

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.) TUESDAY, THE 2ND
)
JUSTICE KOEHNEN) DAY OF FEBRUARY, 2021
)

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF JMX CONTRACTING INC., JMX NATIONAL INC.,
BRND PROPERTIES INC., and JMX LEASING INC. (the "Applicants")**

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order approving the share purchase agreement (the "SPA") between the 2808447 Ontario Inc. ("New ParentCo") and 2779076 Ontario Inc. (the "Purchaser"), as appended to the affidavit of Charlie Dahl sworn January 25, 2021 (the "Dahl Affidavit") and the transactions contemplated therein (the "Transactions") and vesting in the Purchaser all of New ParentCo's right, title and interest in and to the shares described in the SPA (the "Purchased Shares"), was heard this day by videoconference due to the COVID-19 pandemic.

ON READING the Applicants' Notice of Motion, the Dahl Affidavit, and the Second Report of Crowe Soberman Inc. in its capacity as Monitor of the Applicants (the "Monitor"), and on hearing the submissions of counsel for the Applicants, the Monitor, Royal Bank of Canada, and those other counsel appearing as indicated by the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shaun Parsons sworn January 25, 2021, the affidavit of Shaun Parsons sworn January 28, 2021 and the affidavit of Christel Paul, sworn February 1, 2021 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the SPA.
3. **THIS COURT ORDERS AND DECLARES** that the SPA and the Transactions are hereby approved, and the execution of the SPA by New ParentCo is hereby authorized and approved, with such minor amendments as the parties may deem necessary. The Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Purchased Shares to the Purchaser.
4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Applicant to proceed with the Transactions, including but not limited to the reorganization prior to closing, and that no shareholder or other approval shall be required in connection therewith.
5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of New ParentCo's right, title and interest in and to the Purchased Shares described in the SPA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, 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: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Hainey dated September 29, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that

all of the Encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares.

6. **THIS COURT ORDERS** that upon the delivery of the Monitor's Certificate, JMX Contracting Inc., JMX Leasing Inc., and BRND Properties Inc. shall be deemed to cease being Applicants in these CCAA proceedings, and shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of this CCAA proceeding, save and except for this Order, the provisions of which (as they relate to JMX Contracting Inc., JMX Leasing Inc., and BRND Properties Inc.) shall continue to apply in all respects.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from New ParentCo and the Purchaser regarding the satisfaction or waiver of conditions to closing under the SPA and shall have no liability with respect to the delivery of the Monitor's Certificate.

9. **THIS COURT ORDERS** that all contracts to which JMX Contracting Inc., JMX Leasing Inc. and BRND Properties Inc. are parties as at the date of this Order will remain in full force and effect upon and following delivery of the Monitor's certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively “**Persons**” and each a “**Person**”) who is party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder or enforce or exercise any right or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect by reason of:

- (a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing;
- (b) the insolvency of JMX Contracting Inc. or JMX Leasing Inc., or BRND Properties Inc., or the fact that they sought or obtained relief under the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3 (the “**BIA**”) and CCAA;
- (c) and transactions, arrangements, reorganizations or other steps taken or effected pursuant to the SPA, the Transaction, or the provision of this Order, or any other Order of the Court in these proceedings; or

- (d) any transfer or assignment, or any change of control of JMX Leasing Inc., JMX Contracting Inc., and BRND Properties Inc. arising from the implementation of the SPA, the Transaction, provisions of this Order, or any further Order of the Court.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

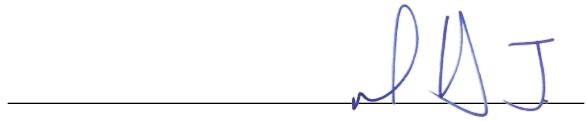
the vesting of the Purchased Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

11. **THIS COURT ORDERS** that the title of these proceedings is hereby changed to

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 2808447
ONTARIO INC., 2809588 ONTARIO INC, AND 2809590
ONTARIO INC.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



Schedule A – Form of Monitor's Certificate

Court File No. CV-20-00648528-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated September 29, 2020, Crowe Soberman Inc. was appointed as the monitor (the "Monitor") of the Applicants.
- B. Pursuant to an Order of the Court dated January 29, 2021, the Court approved the share purchase agreement made as of ● (the "SPA") between the 2808447 Ontario Inc. ("New ParentCo") and 2779076 Ontario Inc. (the "Purchaser") and provided for the vesting in the Purchaser of New ParentCo's right, title and interest in and to the Purchased Shares, which vesting is to be effective with respect to the Purchased Shares upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) that the conditions to Closing as set out in section ● of the SPA have been satisfied or waived by New ParentCo and the Purchaser; and (ii) the Transactions has been completed to the satisfaction of the Monitor.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the SPA.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by New ParentCo and the Purchaser; and
2. The Transaction has been completed to the satisfaction of the Monitor.
3. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**CROWE SOBERMAN INC. in its capacity as
Monitor, and not in its personal capacity**

Per: _____

Name: _____

Title: _____

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ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

WEISZ FELL KOUR LLP
100 King Street West,
Suite 5600
Toronto, ON M5X 1C9

Sharon Kour LSO No. 58328D
skour@wfklaw.ca
Tel: 416.613.8283

Caitlin Fell LSO No. 60091H
cfell@wfklaw.ca
Tel: 416.613.8282

Fax: 416.613.8290

Lawyers for JMX Contracting, et al.