

COURT FILE NUMBER: 2001-05482

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE: Calgary

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.

APPLICANT: Kalinko Enterprises Ltd.

RESPONDENT: JMB Crushing Systems Inc.

DOCUMENT **Affidavit of Tim Kalinski**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Field LLP
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AFFIDAVIT OF TIM KALINSKI

Sworn July 11, 2020

I, Tim Kalinski, of Cold Lake, Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I have personal knowledge of the facts set out below. Where my account is not based on personal knowledge, it is based on information provided by others which I believe to be credible and true.
2. I am swearing this Affidavit in support of an application by Kalinko Enterprises Ltd. ("Kalinko") for the following relief:
 - a. An order directing JMB to disclose to Kalinko all SISF data room materials which purport to market Kalinko's aggregate for sale.

- b. An order directing that JMB may not market Kalinko's aggregate in the SISP, including the Precambrian Pile, Kalinko Land Piles, Stoney Pile, and JMB Yard Pile (as those terms are defined here).
- c. A declaration that Kalinko has clear title to the sand and gravel pile located at SML020038 (the "Precambrian Pile"), subject only to further determination of an existing possessory lien claim by Al's Contracting.
- d. A declaration that Kalinko has clear title to the sand and gravel stockpiled by JMB at the Kalinko SMLs (the "Kalinko Land Piles").
- e. A declaration that Kalinko has clear title to the sand and gravel pile located at SML110069 (the "Stoney Pile").
- f. A declaration that Kalinko has clear title to the sand and gravel located at JMB's yard (the "JMB Yard Pile").
- g. If necessary, to lift the stay of proceedings against JMB to permit the hearing of our application and grant the relief Kalinko seeks.
- h. Any further relief sought by my counsel which the Court sees fit to grant.

Kalinko's Business and the Aggregate Industry

- 3. I am the President of Kalinko and I am authorized to swear this Affidavit as its corporate representative.
- 4. I have been in the aggregate industry since 1995 and incorporated Kalinko at that time. We are a surface mineral extraction company. We own or administer rights to surface minerals on certain lands in northern and central Alberta under Surface Materials Lease (SMLs) from the Crown. I have lived in the area all my life.
- 5. Generally speaking, the "surface minerals" we excavate are sand and gravel. Sand and gravel have individual uses and may also be processed together into "aggregate", which is used for construction, particularly road and infrastructure building in both the public sector and the oilfield.
- 6. Kalinko excavates and sells aggregate ourselves from our SML lands. We also enter into agreements to allow other companies access to the lands to excavate or crush our aggregate and market it on our behalf.
- 7. An SML grants the holder the legal right to surface materials on public lands. My son, Zach, holds SML120004. My family members Jessica Brennan, Matthew Kalinski, and Elisha Kalinski, also hold SMLs. In this affidavit I may refer to my family and I as the "SML

Holders". We have all designated Kalinko to receive all our benefits, and fulfill all our obligations, as SML Holders. Kalinko also owns several SMLs itself. I am attaching a list of the SMLs by number, leaseholder, and location, in the appendix to the Operating Agreement attached as **Exhibit "A"** (the "Kalinko SMLs").

8. SML holders have two main obligations: to pay a royalty back to the Crown for the volume of materials removed from the land, and to adequately reclaim the land after excavation.

JMB

9. JMB Crushing Systems Inc. ("JMB") operates a commercial aggregate crushing and sales business. I'm informed by my lawyer that in May 2020, by order of this Court, JMB entered into *Companies' Creditors Arrangement Act* proceedings with FTI Consulting Canada Inc. acting as the Monitor.
10. In the context of the aggregate industry, JMB is a middle-man, processing aggregate owned by others and either buying it, or marketing it on the owner's behalf to construction companies and taking a cut of the proceeds.

The Sand and Gravel Operating Agreement

11. On June 12, 2012 the SML Holders, Kalinko, and JMB signed a five-year Sand & Gravel Operating Agreement (the "Operating Agreement"). A copy of the Operating Agreement is attached as **Exhibit "A"**. Even though the effective date is not filled out on the only copy I have, it is executed by all of the parties.
12. I negotiated the Operating Agreement on Kalinko's behalf, and I worked under it for seven years. Jeff Buck was the only party Kalinko dealt with at JMB in negotiating the Operating Agreement, other than our lawyers. He was the primary, and often only, person at JMB who we dealt with during the periods discussed in this affidavit.
13. The key term of the Operating Agreement for JMB was permitting it exclusive access to Kalinko's SML Lands. The exclusivity is important to a middle-man like JMB because it ensures they have access to sufficient stockpiles of aggregate to meet market demand. Under the Operating Agreement, JMB was permitted to excavate, crush, blend, process, stockpile, and haul Kalinko's sand and gravel.
14. But because the SML Holders' royalty and reclamation obligations to the Crown are large and inescapable, it was crucial for Kalinko that the Operating Agreement be drafted so that it did not transfer title to the aggregate to JMB. That allowed us to maintain our ownership of it until it was sold to JMB's customers on our behalf and we were paid.

15. It was an option for the parties to structure this deal another way, which would have given JMB title to the aggregate. In our industry, some deals like this are done by "assignment". The SML holder assigns that interest to the buyer. The buyer would then own the aggregate, but it would also be directly liable to the Crown for reclamation and royalty payout. In this case, JMB and Kalinko decided not to use an assignment structure, which would have made JMB the owner of the aggregate.
16. I was also aware at the time that Buck had a reputation in the industry for failing to pay and generally being unreliable, so I preferred an arrangement where we would be more secure by continuing to own the aggregate.
17. Accordingly, the Operating Agreement's terms were drafted to ensure there would be no transfer to JMB of any ownership or title to our sand and gravel. Instead, consistent with its role as middle-man, JMB could come on to Kalinko's lands to process our sand and gravel, and could market it, on our behalf, for customers to purchase, at which point we are paid out for our royalty interest in the material, and JMB keeps the remainder of the purchase price.
18. Other important terms of the Operating Agreement included:
 - a. Under Article 6, Kalinko reserved its royalty rights to our sand and gravel. Based on my years of experience in the aggregate industry, I know that a royalty is a property interest in minerals which its owner—in this case Kalinko—reserves, and which is discharged when the owner is paid the royalty amount.
 - b. For the first two years of the Operating Agreement, under Section 6.3, JMB had to pre-pay Kalinko \$5.5 million for future anticipated royalties. After that two-year period was up, JMB would pay Kalinko's royalty at the time of sale of the sand and gravel to its customer, under Section 6.4. The payment would discharge our royalty interest in the minerals.
 - c. JMB was responsible, at its sole cost and expense, for all reclamation. These reclamation costs can be very large.
 - d. Failure by JMB to pay any amount required to be paid under the Operating Agreement when due constituted a default.
 - e. On a default by JMB, which is not remedied or is not remedial, Kalinko and the Owners had the right to terminate the Operating Agreement.
 - f. If the Operating Agreement is terminated because of default by JMB, then JMB would have no right to be compensated for its work on any stockpile of our sand and gravel which JMB had left on Kalinko's lands.

- g. If the Operating Agreement is terminated other than for default by JMB, then JMB was permitted, for a period of 15 days, to come and obtain any material it had stockpiled on Kalinko's lands, but only on payment of any outstanding royalty amounts. After that 15 day window, JMB would have no right of access and no right to be compensated for its work on the stockpile.
19. After we signed the Operating Agreement in 2012, JMB repeatedly defaulted. We sent them several formal written Notices of Default. For example, I'm attaching the notices sent on January 12, 2015, as **Exhibit "B"**.
 20. By mid-2017, the Operating Agreement's original term was ending. JMB had failed to pay out Kalinko for more than a million dollars in royalties.

The "Amending Agreement"

21. In 2017 Jeff started pressuring me and my son, Zach, to renew the Operating Agreement, even though JMB was in default and had failed to pay out our royalty interests. He sent us drafts of an "Amending Agreement" which he or his lawyers had prepared and threatened that if we didn't sign, he wouldn't pay any of the outstanding amounts and would sue Kalinko for something. At this time, Jeff was trying to sell all or part of JMB to CARC, and he needed an ongoing agreement with Kalinko as a valuable JMB asset.
22. JMB sent us a number of drafts of the Amending Agreement. I am attaching a copy of the first one we received as **Exhibit "C"**. We didn't sign it. We then received a different version, which I'm attaching as **Exhibit "D"**. Eventually we gave in to Jeff's pressure and signed that document, because we were desperate to receive the amounts JMB already owed us, and concerned that JMB would not perform its existing reclamation obligations. I felt we had no choice but to sign. My copy of this agreement includes our signatures, but not JMB's. I note the signature page is separate from the rest of the document, and the non-signature pages aren't initialled.
23. My lawyer has provided me with a third version of the Amending Agreement, which he informs me, and I believe, that he received from JMB's lawyer at Gowlings LLP. I am attaching that version at **Exhibit "E"**. I believe we signed the version at **Exhibit "C"**, not this version, but given the passage of time I can't be sure.
24. Either way, both versions of the Amending Agreement just said that JMB would pay us the amounts they already owed under the Operating Agreement. They also amended the termination clauses of the Operating Agreement to provide that if it was terminated for a reason other than JMB's default, JMB would have two years, instead of 15 days, to come and pay us to obtain any material it had stockpiled on the Kalinko lands.

25. Kalinko didn't get anything new in return for the changes in the Amending Agreement and none of them were to our benefit. We were desperate to be paid the money JMB already owed and were bullied into signing by Jeff's threats.
26. In early June 2017, there was correspondence between our lawyers and JMB's then-lawyers at Ogilvie LLP, which I am attaching as **Exhibit "F"**. JMB's June 8, 2017, letter set out its view of when the aggregate is "sold" from Kalinko to JMB's customer:

... The sale inherently occurs at the point when the customer takes possession of the gravel which has clearly not taken place. Interim crushing payments are standard and commonplace in the industry and do not, in any way, constitute a transfer of ownership or a "sale".
27. After we signed the Amending Agreement, JMB continued to fail to pay out our royalties according to the deadlines set out in s. 6.4 of the Operating Agreement. In August 2018 we sent another Notice of Default.
28. On November 14, 2018, Zach and I received a letter from Jeff Buck, which I'm attaching as **Exhibit "G"**. Jeff often tried to foist agreements on us by sending us a letter in this way. The letter said JMB wanted us to agree to accept a reduction in the royalty amounts already owed to Kalinko and let it be paid out over several months. We didn't accept and didn't sign it.
29. In order to further protect Kalinko, our lawyers registered our property interest in "All alluvial sand and gravel material extracted from the Leased Lands pursuant to the SM Leases wherever situated", naming JMB as the debtor. I'm attaching the PPR registration as **Exhibit "H"**.

The Precambrian Pile

30. On December 18, 2018, I received another letter from Buck, which I'm attaching as **Exhibit "I"**. The letter discusses a pile of sand and gravel which I will refer to as the "Precambrian Pile".
31. The Precambrian Pile came from Kalinko's SML 120004. That SML is located on land with environmental and wildlife restrictions, which meant that after gravel was excavated, it needed to be transported to another location for processing and storage.
32. JMB was responsible for mining, crushing and reclamation at SML 120004. JMB retained subcontractors to perform certain services in connection with the Agreement, including crushing and storing gravel.
33. Al Przysiezny at Al's Contracting has informed me, and I believe, that JMB hired Al's Contracting to remove approximately 70,000 tonnes of gravel from the pit located at

SML 120004. JMB's foreman and Zach were both present at the site to oversee Al's Contracting's excavation of the gravel and to ensure that proper guidelines were followed. Al's Contracting extracted the gravel and JMB's trucking division, Quantum, transported the gravel to SML 020038, where it is currently stored. To my knowledge, Al's Contracting has an agreement with Precambrian Sand & Gravel Ltd. ("Precambrian") for the exclusive right of access and occupancy of SML 020038.

34. I was further informed by Mr. Przysiezny, and I believe, that JMB never paid Al's Construction for its services and Al's is now claiming a possessory lien on the Precambrian Pile.
35. Kalinko owns the Precambrian Pile. JMB removed it from our SML under the terms of the Operating Agreement, but it never bought it or took title to it, they don't have possession of it, and the Operating Agreement was terminated in April 2019, so after that time they had no right to market it.
36. I note that in JMB's December 18, 2018, letter:
 - a. JMB describes itself as our "marketing agent".
 - b. JMB says they will only be "transporting" the sand and gravel from SML120004 to SML020038.
 - c. JMB says they have a right to "crush and store" the material at that site "until Dec 2019".
 - d. JMB mentions E Construction, but I don't know if this was sent to them.
 - e. JMB wanted me to acknowledge that "royalties from SML 12004 will not become payable until the material leaves the interim stockpile side at SML 020038", rather than when JMB was paid by its customer.
37. The letter had a space for my signature, but I didn't agree with all of it and so I didn't sign. In particular, I knew the Operating Agreement said our royalty had to be paid out and discharged at the time JMB was paid by its customer, not when the customer took the gravel (which can take a long time, given the volume of the material).
38. Based on my discussions with Jeff Buck and my review of the letter, I believe JMB's description of itself as our "marketing agent" accurately reflected JMB's knowledge that it didn't own the aggregate and was instead marketing it on Kalinko's behalf pursuant to the Operating Agreement.

Kalinko Terminates the Operating Agreement with JMB

39. JMB continued to fail to make royalty payments to Kalinko when they were due. We sent them another Notice of Default on March 22, 2019. Eventually, on April 10, 2019, Kalinko terminated the Operating Agreement and Amending Agreement for default by JMB. I am attaching the Notice of Termination as **Exhibit "J"**.
40. The current outstanding amount owing by JMB to Kalinko for prior invoices, not including the Precambrian Pile, is \$678,014.13 and is broken down as follows:
 - a. Invoice No. 861, dated September 10, 2019, in the amount of \$87,960.84;
 - b. Invoice No. 866, dated October 8, 2019, in the amount of \$120,254.45;
 - c. Invoice No. 869, dated November 6, 2019, in the amount of \$177,979.02; and,
 - d. Invoice No. 870, dated December 4, 2019, in the amount of \$291,819.82.
41. Given the volume of the Precambrian Pile, the corresponding royalty amount payable to Kalinko for it on sale by JMB would have been approximately \$600,000. But the Operating Agreement was terminated in April 2019, so JMB no longer had any right to market our aggregate.
42. After we terminated the Operating Agreement in April 2019, the timing of the termination prevented Kalinko from bidding on new contracts for that season of work. As a result, from time to time we allowed JMB non-exclusive access onto our lands from to perform reclamation and crushing work, and in the optimistic hope that they would pay us the amounts they owed us and complete their reclamation obligations (which survived the termination of the agreement).

The Anzac Job

43. Unbeknownst to me, in March 2018 JMB signed a subcontract with a company called E Construction Ltd. ("E Construction"). I didn't see it at the time but my lawyer has provided me with a copy, which I'm attaching as **Exhibit "K"**.
44. The subcontract says:
 - a. E Construction has been hired by a company called OCL Group Inc., who was in turn hired by the Regional Municipality of Wood Buffalo ("RMWB"), for a job in or around Anzac, Alberta (the "Anzac Job").
 - b. JMB was supposed to supply E Construction with "all the labour, supervision, materials, tools, and equipment necessary to construct, install, and complete" certain work.
 - c. JMB had to "dewater, excavate, split, eliminate, screen, crush, and stockpile including all pit cost's, royalties, permits, code of practice the following

aggregate materials in the Subcontractor's Aggregate Source as named below: SML 100075 14-82-7-W4, SML 120004 2,3-82-7-W4." SML100075 and 120004 are Kalinko SMLs.

- d. JMB was supposed to provide to E Construction 144,300 tonnes of aggregate, at \$22.48/tonne, for a total of \$3,243,864.00.
45. On April 8, 2019, JMB's lawyer sent Kalinko a letter, which I'm attaching as **Exhibit "L"**. JMB talks about "Anzac/Cheecham", which may or may not be the Anzac Job. JMB's letter says they had incurred costs of "having to obtain gravel from other sites in order to meet their commitment and contractual obligations for this project. JMB is currently in the process of calculating those losses with supporting documents and are in attempts to try and mitigate those losses."
 46. JMB then sued E Construction for unpaid amounts under the Anzac subcontract. On September 25, 2019, they filed a Statement of Claim in the Court of Queen's Bench of Alberta, Action 1903 19761, which is attached as **Exhibit "M"**. In the pleading, JMB says it had duly performed its work and had invoiced E Construction \$1,573,000, which E Construction had refused to pay. I did not know the lawsuit had been filed, but Jeff had told me that he had not been paid for the aggregate JMB had supplied to E and so he was going to sue.
 47. On Friday, January 17, 2020, JMB's then-lawyer at Ogilvie LLP sent an email to Kalinko's lawyer. I am attaching it as **Exhibit "N"**. JMB's lawyer says he had completed a PPR search and saw Kalinko's registration. He asked Kalinko what authority it had to file the registration. On Monday, January 20, 2020, our lawyer replied explaining that "the owners and Kalinko have a registrable security interest in the sand and gravel under the terms of the operating agreement..." I am informed by my lawyer and believe that JMB never replied to this email. My lawyers advise me that they did not know why JMB was asking about our PPR registration.
 48. I have since found out. I am attaching as **Exhibit "O"** a copy of an agreement dated January 16, 2020, between E Construction, under its actual name, NPA Ltd., and JMB, which was provided through my lawyer in the last few weeks (the "January 2020 Agreement"). I was not aware of this document until then.
 49. I believe the January 2020 Agreement was a settlement of the lawsuit JMB had started against E Construction for the \$1,573,000 it claimed it was owed in September 2019. I believe this because:
 - a. Schedule B to the January 2020 Agreement is called "Discontinuance and Release Agreement".
 - b. Its preamble discusses the Anzac job and the subcontract between E Construction and JMB. It says JMB had sued E Construction "seeking damages for

claims relating to the JMB Contract and the cost of aggregate to be supplied for the Project.”

- c. The Discontinuance and Release Agreement says JMB would discontinue its lawsuit without costs and in return, E will pay JMB \$1,330,000 under what is purported to be an “Aggregate Purchase and Removal Agreement”, contained in the body of the January 2020 Agreement, and JMB will provide a further 70,000 tonnes of aggregate.
50. On March 17, 2020, having (again) not been paid our royalty by JMB, we sent a further demand for payment. JMB’s lawyer replied on April 15, 2020, threatening that if Kalinko sued for the amounts owed by JMB, they would “bring a responding counterclaim.” I’m attaching both letters as **Exhibit “P”**.
 51. My counsel has informed me that E Construction claims it paid JMB approximately \$1.3m to JMB in January 2020. That directly contradicts what is in Buck’s sworn affidavit. In addition, Buck told me all along that JMB had not been paid by E. In any event, any payment could not have been a sale of our aggregate, because by that point we had terminated the Operating Agreement, so JMB had no right to sell it on our behalf.
 52. I am also advised by my counsel, and I believe, that JMB has advised it does not claim an interest in the 70,000 tonnes which comprise the Precambrian Pile, but may claim an interest in amounts over that number. Based on my review of the relevant records I do not believe the pile consists of any more than a maximum of 72,000 tonnes, and likely less.

JMB’s False Claims to Kalinko’s Gravel

53. On April 16, 2020, Jeff Buck swore an affidavit (the “Buck Affidavit”) in this CCAA proceeding, which I have reviewed. Two paragraphs may refer to Kalinko, but we aren’t named. Those paragraphs say:

71. JMB previously entered into an agreement with another company whereby JMB was to perform crushing services in exchange for earthmoving services. Following its performance of the earthmoving services, the other company demanded cash payment, rather than the previously agreed upon exchange of services. The other company also leases a property from a third party with whom JMB has an agreement for the storage of crushed aggregate at the same site. JMB had previously sold the stored aggregate and is to receive payment once the aggregate is removed from the site. The other company has blocked JMB’s access to the site and is refusing to permit JMB to remove any of the stored gravel. The other company has threatened to seize the aggregate, which has an

estimated value of \$1,000,000, far in excess of what the other company claims is owed to it.

72. JMB has also received a demand for payment of invoices issued by an owner of a gravel and aggregate pit for arrears of outstanding royalties. JMB disputes the amount claimed. The value of the aggregate and gravel in these pits is approximately \$6,100,000. JMB is concerned that it may lose access to the pits due to the royalty arrears and the potential litigation between it and the SML owner.

54. I believe the first three sentences of Paragraph 71 are referring to JMB's relationship with Al's. The next sentence is referring to JMB not being paid by E Construction: Buck says JMB "previously sold the stored aggregate and is to receive payment once the aggregate is removed from the site."
55. The Precambrian Pile consists of approximately 70,000 metric tonnes of Kalinko aggregate. The Precambrian Pile also includes approximately 10,000 metric tonnes of Kalinko sand, the royalty for which, under the Operating Agreement, is \$1.50 per metric tonne. Under the Operating Agreement, the royalty due to Kalinko would have been \$8.48 per metric tonne for gravel and \$1.50 per tonne of sand, had JMB sold the aggregate prior to the termination of the Agreement. So the total royalty which would have been owing to Kalinko on sale of the Precambrian Pile, in order to discharge its royalty, would be \$593,600 for the aggregate and \$15,000 for the sand, a total of \$608,600.
56. At Paragraph 72 of the Buck Affidavit, Buck admits that JMB has received demands for payments of its debts to Kalinko. However, the second half of the paragraph is misleading, because it omits three facts:
 - a. We had already terminated the Operating Agreement in April 2019, so JMB had no ongoing contractual right of access to our pits.
 - b. Under the terms of the Operating Agreement, JMB had already lost any rights to access, or be compensated for its work on, aggregate in Kalinko's pits by operation of Section 5.10(d).
 - c. After the Operating Agreement was terminated, JMB lost any right to market our aggregate for sale.
57. I believe Paragraph 72 of the Buck Affidavit gives the false impression that JMB had a right of access to Kalinko's pits, and valuable gravel stored there, when in fact Buck knew that not to be the case.

JMB's Marketing of Kalinko's Aggregate in the SISP

58. A few weeks ago I received a copy of a "Teaser" PDF put out by Sequeira Partners, the broker in the SISP process in this action. The Teaser claims to describe JMB's assets to potential buyers. I am extremely concerned that JMB is pretending to own gravel which in fact belongs to Kalinko, and is misrepresenting its right to access our pits. I am attaching this teaser document as **Exhibit "Q"**.
59. The Teaser says JMB has access to "32 pits and 43.6 MT[metric tons] [which] are secured under royalty agreements with 3rd party landowners or leaseholders," and claims "exclusive access to over 110MT [metric tons] of strategically located aggregate..."
60. Based on my knowledge of JMB's business, the only way it could claim to have exclusive access to this volume of material and number of pits is if it claims a right of access to Kalinko's pits. As I described above, because the Operating Agreement was terminated more than a year before the CCAA proceeding, and JMB has lost any financial interest in any gravel remaining on our lands, I believe the statements made in this "Teaser" materially misrepresent JMB's assets and rights of access to our land. Since the Operating Agreement was terminated, JMB has no right to market our aggregate for sale.
61. After receiving the "Teaser", I instructed my counsel to contact the Monitor and JMB to obtain a list of what aggregate JMB is claiming to own from the SISP "Data Room". I am informed by my counsel, and I believe, that they have not provided this list despite multiple requests. I believe JMB is trying to market Kalinko gravel, or access to Kalinko land, to third party buyers without my knowledge and while they do not have any rights to such gravel or access, since the Operating Agreement was terminated and JMB doesn't own the aggregate.
62. I am bolstered in my belief by a document contained in Exhibit "J" to the Buck Affidavit. That document is an October 21, 2019, contract between JMB and a lender, Fiera Private Debt Fund VI LP. Schedule G of the contract is entitled "Material Agreements" and lists agreements for access to aggregate which JMB, under Section 11 of the contract, was putting up as security for its loan from Fiera. One of those asserted "Material Agreements" is called "Kalinko Pits" and lists the locations of 11 Kalinko SMLs. As I have said previously, JMB has had no right of access to these pits since April 2019 when the Operating Agreement was terminated, and no right to market the gravel, and if it warranted otherwise to Fiera six months later, that was false.
63. My counsel has provided me with the Second Report of the Monitor filed July 6, 2020, and I have reviewed it. It confirms my belief that JMB has falsely inflated its aggregate inventory and was purporting to sell material that it did not own.

64. In particular, the chart at paragraph 24 of the Report divides up JMB's inventory into five categories: sand, granular base course, traffic, rock/other, and granular fill. Those last four items are "aggregate". According to this chart, JMB had claimed in its original SISP marketing materials to own 2,565,698 tonnes of aggregate.
65. The Second Report says that JMB is "adjusting" its claimed aggregate inventory down to only 360,116 tonnes. In other words, JMB initially claimed to have more than seven times as much aggregate as it says now. The Second Report also says Jeff Buck has "resigned" during the period when this "adjustment" was discovered. This finding that JMB vastly overstated its inventory is consistent with my years of experience dealing with Jeff.
66. JMB has said it maintains an "interest" in:
- a. 27,800 tonnes of aggregate from Kalinko's SML 120004 now being stored on a third-party SML 110069, which belongs to a company called Stoney.
 - b. 10,200 tonnes of aggregate from Kalinko's SML 140046 and is now being stored on JMB's yard.
67. I do not understand the basis on which JMB could claim to own this aggregate and so be able to sell it to others in the SISP. JMB did not pay for it, the agreement was terminated, and as to the Stoney pile, JMB is not in possession of it.
68. I am advised by my lawyer that JMB has also suggested, through its counsel, that it may have some kind of "interest" in the piles on Kalinko's lands. I am not aware of any basis for this claim, because the Operating Agreement was terminated more than a year before this CCAA proceeding, and under its terms JMB lost any right to compensation for those piles at that time.
69. Again, while JMB may have some kind of legal "interest" in certain aggregate up to the value of the work it did in crushing it, I do not understand how they can claim to own that gravel and so be able to sell it to others in the SISP.
70. On July 15, 2020, at the request of Kalinko's lawyer, the Monitor wrote to us saying:
- The most recent inventory document posted in the JMB dataroom includes the following SMLs as listed in your Schedule A:
- SML 010005
- SML 030046
- SML 100057
- SML 100112
- SML 110065

SML 120004

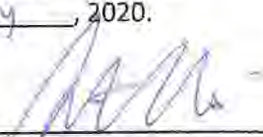
71. These are all Kalinko SMLs. JMB has no right of access to them, and no right to any aggregate on them, due to the termination of the Operating Agreement. This response from the Monitor confirmed my suspicions that JMB is falsely marketing in the SISP aggregate which actually belongs to Kalinko.

The Effect of JMB's Marketing of Kalinko's Aggregate in the SISP

72. JMB's marketing of our aggregate in the SISP is paralyzing our business. Kalinko cannot effectively market our aggregate to our customers, because the data room materials falsely claim JMB owns, and so is able to sell, aggregate which in fact Kalinko owns.
73. JMB is currently marketing in the SISP aggregate which Kalinko owns, as if JMB owned it. In the close-knit aggregate industry in Alberta, this has cast a shadow on Kalinko's aggregate which prevents us from doing business.
74. We are in the process of arranging buyers for our aggregate, and urgently need to sell it in order to continue operating, including the Precambrian Pile, the Stoney Pile, the JMB Yard Pile, and the Kalinko Land Piles.
75. Aggregate supply is a seasonal industry, with a short Spring/Summer window for providing material. Without an immediate order from the Court that our aggregate does not fall within the SISP, we will miss this window and Kalinko will suffer very serious harms to its business which may be fatal to its ability to continue as a going concern. The ongoing uncertainty caused by JMB's behaviour so far, including overstating its inventory and claiming to own the Stoney Pile and the JMB Yard Pile, combined with the dispute over the AI's pile, has already drastically reduced Kalinko's revenues this season and is imperiling our business.
76. I swear this Affidavit in support of an Application seeking:
- a. An order directing JMB to disclose to Kalinko all SISP data room materials which purport to market Kalinko's aggregate for sale.
 - b. An order directing that JMB may not market Kalinko's aggregate in the SISP, including the Precambrian Pile, Kalinko Land Piles, Stoney Pile, and JMB Yard Pile (as those terms are defined here).
 - c. A declaration that Kalinko has clear title to the sand and gravel pile located at SML020038 (the "Precambrian Pile"), subject only to further determination of an existing possessory lien claim by AI's Contracting.
 - d. A declaration that Kalinko has clear title to the sand and gravel stockpiled by JMB at the Kalinko SMLs (the "Kalinko Land Piles").

- e. A declaration that Kalinko has clear title to the sand and gravel pile located at SML110069 (the "Stoney Pile").
 - f. A declaration that Kalinko has clear title to the sand and gravel located at JMB's yard (the "JMB Yard Pile").
 - g. If necessary, to lift the stay of proceedings against JMB to permit the hearing of our application.
 - h. Any further relief sought by my counsel which the Court sees fit to grant.
77. I was not physically present before the Commissioner when affirming this affidavit. I swore it by video using the Court's announced process for remote commissioning. Given the volume of the exhibits to my affidavit, however, while I reviewed them each with my lawyer, I have not initialled every page.

SWORN BEFORE ME BY VIDEO at Edmonton,
Alberta, this 16 day of
July, 2020.



Commissioner for Oaths in and for
Alberta

Scott A. Matheson
Barrister & Solicitor

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TIM KALINSKI

This is Exhibit "A" referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2020

[Signature]

A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

SAND & GRAVEL OPERATING AGREEMENT

THIS AGREEMENT dated effective as of the ____ day of _____, 2012.

AMONG:

Tim Kalinski, Jessica Brennan, Matthew Kalinski, Zachariah Kalinski and Elisha Kalinski

(collectively referred to herein as the "Owners")

Kalinko Enterprises Ltd., a body corporate incorporated under the laws of Alberta and having an office in the City of Edmonton, in the Province of Alberta

(referred to as **Kalinko**)

AND:

JMB Crushing Systems ULC, a body corporate incorporated under the laws of Alberta and having an office in the City of Edmonton, in the Province of Alberta

("JMB")

WHEREAS:

- (A) The Owners and Kalinko collectively hold the legal right to remove various surface materials on public lands pursuant to the SM Leases specifically described in Schedule "A" hereto including the right to remove and sell Sand and Gravel.
- (B) The Owners have designated Kalinko to receive all the benefits and fulfill all the obligations of the Owners the SM Leases.
- (C) JMB operates a commercial aggregate crushing and sales business.
- (D) JMB wishes to obtain exclusive access to the Sand and Gravel located on the Leased Lands.
- (E) The Owners and Kalinko have agreed to make available to JMB, on the terms and conditions of this Agreement, exclusive access to the Sand and Gravel that may be extracted from the Leased Lands for the purposes described in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the Parties do hereby covenant and agree each with the other as follows:

ARTICLE 1
INTERPRETATION

1.1 **Definitions** In this Agreement, including the recitals hereto, unless the context otherwise requires:

"**Affiliate**" means any Person directly or indirectly controlling, controlled by or under common control with any Party. For the purposes of this definition:

- (i) "control" (including "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or by contract or otherwise; and
- (ii) a Person shall be deemed to control a corporation if such Person owns more than fifty (50%) percent of the voting securities of such corporation, or has the right, through the ownership of voting securities or by contract or otherwise, to appoint a majority of the board of directors (or other senior governing body of an entity performing similar functions to a board of directors) of such corporation;

"**Agreement**" means this Sand and Gravel Operating Agreement including the schedules hereto, as amended from time to time;

"**Asset Agreement**" means the Asset Purchase Agreement to be entered into by Kalinko, Tim Kalinski and JMB;

"**Confidential Information**" has the meaning set out in Section 8.1(a);

"**Conservation and Reclamation Plans**" means the conservation and reclamation plans associated with the SM Leases, as the same may be amended, renewed or replaced from time to time;

"**Default**" has the meaning set out in Section 9.1;

"**Default Rate**" has the meaning set out in Section 9.1(a);

"**Environmental Laws**" means all Laws for the protection of or enhancement of the natural environment, including without limitation, any condition, restriction, prohibition or requirement contained in any permit, license, consent, certificate or qualification or other obligation pursuant to any Laws issued in respect of the Operations;

"**Exclusive Area**" means that area as outlined on the map attached hereto as Schedule "D"

"**GST**" means the goods and services tax required to be paid pursuant to the *Excise Tax Act* (Canada);

"**Hazardous Substances**" includes, but is not limited to, used oil and other petroleum products, any contaminants, pollutants, dangerous substances, liquid wastes, industrial wastes, toxic substances or hazardous materials as now or hereafter defined in any federal, provincial or local Laws;

"**Improvements**" means all improvements constructed by or on behalf of JMB from time to time on the Leased Lands and used to conduct the Operations;

"**including**" means including without limitation, and "includes" or other derivatives thereof shall have corresponding meanings;

"**Indemnitee**" has the meaning set out in Section 12.1;

"**Indemnitor**" has the meaning set out in Section 12.1;

"**Interim Agreement**" means the Letter of Intent dated **February 14, 2012**, between Kalinko and JMB, a copy of which is attached as Schedule C;

"**Kalinko**" means Kalinko Enterprises Ltd;

"**Laws**" means all statutes, laws, regulations, rules and orders in effect from time to time and made by any federal, provincial, municipal or other governmental authorities having jurisdiction over the Leased Lands or the Operations;

"**Leased Lands**" means those various parcels of land subject to the SM Leases;

"**Machinery and Equipment**" means all machinery and equipment whatsoever brought onto or installed on the Leased Lands by or on behalf of JMB from time to time and used to conduct the Operations;

"**Occupational Health and Safety Laws**" means all Laws governing safety and health in respect of the Operations;

"**Operations**" means the business to be conducted by JMB on the Leased Lands pursuant to this Agreement being the extraction, processing and sale of Sand & Gravel and products produced or derived therefrom and all activities reasonably related thereto;

"**Payment Default**" has the meaning set out in Section 9.1(a);

"**Party**" means a party to this Agreement and its successors and permitted assigns;

"**Permits**" means all permits necessary and incidental to the maintenance of the SM Leases and access to the Leased Lands;

"**Person**" means a natural person, firm, trust, partnership, association, corporation, government, governmental agency or other entity;

"**Prime Rate**" means the variable reference rate of interest from time to time established by Royal Bank of Canada as its prime rate in Canada for Canadian dollar loans made in Canada to its commercial customers;

"**Production Amount**" means all Sand & Gravel and products derived therefrom extracted or produced from the SM Leases by JMB during the Term as measured in metric tonnes;

"**Reclamation**" means all reclamation and site restoration of the Leased Lands and surrounding areas required from time to time under or pursuant to the Conservation and Reclamation Plans, the municipal authorities having jurisdiction, the Permits, and Law as a result of any activities conducted or permitted to be conducted on such areas by JMB or its Affiliates or contractors;

"**Release**" includes releasing, spilling, leaking, pumping, emitting, discharging, escaping, leaching or dumping;

"**Sand & Gravel**" means alluvial sand and gravel material permitted to be extracted from the Leased Lands pursuant to the SM Leases but does not include any crushed gravel inventory held by Kalinko and the Owners as of January 1, 2012;

"**Sand & Gravel Royalty**" has the meaning set out in Section 6.1;

"**SM Leases**" means collectively, the surface materials leases set out in Schedule A, as each of the same may be amended or renewed from time to time;

"**Statement of Gross Sales**" means a statement in the form attached as Schedule B;

"**Term**" has the meaning set out in Section 4.1 and shall include any extension pursuant to Section 4.2 if applicable;

"**Term Year**" means each calendar year during the Term, and will include any partial calendar year at the beginning or end of the Term.

1.2 Schedules. The following schedules are attached to, and incorporated by reference in, this Agreement:

- Schedule A - SM Leases
- Schedule B - Statement of Gross Sales
- Schedule C - Interim Agreement
- Schedule D - Map of Conklin, Foster Creek and Bonnyville Areas

1.3 Headings. The insertion into this Agreement and the Schedules hereto of headings is for convenience of reference only and shall not affect the construction or interpretation of this Agreement or such Schedules.

1.4 Interpretation. Words importing singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders. Unless the context otherwise requires, all references to "Articles" or "Sections" refer to articles or sections of this Agreement and "herein", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article or Section of this Agreement.

1.5 Currency. All sums of money expressed herein are in Canadian currency unless the context otherwise expressly requires.

ARTICLE 2
RIGHT TO OPERATE AND ENTER

2.1 Grant. The Owners and Kalinko hereby grant to JMB and JMB hereby accepts and takes from the Owners, subject to the reservations, terms and conditions set forth in this Agreement, the exclusive right:

- (a) to mine and remove the Sand & Gravel from the Leased Lands;
- (b) to blend, process and stockpile Sand & Gravel upon the Leased Lands and haul, transport and sell Sand & Gravel from the Leased Lands;
- (c) to construct such Improvements on the Leased Lands as are necessary for the Operations; and
- (d) to install such Machinery and Equipment on and over the Leased Lands as are necessary for the Operations.

2.2 Reservation of Rights. Except as otherwise expressly provided in this Agreement and without limiting the generality thereof the unfettered right of JMB to conduct the Operations, the Owners and Kalinko shall retain all of their rights whatsoever in respect of the Leased Lands, including without limitation, the right to enter upon the Leased Lands for the purpose of inspection.

2.3 No Unreasonable Interference. The Owners and Kalinko's activities on the Leased Lands shall not unreasonably interfere with JMB's conduct of the Operations.

2.4 No Interest. JMB shall have no legal or beneficial interest in title to the Leased Lands or the SM Leases which shall remain the exclusive property of the Owners and Kalinko.

2.5 Cooperation. In the event that this Agreement is deemed by any governmental authority of appropriate jurisdiction to constitute an agreement for which any governmental approvals, permits or other action is required, or if any governmental approval, permit or other action is required for JMB to use and occupy the Leased Lands, then the Parties shall use their commercially reasonable efforts to fully and timely obtain such required approvals, permits or action. The Parties shall fully cooperate with each other in the pursuit thereof.

2.6 Future SM Leases. During the Term of this Agreement, JMB shall have the right of first refusal to SM Leases currently controlled by the Owners and Kalinko not currently listed on Schedule "A" and exclusive use of new SM Leases (the "New SM Lease") established by the Owners or Kalinko within the Exclusive Area. Upon being granted a New SM Lease, the Owners or Kalinko shall give JMB written notice of such new SM Lease which includes details of the location thereof. Within seven (7) days of receiving such written notice, JMB shall provide written confirmation of exercising the option granted in this section 2.6. Failure to provide written notice of exercising of its option shall be deemed a refusal thereof. Upon exercising such option granted herein, the new SM Leases shall be subject to the terms and conditions of this Agreement. Failure to exercise the option shall allow the Owners or Kalinko to have other operators use the New SM Leases for the crushing and sale of Sand & Gravel on any terms and conditions it deems fit.

ARTICLE 3 **REPRESENTATIONS AND WARRANTIES**

3.1 Representations of JMB. JMB hereby represents and warrants to the Owners and Kalinko:

- (a) JMB is a corporation duly organized, validly existing and subsisting under the laws of Alberta, and has the corporate power and authority to own its properties and to carry on its business.
- (b) The execution, delivery and performance of this Agreement by JMB has been duly authorized by all necessary corporate action and this Agreement constitutes the valid and binding obligation of JMB, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.

- (c) The execution and delivery of this Agreement, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in the breach of the terms and provisions of, or constitute a default under, or conflict with any agreement or other instrument by which JMB is bound, or any judgment, decree, order or award of any court, governmental body, or arbitrator or any applicable law, rule or regulation by which JMB is bound or JMB's articles of incorporation or by-laws.

3.2 Representations of Kalinko and the Owners. Kalinko and the Owners hereby represent and warrant to JMB that:

- (a) Kalinko is a corporation duly organized, validly existing and subsisting under the laws of Alberta, and has the corporate power and authority to own or be the beneficial owner of the SM Leases and to carry on its business.
- (b) Kalinko has been irrevocably designated by the Owners to receive all the benefits and fulfill all the obligations of the Owners under the SM Leases and has the right to and shall receive all payments owing hereunder and perform all covenants made by the Owners hereunder notwithstanding the fact that the legal ownership of an SM Lease is not Kalinko
- (c) The execution, delivery and performance of this Agreement by Kalinko has been duly authorized by all necessary corporate action and this Agreement constitutes the valid and binding obligation of Kalinko enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.
- (d) The execution and delivery of this Agreement, the consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in the breach of the terms and provisions of, or constitute a default under, or conflict with any agreement or other instrument by which the Owners or Kalinko are bound, or any judgment, decree, order or award of any court, governmental body, or arbitrator or any applicable law, rule or regulation by which the Owners or Kalinko are bound or Kalinko's articles of incorporation or by-laws.
- (e) The management of the SM Leases and the Leased Lands is the responsibility of Kalinko and JMB shall be at liberty to deal with Kalinko and take its direction with respect to all matters contained in this Agreement.
- (f) Any and all payments under this Agreement shall be made to Kalinko notwithstanding the fact that the legal owner of any SM Lease is not Kalinko.

3.3 Date and Continuation of Warranties. The representations and warranties set out in this Article 3 are effective upon the execution and delivery of this Agreement by both Parties and shall be continuing representations and warranties respectively by the Parties and shall not merge with but shall survive the date of delivery of this Agreement and shall remain in full force and effect during the term of this Agreement.

ARTICLE 4
TERM

4.1 Term. Subject only to Section 4.2 of this Agreement, the term of this Agreement shall commence on the date of this Agreement (the "Commencement Date") and end on the earlier of:

- (a) the fifth anniversary of the Commencement Date;
- (b) the date that the Sand & Gravel reserves permitted to be extracted have been removed from the Leased Lands, or
- (c) unless terminated earlier or extended as provided in this Agreement

4.2 Extension of Term. Provided the Sand & Gravel Royalty received by Kalinko pursuant to this Agreement exceeds twelve million (\$12,000,000.00) dollars exclusive of GST during the Term, this Agreement shall automatically extend the Term for an additional five (5) years provided that:

- (a) as of the date of such extension JMB is not in default of any term or condition of this Agreement; and
- (b) any and all amounts owing for the Sand & Gravel Royalty are paid in full as of the date of exercising such extension.

ARTICLE 5
OPERATIONS

5.1 The Owners and Kalinko to Maintain and Renew SM Leases and Permits. The Owners and Kalinko shall, at their own expense, take all actions as are necessary on a timely basis to maintain and renew as necessary, the SM Leases and the Permits provided that it is acknowledged that certain SM Leases may expire in accordance with their terms before the end of the Term and cannot be extended by the Owners or Kalinko and also provided that JMB is responsible under this Agreement for certain matters required to maintain the SM Leases and Permits.

5.2 Operations Cost. JMB shall, at its own expense, be responsible for all capital investment, the provision of all working capital, and all other funding for the Operations, including without limitation, the cost of Machinery and Equipment, Improvements and the Reclamation.

5.3 Production Commencement Date. The parties hereto acknowledge that production sales of Sand & Gravel commenced on January 1, 2012.

5.4 Operations. In connection with Operations, JMB shall:

- (a) conduct all Operations in accordance with the SM Leases, the Conservation and Reclamation Plans, the Permits, all applicable Laws and good industry practice;

- (b) promptly notify Kalinko of any and all Releases of Hazardous Substances or breaches of Environmental Laws that it becomes aware of in respect of the Operations;
- (c) with respect to the Operations, be the prime contractor within the meaning of the *Occupational Health and Safety Act* (Alberta) and discharge its duties and responsibilities as such;
- (d) pay all rentals, royalties, and taxes (other than Kalinko's taxes based on royalty income) payable with respect to the Operations, including business taxes relating to the Operations, property or other taxes relating to the Leased Lands and the Improvement, and applicable GST, sales tax, value added tax, consumption tax or any other similar tax, levy or assessment on the Sand & Gravel Royalty;
- (e) prepare and deliver to Kalinko quarterly written plans on all activities relating to the Operations with the intention being to provide an organized plan for extraction and reclamation upon the Leased Lands which plans shall include the following:
 - (i) identification of proposed activity on Leased Lands in accordance with the terms and conditions of the SM Leases;
 - (ii) locations within active Leased Lands where Sand & Gravel will be extracted in accordance with the terms of the SM Leases;
 - (iii) a description of completed Remediation and a plan for future Remediation.
- (f) promptly prepare and deliver to Kalinko a written incident report following each material incident on the Leased Lands that it becomes aware of in respect of the Operations;
- (g) meet with the Owners, upon its request, to review and discuss the Operations or any report provided to Kalinko;
- (h) keep the Operations, the Improvements, the Machinery and Equipment and the SM Leases free from liens, charges and encumbrances arising out of the activities of JMB except to the extent that JMB disputes the claim or account in respect of which a lien, charge or encumbrance arises or is registered and take all commercially reasonable steps to remove such lien, charge or encumbrance from title to the Operations, the Improvements, the Machinery and Equipment or the SM Leases;
- (i) at all times throughout the Term, ensure that all legal and beneficial right, title and interest in and to the Operations, the Improvements and the Machinery and Equipment is owned by JMB;

- (j) not bring onto the Leased Lands nor cause or permit to be brought onto the Leased Lands any fill or other material from a location outside of the Leased Lands unless approved by Kalinko in writing;
- (k) purchase and maintain in force any and all insurance for the Operations as may required by Law and this Agreement;
- (l) with respect to the Operations, use commercially reasonable efforts to promptly address concerns and/or complaints received from neighboring property owners, government authorities or regulators, aboriginal groups or other Persons as a result of the Operations. If JMB receives any such concerns and/or complaints, JMB shall promptly notify Kalinko in writing within twenty-four (24) hours after receipt thereof by JMB;
- (m) issue an invoice for all Sand & Gravel removed from the Leased Lands to its customers within fifteen (15) days of its removal;
- (n) use all commercially reasonable efforts to mine and sell all Sand & Gravel reserves permitted to be extracted prior to the expiration of the Term; and
- (o) subject to Section 5.11, upon termination of this Agreement, remove the Improvements and the Machinery and Equipment from the Leased Lands.

5.5 Releases of Hazardous Substances-Operations. JMB shall, in respect of the Operations:

- (a) comply with all Environmental Laws relating to the use, generation, manufacture, production, processing, storage, transportation, handling, Release, disposal or cleanup of Hazardous Substances and the protection of the environment on, under or about the Leased Lands;
- (b) not use or cause or permit to occur the generation, manufacture, production, processing, storage, handling, Release, disposal or cleanup of any Hazardous Substance on, under or about the Leased Lands or the transportation to or from the Leased Lands of any Hazardous Substance of which it becomes aware except in accordance with all applicable Laws;
- (c) promptly notify Kalinko of any and all Releases of a Hazardous Substance in the Leased Lands or in connection with the Operations of which it becomes aware; and
- (d) upon the demand by any governmental authority or Kalinko that a cleanup be undertaken because of any addition, deposit, emission, leak, spill, discharge or other Release of a Hazardous Substance that occurs in or from the Leased Lands (other than a Release of a Hazardous Substance that results from the Owners' or Kalinko's activities on the Leased Lands), take all remedial action necessary to carry out a full and complete cleanup.

5.6 Environmental Assessment. Within the calendar month following a cleanup contemplated in Section 5.5(d), JMB shall, at its sole cost and expense, provide to Kalinko an independent environmental assessment in form and substance approved by Kalinko acting reasonably and from qualified experts approved by Kalinko, acting reasonably, regarding Hazardous Substances and the protection of the environment on, under or about the Leased Lands.

5.7 Kalinko May Perform. Notwithstanding any provision of this Agreement to the contrary, expressed or implied, in the event Kalinko receives a notice of a deficiency with respect to a SM Lease, the Permits or the Conservation and Reclamation Plan, Kalinko shall provide written notice to JMB of such deficiency and in the event such deficiency is not rectified by JMB within one half of the time period provided in such notice of a deficiency, Kalinko may, but shall not be obligated to, take all steps or actions necessary in the opinion of Kalinko, acting reasonably, to:

- (a) maintain all of the Owners' rights under the SM Leases, the Permits and all other leases, licences or similar rights giving rise to the Owners' rights to the Sand & Gravel;
- (b) ensure all the terms and conditions of the Conservation and Reclamation Plan are complied with; or
- (c) undertake Reclamation.

5.8 Reimbursement by JMB. All monies expended by Kalinko on behalf of the Owners in connection with matters described in Section 5.7 that are the responsibility of JMB pursuant to Law or this Agreement, shall be reimbursed to Kalinko by JMB within in seven (7) days of written demand from Kalinko.

5.9 Removal of Improvements, Machinery and Equipment on Termination.

- (a) After the termination of this Agreement in accordance with the terms hereof or due to the default of JMB, JMB shall be entitled for a period of fifteen (15) days to enter on and remove from the Leased Lands all Improvements and Machinery and Equipment. JMB shall make good any damage which may be occasioned by such removal.
- (b) Any Improvements or Machinery and Equipment not removed from the Leased Lands on or before the date as set out in Section 5.9(a) above shall, at the option of Kalinko, become the sole and absolute property of Kalinko without compensation to JMB.

5.10 Removal of Stockpile Sand & Gravel on Termination.

- (a) After the termination of this Agreement, JMB shall be entitled for a period of fifteen (15) days to enter on and remove from the Leased Lands the stockpile of Sand & Gravel produced by JMB pursuant to the terms of this Agreement

provided that the Sand & Gravel Royalty in respect of the same has been paid in full to Kalinko.

- (b) Any stockpile of Sand & Gravel not removed from the Leased Lands on or before expiry of the date as set out in Section 5.10(a) above, at the option of Kalinko, become the sole and absolute property of Kalinko without compensation to JMB.
- (c) Notwithstanding the foregoing, if this Agreement is terminated because of a Default by JMB, the stockpile of Sand & Gravel shall, at the option of The Owners, become the sole and absolute property of the Owners without compensation to JMB.
- (d) Any stockpile of Sand & Gravel so removed from the Leased Lands shall, for the purpose of the Sand & Gravel Royalty, be construed as a sale and shall be deemed to be at the then "fair market value" for that type and quality product.

5.11 Aggregate Tracking: During the Term of this Agreement all production of aggregate by JMB shall be measured and tracked on the following terms and conditions:

- (a) At each SM Lease location where Sand & Gravel is being produced, JMB shall operate a belt scale which will be used to weight all production of Sand & Gravel and shall provide a monthly production summary by product type and location to Kalinko as an interim total of production;
- (b) All gravel produced leaving the Leased Lands shall be weighed by either a loader scale or platform truck scale and JMB shall provide monthly statements to Kalinko identifying the quantities removed from each of the Leased Lands along with the product type and the customer and location to which the Sand & Gravel was shipped;
- (c) Prior to the end of each year of the Term of this Agreement or at such other time as may be required by Kalinko pursuant to the terms of the applicable SM Lease, JMB will complete a Global Positioning System survey of all stockpiles on the Leased Lands and provide Kalinko with the results if such survey; and
- (d) JMB shall provide all employees required to staff the scale house on the Leased Lands provided that Kalinko shall have the option, at its sole cost and expense, to have its own employees either monitor or operate the scale house on the Leased Lands.

ARTICLE 6 **ROYALTY**

6.1 Sand & Gravel Royalty. For the first thirty-six (36) months of the Term or until all of the Pre-Paid Sand & Gravel Royalty Payments as set out in Section 6.3 below are paid in full (the "Initial Payment Term"), whichever occurs first, JMB shall pay to the Owners, as a royalty (the "Sand & Gravel Royalty"), plus GST (and any other sales tax, value added tax, consumption tax or any other similar tax, levy, or assessment):

- (a) Eight (\$8.00) dollars per metric tonne for aggregate from Leased Lands located in the Conklin & Foster Creek markets (as outlined on Schedule "D");
- (b) Six (\$6.00) dollars per metric tonne for aggregate from Leased Lands located in the Bonnyville market (as outlined on Schedule "D");
- (c) One Dollar and Fifty (\$1.50) Cents per tonne for 3/8" minus screenings from all Leased Lands;
- (d) All asphalt material and concrete rock removed from any Leased Lands shall be subject to a twenty-five (25%) percent premium on the base price noted in subsection (a), (b) and (c) above; and
- (e) An amount to be negotiated on a case by case basis for other specialty rock product.

6.2 Sand & Gravel Royalty upon expiry of the Initial Payment Term: After expiry of the Initial Payment Term, the Sand & Gravel Royalty as set out in Section 6.1 shall be increased based on the following factors:

- (a) By an amount equal to the percentage of increase in the Consumer Price Index of Alberta from the date of this Agreement to end of the Initial Payment Term with adjustments being made on a yearly basis thereafter to capture any additional increases
- (b) By an amount equal to the dollar value increase in the royalty paid by the Owners to the Province of Alberta pursuant to the SM Leases from the date of this Agreement to the end of the Initial Payment Term with any adjustments being made on a yearly basis thereafter to capture and additional increases.
- (c) All Sand & Gravel Royalty payments made after January 1, 2012 but before Closing will be credited towards the payment due under section 6.3(a) of this Agreement.

For clarity, the Sand & Gravel Royalty after the expiry of the Initial Payment Term shall at no times be decreased from those rates as set out in Section 6.1 notwithstanding any decrease in those items as set out in Section 6.2 (a) and (b).

6.3 Pre-Paid Sand & Gravel Royalty Payments JMB shall be required to prepay a portion of the Sand & Gravel Royalty on a non-refundable basis as follows:

- (a) Two Million Five Hundred Thousand (\$2,500,000.00) Dollars on the Commencement Date;
- (b) Three Million (\$3,000,000.00) Dollars on or before the first anniversary of the Commencement Date; and

- (c) Three Million (\$3,000,000.00) Dollars on or before the second anniversary of the Commencement Date.

All Sand & Gravel Royalty payments made after January 1, 2012 in excess of Two Million Five Hundred Thousand (\$2,500,000.00) but before the first anniversary of the Commencement Date shall be credited towards the payment due under Section 6.3 (b). All Sand & Gravel Royalty payments made after January 1, 2012 in excess of Five Million Five Hundred Thousand (\$5,500,000.00) Dollars but before the second anniversary of the Commencement Date shall be credited towards the payment due under Section 6.3 (c). In the event a Pre-Paid Royalty Payment is made pursuant to this Agreement but is not used within a year from payment thereof, the unused amount shall be carried forward as a credit towards Sand & Gravel Royalty Payments to be made in the next year provided however JMB shall not be released from making any ensuing Pre-Payment Sand & Gravel Royalties. Any unused portion of such Pre-Payment Sand & Gravel Royalties at the end of the Term shall not be refunded to JMB.

6.4 Payment of Sand & Gravel Royalty. JMB shall, within fourteen (14) days after JMB receiving payment from its customers, deliver to the Owners the Sand & Gravel Royalty in respect of the amount sold to such paying customer.

6.5 Annual Statement of Production Amounts and Payment of Sand & Gravel Royalty. Within thirty (30) days of the end of each Term Year, JMB shall deliver to the Kalinko a certified statement showing the amount of Sand & Gravel removed from the SM Leases for the preceding Term Year.

6.6 Audit of Records.

- (a) JMB shall keep on the Leased Lands proper and sufficient records and books of all production and all supporting records from January 1, 2012.
- (b) JMB grants Kalinko the right at any time to have JMB's annual statement of Production Amount audited by an independent chartered accountant or other qualified consultant.
- (c) The Owners' independent chartered accountant or qualified consultant shall have full and free access to the books, accounts and records of JMB dealing with the Production Amount at all reasonable times during the Term or extension thereof.
- (d) The result of any audit conducted by the Owners' independent chartered accountant or qualified consultant shall be final and binding upon the Owners and JMB.
- (e) JMB shall pay on demand any deficiency in the Sand & Gravel Royalty shown to be due by any audit.

6.7 The Owners' Rights to Inspect. The Owners and its authorized representatives shall at all times be entitled to enter on and visit all parts of the Leased Lands during normal operating times or business hours for the purpose of inspecting the Operations, in a manner and at those times as shall not unreasonably interfere with the Operations. Such inspections may

include conducting surveys and assessments of the volume of Sand & Gravel removed from the Leased Lands.

6.8 Gravel Inventory. Any gravel inventory held by the Owners and Kalinko as of the date of this Agreement shall be sold to JMB at a mutually agreeable price per tonne. The payment for any such gravel inventory shall be paid to Kalinko on the same terms and conditions as payment for the Sand & Gravel Royalty under Section 6.4 of this Agreement provided that such payment shall not be considered a payment of a Sand & Gravel Royalty for the purposes of this Agreement including, but not limited to, a payment which reduces the amounts referenced in Sections 4.2 and 6.3.

ARTICLE 7 **RECLAMATION**

7.1 Reclamation by JMB. JMB shall be responsible, at its sole cost and expense, for all Reclamation. Such Reclamation shall be completed on an ongoing basis during the Term.

7.2 Kalinko May Assume Reclamation. In the event Reclamation is not being completed on any of the Leased Lands on an ongoing basis in accordance with the requirements of the Conservation and Reclamation Plan, Kalinko may elect to assume JMB's Reclamation obligations under this Agreement upon seven (7) days written notice to JMB. JMB will be responsible to pay Kalinko for the costs of the Reclamation on demand failing which Kalinko may, at its option terminate this agreement with respect to the SM Lease site in question.

ARTICLE 8 **CONFIDENTIALITY**

8.1 Confidential Information.

- (a) All technical, commercial, and economic information and other proprietary information, including without limitation, information on reserves, acquired by the Parties, or either of them, pursuant to this Agreement or relating to the subject matter hereof (collectively, "Confidential Information") will be held by each Party in strict confidence.
- (b) The Parties shall maintain such Confidential Information secret and will not disclose any of such Confidential Information to any third Person other than to such of its own officers, representatives, agents, advisors, contractors, subcontractors and employees as may be necessary in performing their obligations hereunder or as contemplated hereby (including the Operations) or as required by applicable Laws.
- (c) The Parties shall advise their officers, representatives, agents, advisors, contractors, subcontractors and employees who have access to the Confidential Information of the foregoing obligations and require them to adhere to this Section 8.1.

- (d) The Parties shall make no use of any part of such Confidential Information except for the purposes as stated herein.
- (e) Any written material or tangible thing including or embodying any of such Confidential Information is and remains the property of the disclosing Party.
- (f) No rights or licenses of whatsoever nature or kind are granted hereby to any Party by another Party with respect to any Confidential Information acquired from such other Party pursuant to this Agreement except as expressly set forth herein.

8.2 Exclusions. The obligations under Section 8.1 shall not apply to information which:

- (a) is, at the time of disclosure, available to the general public;
- (b) becomes at a later date available to the general public through no fault of either Party, as at such date;
- (c) a Party can demonstrate was in its possession before the contemplation of the formation of this Agreement or the joint venture agreement previously contemplated by the Parties; or
- (d) is disclosed to a Party and specifically stated to be without restriction as to disclosure.

8.3 Press Releases. Neither Party shall make any press releases or other public announcements in respect of this Agreement, except such as may be mutually authorized and approved by them or as required by Law.

ARTICLE 9

DEFAULT

9.1 Events of Default. Each of the following shall constitute a default ("Default"):

- (a) Failure by JMB to pay any amount required to be paid under this Agreement when such amount becomes due and such failure continues for ten (10) days after notice thereof from the Owners ("Payment Default"); provided, however, that interest on the amount due shall accrue from the invoice date at the Prime Rate plus four percent (4%) (the "Default Rate"). Interest at the Default Rate shall continue to accrue at such rate, and continue to be paid after Default, recovery of judgment, bankruptcy or insolvency proceeding of any kind until such Payment Default has been cured.
- (b) Any representation or warranty made by JMB, Kalinko or the Owners in this Agreement proves to be false or misleading in any material respect.
- (c) Failure by JMB, Kalinko or the Owners to observe or perform any covenants, conditions or provisions applicable to it contained in this Agreement including

failure by JMB Kalinko or the Owners to observe or perform any covenants, conditions or provisions of any SM Lease or its the associated Conservation and Reclamation Plan, but other than those described in Section 7.2 or 9.1(a) above, or Sections 9.1(d) or (e) below, provided that such failure shall continue for twenty-one (21) days after notice thereof from the other Party or Parties;

- (d) At the non-defaulting Party's election, filing by JMB, Kalinko or the Owners of a voluntary petition in bankruptcy or a voluntary petition or reorganization, arrangement, readjustment of its debts or for any other relief under any provincial or federal bankruptcy or insolvency law.
- (e) Filing of any involuntary petition against JMB or the Owners in bankruptcy or seeking reorganization, arrangement or readjustment of its debts or for any other relief under any provincial or federal bankruptcy or insolvency law; or the involuntary appointment of a receiver or trustee of JMB or the Owners, or for all or a substantial part of the property of JMB or the Owners; and the continuance of any of such events for a period of ninety (90) days undismissed or undischarged).

9.2 Remedies. Upon the occurrence of a Default by JMB which is not remedied as above or is not remedial, Kalinko and the Owners shall have the right to:

- (a) treat the Agreement as ongoing and rectify the Default;
- (b) terminate this Agreement; and
- (c) in either case, seek indemnification as provided in Article.

9.3 Right of Set-Off. Upon the occurrence of an unremedied Default, the non-defaulting Party shall have the right, in addition to all other rights and remedies available to it, to set-off the unpaid amount of any monetary obligation of the non-defaulting Party to the defaulting Party, regardless of the source of such obligation.

9.4 Other Remedies. The rights and remedies granted pursuant to this Agreement in respect of Defaults shall be in addition to, and not in substitution for, any and all other rights and remedies available to the non-defaulting Party hereunder, at Law or in equity.

ARTICLE 10

ASSIGNMENT OR TRANSFER

10.1 Assignment or Transfer.

- (a) Neither Party may not assign or transfer, or attempt to assign or transfer all or any part of its rights under this Agreement without the prior written consent of the other Party which consent may be unreasonably withheld.
- (b) For the purposes of Section 10.1(a) above, a transfer, issue or allotment of a share or shares, or of any rights attached or related thereto, or of any other interest in the share capital of JMB, to one or more Persons whereby such Person or Persons

in aggregate would hold a beneficial ownership in the share capital, voting or participation rights in JMB of greater than forty-nine percent (49%) will be deemed to be a transfer of this Agreement.

ARTICLE 11 **INSURANCE**

11.1 Insurance.

- (a) During the Term of this Agreement, JMB shall maintain commercial general liability insurance in an amount commensurate with industry standard at its sole cost and expense but in no event less than \$2,000,000.00.
- (b) Before commencing the Operations, JMB shall deliver to the Owners a certificate of insurance on forms provided by JMB's insurance carrier. The insurance shall also name the Owners as an additional insured and shall provide that the insurance will not be cancelled or modified without the insurer having given at least thirty (30) days' notice to the Owners.
- (c) In lieu of, or in addition to, submitting a certificate of insurance to the Owners, the Owners may request a copy of the insurance policy. Such certificate and/or policies shall be in a form and underwritten by a carrier satisfactory to the Owners.
- (d) JMB shall not engage any subcontractor to perform services on the Leased Lands unless such subcontractor has and continues to carry the types of insurance with the minimum limits of liability set forth above.
- (e) JMB shall comply with all applicable workers' compensation laws, and will from time to time, upon written request of the Owners, furnish evidence that all payments required by such laws have been paid.
- (f) JMB shall require its subcontractors to comply with all applicable workers' compensation laws.

11.2 Release. The Owners are hereby released from responsibility or liability to JMB or its Affiliates, or to those claiming by, through, or under them, including, but not limited to, their respective employees, agents, customers, contractors, subcontractors, and other invitees upon the Leased Lands, for any loss or damage to either the person or property of them or any other Person while in or upon the Leased Lands, from any cause whatsoever, except to the extent of a loss or damage directly caused by the gross negligence or willful misconduct of the Owners or those other Persons for whom the Owners are responsible in Law.

ARTICLE 12 **INDEMNIFICATION**

12.1 Indemnification. Each Party (the "Indemnitor") shall be liable to the other Party for and shall indemnify and hold harmless the other Party (the "Indemnitee") and the directors,

officers, partners, employees, agents and representatives of the Indemnitee from and against; any and all costs, losses, claims, damages and liabilities (including, without limitation, legal fees on a solicitor and his own client basis) arising out of:

- (a) any act of the Indemnitor or any of its directors, officers, partners, employees, agents or representatives undertaken so as to bind the Indemnitee or make it liable except in accordance with provisions of this Agreement;
- (b) any material misrepresentation in or breach of any representation and warranty made by a Party in this Agreement or in writing delivered pursuant to this Agreement;
- (c) any liability of the Indemnitee, which by the terms hereof, is or should be the liability or obligation of the Indemnitor; and
- (d) the negligence or willful misconduct or breach of this Agreement of or by the Indemnitor and its directors, officers, partners, employees, agents and representatives.

12.2 Procedure.

- (a) In the event that any claim shall be asserted by the Indemnitee which, if sustained, would result in a claim for indemnification, the Indemnitee, within a reasonable time after learning of such claim, provided that the failure to give such notice shall not relieve the Indemnitor of any liability hereunder except to the extent that Indemnitor is materially adversely prejudiced by such failure, shall notify the Indemnitor in writing of such claim and shall extend to the Indemnitor a reasonable opportunity to defend against such claim, at the Indemnitor's sole expense and through legal counsel acceptable to the Indemnitee, provided that the Indemnitor proceeds in good faith, expeditiously and diligently.
- (b) The Indemnitee at its option and expense has a right to participate in any defense undertaken by the Indemnitor with legal counsel of its own selection. No settlement or compromise of any claim which may result in an indemnifiable expense may be made by the Indemnitor without the prior written consent of the Indemnitee unless:
 - (i) prior to such settlement or compromise, the Indemnitor acknowledges in writing its obligation to pay in full the amount of the settlement or compromise and all associated expenses; and
 - (ii) the Indemnitee is furnished with security reasonably satisfactory to the Indemnitee that the Indemnitor will in fact pay such amount and expenses.
- (c) The Indemnitee and the Indemnitor may agree in writing, at any time, as to the existence and amount of any indemnification claim and upon the execution of such agreement, such claim shall be deemed established.

12.3 Payment. The Indemnitor agrees to pay the amount of established indemnification claims to the Indemnitee within five (5) days after the establishment thereof. Any amounts not paid by the Indemnitor when due shall bear interest from the due date thereof until the date paid at the Default Rate.

ARTICLE 13 **ARBITRATION**

13.1 Arbitrable Disputes. In the event of any dispute or disagreement between the Parties as to any matter arising under, or pursuant to or connected with any of the provisions of this Agreement which are required to be settled by arbitration, (or alternatively to which the Parties agree to revolve by arbitration) which are not resolved by the Parties or their legal representatives within twenty (20) days after either Party shall notify in writing the other Party of such dispute or disagreement, shall be settled by arbitration pursuant to the terms of this Agreement.

13.2 Appointment of Arbitrators.

- (a) Either Party desiring arbitration shall nominate one arbitrator and shall give notice to the other Party of such nomination. Such notice shall also set forth a description of the matter submitted for arbitration.
- (b) The other Party shall, within ten (10) days after such notice has been given, nominate an arbitrator, and the two (2) arbitrators so appointed shall, within seven (7) days after the appointment of the second arbitrator, select a chair of the arbitration tribunal to act jointly with them. If such arbitrators shall be unable to agree on the selection of such chair, then upon written application by either of the arbitrators to be made within three (3) days after the expiry of the seven (7) day period for selection of a chair, the chair shall be appointed by a Judge of the Court of Queen's Bench of Alberta.
- (c) All arbitrators shall have a background and expertise in the area being arbitrated and in all cases shall have at least an acquaintance with the sand and gravel industry.
- (d) The arbitration shall take place as soon as practicable after the appointment of the chair and the chair shall fix such time and place for the purpose of hearing such evidence and representations as either Party to the dispute may present.
- (e) The arbitration tribunal shall be the master of its own procedure.
- (f) The decision in writing of the arbitrators or any two (2) of them or failing that the decision of the chair of the arbitration tribunal shall be binding on the Parties and constitute the final determination of the issues therein except as otherwise provided by the Arbitration Act (Alberta).

- (g) The arbitration tribunal shall, promptly after hearing such evidence and representations as the Parties may submit, make their decision, reduce the same to writing and deliver a copy to each Party.
- (h) The arbitration tribunal or the single arbitrator, as the case may be, shall have the authority to assess the costs of the arbitration against either or both of the Parties, including witness costs and legal counsel fees on a solicitor and his own client basis.
- (i) If a Party receiving the notice of the nomination of an arbitrator by the Party desiring arbitration fails within the ten (10) day period mentioned above to nominate an arbitrator, then the arbitrator nominated by the Party desiring arbitration may proceed alone to determine the dispute, controversy or claim in such manner and at such time as he shall think fit and his decisions shall be binding upon the Parties.
- (j) Notwithstanding the foregoing, any arbitration may be carried out by a single arbitrator if the Parties so agree.

ARTICLE 14 **NOTICES**

14.1 Method for Giving Notice. Any notice or other communication required or permitted to be given by either Party to the other Party shall be in writing and shall be given or made by personal delivery or by prepaid telefax properly directed and addressed to the Party to which it is to be given or made at the addresses listed below. In no event shall notices or other communications be delivered by mail. The addresses for the Parties, until changed by notice to the other Parties, shall be:

- (a) If to the Owners:

c/o Kalinko Enterprises Ltd.
P.O. Box 6582
Bonnyville, AB T9N 2H1
Attn: Tim Kalinski
Email: Tim@kalinkoenterprises.com
Phone: (780)826-5885
Fax: (780) 826-9018
And to:

Field LLP
#2000, 10235-101 Street

Edmonton, AB T5J 3G1
Attention: Brian Futoransky
Email: bfutoransky@fieldlaw.com
Phone: (780) 643-8758
Fax: (780) 428-9329

(b) If to JMB:

JMB CRUSHING SYSTEMS ULC.
PO Box 6977
Bonnyville, AB T9N 2H4
Attn: Jeff Buck, President
Phone: (780) 826-1774
Fax: (780) 826-6280
Email: jeffbuck@jmbcrush.com

And to

Trevoy LLP
#516, 10235-101 Street
Edmonton, AB T5J 3G1
Attention: Andrew J. Trevoy
Email: atrevoy@trevoyllp.com
Phone: (780) 425-1000
Fax: (780) 425-1010

Every notice shall only be deemed to have been duly given or made upon its actual receipt by the Party to whom it was directed.

ARTICLE 15 **GENERAL**

15.1 Time of the Essence. Time shall be of the essence of this Agreement.

15.2 No Waiver. No provision of this Agreement shall be deemed to be waived unless such waiver is in writing. Any waiver of any default committed by either of the Parties in the performance of any part of this Agreement shall not extend to or be taken in any manner to affect any other default.

15.3 Enurement. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

15.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Subject to Article 13, the Parties hereby irrevocably submit to the jurisdiction of the

Courts of the Province of Alberta for all matters related to this Agreement, its validity or interpretation.

15.5 Counterparts. This Agreement may be executed in several counterparts each of which when executed by a Party shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

15.6 Entire Agreement. This Agreement and the ancillary agreements contemplated herein constitute the entire agreement among the Parties with respect to the matters contained herein, and, any and all previous agreements, written or oral, express or implied, between the Parties or on their behalf relating to the matters contained herein are hereby terminated and cancelled.

15.7 Further Assurances. The Parties shall do all such acts and to execute and deliver all such documents and instruments as may from time to time be reasonably necessary or advisable in order to fully perform and carry out the purpose and intent of this Agreement.

15.8 Survival. This Section and Sections 3.3, 5.9, 5.10 and 12.1 shall survive the termination of this Agreement.

15.9 Termination of Interim Agreement. The Parties hereby acknowledge and agree that the Interim Agreement is hereby extended so that its term continues through to the effective date of this Agreement and, on the effective date of this Agreement, the Interim Agreement shall terminate and be of no further force and effect.

15.10 No Partnership. Nothing contained in this Agreement shall be construed to constitute any Party a partner, agent or representative of any other Party or to create any trust or any partnership. Each of the Parties expressly disclaims any intent to form any such partnership with respect to the Operations or otherwise.


IN WITNESS WHEREOF the Parties have executed this Agreement effective the day and year first above mentioned.


KALINKO ENTERPRISES LTD.


Per: 
Per: _____


JMB CRUSHING SYSTEMS ULC

Per: _____
Per: _____



Witness



Tim Kalinski



Witness



Jessica Brennan


Witness


Matthew Kalinski


Witness


Zachariah Kalinski


Witness


Elisha Kalinski

IN WITNESS WHEREOF the Parties have executed this Agreement effective the day and year first above mentioned.

KALINKO ENTERPRISES LTD.

Per: _____

Per: _____

JMB CRUSHING SYSTEMS ULC

Per:  _____

Per: _____

Witness

Tim Kalinski

Witness

Jessica Brennan

Witness

Matthew Kalinski

Witness

Zachariah Kalinski

Witness

Elisha Kalinski

Schedule A

SM Leases

1	SML 00034	Kalinko Enterprises Ltd.	11-63-08-W4M	LOC 001561
2	SML 010005	Kalinko Enterprises Ltd.	13-62-8-W4M	LOC 012255
3	SML 010032	Kalinko Enterprises Ltd.	SE 34-66-4 W4M	
4	SML 020014	Tim Kalinski	7-62-74-W4M	LOC 031103
5	SML 030046	Kalinko Enterprises Ltd.	9-62-74-W4M	
6	SML 040122	Kalinko Enterprises Ltd.	21-66-5-W4M	
7	SML 100016	Kalinko Enterprises Ltd.	2-66-03-W4M	LOC 100514
8	SML 100050	Jessica Brennan	10-66-03-W4M	LOC 10040
9	SML 100057	Jessica Brennan	14-82-07-W4M	
10	SML 100075	Jessica Brennan	14-82-07-W4M	
11	SML 100101	Kalinko Enterprises Ltd.	1-84-06-W4M	
12	SML 100112	Kalinko Enterprises Ltd.	9-82-07-W5M	LOC 101008
13	SML 110037	Jessica Brennan	18&19-62-7-W4M	
14	SML 110044	Kalinko Enterprises Ltd.	13-75-08-W4M	LOC 111470
15	SML 110059	Matthew Kalinski	22-62-8-W4M	
16	SML 110060	Zachary Kalinski	21-62-8-W4M	
17	SML 110061	Elisha Kalinski	28-62-84-W4M	
18	SML 110065	Jessica Brennan	SE9&16&20-66-4-W4M	
19	SML 110072	Matthew Kalinski	9-82-7-W4M	LOC 101008
20	SML 120004	Zachary Kalinski	2&3-82-7-W4M	LOC 120154

Schedule B
Statement of Production Amount

Schedule C
Interim Agreement

February 14, 2012

Dear Tim,



JMB Crushing Systems ULC ("JMB") is very pleased to submit this Summary of Transaction Terms (the "Term Sheet") to Kalinko Enterprises Ltd. ("Kalinko") and Tim Kalinski (collectively, the "Sellers") whereby JMB would acquire 100% of the equipment held by Kalinko, other than the retained assets, and enter into an Exclusive Aggregate Lease Agreement with Kalinko to extract and market aggregate from Kalinko's existing and future properties.

JMB has attempted to provide an offer that incentivizes Kalinko and JMB to work together in the future to maximize the value of Kalinko's existing and future aggregate reserves by leveraging JMB's long-term customer relationships and gravel operating expertise.

Summary of Transaction Terms:

KEY TERM	TERM SUMMARY
Acquirer	<ul style="list-style-type: none"> JMB Crushing Systems ULC
Sellers	<ul style="list-style-type: none"> Kalinko Enterprises Ltd. and Tim Kalinski
Transaction Structure	<ul style="list-style-type: none"> Asset Purchase, Exclusive Aggregate Lease Agreement, and Non-Competition Agreement(s)
Asset Purchase of Equipment	<ul style="list-style-type: none"> At the Close of the Transaction (the "Close"), JMB will purchase equipment held by Kalinko listed in Schedule A (the "Equipment") for \$5,236,000 and Kalinko will retain the equipment listed in Schedule B The Equipment shall be delivered to JMB free and clear of all liens including bank debt and leases
Exclusive Aggregate Lease Agreement	<ul style="list-style-type: none"> At the Close, JMB and Kalinko will enter into an Exclusive Aggregate Lease whereby JMB will have the sole right to extract aggregate from all properties currently held by the Sellers for an initial period of 5 years and an automatic extension for an additional 5 years in the event that JMB pays the Sellers a total of \$12.0 million in royalties during the initial 5 year term, which total shall include the Guaranteed Prepaid Royalty Payments and all additional royalty payments in excess of the Guaranteed Prepaid Royalty Payments JMB will be granted the exclusive option to enter into additional Exclusive Aggregate Leases on future properties acquired or developed by the Sellers during the term of the Exclusive Aggregate Lease, subject to the Royalty Rates below.

KEY TERM	TERM SUMMARY
<p>Royalty Rates and Pit Management under Exclusive Aggregate Lease</p>	<ul style="list-style-type: none"> • \$8.00 per tonne for aggregate removed from pits located in the Conklin and Foster Creek markets • \$6.00 per tonne for aggregate removed from pits located in the Bonnyville market • \$1.50 per tonne for screenings (3/8" minus) from all pits • A 25% premium shall be paid for asphalt material and concrete rock from all pits • Other specialty rock products will be negotiated on a case-by-case basis and specified as such in the royalty agreements • JMB to bear all costs of pit development, management and reclamation excluding the 48 cents per tonne royalty due to the provincial government • All non-prepaid royalty payments are to be paid to the Sellers within 14 days of JMB receiving payment from its customer(s) • JMB anticipates that the Sellers will want to employ a pit manager to oversee pit development, management and reclamation. JMB will commit to work with the Sellers to include the Sellers' pit manager in activities going forward. • Royalty Rates will be fixed based on the above schedule for the first 36 months after the Close of the Transaction or until such time as the Guaranteed Royalty Payments have been fully utilized for the purchase of aggregate from Kalinko. Thereafter, the Royalty Rates will be modified based upon the change in the <i>Consumer Price Index of Alberta</i> and to reflect any increase in the government royalty rate until the end of the exclusivity period(s). JMB anticipates moving in excess of 500,000 tonnes of aggregate per year from Kalinko sources, which is anticipated to increase as Kalinko's pit resources continue to increase
<p>Methodology for Aggregate Tracking</p>	<ul style="list-style-type: none"> • JMB will weigh via belt scale all crushed products into stockpile and provide monthly production summaries by product type and pit location to Kalinko, which will represent interim totals • All loads leaving Kalinko pits will be weighed by either loader scale or platform truck scale and JMB will provide monthly statements to Kalinko identifying quantities removed from pits by location, product type, customer and location • Prior to JMB year end, JMB will complete a GPS survey of all stockpiles in Kalinko pits and the findings will be shared with Kalinko

KEY TERM	TERM SUMMARY
Guaranteed Prepaid Royalty Payments	<ul style="list-style-type: none"> • Guaranteed Prepaid Royalty Payments of \$8.5 million, comprised of: <ul style="list-style-type: none"> – \$2.5 million in prepaid royalties at the Close, – \$3.0 million in prepaid royalties one (1) year after the Close, and – \$3.0 million in prepaid royalties two (2) years after the Close • All royalty payments made after 1/1/12 and before the Close will be credited against the \$2.5 million Guaranteed Prepaid Royalty Payment due at Close • All royalty payments made after 1/1/12 and in excess of \$2.5 million will be credited against the \$3.0 million Guaranteed Prepaid Royalty Payment due one (1) year after the Close and then credited against the \$3.0 million Guaranteed Prepaid Royalty Payment due two (2) years after Close. Guaranteed Prepaid Royalty Payments if not used in the year in which JMB pays Kalinko shall carry forward until fully used by JMB. Any Guaranteed Prepaid Royalty Payments that are carried forward shall be subject to the Royalty Rates of \$8.00 per tonne in the Conklin market and \$6.00 per tonne in the Bonnyville market.
Non-Competition Agreement	<ul style="list-style-type: none"> • Kalinko and Tim Kalinski shall enter into Non-Competition Agreements with JMB whereby the Sellers agrees to not engage in any activities which are or may be in direct competition with JMB for a period of 5 years, with the exception of new aggregate pit identification and permitting, which JMB has the exclusive option to enter into the Exclusive Aggregate Leases per the above term
Inventory	<ul style="list-style-type: none"> • All Inventory held by Kalinko at the time of the Close will be sold by JMB at a mutually agreeable price per tonne. The price will be paid to Kalinko within 14 days of JMB receiving payment from JMB's customer(s) • The Inventory held by Kalinko will be mutually agreed upon at Close and verified by eConstruction, an Independent 3rd party estimator. • Existing Inventory shall be tracked as it is removed and shall be paid for by JMB at the rate of \$13.50 per tonne for Inventory in the Bonnyville market (Pit 19) and \$19.00 per tonne for Inventory in the Foster Creek market (Pit 27), with such inventory to be identified by market at the time of the survey.

KEY TERM	TERM SUMMARY
Alberta Sustainable Resource Development (SRD) Management	<ul style="list-style-type: none"> • Following the Close of the Transaction, JMB will prepare a quarterly plan that will be shared with and approved by Kalinko (the "Plan") • The Plan will identify the pits and location(s) within those pits that JMB plans to extract gravel • Along with the extraction plan, JMB will provide a plan for progressive reclamation • The purpose of the Plan will be to allow for an organized approach for extraction and reclamation and provide the appropriate lead time to JMB/Kalinko to discuss any potential problems with SRD • In the event JMB's schedule for extraction changes and JMB requires quicker access, JMB will be required to submit a pit plan to Kalinko for approval prior to JMB activity • It is the intention of JMB to operate a separate crew of people and equipment to develop, reclaim and in some cases extract the aggregate from our crushing personnel. This new group will operate under the direction of the general manager with consultation from Kalinko and/or a Kalinko representative (i.e. Les)
Interim Period/Activities	<ul style="list-style-type: none"> • Sellers grant JMB the option to purchase aggregate from any of the Sellers' aggregate holdings at the above Royalty Rates during the time between the signing of this term sheet and the closing of the transactions as contemplated herein ("Interim Period"). In the event that this term sheet is signed and the transaction is not consummated, any aggregate crushed by JMB shall be for the benefit of JMB and JMB shall owe the royalty payments as described above. Notwithstanding the foregoing, JMB and Kalinko can mutually agree that aggregate crushed for Kalinko shall not be for the benefit of JMB or subject to royalty payments.
Closing	<ul style="list-style-type: none"> • Anticipated Close of April 15, 2012
Closing Documentation	<ul style="list-style-type: none"> • Anticipated documentation includes: <ul style="list-style-type: none"> - Asset Purchase Agreement for Equipment - Exclusive Aggregate Lease describing the royalty arrangement - Non-Competition Agreement(s)
Transaction Expenses	<ul style="list-style-type: none"> • JMB shall pay all expenses incurred by JMB and the Sellers shall pay all expenses incurred by the Sellers, except any prepayment penalties associated with paying off the Kalinko loans with GE Capital, which shall be paid 50% by JMB and 50% by the Sellers.
Conditions	<ul style="list-style-type: none"> • Satisfactory documentation necessary to consummate the transaction • JMB shall be satisfied with its due diligence • JMB shall have received satisfactory financing to complete the proposed transaction

KEY TERM	TERM SUMMARY
Exclusivity Period	<ul style="list-style-type: none"> The Sellers agree that, unless negotiations between Kalinko and JMB are terminated earlier by mutual written agreement, JMB shall have the exclusive right to negotiate and consummate the acquisition proposed or any similar transaction with Tim Kalinski or the Company for a period (the "Exclusivity Period") commencing on the date hereof and terminating on the 90th day following the execution date of this Terms Sheet, unless extended by written agreement of the parties. During the Exclusivity Period, neither the Company nor Tim Kalinski shall solicit, initiate, participate in, or encourage the submission of any proposal or offer from any person or entity.

This Term Sheet is Non-Binding other than the Interim Period Activities and Exclusivity Period Sections above. This Term Sheet is subject to mutually agreeable documentation of the transaction and the Conditions Section above.

We have put a significant amount of time into evaluating your Company, your goals for the future, and the advantages of a Kalinko – JMB partnership. We have attempted to structure a transaction that provides you with a means to maximize the value of your aggregate holdings and future reserves. JMB is committed to sell significant volumes of Kalinko aggregate in the future which we believe makes JMB the ideal partner to maximize the volume of aggregate sold in the Bonnyville and Conklin markets.

If you should have any questions relating this Summary of Transaction Terms feel free to contact Jeff or me directly.

[Signature Page Follows]

Signed:



Erik Tolzmann
Chairman
JMB Crushing Systems ULC
206 240 5340



Jeff Buck
President
JMB Crushing Systems ULC
780 573 9611

Accepted and Agreed:



Tim Kalinski
Owner
Kalinko Enterprises Ltd.

Schedule A: Equipment to be Purchased

Unit #	S/N	Description
ROCK TRUCKS		
15	BE200DT201655	2006 John Deere 300D Articulated Dump Truck c/w 5383 hrs
23	A8591284	2006 Terex TA30 Generation 7 Articulated Dump Truck c/w 3532 hrs
41	A8591284	2006 Terex TA30 Articulated Dump Truck, 3750 hrs
05	A7751351	2000 Terex TA30 Articulated Dump Truck, c/w 6361 hrs
39	N/A	2007 Western Star Tri/D Winch Tractor, c/w sleeper, alum buds, grill guard, 211,222 kms
48	N/A	2001 Sterling T/A Truck Tractor, c/w 525 hp eng, 18spd trans, sleeper, alum buds, kms N/A
EXCAVATORS		
19	EC330V10699	2006 Volvo EC330B LC Hyd Excavator, c/w catwalks, ROPS, aux hyds, hyd thumb, 3993 hrs
38	SLPJS1026E0713447	2006 JCB JS330 Hyd Excavator, c/w catwalks, aux hyds, SEC 72" tilting bkt, s/n Z18915, SEC 64" Skeleton bkt, s/n Z11871, WBM 72" cleanup bkt, 5677 hrs,
03	FF892EX012153	1997 John Deere 892E LC Hyd Excavator, c/w aux hyds, 8593 hrs, NOTE - boom has repair
21	YR-01437	Kobelco SK75UR Mini Excavator, 3,456 hrs
N/A	N/A	Hitachi EX55UR Hyd Excavator, c/w dozer, swing boom, 3005 hrs
54	??	2005 Daewoo 470 Excavator
CRAWLER TRACTORS		
20	7XM00370	1996 Caterpillar D8R Crawler Tractor, c/w sweeps, A / dozer w/ tilts, Cat 4 bbl m/s ripper, s/n 1GH02422, 13,746 hrs
58	??	2006 Caterpillar D6N LCP
WHEEL LOADERS		
04	53372	1999 Komatsu WA450A Wheel Loader, hrs N/A
10	811AC00387	1991 Volvo 320 Wheel Loader, c/w 16,355 hrs
12	LH0410092	2007 Hyundai HL780-7A Wheel Loader, c/w attm, 6000 hrs,
17	1560	2004 Daewoo Mega 400-V Wheel Loader, c/w 6420 hrs
28	97C45297	2005 Kawasaki 95ZV Wheel Loader, c/w 13,942 hrs
31	11C45095	2006 Kawasaki 115ZV Wheel Loader, c/w 8777 hrs
44	N/A	1998 Daewoo Mega 300 III Wheel Loader, 10,000 hrs
55	??	2006 780 Hyundai Wheel Loader
FORESTRY		
01	FT4C1570071999	1999 Timbco T445 Feller Buncher c/w Quadco Felling Head, hrs N/A
07	A70727	1993 Komatsu PC 200-5 Delimber, c/w Limmit 2000 Delimber w/ buttsaw, hrs N/A
09	AAE00408	2001 Caterpillar 535B Grapple Skidder, c/w frt tire chains, 9700 hrs

TRAILERS

40	N/A	2006 Doepker Tridem Scissorsneck Hiboy Trailer
50	N/A	1981 T/A Wheel Jeep. c/w tires - daytons
51	N/A	1980 16 Wheel Jeep, tires - daytons
49	N/A	1980 16 Wheel S/D Lowboy Trailer, c/w detach neck, beavertails, tires - daytons

CRUSHING

08	7835	2003 Exec C12 Track Mounted Jaw Crusher, c/w 10,000 hrs
11	6542	2006 CLC 450CC Crushing Plant, c/w 36'x60' radial stacking conveyor, s/n 30600606-J, 36'x40' radial stacking conveyor, s/n 36400706-J, Fruehauf Tri/A Tower Van, s/n 2H8V0533XJ5047901, Volvo 360 KW generator, s/n 106V3257, 4845 hrs
13	407186	2007 Kolberg S/A Portable Stacking Conveyor, c/w lattice frame
14	P620332506	2006 Fabtec/Cedar Rapids 6'x20' Portable Feeder Screen, c/w top deck: (1) 3' punch plant and rest 3" screen, Second Deck: 1.5" screen, Third Deck: 1/4" long slot screens
18	409329	2008 Kolberg/Pioneer 36"x150' Telescopic Radial Super Stacker c/w lattice frame
24	1JJV533W79L314661	2010 Lonetrack 53' Powervan, c/w Wabash Tri/A 53' Van, Control Tower, underslung fuel tanks, Volvo 545 KW diesel genset, s/n G10V3953, 2000 hrs
25	410244	2010 Kolberg/Pioneer S/A 36'x70' Portable Stackable Conveyor c/w lattice frame
26	410245	2010 Kolberg/Pioneer T/A 36'x70' Portable Stackable Conveyor c/w lattice frame
27	410246	2010 Kolberg/Pioneer S/A 36'x70' Portable Stackable Conveyor c/w lattice frame
29	1498-4127	2008 Clemro 20'x54' Portable Jaw Screening Plant, c/w 5'x18' deck screener, s/n 1496-4103, hyd flip head pulley, s/n 1497-423, attm & accessories
30	1679-4599	2011 Clemro 42'x48" Extra H/D Straight Chassis Belt Feeder
32	RD18F99000010	Red Deer Industries Dozer Trap Feeder, c/w channel frame conveyor
34	410163	2010 Kolberg/Pioneer Telescopic Radial 36"x150' Superstacker c/w lattice frame
35	1681-4600 1682-4471	2011 Clemro 3 Deck 7x20 3 Deck Horizontal Feeder Screen Plant, c/w Tri/A chassis
37	1683-4609,	2011 Clemro XC1500 Cone Crusher Plant, c/w chassis, s/n 1683-4609, XC1500 cone crusher, s/n 1684-4557
47	N/A	2006 36"x80' Telescopic Radial Stacking Conveyor, c/w lattice frame, diesel eng
33	T06-012	2006 Bold 12'x56' Triple Skidded Wellsite, c/w A/C, (2) LP pigs
53	??	542 Fintec 5x12 Screener

MISCELLANEOUS

43 N/A

Duragreen Double Wall 10,000 gal Skidded Fuel Tank, c/w pumps, meter,
mtd on S/A Hiboy Trailer, steps

56 ??

Tool and Parts Van

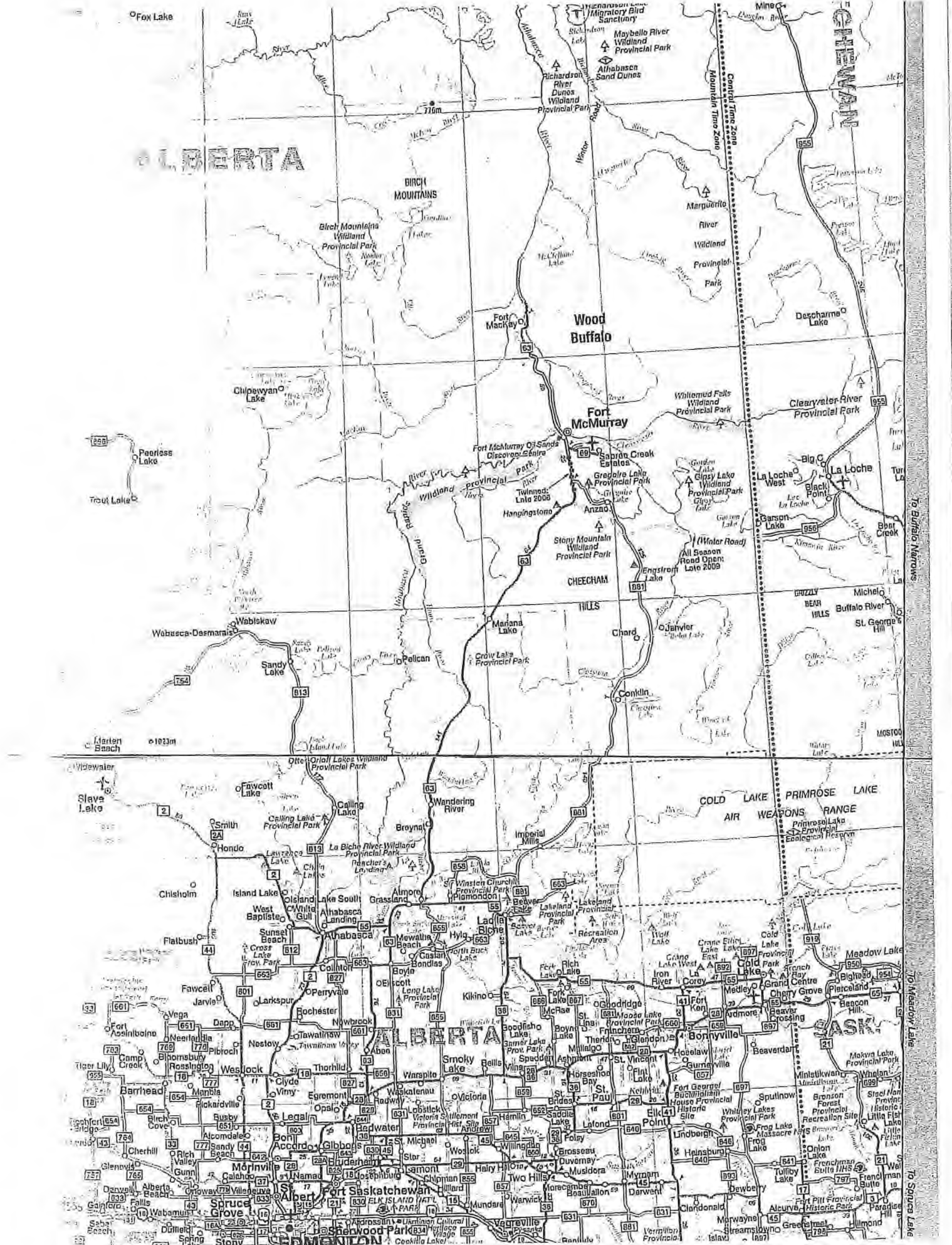
57 ??

Light Tower

Schedule B: Retained Assets

Unit #	S/N	Description
EXCAVATORS		
42	N/A	2005 Daewoo 340 LCV Hyd Excavator, 3302 hrs
16	DAC461150	2004 Case CX460 Hyd Excavator, 6,218 hrs
06	15R-11514	1997 Hitachi EX 310H Hyd Excavator
22	14M85643	1997 Hitachi EX200LC-5 Excavator, 10,000 hrs
CRAWLER TRACTORS		
02	77V15325	1981 Cat D8K Crawler Tractor c/w A / dozer w/ tilts, hrs N/A
45	N/A	Cat D5H Crawler Tractor, c/w sweeps, 6 way dozer, 4 bbl ripper, 9,990 hrs
46	N/A	1981 Terex 8250 Crawler Tractor, c/w sweeps, A / dozer w/ tilts, m/s ripper, Hrs N/A

Schedule D
Exclusive Area



ALBERTA

BIRCH MOUNTAINS

Wood Buffalo

Fort McMurray

CHEECHAM

HILLS

COLD LAKE PRIMROSE LAKE
AIR WEAPONS RANGE

ALBERTA

ALBERTA

Fort Saskatchewan

St. Albert

ALBERTA

ALBERTA

ALBERTA

ALBERTA

ALBERTA

ALBERTA

To Buffalo Narrows

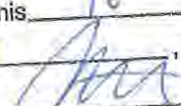
To Meadow Lake

To Spruce Lake

This is Exhibit "E" referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day
of July, 2022


A Notary Public
in and for the Province of Alberta
Scott A. Matheson
Barrister & Solicitor

NOTICE OF DEFAULT

January 12, 2015

DELIVERED BY FAX

TO: JMB Crushing Systems ULC.
P.O. Box 6977
Bonnyville, AB T9N 2H4
Fax (780) 826-6280

AND TO: Trevoy LLP
#516, 10235-101 Street
Edmonton, AB T5J 3G1
Fax: (780) 425-1010
Attention: Andrew J. Trevoy

Attention: Jeff Buck
STRICTLY PRIVATE AND CONFIDENTIAL

Dear Sir:

RE: Sand and Gravel Operating Agreement between KALINKO ENTERPRISES LTD. et al, and JMB CRUSHING SYSTEMS ULC (the "Agreement").

TAKE NOTICE that JMB Crushing Systems ULC. is in breach of its obligations, by failing to comply with Article 6.4 of the Agreement, in the amount of \$ 604,413.12.

AND FURTHER TAKE NOTICE that if the above breach is not remedied within the time frame set out in the Agreement, JMB Crushing Systems ULC. will be in default of the Agreement and Kalinko shall be at liberty to take whatever remedies it may deem necessary pursuant to the Agreement and a law.

Kindly govern yourselves accordingly.

Yours truly,

KALINKO ENTERPRISES LTD.


Tim Kalinski

NOTICE OF DEFAULT

January 12, 2015

DELIVERED BY FAX

TO: JMB Crushing Systems ULC.
P.O. Box 6977
Bonnyville, AB T9N 2H4
Fax (780) 826-6280

AND TO: Trevoy LLP
#516, 10235-101 Street
Edmonton, AB T5J 3G1
Fax: (780) 425-1010
Attention: Andrew J. Trevoy

Attention: Jeff Buck
STRICTLY PRIVATE AND CONFIDENTIAL

Dear Sir:

RE: Sand and Gravel Operating Agreement between KALINKO ENTERPRISES LTD. et al, and JMB CRUSHING SYSTEMS ULC (the "Agreement").

TAKE NOTICE that JMB Crushing Systems ULC. is in breach of its obligations, by failing to comply with Article 6.4 of the Agreement, in the amount of \$ 42,833.18.

AND FURTHER TAKE NOTICE that if the above breach is not remedied within the time frame set out in the Agreement, JMB Crushing Systems ULC. will be in default of the Agreement and Kalinko shall be at liberty to take whatever remedies it may deem necessary pursuant to the Agreement and a law.

Kindly govern yourselves accordingly.

Yours truly,

KALINKO ENTERPRISES LTD.



Tim Kalinski

This is Exhibit "C" referred to in the
Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2020



A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

THIS IS AN AMENDMENT TO THE ORIGINAL SAND & GRAVEL OPERATING AGREEMENT made as of the 12th day of June, 2012 (the "Agreement") by and between TIM KALINSKI, JESSICA BRENNAN, MATTHEW KALINSKI, ZACHARIAH KALINSKI and ALISHA KALINSKI (the "Owners") and KALINKO ENTERPRISES LTD., a corporation having its principal place of business at P.O. Box 6582 Bonnyville, Alberta ("Kalinko") and JMB CRUSHING SYSTEMS ULC, a corporation having its principal place of business at P.O. Box 6977 Bonnyville, Alberta ("JMB")

Agreement Revision Number 1: Dated June __, 2017 (the "Amendment")

In the spirit of our business relationship and in consideration of the mutual promises made by and between the parties (the receipt and sufficiency of which is acknowledged by the parties), the Agreement is to be revised as follows:

1. Unless otherwise stated herein, capitalized terms shall have the meaning ascribed to them in the Agreement.
2. The Parties hereto agree that Kalinko has received an amount greater than TWELVE MILLION (\$12,000,000.00) DOLLARS, exclusive of GST, pursuant to the terms of Section 4.2 of the Agreement. The Parties agree that as of the date of this Amendment JMB is in default of the Agreement for failing to pay Kalinko and the Owners the amount of ONE MILLION ONE HUNDRED EIGHTY-EIGHT THOUSAND ONE HUNDRED SEVEN DOLLARS (\$1,188,107.36), for the outstanding Sand & Gravel Royalties paid to JMB by its customers but not paid to Kalinko in accordance with Section 6.4 of the Agreement (the "Outstanding Royalties"). In consideration of a payment in the amount of Seven Hundred Twenty-Nine Thousand Ninety-Seven Dollars (\$729,097.25) Twenty-Five Cents on or about June 8, 2017, Kalinko has agreed to waive its rights to enforce the default for nonpayment of the Outstanding Royalties and by operation of the Agreement the Term of an additional FIVE (5) YEARS in accordance with Section 4.2 of the Agreement will come into effect. JMB agrees that the balance of the Outstanding Royalties, will be paid to Kalinko and the Owners, in full by JMB to Kalinko and the Owners no later than October 1, 2017.
3. Section 5.4(p) shall be added to and form part of the Agreement, "With respect to sales to any Municipal District, County and all jobs related to public works, JMB will request a completed Royalty Waiver at the completion of each transaction. JMB will use its best efforts to provide the Royalty Waiver to Kalinko as soon as possible."
4. Section 5.9(a) shall be removed in its entirety and the following shall be the replacement clause 5.9(a), effective June 12, 2017, "After the termination of this Agreement, JMB shall be entitled for a period of SEVEN HUNDRED THIRTY (730) DAYS to enter on and remove from the Leased Lands all Improvements and Machinery and Equipment. JMB shall make good any damage which may be occasioned by such removal."
5. Section 5.10(a) shall be removed in its entirety and the following shall be the replacement clause 5.10(a), effective June 12, 2017, "After the termination of this Agreement, JMB

shall be entitled for a period of SEVEN HUNDRED THIRTY (730) DAYS to enter on and remove from the Leased Lands the stockpile of Sand & Gravel produced by JMB pursuant to the terms of this Agreement provided that any Sand & Gravel Royalty has been paid in full to Kalinko.”

6. Section 5.12 shall be added and form part of the Agreement and be effective as of June 12, 2017 “In the event that JMB elects to provide Kalinko or the Owner with gravel to supply friends or family, prior to any subsequent distribution of gravel, Kalinko will verbally advise JMB of this distribution and such distribution shall not be deemed as a breach of the Non-Competition Agreement.”
7. Section 6.1(c) shall be amended and the following shall come into effect as of June 12, 2017, “ TWO (\$2.00) DOLLARS per tonne for 3/8” minus screenings from all Leased Lands;”
8. Section 6.1(d) shall be amended and the following shall come into effect as of June 12, 2017, “All asphalt material and concrete rock removed from any Leased Lands, with the exception of the Truman Pit which shall remain at TWENTY FIVE (25%) PERCENT premium, shall be subject to a SIXTY SEVEN (67%) PERCENT premium on the base price noted in subsection (a), (b) and (c) above.”
9. The Parties hereto acknowledge and agree that the increase to the Sand & Gravel Royalty pursuant to 6.2(a) of the Agreement has not been made to date. The parties agree that the calculation contemplated by Section 6.2(a) shall be completed in accordance with the terms of the Agreement and shall apply to adjust the prices as set out in Section 5.1 of the Agreement.
10. Section 6.8 shall be added and form part of the Agreement and become effective June 12, 2017, “JMB agrees to make annual minimum royalty payments to Kalinko in the amount of \$800,000 on or before June 12, 2018 and on or before each anniversary of this Agreement thereafter (the “Minimum Royalty”). Any Minimum Royalty amounts paid in a given year, being anniversary date to anniversary date, which exceed the Minimum Royalty amount of Eight Hundred Thousand (\$800,000) Dollars, shall rollover and be applied to the Minimum Royalty due in future years. The maximum Minimum Royalty to be paid by JMB to Kalinko will be Four Million (\$4,000,000.00) Dollars.
11. Section 7.1 shall be removed and the following shall become Section 7.1, effective June 12, 2017, “JMB shall be granted access to the pits for a period of up to TWO (2) YEARS to complete reclamation after the termination of the Agreement. JMB is responsible for reclamation in any areas that it has disturbed up to the time of the termination of the Agreement. In the event that Kalinko intends to continue to operate certain pits following the termination of the Agreement, and Kalinko’s operations would prohibit JMB from completing any reclamation in these pits, Kalinko will release JMB from liability to complete such reclamation.”

12. Section 15.11 shall be added and form part of the Agreement, "Notwithstanding Section 15.6, the Parties may enter into contracts for the completion of work on a case by case basis, as between JMB and Kalinko, separate and apart from the matters contained herein and on terms separate and apart from the terms contained herein."
13. The parties hereto acknowledge and agree that Surface Material Lease # _____, are not considered as SM Leases under the Agreement and as such are not subject to the terms of the Agreement and Kalinko and the Owners may operate such SM Leases as they may wish.

IN WITNESS WHEREOF, the parties have caused this Agreement Revision of the Agreement to be executed by their duly authorized officers on the respective dates and at the respective places hereinafter set forth.

KALINKO ENTERPRISES LTD.

JMB CRUSHING SYSTEMS ULC

Per: _____

Per: _____

Per: _____

Per: _____

Witness

TIM KALINSKI

Witness

JESSICA BRENNAN

Witness

MATTHEW KALINSKI

Witness

ZACHARIAH KALINSKI

Witness

ELISHA KALINSKI

This is Exhibit "D" referred to in the
Affidavit of

TIM KALINSKI

Sworn before me this 6 day

of July, 202


A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

THIS IS AN AMENDMENT TO THE ORIGINAL SAND & GRAVEL OPERATING AGREEMENT made as of the 12th day of June, 2012 (the "Agreement") by and between TIM KALINSKI, JESSICA BRENNAN, MATTHEW KALINSKI, ZACHARIAH KALINSKI and ALISHA KALINSKI (the "Owners") and KALINKO ENTERPRISES LTD., a corporation having its principal place of business at P.O. Box 6582 Bonnyville, Alberta ("Kalinko") and JMB CRUSHING SYSTEMS ULC, a corporation having its principal place of business at P.O. Box 6977 Bonnyville, Alberta ("JMB")

Agreement Revision Number 1; Dated June __, 2017 (the "Amendment")

In the spirit of our business relationship and in consideration of the mutual promises made by and between the parties (the receipt and sufficiency of which is acknowledged by the parties), the Agreement is to be revised as follows:

1. Unless otherwise stated herein, capitalized terms shall have the meaning ascribed to them in the Agreement.
2. The Parties hereto agree that Kalinko has received an amount greater than TWELVE MILLION (\$12,000,000.00) DOLLARS, exclusive of GST pursuant to the terms of Section 4.2 of the Agreement. The Parties agree that JMB owes Kalinko and the Owners in the amount of ONE MILLION ONE HUNDRED EIGHTY-EIGHT THOUSAND ONE HUNDRED SEVEN DOLLARS AND THIRTY-SIX (\$1,188,107.36) CENTS, for 2015 MD Gravel Royalties (the "2015 MD Royalties"). The full amount of the 2015 MD Royalties will be paid in full by JMB to Kalinko and the Owners no later than October 1, 2017.
3. Section 5.4(p) shall be added to and form part of the Agreement, "With respect to sales to any Municipal District, County and all jobs related to public works, JMB will request a completed Royalty Waiver at the completion of each transaction. JMB will use its best efforts to provide the Royalty Waiver to Kalinko as soon as possible."
4. Section 5.9(a) shall be removed in its entirety and the following shall be the replacement clause 5.9(a), effective June 12, 2017, "After the termination of this Agreement, JMB shall be entitled for a period of SEVEN HUNDRED THIRTY (730) DAYS to enter on and remove from the Leased Lands all Improvements and Machinery and Equipment. JMB shall make good any damage which may be occasioned by such removal."
5. Section 5.10(a) shall be removed in its entirety and the following shall be the replacement clause 5.10(a), effective June 12, 2017, "After the termination of this Agreement, JMB shall be entitled for a period of SEVEN HUNDRED THIRTY (730) DAYS to enter on and remove from the Leased Lands the stockpile of Sand & Gravel produced by JMB pursuant to the terms of this Agreement provided that any Sand & Gravel Royalty has been paid in full to Kalinko."
6. Section 5.12 shall be added and form part of the Agreement and be effective as of June 12, 2017 "In the event that JMB elects to provide Kalinko or the Owner with gravel to

supply friends or family, prior to any subsequent distribution of gravel, Kalinko will verbally advise JMB of this distribution and such distribution shall not be deemed as a breach of the Non-Competition Agreement.”

7. Section 6.1(c) shall be amended and the following shall come into effect as of June 12, 2017, “ TWO (\$2.00) DOLLARS per tonne for 3/8” minus screenings from all Leased Lands;”
8. Section 6.1(d) shall be amended and the following shall come into effect as of June 12, 2017, “All asphalt material and concrete rock removed from any Leased Lands, with the exception of the Truman Pit which shall remain at TWENTY FIVE (25%) PERCENT premium, shall be subject to a SIXTY SEVEN (67%) PERCENT premium on the base price noted in subsection (a), (b) and (c) above.”
9. Section 6.8 shall be added and form part of the Agreement and become effective June 12, 2017, “JMB agrees to make annual minimum royalty payments to Kalinko in the amount of \$800,000 on or before June 12, 2018 and on or before each anniversary of this Agreement thereafter (the “Minimum Royalty”). Any Minimum Royalty amounts paid in a given year, being anniversary date to anniversary date, which exceed the Minimum Royalty amount of Eight Hundred Thousand (\$800,000) Dollars, shall rollover and be applied to the Minimum Royalty due in future years. The maximum Minimum Royalty to be paid by JMB to Kalinko will be Four Million (\$4,000,000.00) Dollars.
10. Section 7.1 shall be removed and the following shall become Section 7.1, effective June 12, 2017, “JMB shall be granted access to the pits for a period of up to TWO (2) YEARS to complete reclamation after the termination of the Agreement. JMB is responsible for reclamation in any areas that it has disturbed up to the time of the termination of the Agreement. In the event that Kalinko intends to continue to operate certain pits following the termination of the Agreement, and Kalinko’s operations would prohibit JMB from completing any reclamation in these pits, Kalinko will release JMB from liability to complete such reclamation.”
11. Section 15.11 shall be added and form part of the Agreement, “Notwithstanding Section 15.6, the Parties may enter into contracts for the completion of work on a case by case basis, as between JMB and Kalinko, separate and apart from the matters contained herein and on terms separate and apart from the terms contained herein.”

IN WITNESS WHEREOF, the parties have caused this Agreement Revision of the Agreement to be executed by their duly authorized officers on the respective dates and at the respective places hereinafter set forth.

[Signatures appear on the following page]

KALINKO ENTERPRISES LTD.

Per: 

Per: _____


Witness


Witness


Witness


Witness


Witness

JMB CRUSHING SYSTEMS ULC

Per: _____

Per: _____


TIM KALINSKI


JESSICA BRENNAN


MATTHEW KALINSKI


ZACHARIAH KALINSKI


ELISHA KALINSKI

This is Exhibit "E" referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 202

[Signature]

A Notary Public
in and for the Province of Alberta

THIS IS AN AMENDMENT TO THE ORIGINAL SAND & GRAVEL OPERATING AGREEMENT made as of the 12th day of June, 2012 (the "Agreement") by and between TIM KALINSKI, JESSICA BRENNAN, MATTHEW KALINSKI, ZACHARIAH KALINSKI and ALISHA KALINSKI (the "Owners") and KALINKO ENTERPRISES LTD., a corporation having its principal place of business at P.O. Box 6582 Bonnyville, Alberta ("Kalinko") and JMB CRUSHING SYSTEMS ULC, a corporation having its principal place of business at P.O. Box 6977 Bonnyville, Alberta ("JMB")

Agreement Revision Number 1: Dated June 12 2017 (the "Amendment")

In the spirit of our business relationship and in consideration of the mutual promises made by and between the parties (the receipt and sufficiency of which is acknowledged by the parties), the Agreement is to be revised as follows:

1. Unless otherwise stated herein, capitalized terms shall have the meaning ascribed to them in the Agreement.

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2. Section 5.4(p) shall be added to and form part of the Agreement, "With respect to sales to any Municipal District, County and all jobs related to public works, JMB will request a completed Royalty Waiver at the completion of each transaction. JMB will use its best efforts to provide the Royalty Waiver to Kalinko as soon as possible."
3. Section 5.9(a) shall be removed in its entirety and the following shall be the replacement clause 5.9(a), effective June 12, 2017, "After the termination of this Agreement, JMB shall be entitled for a period of SEVEN HUNDRED THIRTY (730) DAYS to enter on and remove from the Leased Lands all Improvements and Machinery and Equipment. JMB shall make good any damage which may be occasioned by such removal."
4. Section 5.10(a) shall be removed in its entirety and the following shall be the replacement clause 5.10(a), effective June 12, 2017, "After the termination of this Agreement, JMB shall be entitled for a period of SEVEN HUNDRED THIRTY (730) DAYS to enter on and remove from the Leased Lands the stockpile of Sand & Gravel produced by JMB pursuant to the terms of this Agreement provided that any Sand & Gravel Royalty has been paid in full to Kalinko."
5. Section 5.12 shall be added and form part of the Agreement and be effective as of June 12, 2017 "In the event that JMB elects to provide Kalinko or the Owner with gravel to

supply friends or family, prior to any subsequent distribution of gravel. Kalinko will verbally advise JMB of this distribution and such distribution shall not be deemed as a breach of the Non-Competition Agreement."

6. Section 6.1(c) shall be amended and the following shall come into effect as of June 12, 2017, " TWO (\$2.00) DOLLARS per tonne for 3/8" minus screenings from all Leased Lands;"
7. Section 6.1(d) shall be amended and the following shall come into effect as of June 12, 2017, "All asphalt material and concrete rock removed from any Leased Lands, with the exception of the Truman Pit which shall remain at TWENTY FIVE (25%) PERCENT premium, shall be subject to a SIXTY SEVEN (67%) PERCENT premium on the base price noted in subsection (a), (b) and (c) above."
8. Section 6.8 shall be added and form part of the Agreement and become effective June 12, 2017, "JMB agrees to make annual minimum royalty payments to Kalinko in the amount of \$800,000 on or before June 12, 2018 and on or before each anniversary of this Agreement thereafter (the "Minimum Royalty"). Any Minimum Royalty amounts paid in a given year, being anniversary date to anniversary date, which exceed the Minimum Royalty amount of Eight Hundred Thousand (\$800,000) Dollars, shall rollover and be applied to the Minimum Royalty due in future years. The maximum Minimum Royalty to be paid by JMB to Kalinko will be Four Million (\$4,000,000.00) Dollars.
9. Section 7.1 shall be removed and the following shall become Section 7.1, effective June 12, 2017, "JMB shall be granted access to the pits for a period of up to TWO (2) YEARS to complete reclamation after the termination of the Agreement. JMB is responsible for reclamation in any areas that it has disturbed up to the time of the termination of the Agreement. In the event that Kalinko intends to continue to operate certain pits following the termination of the Agreement, and Kalinko's operations would prohibit JMB from completing any reclamation in these pits, Kalinko will release JMB from liability to complete such reclamation."
10. Section 15.11 shall be added and form part of the Agreement, "Notwithstanding Section 15.6, the Parties may enter into contracts for the completion of work on a case by case basis, as between JMB and Kalinko, separate and apart from the matters contained herein and on terms separate and apart from the terms contained herein."
11. The parties hereto acknowledge and agree that Surface Material Lease # 1719, are not considered as SM Leases under the Agreement and as such are not subject to the terms of the Agreement and Kalinko and the Owners may operate such SM Leases as they may wish.

IN WITNESS WHEREOF, the parties have caused this Agreement Revision of the Agreement to be executed by their duly authorized officers on the respective dates and at the respective places hereinafter set forth.

KALINKO ENTERPRISES LTD.

Per: [Signature]

Per: _____

[Signature]
Witness

[Signature]
Witness

[Signature]
Witness

[Signature]
Witness

[Signature]
Witness

JMB CRUSHING SYSTEMS ULC

Per: [Signature]

Per: _____

[Signature]
TIM KALINSKI

[Signature]
JESSICA BRENNAN

[Signature]
MATTHEW KALINSKI

[Signature]
ZACHARIAH KALINSKI


[Signature]
ELISHA KALINSKI

This is Exhibit " F " referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2020


A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

OGILVIE LLP

BARRISTERS AND SOLICITORS

OUR FILE: 27442-14/GDS

YOUR FILE:

REPLY TO:

CAMRON D. SCHWARTZ

DIRECT LINE: (780) 701-6364

DIRECT FAX: (780) 426-1010

EMAIL: cschwartz@ogilvie.com

Assistant:

Lisa M. Lulis

Direct Line: (780) 429-6209

Direct Fax: (780) 701-5908

EMAIL: llulis@ogilvie.com

CANADIAN WESTERN BANK PLACE
SUITE 1400
10303 JASPER AVENUE
EDMONTON AB T5J 3N6
FACSIMILE (780) 429-4453
TELEPHONE (780) 421-1818

June 7, 2017

SENT VIA FAX

Field LLP
Barristers and Solicitors
#2000, 10235 -101 Street NW
Edmonton, AB T5J 3G1
Fax (780) 428-9329

Attention: Brian Futoransky

Kalinko Enterprises Ltd.
606 Beach Avenue
Cold Lake, AB T9M 1G5
Fax (780) 826-9018

Attention: Tim Kalinski

Dear Sir:

**RE: NOTICE OF DEFAULT RE SAND AND GRAVEL OPERATING
AGREEMENT BETWEEN KALINKO ENTERPRISES LTD. ET AL AND
JMB CRUSHING SYSTEMS ULC**

On or about May 30, 2017, our office received a Notice of Default from your office addressed to our client, JMB Crushing Systems ULC, (the "Notice"). The Notice was concerning a Sand and Gravel Operating Agreement between Kalinko Enterprises Ltd. et al and JMB Crushing Systems ULC dated June 12, 2012 (the "Agreement"). Within the Notice you indicated that our client was in breach of its obligations by failing to comply with Article 6.4 of the Agreement in the amount of \$1,700,000.00.

We have reviewed the Agreement and note that Article 6.4 states: "JMB shall, within fourteen (14) days after JMB receiving payment from its customers, deliver to the Owners the Sand & Gravel Royalty in respect of the amount sold to such paying customer." We understand that our client owes \$540,989.88, inclusive of GST, for non 2015 MD ("Non 2015 MD Amount"). We further understand that the amount that will become due, once the final sale of the 2015 MD gravel occurs and the gravel leaves the pit will be \$1,188,107.36, inclusive of GST ("2015 MD Amount").

Please be advised that our clients will be providing payment to you in the amount of Seven Hundred Twenty Nine Thousand Ninety Seven (\$729,097.25) Dollars Twenty Five Cents on June 7, 2017, which represents a payment of all outstanding royalty amounts owed, as well as a prepayment of One Hundred Eighty Eight Thousand One



Hundred Seven (\$188,107.36) Dollars and Thirty Six Cents which will be applied to the 2015 MD Amount that has not yet come due.

As discussed between you and our client on June 1, 2017, our client has offered to pay the remaining total of One Million (\$1,000,000.00) Dollars of the 2015 MD Amount, as gravel is removed from the 2015 MD stockpile, but no later than October 1, 2017. Our client has further offered to complete crushing and excavation work for you in your Wabasca pit to offset a mutually agreeable portion of the remaining 2015 MD Amount. Please be aware that our client is not obligated under the Agreement to offer accelerated payments of the 2015 MD Amount, but has offered to do so on the basis of maintaining a positive working relationship with you going forward.

Though our client was not in default, the payment of Seven Hundred Twenty Nine Thousand Ninety Seven (\$729,097.25) Dollars Twenty Five Cents, as referenced above, would rectify any possible default, as the payment will be received by your office no later than ten (10) days after our clients received your Notice. Additionally, our client remains willing to incorporate additional mutually agreeable amendments to the Agreement as discussed on or about June 1, 2017, prior to the extension of the Agreement which will extend effective June 12, 2017, as stated in Article 4.2 of the Agreement.

Yours truly,

OGILVIE LLP

Per:

CAMRON D. SCHWARTZ

CDS/ml
cc: client

* * * Communication Result Report (Jun. 7. 2017 2:59PM) * * *

1}

Date/Time: Jun. 7. 2017 2:58PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
0503	Memory TX	##92497804251010	P. 1	OK	

Reason for error
 1) Hang up or line fail
 2) Busy
 3) No answer
 4) No facsimile connection
 5) Exceeded max. E-mail size
 6) Destination does not support IP-Fax

FIELD LAW

2500 - 1075th St NW
Edmonton AB T6A 0K2
Addressee:

CALGARY EDMONTON YELLOWHEAD

Brian Puljansky
T 780-643-8728
F 780-424-0513
bpuljansky@fieldlaw.com

Auriah Kandra Jones
T 780-424-0203 ext. 7164
kjones@fieldlaw.com

OW (R) 5215-1

June 7, 2017

VIA FAX 780-425-1010

Ogilvie LLP
Canadian Western Bank Place
Suite 2400, 103080 Jasper Avenue
Edmonton, Alberta T5J 3N6

Attention: Cameron D. Schweritz

Dear Sir:

RE: Notice of Default
Sand and Gravel Operating Agreement between Kalinko Enterprises Ltd. and JMD Crushing
Systems ULC

We have reviewed your letter dated June 7, 2017 with respect to the above noted matter. At this stage my client and I have no comment on the negotiations as between our clients to amend the existing agreement as referenced in your letter.

With specific reference to the status of amounts owing we would agree that Article E.4 indicates when funds are payable to my client under the Agreement. We are however unable to locate anywhere in the Agreement whereby funds are not payable until gravel leaves the pit which seems to be the sole basis upon which your client is refusing to pay the 2015 MD Amount (as referenced in your letter). This being the case we are left to assume that your client has indeed received the 2015 MD Amount but has not paid this to my client in accordance with Article E.4. Accordingly, it is our position that the full amount of \$1,700,000.00 owing as set out in the Notice of Default issued May 30, 2017, is owing in accordance with the Agreement.

Your client may choose to forward payment to our office or my client in an amount less than as set out in the Notice of Default if it wishes. We note that if such funds in a lesser amount are paid my client may choose to receive these funds as partial payment of the total amount owing without waiving its rights to rely on the Notice of Default for payment of the full amount as stated therein. In this regard we reference Article 15.2 of the Agreement. Further, if any funds are forwarded subject to any conditions other than they are for immediate release to our client we do not believe that this would constitute payment in accordance with Agreement.

Sincerely,

FIELD LLP


BRIAN PULJANSKY

cc: Kalinko Enterprises

EM8855.DOCX





2500 - 10175 101 ST NW
Edmonton AB T5J 0H3
fieldlaw.com

CALGARY / EDMONTON / YELLOWKNIFE

Brian Futoransky
T 780-643-8758
F 780-428-9329
bfutoransky@fieldlaw.com

Assistant: Kendra Jones
T 780-423-3003 Ext 7168
kjones@fieldlaw.com

Dur File: 55198-1

June 7, 2017

VIA FAX 780-425-1010

Ogilvie LLP
Canadian Western Bank Place
Suite 1400, 103030 Jasper Avenue
Edmonton, Alberta T5J 3N6

Attention: Camron D. Schwartz

Dear Sir;

RE: **Notice of Default
Sand and Gravel Operating Agreement between Kalinko Enterprises Ltd. and JMB Crushing
Systems ULC**

We have reviewed your letter dated June 7, 2017 with respect to the above noted matter. At this stage my client and I have no comment on the negotiations as between our clients to amend the existing agreement as referenced in your letter.

With specific reference to the status of amounts owing we would agree that Article 6.4 dictates when funds are payable to my client under the Agreement. We are however unable to locate anywhere in the Agreement whereby funds are not payable until gravel leaves the pit which seems to be the sole basis upon which your client is refusing to pay the 2015 MD Amount (as referenced in your letter). This being the case we are left to assume that your client has indeed received the 2015 MD Amount but has not paid this to my client in accordance with Article 6.4. Accordingly, it is our position that the full amount of \$1,700,000.00 owing as set out in the Notice of Default issued May 30, 2017, is owing in accordance with the Agreement.

Your client may choose to forward payment to our office or my client in an amount less than as set out in the Notice of Default if it wishes. We note that if such funds in a lesser amount are paid my client may choose to receive these funds as partial payment of the total amount owing without waiving its rights to rely on the Notice of Default for payment of the full amount as stated therein. In this regard we reference Article 15.2 of the Agreement. Further, if any funds are forwarded subject to any conditions other than they are for immediate release to our client we do not believe that this would constitute payment in accordance with Agreement.

Sincerely,

FIELD LLP



BRIAN FUTORANSKY

BF/kj
cc: Kalinko Enterprises

E3343296.DOCX;1

OGILVIE LLP

BARRISTERS AND SOLICITORS

OUR FILE: 27442-14/CDS

YOUR FILE:

REPLY TO:

CAMRON D. SCHWARTZ

DIRECT LINE: (780) 701-6364
DIRECT FAX: (780) 425-1010EMAIL: cschwartz@ogilvie.com

Assistant:

Lisa M. Lusic
Direct Line: (780) 429-6209
Direct Fax: (780) 701-5908EMAIL: llusic@ogilvie.comCANADIAN WESTERN BANK PLACE
SUITE 1400
10303 JASPER AVENUE
EDMONTON AB T5J 3N6
FACSIMILE (780) 429-4453
TELEPHONE (780) 421-1818

June 8, 2017

SENT VIA FAX: 780-428-9329Field LLP
Barristers and Solicitors
2000, 10235-101 Street NW
Edmonton, AB T5J 3G1**Attention: Brian Futoransky**

Dear Sir:

**RE: NOTICE OF DEFAULT RE SAND AND GRAVEL OPERATING
AGREEMENT BETWEEN KALINKO ENTERPRISES LTD. ET AL AND
JMB CRUSHING SYSTEMS ULC**

Thank you for your correspondence sent yesterday. We note within your correspondence you assume that JMB has been fully paid for the 2015 MD Amounts. This is, in fact, not the case and we understand that your clients are aware of this.

Per Article 6.4 of the Agreement, "JMB shall, within fourteen (14) days after JMB receiving payment from its customers, deliver to the Owners the Sand & Gravel Royalty in respect of the amount sold to such paying customer." Royalties to be paid under Article 6.4 are strictly based "in respect of the amount sold to such paying customer". In the case of the 2015 MD gravel, the customer has not taken possession of the gravel and JMB has solely been paid for its services to crush and stockpile the gravel in the pit. JMB has not been paid to remove the gravel from the pit or to transport it into the possession of its customer. The sale inherently occurs at the point when the customer takes possession of the gravel which has clearly not yet taken place. Interim crushing payments are standard and commonplace in the industry and do not, in any way, constitute a transfer of ownership or a "sale".

It is our understanding that our respective clients met last week to discuss certain amendments to the current Agreement and to further discuss the payment of the 2015 MD Amount in light of the extension of the Term. During these discussions the parties reached an agreement concerning the payment of the 2015 MD Amount and further agreed that the Term would be extended, as per the Agreement. We understand that our clients are in the process of completing the details of the amendments and papering these amendments. Your clients are now acting in "bad faith" as an agreement was reached, as previously stated, concerning certain amendments to the Agreement, during the Extension and they had also reached an agreement as to how and when the 2015 MD amounts would be paid out. Your client is now, it appears, trying the back out of those agreements.

-2-

OGILVIE LLP

BARRISTERS AND SOLICITORS

Our clients provided your client with the payment of the Seven Hundred Twenty Nine Thousand Ninety Seven (\$729,097.25) Dollars Twenty Five Cents, as referenced in our June 7, 2017 correspondence provided to you and your client. This amount not only included the amount owing, being Five Hundred Forty Thousand Nine Hundred Eighty Nine (\$540,989.88) Dollars Eighty Eight Cents but also included an additional payment towards the 2015 MD gravel as a gesture of good faith. The amount paid to your client yesterday was paid directly to your client, with no conditions.

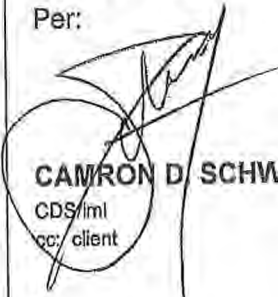
If this matter does end up in court, your client will leave us with no option but to raise your client's bad faith conduct related to the above matters and your client's breach of the non-compete agreement, which also formed part of the original agreement between our clients.

We trust this clarifies the status of the 2015 MD Amount and we look forward to assisting our clients to work together during the extension period.

Yours truly,

OGILVIE LLP

Per:



CAMRON D. SCHWARTZ

CDS/ml
cc: client

This is Exhibit "C" referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2020



A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor



P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com



November 14, 2018

Tim and Zach,

JMB Crushing Systems ULC is willing to agree to the following items;

1. Payments. Post closing of the JMB sale transaction, JMB will pay the outstanding amount owing to Kalinko of \$240,940.68 by 11/31/18. With regard to the 2015 MD of Bonnyville gravel stockpiled in P19, JMB agrees to make the following royalty prepayments: \$200k 12/31/18, \$200k 1/31/19, \$200k 2/28/19.
2. JMB will withdraw its SME application in the Truman area at a time of Kalinko's choosing.
3. JMB will be utilizing additional crushing and screening capacity in 2019 to address your request for additional screening capabilities.
4. Kalinko will provide a detailed prioritized list outlining pit work initiatives for 2019 to be addressed by JMB
5. JMB agrees it will not take legal action against Kalinko for its actions prior to this date, and Kalinko agrees it will not take legal action against JMB for its actions prior to this date.

Please indicate your acceptance of this agreement by signing the following signature page:

Bonnyville

JMB (780) 826 - 1774 | Quantum: (780) 826 - 3272
Fax: (780) 826 - 6280



P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmberush.com



For JMB:

A handwritten signature in black ink, appearing to read 'Jeff Buck', is written over a horizontal line.

Jeff Buck
President
JMB Crushing Systems ULC

For Kalinko:

Tim Kalinski

Zachariah Kalinski

Matthew Kalinski

Jessica Brennan

Elisha Kalinski

This is Exhibit "H" referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2021

A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

Security Agreement

Control #: F05861609

Registration Date: 2019-Apr-23

Registration #: 19042328039

The Registration Term is 3 Years

This Registration Expires at 11:59 PM on 2022-Apr-23

Debtor(s)

Block

1 JMB CRUSHING SYSTEMS ULC
PO Box 6977
Bonnyville, AB T9N2H4

Secured Party / Parties

Block

1 KALINKO ENTERPRISES LTD.
c/o Field LLP 2500, 10175-101 Street
Edmonton, AB T5J0H3

Block

2 KALINSKI, TIM
c/o Field LLP 2500, 10175-101 Street
Edmonton, AB T5J0H3

Block

3 BRENNAN, JESSICA
c/o Field LLP 2500, 10175-101 Street
Edmonton, AB T5J0H3

Block

4 KALINSKI, MATTHEW
c/o Field LLP 2500, 10175-101 Street
Edmonton, AB T5J0H3

Block

5 KALINSKI, ZACHARIAH
c/o Field LLP 2500, 10175-101 Street
Edmonton, AB T5J0H3

Block

6 KALINSKI, ELISHA
c/o Field LLP 2500, 10175-101 Street
Edmonton, AB T5J0H3

Collateral: General

Block **Description**

1 All alluvial sand and gravel material extracted from the Leased Lands pursuant to the SM Leases wherever situated.


End of Verification Statement

This is Exhibit "I" referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2022


A Notary Public
in and for the Province of Alberta



P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com



December 18, 2018

Re: Agreement to Store gravel on SML 020038

The following is an agreement between JMB Crushing Systems, Zach Kalinski and Randall Lacombe for the storage of gravel from SML 120004 to SML 020038.

Zach Kalinski is the owner and representative for SML 120004.

Randall Lacombe is the owner and representative of SML 020038

JMB Crushing Systems is the marketing agent for Zach Kalinski and the company that will be transporting pit run from SML 120004 to SML 020038 where JMB Crushing Systems will crush and stockpile material to be stored on SML 020038.

All parties agree that JMB Crushing Systems will pay a lump sum of \$5000 to Randall Lacombe to allow JMB Crushing Systems to crush gravel and store gravel on SML 020038. This work will commence in Dec 2018 and JMB will have rights to store the material on SML 020038 until Dec 2019.

Randall Lacombe further agrees and acknowledges that JMB Crushing Systems and E Construction will have a financial interest in material stored on SML 020038 and that at no point in the future will Randall Lacombe prevent JMB Crushing Systems or their designates from removing any or all of the material from SML 020038.

Zach Kalinski also acknowledges that royalties from SML 120004 will not become a payable until the material leaves the Interim stockpile site at SML 020038. It is anticipated that the crushed material will begin to leave SML 020038 in early summer 2019 and will be completely removed by late fall 2019.

Jeff Buck
President
JMB Crushing Systems

Zach Kalinski
SML Holder 120004
PO Box 7794
Bonnyville, T9N 2J1

Randall Lacombe
SML Holder 020038
124 Circle Drive North
Box 93 Chard TOP 1G0

Bonnyville

JMB (780) 826-1774 | Quantum: (780) 826-3272
Fax: (780) 826-6280

This is Exhibit "J" referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2022

A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

Brian D. Futoransky

Partner

T 780-643-8758

F 780-428-9329

bfutoransky@fieldlaw.com

Assistant Kristin Klarenbach

T 587-773-7187

kkklarenbach@fieldlaw.com

Our File: 55198-1

April 10, 2019

DELIVERED BY FAX

PRIVATE AND CONFIDENTIAL

JMB Crushing Systems ULC
P.O. Box 6977
Bonnyville, AB T9N 2H4

Attention: Jeff Buck

Dear Sir:

Re: Notice of Default dated March 22, 2019 with respect to the Sand and Gravel Operating Agreement between KALINKO ENTERPRISES LTD. et al (collectively "Kalinko"), and JMB CRUSHING SYSTEMS ULC (the "Original Agreement") as amended by that Amending Agreement from June, 2017 (the "Amending Agreement") (the Original Agreement and the Amending Agreement are collectively referred to herein as the "Agreement")

Please find enclosed the Notice of Termination.

We are in receipt of the letter from Ogilvie LLP dated April 8, 2019. Our client has instructed us to reserve comment on the contents.

Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,

FIELD LLP



Brian D. Futoransky
Partner

BF/kk
Encl.

cc: Andrew J. Trevoy – Fax: 780-425-1010
Camron D. Schwartz – Fax: 780-429-4453

NOTICE OF TERMINATION

April 10, 2019

DELIVERED BY FAX

TO: JMB Crushing Systems ULC.
P.O. Box 6977
Bonnyville, AB T9N 2H4
Fax (780) 826-6280

AND TO: Trevoy LLP
#516, 10235-101 Street
Edmonton, AB T5J 3G1
Fax: (780) 425-1010
Attention: Andrew J. Trevoy

AND TO: Ogilvie LLP
Canadian Western Bank Place
Suite 1400, 10303 Jasper Avenue
Edmonton, AB T5J 3N6
Fax: (780) 429-4453
Attention: Camron D. Schwartz

Attention: Jeff Buck

STRICTLY PRIVATE AND CONFIDENTIAL

Dear Sir:

RE: Notice of Default dated March 22, 2019 with respect to the Sand and Gravel Operating Agreement between KALINKO ENTERPRISES LTD. et al (collectively "Kalinko"), and JMB CRUSHING SYSTEMS ULC (the "Original Agreement") as amended by that Amending Agreement from June, 2017 (the "Amending Agreement") (the Original Agreement and the Amending Agreement are collectively referred to herein as the "Agreement").

TAKE NOTICE that JMB Crushing Systems ULC. has failed to pay the sum of \$114,626.51 within the time period as set out in section 9.1(a) of the Original Agreement.

TAKE NOTICE that JMB Crushing Systems ULC. has failed to pay the sum of \$400,000.00 within the time period as set out in section 9.1(a) of the Original Agreement.

AND FURTHER TAKE NOTICE that as a result of the foregoing failures of payment, Kalinko exercises its right to terminate the Agreement pursuant to section 9.2(b) of the Original Agreement.

* * * Communication Result Report (Apr. 10. 2019 2:44PM) * * *

2}

Date/Time: Apr. 10. 2019 2:43PM

File No.	Mode	Destination	Page(s)	Result	Page Not Sent
1949	Memory TX	##323917804251010	P. 2	OK	

Reason for error

E. 1)	Hang up or line fail	E. 2)	Busy
E. 3)	No answer	E. 4)	No facsimile connection
E. 5)	Exceeded max. E-mail size	E. 6)	Destination does not support IP-Fax

FIELD LAW

3500 - 107th 101st NW
Edmonton AB T5E 1G8
Canada

CALGARY EDMONTON YELLOWHEAD

Brian D. Potoransky
Partner
T 780-428-4252
F 780-428-4028
bp@fieldlaw.com
Alicia M. Starobich
T 510-273-7307
astarobich@fieldlaw.com
Dir Fax: 55189 1

April 10, 2019

DELIVERED BY FAX

PRIVATE AND CONFIDENTIAL

JMB Crushing Systems ULC
P.O. Box 6977
Bonnyville, AB T9N 2H4

Attention: Jeff Buck

Dear Sir:

Re: Notice of Default dated March 22, 2019 with respect to the Sand and Gravel Operating Agreement between KALIMKO ENTERPRISES LTD. et al (collectively "Kalimko"), and JMB CRUSHING SYSTEMS ULC (the "Original Agreement") as amended by that Amending Agreement from June, 2017 (the "Amending Agreement") (the Original Agreement and the Amending Agreement are collectively referred to herein as the "Agreement")

Please find enclosed the Notice of Termination.
We are in receipt of the letter from Ogilvie LLP dated April 8, 2019. Our client has instructed us to reserve comment on the contents.
Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,

FIELD LLP


Brian D. Potoransky
Partner

BP/AS
End.

cc: Andrew J. Treney - Fax: 780-425-4010
Cammie D. Schwartz - Fax: 780-425-4453



* * * Communication Result Report (Apr. 10. 2019 2:42PM) * * *

1)
2)

Date/Time: Apr. 10. 2019 2:41PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
1948 Memory TX	##596917808266280	P. 2	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection
 E. 6) Destination does not support ip-Fax



2500 - 1072 101 ST NW
 Edmonton AB T5J 0M5
 ksl@fieldlaw.com

CALGARY EDMONTON YELLOWKNIFE

Brian D. Futoransky
 Partner
 T 780-464-4721
 F 780-428-8329
 bfutoransky@fieldlaw.com
 Accounting Brian D. Futoransky
 T 507-770-7387
 bfutoransky@fieldlaw.com
 Our Fax: 554961

April 10, 2019

DELIVERED BY FAX

PRIVATE AND CONFIDENTIAL

JMS Crushing Systems (ULC)
 P.O. Box 6977
 Bonnyville, AB T9N 2H0
 Attention: Jeff Buck

Dear Sir:

Re: Notice of Default dated March 22, 2019 with respect to the Sand and Gravel Operating Agreement between KALINKO ENTERPRISES LTD. et al (collectively "Kalinko"), and JMS CRUSHING SYSTEMS ULC (the "Original Agreement") as amended by that Amending Agreement from June, 2017 (the "Amending Agreement") (the Original Agreement and the Amending Agreement are collectively referred to herein as the "Agreement")

Please find enclosed the Notice of Termination.

We are in receipt of the letter from Ogilvie LLP dated April 8, 2019. Our client has instructed us to reserve comment on the contents.

Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,

FIELD LLP

 Brian D. Futoransky
 Partner

wfk
 End.

cc: Andrew J. Trexler - Fax: 780-425-4058
 Camryn D. Schwartz - Fax: 780-425-4453



* * * Communication Result Report (Apr. 10. 2019 2:45PM) * * *

1/2

Date/Time: Apr. 10. 2019 2:44PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
1950 Memory TX	##447917804294453	P. 2	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E=mail size

E. 2) Busy
 E. 4) No facsimile connection
 E. 6) Destination does not support IP-Fax

FIELD LAW

250-1075 101 ST NW
 Calgary AB T2L 0H8
 Add'l phone no.

CALGARY EDMONTON YELLOWHEAD

Brian D. Futoransky
 Partner
 T 780-425-4254
 F 780-425-4025
 b.futoransky@fieldlaw.com
 401-401 Main Street East
 T 541-773-7187
 b.futoransky@fieldlaw.com
 Our File: 55315-1

April 10, 2019

DELIVERED BY FAX

PRIVATE AND CONFIDENTIAL

JMB Crushing Systems LLC
 P.O. Box 6977
 Donnyville, AB T9N 2H4

Attention: Jeff Back

Dear Sir:

Re: Notice of Default dated March 22, 2019 with respect to the Sand and Gravel Operating Agreement between KALINKO ENTERPRISES LTD. et al (collectively "Kalinko"), and JMB CRUSHING SYSTEMS ULC (the "Original Agreement") as amended by that Amending Agreement from June, 2017 (the "Amending Agreement") (the Original Agreement and the Amending Agreement are collectively referred to herein as the "Agreement")

Please find enclosed the Notice of Termination.

We are in receipt of the letter from Ogilvie LLP dated April 6, 2019. Our client has instructed us to reserve comment on the contents.

Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,

FIELD LLP


 Brian D. Futoransky
 Partner

BEA/End.

cc: Andrew L. Treacy - Fax: 780-425-4011
 Cameron D. Schwartz - Fax: 780-425-4458

This is Exhibit " K " referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2002

[Signature]

A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor



P.O. Box 5210, Fort McMurray, Alberta, T9H 3G3 Telephone: (780) 743-3822 Fax: (780) 743-5946

May 22nd, 2018

JMB Crushing Systems ULC
P.O. Box 6977
Bonnyville, Alberta, T9N 2H4

Attn: Mr. Jeff Buck, President

**RE: QU4411 – Anzac Water and Sewer Contract No. 4 - Subcontract Document
- RETURNED**

Please find enclosed, for your files, the executed subcontract for the above noted project.

We look forward to working with you on this project.

Yours truly,
E Construction Ltd.

A handwritten signature in black ink, appearing to read 'Nelson Davis'.

Nelson Davis,
Project Manager
Encl.

FORT McMURRAY: Box 5210, Fort McMurray, Alberta T9H 3G3 Telephone: (780) 743-3822 Fax: (780) 743-5946

COLD LAKE: Mailing Address: Box 56, Cold Lake, Alberta T9M 1P1 Telephone: (780) 594-4614 Fax: (780) 594-4210
Office Location: 5508 - 50 Avenue, Cold Lake, Alberta

SLAVE LAKE: Mailing Address: Box 721, Slave Lake, Alberta T0G 2A0 Telephone: (780) 849-2265 Fax: (780) 849-3577
Office Location: 224 Balsam Road N.E., Slave Lake, Alberta



AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR



Appendix "B"

Subcontract No.

3325-02

Safety Clause

Employees on a construction project are responsible for the health and safety of their workers as regulated by provincial, territorial and federal acts and regulations. As a sub-contractor, you are obligated to familiarize yourself with and to fully comply with all laws, regulations and codes concerning safety as shall be applicable to the work and to the Safety Standards established during the progress of the work by the Contractor and to conduct all your operations within Contractor's Safety Policy.

Safety Regulations

1. The sub-contractor shall comply with all regulations of the Government Regulating body for the province and municipality in which the project is being performed.
2. The sub-contractor shall comply with all Health Safety and loss control rules and regulations that apply to the principal contractor.

Safety Rules

1. The sub-contractor shall assume full responsibility for all persons in his employment on the project site and for their compliance to all rules and regulations.
2. The sub-contractor shall provide effective indoctrination to all new and transferred workers, which will include safety regulations, safety awareness, emergency procedures and equipment location, hours of work, first aid and accident reporting procedures.
3. The sub-contractor shall ensure that all workers are equipped with all personal protective equipment required under government and principal contractors safety regulations and rules and that they use the appropriate protective equipment.
4. The sub-contractor's site supervisor or his representative shall give his current address and telephone number for the project superintendent so that he may be contacted after hours in case of an emergency.
5. The sub-contractor shall ensure that all tools and equipment meet the required standards prescribed by safety regulations and that work procedures are safe and efficient.
6. The sub-contractor shall ensure that good housekeeping and orderliness are maintained to a high standard at all times by his workers. He will give special attention to maintaining clear walkways, removal of trash, debris, slipping and tripping hazards. Temporary material storage must be cleared through the project superintendent and kept neat and safety stored at all times.
7. All sub-contractors shall hold "tailgate" Safety Meetings with their workers at least once a week. Minutes of these meetings shall be forwarded to the site superintendent in the form of the Tailgate Meeting Record Book.

Federal Hazardous Products Act

In keeping with the Federal Hazardous Products Act (HPA) and subsequent Provincial Occupational Safety and Health Regulations governing Workplace Hazardous Materials Information Safety Legislative (WHMIS), we require that sub-contractors and suppliers ensure that the appropriate Material Safety Data Sheets (MSDS) accompany or precede all controlled products to the project.

Safety Monitoring

- 1) Sub-contractors will be expected to carry out their own inspections of their areas of responsibility to detect and correct hazardous conditions and unsafe work practices. Records of routine inspections to be maintained and available for viewing by the principal contractor.
- 2) Sub contractors shall comply with the normal work hour schedules as laid down by the principal contractor. He will request permission from the principal contractor's superintendent prior to any deviation from the established working terms.
- 3) The sub-contractor shall be subject to safety inspections and audits by the principal contractor and is responsible for prompt rectification of any unsafe conditions, practice or situation found during these inspections.

AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR



Safety Compliance

Failure of a sub-contractor to comply with all safety program instructions will lead to notice under Condition SC-18 of the sub-contract agreement which may result in deductions from payments or termination of the sub-contract, should the default not be remedied.

JMB Crushing Systems ULS per: [Signature] April 18
Sub-contractor Signature Date

AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

SUBCONTRACTOR'S COPY

SUBCONTRACT # 3325-02

THIS AGREEMENT made this 8th day of March, 2018

BETWEEN **E CONSTRUCTION LTD.**
(hereinafter called the "Contractor")
P.O. Box 5210, Fort McMurray, AB, T9H 3G3

AND **JMB CRUSHING SYSTEMS ULC**
(hereinafter called the "Subcontractor")
P.O. Box 6977, Bonnyville, AB, T9N 2H4

WHEREAS THE CONTRACTOR has entered into an agreement (hereinafter called the "Prime Contract") dated the 19th day of August, 2017, with

OCL GROUP INC.
(hereinafter called the "Owner")

for the construction of QU4411 – ANZAC WATER AND SEWER CONTRACT 2

**CEMENT STABILIZED SUBGRADE, GRANULAR BASE COURSE CONSTRUCTION, CONCRETE INFRASTRUCTURE, ASPHALT
CONCRETE PAVEMENT CONSTRUCTION**
(hereinafter called the "Project")

AND WHEREAS the Prime Contract includes the work to be performed under this Agreement;
AND WHEREAS the Subcontractor has agreed with the Contractor to construct, install and complete the portion(s) of the Project and supply the materials necessary therefore as hereinafter set forth;
NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1 - THE WORK

A. The Subcontractor shall supply all the labour, supervision, materials, tools, and equipment necessary to construct, install and complete the following portion(s) of the Project (hereinafter called the "Work"), at and for the subcontractor price(s), namely:
In accordance with all applicable plans and specifications to complete the work described below.
The Subcontractor shall: Dewater, Excavate, Split, Eliminate, Screen, Crush, and Stockpile including all pit cost's, royalties, permits, code of practice the following aggregate materials in the Subcontractor's Aggregate Source as named below:

JMB Cheecham Pit SML 100101 located at Sec 1, 2-84-6-W4

SML 10005 14-82-7-W4, SML 12004 2,3-82-7-W4.

Item No.	Description	Estimated Quantity	Unit of Measure	Unit Price	Total Bid
1	Des 2 Class 20	144,300	Per tonne	\$22.48	\$3,243,864.00

TOTAL ESTIMATED COST **\$3,243,864.00**

- Subcontractor to haul granular base material to contractor as required to meet production demands. Hauling of material is expected to commence in May of 2018 and will continue throughout the entire duration of the 2018 construction season.
- Subcontractor is responsible for maintaining haul road and their cost from Cheecham Pit to Hwy 881 during the course of construction.
- Subcontractor responsible to provide and maintain all required haul road use agreements.
- Subcontractor responsible for payment of the Community Aggregate Payment Levy (CAPL) if applicable.

all in a proper and workmanlike manner and in accordance with the requirements and on the terms and conditions contained herein of both the Prime Contract (including, without limitation, such documents as drawings, specifications, instructions to bidders, general and/or special conditions, and any addenda thereto issued before the date of Subcontractor's tender closing to the Contractor or as modified herein), and this Agreement including the Subcontract Conditions and Appendix "B", if any, forming part hereof (hereinafter called the "Contract Documents").

B. The Subcontractor will begin work on or about the 15th day of March, 2018, and will carry on and complete the Work on or before the 15th day of November, 2018, (hereinafter called the "Subcontract Time") generally in accordance with the Schedule attached hereto or as otherwise provided for by the Prime Contract and the Subcontractor shall carry out its work in a manner which shall not delay the work of the Contractor or of other subcontractors on the Project. The order and schedule of the Work will be at the discretion of the Contractor in consultation with the Subcontractor.

C. The period of time in SC 18 shall be 3 days.

SUBCONTRACT CONDITIONS

SC 1 - PRECEDENCE

- 1.1 In the event of any discrepancy between the various documents constituting the Prime Contract and this Subcontract, the terms and conditions of this Subcontract shall prevail, except as may be otherwise noted in Appendix A.

SC 2 - REGULATIONS, LAWS, ETC.

- 2.1 The law of the place of the Work shall govern this Subcontract.

SC 3 - PERMITS, LICENSES AND CERTIFICATES

- 3.1 Unless otherwise stipulated the Contractor shall obtain and pay for the building permit. The Subcontractor shall obtain and pay for all permits, licenses and certificates relative to the Work of this Subcontract.

SC 4 - INSTRUCTIONS AND DECISIONS

- 4.1 The Subcontractor shall carry out the instructions of the Contractor relative to the Work. The Contractor shall determine all matters pertaining to this Subcontract and direct the Subcontractor accordingly. Should the Subcontractor hold such instructions to be at variance with this Subcontract or to involve changes in the Work already built, fixed, ordered or on hand or to be given in error, the Subcontractor shall notify the Contractor in writing before proceeding to carry them out. If the Contractor and the Subcontractor fail to reach agreement with respect to any such instruction and the Contractor decides to have such instruction carried out, the Subcontractor shall comply with such instruction without delay. Any unresolved questions of difference of cost resulting from any such instruction shall be decided in the manner provided by SC 26 hereof.
- 4.2 Whenever by the terms of this Subcontract any matter is to be decided, stipulated, requested or required by the Contractor, or to be done to the approval or satisfaction or at the discretion or with the authority or according to the opinion of the Contractor or acceptable or satisfactory to the Contractor or otherwise to be subject to singular or discretionary determination by the Contractor, the Contractor shall act reasonably and in a timely manner and if the Contractor's approval or consent is required pursuant to any provision of this Subcontract such approval or consent shall not be unreasonably withheld.

SC 5 - CHANGES TO THE WORK

- 5.1 The Contractor, without invalidating this Subcontract, may make changes by altering, adding in, or deleting from the Work and the Subcontract Price and Subcontract Time shall be adjusted accordingly. No changes shall be made without a written order from the Contractor and no, subject to SC 25 hereof, claim for an addition or deduction to the Subcontract Price or change in the Subcontract Time shall be valid unless so authorized and at the same time valued or signed to be valued at a price satisfactory to the Contractor and the Subcontractor.

SC 6 - SHOP DRAWINGS

- 6.1 The Contractor shall determine the number of copies of shop drawings as may reasonably be required together with the procedure and schedule for the transfer of them, and the Subcontractor shall prepare and supply such shop drawings in compliance with the Prime Contract.

SC 7 - RECORD DRAWINGS, MAINTENANCE MANUALS, ETC.

- 7.1 The Subcontractor shall supply all record drawings, maintenance manuals, instructions, brochures, guarantees, warranties, certificates, and other similar documents, as required of it by the Contract Documents in a manner and at a time stipulated by the Contractor but in any event not later than the Subcontractor's final progress estimate or 2 weeks before the Consultant's final inspection, whichever is earlier.

SC 8 - TRIAL ASSEMBLIES AND SAMPLES

- 8.1 The Subcontractor shall furnish the Contractor such mockups, trial assemblies and samples, as are required by the Contract Documents at such times and in the manner requested by the Contractor.

SC 9 - TESTS AND DESIGNS

- 9.1 The Subcontractor shall furnish the Contractor with any tests and designs related to the Work as may be required by the Contractor in addition to tests and designs called for in the Contract Documents. If the Work to which such tests and designs are related is found to be in accordance with the Contract Documents, the Contractor shall pay the cost of reexamination, testing, design and replacements.

SC 10 - SUPERVISION & WORKERS

- 10.1 The Subcontractor shall keep on the Project, at all times during the course of the Work, an experienced, designated responsible person and any necessary assistants, all of whom shall be satisfactory to the Contractor. This person shall not be changed except with the consent of the Contractor, unless such person proves to be unsatisfactory to the Subcontractor or ceases to be in the Subcontractor's employ. This person shall represent the Subcontractor and directions on minor matters given to the person shall be held to be given to the Subcontractor. Important directions shall be given in writing to the Subcontractor. The Subcontractor shall provide efficient supervision to the Work, using its best skill and attention. The Subcontractor shall not employ on the Work any unfit person or anyone not skilled in the work assigned to them.

SC 11 - EMERGENCIES

- 11.1 The Contractor has authority in an emergency to stop the progress of the Work whenever, in the Contractor's opinion, such stoppage may be necessary to ensure the safety of life, or any part of the Project, or neighbouring property. The Contractor has the authority to make changes and to order, assess and award the costs of work extra to the Subcontractor or otherwise as may, in the Contractor's opinion, be necessary to ensure such safety.

SC 12 - PROTECTION OF THE WORK AND PROPERTY

- 12.1 The Subcontractor shall be responsible for the protection of its own Work and shall take all reasonable precautions to protect the Work and property of others during the performance of the Work.

SC 13 - WARRANTY

- 13.1 The Subcontractor warrants the Work in accordance with the Contract Documents. No payment to the Subcontractor and no partial or entire occupancy of the Work by the Owner shall be construed as an acceptance of any Work or material not in accordance with this Subcontract. The Subcontractor shall promptly remove from the Project any defective Work, whether the result of poor workmanship, use of defective materials, damage through carelessness or other act or omission of the Subcontractor, which has been ordered by the Contractor as failing to conform to the Contract Documents, whether incorporated into the Work or not. The Subcontractor shall promptly replace and re-execute such defective or condemned Work. The Subcontractor agrees to pay for damage resulting from corrections made under this requirement.

SC 14 - HOUSEKEEPING

- 14.1 During construction, the Subcontractor shall at all times remove and keep removed from the site all debris resulting from its operations, and upon completion of the Work shall remove all temporary structures belonging to the Subcontractor, and shall leave the premises in a neat and tidy condition.

SC 15 - BONDING

- 15.1 Notwithstanding the terms and conditions of the instructions to bidders, the Subcontractor, if required by the Contractor, must produce bonds with a Surety in a form acceptable to the Contractor and must maintain same in good standing until completion of this Subcontract, provided however, that any such requirement must be requested by the Contractor within 15 days of the execution of this Subcontract. The cost of a Labour and Material Payment bond and/or Performance bond shall be borne by the Subcontractor if called for at the time of tendering, but otherwise the cost shall be borne by the Contractor. Any demonstrable costs associated with a change of the Surety company of the instruction of the Contractor shall be borne by the Contractor.

SC 16 - INSURANCE

- 16.1 The Subcontractor shall, without limiting its obligations or liabilities herein, provide, maintain and pay for:
- general liability insurance, automobile liability insurance, aircraft and watercraft liability insurance in the amounts and on terms described in and consistent with the Contract Documents unless otherwise specified;
 - Workers' Compensation insurance covering all employees and sub-contractors' employees, engaged in the Work. In accordance with the statutory requirements and all risks contractor's equipment insurance covering construction machinery and equipment used by the Subcontractor for the performance of the Work;
 - such other insurance as may be required by the Contractor from time to time, with regard always to a standard of insurance coverage reasonably expected to be carried by any prudent Subcontractor performing similar work for others.
- 16.2 The minimum amount of insurance to be provided under items (b) and (c) above shall not be less than those of the Prime Contract and in no case shall be less than \$2,000,000 for bodily injury and/or property damage.
- 16.3 Prior to commencement and through to completion of the Work, the Subcontractor shall provide the Contractor with certificates (or with full complete copies if the Contractor has need of them) of such insurance, which shall be subject to the Contractor's approval for adequacy of protection.
- 16.4 The Contractor shall be provided with not less than 15 days written notice in advance of any cancellation, change or amendment restricting coverage.
- 16.5 The Subcontractor, upon request, shall provide proof of good standing with the Workers' Compensation Board.
- 16.6 On projects where the Contractor is required by the Prime Contract or by the Owner to carry all risk or similar insurance, such insurance may be subject to an amount deductible from the sum otherwise payable thereunder, and the burden of such deduction shall be borne by the party responsible for the loss, or if no responsible party can be determined, by the party receiving the direct benefit of such insurance.

SC 17 - HOLD HARMLESS

- 17.1 The Subcontractor shall indemnify and hold harmless the Contractor, the Owner, the Consultant, their agents and employees from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties that arise out of, or are attributable to the Subcontractor's performance or non-performance of the Subcontract (hereinafter called "claims"), provided such claims are:
- attributable to bodily injury, sickness, disease or death or injury to or destruction of tangible property, and
 - caused by negligent acts or omissions of the Subcontractor or anyone for whose acts the Subcontractor may be liable, and
 - made in writing within a period of 6 years from the date of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the place of the Work.
- The Contractor hereby expressly waives the right to indemnify for claims other than those stated above.
- 17.2 The Contractor shall indemnify and hold harmless the Subcontractor, its agents and employees from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Subcontractor's performance of the Subcontract which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Place of the Work.

SC 18 - CONTRACTOR'S RIGHT TO DO WORK OF THE SUBCONTRACTOR OR TERMINATE THE SUBCONTRACT

- 18.1 If the Subcontractor should neglect to prosecute the Work, property or fail to perform any provision contained in the Contract Documents, the Contractor may give the Subcontractor written notice specifying such default and if such default shall continue for the period of time specified in Article 1.C. hereof the Contractor, without prejudice to any other right or remedy it may have, may make good such deficiencies and deduct the cost thereof from the payment otherwise due to the Subcontractor or may terminate this Subcontract, and may, for the purpose of completing the Work, take possession of all materials, tools and equipment, upon the premises, and may either complete this Subcontract itself or employ any other person, firm or corporation to do so, charging all costs incurred to the Subcontractor.
- 18.2 If the Subcontractor should be adjudged bankrupt, or if a judgement is made and is not satisfied, or makes a general assignment for the benefit of creditors or if a receiver is appointed on account of the Subcontractor's insolvency, the Contractor may, without prejudice to any other right of remedy it may have, by giving to the Subcontractor or receiver or trustee in bankruptcy written notice, take over the Work of the Subcontractor, or terminate the Subcontract. In completing the Work of the Subcontractor, the Contractor shall be entitled to recover all costs incurred as a result of completion of the Subcontract including any replacement contractors, labour, equipment, materials, interest, legal expenses and any other costs associated with or resulting from completing the Work of the Subcontract.

ARTICLE 2 - PAYMENT

The Contractor agrees, subject to such additions and deductions for changes as may be determined in accordance with the terms hereof, to pay the Subcontractor including Federal sales tax in effect at the time of the Subcontractor's tender closing in Canadian Funds for the performance of this Subcontract as follows:

- A. Payments shall be made monthly on progress estimates as approved by the Contractor covering 90 % of the value of the Work completed by the Subcontractor to the 25th of the previous month; but in no event shall payment be made later than 45 days after receipt of the Subcontractor's monthly progress estimate by the Contractor.
- B. Payment Clarifications:
 - a. Granular Base Course:
 - i. Payment will be based on accepted quantity supplied to site. All loads shall be scaled using certified truck scale. Copy of scale calibration certificate shall be provided to contractor prior to commencement of haul. Truck haul tickets by truck to be provided daily to Contractor personnel for verification which shall be used for payment purposes.
 - ii. ECL will pay an interim crush rate of \$22.48/tonne less \$10.98/tonne (\$11.50/tonne) monthly.
 - iii. ECL would reduce the rate paid by \$10.98/tonne if we had to haul material with our own forces. This would accommodate loading and hauling. Truck scale provided by JMB.
 - iv. It is the intention of ECL to utilize JMB for supply and delivery of the GBC as required.
- C. It is agreed between the Contractor and Subcontractor hereto that payments made shall be treated as advances which will be deducted from the final payment amount.
- D. Payment of the balance owing under this Subcontract shall be made within 10 days after payment has been received by the Contractor, or within a reasonable period of time after total performance or termination of the Prime Contract, or stoppage of the Project, whichever is earlier. This provision shall not relieve the Contractor from its obligation of payment to the Subcontractor in the event the Contractor does not receive the balance of the contract funds from the Owner within a reasonable period of time.
- E. If the Contractor fails to make any payments to the Subcontractor as such payments become due under the terms of this Subcontract, or in an award by arbitration or a court, interest of Prime % per annum on such unpaid amounts shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.
- F. Quality Control Testing by the Contractor on all aggregates at the crusher or in the crushed stockpiles does not relieve the Subcontractor from any obligation to perform all work in strict accordance with the requirements of the Contract.

ARTICLE 3 - AGREEMENT

All the documents as set forth in Article 1 A. form part of this Agreement and the whole shall constitute the entire contract between the parties (hereinafter called the "Subcontract"). This Subcontract shall enure to the benefit of and be binding upon the parties hereto, their respective successors, executors, administrators and permitted assigns.

ARTICLE 4 - ADDRESSES FOR NOTICES

Addresses for notices for the parties under this Subcontract are:

Contractor's Address	P.O. Box 5210, Fort McMurray, AB, T9H 3G3
Subcontractor's Address	P.O. Box 6977, Bonnyville, AB, T9N 2H4

IN WITNESS WHEREOF the parties hereto have executed this Agreement including Conditions following, the day and year first above written,

SIGNED, SEALED AND DELIVERED

in the presence of	Contractor	E CONSTRUCTION LTD.	SEAL
_____	per: (Signature)		_____
_____	Name & Title	Dean Morrow, VPO	_____
Witness	per: (Signature)		_____
	Name & Title	DEAN MORROW, DIVISION	_____
	Subcontractor	JMB CRUSHING SYSTEMS ULC	SEAL
_____	per: (Signature)		_____
_____	Name & Title	Bill Backe, President	_____
Witness	per: (Signature)	_____	_____
	Name & Title	_____	_____

- SC 19 - SUBCONTRACTOR'S RIGHT TO STOP WORK OR SUSPEND OR TERMINATE THE SUBCONTRACT**
- 19.1 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency or if a receiver is appointed because of the Contractor's insolvency, the Subcontractor may, without prejudice to any other right or remedy it may have, by giving the Contractor or receiver in bankruptcy written notice, terminate the Subcontract.
- 19.2 If the Work should be stopped or otherwise delayed for a period of 30 days or more under an order of any Court, or other public authority, and providing that such order was not issued as the result of any act or fault of the Subcontractor or of anyone directly or indirectly employed by it, the Subcontractor may, without prejudice to any other right or remedy it may have, by giving the Contractor written notice, terminate the Subcontract.
- 19.3 The Subcontractor may notify the Contractor in writing that the Contractor is in default of its contractual obligations if the Contractor should fail to pay the Subcontractor in accordance with the time for payment stated in Article 2 of this Subcontract. Such written notice shall advise the Contractor that if such default is not corrected within 5 working days from the receipt of the written notice the Subcontractor may, without prejudice to any other right or remedy it may have, stop work and/or terminate the Subcontract.
- 19.4 If the Subcontractor terminates the Subcontract under the conditions set out above, the Subcontractor shall without prejudice to any other right or remedy it may have, be entitled to be paid for all Work performed and for any loss sustained with respect to products and construction machinery and equipment, with reasonable profit, damages and legal expenses.
- 19.5 If the Prime Contract is terminated for any reason, either the Contractor or Subcontractor may terminate this Subcontract upon written notice to the other. Thereafter the respective rights of the parties shall be as if the Subcontractor had terminated the Subcontract under any of the above conditions.
- SC 20 - PROJECT MATERIALS AND EQUIPMENT**
- 20.1 The Subcontractor shall not remove any materials or equipment brought on to the Project for incorporation into the Work without written authority of the Contractor.
- SC 21 - ASSIGNMENT**
- 21.1 Neither party to this Subcontract shall assign the Work or any part thereof without written consent of the other. The Subcontractor will not assign payments under this Agreement without the written consent of the Contractor, provided always, however, that the Subcontractor by reason of this provision will not be precluded from assigning or pledging the benefits of this Subcontract in the normal course of business.
- SC 22 - SUBCONTRACTORS**
- 22.1 The Subcontractor agrees that the list of names of sub-subcontractors to be supplied prior to the signing of this Subcontract is the list of sub-subcontractors to be used to carry out those portions of the Work noted therein and the Subcontractor shall not employ any sub-subcontractor to whom the Contractor may reasonably object. If the change of any name on such list is required by the Contractor and the Work has to be awarded to a higher bidder, the amounts payable hereunder shall be increased by the difference payable as a result of the difference between the two bids. No such subcontracting by the Subcontractor will relieve the Subcontractor from any obligations under this Subcontract. The Subcontractor agrees that it shall incorporate the terms and conditions of the Contract Documents into all agreements it enters into with any such sub-subcontractors.
- SC 23 - STATUTORY DECLARATION**
- 23.1 Before payment of the balance payable pursuant to Article 2 hereof is made, the Subcontractor must execute and submit the Statutory Declaration and Indemnity in A.C.A. Form B Rev. 1, to the Contractor or such other form as may be acceptable to the Contractor.
- SC 24 - PAYMENT OF BILLS**
- 24.1 The Subcontractor shall promptly and satisfactorily settle and pay for all accounts, claims or liens with respect to the Work. If, after having received 2 working days written notice from the Contractor to settle and pay such accounts, claims or liens, the Subcontractor fails or refuses to settle or pay same, the Contractor shall have the right to settle or pay such accounts, claims and/or liens for the account of the Subcontractor and the receipt issued to the Contractor with respect to such accounts, claims or liens shall be conclusive evidence as to such payments and the amount thereof. Notwithstanding the foregoing provision, the Subcontractor shall not be required to pay any such accounts, claims or liens if it has reasonable grounds for disputing same and the Contractor in these circumstances will only have the right to pay or settle such accounts, claims or liens in such manner as in its opinion, will not prejudice the Subcontractor's right to dispute same.
- SC 25 - SITE OCCUPANCY AND ROADWAY RENTALS**
- 25.1 When pursuant to the terms and conditions of the Prime Contract the project contains a site occupancy or roadway rental clause and the work completed by the Subcontractor is subject to that clause the cost of such occupancy/rental will be added or deducted from the Subcontractor as follows:
- the Subcontractor shall be responsible to complete his work in the number of days or at the productivity level indicated in his quotation with the Subcontractor being charged for the number of days used and the balance of days will either be added or deducted from his progress estimate.
 - in the event the Subcontractor is entitled to additional site occupancy/roadway rental days pursuant to the Prime Contract and those days are granted to the Subcontractor by the Owner those additional days will be added to the number of site days indicated in his quotation.
 - in the event no site occupancy or roadway rental days were contained in the quote of the Subcontractor it is assumed that the work will be completed concurrent with the work of the Contractor. If the Work of the Subcontractor extends beyond the completion of the work of the Contractor then the Contractor will deduct the additional days of site occupancy/roadway rental.
- SC 26 - LIQUIDATED DAMAGES**
- 26.1 When pursuant to the terms and conditions of the Prime Contract the project contains a liquidated damages provision and the work undertaken by the Subcontractor is subject to that clause, liquidated damages will be dealt with as follows:
- in the event the project is completed prior to the specified completion date or within the number of working days allowed then no charge or credit will be given to either the Contractor or the Subcontractor.
 - in the event the Contractor schedule is delayed forcing the project into liquidated damages through no fault of the subcontractor then no liquidated damages charge will be made to the Subcontractor and will be to the account of the Contractor.
 - when liquidated damages result from a delay in the Subcontractor commencing or recommencing its Work or the Subcontractor being over site occupancy days then the Subcontractor will be charged the liquidated damages resulting from such delay and/or additional site occupancy.
 - when the Subcontractor is to have completed its work concurrent with the work of the Contractor and does not do so for the Subcontractor's own reasons then any liquidated damages resulting from such delay will be to the account of the Subcontractor.
- SC 27 - PARTIAL OCCUPANCY**
- 27.1 Should the Owner request partial occupancy, the Subcontractor shall prepare the portion of the Work necessary for such partial occupancy. The Contractor shall endeavour to make arrangements with the Owner to accept those portions to be used and to span any warranty from the date of this acceptance.
- SC 28 - DISPUTES**
- 28.1 In the case of any dispute arising between the Contractor and the Subcontractor as to their respective rights and obligations under the Subcontract, either party hereto shall be entitled to give the other written notice of such dispute. In the event that the parties have agreed to submit such disputes to arbitration either party may thereupon request arbitration. In the event that the parties do not agree to submit such dispute to arbitration, then either party may seek recourse pursuant to such judicial process as the circumstances may require.
- 28.2 Arbitration proceedings or legal proceedings shall not take place until after the performance or alleged performance of the disputed Work, except:
- when the dispute concerns a progress payment;
 - where either party can show that the matter in dispute requires immediate consideration while evidence is available;
 - in the case of legal proceedings, where the action may become prescribed by reason of delay.
- 28.5 If, during the continuation of a dispute, the Contractor deems continuation of the Work or the Subcontractor to be necessary under the terms of the Prime Contract, the Contractor may order the Subcontractor to continue such Work under protest. Continuation of any Work under protest, either by written direction of the Contractor or by written notice of the Subcontractor that such Work is being performed under protest, shall not prejudice any right or remedy of the Subcontractor to receive fair and reasonable payment for the Work done under protest or for materials furnished or equipment provided to execute such Work done under protest.
- 28.4 Should any dispute arise between the Contractor and the Subcontractor in any way pertaining to this Subcontract that is related to a dispute between the Owner and the Contractor, such dispute shall be disposed of in the same manner, by the same Arbitrator or Arbitration panel or the same Court, at the same time, in the same hearing as the dispute is to be disposed of if agreed between the Owner and the Contractor.
- 28.5 This Article shall apply to all contracts entered into between the Contractor with any Owner or any other party whereby the Contractor is required to incorporate into all of its subcontracts the rules for the Dispute Resolution Process for Government of Alberta Construction Contracts, Edition 1, 1997, as published and as may be amended by the Government of Alberta (herein referred to as the "D.R.P."). Notwithstanding anything else to the contrary stated herein the Contractor and the Subcontractor agree that the D.R.P. is hereby incorporated into and forms part of this Subcontract as if the terms hereinafter set out. For greater clarification but without limiting the generality of the foregoing, in the event the D.R.P. requires any notice to be given by the Subcontractor upon the Contractor or the Owner in respect of a dispute, claim or otherwise, the Subcontractor shall serve such notice strictly in accordance with the terms of the D.R.P.. Further, should the Subcontractor fail to comply with any term of the D.R.P. which failure prejudices either the right of ability of the Contractor to claim over as against the Owner or in respect of any other right, the Subcontractor shall be deemed to have forfeited its right and entitlement to claim as against the Contractor in respect of the subject matter of the notice.
- SC 29 - SAFETY**
- 29.1 The Subcontractor agrees to respect and comply with all applicable safety legislation and comply with all safety procedures on the Project as defined in APPENDIX B.
- SC 30 - ROYALTIES AND PATENTS**
- 30.1 The Subcontractor shall indemnify the Contractor and the Owner against all actions, claims or proceedings for infringement of any patent rights and for royalties or other payments which may be payable in connection with any such patent rights in carrying out the Subcontract.

APPENDIX B

Jeff Buck

From: MORROW, Dean (EDECL) <dean.morrow@ecld.ca>
Sent: February-05-18 2:29 PM
To: Jeff Buck
Subject: RE: Anzac

Jeff,

Sorry for the delay with the subcontract. I wanted to review a few of the terms and conditions with Jack and yourself prior to sending it off. Please review the items below and provide your comments or acceptance:

- We anticipate the load, haul and scale person cost from your pit to Anzac would be approximately \$11.00/tonne if we had to hire and coordinate our own independent trucking. As such we propose that we use this number in lieu of the proposed \$5.00/tonne stated in your quote. Therefore;
 - o ECL would pay an interim rate of \$22.48/tonne less \$10.98/tonne (\$11.50/tonne) monthly.
 - o ECL would reduce the rate paid by \$10.98/tonne if we had to haul material with our own forces. This would accommodate loading and hauling. Truck scale provided by JMB.
 - o It is the intention of ECL to utilize JMB for supply and delivery of the GBC as required.
 - As previously discussed, the subcontract will include the GBC quantity only. Anticipated quantity after addendums is 144,300 tonnes.

In addition, please provide a schedule for the crushing of these aggregates at your earliest convenience.

Thanks

Dean Morrow



Division Manager
Office: (780) 743-3822 | F: (780) 743-5916 | C: (780) 446-9554
745 Memorial Drive, Fort McMurray, AB, T9K 0K4
dean.morrow@ecld.ca | www.ecld.ca

For project updates and information visit www.ecld.ca/epost/

Dean, This should be attached to the contract.

ACKNOWLEDGED

1

DEAN MORROW, MAY 15TH 2018

This is Exhibit "L" referred to in the Affidavit of

T.M. KALINSKI

Sworn before me this 16 day

of 24, 2022

A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor



OUR FILE: 27442-15

YOUR FILE: 55198-1

REPLY TO:

CAMRON D. SCHWARTZ

DIRECT LINE: (780) 701-6364

DIRECT FAX: (780) 425-1010

EMAIL: cschwartz@ogilvieilaw.com

CANADIAN WESTERN BANK PLACE
SUITE 1400
10303 JASPER AVENUE
EDMONTON AB T6J 3N6
FACSIMILE (780) 429-4453
TELEPHONE (780) 421-1818

April 8, 2019

Field Law
2500, 10175 – 101 Street
Edmonton, AB T5J 0H3

Attention: Brian Futoransky

Dear Sir:

**Re: Notice of Default Re: Sand and Gravel Operating Agreement Between
Kalinko Enterprises Ltd. et al and JMB Crushing Systems ULC Dated
March 22, 2019 (the "Notice")**

Via Email

We are in receipt of your letter of March 22, 2019 and the attached Notice of Default.

With regards to the amount of \$114,626.51, JMB Crushing Systems ULC ("JMB") will be providing your client with payment of that amount next week.

With regards to the \$400,000 referred to in the second paragraph of the Notice, there are set-off amounts that will be detailed below. Our suggestion with regards to resolution is that the \$400,000 not be paid until such time as the amount of the set-off is determined. In the event that your client cannot agree to this, then my client invokes the arbitration clause from the Agreement and you can consider this letter our Notice of Arbitration pursuant to 13.1 of the Agreement.

The three projects where your client's conduct has caused JMB to suffer a loss are as follows.

Pit 19

As you are aware, Alberta Environment has imposed an Administrative Proceeds Penalty against your client in the amount of \$226,020.84. That was calculated using 37,670.14 tonnes at \$6 per tonne. Your client paid that Administrative Penalty with the \$6 royalty provided by JMB. If the ultimate result of my client's appeal to the Public Lands Appeal Board ("PLAB") is not successful then it means that your client did not have authority to authorize JMB to go into the SMC or take gravel from the SMC. Therefore your client would not be entitled to a royalty payment for such gravel.

In addition, an Administrative Penalty has been issued against JMB. The Director's letter dated June 11, 2018, sets out the Preliminary Assessment amount of The Administrative Penalty against JMB of \$586,757. After JMB provided additional information, the Director reduced the amount of The Administrative Penalty to \$247,236.31 in a written decision issued February 22, 2019. That decision is currently under appeal to the PLAB. We are currently attempting to schedule a mediation for June of this year through the PLAB process. If this dispute is not resolved at mediation then we will continue with the Appeal Hearing. My client will not know the amount of their loss until such time as the Administrative Penalty matter is resolved.

Last, there is the reclamation expense in the amount of \$38,367 that your client should be responsible for in the event that they did not have approval to authorize JMB to go into the SMC in the first place and disturb the land. Had JMB not gone in, as per your client's instructions, then there would be nothing to reclaim.

Anzac/Checham

On this matter JMB bid a project based on the representations of your client (both verbally and in writing) that there was sufficient gravel available. However, it turned out that there was very little gravel at this site and the gravel that was there was an extremely poor quality. In addition, your clients didn't have the necessary agreements in place for various road and pipeline authorities to allow access. JMB estimates that there losses are in excess of \$500,000 for the extra cost of having to obtain gravel from other sites in order to meet their commitment and contractual obligations for this project. JMB is currently in the process of calculating those losses with supporting documents and are in attempts to try and mitigate those losses. Once the amounts are calculated, your client will be advised accordingly.

Wabasca/Rock Island/Alvin Bancarz

Once again JMB bid a project and entered into a contract based on your client's assurances that JMB would have access to this pit near Wabasca to supply the gravel. It is my understanding from review of the PLAB's decision of December 20, 2018 and the Administerial Order issued January 16, 2019 that there were numerous terms and conditions that your clients had to meet in order to ensure that JMB would have access to the roadway in order to attend your client's SML site for gravel. It is our understanding that several of those terms and conditions have not yet been met by your client and as a result your clients and JMB cannot use the roadway to access this gravel pit. Once again JMB is going to incur significant costs of having to attempt to obtain the gravel for this project from other sources.

JMB is willing to continue to work with your clients to try and minimize the impact of the losses to JMB caused by your client's conduct in the above three mentioned matters. However, if your client is not willing to work with JMB to try and resolve this outstanding issue then we should proceed with the Arbitration.

We look forward to hearing from you.

Yours truly,

Ogilvie LLP

Per:

CAMRON D. SCHWARTZ
CDS/mdd

cc: Client

This is Exhibit " M " referred to in the
Affidavit of

TIM KALINSKI

Sworn before me this 16 day
of July, 2020


A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

COURT FILE NUMBER 1903 - 19761
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF JMB CRUSHING SYSTEMS ULC and
1610880 ALBERTA ULC
DEFENDANT E CONSTRUCTION LTD.
DOCUMENT STATEMENT OF CLAIM



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

OGILVIE LLP
Barristers & Solicitors
1400, 10303 Jasper Avenue
Edmonton AB T5J 3N6
Attention: Rob O'Neill
Phone: 780.429.6224
Fax: 780.429.4453
File No.: 27442.17
**Service will be accepted by delivery or fax. No
other form of service will be accepted.**

NOTICE TO DEFENDANT

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence

Statement of facts relied on:

1. The Plaintiff, 1610880 Alberta ULC, is a corporation duly incorporated pursuant to the laws of the Province of the Alberta, whose previous legal entity name was JMB Crushing Systems ULC (collectively "JMB").
2. The Defendant, E Construction Ltd ("ECL"), is a corporation duly incorporated pursuant to the laws of the Province of Alberta.
3. By way of written agreement dated August 19, 2017, (the "Prime Contract") the Defendant contracted with OCL Group Inc. to perform certain work and services for the construction of a project known as the "QU4411 - Anzac Water and Sewer Contract 2" (the "Project").

4. By way of written agreement dated the 8th day of March, 2018, (the "Agreement"), the Defendant subcontracted portions of the Prime Contract to JMB, wherein the Plaintiff agreed to supply the Defendant with all labour, supervision, materials, tools, and equipment necessary to complete the aggregate scope of work (the "Work") as further particularized in the Agreement.
5. Express terms of the Agreement included, but are not limited to, the following:
 - a) The cost of the aggregate would be \$22.48 per tonne;
 - b) Payments shall be made monthly by the Defendant on progress estimates as approved by the Defendant covering 90% of the value of the Work completed by the Plaintiff to the 25th of the previous month, but in no event shall payment be made later than 45 days after receipt of the Plaintiff's monthly progress estimate by the Defendant;
 - c) Further payment terms included that payment would be based on accepted quantity supplied to the site and that the Defendant would pay an "interim crush rate" of \$22.48/tonne monthly.
 - d) Payments would be treated as "advances which will be deducted from the final payment amount";
 - e) Payment of the balance owing under the Agreement shall be made within 10 days after payment has been received by the Defendant, or within a reasonable time after total performance or termination of the Prime Contract, or stoppage of the Project, whichever is earlier. This provision does not relieve the Defendant from its obligation of payment to the Plaintiff in the event the Defendant does not receive the balance of the funds under the Prime Contract;
 - f) If the Defendant fails to make any payments as they become due under the terms of the Agreement, interest at prime rate shall accrue on any unpaid amounts
 - g) The Agreement was the entire contract between the Defendant and the Plaintiff;
 - h) Such further and other terms as may be proven at trial of this action.

(collectively the "Terms")
6. The Plaintiff has duly performed the Work in accordance with the Terms of the Agreement and has invoiced the Defendant in the amount of \$1,573,000 (the "Indebtedness") in respect of the same. Despite repeated demand, and in breach of the Agreement, the Defendant has failed, refused, or neglected to make payment in the

amount of the Indebtedness, or at all, and the same remains a just debt improperly withheld.

7. Further, or in the alternative, the Defendant has been unjustly enriched to the detriment of the Plaintiff absent juristic reason for the same.
8. In the further alternative, the Defendant claims the amount of the Indebtedness on a *quantum meruit* basis.
9. The Plaintiff claims contractual interest on the Indebtedness, or in the alternative, interest on the Indebtedness pursuant to the provisions of the *Judgment Interest Act*, R.S.A. 2000 c. J-1.
10. The Plaintiff claims the costs of the within action on a solicitor own client basis, party-party basis, or such further and other basis as this Honourable Court deems just in the circumstances.

Remedy sought:

11. Judgment in the amount of \$1,573,000 or such further and other amounts as may be proven at trial of this action.
12. Contractual interest, or in the alternative, interest pursuant to the provisions of the *Judgment Interest Act*, R.S.A. 2000 c. J-1.
13. Costs on a solicitor own client basis, party-party basis, or such further and other basis as this Honourable Court deems just in the circumstances.
14. Such further and other relief as this Honourable Court deems just in the circumstances.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING


If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is Exhibit " N " referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2023


A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

Scott Matheson

From: Scott Matheson
Sent: Monday, January 20, 2020 12:32 PM
To: 'CSchwartz@ogilvielaw.com'
Subject: RE: JMB and Kalinko

Hi Cam,

I assisted Kalinko with this last year; Brian passed your email along.

The owners and Kalinko have a registrable security interest in the sand and gravel under the terms of the operating agreement (see attached) and filed at PPR to protect that interest while I understood negotiations were continuing between our clients to resolve their dispute. I've reached out to my clients for an update in that regard and expect to hear back later this week.

Scott



Scott Matheson | Partner
T 780-643-8765 | F 780-428-9329 | smatheson@fieldlaw.com
2500 - 10175 101 ST NW, Edmonton AB T5J 0H3

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From: Camron D. Schwartz [<mailto:CSchwartz@ogilvielaw.com>]
Sent: Friday, January 17, 2020 10:43 AM
To: Brian Futoransky
Subject: JMB and Kalinko

Brian,

In completing a PPR search for our clients this am I came across a registration by your clients. When I attempted to pull the related Security Agreement there was nothing available. Can you please provide me with a copy of the Security Agreement which allows your office, on behalf of your clients, to file registration against my clients?

I am quite certain that JMB didn't enter any form of Security Agreement with your clients on or about April 23, 2019. If the registration was completed in error would ask that you move quickly to have it discharged.

We look forward to hearing from at your earliest convenience.

Best regards

Cam

Camron D. Schwartz
Partner

Ogilvie LLP | 1400 Canadian Western Bank Place
10303 Jasper Avenue Edmonton, AB T5J 3N6
Direct (780) 701-6364 Direct Fax (780) 701-5913 Main (780) 421-1818

This is Exhibit " 0 " referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day
of July, 202

A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor

AGGREGATE PURCHASE AND REMOVAL AGREEMENT

This agreement made effective the 16 day of January, 2020.

BETWEEN:

N.P.A. LTD., a corporation conducting business in the Province of Alberta under the name E Construction

(hereinafter called the "**Purchaser**")

OF THE FIRST PART

AND:

JMB CRUSHING SYSTEMS INC., a corporation conducting business in the Province of Alberta

(hereinafter called the "**Vendor**")

OF THE SECOND PART

WHEREAS the Vendor was previously an Alberta corporation known as JMB Crushing Systems ULC, which amalgamated to form 1610880 Alberta ULC, and which has continued out of Alberta into the Province of British Columbia, where it amalgamated to form the Vendor;

AND WHEREAS the Vendor has entered into the Gravel Storage Agreement with Precambrian;

AND WHEREAS the Vendor has extracted the Extracted Aggregates from the Vendor SML Lands and transported them to the Precambrian SML Lands where they have been crushed, stockpiled and stored;

AND WHEREAS the Vendor owns the Extracted Aggregates free and clear of any and all claims, liens, encumbrances or security interests of any kind;

AND WHEREAS the Vendor wishes to sell to the Purchaser the Prepaid Aggregate from the Extracted Aggregates stored on the Precambrian SML Lands;

AND WHEREAS the Gravel Storage Agreement permits the Vendor to store the Extracted Aggregates on the Precambrian SML Lands and allows the Vendor to sell the Prepaid Aggregate to the Purchaser;

AND WHEREAS the Gravel Storage Agreement further permits the Vendor, Purchaser or either of their designates to enter onto the Precambrian SML Lands for the purpose of removing the Prepaid Aggregate;

AND WHEREAS the Vendor has agreed and has authority to grant to (or has obtained in favour of) the Purchaser the right for the Purchaser to enter onto the Precambrian SML Lands to purchase from the Vendor, free and clear of any and all claims, liens, encumbrances or security interests of any kind, and to remove from the Precambrian SML Lands the Prepaid Aggregate for the Purchase Price;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration now paid by each party to the other (the receipt and sufficiency of which is hereby acknowledged by the parties hereto), and of the mutual promises, covenants and agreements hereinafter set forth, the parties agree and covenant with each other as follows:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement the following terms, whenever used shall have the meaning set forth below:

- (a) "**Aggregates**" means rock, gravel, sand and other items related thereto, and for the purposes of this Agreement, means Aggregates meeting the "Designation Two Class Twenty GBC Material Specification";
- (b) "**Agreement**" means this Agreement as the same may be amended from time to time in accordance with the terms hereof and the expressions "**herein**", "**hereof**", "**hereto**", "**above**", "**below**" and similar expressions used in any paragraph, subparagraph, section or article of this Agreement refer and relate to the whole of this Agreement and not to that paragraph, subparagraph, section or article only, unless otherwise expressly provided;
- (c) "**Applicable Laws**" means any laws, regulations, statutes, rules, by-laws or otherwise of any governmental authority with jurisdiction over the Vendor, Purchaser, the Vendor SML Lands, the Precambrian SML Lands and the Extracted Aggregates, and includes Environmental Laws;
- (d) "**Business Day**" means any day except a Saturday, Sunday or statutory holiday in the Province of Alberta;
- (e) "**Environmental Laws**" means all applicable statutes, regulations, ordinances, by-laws, guidelines, policies and codes (whether federal, provincial or municipal) relating to the protection and preservation of the environment, occupational health and safety and/or Hazardous Substances;
- (f) "**Extracted Aggregates**" means Aggregates extracted from the Vendor SML Lands by the Vendor which Aggregates have been transported to the Precambrian SML Lands where they have been crushed, stockpiled and stored, and which total no less than 70,000 tonnes of Aggregates, and which all meet the "Designation Two Class Twenty GBC Material Specification";

- (g) "**Government of Alberta**" means Her Majesty the Queen in Right of the Province of Alberta as represented by the ministry from time to time responsible for the administration of surface material leases and the extraction of Aggregates from public lands;
- (h) "**Gravel Storage Agreement**" means that Agreement to Store Gravel on SML 020038 dated January 15, 2020 between the Vendor and Precambrian in the form attached hereto as Schedule "A";
- (i) "**Hazardous Substances**" means any substance which is hazardous to persons, property or the environment, including, without limitation, any pollutant, dangerous substance, liquid waste, industrial waste, hauled liquid waste, toxic substance, special waste or any other hazardous substance, the use, transportation or release into the environment of which, is now or from time-to-time, prohibited, controlled or regulated under any laws or by any governmental authority having authority over the Precambrian SML Lands or the Vendor SML Lands, and including any law, judgment, decree, order, injunction, rule, statutory regulation or otherwise of any court, arbitrator or government authority to which the Vendor or Precambrian are bound with respect to the Precambrian SML Lands or the Vendor SML Lands;
- (j) "**Precambrian**" means Precambrian Sand & Gravel Ltd., a corporation conducting business in the Province of Alberta;
- (k) "**Precambrian SML Lands**" means those lands outlined in SML 020038 and legally described as SE-8-82-6 W4M & SW-9-82-6 W4M, with respect to which Precambrian held SML 020038 and has the ability to grant the rights outlined in the Gravel Storage Agreement;
- (l) "**Prepaid Aggregate**" means Extracted Aggregates in the amount of 70,000 tonnes which have been crushed and stored on the Precambrian SML Lands and which the Purchaser is entitled to haul and remove from the Precambrian SML Lands pursuant to the terms of this Agreement, and which meet the "Designation Two Class Twenty GBC Material Specification";
- (m) "**Purchase Price**" means the amount of One Million Three Hundred Thirty Thousand (\$1,330,000.00) Canadian dollars, representing a purchase price of Nineteen (\$19.00) Canadian dollars per tonne of Prepaid Aggregate;
- (n) "**Term**" means the term commencing on the date hereof and continuing until the earlier of (a) December 31, 2020; or (b) all of the Prepaid Aggregate has been removed from the Precambrian SML Lands by the Purchaser; and
- (o) "**Vendor SML Lands**" means those lands governed by SML 120004 from which the Vendor extracted the Extracted Aggregates.

ARTICLE 2 – LICENCE AND RIGHTS OF PURCHASER

2.1 The Vendor hereby grants to the Purchaser (including its employees, agents, contractors or designates) the right, during the Term, to enter upon the Precambrian SML Lands for the purpose of hauling and removing the Prepaid Aggregate, which Prepaid Aggregate is hereby sold to the Purchaser, free and clear of any and all claims, liens, encumbrances, security interests or otherwise, for the Purchase Price.

2.2 Without limiting the generality of the foregoing, the Purchaser shall be permitted, in its sole discretion, acting reasonably, to haul and remove the Prepaid Aggregate from the Precambrian SML Lands at such times, in such quantities and in such manner as it determines.

2.3 The Purchaser shall be permitted to utilize crushers, loaders, trucks and other equipment deemed necessary to haul and remove the Prepaid Aggregate from the Precambrian SML Lands.

2.4 The payment of the Purchase Price shall be the sole compensation the Vendor shall be entitled to in consideration for the granting of the rights hereunder and for the sale of the Prepaid Aggregate to the Purchaser, and shall be the only amount payable by the Purchaser to the Vendor in relation to this Agreement and the rights and activities hereunder except as otherwise expressly outlined herein.

2.5 All of the Prepaid Aggregate removed from the Precambrian SML Lands by the Purchaser, and all products resulting therefrom, shall, at all times, be the sole property of, and shall be sold and shipped as the sole property of, the Purchaser. The Purchaser shall have the sole discretion and exclusive right to determine the sale price and identity of the purchaser(s) of all of the Prepaid Aggregate.

ARTICLE 3 – OBLIGATIONS OF VENDOR AND PURCHASER

3.1 The Purchaser shall:

- (a) on the date hereof, pay to the Vendor the Purchase Price, plus applicable GST;
- (b) measure and scale all Prepaid Aggregate removed from the Precambrian SML Lands at the time such Aggregates are hauled or removed from the Precambrian SML Lands and provide an accurate reporting of the Prepaid Aggregate removed from the Precambrian SML Lands during each month of the Term. The Purchaser shall provide monthly reports to the Vendor within thirty (30) days of the immediately preceding month during which Aggregates removal has occurred;
- (c) conduct all its operations on the Precambrian SML Lands in a diligent, careful and workmanlike manner and in compliance with all Applicable Laws;
- (d) be responsible for all of its own internal costs of removing and hauling the Prepaid Aggregate from the Precambrian SML Lands; and

- (e) obtain and maintain in force during the currency of this Agreement public liability insurance in an amount not less than Two Million (\$2,000,000.00) Canadian dollars.

3.2 The Vendor shall:

- (a) be responsible for (or caused to be paid) all royalties, costs, amounts, payments, fees or other amounts of any kind due to the Government of Alberta related to the Extracted Aggregates, Prepaid Aggregate, Vendor SML Lands or the Precambrian SML Lands, and the removal and hauling of the Prepaid Aggregate by the Purchaser, including, without limitation, any community aggregate levies, royalties, lease and land rental costs and land-based taxes, as the case may be;
- (b) be responsible for any payments to Precambrian related to the Gravel Storage Agreement, the storage of the Extracted Aggregates on the Precambrian SML Lands and the removal and hauling of the Prepaid Aggregate by the Purchaser;
- (c) maintain the Gravel Storage Agreement and the right of the Vendor, Purchaser and either of their designates to enter onto the Precambrian SML Lands during the Term hereof to remove the Prepaid Aggregate;
- (d) take all necessary steps to ensure the Purchaser has and maintains the rights granted to it by the Vendor herein, including pursuant to the Gravel Storage Agreement, and including the right of the Purchaser to remove all of the Prepaid Aggregate from the Precambrian SML Lands without interference and free and clear of any and all claims, liens, encumbrances or security interests of any kind during the Term hereof;
- (e) be responsible for, or cause to be completed, any and all reclamation activities and environmental obligations related to the Vendor SML Lands or the Precambrian SML Lands, except to the extent such obligations are caused solely by the negligence or willful misconduct of the Purchaser;
- (f) pay, or cause to be paid, any and all property taxes, rates, assessments and dues that may be assessed or levied on the Vendor SML Lands or the Precambrian SML Lands due to the removal of the Prepaid Aggregate by the Purchaser or otherwise;
- (g) pay, or cause to be paid, any taxes, fees, assessments or dues whatsoever imposed by the Government of Alberta, the Government of Canada, any municipal government or any other governmental authority with jurisdiction over the Vendor SML Lands or the Precambrian SML Lands arising due to the conduct of the activities by the Purchaser hereunder, including paying any inspection fees, business taxes and income taxes (but for clarity excluding the Purchaser's own income taxes from its eventual sale or use of the Prepaid Aggregate);

- (h) ensure the Purchaser has access to the Precambrian SML Lands sufficient to remove the Prepaid Aggregate in accordance with the terms hereof during the entire Term hereof;
- (i) ensure all of the Prepaid Aggregate is free and clear of any and all liens, charges, security interests or encumbrances of any kind and that the Purchaser has clear and unencumbered title to such Prepaid Aggregate and is able to sell or use such Prepaid Aggregate in such manner as the Purchaser determines in its sole discretion, including, if necessary, obtaining any letters of no interest or discharges of security from any of the Vendor's lenders or creditors as may be required;
- (j) ensure, or cause to be ensured, that the Precambrian SML Lands are kept free and clear of any lien, charge or encumbrance which could prevent the Purchaser from enjoying any of the rights and benefits of this Agreement;
- (k) provide, or cause to be provided, unrestricted access to the Purchaser to the Precambrian SML Lands through existing roads and trails;
- (l) not place, or cause not to be placed, any restrictions on the hours of work of the Purchaser, its employees, agents, contractors or designates, except to the extent required by Applicable Laws;
- (m) obtain, or cause to be obtained, all permits, approvals and consents as are required for the Precambrian SML Lands to permit the Purchaser to remove and haul the Prepaid Aggregate from the Precambrian SML Lands;
- (n) not permit any of its own activities or those of any third parties, including Precambrian, to impact the operations of the Purchaser on the Precambrian SML Lands, including the removal of Prepaid Aggregate; and
- (o) not grant or permit to be granted any rights to any other party regarding all or any of the Prepaid Aggregate or Precambrian SML Lands which may affect or interfere with the Purchaser's rights hereunder.

ARTICLE 4 - TERMINATION

4.1 Upon the expiration of the Term of this Agreement, the Purchaser shall be entitled to enter on and remove from the Precambrian SML Lands all plants, tools, machinery, appliances and equipment and stockpiles of Prepaid Aggregate for a period of one hundred eighty (180) days after the expiry or earlier termination of this Agreement. Any stockpiles of Prepaid Aggregate not removed within such period shall become the property of the Vendor. Notwithstanding any provision contained herein to the contrary, the Purchaser has the right, at all times during the Term to remove plant(s), tools, machinery, appliances and equipment and stockpiles put up, erected or placed on the Precambrian SML Lands.

ARTICLE 5 – REPRESENTATIONS AND WARRANTIES OF THE VENDOR

5.1 The Vendor warrants and represent to the Purchaser that, and acknowledges that the Purchaser is relying upon such representations and warranties and would not have entered into this Agreement without the same:

- (a) the Vendor has the right and authority to grant (or caused to be granted to) the Purchaser all of the rights granted hereunder, including, without limitation, the right of the Purchaser to enter upon the Precambrian SML Lands and the right of the Purchaser to remove the Prepaid Aggregate on the terms hereof and using the equipment outlined herein (with such Prepaid Aggregate to be free and clear of any and all claims, liens, encumbrances or security interests of any kind);
- (b) the Extracted Aggregates were removed solely from the Vendor SML Lands in accordance with all Applicable Laws and the Vendor has free and unencumbered ownership of the Extracted Aggregates with the right to sell the same free and clear of any and all claims, liens, encumbrances or security interests of any kind;
- (c) the Vendor complied with all terms of the surface material lease related to the Vendor SML Lands and all Applicable Laws related to the same, and did not breach any terms of any Applicable Laws related to the same;
- (d) the Vendor has no indebtedness, including contingent and undisclosed indebtedness, to any person, firm, corporation or otherwise which does or might, by operation of law or otherwise, constitute a lien, charge claim or security interest of any kind against all or any of the Precambrian SML Lands, Vendor SML Lands or the Prepaid Aggregate;
- (e) no person, firm or corporation has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming an agreement, for the purchase from the Vendor of the Prepaid Aggregate;
- (f) the Purchaser has and shall have full and sufficient rights to enter onto the Precambrian SML Lands and remove the Prepaid Aggregate in accordance with the terms hereof during the entire Term;
- (g) the Vendor is not subject to any legal proceedings which may give rise to a claim, lien or encumbrance of any kind on the Prepaid Aggregate;
- (h) no labour has been performed, nor materials supplied, for all or any of the Vendor SML Lands, the Precambrian SML Lands or the Prepaid Aggregate which has not been fully paid for or for which a builder's lien, mechanic's lien or materialmen's lien or any other lien may be claimed by an entity;
- (i) there are no notices or complaints against the Vendor under any federal, provincial or municipal laws, rules, regulations or bylaws, including Environmental Laws, which now or could result in a lien or charge registered

against all or any of the Vendor's interest in the Precambrian SML Lands, the Vendor SML Lands or the Prepaid Aggregate;

- (j) the rights of Precambrian with respect to the Precambrian SML Lands and to grant the rights in the Gravel Storage Agreement are in good standing and the rights granted thereunder remain unamended;
- (k) all documents submitted by the Vendor to the Government of Alberta in relation to the Vendor SML Lands (including the application for the same) and the Extracted Aggregates were true, complete and correct in all material respects;
- (l) the Vendor has paid all royalties, property, realty, business and other taxes and fees related to the Vendor SML Lands and the Extracted Aggregates;
- (m) the pile(s) of Extracted Aggregates stored at the Precambrian SML Lands contain no less than 70,000 tonnes of Aggregates which can be removed by the Purchaser in accordance with the terms hereof;
- (n) the Prepaid Aggregates which have been purchased and which can be removed by the Purchaser from the Precambrian SML Lands all meet the "Designation Two Class Twenty GBC Material Specification";
- (o) no Hazardous Substance is migrating to or from the Precambrian SML Lands;
- (p) there are no underground storage tanks on or beneath the Precambrian SML Lands;
- (q) neither the Vendor nor Precambrian have buried, dumped, disposed of, spilled or released any Hazardous Substances on, beneath or adjacent to the Precambrian SML Lands; and
- (r) the Vendor has no knowledge of the release of any Hazardous Substances into the environment, in any manner whatsoever or the presence of any Hazardous Substances on, under or around or from the Precambrian SML Lands.

ARTICLE 6- INDEMNITY AND FURTHER COVENANTS

6.1 The Vendor shall indemnify the Purchaser and its directors, officers, employees, contractors and agents (including with respect to legal fees on a solicitor and his own client full indemnity basis) for any claim, liability, loss, demand, expense, cause of action, fine penalty or amount of any kind (collectively, a "Loss") which may arise as a result of:

- (a) any incorrectness in or breach of any representation or warranty of the Vendor contained in this Agreement;
- (b) any negligence, willful misconduct or failure to act by the Vendor; and
- (c) any breach or non-fulfillment of any covenant of the Vendor hereunder.

6.2 The Vendor covenants that if the supply of stored Prepaid Aggregate on the Precambrian SML Lands which can be hauled and removed by the Purchaser does not equal a minimum of 70,000 tonnes, the Vendor will, within thirty (30) days of notice from the Purchaser with respect to the lack of Prepaid Aggregate on the Precambrian SML Lands, deliver to the Purchaser at the Precambrian SML Lands or such other location within fifty (50) kilometres of the Precambrian SML Lands that the Purchaser, acting reasonably, designates, the remaining balance of Prepaid Aggregate (being the difference between 70,000 tonnes and the amount of Prepaid Aggregate actually removed from the SML Lands by the Purchaser) (the "**Aggregate Shortfall**") from such source as the Vendor deems fit, with such Aggregates to be at least of the same character and quality as the Prepaid Aggregate removed from the Precambrian SML Lands by the Purchaser, and for clarity which must meet "Designation Two Class Twenty GBC Material Specification". If any of the Prepaid Aggregate is found by the Purchaser to not meet "Designation Two Class Twenty GBC Material Specification", the Vendor will, within thirty (30) days of notice from the Purchaser of the same, deliver to the Purchaser at the Precambrian SML Lands or such other location within fifty (50) kilometres of the Precambrian SML Lands that the Purchaser, acting reasonably, designates, replacement Aggregate for the quantity of Prepaid Aggregate that does not meet the "Designation Two Class Twenty GBC Material Specification" which replacement Aggregate meets such standard and specification.

6.3 In the event the Vendor is unable or fails to comply with the obligations outlined in Section 6.2 hereof, the Vendor will be liable to the Purchaser for liquidated damages representing the fair market value amount of revenue the Purchaser would have earned selling the Aggregate Shortfall to such purchaser(s) as it determines in its sole discretion. Upon the Purchaser providing the Vendor with an estimate, acting reasonably, of what such revenue from the sale of the Aggregate Shortfall would have been, within thirty (30) days the Vendor will pay the Purchaser such amount by wire or bank draft. In the event the Vendor fails to do so, the Vendor agrees to enter into a consent judgment with the Purchaser for such amount. The parties agree and acknowledge that the liquidated damages outlined herein are not a penalty but rather are an accounting and estimate of damages and losses the Purchaser has suffered as a result of the Vendor's breach. The Vendor agrees that it shall not challenge and is forever estopped from challenging the Purchaser's estimate of revenue for the Aggregate Shortfall.

6.4 The Vendor shall, on signing of this Agreement, sign and enter into that Discontinuance and Release Agreement attached hereto as Schedule "B".

ARTICLE 7- GENERAL

7.1 **Further Assurances:** Each of the parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

7.2 **Preamble and Schedules.** The parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Agreement and agree that same and the various schedule(s) hereto are expressly incorporated into and form part of this Agreement:

Schedule "A" - Gravel Storage Agreement.

7.3 **Relationship between Parties.** Nothing contained herein shall be deemed or construed by the parties nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties, it being understood and agreed that none of the provisions contained herein nor any act of the parties shall be deemed to create any relationship between the parties other than an independent purchase agreement between the two parties at arm's length.

7.4 **No Authority.** Except as may from time to time be expressly stated in writing by the one party or as otherwise contained herein, the other party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other party, nor to bind the other party in any manner whatsoever.

7.5 **Statutory Reference.** Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

7.6 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and the parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement.

7.7 **Unenforceability:** If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest permitted by law.

7.8 **Notice:** Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.

Any Notice required or permitted hereunder may be sent to the intended recipient at its address as follows:

(a) if to the Vendor:

JMB Crushing Systems Inc.
P.O. Box 6977
Bonnyville, AB T9N 2H4
Attention: Jeff Buck
Email: jeffb@jmbcrush.com

(b) if to the Purchaser:

N.P.A. Ltd. d/b/a E Construction
10130 – 21 Street
Edmonton, Alberta T6P 1W7
Attention: Vice President & General Manager
Email: bill.turner@wapitigravel.ca

with a cc to:

Brownlee LLP
Barristers and Solicitors
2200 Commerce Place
10155 – 102 Street
Edmonton, Alberta T5J 4G8
Attention: Raymond Guy Miki
Fax: 780-424-3254
Email: gmiki@brownleelaw.com

or to such other address as each party may from time to time direct in writing.

Notice may be served by one of the following means:

- (c) by delivering it to the party on whom it is to be served. Notice delivered in this manner shall be deemed received when actually delivered to such party;
- (d) if delivered to a corporate party, by delivering it to the address specified above during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (e) by email or fax to a party to the address specified above. Notice delivered in this manner shall be deemed received on the next Business Day; or
- (f) by mailing via first class registered post, postage prepaid, to the party to whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

7.9 **Time:** Time shall be of the essence of this Agreement.

7.10 **Governing Law:** This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta.

7.11 **Binding Effect:** This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

7.12 **No Waiver:** No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

7.13 **Headings:** The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any provisions hereof.

7.14 **Counterparts:** This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and agreement to be legally bound by its terms. Each counterpart when executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

7.15 **Amendments:** This Agreement may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.

7.16 **Survival:** The parties acknowledge and agree that the provisions of this Agreement which, by their context, are meant to survive the termination or expiry of this Agreement shall survive the termination or expiry of this Agreement and shall not be merged therein or therewith.

7.17 **Remedies Generally:** Mention in this Agreement of any particular remedy of a party in respect of a default by the other party does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.

7.18 **Payment of Monies:** The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds.

7.19 **Singular, Plural and Gender:** Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof

7.20 **Requests for Consent:** Each party shall provide any decision with regard to a request for consent in a timely manner.

7.21 **Construction:** This Agreement shall be interpreted according to its fair construction and shall not be construed as against any party hereto.


[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day first above written.

N.P.A. LTD.

Per: 

JMB CRUSHING SYSTEMS INC.

Per: 



SCHEDULE "A"

P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com



January 15, 2020

Re: Agreement to Store Gravel on SML 020038

The following is an agreement between JMB Crushing Systems (JMB) and Precambrian Sand & Gravel Ltd (PRE) for the storage of gravel from SML 120004 in SML 020038.

- PRE is the lease holder of SML 020038 in SE-8-82-6 W4M & SW-9-82-6 W4M. Randall Lacombe is the representative of PRE.
- JMB has transported pit run from SML 120004 to SML 020038 where JMB crushed and stockpiled material to be stored on SML 020038.
- JMB will pay a lump sum of \$10,000 to PRE to allow JMB to store the JMB produced gravel on SML 020038.
- The term of this agreement is January 1st, 2020 to December 31, 2020. JMB will have rights to store the material on SML 020038 until December 31, 2020.
- PRE further agrees and acknowledges that JMB and E Construction have a financial interest in material stored on SML 020038 and that at no point in the future will PRE or Randall Lacombe prevent JMB, E Construction, or their designates from removing any or all of the JMB material from SML 020038. It is anticipated that the JMB crushed material will begin to leave SML 020038 in early summer 2020.
- JMB will coordinate and cover costs associated with a Temporary Field Authorization (TFA) approval associated with the storage of JMB material on SML 020038.
- In the event that JMB has material on the lease after AI's Contracting has removed our material, JMB will be responsible for the remaining reclamation.
- In the year 2020, Randall Lacombe, an equipment operator for over 50 years, may borrow (free of cost) an excavator on site for 5 hours.
- JMB will supply Randall Lacombe a gate key.

Jeff Buck
President
JMB Crushing Systems
Box 6977
Bonnyville AB T9N 2H4

Randall Lacombe
Director
Precambrian Sand & Gravel Ltd
Box 93
Chard AB T0P 1G0

Bonnyville

JMB (780) 826 - 1774 | Quantum; (780) 826 - 3272
Fax: (780) 826 - 6280

SCHEDULE "B"

DISCONTINUANCE AND RELEASE AGREEMENT

THIS AGREEMENT is made effective as of the ___ day of January, 2020.

BETWEEN:

N.P.A. LTD., a corporation conducting business in the Province of Alberta under names which include E Construction

(hereinafter called "**NPA**")

OF THE FIRST PART

AND:

JMB CRUSHING SYSTEMS INC., a corporation conducting business in the Province of Alberta

(hereinafter called "**JMB**")

OF THE SECOND PART

WHEREAS:

- A. JMB was previously an Alberta corporation known as JMB Crushing Systems ULC, which amalgamated to form 1610880 Alberta ULC, and which has continued out of Alberta into the Province of British Columbia, where it amalgamated to form JMB.
- B. NPA is the successor corporation to E Construction Ltd.
- C. The Regional Municipality of Wood Buffalo ("**RMWB**") entered into a contract with OCL Group Inc. ("**OCL**") to perform certain water and sewer construction work in or around Anzac, Alberta (the "**Project**") under a Prime Contract dated August 19, 2017 (the "**Prime Contract**").
- D. OCL retained subcontractors including NPA to perform certain work in relation to the Project, including the supply of certain aggregate.
- E. NPA (then E Construction Ltd.) entered into a subcontract with JMB (then JMB Crushing Systems ULC) dated March 8, 2018 in which JMB agreed to provide aggregate to NPA for the Project (the "**JMB Contract**").
- F. JMB (in the name of JMB Crushing Systems ULC and 1610880 Alberta ULC) has commenced Court of Queen's Bench Action No. 1903 19761 against NPA (in the name of E Construction Ltd.), seeking damages for claims relating to the JMB Contract and the cost of aggregate to be supplied for the Project (the "**JMB Action**").

- G. The parties have now agreed to a discontinuance of the JMB Action and a release of NPA by JMB.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the payment for aggregate by NPA to JMB pursuant to that Aggregate Purchase and Removal Agreement between NPA and JMB and other good and valuable consideration now paid by each party to the other (the receipt and sufficiency of which is hereby acknowledged by the parties hereto), and of the mutual promises, covenants and agreements hereinafter set forth and as set forth in the Aggregate Purchase and Removal Agreement, the parties agree and covenant with each other as follows:

1. The preamble hereto is binding and forms part of this Agreement.
2. JMB represents and warrants that it is the successor to JMB Crushing Systems ULC and 1610880 Alberta ULC (the "**Former Entities**") and has the ability to discontinue the JMB Action and provide the releases herein on behalf of itself and the Former Entities.
3. Upon execution of this Agreement, JMB will forthwith discontinue the JMB Action and NPA will provide its consent to a discontinuance of the JMB Action on a without cost basis.
4. JMB, the Former Entities and their subsidiaries, affiliated companies, partners, agents, administrators, successors, assigns, directors, officers or employees, whether past or present (the "**JMB Releasors**") do forever release, remise and discharge NPA (including E Construction Ltd.) and its respective subsidiaries, affiliated companies, partners, agents, administrators, successors, assigns, directors, officers, or employees, whether past or present (the "**NPA Releasees**"), jointly and severally from any and all actions, causes of action, contracts (whether expressed or implied), claims and demands for damages, loss or injury, suits, debts, sums of money, indemnity, expense, interest, cost, and claims of any and every kind and nature whatsoever which the JMB Releasors ever had, now have or may have, at law or in equity, including (without restricting the generality of the foregoing) with respect to or in any way connected with the JMB Action, the JMB Contract, the supply of the aggregate, the Project or the Prime Contract (the "**Released Matters**").
5. The JMB Releasors hereby agree to indemnify the NPA Releasees from any and all actions, causes of action, contracts (whether expressed or implied), claims and demands for damages, loss or injury, suits, debts, sums of money, indemnity, expense, interest, cost, and claims of any and every kind and nature whatsoever related to the Released Matters.
6. The respective parties agree and acknowledge that in executing this Agreement that they have not relied upon any representations and that they have reviewed this Agreement. The respective Parties hereby voluntarily accept said terms for the purpose of making full and final compromise, adjustment and settlement of all claims as aforesaid.
7. It is understood and agreed that this Agreement to settle and release is a compromise of a disputed and doubtful claim and that the payment is not meant to be construed as an admission of liability on the part of the NPA Releasees.

8. This Agreement may be executed in counterpart, and by way of PDF or facsimile.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day first above written.

N.P.A. LTD.

Per:

JMB CRUSHING SYSTEMS INC.


Per:

This is Exhibit "P" referred to in the
Affidavit of

TIM KACIWSKI

Sworn before me this 14 day

of 16, 2020


A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor



2500 - 10175 101 ST NW
Edmonton AB T5J 0H3
fieldlaw.com

CALGARY EDMONTON YELLOWKNIFE

Brian D. Futoransky
Partner
T 780-643-8758
F 780-428-9329
bfutoransky@fieldlaw.com
Assistant: Kristin Klarenbach
T 587-773-7187
kklarenbach@fieldlaw.com
Our File: 55198-1

March 17, 2020

VIA REGISTERED MAIL

JMB Crushing Systems Inc.
1400 - 10303 Jasper Avenue NW
Edmonton, AB T5N 3Y4

To Whom it May Concern:

Re: Demand for Payment of Outstanding Accounts with Kalinko Enterprises Ltd.

We are the solicitors for Kalinko Enterprises Ltd. ("Kalinko"). We are advised by Kalinko that there remains outstanding accounts receivable in the sum of **\$795,131.02** by JMB Crushing Systems ULC. We note that JMB Crushing Systems ULC had been continued into British Columbia and subsequently amalgamated with JMB Crushing Systems Inc. in 2018.

The outstanding accounts receivable are broken down as follows:

1. Invoice No. 861, dated September 10, 2019, in the amount of \$87,960.84;
2. Invoice No. 866, dated October 8, 2019, in the amount of \$120,254.45;
3. Invoice No. 869, dated November 6, 2019, in the amount of \$177,979.02; and
4. Invoice No. 870, dated December 4, 2019, in the amount of \$291,819.82.

We have been further advised by our client that a further \$117,116.89 is outstanding. This additional amount arises from a haul taken from SML 140046 in 2018. The total amount taken was 10,201.82 tonnes and was charged at a rate of \$11.48 per tonne. As such, we are also demanding payment for this additional outstanding amount.

We hereby demand payment of \$795,131.02 on behalf of our client.

We further demand that JMB Crushing Systems Inc. cease all sales of any Kalinko products until the above noted outstanding accounts receivable has been paid in full and upon Kalinko providing JMB Crushing Systems Inc. consent to resume any work involving Kalinko products.

Please be advised that if our office does not receive payment of the **\$795,131.02 by certified cheque, money order or bank draft payable to Field LLP on or before April 15, 2020**, we anticipate receiving instructions to commence legal proceedings against you to recover the same. If such legal proceedings are necessary, we will seek, on behalf of our client, additional amounts for the cost of the legal proceedings.

Sincerely,

FIELD LLP

A handwritten signature in black ink, appearing to be 'B. Eutoransky', written over the printed name.

Brian D. Eutoransky
Partner

cc: Jeff Ryks, via email (jeffryks@jmbcrush.com)





OUR FILE: /CDS

April 15, 2020

YOUR FILE:

REPLY TO:

SENT BY EMAIL: bfutoransky@fieldlaw.com

CAMRON D. SCHWARTZ

DIRECT LINE: (780) 701-6364
DIRECT FAX: (780) 701-5913

EMAIL: cschwartz@ogilvie.com

Assistant:

Lisa M. Lusic
Direct Line: (780) 429-6209
Direct Fax: (780) 429-4453

EMAIL: llusic@ogilvie.com

CANADIAN WESTERN BANK PLACE
SUITE 1400
10303 JASPER AVENUE
EDMONTON AB T5J 3N6
FACSIMILE (780) 429-4453
TELEPHONE (780) 421-1818

Field Law
Barristers & Solicitors
2500, 10175 - 101 Street NW
Edmonton, AB T5J 0H3

Attention: Brian D. Futoransky

Dear Mr. Futoransky:

**Re: Kalinko Enterprises Ltd. ("Kalinko") and
JMB Crushing Systems Inc. ("JMB")**

Further to your correspondence of March 17, 2020, it appears that your client continues to rely on the June 12, 2012 Sand and Gravel Agreement and the June 2017 Amendment as between JMB, Kalinko and the Owners, as more specifically described within the aforementioned agreements.

There is no basis for your client's claim in the amount of \$117,116.89.

We further understand that your client owes reclamation costs to JMB in the amount of approximately \$759,742.00. This amount represents the total expenses to date to reclaim Pit 19. You should further be advised that additional work is required related to the reclamation of this land.

We understand that your clients instructed our clients to mine beyond the boundaries of the pit because your clients intended to obtain adjacent property. We further understand that when your client realized that they would not be able to, or had decided not to, obtain the additional land, JMB had already excavated up the SML property line as instructed by your client. All of this additional land needs to be reclaimed.

As you will note, the amount claimed by your client in your March 17, 2020 correspondence is close to the amount owed by your client to ours. We would suggest that our clients get together to determine if they are able to reach an agreement related to these matters. Please be advised that should your client decide to bring a claim against our client, we will bring a responding counterclaim against your client.

CELEBRATING
100 YEARS
TOGETHER



We look forward to any further questions you may have related to this matter and we look forward to hearing that our respective clients have decided to work toward reaching a reasonable settlement related to these matters.

Yours truly,

OGILVIE LLP

Per:

CAMRON D. SCHWARTZ

CDS/ml
Encls.
cc: client



This is Exhibit "Q" referred to in the Affidavit of

TIM KALINSKI

Sworn before me this 16 day

of July, 2010



A Notary Public
in and for the Province of Alberta

Scott A. Matheson
Barrister & Solicitor



Acquisition Opportunity – JMB Crushing Systems

A Premier Provider of Aggregates to Alberta

Sequeira Partners has been appointed as the Sale Advisor to JMB Crushing Systems Inc. (the “Company” or “JMB”) as part of the court ordered Sale and Investment Solicitation Process (“SISP”).

For over 30 years, JMB has been producing and supplying aggregates for leading oil field companies, road construction, and industrial projects throughout Alberta. The business has access to numerous gravel pits and maintains a significant inventory of aggregate for immediate distribution while holding one of the largest reserves of aggregates in Alberta. Services include gravel pit management, excavation and reclamation, lease and road maintenance, mobile gravel crushing, scaling, weighing, loading services, trucking, and delivery.

COMPANY OVERVIEW

- JMB operates out of Bonnyville, Alberta, serving Northeast Alberta
- The Company has access to 45 pits in Alberta with estimated reserves exceeding 110 million tonnes (MT)
- JMB has 45 team members consisting of 14 Salaried and 31 Hourly employees¹
- The business has streamlined operations in 2020 to reduce costs and improve margins
- JMB has maintained a diverse roster of customers across various industries and regions

1) Headcount as of May 15, 2020



ASSET OVERVIEW

Equipment Overview

- Mobile crushing plants
- Truck tractors
- Wheel loaders
- Rock trucks
- Excavators
- Dozers
- Pickup trucks
- Assorted conveying equipment

Aggregate Pit Overview

- Diversified geographic presence with exposure across various markets
- 12 pits and 68.0 MT are secured under JMB-held Surface Materials Leases (“SML”)
- 32 pits and 43.6 MT are secured under royalty agreements with 3rd party landowners or leaseholders
- 1 pit and 0.3 MT are on owned property

Primary Market	# of Pits	Reserves (MT)	Est. Life (Years)
Smoky Lake	12	68.2	20+
Fort McMurray / Conklin	9	28.9	20+
Bonnyville	23	13.6	15
Wabasca	1	1.2	10
Total	45	111.8	



Spring 2020

sequeira PARTNERS

Acquisition Opportunity – JMB Crushing Systems

A Premier Provider of Aggregates to Alberta

FINANCIAL HIGHLIGHTS

JMB Crushing Systems							DRAFT
Financial Performance Summary (Reported in CAD 000's)							
For the period ended December 31st, ...	2014	2015	2016	2017	2018	2019	
Revenue	\$ 41,688	\$ 30,137	\$ 30,642	\$ 32,291	\$ 31,484	\$ 32,891	
Direct Costs ¹	33,483	20,907	20,250	21,508	21,391	25,554	
Gross Profit	8,205	9,230	10,392	10,783	10,093	7,337	
Gross Margin	20%	31%	34%	33%	32%	22%	
Operating Expenses ¹	5,109	5,899	4,736	5,412	5,641	8,370	
Reported EBITDA	3,096	3,331	5,656	5,371	4,452	(1,034)	

¹ Excludes amortization, interest expense, and other income and losses

Source: Company's Financial Statements

- Despite recent capital structure challenges, JMB historically delivered strong financial results
- The Company's owned equipment were recently appraised at ~\$8 MM, inventory has a recorded book value of ~\$23 MM, and JMB's gravel pit agreements and leases hold significant value

KEY INVESTMENT HIGHLIGHTS

Unmatched, Strategically Located Supply

- JMB controls 45 gravel pits in Alberta, providing a significant barrier to entry as the Company has exclusive access to over 110 MT of strategically located aggregate throughout the province
- Aggregate scarcity in operating area drives consistent revenue and represents tremendous opportunity

Well Positioned for Returning Economic Activity

- JMB is positioned to be competitive on future opportunities as infrastructure and capital spending begins to return in its regional markets
- The Province of Alberta's major projects inventory infrastructure backlog is notable at almost \$20 billion

Business Efficiency Improvement Process Will Position the Business for Continued Growth

- JMB is in the process of adopting a subcontract crushing model which will promote increased cash flows, reduce fixed operating leverage, and allow management to focus on the sales pipeline and customers
- There is significant opportunity to develop 10 newly acquired, largely un-operational pits in the Smoky Lake region and capitalize on high demand and limited competition in this region

SISP PROCESS AND NEXT STEPS

The SISP is intended to solicit interest in the sale of, or investment in, JMB or all or any part of JMB's property, assets, undertakings and business on an "as is, where is" basis. The SISP Process is a two-phased process with the Phase 1 bid deadline set for June 19, 2020. All proposals will be subject to Court approval. All qualified interested parties will be provided with an opportunity to participate in the SISP and will need to sign the Non-Disclosure Agreement that accompanies this teaser to receive access to additional information.

Qualified interested parties are invited to contact one of the Sequeira Partners representatives listed below for further information. The appointed Monitor is FTI Consulting Canada Inc.

Kellie Manchester, CFA

604.838.3547

kmanchester@sequeirapartners.com

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