*Obligations*" means all debts, liabilities and obligations of the Borrowers under the DIP Loan Documents, whether present, future, direct, indirect, liquidated, unliquidated or contingent, in connection with the DIP Credit Facility, including all outstanding principal amounts under the DIP Credit Facility, together with all accrued and unpaid interest and

all fees (including legal fees on a solicitor and own client full indemnity basis) and other amounts due, owing or payable under any of the DIP Loan Documents.

(u) "*Permitted Liens*" means:

- (i) inchoate or statutory liens or trust claims for taxes, assessments and other governmental charges or levies which are not delinquent or the validity of which are currently being contested in good faith by appropriate proceedings, provided that there will have been set aside a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto;
- (ii) the right reserved to, or vested in, any municipality or Governmental Authority by the terms of any lease, license, franchise, grant, or permit acquired by the Borrower, or by any statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition of its continuance;
- (iii) inchoate or statutory liens of builders, contractors, subcontractors, mechanics, suppliers, materialmen and others in respect of construction, maintenance, repair or operation of assets or properties, or other like possessory liens and public utility liens provided the same are not registered as encumbrances against the title to any real or personal property of the Borrower;
- (iv) a Lien granted by a Borrower to a public utility or other Governmental Authority when required by that utility or municipality or other authority in connection with the operations of a Borrower in the ordinary course of business;
- (v) title defects which are of a minor nature and in the aggregate will not materially impair the value or the use of property for the purposes for which it is held;
- (vi) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the Crown;
- (vii) Liens securing appeal bonds or similar Liens arising in connection with court proceedings (including surety bonds, security for costs of litigation where required by law and letters of credit) or any other instrument serving a similar purpose.

(v) "*Permitted Fees and Expenses*" means, collectively:

- (i) all of the reasonable and documented fees and expenses (including the fees and expenses of its counsel and advisors) incurred by the Lender in connection with, relating to or arising from the CCAA Case (including preparation for, and attendance at, the CCAA Court from time to time), due diligence, negotiation and documentation of the DIP Credit Facility, whether incurred prior to or after the date of the Initial Order, as well as all expenses of the Lender in connection with the ongoing monitoring, maintenance, interpretation and administration of the DIP Credit Facility and the enforcement of any of rights of the Lender including pursuant to the DIP Loan Documents (collectively, the "*DIP Expenses*");



- (ii) all reasonable and documented fees and expenses (including the fees and expenses of its counsel) of any CRO;
- (iii) all reasonable and documented fees and expenses for the counsel for the Borrowers in connection with the DIP Credit Facility and the CCAA Case (whether incurred prior to or during the pendency of the CCAA Case); and
- (iv) all reasonable and documented fees and expenses incurred by the Monitor and its counsel,

where the fees and expenses in subparagraphs (i) to (iv), inclusive, are collectively referred to as the "*CCAA Expenses*".

- (w) "*Rolling 10 Week Cash Flow Updates*" means the statements prepared by the Borrowers, on a consolidated basis, that are required under the CCAA and set out the rolling 10-week cash flow forecasts of receipts and disbursements of the CCAA Applicants, which will be in form and content satisfactory to the Monitor and the Lender.
- (x) "*SISP*" means a sale, refinancing and investment solicitation process (the "*SISP*") satisfactory to the Lender and approved by the CCAA Court.
- (y) "*10 Week Cash Flow Projections*" means the statement, prepared by the Borrowers on a consolidated basis, that is required under the CCAA and that sets out the projected cash flow forecasts of receipts and disbursements of the CCAA Applicants for a period of 10 weeks following the date of the Initial Order, which will be in form and content satisfactory to the Monitor and the Lender.

## 1.2

### **Rules of Interpretation**

- (a) In this DIP Letter Loan Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words "including" or "includes" in this DIP Letter Loan Agreement is to be construed as meaning "including, without limitation" or "includes, without limitation", respectively.
- (b) The division of this DIP Letter Loan Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this DIP Letter Loan Agreement.
- (c) Wherever in this DIP Letter Loan Agreement reference is made to a calculation to be made in accordance with IFRS, the reference is to the generally accepted accounting principles in Canada, applied on a consistent basis, and statements and interpretations (if applicable) issued by the Canadian Institute of Chartered Accountants or any successor body from time to time, including International Financial Reporting Standards.
- (d) References in this DIP Letter Loan Agreement to an Article, Section or Schedule are to be construed as references to an Article, Section or Schedule of or to this DIP Letter Loan Agreement unless otherwise specified.
- (e) Time is of the essence in all respects of this DIP Letter Loan Agreement.

- (f) All amounts referred to in this DIP Letter Loan Agreement are denominated in, and all amounts payable under this DIP Letter Loan Agreement are payable in, Canadian currency.
- (g) Unless otherwise specified in this DIP Letter Loan Agreement, time periods within which or following which any calculation or payment is to be made, or action is to be taken, will be calculated by excluding the day on which the period begins and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- (h) Unless otherwise specified, any reference in this DIP Letter Loan Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

## 2. COVENANTS

Until the DIP Credit Facility has been terminated and the Obligations repaid in full, the Borrower covenants and agrees as follows:

- (a) the Borrowers shall ensure that, as of any date, the aggregate borrowings then outstanding under the DIP Credit Facility will not exceed the then applicable forecast borrowing requirements of the Borrowers for such date as set forth in the 10 Week Cash Flow Projections or the Rolling 10 Week Cash Flow Updates, as the case may be;
- (b) the Borrowers shall not make or permit to be made any payment that are not contemplated in the then applicable forecast borrowing requirements of the Borrowers for such date as set forth in the 10 Week Cash Flow Projections or the Rolling 10 Week Cash Flow Updates, as the case may be, without the prior consent of the Monitor and the Lender, subject to variances in actual cash receipts being up to 10% less than projected on an aggregate basis, and actual disbursements being up to 10% greater than projected;
- (c) the Borrowers shall not permit actual ending cash, tested as of the last Business Day of any measurement period, to be less than the amount set forth for such date in the 10 Week Cash Flow Projections or the Rolling 10 Week Cash Flow Updates, as the case may be, with a permitted variance of 20% without the consent of the Monitor and the Lender;
- (d) the Borrowers shall not, and shall not permit any other CCAA Applicant to, without the prior written consent of the Lender, after the date of the Initial Order incur any indebtedness, liabilities or obligations other than the Obligations, indebtedness permitted by the Initial Order, trade payables incurred in the ordinary course after the date of the Initial Order and other indebtedness permitted by the Lender;
- (e) the Borrowers shall not, and shall not permit any other CCAA Applicant to, without the prior written consent of the Lender, make any payment of any indebtedness, liabilities or obligations outstanding on the date of the Initial Order other than as may be permitted by the Initial Order and contemplated by the 10 Week Cash Flow Projections or the Rolling 10 Week Cash Flow Updates, as the case may be, or otherwise as may be permitted by the Lender;

- (f) the Borrowers will take any steps necessary to ensure that the Lender is at all times considered an unaffected creditor in the CCAA Case in respect of the DIP Credit Facility and the Obligations, and the Obligations will not be subject to any compromise or arrangement under any plan of compromise or arrangement filed in the CCAA Case;
- (g) the Borrowers shall ensure that any plan of compromise or arrangement filed by one or more of the CCAA Applicants will provide for or be conditional upon the repayment in full of the Obligations upon such plan becoming effective;
- (h) the Borrowers shall comply with all orders made in the CCAA Case except to the extent such orders have been in whole or in part stayed, reversed, modified or amended;
- (i) the Borrowers shall, after the Initial Order is issued and on or before the Comeback Hearing, apply to the CCAA Court for the approval of a commercially reasonable form of SISP;
- (j) the Borrowers shall not create a key employee retention plan in favour of its employees without the consent of the Lender and the approval of the Court;
- (k) the Borrowers shall not cease to carry on the business currently being carried on by it on the date hereof;
- (l) the Borrowers shall ensure that its senior management team cooperates fully with the Monitor and the Lender and is available to meet with and promptly respond to enquiries and information requests from the Monitor, the Lender and their advisors;
- (m) the Borrowers shall not make any material change to its existing senior management, without the prior written consent of the Lender and the Monitor;
- (n) the Borrowers shall not use the proceeds of any advance under the DIP Credit Facility for any purposes other than those expressly contemplated in this DIP Letter Loan Agreement and in the 10 Week Cash Flow Projections and Rolling 10 Week Cash Flow Updates, as applicable;
- (o) the Borrowers shall not amend the terms of, terminate or otherwise disclaim, in whole or in part, any Material Contract, without the prior written consent of the Lender and the Monitor;
- (p) none of the Borrowers shall request, obtain or consent to a variation of the Initial Order or the Extension Order, as the case may be, without the prior written consent of the Lender;
- (q) the Borrowers shall, to the extent reasonably practicable, provide the Lender with at least five (5) business days advance notice of all court filings made by it, together with copies of all related court materials, and shall provide the Lender with notice of all court filings that any other person or entity intends to make, as indicated in any way to any of the Borrowers by such person or entity, as soon as reasonably practicable after obtaining knowledge of such intended filings;
- (r) the Borrowers shall maintain the current insurance coverage over the its assets and property and designate the Lender as loss payee as its interest may appear;



- (s) the Borrowers shall pay when due all statutory liens, trusts and other Crown claims including employee source deductions, GST and workplace safety, wages, vacation pay and insurance premiums;
- (t) each of the Borrowers shall maintain its corporate existence, comply in all material respects with all applicable statutory laws and regulations (including, all applicable construction or builders lien related legislation in all jurisdictions in which it carries on business) and obtain and maintain in good standing in all material respects all material leases and licences and permits;
- (u) the Borrowers shall permit the Lender and its employees and agents to enter upon and inspect its property, assets, books and records from time to time upon reasonable notice and during regular business hours and conduct environmental investigations of its properties and assets; and it shall execute and deliver all consents and further assurances as may be necessary or desirable in order for the Lender and its agents to obtain information from governmental authorities and other persons or entities with respect to such matters.

## 2.2 Lender Consents

The Lender may consent in writing (upon such terms and conditions as it may require) to any particular matter which is otherwise the subject of a prohibition, restriction or negative covenant contained in this DIP Letter Loan Agreement, in which case, the particular matter specified in such consent shall not be subject to such prohibition, restriction or negative covenant provided that such terms and conditions as may be required by the Lender in connection with such consent, if any, are fully complied with.

## 3. REPRESENTATIONS AND WARRANTIES

### 3.1 Representations and Warranties

To induce the Lender to make the DIP Credit Facility available to the Borrowers and make Advances under this DIP Letter Loan Agreement, each of the Borrowers hereby represents and warrants to the Lender the following (which representations and warranties will be deemed to be repeated upon each Advance being made to a Borrower):

- (a) the 10 Week Cash Flow Projections and Rolling 10 Week Cash Flow Updates (when delivered) include all payments that are secured by or could be secured by statutory Liens ranking in priority to the DIP Charge;
- (b) each Borrower is a corporation duly incorporated, and validly existing under the laws of the Province of Alberta and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary;
- (c) subject to the Initial Order, each Borrowers has all requisite power and authority to own and operate its properties, assets and business, and to enter into and perform its obligations under the DIP Loan Documents;
- (d) the execution and delivery of the DIP Loan Documents by each Borrower party thereto and the performance by each Borrower of its obligations thereunder have been duly authorized by the Initial Order, and no authorization under any Applicable Law, and no

registration, qualification, designation, declaration or filing with any Governmental Authority, is necessary therefor;

- (e) pursuant to the Initial Order, each DIP Loan Document has been duly executed and delivered by each Borrower party thereto and constitutes legal, valid and binding obligations of such Borrower, enforceable against it in accordance with its terms, subject only to applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or creditors rights generally, and the discretion that a court may exercise in granting equitable remedies;
- (f) subject to the Initial Order, the execution and delivery of the DIP Loan Documents by the Monitor on behalf of each Borrower and the performance by each Borrower of its obligations thereunder and compliance with the terms, conditions and provisions thereof, will not conflict with or result in a breach of (i) its constating documents or by-laws; (ii) any Applicable Laws; or any Material Contract;
- (g) each Borrower has good and valid title to all of its real property, a valid leasehold interest in all property leased by it, and a valid license to all property licensed by it, and owns all personal property that is purported to be owned by it (including any personal property reflected on its most recent financial statements), and no such property is subject to any Lien other than Permitted Liens;
- (h) no Default or Event of Default has occurred and is continuing;
- (i) the information prepared or furnished by or on behalf of the Borrowers in connection with any DIP Loan Document and the CCAA Case, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances when made, not misleading; provided, however, that projections contained therein are not to be viewed as factual and that actual results during the periods covered thereby may differ from the results set forth in such projections by a material amount. All projections that are part of such information (including those set forth in any 10 Week Cash Flow Projections and Rolling 10 Week Cash Flow Update provided to the Lenders) are based upon good faith estimates and stated assumptions believed to be reasonable and fair as of the date made in light of conditions and facts then known and, as of such date, reflect good faith, reasonable and fair estimates of the information projected for the periods set forth therein. All facts known to either or both of the Borrowers and material to an understanding of the financial condition, business, property or prospects of either or both of the Borrowers have been disclosed to the Lender;
- (j) except as disclosed to the Lenders in writing, (i) each Borrower and its property, assets and undertakings taken as a whole comply in all respects, and the business, activities and operations of such Borrower and the use of such property, assets and undertakings, and the processes and undertakings performed thereon, comply in all respects with all Environmental Laws except to the extent that failure to so comply would not have a Material Adverse Change; and (ii) such Borrower (1) has not received written notice and, except as previously disclosed to the Lender in writing, such Borrower has no knowledge, of any facts which could give rise to any notice of non-compliance with any Environmental Laws, which non-compliance has or would have a Material Adverse Change and (2) has not received any notice from any Governmental Authority that such Borrower is a potentially responsible party for a clean-up order or for corrective action in

connection with its property, assets and undertakings where such clean up order or corrective action would have a Material Adverse Change;

- (k) each Borrower has made available to the Lender copies of all existing environmental reports, reviews and audits and all documents pertaining to actual or potential environmental liabilities of the Borrowers, in each case to the extent such reports, reviews, audits and documents are in their possession, custody or control; and
- (l) all federal, provincial, local and foreign income and franchise and other tax returns (or information returns), reports and statements (collectively, the "Tax Returns") required to be filed have been filed by the Borrowers with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of each Borrower in accordance with GAAP and for which no collection action has been undertaken or threatened by any Governmental Authority. No Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by either or both Borrowers for payments to its employees and any person which is non-resident for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable requirements of law and such withholdings have been timely paid to the respective Governmental Authorities.

### 3.2 Nature of Representations and Warranties

All representations and warranties, when repeated or deemed to be repeated under this DIP Letter Loan Agreement, will be construed with reference to the facts and circumstances existing at the time of repetition, unless they are stated herein to be made as of a specific date only. The representations and warranties set out in, or deemed to be made pursuant to, this DIP Letter Loan Agreement will survive the execution and delivery of this DIP Letter Loan Agreement and the making of any Advance, notwithstanding any investigations or examinations that may be made by the Lender or their counsel. Such representations and warranties will survive until this DIP Letter Loan Agreement has been terminated and the Obligations have been repaid in full.



4. **ADDITIONAL MATTERS**

4.1 **Interest**

- (a) For purposes of the *Interest Act* (Canada), the principle of deemed reinvestment of interest will not apply to any interest rate calculation under this DIP Letter Loan Agreement, and the rates of interest stipulated in this DIP Letter Loan Agreement are intended to be nominal rates and not effective rates or yields.
- (b) In the event that any provision of this DIP Letter Loan Agreement would oblige either or both of the Borrowers to make any payment of interest or any other payment which is construed by a court of competent jurisdiction to be interest in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lender of interest at a criminal rate (as those terms are construed under the *Criminal Code* (Canada)), then notwithstanding that provision, that amount or rate will be deemed to have been adjusted *nunc pro tunc* to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lender of interest at a criminal rate, that adjustment to be effected, to the extent necessary, as follows:
- (i) first, by reducing the amount or rate of interest required to be paid under this DIP Letter Loan Agreement; and
- (ii) second, by reducing any fees, commissions, premiums and other amounts which would constitute interest for the purposes of Section 347 of the *Criminal Code* (Canada);
- (c) If, despite giving effect to all adjustments contemplated by clause (b) of this Section, the Lender has received an amount in excess of the maximum permitted by that clause, then that excess will be applied by the Lender to the reduction of the principal balance of the Obligations and not to the payment of interest, or if that excessive interest exceeds that principal balance, that excess will be refunded to the Borrower.

4.2 **General Indemnity**

In addition to any other indemnity provided for in this DIP Letter Loan Agreement, the Borrowers agree to indemnify the Lender on demand against any loss, expense or liability which the Lender may sustain or incur as a consequence of the action or inaction of the Borrowers or any other Borrower in connection with:

- (a) any default in payment of the principal amount of any Obligations or any part thereof or interest accrued thereon, as and when due and payable;
- (b) the occurrence of any Default or Event of Default;
- (c) any misrepresentation made by either or both of the Borrowers or any other Borrower in this DIP Letter Loan Agreement or in any instrument in writing delivered to the Lender in connection with this DIP Letter Loan Agreement;
- (d) any failure to comply with any Environmental Law; or

- (e) any default in the payment or performance of any covenant to pay or remit present or future Taxes, or to make and remit withholdings or deductions with respect to any Taxes or Priority Payables.

The Borrower's obligations under this Section continue even after all DIP Credit Facility has been repaid and this DIP Letter Loan Agreement has terminated.

#### 4.3 Further Assurances

Each Borrower will from time to time promptly upon request by the Lender do and execute all acts and documents as may be reasonably required by the Lender to give effect to the DIP Credit Facility and the DIP Loan Documents, and to any assignment or participation made by the Lender pursuant to this DIP Letter Loan Agreement.

#### 4.4 Non-Merger

Obtaining any judgment, or taking any action or proceeding, by the Lender under any DIP Loan Document will not operate as a merger of any of the Obligations, or in any way suspend payment or affect or prejudice the powers, rights and remedies, legal or equitable, which the Lender may have in connection with the Obligations. The surrender or cancellation of, or any other dealings with, any security will not release or affect the Obligations.

#### 4.5 Lenders May Perform Covenants

If either or both Borrowers fails to perform any covenant on its part in this DIP Letter Loan Agreement, the Lender may, but is not required to, perform that covenant if it is capable of being performed by the Lender and, if that covenant requires the payment of money, the Lender may, but is not required to, make that payment with its own funds. All amounts paid by the Lender under this Section will be repaid by either or both of the Borrowers on demand for payment, will bear interest at the rate applicable to the DIP Credit Facility, commencing on the day of payment of those amounts by the Lender, and form part of the Obligations and be secured by the DIP Charge.

#### 4.6 Remedies Cumulative

The rights, powers and remedies under the DIP Loan Documents and the DIP Charge are cumulative and are in addition to and not in substitution for any other rights, powers and remedies available at law or in equity or otherwise. No single or partial exercise by the Lender of any right, power or remedy precludes or otherwise affects the exercise of any other right, power or remedy to which the Lender may be entitled.

#### 4.7 Entire Agreement

This DIP Letter Loan Agreement and the other DIP Loan Documents constitute the entire agreement between the parties pertaining to the subject matter thereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no representations, warranties or other agreements between the parties in connection with the subject matter thereof except as specifically set out herein and therein. Neither Borrower has been induced to enter into this DIP Letter Loan Agreement or any other DIP Loan Document in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this DIP Letter Loan Agreement or in any of the other DIP Loan Document.



#### 4.8 Conflicts

In the event of a conflict in or between the provisions of this DIP Letter Loan Agreement and the provisions of any other DIP Loan Document, then, despite anything contained in that other DIP Loan Document, the provisions of this DIP Letter Loan Agreement will prevail and the provisions of that other DIP Loan Document will be deemed to be amended to the extent necessary to eliminate the conflict. If any act or omission is expressly prohibited under a DIP Loan Document (other than this DIP Letter Loan Agreement) but this DIP Letter Loan Agreement does not expressly permit that act or omission, or if any act is expressly required to be performed under a DIP Loan Document (other than this DIP Letter Loan Agreement) but this DIP Letter Loan Agreement does not expressly relieve either or both of the Borrowers from that performance, that circumstance will not constitute a conflict in or between the provisions of this DIP Letter Loan Agreement and the provisions of that other DIP Loan Document.

#### 4.9 Severability

Each Section of this DIP Letter Loan Agreement is distinct and severable. If any Section of this DIP Letter Loan Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect the legality, validity or enforceability of the remaining Sections of this DIP Letter Loan Agreement, in whole or in part, or the legality, validity or enforceability of that Section, in whole or in part, in any other jurisdiction.

#### 4.10 Amendment and Waiver

No amendment, discharge, modification, restatement, supplement, termination or waiver of this DIP Letter Loan Agreement or any Section of this DIP Letter Loan Agreement is binding unless it is in writing and executed by the Party to be bound. No waiver of, failure to exercise, or delay in exercising, any Section of this DIP Letter Loan Agreement constitutes a waiver of any other Section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

#### 4.11 Assignment

- (a) None of this DIP Letter Loan Agreement, the other DIP Loan Documents or any rights, remedies or obligations under them may be assigned by either or both of the Borrowers without the prior written consent of the Lender.
- (b) The Lender will have the right to assign, sell or participate its rights and obligations in the DIP Credit Facility to one or more Persons ("**Participants**") without the consent of the Borrower. For this purpose, the Lender may disclose, on a confidential basis, to a potential Participant any information concerning the Borrower as the Lender considers appropriate. Each Borrower will execute any documentation and take any actions as the Lender may reasonably request in connection with any assignment or participation.

#### 4.12 Enurement

This DIP Letter Loan Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.



**4.13 English Language**

It is the express wish of the parties that this DIP Letter Loan Agreement and any related documents be drawn up and executed in English. Il est la volonté express des parties que cette convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

**4.14 Limitations**

Each Borrower agrees to extend the limitation period otherwise applicable under the *Limitations Act, 2000* (Alberta) to any demand loan obligation payable under this DIP Letter Loan Agreement, and agrees that the right of the Lender to commence a legal proceeding to enforce the Borrower's demand loan obligations will continue for a period of ten years after the date on which demand is made under this letter

