

COURT FILE NUMBER 2001-05482
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANTS IN THE MATTER OF THE COMPANIES' CREDITORS
 ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED



AND IN THE MATTER OF THE COMPROMISE OR
 ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. AND
 2161889 ALBERTA LTD.

DOCUMENT **ORDER (Sandhill Sale Approval and Vesting Order)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP
 4000, 421 – 7th Avenue SW
 Calgary, Alberta T2P 4K9
 Attention: Sean Collins / Pantelis Kyriakakis
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I hereby certify this to be a true copy of
 the original **Order**
 Dated this **6th** day of **October, 2020**
 for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: **October 1, 2020**
 LOCATION OF HEARING OR TRIAL: **Calgary, Alberta**
 NAME OF JUDGE WHO MADE THIS ORDER: **Honourable Justice K.M. Eidsvik**

UPON the application (the "Application") of FTI Consulting Canada Inc. (the "Monitor"), in its capacity as the court-appointed monitor of JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. ("216 Alberta", 216 Alberta and JMB are collectively referred to as, the "Companies") pursuant to the initial order granted under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") on May 1, 2020, as subsequently amended and restated on May 11, 2020 (collectively, the "Initial Order") in the within proceedings (the "Proceedings"), for an order approving the sale transaction (collectively, the "Transaction") contemplated by the Asset Purchase Agreement, dated September 28, 2020 (the "APA"), between JMB, as vendor, and Sandhill Equipment Corp. (the "Purchaser"), as purchaser, attached as Appendix "D" to the Seventh Report of the Monitor, dated September 30, 2020 (the "Seventh Monitor's Report"), and vesting in the Purchaser (or its nominee), all of JMB's right, title, and interest in and to the assets described in the APA (collectively, the "Equipment");

AND UPON HAVING READ the Initial Order and the SISP; **AND UPON HAVING READ** the Second Report of the Monitor, dated July 6, 2020 (the "**Second Monitor's Report**"), the Fifth Report of the Monitor, dated September 10, 2020, and the Seventh Monitor's Report, all filed; **AND UPON HAVING READ** the Affidavit of Service of Katie Doran (the "**Service Affidavit**"), to be filed; **AND UPON HEARING** the submissions of counsel for the Monitor and for any other parties who may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Seventh Monitor's Report is abridged, the Application is properly returnable today, service of the Application and the Seventh Monitor's Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Seventh Monitor's Report.

APPROVAL OF THE TRANSACTION

2. The Transaction is hereby approved and execution of the APA is hereby authorized, ratified, confirmed, and approved, with such minor amendments as the Monitor and the Purchaser may agree to, with the consent of JMB. The Monitor and JMB are hereby authorized and directed to take such additional steps and JMB is hereby authorized and empowered to execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Equipment to the Purchaser (or its nominee).

VESTING OF THE EQUIPMENT

3. Upon the delivery of a Monitor's certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule "**A**" hereto (the "**Monitor's Certificate**"), all of JMB's right, title, and interest in and to the Equipment, as described in the APA, shall vest absolutely, exclusively, and entirely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts, reservations of ownership, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary, or otherwise, whether or not they have attached or been perfected, registered, or filed and whether

secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Initial Order; and,
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;

and for greater certainty, this Court orders that all Claims, affecting or relating to the Equipment are hereby expunged, discharged and terminated as against the Equipment.

4. Upon delivery of the Monitor’s Certificate and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested, and directed to accept delivery of such Monitor’s Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Equipment. Without limiting the foregoing, the Registrar of the Alberta Personal Property Registry (the “**PPR Registrar**”) shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests in the estate or interest of JMB in any of the Equipment which are of a kind prescribed by applicable regulations as serial-number goods.

5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and the Monitor’s Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Equipment of any Claims.

6. The Monitor is authorized and directed to undertake and perform such activities and obligations as are contemplated to be undertaken or performed by the Monitor pursuant to this Order, the SISP, the APA, or any ancillary document related thereto, and shall incur no liability in connection therewith, save and except for any gross negligence or wilful misconduct on its part.

7. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Equipment is required for the due execution, delivery, and performance by JMB of the APA.

8. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Equipment shall stand in the place and stead of the Equipment from and after delivery of the Monitor's Certificate and all Claims shall not attach to, encumber, or otherwise form a charge, security interest, lien, or other Claim against the Equipment and may be asserted against the net proceeds from sale of the Equipment with the same priority as they had with respect to the Equipment immediately prior to the sale, as if the Equipment had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. Upon completion of the Transaction, JMB and all persons who claim by, through or under JMB in respect of the Equipment, and all persons or entities having any Claims of any kind whatsoever in respect of the Equipment, shall stand absolutely and forever barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Equipment, and to the extent that any such persons or entities remain in the possession or control of any of the Equipment, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Equipment, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

10. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Equipment for its own use and benefit without any interference of or by JMB, or any person claiming by, through or against JMB.

11. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

12. The Monitor may rely on written notice from JMB and the Purchaser or their respective counsel regarding the fulfillment of conditions to closing under the APA and shall incur no liability with respect to the delivery of the Monitor's Certificate.

MISCELLANEOUS MATTERS

13. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of JMB, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of JMB; and
- (d) the provisions of any federal or provincial statute:

the vesting of the Equipment in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of JMB and shall not be void or voidable by creditors of JMB, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. JMB, the Monitor, the Purchaser (or its nominee), and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

15. Service of this Order shall be deemed good and sufficient by:

- (a) Serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order;
 - (iv) the Purchaser or the Purchaser's solicitors; and
- (b) Posting a copy of this Order on the Monitor's website at:
<http://cfcanada.fticonsulting.com/jmb/default.htm>

and service on any other person is hereby dispensed with.

16. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted on May 29, 2020.



Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A" TO THE ORDER (SALE APPROVAL AND VESTING)
MONITOR'S CERTIFICATE**

Clerk's Stamp

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Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

RECITALS

- A. Pursuant to an Order of the Honourable Justice K.M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), dated May 1, 2020 as subsequently amended and restated on May 11, 2020, FTI Consulting Canada Inc., was appointed as the monitor (the "**Monitor**") of JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216 Alberta**", 216 Alberta and JMB are collectively referred to as, the "**Companies**").
- B. Pursuant to an Order of the Court, dated October 1, 2020 (the "**Sale Approval Order**"), the Court approved the Asset Purchase Agreement, dated September 28, 2020 (the "**APA**"), between JMB, as vendor, and Sandhill Equipment Corp. (the "**Purchaser**"), as purchaser, and provided for the vesting in the Purchaser of JMB's right, title, and interest in and to the Equipment, which vesting is to be effective with respect to the Equipment upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Equipment; (ii) that all

conditions to the closing of the APA have been satisfied or waived by JMB and the Purchaser; and, (iii) the Transaction has been completed to the satisfaction of the Monitor.

- C. Unless otherwise indicated herein, all capitalized terms have the meanings set out in the Sale Approval Order.

THE MONITOR CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Monitor has received the purchase price for the Equipment, in accordance with and as contemplated by the terms of the APA;
2. The conditions to the closing of the APA have been satisfied or waived by JMB and the Purchaser (or its nominee); and,
3. The Transaction has been completed to the satisfaction of the Monitor.

This Certificate was delivered by the Monitor at **[Time]** on **[Date]**.

FTI CONSULTING CANADA INC., in its capacity as the monitor of **JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.**, and not in its personal or corporate capacity.

Per: _____
Name:
Title: