



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

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")

NOTICE OF APPLICATION

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing on September 29, 2020 at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto ON M5G 1R8.⁷

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer, or where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your other lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September 29, 2020

Issued by: _____

Address of court office:

Ontario Superior Court of Justice
(Commercial List)
330 University Avenue, 9th floor
Toronto, ON M5G 1R8

TO: THIS HONOURABLE COURT

AND TO: THE ATTACHED SERVICE LIST AT SCHEDULE "A"

APPLICATION

THE APPLICANTS MAKE AN APPLICATION FOR:

1. An Order, substantially in the form attached as Schedule “**B**” (the “**Initial Order**”) that, among other things:
 - a) abridges the time for service of this Application, validates the manner of service, and declares that this Application is properly returnable before the Court;
 - b) declares that the Applicants are companies to which the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) applies;
 - c) authorizes the continuation under the CCAA of the proposal proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), commenced on April 17 and April 20, 2020, pursuant to the Notices of Intention to Make a Proposal filed by each of the Applicants (the “**NOIs**”);
 - d) appoints Crowe Soberman Inc. (“**Crowe Soberman**” or the “**Proposed Monitor**”) as an officer of this Honourable Court to monitor the business and financial affairs of the Applicants;
 - e) stays all proceedings and enforcement processes taken or that might be taken in respect of the Applicants, the Proposed Monitor, or their respective employees and representatives;
 - f) grants the Applicants the authority to file a plan of compromise or arrangement;

g) grants the following charges over the property of the Applicants, listed in order of priority:

- (i). an administration charge in favour of the Applicants' counsel, the Proposed Monitor, and the Proposed Monitor's counsel (the "**Administration Charge**" – qualified below); and,
- (ii). a debtor-in-possession charge (the "**DIP Lenders' Charge**") in favour of JXM Environmental Inc., BRND Properties Inc., and Charlie Dahl (collectively, the "**DIP Lenders**") up to a maximum of \$1 million, which shall be subordinate to the security interest of the Royal Bank of Canada against the Applicants (the "**RBC Security**") – and any security interest, lien or statutory deemed trust that, as a result of the operation of law, is in priority to the RBC Security – but shall rank ahead of any other existing security granted by the Applicants in favour of their secured creditors.

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Overview

3. On April 17 and April 20, 2020, the Applicants each filed NOIs (the proceedings commenced by such filing, being the "**NOI Proceedings**"). Crowe Soberman Inc. was appointed as the proposal trustee in the NOI Proceedings (the "**Proposal Trustee**").

4. The Applicants are a part of a corporate group which is in the business of environmental contracting, including providing demolition, abatement, remediation, and commodity salvage services to construction and decommissioning projects in Ontario.
5. These insolvency proceedings were initiated by the Applicants in response to aggressive steps taken to enforce the RBC Security on the basis of an alleged default of the debt service coverage ratio under the Applicants' primary operating loan. The Applicants deny that any breach of covenant existed. At the time, the Applicants' auditor, BDO Canada Limited, reviewed the Applicants' financial information and concluded that the JMX Group was not in breach of the relevant covenant.
6. Notwithstanding that there was no breach of covenant and, in any event, no payment default, RBC delivered a notice of intent to enforce pursuant to s. 244 of the BIA on April 9, 2020. Unless the JMX Group was to provide additional collateral security, RBC refused to extend the 10-day notice period under s. 244 of the BIA to permit the JMX Group to negotiate a forbearance. Accordingly, the JMX Group filed NOIs on April 17 and 20, 2020 to avoid precipitous enforcement action.
7. As at the date of filing, the total RBC indebtedness was approximately \$4.43 Million. The Applicants have worked cooperatively with RBC to pay down the RBC indebtedness and to ensure RBC's interests and concerns were addressed throughout the course of the NOI proceeding including, *inter alia*:
 - a) permitting RBC to engage MSI Spergel Inc. as its financial advisor with unfettered access to the JMX Group and its books and records for the duration of this restructuring;

- b) entering into a mortgage commitment from Hillmount Capital that provided a repayment of \$1.3 million of the RBC indebtedness, including paying out the indebtedness of BRND Properties Inc. in full;
 - c) sourcing new, profitable post-filing contracts and collecting outstanding receivables in order to accelerate the paydown of the indebtedness to RBC.
8. Aside from the RBC indebtedness, the Applicants' current financial difficulties are largely attributable to the breakdown of two pre-filing demolition projects with Ontario Power Generation ("OPG") and ASNA Robson Landmark Developments Limited ("ASNA"). The ASNA and OPG projects are the subject of ongoing litigation in Ontario and British Columbia.
9. The resolution of the OPG and ASNA disputes is a material focus of the Applicants. The JMX Group is otherwise profitable and cash-flow positive, demonstrating potential viability as a going-concern. It is appropriate for the ASNA and OPG claims to be determined within these CCAA proceedings under the supervision of the CCAA judge. Each matter involves disputed payables to the Applicants, which payables constitute assets of the estate. JMX is currently pursuing these payables for the benefit of its stakeholders.
10. The CCAA is the best forum to continue these insolvency proceedings as it provides a flexible, court-supervised environment conducive to resolving contested issues in a timely and commercially reasonable manner. It is very typical for CCAA courts to supervise market-testing sale processes and to approve complex commercial agreements. Moreover, critically, the CCAA will allow the JMX Group the flexibility to deal with the remaining issues without adhering to a 6 month timeline – this provides the opportunity to engage in

substantive negotiation and to pursue a sale or restructuring plan for the benefit of all of the company's stakeholders.

Continuation under the CCAA

11. The Applicants are insolvent and seek to continue the NOI Proceedings under the CCAA pursuant to section 11.6 of the CCAA. The CCAA is the best forum for these proceedings considering the JMX Group's potential viability as a going-concern – a bankruptcy and liquidation is not commercially reasonable.
12. The Applicants are each Canadian corporations and the JMX Group, collectively, has total liabilities in excess of \$5 million.
13. The Proposal Trustee supports the Applicants' motion to continue the NOI Proceedings under the CCAA.
14. The Applicants have prepared a preliminary cash flow forecast that demonstrates the JMX Group will have sufficient liquidity to meet its obligations during the initial period of the CCAA filing.

Objectives of the CCAA Proceedings

15. The Applicants require the continued stay of proceedings and the other relief set out in the Initial Order to preserve the value of the Applicants' business while the JMX Group continues to operate as it pursues restructuring paths for the benefit of all stakeholders.
16. The protections afforded under the CCAA will maintain the *status quo*, as well as provide the breathing room required to: (i) to determine and implement a procedure to resolve the outstanding disputes with OPG and ASNA; and (ii) to formally canvass the market for

purchasers of the business as a going-concern through a court-supervised stalking horse sale process.

17. The CCAA framework will also permit the Applicants to continue sourcing further post-filing business and collecting outstanding receivables, in further aid of their efforts to pay down the RBC indebtedness.
18. Crowe Soberman has consented to act as Monitor in the CCAA proceedings.

DIP Financing and DIP Lenders' Charge

19. The JMX Group is seeking Court approval of a debtor-in-possession facility term sheet (the “**DIP Term Sheet**”) and facility up to a maximum of \$1 million, pursuant to which JMX Environmental Inc., BRND Properties Inc., and Dahl Demolition Corp. will provide DIP financing to the Applicants, up to a maximum of \$1,000,000.
20. The DIP loan will primarily be used to accelerate the repayment of the RBC indebtedness, which will greatly enhance the prospects of a viable restructuring.
21. The Applicants seek a DIP Lender’s Charge as security for any and all of the outstanding borrowings under the DIP Term Sheet. The parties have agreed that the DIP Lenders’ Charge will be subordinate in all respects to the RBC Security, and any other claims, liens or trusts, which by operation of law, would be in priority to the indebtedness of RBC.

Priority Charges

22. The Applicants are seeking the following Court-ordered charges as part of the relief granted by the Initial Order, in the following priority:

FIRST – a continuation of the Administration Charge, previously granted in the NOI Proceedings, up to a maximum of \$300,000 to secure the fees and disbursements of the professional advisors of the Applicants, Proposed Monitor and Proposed Monitor’s counsel; and,

SECOND – the DIP Lenders’ Charge, in the maximum amount of \$1 million, which is subordinate to the RBC Security.

23. It is just and appropriate under the circumstances to grant the relief sought in the Initial Order. The requested relief is limited only to that required to maintain the Applicants during the initial period of the CCAA until November 29, 2020.

Extension of the NOI Proceedings

24. Strictly in the alternative, if this Court does not see it fit to grant the proposed Initial Order at this time, the JMX Group seeks an extension of the stay period under the NOI Proceedings up to and including October 16, 2020.
25. The JMX Group has acted, and continues to act, in good faith and with due diligence during the NOI Proceedings with the oversight of the Proposal Trustee, Crowe Soberman. No creditors of the JMX Group will be materially prejudiced by the proposed stay extension.
26. The Proposal Trustee supports the proposed stay extension.

Further Grounds

27. The provisions of the BIA, including section 50.4(9);
28. The provisions of the CCAA, including section 11.6;
29. The statutory, inherent, and equitable jurisdiction of this Honourable Court
30. Rules 1.04, 2.03, 3.02, 16.04, and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended; and
31. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

1. The Affidavit of Charlie Dahl, sworn September 23, 2020, with Exhibits attached thereto;
2. The consent of Crowe Soberman Inc. to act as Monitor in the CCAA proceedings;
3. The Fourth Report of the Proposed Monitor, to be filed; and,
4. Such further and other materials as counsel may advise and this Honourable Court may permit.

September 29, 2020

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

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

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

Fax: 416.613.8290

Lawyers for JMX Contracting Inc., et al.

SCHEDULE "A"
Service List

Court File No. 31-2639875
Estate No. 31-2639875

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

IN THE MATTER OF THE *BANKRUPTCY AND*
***INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

AND IN THE MATTER OF THE PROPOSAL OF JMX CONTRACTING INC.
OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS
(JMX NATIONAL INC., BRND PROPERTIES INC., and JMX LEASING
INC.)

SERVICE LIST
(September 21, 2020)

<p>JMX CONTRACTING INC. 27 Anderson Boulevard Uxbridge, ON L9P 0C7</p> <p>Peter Bensley Email: peter.bensley@jmxenv.com</p> <p>Charlie Dahl Email: charlie.dahl@jmxcontracting.com</p> <p>Candace Little Email: candace@jmxcontracting.com</p>	<p>WEISZ FELL KOUR LLP 100 King St W, Suite 5600 Toronto, ON M5X 1C9</p> <p>Sharon Kour LSO No. 58328D skour@wfkllaw.ca Tel: 416.613.8283</p> <p>Caitlin Fell LSO No. 60091H cfell@wfkllaw.ca Tel: 416.613.8282</p> <p>Fax: 416.613.8290</p> <p>BISCEGLIA & ASSOCIATES 9100 Jane St, Building A Suite 200 Concord, ON L4K 0A4</p> <p>Emilio Bisceglia Tel: (905) 695-3100 Fax: (905) 695-5201 Email: ebisceglia@lawtoronto.com</p> <p>Lawyers for JMX Contracting Inc.</p>
<p>CROWE SOBERMAN INC. 2 St. Clair Avenue East, Suite 1100 Toronto, ON M4T 2T5</p> <p>Hans Rizarri Tel: 416.929.2500 Email: Hans.Rizarri@CroweSoberman.com Fax: 416.963.7175</p> <p>Proposal Trustee</p>	<p>CHAITONS LLP 5000 Yonge St, North York, ON M2N 7E9</p> <p>Harvey Chaiton Tel: 416.218.1129 Email: harvey@chaitons.com</p> <p>Lawyers for the Proposal Trustee</p>

<p>MINDEN GROSS LLP. 145 King Street West, Suite 2100 Toronto, ON M5H 4G2</p> <p>Rachel Moses LSO No. 42081V Tel: 416.369.4115 Email: rmoses@mindengross.com</p> <p>Raymond M. Slattery LSO No. 20479L Tel: 416.369.4149 Email: rslattery@mindengross.com Fax: 416.864.9223</p> <p>Lawyers for the Royal Bank of Canada</p>	<p>PALLET VALO LLP 77 City Centre Drive, West Tower Suite 300 Mississauga, Ontario L5B 1M5</p> <p>Maria Ruberto LSO No. 51148D Tel: 905.273.3300 Email: mruberto@pallettvalo.com</p> <p>Fax: 905.273.6920</p> <p>Lawyers for Toromont Industries Ltd., carrying on business as Battlefield Equipment Rentals and as Jobsite Industrial Rental Services and as Toromont CAT</p>
<p>ONTARIO POWER GENERATION 700 University Avenue Toronto, ON M5G 1X6</p> <p>Tanya Rocca Tel: 647.401.7634 Email: tanya.rocca@opg.com</p> <p>Hannah Arthurs Email: hannah.arthurs@opg.com</p>	<p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street, Suite 4000 Toronto ON M5L 1A9</p> <p>Linc Rogers Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p>Seumas Woods Tel: 416-863-3876 Email: seumas.woods@blakes.com</p> <p>Caitlin McIntyre Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p>Lawyers for Ontario Power Generation</p>

<p>KOSKIE MINKSY LLP 20 Queen Street West, Suite 900 Toronto, ON M5H 3R3</p> <p>Demetrios Yiokaris Tel: 416.595.2130 Email: dyiokaris@kmlaw.ca</p> <p>Daniel Resnick Tel: 416.542.6299 Email: dresnick@kmlaw.ca</p> <p>Lawyers for LIUNA Locals 506 and 1089</p>	<p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office – Tax Law Section The Exchange Tower, 3400 –130 King Street West, Box 36 Toronto, ON M5X 1K6</p> <p>Diane Winters Tel: 416.973.3172 Email: diane.winters@justice.gc.ca</p> <p>Michael Bader Tel: 647.256.7328 Email: michael.bader@justice.gc.ca</p> <p>Fax: 416.973.0809</p>
<p>CATERPILLAR FINANCIAL SERVICES LIMITED 3457 Superior Court, Unit 2 Oakville, ON L6L 0C4</p> <p>McCarthy Tétrault LLP 421 – 7th Avenue SW Suite 4000 Calgary, AB T2P 4K9</p> <p>Pantelis Kyriakakis Tel: 403.260.3536 Email: pkyriakakis@mccarthy.ca</p>	<p>FORD CREDIT CANADA LEASING Division of Canadian Road Leasing Company PO Box 2400 Edmonton, AB T5J 5C7</p>
<p>KOMATSU INTERNATIONAL (CANADA) INC. 3755 Boul Matte Suite E Brossard, QC J4Y 2P4</p>	<p>MERIDIAN ONECAP CREDIT CORP. 4710 Kingsway, Suite 1500 Burnaby, BC V5H 4M2</p>

<p>CWB NATIONAL LEASING INC. 1525 Buffalo Place Winnipeg, MB R3T 1L9</p>	<p>SUMMIT ACCEPTANCE CORP. 4620 Blackfoot TR SE Calgary, AB T2G 4G2</p>
<p>KUBOTA CANADA LTD. 5900 14th Avenue Markham, ON L3S 4K4</p>	<p>COAST CAPITAL EQUIPMENT FINANCE LTD. 800 – 9900 King George Blvd. Surrey, BC V3T 0K7</p>
<p>TD AUTO FINANCE (CANADA) INC. PO Box 4086, Station A Toronto, ON M5W 5K3</p>	<p>BOUGHTON LAW CORPORATION 700 - 595 Burrard Street Vancouver, BC V7X 1S8</p> <p>Scott MacKenzie Tel: 604-687-6789 Email: smackenzie@boughtonlaw.com</p> <p>Martin Sennott Email: msennott@boughtonlaw.com</p> <p>Lawyers for ASNA Robson Landmark Developments Limited</p>

<p>KOSKIE MINSKY LLP 900-20 Queen Street West PO Box 52 Toronto, Ontario M5H 3R3</p> <p>Demetrios Yiokaris LSO #: 45852L Tel: (416) 595-2130 Fax: (416) 204-2810 Email: dyiokaris@kmlaw.ca</p> <p>Daniel Resnick LSO#: 55349A Tel: (416) 542-6299 Fax: (416) 204-2813 Email: dresnick@kmlaw.ca</p> <p>Lawyers for LIUNA Local 506</p>	<p>GIFFEN LLP Lawyers PO Box 2396 Kitchener, ON N2H 6M3</p> <p>Cynthia Davis LSO # 53653M Tel: (519) 578-4150 Fax: (519) 578-8740 Email: cd@giffenlawyers.com</p> <p>Lawyers for the Creditor, VAS Inc.</p>
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ELECTRONIC SERVICE LIST

peter.bensley@jmxenv.com; charlie.dahl@jmxcontracting.com; candace@jmxcontracting.com;
cfell@wfkllaw.ca; skour@wfkllaw.ca; ebisceglia@lawtoronto.com;
Hans.Rizarri@CroweSoberman.com; harvey@chaitons.com; rmoses@mindengross.com;
rslattery@mindengross.com; mruberto@pallettvalo.com; tanya.rocce@opg.com;
hannah.arthurs@opg.com; linc.rogers@blakes.com; seumas.woods@blakes.com;
caitlin.mcintyre@blakes.com; dyiokaris@kmlaw.ca; dresnick@kmlaw.ca;
diane.winters@justice.gc.ca; michael.bader@justice.gc.ca; pkiriakakis@mccarthy.ca;
smackenzie@boughtonlaw.com; msennott@boughtonlaw.com; dyiokaris@kmlaw.ca;
dresnick@kmlaw.ca; cd@giffenlawyers.com

DOCUMENT CENTRE WEBSITE

<https://www.crowesobermaninc.com/insolvency/insolvency-cases/jmx-group/>

SCHEDULE "B"
Proposed Form of Initial Order

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) TUESDAY, THE 29TH
)
JUSTICE HAINEY) DAY OF SEPTEMBER, 2020

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")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by video conference due to the COVID-19 crisis.

ON READING the affidavit of Charlie Dahl, sworn September 24, 2020, and the Exhibits thereto (the "**Dahl Affidavit**"), the Fourth Report, dated September 25, 2020 (the "**Fourth Report**"), of Crowe Soberman Inc. ("**CS**") in its capacity as proposal trustee (the "**Proposal Trustee**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, the Proposal Trustee and for the secured creditor, the Royal Bank of Canada ("**RBC**"), as well as any person listed on the counsel slip and on reading the consent of CS to act as the monitor (the "**Monitor**"),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

CONTINUANCE UNDER THE CCAA

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

3. **THIS COURT ORDERS AND DECLARES** that effective September 29, 2020, the Applicants' proposal proceedings (the "**Proposal Proceedings**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (as amended) (the "**BIA**") are hereby taken up and continued under the CCAA and that, as of such date, the provisions of Part III of the BIA shall have no further application to the Applicants, save that any and all steps, agreements and procedures validly taken, done or entered into by the Applicants and all Orders granted during the Proposal Proceedings shall remain valid and binding, notwithstanding the commencement of the CCAA proceedings. For greater certainty, in the event of a conflict between an Order granted during the Proposal Proceedings and this Order, this Order shall govern.

4. **THIS COURT ORDERS** that the Fourth Report and the activities of the Proposal Trustee, as described therein, be and are hereby approved.

5. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to take all necessary steps in furtherance of its discharge as Proposal Trustee in the Proposal Proceedings, including the taxation of its fees and disbursements and those of its counsel.

PLAN OF ARRANGEMENT

6. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

7. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

8. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Dahl Affidavit or, with the consent of RBC, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

9. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case

incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

10. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

11. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

12. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

RESTRUCTURING

13. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$300,000 in any one transaction or \$500,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

14. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

15. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

16. **THIS COURT ORDERS** that until and including December 11, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be

agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

APPOINTMENT OF MONITOR

22. **THIS COURT ORDERS** that CS is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of the Applicants' cash flow statements;
- (d) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. **THIS COURT ORDERS** that the Monitor is hereby relieved of any obligation to publish a notice to creditors as prescribed in Section 23(1)(a)(i) of the CCAA.

27. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis.

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** the “**Administration Charge** as defined and granted in the Order of the Court dated May 15, 2020, be and is hereby continued.

DIP FINANCING

32. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a loan from JMX Environmental Inc., BRND Properties Inc., and Charlie Dahl (collectively, the “**DIP Lender**”) solely in order to pay down the indebtedness of the Applicants to RBC in the amount of \$700,000 and the remainder \$300,000 shall be used by the Applicants for working capital purposes, and such credit facility shall not exceed \$1,000,000 unless permitted by further Order of this Court.

33. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of September 21, 2020 (the “**Commitment Letter**”), filed.

34. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and

when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property of JMX Contracting Inc. and JMX Leasing Inc., which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 38 and 40 hereof.

36. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon five (5) days notice to the Applicants, RBC and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

37. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

38. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$300,000);

Second- the security interest of RBC against the Applicants (the “**RBC Security**”) securing the indebtedness of the Applicants to RBC (the “**RBC Indebtedness**”) and any security interest, lien or statutory deemed trust that, as a result of the operation of law, is in priority to the RBC Security; and

Third – DIP Lender's Charge (to the maximum amount of \$1,000,000).

39. **THIS COURT ORDERS** that the filing, registration or perfection of the DIP Lender's Charge shall not be required, and that the DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. **THIS COURT ORDERS** that the DIP Lender's Charge shall constitute a charge on the Property of JMX Contracting Inc. and JMX Leasing Inc. and the DIP Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person but subordinate to the RBC Security in respect to the RBC Indebtedness and any security interest, lien or statutory deemed trust that, as a result of the operation of law, is in priority to RBC's Security.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any further Encumbrances over any Property that rank in priority to, or *pari passu* with the DIP Lender's Charge, unless the

Applicants also obtain the prior written consent of the Monitor, RBC, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. **THIS COURT ORDERS** that the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the DIP Charge nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) the DIP Lender shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the DIP Charge, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of DIP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SALE PROCESS

44. **THIS COURT ORDERS** that the Sale Process attached as Schedule “A” to this Order is hereby approved (the “**Sale Process**”).

45. **THIS COURT ORDERS** that the Applicants and the Monitor are hereby authorized and empowered to take such steps as are necessary or desirable to carry out and perform their obligations under the Sale Process, provided that any definitive agreement to be executed by the Applicants in respect of the sale of all or part of the assets, rights, undertakings and properties of the Applicants, of every nature and kind whatsoever, and wherever situated, including all proceeds thereof shall require further approval of the Court.

46. **THIS COURT ORDERS** that the Applicants and the Monitor are authorized and directed to enter into the stalking horse asset purchase agreement dated September 24, 2020 (the “**Stalking Horse Agreement**”) between the Applicants and Peter Bensley and Matt Richards in trust for a company to be incorporated, in its capacity as stalking horse bidder (the “**Stalking Horse Bidder**”), and the Stalking Horse Agreement is hereby approved and accepted for the purpose of conducting the Sale Process.

47. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of assisting the Applicants with the carrying out of the Sale Process or the provisions of this Order, save and except for gross negligence or willful misconduct on its part.

SERVICE AND NOTICE

48. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

49. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://www.crowesobermaninc.com/insolvency/insolvency-cases/jmx-group/>>’.

50. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

51. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

52. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

53. **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 Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

54. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

55. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

56. **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.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF JMX CONTRACTING INC. OF THE TOWN OF
UXBRIDGE IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS OF
JMX NATIONAL INC., BRND PROPERTIES INC., and JMX LEASING INC.

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

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

Proceedings commenced at Toronto

NOTICE OF APPLICATION

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

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

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

Fax: 416.613.8290

Lawyers for JMX Contracting Inc., et al.