

**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")**

AFFIDAVIT OF CHARLIE DAHL
(Sworn January , 2021)

I, **CHARLIE DAHL**, of the town of Stouffville, in the province of Ontario, **MAKE OATH AND SAY:**

1. I am a director of each of the Applicants, JMX Contracting Inc. ("**JMX Contracting**"), JMX National Inc., BRND Properties Inc. ("**BRND**"), and JMX Leasing Inc. ("**JMX Leasing**"). I am also the Chief Executive Officer of JMX Contracting. Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. This Affidavit is sworn in support of a motion for Orders substantially in the form appended as Tabs 3 and 4 of the Applicants' Motion Record, among other things:

- (a) approving a reorganization transaction pursuant to which the JMX Shareholders (as defined herein) are issued shares of a newly incorporated company- 2808447 Ontario Inc. ("**New ParentCo**") in exchange for all of the issued and outstanding shares of JMX Leasing and BRND that are held by the JMX Shareholders;

- (b) vesting out:
- (i) all claims against JMX Contracting, other than the Assumed Liabilities, defined herein, in and to a newly incorporated company- 2809588 Ontario Inc. (“**Residual Contracting**”);
 - (ii) all claims against JMX Leasing, other than the Assumed Liabilities, in and to a newly incorporated company- 2809590 Ontario Inc. (“**Residual Leasing**”);
 - (iii) all claims against BRND, other than the Assumed Liabilities, in and to New ParentCo,

such that those claims shall no longer be obligations of JMX Contracting, JMX Leasing or BRND, as applicable;

- (c) vesting in Residual Contracting all rights and benefits, including causes of action, of JMX Contracting in the CCDC17 Contract for 1400 Robson Empire Landmark Hotel Demolition dated October 23, 2017 (the “**ASNA Contract**”) including, without limitation: the lien action commenced in British Columbia by JMX Contracting bearing Court File No. VLC-S-S-207196; JMX Contracting’s right to receive progress payments pursuant to the ASNA Contract; and any actions, claims, rights or lawsuits of any nature whatsoever, whether against ASNA Robson Landmark Holdings Limited (“**ASNA**”) or any other party, arising out of or in connection with the ASNA Contract (collectively, the “**ASNA Claims**”);
- (d) vesting in Residual Contracting all rights and benefits, including causes of action, of JMX Contracting in the Lambton Generating Station Demolition Agreement

#RG00287132 with Ontario Power Generation (“**OPG**”) dated July 10, 2020 (the “**OPG Contract**”) including, without limitation: JMX Contracting’s interest in amounts drawn down by OPG pursuant to a letter of credit provided by JMX Contracting; JMX Contracting’s right to receive progress payments pursuant to the OPG Contract; and any actions, claims, rights or lawsuits of any nature whatsoever, whether against OPG or any other party, arising out of or in connection with the OPG Contract (collectively, the “**OPG Claims**”);

- (e) ordering and declaring that each of New ParentCo, Residual Leasing and Residual Contracting:
 - (i) are companies to which the *Companies’ Creditors Arrangement Act*, RSC, 1985, c C-36 (the “**CCAA**”) applies;
 - (ii) are Applicants in these CCAA proceedings; and
 - (iii) are added to the style of cause of these proceedings;

- (f) approving the share purchase agreement (the “**Share Purchase Agreement**”) between New ParentCo and 2779076 Ontario Inc. (the “**Stalking Horse Purchaser**” or “**277**”) and vesting all of New ParentCo’s right, title and interest in and to the shares of JMX Leasing and BRND in and to the Stalking Horse Purchaser, such that the Stalking Horse Purchaser will hold JMX Contracting, JMX Leasing and BRND.

I. ~~I.~~ **BACKGROUND**

JMX Corporate Entities

3. The Applicants are part of a corporate group (the “**JMX Group**”) engaged in the business of environmental contracting, including the provision of demolition, abatement, remediation and commodity salvage services for construction and decommissioning projects in Ontario (the “**Business**”).

4. JMX Contracting is the primary operating entity within the JMX Group. It is wholly owned by JMX Leasing. JMX Leasing holds the group’s equipment leases and other leasehold interests, including leases financed by the JMX Group’s primary secured creditor, Royal Bank of Canada (“**RBC**”).

5. BRND owns the real estate and building from which the Business operates. It is a borrower under a term loan with Hillmount Capital Inc. (“**Hillmount**”), which loan is secured by a mortgage on title to the real property. BRND does not conduct any business operations.

6. JMX National Inc. (“**JMX National**”) conducts no active business.

7. Each of JMX Leasing, BRND and JMX National are held by four shareholders: 2542097 Ontario Inc., Dahl Demolition Corp., 2391212 Ontario Inc., and 1291213 Ontario Inc. (the “**JMX Shareholders**”). Each shareholder holds a 25% interest in JMX Leasing, BRND and JMX National respectively.

Background to the CCAA Proceeding

8. On April 17, 2020 and April 20, 2020, the Applicants each filed a Notice of Intention to Make a Proposal (“NOI”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended (the “BIA”), as a result of demands made by their primary secured creditor, RBC, for the repayment of approximately \$4.43 million in secured debt that was outstanding under a demand facility. RBC asserted a debt service ratio coverage default as the basis for its demand.

9. Notwithstanding the JMX Group’s continued view that there was and had never been a default of its obligations to RBC, the JMX Group commenced NOI proceedings under the BIA to avoid enforcement action by RBC that would jeopardize the Business and contracts.

10. Crowe Soberman Inc. was appointed as proposal trustee to supervise the JMX Group during the NOI proceeding. After the NOI filing, the JMX Group continued to operate under creditor protection with the intention of restructuring its secured debt and to make a proposal to its creditors that would permit the continuation of the Business on a going concern basis.

11. During the pendency of the NOI proceeding, the JMX Group actively engaged with its secured lender, RBC to pay down the RBC indebtedness with cash flow from operations. Among other things,

- (a) the Applicants agreed to permit RBC to engage msi Spergel Inc. as RBC’s financial advisor with unfettered access to the JMX Group and its books and records, and to pay the professional fees associated with the engagement; and

- (b) the Applicants refinanced their mortgage with RBC by executing a mortgage facility with Hillmount, which provided for the full and final paydown of BRND's mortgage obligations to RBC, as well as the partial paydown of JMX Contracting's obligations to RBC.

12. The stay of proceedings and breathing room afforded by the NOI proceeding also allowed the Applicants to execute new, profitable post-filing contracts and collect outstanding receivables. As a result, the Applicants' liquidity position has continued to improve.

13. Recognizing that additional time beyond the 6-month limitation period under the BIA would be necessary to undertake further restructuring steps such as a sale of the Business, the Applicants sought to convert the NOI proceeding into a proceeding under the CCAA.

14. On September 29, 2020, the Honourable Mr. Justice Hainey granted an order (the "**Initial Order**"), providing for protection for the JMX Group under the CCAA and approval of a stalking horse sales process. Among other things, the Initial Order provided for:

- (a) a stay of proceedings up to and including December 11, 2020 (the "**Stay Period**");
- (b) appointed Crowe Soberman Inc. as the court-appointed monitor of the Applicants (in such capacity, the "**Monitor**");
- (c) approved an asset purchase agreement (the "**Stalking Horse Bid**") submitted by the Stalking Horse Purchaser, appended hereto as Exhibit "**A**";
- (d) approved a stalking horse sale process for the marketing and sale of the assets of the Applicants (the "**Stalking Horse Sales Process**") whereby interested parties were

required to submit bids by 5:00 p.m. on October 23, 2020 (the “**Phase I Bid Deadline**”). Phase I Bid Deadline elapsed and no bids were received by the Monitor.

15. On December 8, 2020, the Honourable Madam Justice Conway granted an Order that, among other things,

- (a) extended the Stay Period up to and including March 8, 2021 to permit the Applicants and the Stalking Horse Purchaser to explore a reverse vesting structure for the transaction contemplated by the Stalking Horse Bid (the “**Transaction**”);
- (b) extended the deadline for the closing of the Transaction up to and including January 31, 2021; and
- (c) approved the activities of the Monitor as described in the report dated December 4, 2020 (the “**First Report**”).

16. The activities of the Monitor described in the First Report and approved by the Court included the Stalking Horse Sales Process conducted by the Monitor pursuant to the Initial Order.

The First Report states, among other things, that:

- (a) the Monitor administered all aspects of the Stalking Horse Sales Process on behalf of the company;
- (b) the Monitor contacted more than 35 parties and provided them with a “teaser” document;

- (c) for a period of two weeks the Monitor published notices of the Stalking Horse Sales Process in two major industry publications and on the Monitor's website;
- (d) seven interested parties contacted the Monitor and executed non-disclosure agreements to gain access to a data room established and maintained by the Monitor; and
- (e) no non-binding letters of intent were received by the Phase I Bid Deadline and, pursuant to the terms of the Stalking Horse Sales Process, the Stalking Horse Purchaser was deemed to be the successful bidder.

Share Purchase and Reverse Vesting

17. In accordance with the Stalking Horse Sales Process, the JMX Group is bound to complete the Transaction with the Stalking Horse Purchaser. However, as no bids were received in the Stalking Horse Sales Process other than the Stalking Horse Purchaser, the Stalking Horse Purchaser has requested that the Transaction be structured as a share purchase with a reverse vesting of liabilities in order to realize further efficiencies and avoid disruption to the Business. As described below, the resulting effect of the reverse vesting order, including its effect on creditors and stakeholders, is the same as an ordinary course asset sale and approval and vesting order.

Transaction Steps to Effect the Reverse Vesting Transaction

18. The Stalking Horse Bid submitted by 277 provided for, among other things:
- a) the purchase of substantially all the assets of the JMX Group, including JMX Contracting's claim against ASNA, and the assumption of the Assumed Liabilities (as defined below);

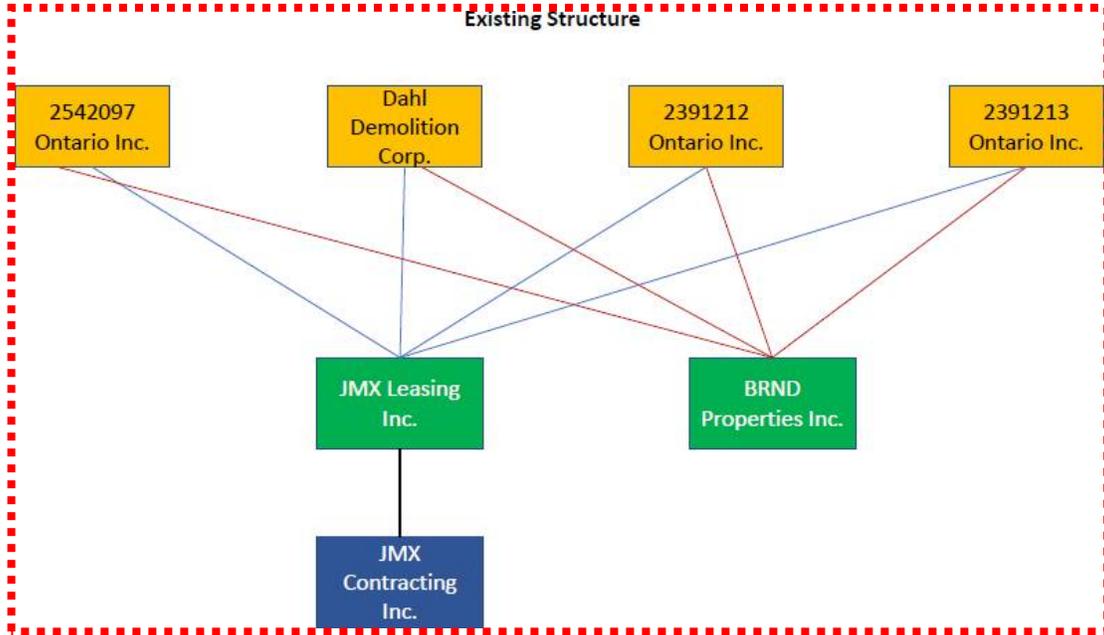
- b) a purchase price equal to the assumption of liabilities ~~in the approximate amount of \$9.6 million~~, comprised of the aggregate of, *inter alia*,
- (i) the assumption of the secured indebtedness owing by the Applicants, if any, to RBC;
 - (ii) the assumption of the DIP Loan in the amount of \$1,000,000 plus any accrued interest owing by the Applicants to the DIP Lenders;
 - (iii) the assumption of certain ordinary course trade liabilities of the Applicants amounting to approximately \$4 million, which includes the indebtedness owing by the Applicants to JMX Environmental Inc., a corporation held by two of the same shareholders as the Stalking Horse Purchaser;
 - (iv) the assumption of the outstanding mortgage indebtedness owing by BRND to Hillmount in the amount of approximately \$1.7 million; ~~and~~
 - (v) the assumption of the indebtedness owing by BRND to Dahl Demolition Corp., 2391212 Ontario Inc., and 2391213 Ontario Inc. (three of the JMX Shareholders) amounting to approximately \$1.2 million; and
 - (vi) lease liabilities of JMX Leasing in the approximate amount of \$3.8 million.

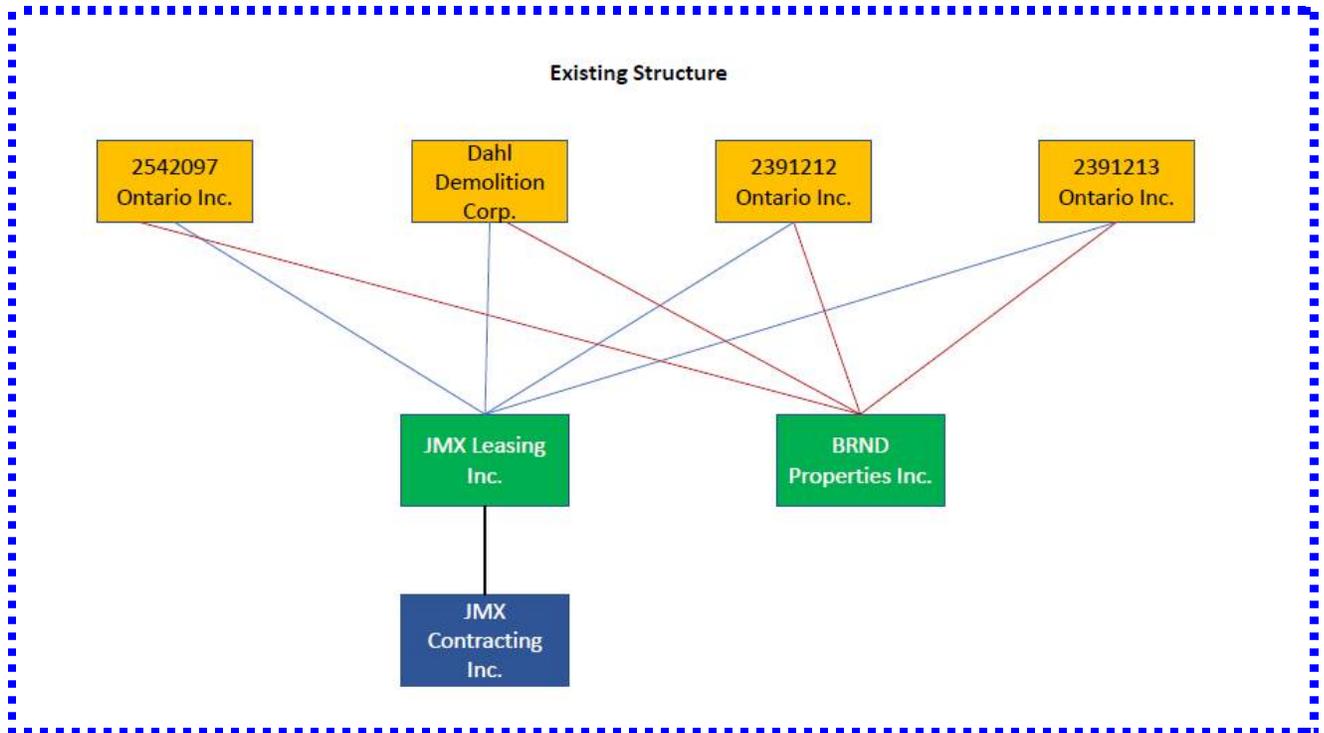
(collectively, the “**Assumed Liabilities**”)

19. Under the Stalking Horse Bid, the OPG Contract (which has been terminated), the ASNA Contract (which is complete), and the proceeds of any litigation against OPG are excluded from the assets purchased by the Stalking Horse Purchaser.

20. Pursuant to the Stalking Horse Bid, the Stalking Horse Purchaser also agreed to: (i) pay or assume any payables of the Applicants, which by operation of law, are in priority to the security interest of RBC; and (ii) fund the litigation of the OPG Claims.

21. The existing structure of the JMX Group is as follows:



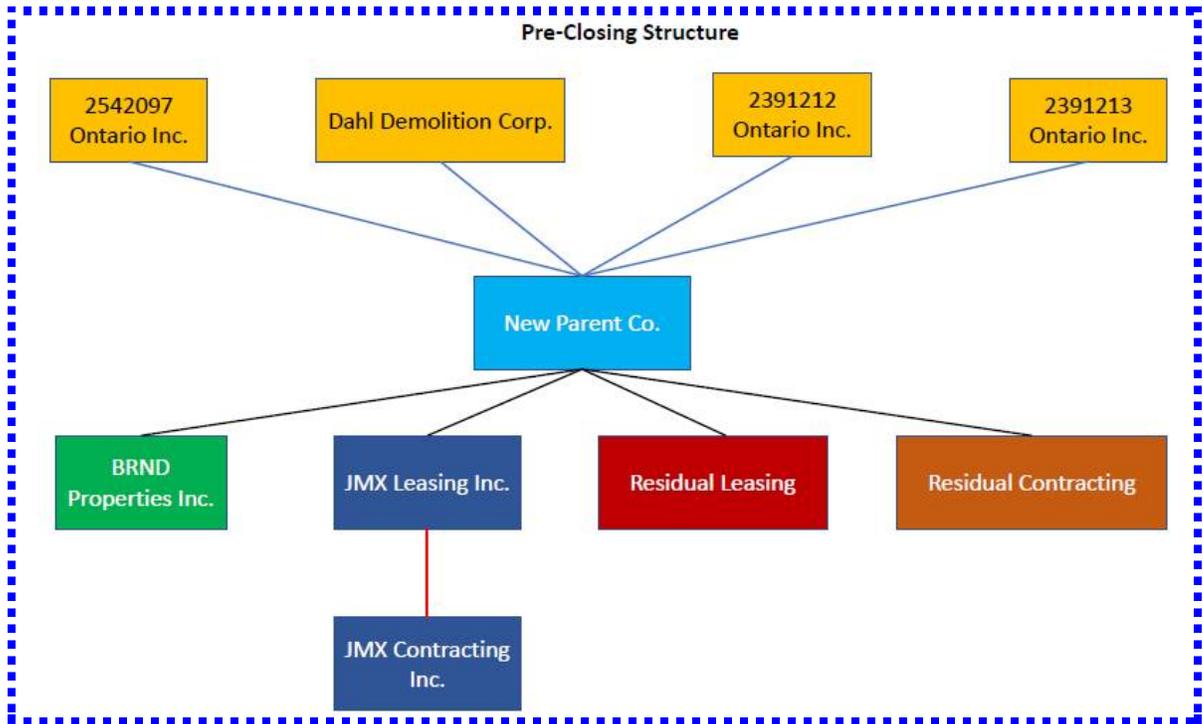


22. Pursuant to the Stalking Horse Bid, substantially all of the assets of JMX Leasing, JMX Contracting and BRND would have been vested out to the Stalking Horse Purchaser, leaving behind the liabilities of each corporation. Pursuant to the reverse vesting structure, liabilities instead are vested out into new corporate entities while the assets are maintained in the JMX Group's existing entities. The shares of the JMX Group will be transferred by way of share purchase to the Stalking Horse Purchaser. Under either structure, the Stalking Horse Purchaser does not assume the liabilities that are excluded under the Stalking Horse Bid.

23. The Applicants seek approval of the following transaction steps and mechanisms to effect the reverse vesting (the result of which is illustrated in the charts below):

- (a) New ParentCo will be incorporated under the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 (the "OBICA");

- (b) each of the JMX Shareholders - 2542097 Ontario Inc., Dahl Demolition Corp., 2391212 Ontario Inc., and 2391213 Ontario Inc. - will be issued shares of New ParentCo in exchange for all of the issued and outstanding common shares held by each of them in JMX Leasing and in BRND on a 1:1 basis (the “**Share Exchange**”);
- (c) following the completion of the Share Exchange, each of the JMX Shareholders will hold 25% of the common shares of New ParentCo and JMX Leasing and BRND will be wholly owned subsidiaries of New ParentCo;
- (d) New ParentCo will establish two new corporations pursuant to the OBCA. 2809588 Ontario Inc., referred to herein as Residual Contracting, and 2809590 Ontario Inc., referred to herein as Residual Leasing. Each of these companies will be a wholly owned subsidiary of New ParentCo. The following chart illustrates the interim corporate structure prior to the closing of the share purchase.

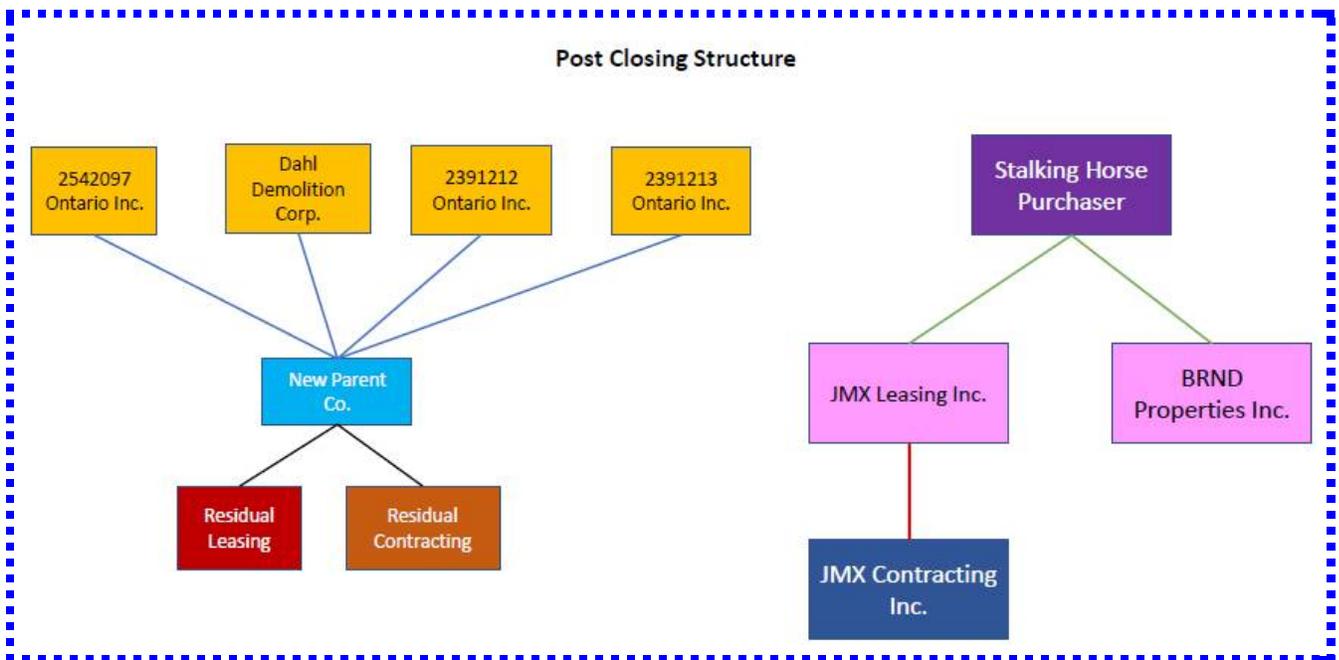
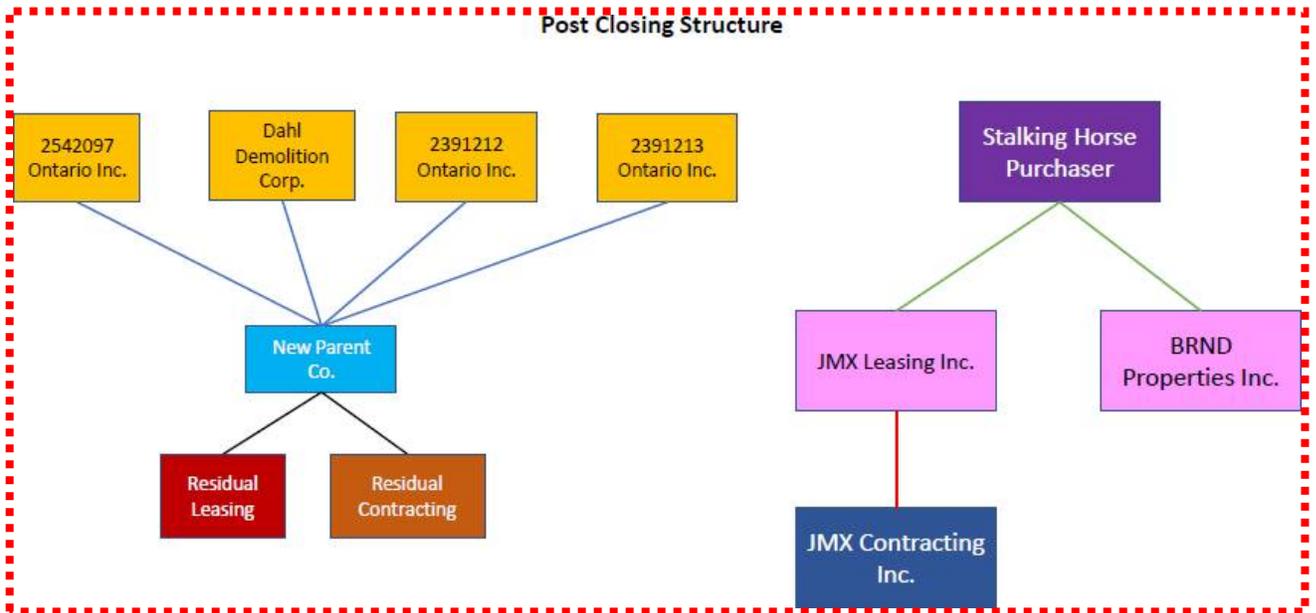


- (e) all of the liabilities of JMX Contracting shall be transferred and vested in and to Residual Contracting; all of the liabilities of JMX Leasing shall be transferred and

vested in and to Residual Leasing; and all of the liabilities of BRND shall be transferred and vested in and to New ParentCo, each pursuant to an Order of the Court (the “**Reverse Vesting Order**”);

- (f) the causes of action and claims of JMX Contracting (being assets of JMX Contracting), being the OPG Claims and the ASNA Claims (together, the “**Litigation Claims**”) will be transferred and vested in and to Residual Contracting, the recovery of which shall be available first to the creditors of Residual Contracting and second to the creditors of Residual Leasing in that priority, based on the pre-existing corporate structure; and

- (g) New ParentCo shall enter into the Share Purchase Agreement [\(a copy of which is attached hereto as Exhibit “B”\)](#) with the Stalking Horse Purchaser pursuant to which the Stalking Horse Purchaser shall acquire all of the issued and outstanding shares of JMX Leasing and BRND and the shares shall be vested in and to the Stalking Horse Purchaser pursuant to an Order of the Court (the “**Approval and Vesting Order**”). The following chart illustrates the final corporate structure.



24. The reorganization transactions and reverse vesting, contained in the Approval and Vesting Order and the Reverse Vesting Order, achieve practically the same result as the asset purchase described in the Stalking Horse Bid approved by the Court. However, instead of assets being

vested out to a purchaser, the liabilities are vested out and the Stalking Horse Purchaser receives equity in the JMX Group. In either transaction, creditors with liabilities not assumed by the Stalking Horse Purchaser and any equity claimants obtain no recovery other than recourse to proceeds from the OPG Claims, if any.

25. The reverse vesting structure described above will allow the JMX Group to achieve the following efficiencies among others:

- (a) allow JMX Leasing, JMX Contracting and their operations to continue as a going concern;
- (b) minimize fees that would be payable on its mortgage commitment associated with the transfer of the real property to 277 in an asset sale;
- (c) minimize taxes payable upon the transfer of real estate;
- (d) maintain the corporate existence of JMX Contracting to the extent necessary to qualify for grants, tax incentives or COVID-19 relief measures for the ongoing business (if appropriate) since many such grants, tax incentives and relief measures are only available to corporations in existence as of April 2019;
- (e) avoid disruption for employees, project owners and subtrades in ongoing projects as billing practices and parties will not need to change;
- (f) avoid the need to assign any contracts; and
- (g) avoid the need to transfer employees to a new entity.

26. The CCAA proceedings of the JMX Group culminating in the Transaction, if approved, will result in the continuation of the Business – a successful outcome that preserves jobs and supply relationships, and preserves the assets of the JMX Group as a going concern.

Litigation Funding Arrangement

27. As I have disclosed in my previous affidavits, the JMX Group has been pursuing payment from OPG under the OPG Contract given the significant amount of creditor claims that will be left in Residual Contracting with otherwise no recovery other than proceeds from litigation.

28. The Stalking Horse Purchaser has committed to funding the OPG litigation pursuant to the Stalking Horse Bid, which provides that the Stalking Horse Purchaser will fund the costs associated with litigating the OPG Claims for amounts owing under the OPG Contract, and any amounts recovered in respect to that litigation less the funded costs of the litigation will be distributed to unsecured creditors on the basis of their legal entitlements.

29. The JMX Group seeks to vest the Litigation Claims to Residual Contracting in order to permit Residual Contracting to pursue payment within these CCAA proceedings for the benefit of remaining unsecured creditors.

30. As at the date of this affidavit, approximately \$4.3 million remains outstanding to secured and unsecured trade creditors in respect to the OPG Contract. In addition to this, there is over \$3 million in unsecured claims at JMX Contracting. OPG continues to hold approximately \$2.3 million in holdback that is required to be paid to trade creditors on the OPG project, Additionally: (i) \$3 million has been drawn pursuant to a letter of credit provided by JMX Contracting, which funds OPG, in the view of JMX Group, has inappropriately retained; and (ii) OPG has refused to

pay JMX Contracting over \$4 million for work performed. Accordingly, significant funds may be available for the creditors of the JMX Group.

31. Accordingly, once the Litigation Claims are vested in Residual Contracting, the Stalking Horse Purchaser will advance funding pursuant to a staged funding agreement to be agreed between Residual Contracting and the Stalking Horse Purchaser.

32. Given the prospect of recovering proceeds from OPG in a litigation proceeding, JMX Contracting and the Stalking Horse Purchaser have agreed ~~between~~ to vest the OPG claim in and to Residual Contracting ~~and~~ to preserve the ~~Stalking Horse Purchaser~~ ability for the litigation proceeds to form consideration under a possible plan of arrangement.

Status of the Dispute with OPG

33. ~~32.~~ The OPG project involved the demolition of OPG's Lambton Generating Plant and the sale of scrap removed from the structures.

34. ~~33.~~ On September 25, 2020, the JMX Group and the Monitor consented to lifting the stay to permit OPG to terminate the OPG Contract without prejudice to the JMX Group's rights to assert any remedies available to it at law and pursuant to the OPG Contract. On September 30, 2020, OPG served a notice terminating the OPG Contract.

35. ~~34.~~ OPG is currently holding approximately \$3 million in proceeds that it has drawn down under a letter of credit provided to OPG as security under the OPG Contract. OPG's claim to the \$3 million has not been determined as yet.

36. ~~35.~~ JMX Contracting has perfected a lien against the OPG project in the amount of approximately \$10.9 million to secure payment due under the OPG Contract. While a Statement of

Claim has been filed to perfect the lien, no further steps have been taken and the amount of the claim have yet to be determined.

37. ~~36.~~ At this time, I am not aware of any alternate contractor having been retained by OPG to complete the project, nor any steps OPG has taken to mitigate its damages. A key issue under the OPG Contract was the stockpiling of scrap metal on the site due to depressed scrap prices. Pursuant to the OPG Contract, JMX Contracting was required to demolish the structures on site, and process and sell scrap. OPG was entitled to receive \$280 per tonne of scrap sold.

38. ~~37.~~ Metal prices were significantly depressed in 2020. The sale of scrap while metal prices were lower than \$280 per tonne would have resulted in losses to JMX Contracting under the OPG Contract and could not have been a commercially reasonable expectation of OPG given that there is no term in the OPG Contract requiring JMX Contracting to sell scrap at a specific time or price.

39. ~~38.~~ At the time JMX Contracting demobilized from the site on or about April 14, 2020, there was approximately 20,000 tonnes of scrap on the ground that was processed and prepared for sale. At the date of this affidavit, AMM indexed scrap pricing has risen to over \$470 a tonne. The aggregate value of the scrap on site is over \$9.5 million.

40. ~~39.~~ JMX Contracting has offered to mobilize to transport and sell the scrap on site to capitalize on steel prices and to minimize, to the extent possible, any damages that the parties may assert under the OPG Contract.

Claim Against ASNA

41. ~~40.~~ The ASNA project is located in Vancouver, BC and involved the demolition of the Empire Landmark Hotel – a 42-storey building with a revolving restaurant located at the top. The

JMX Group successfully demolished the structure and has completed the ASNA Contract. JMX Contracting has perfected a lien in BC for approximately \$6.7 million against the ASNA project for its costs and damages associated with the owner's failure to disclose structural and other issues during the demolition.

42. ~~41.~~ Pursuant to the Stalking Horse Bid, JMX Contracting's claim against the project owner, ASNA, is included in the purchased assets. Notwithstanding the purchase of the claim by the Stalking Horse Purchaser, JMX Contracting and the Stalking Horse Purchaser are considering a potential litigation support arrangement over the litigation of the ASNA Claim so as to permit proceeds of that litigation to flow to creditors.

43. ~~42.~~ Given the prospect of recovering proceeds from ASNA in a litigation proceeding, JMX Contracting and the Stalking Horse Purchaser have agreed to vest the ASNA claim in and to Residual Contracting to preserve the ability for the litigation proceeds to form consideration under a possible plan of arrangement.

44. ~~43.~~ The JMX Group continues to seek a global resolution of the disputes with OPG and ASNA.

SWORN before me by video conference at the city of Toronto in the Province of Ontario this 25nd day of January 2021:

A Commissioner for Taking Affidavits
Name:

CHARLIE DAHL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
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INC., and JMX LEASING INC.**

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Proceedings commenced at Toronto

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