

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(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")

MOTION RECORD

January 25, 2021

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TO: THE SERVICE LIST

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TAB 1

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

**ONTARIO
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**IN THE MATTER OF THE *COMPANIES' CREDITORS
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**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 MOTION
(Re: Approval of Transaction, Returnable January 29, 2021)**

JMX CONTRACTING INC. ("JMX Contracting"), JMX NATIONAL INC., BRND PROPERTIES INC. ("BRND"), and JMX LEASING INC. ("JMX Leasing") will make a motion to a Judge presiding over the Commercial List on Friday, January 29, 2021 at 10:00 a.m., or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule "A" hereto in order to attend the motion and advise if you intend to join the motion by emailing Christel Paul at cpaul@wfkllaw.ca.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. Orders, substantially in the form attached at Tabs 3 and 4 of the 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, 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 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; and
- g) Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Background

- 2. The Applicants are a part of a corporate group (the “**JMX Group**”) in the business of providing environmental contracting, demolition, abatement, remediation, and commodity salvage services to construction and decommissioning projects across Canada (the “**Business**”).
- 3. 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.
- 4. On September 29, 2020, the Honourable Mr. Justice Hainey granted an Order (the “**Initial Order**”) converting the NOI proceeding into a proceeding under the CCAA and approving a stalking horse sale process (the “**Stalking Horse Sales Process**”) to be conducted by the Crowe Soberman Inc., in its capacity as monitor of the JMX Group (the “**Monitor**”). Additionally, the Initial Order approved an asset purchase agreement (the “**Stalking Horse Bid**”) submitted by the Stalking Horse Purchaser.

5. Pursuant to the Stalking Horse Sales Process, interested parties were required to submit bids by 5:00 p.m. on October 23, 2020 (the “**Phase I Bid Deadline**”). The Phase I Bid Deadline elapsed and no bids were received by the Monitor.
6. 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, including the activities of the Monitor in respect of the Stalking Horse Sales Process.
7. 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 resultant effects of the reverse vesting order, including its effect on creditors and stakeholders are the same as a usual course asset sale and approval and vesting order.

The Transaction

8. The Stalking Horse Bid submitted by 277 provided for, among other things, the purchase of substantially all the assets of the JMX Group and a purchase price equal to the assumption of liabilities in the approximate amount of \$9.6 million.
9. 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.
10. 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.
11. The Applicants seek approval a reverse vesting transaction effected pursuant to the following steps:
 - a) New ParentCo will be incorporated under the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 (the “**OBCA**”);
 - 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;
- 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, 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 a share purchase agreement 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**”).

12. 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 corporate 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.

13. 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.
14. The Stalking Horse Purchaser has committed to funding litigation against the OPG to recover proceeds for creditors. Once the OPG 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.
 15. Further, the Stalking Horse Purchaser has agreed to permit JMX Contracting's claim against ASNA to vest in Residual Contracting notwithstanding that the ASNA Claims were a purchased asset under the Stalking Horse Bid. It is anticipated that Residual Contracting will pursue the claim against ASNA for payment subject to a litigation funding arrangement being negotiated between Residual Contracting and the Stalking Horse Purchaser.
 16. 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 48 jobs and supply relationships, and preserves the assets of the JMX Group as a going concern.

Further Grounds:

17. The provisions of the CCAA, including sections 2, 3, 6, 11, and 36;
18. The statutory, inherent, and equitable jurisdiction of this Honourable Court;
19. Rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended; and

20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

1. The Affidavit of Charlie Dahl, sworn January 25, 2021, with Exhibits attached thereto;
2. The Second Report of the Monitor, to be filed; and,
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 25, 2021

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TO: THE SERVICE LIST

Schedule "A"
Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/89982730985>

Meeting ID: 899 8273 0985

One tap mobile

+14388097799,,89982730985# Canada

+15873281099,,89982730985# Canada

Dial by your location

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

Meeting ID: 899 8273 0985

Find your local number: <https://us02web.zoom.us/u/kdhxvJnvNG>

IN THE MATTER OF THE *COMPANIES' CREDITORS*
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ARRANGEMENT OF JMX CONTRACTING INC., JMX
NATIONAL INC., BRND PROPERTIES INC., and JMX
LEASING INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION
(Re Approval of Transaction, Returnable January 29, 2021)

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TAB 2

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

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

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ARRANGEMENT OF JMX CONTRACTING INC., JMX
NATIONAL INC., BRND PROPERTIES INC., and JMX LEASING
INC. (the "Applicants")

AFFIDAVIT OF CHARLIE DAHL
(Sworn January 25, 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. 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 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;

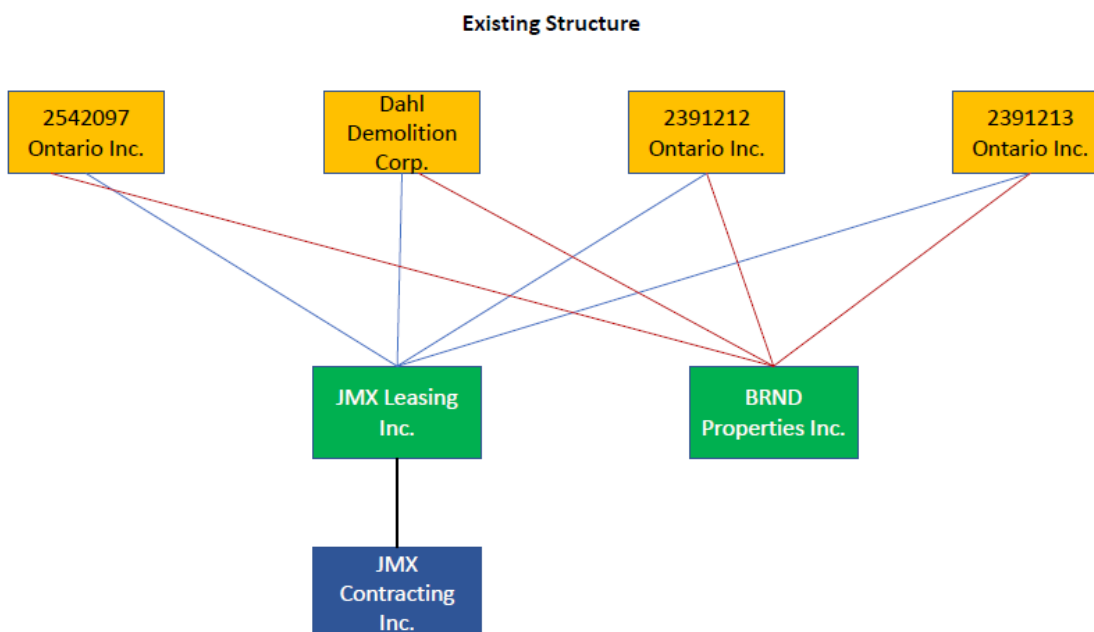
- (v) the assumption of the indebtedness owing by BRND to Dahl Demolition Corp., 2391212 Ontario Inc., and 2391213 Ontario Inc. (three of the JMX Shareholders) amounting to approximately \$1.2 million; and
- (vi) lease liabilities of JMX Leasing in the approximate amount of \$3.8 million.

(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:

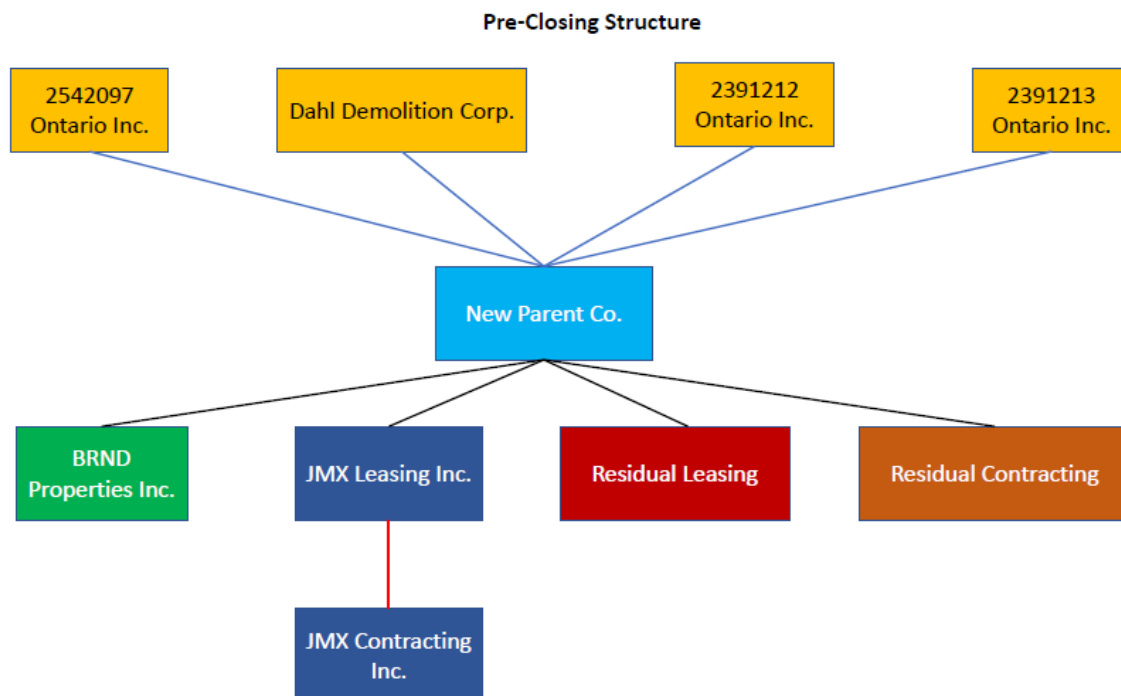


22. Pursuant to the Stalking Horse Bid, substantially all of the assets of JMX Leasing, JMX Contracting and BRND would have been vested out to the Stalking Horse Purchaser, leaving behind the liabilities of each corporation. Pursuant to the reverse vesting structure, liabilities instead are vested out 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):

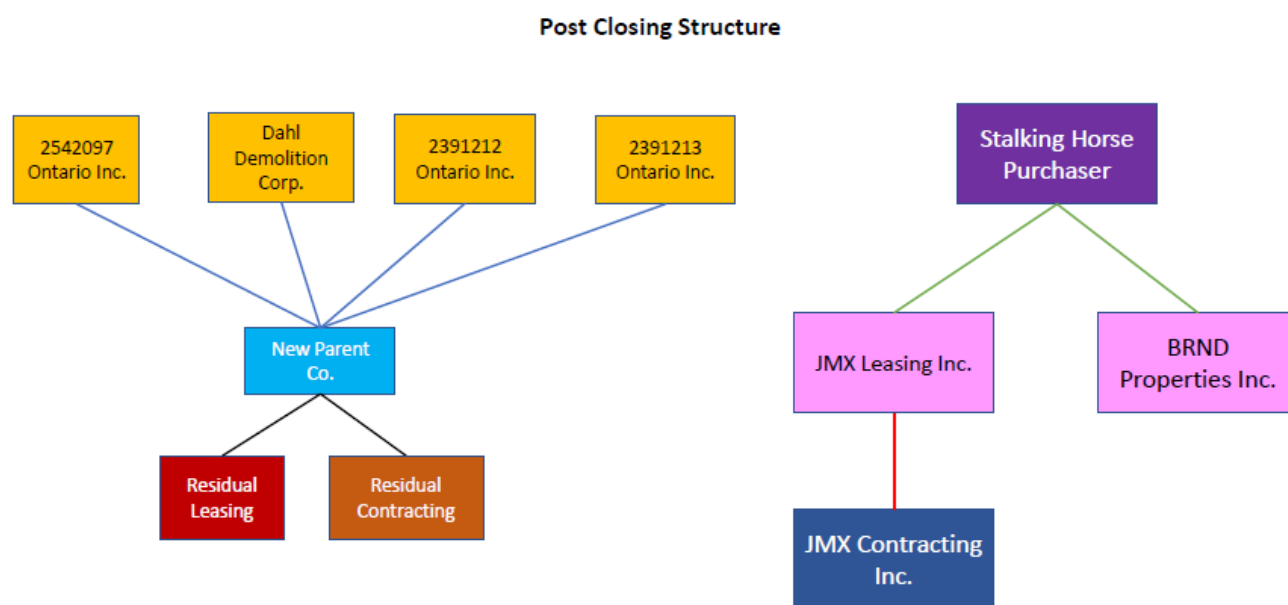
- (a) New ParentCo will be incorporated under the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 (the "OBCA");

- (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 to vest the OPG claim in and to Residual Contracting to preserve the ability for the litigation proceeds to form consideration under a possible plan of arrangement.

Status of the Dispute with OPG

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

34. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 25TH DAY OF JANUARY, 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

2779076 Ontario Inc.

as Purchaser

and

JMX Contracting Inc., JMX Leasing Inc. JMX National Inc. and BRND Properties Inc.

collectively, the Vendor

ASSET PURCHASE AGREEMENT

September 23, 2020

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ASSET PURCHASE AGREEMENT

Asset purchase agreement dated September 23, 2020 between JMX Contracting Inc. (“**JMX Contracting**”), JMX Leasing Inc. (“**JMX Leasing**”) and BRND Properties Inc. (“**BRND**” collectively with JMX Contracting and JMX Leasing, the “**Vendor**”) and 2779076 Ontario Inc. (the “**Purchaser**”).

RECITALS:

- (1) The Vendor is in the business of providing environmental contracting, demolition, abatement, remediation, and commodity salvage services to construction and decommissioning sites across Canada (the “**Business**”).
- (2) In April, 2020, the Vendor commenced proceedings (the “**NOI Proceedings**”) under the *Bankruptcy and Insolvency Act* (Canada), which NOI Proceedings were converted to proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceedings**”) pursuant to an order dated September 28, 2020 by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), pursuant to which, *inter alia*, Crowe Soberman Inc. was appointed monitor (in such capacity, the “**Monitor**”) and a super-priority DIP Credit Agreement (as defined herein) providing for a non-revolving credit facility of up to \$1,000,000 was approved by the Court.
- (3) In connection with the sale, refinancing and investment solicitation process commenced by the Vendor pursuant to an Order granted by the Court on September 28, 2020, the Purchaser, as a “stalking horse bidder”, wishes to purchase, and the Vendor has agreed to sell, the Purchased Assets pursuant to and in accordance with the terms of the Sale Process and subject to and in accordance with the conditions of this Agreement.
- (4) The transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated only pursuant to the Approval and Vesting Order to be entered in the CCAA Proceedings.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Defined Terms.

As used in this Agreement, the capitalized terms listed below shall have the corresponding meanings.

“**Affiliate**” of a Person means any other Person that directly or indirectly controls, is controlled by or is under common control with such Person, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the

management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Asset Purchase Agreement and all attached Schedules, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and all attached Schedules and unless otherwise indicated, references to Articles, Sections and Schedules are to Articles, Sections and Schedules in this Agreement.

“Ancillary Agreements” means all agreements, certificates and other instruments delivered or given pursuant to this Agreement.

“Approval and Vesting Order” means an approval and vesting order of the Court in form and in substance satisfactory to the Vendor and the Purchaser, each acting reasonably, approving this Agreement and vesting in and to the Purchaser the Purchased Assets, free and clear of and from any and all Encumbrances to the extent and as provided for in such approval and vesting order.

“ASNA Litigation Claim” means the litigation claim of the Vendor as against ASNA Robson Landmark Developments Limited.

“Assignment Order” means an order or orders of the Court, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving the assignment of one or more Consent Required Contracts for which the consent, approval or waiver of the party or parties thereto (other than the Vendor) required to assign such Consent Required Contracts has not been obtained by Closing.

“Assumed Contracts” means all of the Contracts of the Vendor used in the Business other than the Excluded Contracts.

“Assumed Liabilities” has the meaning given to such term in Section 3.1.

“Assumed Transferred Employee Liabilities” means all liabilities with respect to or in connection with the Transferred Employees, including any Employee Plan or Benefit Plan associated with a Transferred Employee;

“Benefit Plan” means the group insurance policy held by the Vendor with Sunlife Financial bearing policy number 182646 and policy effective date March 1, 2017, as amended, restated, modified or supplemented from time to time.

“Books and Records” means all information in any form relating to the Purchased Assets, including books of account, financial, operations, sales books, tax, business, marketing, personnel and research information and records, technical information, drill logs, equipment logs, technical reports, operating guides and manuals and all other documents, files, correspondence and other information, including all data, information and databases stored on computer-related or other electronic media, but excluding the minute books and corporate records of the Vendor.

“**Business Day**” means any day of the year, other than a Saturday, Sunday or any day on which major Canadian chartered banks are closed for business in the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

“**Business**” has the meaning given to such term in the preamble to this Agreement.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36.

“**CCAA Proceedings**” has the meaning given to such term in the preamble to this Agreement.

“**Closing**” means the completion of the transaction of purchase and sale contemplated in this Agreement.

“**Closing Date**” means the date on which the Closing occurs, which date shall be no later than five (5) days from the issuance of the Approval and Vesting Order or such other date as mutually agreed between the Parties and the Monitor.

“**Consent Required Contract**” means any Assumed Contract or License which is not assignable in whole or in part without the consent, approval or waiver of the party or parties thereto (other than the Vendor).

“**Construction Act**” means the *Construction Act*, R.S.O. 1990, c. C.30.

“**Contract**” means all contracts, letters of intent, licenses, leases, agreements, obligations, promises, undertakings, arrangements, documents, commitments, entitlements or engagements to which the Vendor is a party or by which the Vendor is bound relating to the Purchased Assets and/or the Business, all as may be amended and/or restated, and including any and all related quotations, orders, proposals or tenders which remain open for acceptance, warranties and guarantees and documents ancillary thereto.

“**Cure Costs**” means, in respect of any Consent Required Contract for which an Assignment Order is Required, all amounts owing as at the Closing Date by the Vendor pursuant to such Consent Required Contract and all amounts required to be paid to cure any monetary defaults thereunder, if any, required to effect an assignment thereof from the Vendor to the Purchaser, together with any fee or other monetary concession approved by the Purchaser and granted in connection with obtaining any Assignment Order for such Consent Required Contract, including all administrative fees and counsel fees of the counterparties required to be paid to obtain such Assignment Order.

“**DIP Credit Agreement**” means the credit agreement between the Vendor and the DIP Lender dated September 23, 2020, as it may be further amended, supplemented or otherwise modified, in connection with the provision by the DIP Lender to the Vendor of a secured debtor-in-possession non-revolving credit facility in the principal amount of \$1,000,000, as such agreement may be amended, restated or otherwise modified from time to time.

“DIP Lender” means each of BRND, JMX Environmental Inc., and Charlie Dahl.

“DIP Loan” means up to \$1,000,000 in financing provided by the DIP Lenders to the Vendor as set out in the DIP Credit Agreement.

“Employees” means any and all (i) employees who are actively at work (including full-time, part-time or temporary employees) of the Vendor; and (ii) employees of the Vendor who are on leaves of absence (including maternity leave, parental leave, disability leave, sickness leave, workers' compensation and other statutory leaves) as at the Closing Date;

“Employee Plan” means all:

- (a) contracts, agreements, plans, arrangements or policies (written or oral) providing for incentive compensation, deferred compensation, bonuses, profit-sharing, severance or termination pay, share appreciation, share option, share purchase or other stock related rights relating to the Business; and
- (b) health or other medical benefits (other than the Canadian Pension Plan, the Ontario Health Insurance Plan and other similar health plans established and administered by any other province and workers' compensation insurance provided pursuant to Applicable Law), life or other insurance (including any self-insured arrangements), dental, disability, salary continuation, vacation, automobile, supplemental unemployment benefits, post-employment, retirement or supplemental retirement benefits (including compensation, health, medical or life insurance benefits);

which is maintained, administered or contributed to by or on behalf of the Vendor and which covers any employee or former employee of the Vendor;

“Encumbrance” means any mortgage, charge, pledge, hypothec, security interest, deemed trust (statutory or otherwise), assignment, lien (statutory or otherwise), leases, rights of way, title defects, options, claim, adverse claims, encumbrances, easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature which, in substance, secures payment or performance of an obligation.

“Excluded Assets” has the meaning specified in Section 2.2.

“Excluded Contracts” means all of the Contracts listed in Schedule 1.1(a).

“Excluded Liabilities” means, other than the Assumed Liabilities, any and all liabilities and obligations of the Vendor including, without limitation, the Excluded Contracts and any liabilities or claims with respect to or arising in connection with, the Excluded Contracts and the Non-Transferred Employee Liabilities, and including those liabilities listed in Schedule 1.1(b);

“Expense Reimbursement” has the meaning specified in Section 7.2(a).

“Governmental Authorities” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“Intellectual Property” means all intellectual property of the Vendor used by or currently being developed for use in the Business, and all rights of the Vendor therein, including without limitation:

- (a) all patents, patent applications and other patent rights, including provisional and continuation patents;
- (b) all registered and unregistered trade-marks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor;
- (c) registered and unregistered copyrights and mask works, including all copyright in and to computer software programs and applications and registrations of such copyright;
- (d) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
- (e) industrial designs; and
- (f) trade secrets and proprietary information not otherwise listed in (a) through (e) above, including, without limitation, all inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, mask works, circuit topography, formulae, methods (whether or not patentable), designs, processes, procedures, technology, business methods, source codes, object codes, computer software programs (in either source code or object code form), databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded or unrecorded.

“Laws” means any principle of common law and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws, (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any governmental entity and (iii) to the extent that they have the force of law, standards, policies, guidelines, notices and protocols of any governmental entity.

“Monitor’s Certificate” has the meaning specified in Section 9.3.

“**NOI Proceedings**” has the meaning given to such term in the preamble to this Agreement.

“**Non-Transferred Employees**” means all Employees who are not Transferred Employees.

“**Non-Transferred Employee Liabilities**” means all liabilities relating to the Non-Transferred Employees, including Wages, vacation pay, termination costs, notice or pay in lieu of notice, severance, wrongful and constructive dismissal damages, human rights claims, all liabilities pursuant to any Employee Plan and any other damages arising from the loss of employment by any Non-Transferred Employee.

“**Notice**” has the meaning specified in Section 11.1.

“**Offerees**” has the meaning given in Section 6.4(a).

“**OPG Funding Litigation Amount**” has the meaning given in Section 3.1(g).

“**OPG Litigation Claim**” means the litigation with respect to the claim of JMX Contracting as against Ontario Power Generation in connection with the Lambton Generating Station Demolition Agreement #RG00287132 dated July 10, 2018, including the lien charge and corresponding claim in favour of JMX Contracting.

“**OPG Litigation Costs**” means any costs incurred by the Purchaser to fund the OPG Litigation Claim.

“**OPG Litigation Proceeds**” means the proceeds, if any, obtained from the OPG Litigation Claim less the amount of the OPG Litigation Costs.

“**Parties**” means the Vendor and the Purchaser and any other Person who may become a party to this Agreement.

“**Person**” means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity and pronouns have a similarly extended meaning.

“**Priority Payables**” has the meaning specified in Section 3.1(a).

“**Purchase Price**” has the meaning specified in Section 3.1, subject to any change pursuant to Section 3.1.

“**Purchased Assets**” has the meaning specified in Section 2.1.

“**Purchaser**” has the meaning specified in the preamble above.

“**Sale Process**” means the sale solicitation process set forth in Schedule 1.1(c) as approved by the Court on September 29, 2020, as may be amended or otherwise modified from time to time in accordance with the terms therein.

“**Sale Process Approval Order**” means the Court order approving the Sale Process.

“**Successful Bidder**” has the meaning specified in the Sale Process.

“**Successful Bid**” has the meaning specified in the Sale Process.

“**Tax Act**” means the *Income Tax Act* (Canada), as amended and any relevant legislation of a province imposing tax similar to the *Income Tax Act* (Canada).

“**Taxes**” means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies, rates, withholdings, dues, contributions and other charges, collections or assessments of any kind whatsoever; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed on or in respect of amounts of the type described in clause (i) above or this clause (ii); and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

“**Tax Returns**” means any and all returns, reports, declarations, elections, notices, forms, designations, filings, and other documents filed or required to be filed in respect of Taxes.

“**Transferred Employees**” means Offerees who accept an offer of employment made by the Purchaser and attend work on their next regularly scheduled work day following the Closing Date;

“**Vendor**” has the meaning specified in the preamble above.

“**Wages**” has the meaning given in Section 6.4(d).

Section 1.2 References and Usage.

Unless expressly stated otherwise, in this Agreement:

- (a) reference to a gender includes all genders;
- (b) the singular includes the plural and vice versa;
- (c) “or” is used in the inclusive sense of “and/or”;
- (d) “any” means “any and all”;
- (e) the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”;

- (f) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”;
- (g) \$ or dollars refers to the Canadian currency unless otherwise specifically indicated;
- (h) a statute includes all rules and regulations made under it, if and as amended, re-enacted or replaced from time to time;
- (i) a Person includes its predecessors, successors and permitted assigns;
- (j) the term “notice” refers to oral or written notices except as otherwise specified;
- (k) the term “Agreement” and any reference in this Agreement to this Agreement or any other agreement or document includes, and is a reference to, this Agreement or such other agreement or document as it may have been, or may from time to time be amended, restated, replaced, supplemented or novated and all schedules to it, except as otherwise provided in this Agreement; and
- (l) whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be required to be made or such action will be required to be taken on or not later than the next succeeding Business Day and in the computation of periods of time, unless otherwise stated, the word “from” means “from and excluding” and the words “to” and “until” each mean “to and including”.

Section 1.3 Headings, etc.

The use of headings (e.g. Article, Section, etc.) in this Agreement is reference only and is not to affect the interpretation of this Agreement. References in the Agreement to Article, Section etc., unless otherwise specified, shall mean the applicable Article, Section, etc. of this Agreement.

Section 1.4 Schedules.

The schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.

Schedule 1.1(a)	Excluded Contracts
Schedule 1.1(b)	Excluded Liabilities
Schedule 1.1(c)	Sale Process
Schedule 2.2(d)	Excluded Assets
Schedule 3.2(d)	Trade Liabilities
Schedule 3.3	Purchase Price Allocation
Schedule 5.1(e)	Priority Amounts

ARTICLE 2 PURCHASE AND SALE

Section 2.1 Purchased Assets.

Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor on the Closing Date, on an “as is, where is” basis, all of the Vendor’s right, title and interest in the Vendor’s property, assets and undertakings of every kind and description and wheresoever situate, of the Business, other than the Excluded Assets (collectively, the “**Purchased Assets**”), free and clear of all Encumbrances, and the Purchased Assets shall include:

- (a) **Equipment and Supplies.** All machinery, equipment, furnishings, furniture, parts, dies, molds, tooling, tools, computer hardware, supplies, accessories and other tangible personal and moveable property (other than inventory) owned by the Vendor and used in connection with the Business;
- (b) **Contracts.** All Assumed Contracts and all rights, title, interests and obligations thereunder;
- (c) **Vehicles.** All motor vehicles, including all trucks, vans, cars and forklifts registered in the name of the Vendor and used for the Business.
- (d) **Computer Software.** All **software** and documentation used in the Business, including, all electronic data processing systems, program specifications, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals;
- (e) **Cash and Accounts Receivable.** All cash in bank accounts of the Vendor and all accounts receivable (including unbilled revenue from work in progress), bills receivable, contractual hold-backs (as contemplated in the Construction Act), trade accounts, trade debts and book debts due or accruing due in connection with the Business, including any refunds and rebates receivable relating to the Business or the Purchased Assets and the full benefit of all security (including cash deposits), guarantees and other collateral held by the Vendor relating to the Business, and amounts receivable (or which may become receivable) by the Vendor under agreements whereby the Vendor has disposed of a business, facility or other assets, or under royalty (or other) agreements or documents related thereto and all bank accounts;
- (f) **Proceeds from Litigation Claims.** All proceeds and amounts received in connection with or obtained from any litigation between the Vendor and any other Person, other than the OPG Litigation Proceeds;
- (g) **Collective Agreements.** All of the collective agreements or similar agreements to which the Vendor is a party relating to the Business (the “**Collective Agreements**”);

- (h) **Prepaid Expenses.** All prepaid expenses of the Business;
- (i) **Real Property.** The real or immovable property used for the Business and owned by BRND municipally known as 27 Anderson Blvd, Uxbridge ON L9P 0C7, and all plants, buildings, structures, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) thereon or forming part thereof (the “**Real Property**”);
- (j) **Intellectual Property.** All right, title and interest of the Vendor in and to the Intellectual Property owned by or licensed to the Vendor for use in connection with the Business or the Purchased Assets, including domain names;
- (k) **Books and Records.** The Books and Records of the Vendor related to the Business, the Purchased Assets, the Ordinary Course Assumed Liabilities, or the Assumed Liabilities;
- (l) **Claims.** All claims of the Vendor relating to the Business or the Purchased Assets whether choate or inchoate, known or unknown, contingent or otherwise, including the ASNA Litigation Claim;
- (m) **Tax Refunds.** The benefit of any refundable Taxes payable or paid by the Vendor net of any amounts withheld by any taxing authority, and any claim or right of the Vendor to any refund, rebate, or credit of Taxes;
- (n) **Goodwill.** The goodwill of the Business, including the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor;
- (o) **Licenses.** All license agreements relating to the Business, to the extent the foregoing are transferable (the “**Licenses**”);
- (p) **Insurance.** The interest of the Vendor in all contracts of insurance, insurance policies and insurance plans which are assets of or maintained in connection the Purchased Assets, (b) any insurance proceeds net of any deductibles recovered by the Vendor under all other contracts of insurance, insurance policies (excluding D&O policies) and insurance plans between the date of this Agreement and the Closing Date, and (c) the full benefit of the Vendor’s rights to insurance claims relating to the Business and amounts recoverable in respect thereof net of any deductible to the extent any of the foregoing are transferable;
- (q) **Warranty Rights.** All warranty rights against manufacturers or suppliers relating to any of the Purchased Assets, to the extent the foregoing are transferable; and
- (r) **Other Property.** All other property, assets and undertakings of the Vendor of whatever nature or kind used in connection with the Business and/or the Purchased Assets.

Section 2.2 Excluded Assets.

The Purchased Assets shall not include any of the following assets (collectively, the “**Excluded Assets**”):

- (a) the Excluded Contracts;
- (b) the OPG Litigation Proceeds; and
- (c) the Excluded Assets listed on Schedule 2.2(d).

Section 2.3 Assumed Liabilities.

Subject to this transaction Closing on the Closing Date, the Purchaser agrees to discharge, perform and fulfil the obligations and liabilities of the Vendor with respect to the Purchased Assets, including the Assumed Liabilities.

Section 2.4 Excluded Liabilities.

The Purchaser shall not assume and shall have no obligation to discharge, perform or fulfil any of the Excluded Liabilities.

Section 2.5 Assignment and Assumption of Consent Required Contracts.

- (a) Notwithstanding anything in this Agreement, the Purchaser shall not assume and has no obligation to discharge any liability or obligation under or in respect of any Consent Required Contract unless: (a) the consent, approval or waiver of the party or parties to such Consent Required Contract (other than the Vendor) required to assign such Consent Required Contract has been obtained on terms satisfactory to the Purchaser, acting reasonably and the value of such Consent Required Contract has enured to the Purchaser; or (b) such Consent Required Contract is subject to an Assignment Order.
- (b) The Vendor and the Purchaser shall use reasonable commercial efforts to obtain the consent, approval or waiver of the party or parties to each Consent Required Contract (other than the Vendor) to the assignment of such Consent Required Contract prior to the filing of the motion materials for the Approval and Vesting Order. For greater certainty, neither the Vendor nor the Purchaser is under any obligation to pay any money, incur any obligations, commence any legal proceedings (other than as set forth below with respect to Assignment Orders), or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain any such consent, approval or waiver.
- (c) In the event that the consent, approval or waiver required to assign any Consent Required Contract is not obtained before the date the motion materials are filed for the Approval and Vesting Order, the Vendor shall, at the request of the Purchaser and prior to Closing, seek the Assignment Order for such Consent

Required Contract in form and substance satisfactory to the Vendor and the Purchaser, each acting reasonably.

- (d) Subject to Closing, in the event that the consent to assign any Consent Required Contract is not obtained and the Vendor is required to obtain the Assignment Order for one or all of the Consent Required Contracts, the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contracts on Closing.

ARTICLE 3 PURCHASE PRICE

Section 3.1 Purchase Price.

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the “**Purchase Price**”) shall be the aggregate of the following:

- (a) the payment in cash, or the assumption of, any payables of the Vendor, which by operation of law, are in priority to the security interest of RBC (the “**Priority Payables**”);
- (b) the assumption of the amount, if any, comprising the secured indebtedness owing by the Vendors to the Royal Bank of Canada as of the Closing Date which amount as of the date hereof is \$2,647,883, less the amount of the DIP Loan;
- (c) the assumption of the DIP Loan in the amount of \$1,000,000 plus any accrued interest owing by the Vendor to the DIP Lender as of the Closing Date;
- (d) the assumption of the ordinary course trade Liabilities of the Vendor owing as of the Closing Date, which amount as of the date hereof is \$4,034,821, a breakdown of which is attached hereto as Schedule 3.1(d);
- (e) the assumption of the mortgage granted to BRND by Hillmount Capital Inc., of which \$1,700,000 is outstanding as of the date hereof; and
- (f) the assumption of the indebtedness owing by BRND to Dahl Demolition Corp; 23912112 Ontario Inc., and 2391213 Ontario Inc. as of the Closing Date, representing a total indebtedness of \$ 1,245,087.53 as of the date hereof;

(the assumption of the amounts in (b) to (f) above, collectively, the “**Assumed Liabilities**”. As of the date hereof, the Assumed Liabilities total approximately \$9,677,791)

- (g) the OPG Litigation Costs of the Vendor associated with continued funding of the the OPG Litigation (the “**OPG Funding Litigation Amount**”).

Section 3.2 Payment of the Purchase Price.

The Purchaser shall pay and satisfy the Purchase Price:

- (a) at Closing, by the payment in cash, or, with the consent of the holder of a Priority Payable, the assumption of, all Priority Payables;
- (b) at Closing, by the assumption of the Assumed Liabilities; and
- (c) from and after Closing, the funding of the OPG Litigation Costs.

Section 3.3 Purchase Price Allocation.

The Purchase Price shall be allocated among the Purchased Assets in the manner and form set out in Schedule 3.3. Such allocation shall be binding and the Purchaser and Vendor shall report the purchase and sale of the Purchased Assets and file all filings which are necessary or desirable under the Tax Act to give effect to such allocations and shall not take any position or action inconsistent with such allocation.

Section 3.4 No Effect on Other Rights.

The determination of the Purchase Price in accordance with the provisions of this Article will not limit or affect any other rights or causes of action either the Purchaser or the Vendor may have with respect to the representations, warranties or covenants in its favour contained in this Agreement.

**ARTICLE 4
TAX MATTERS****Section 4.1 Transfer Taxes.**

The Purchaser shall be liable for and shall pay all sales Taxes and all other similar Taxes properly payable upon and in connection with the sale, assignment and transfer of the Purchased Assets from the Vendor to the Purchaser, other than any taxes payable on the Vendor's net income, profits or gains.

Section 4.2 Tax Elections.

The Parties shall use their commercially reasonable efforts in good faith to minimize (or eliminate) any taxes payable under the *Excise Tax Act* (Canada) in respect of the Closing by, among other things, making such elections and taking such steps as may be provided for under that Act (including, for greater certainty, making a joint election in a timely manner under Section 167 of that Act or Section 22 of the Tax Act as may reasonably be requested by the Purchaser in connection with the Closing.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations and Warranties of the Vendor.

The Vendor represents and warrants as follows to the Purchaser and acknowledges and agrees that the Purchaser is relying upon the representations and warranties in connection with its purchase of the Purchased Assets and its assumption of the Assumed Liabilities.

- (a) **Incorporation and Qualification.** Each of the Vendor is a corporation incorporated and existing under the laws of jurisdiction of its formation. Each of the Vendor has the corporate power and authority to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party.
- (b) **Corporate Authorization.** Subject to the issuance of the Approval and Vesting Order, the execution and delivery of and performance by the Vendor of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary and corporate action on the part of each of them.
- (c) **Execution and Binding Obligation.** Subject to the issuance of the Approval and Vesting Order, this Agreement and each of the Ancillary Agreements to which the Vendor is a party have been duly executed and delivered by the Vendor and constitute legal, valid and binding agreements of it, enforceable against it in accordance with their respective terms.
- (d) **Residence of the Vendor.** None of the Vendor is a non-resident of Canada within the meaning of the *Tax Act*. None of the Vendor is a non-Canadian within the meaning of the *Investment Canada Act*.
- (e) **HST Registrant.** The Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada) and its registration number is ►.

Section 5.2 Representations and Warranties of the Purchaser.

The Purchaser represents and warrants as follows to the Vendor and acknowledges and agrees that each Vendor is relying on such representations and warranties in connection with its sale of the Purchased Assets:

- (a) **Incorporation and Corporate Power.** The Purchaser is an entity that is duly formed and validly existing under the laws of the jurisdiction of its formation, has full power and capacity to own the Purchased Assets and to carry on the Business as now conducted has the power and authority to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party.

- (b) **Corporate Authorization.** The execution and delivery of and performance by the Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary action on the part of the Purchaser.
- (c) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which the Purchaser is a party have been duly executed and delivered by the Purchaser and constitute legal, valid and binding agreements of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) **HST Registrant.** The Purchaser will be as at Closing, a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada) and its registration number is ►.

Section 5.3 No Other Representations or Warranties.

The representations and warranties given by the Vendor in Section 5.1 are the only representations and warranties of the Vendor in connection with this Agreement and the transactions contemplated by it. Except for the representations and warranties given by the Vendor in Section 5.1, the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis and does not rely upon any statements, representations, promises, warranties, conditions or guarantees whatsoever by the Vendor or the Monitor, whether express or implied (by operation of law or otherwise), oral or written, legal, equitable, conventional, collateral or otherwise, regarding any of the assets to be acquired or any of the liabilities to be assumed or the completeness of any information provided in connection therewith. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets, the Business, the Ordinary Course Assumed Liabilities or the Assumed Liabilities.

Section 5.4 As is, Where is.

THE PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS ARE PURCHASED AND THE ASSUMED LIABILITIES ARE ASSUMED BY THE PURCHASER "AS IS, WHERE IS" AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS, AND THE ASSUMED LIABILITIES, AND WITHOUT ANY RECOURSE TO ANY OF THE VENDOR, THE MONITOR OR ANY OF THEIR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS,

REPRESENTATIVES OR ADVISORS, OTHER THAN FOR KNOWING AND INTENTIONAL FRAUD. THE PURCHASER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS, THE ORDINARY COURSE ASSUMED LIABILITIES AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE PURCHASER'S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO ANY OF THE VENDOR OR THE MONITOR, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Purchaser acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Vendor or Monitor in this Agreement or in any instrument furnished in connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, operate, merchantability, quantity, condition, ownership, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are hereby expressly excluded.

ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES

Section 6.1 Access by Purchaser.

Subject to applicable Law, from the date that this Agreement is selected, or deemed to be selected as, the Successful Bid in accordance with the Sale Process until the Closing, the Vendor shall (i) upon reasonable notice, permit the Purchaser and its partners and Affiliates, its and their respective employees, agents, counsel, accountants or other representatives, lenders, potential lenders and potential investors to have reasonable access during normal business hours to (a) the premises of the Vendor, (b) the Purchased Assets, including all Books and Records and all minute books and corporate records of the Vendor using commercially reasonable efforts and (c) the Assumed Contracts; and (d) furnish to the Purchaser or its partners, employees, agents, counsel, accountants or other representatives, lenders, potential lenders and potential investors such financial and operating data and other information with respect to the Purchased Assets and the Vendor (to the extent such data or information is in the Vendor's possession or, using commercially reasonable efforts, can be obtained by the Vendor or the Monitor) as the Purchaser from time to time reasonably requests.

Section 6.2 Access by Monitor.

From the Closing Date, the Purchaser shall, upon reasonable notice, permit representatives of the Monitor to have reasonable access during normal business hours to the Books and Records for the purpose of completing its mandate as the Monitor from time to time reasonably requests.

Section 6.3 Title and Risk.

The Purchased Assets shall remain at the risk of the Vendor until Closing and at the risk of the Purchaser from and after Closing. The Vendor covenants to the Purchaser that, during the period from and including the date hereof through and including the Closing Date or the earlier termination of this Agreement, the Vendor shall use commercially reasonable efforts to conduct the Business in substantially the same manner as conducted as of the date hereof.

Section 6.4 Employees.

- (a) The Purchaser shall prior to the Closing Date, offer employment conditional on Closing and effective as of the Closing Date to the all of the Employees whom the Purchaser wishes, in its sole discretion (subject to the requirements of applicable Law, if any), to employ after the Closing (collectively, the “**Offerees**”) on such employment terms and conditions as the Purchaser considers appropriate or as may be required in accordance with applicable Law.
- (b) At least two (2) Business Days prior to the Closing Date, the Purchaser shall provide the Vendor and the Monitor with a schedule setting forth a list of the names of all Offerees.
- (c) The Vendor shall terminate the employment of all Employees no later than the Closing.
- (d) Prior to the Closing Date, the Vendor shall process, or cause to be processed, the payroll for, and pay (or cause to be paid), all compensation, including the base wages, base salary, vacation pay and ordinary course sales commissions for all Employees (collectively, “**Wages**”) as and when due for the period prior to Closing. The Vendor shall withhold and remit all applicable payroll taxes and deductions from Wages at source as required by Law.
- (e) Following the Closing, the Purchaser shall process the payroll for, and pay (or cause to be paid), as and when due, (i) all unpaid Wages accrued but which did not become due prior to the Closing Date with respect to each Transferred Employee, and (ii) all Wages accrued on and after the Closing Date with respect to each Transferred Employee.
- (f) As of the Closing Date, the Purchaser shall become the participating employers and sponsors under the Benefit Plan. The Vendor shall take all appropriate and necessary action to transfer control of and liability and responsibility for the Benefit Plan to the Purchaser.
- (g) All Non-Transferred Employee Liabilities shall be dealt with in the CCAA Proceedings or any subsequent bankruptcy of the Vendor in accordance with the entitlement and priority afforded to such claims under applicable Law. The Purchaser shall not assume or be liable for any Non-Transferred Employee Liabilities.

Section 6.5 Notices and Requests for Consents.

- (a) Subject to the selection or deeming of this Agreement as the Successful Bid in accordance with the Sale Process, the Vendor shall use its commercially reasonable efforts to obtain or cause to be obtained prior to Closing, at its expense, all consents, approvals and waivers that are required by the terms of the Consent Required Contracts, or an Assignment Order in order to complete the transactions contemplated by this Agreement.
- (b) The Vendor and the Monitor shall provide notices (in form and substance acceptable to the Purchaser, acting reasonably) that are required by the terms of the Assumed Contracts in connection with the transaction contemplated pursuant to the Approval and Vesting Order and this Agreement.

Section 6.6 Transfer of the Purchased Assets.

The Vendor shall take all necessary steps and proceedings to permit title to the Purchased Assets to be duly and validly transferred and assigned to the Purchaser at the Closing pursuant to the Approval and Vesting Order and this Agreement, free from all Encumbrances.

Section 6.7 Actions to Satisfy Closing Conditions.

- (a) The Vendor shall use its commercially reasonable efforts to take or cause to be taken all such actions so as to ensure compliance with all of the conditions set forth in Section 8.1.
- (b) The Purchaser shall use its commercially reasonable efforts to take or cause to be taken all such actions so as to ensure compliance with all of the conditions set forth in Section 8.2.

**ARTICLE 7
SALES PROCESS****Section 7.1 Compliance with Sale Process.**

The Parties each agree to comply with the Sale Process.

Section 7.2 Expense Reimbursement.

- (a) In consideration for the Purchaser's expenditure in the preparation of this Agreement, and in performing due diligence with respect to the Vendor and the Purchased Assets, if this Agreement is terminated pursuant to Section 10.1(1) and Section 10.1(2)(b), then the Vendor shall reimburse the Purchaser for its expenses reasonably incurred in connection with this Agreement up to a maximum amount of \$25,000 (the "**Expense Reimbursement**").

- (b) The Purchaser agrees that the Expense Reimbursement will be the sole and exclusive remedy of the Purchaser against the Vendor in the event that this Agreement is terminated pursuant to Section 10.1(1) or Section 10.1(2)(b).
- (c) If the Purchaser is not selected as, or deemed to be, the Successful Bidder, the Vendor shall request that the order of the Court approving the sale of the assets of the Vendor to the Successful Bidder to include a provision requiring that the Expense Reimbursement be paid to the Purchaser in accordance with the Sale Process and that the payment of the Expense Reimbursement be approved as part of such sale and not be voidable as a matter of bankruptcy law or otherwise.
- (d) The Vendor shall seek the approval of the Court to the transactions contemplated by this Agreement in accordance with the following:
 - (i) Promptly upon execution of this Agreement, the Vendor shall seek approval of the (i) Sale Process, (ii) filing of this Agreement as a “stalking horse bid” and (ii) the Expense Reimbursement.
 - (ii) The Vendor and the Purchaser acknowledge that: (i) this Agreement is subject to Court approval, and (ii) Closing the transactions contemplated herein is subject to this Agreement being determined to be the “Successful Bid” in accordance with the Sale Process and to the issuance of the Approval and Vesting Order.
 - (iii) As soon as practicable if the Purchaser is selected as, or deemed to be, the Successful Bidder, the Vendor shall file motion materials seeking the issuance of the Approval and Vesting Order.
 - (iv) If the Purchaser is selected, or deemed to be selected as the Successful Bidder, as soon as practicable, the Purchaser shall advise the Vendor and the Monitor in writing of the Consent Required Contracts for which the Purchaser requires the Vendor to seek an Assignment Order.
 - (v) The Vendor and the Purchaser shall cooperate with filing and serving the motion for issuance and entry of the Approval and Vesting Order and any Assignment Orders required pursuant to Section 2.5(c).
 - (vi) The Vendor, in consultation with the Purchaser, shall determine all Persons required to receive notice of the motions for the Approval and Vesting Order and any Assignment Order under applicable Laws and the requirements of the CCAA, the Court and any other Person determined necessary by the Vendor or the Purchaser.

ARTICLE 8 CONDITIONS OF CLOSING

Section 8.1 **Conditions for the Benefit of the Purchaser.**

The purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities are subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (a) **Successful Bid.** The Purchaser shall have been selected as, or deemed to be, the Successful Bidder, following the completion of the Sale Process.
- (b) **Truth of Representations and Warranties.** The representations and warranties of the Vendor contained in this Agreement were true and correct as of the date of this Agreement and are true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Vendor shall have executed and delivered a certificate of a senior officer to that effect. Upon the delivery of such certificate, the representations and warranties of the Vendor in Section 5.1 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.
- (c) **Performance of Covenants.** The Vendor shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to the Closing, and the Vendor shall have executed and delivered a certificate of an authorized representative to that effect.
- (d) **Consents for Consent Required Contracts.** All consents, approvals or waivers for each Consent Required Contract shall have been obtained on terms acceptable to the Purchaser, acting reasonably, or an Assignment Order will have been obtained in respect thereof. All such consents, approvals, waivers or Assignment Orders will be in force and will not have been modified, rescinded, appealed or stayed.
- (e) **Legal Action.** There shall be no order issued by any Governmental Authority delaying, restricting or preventing consummation of the transactions contemplated herein.
- (f) **Deliveries.** The Vendor shall have delivered or caused to be delivered to the Purchaser the following in form and substance satisfactory to the Purchaser acting reasonably:
 - (i) consents to the assignment of the Consent Required Contracts to the extent that an Assignment Order was not obtained;
 - (ii) the certificates referred to in Section 8.1(b) and Section 8.1(c);

- (iii) the issued and entered Approval and Vesting Order, which Order will not have been modified, rescinded, appealed or stayed;
- (iv) a copy of the Monitor's Certificate (such certificate shall be filed with the Court by the Monitor following Closing and a copy of such filed Monitor's Certificate shall be delivered to the Purchaser promptly thereafter);
- (v) the originals of the Books and Records, excluding those Excluded Assets but including all Tax Returns pertaining to corporate income Taxes of the Vendor for the previous 5 years from the Closing Date, that are available to the Vendor using commercially reasonable efforts;
- (vi) the Purchased Assets, which shall be delivered in situ, other than the cash held in the Vendor's bank accounts on the Closing Date, which shall be transferred to the Purchaser; and
- (vii) an assignment and assumption agreement, bill of sale or such other conveyances, assignments, documents and instruments of transfer as may be reasonably required by the Purchaser to complete the transaction contemplated herein.

Section 8.2 Conditions for the Benefit of the Vendor.

The purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities are subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor in its sole discretion.

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement were true and correct as of the date of this Agreement and are true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect. Upon delivery of such certificate, the representations and warranties of the Purchaser in Section 5.2 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.
- (b) **Performance of Covenants.** The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to Closing and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect.
- (c) **Deliveries.** The Purchaser shall have delivered or caused to be delivered to the Vendor the following in form and substance satisfactory to the Vendor, acting reasonably:

- (i) all resolutions of the board of directors of the Purchaser approving the entering into and completion of the transactions contemplated by this Agreement and the Ancillary Agreements;
 - (ii) a certificate of status, compliance, good standing or like certificate with respect to the Purchaser issued by appropriate government official of the jurisdiction of its incorporation;
 - (iii) the certificates referred to in Section 8.2(a) and Section 8.2(b); and
 - (iv) an agreement of the Purchaser to fund the OPG Funding Litigation Amount on behalf of the Vendor.
- (d) **Proceedings.** All proceedings to be taken in connection with the transactions contemplated in this Agreement and any Ancillary Agreement are reasonably satisfactory in form and substance to the Vendor, acting reasonably, and the Vendor shall have received copies of all the instruments and other evidence as it may reasonably request in order to establish the consummation of such transactions and the taking of all proceedings in connection therewith.
- (e) **Legal Action.** There shall be no order by issued by any Governmental Authority delaying, restricting or preventing consummation of the transactions contemplated herein.

Section 8.3 Conditions for the Benefit of the Purchaser and the Vendor.

The purchase and sale of the Purchased Assets is subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the benefit of both the Vendor and the Purchaser and may be jointly waived, in whole or in part, by the Vendor and the Purchaser.

- (a) **Approval and Vesting Order.** The Approval and Vesting Order shall have been obtained and shall not have been appealed, set aside, varied or stayed or, if appealed or stayed, all appeals shall have been dismissed and all stays shall have been lifted, respectively.
- (b) **Monitor's Certificate.** The Monitor shall have delivered the Monitor's Certificate confirming the satisfaction of all conditions under this Agreement, payment of the Purchase Price and the vesting of the Purchased Assets pursuant to the Approval and Vesting Order.

ARTICLE 9 CLOSING

Section 9.1 Date, Time and Place of Closing.

Closing will take place on the Closing Date by exchanging signature pages of the Parties electronically or at the offices of counsel to the Vendor in, Toronto, Ontario, or at such

other place, on such other date and at such other time as may be consented to by the Monitor and agreed upon in writing between the Vendor and the Purchaser.

Section 9.2 Closing Procedures.

Subject to satisfaction or waiver by the relevant Party of the conditions of closing, on the Closing Date, the Closing shall be deemed completed upon the delivery of the Monitor's Certificate.

Section 9.3 Monitor's Certificate.

The Parties hereby acknowledge and agree that the Monitor shall be entitled to file a certificate, substantially in the form attached to the Approval and Vesting Order (the "**Monitor's Certificate**"), with the Court upon receiving written confirmation from the Purchaser and the Vendor that all conditions of Closing have been satisfied or waived.

ARTICLE 10 TERMINATION

Section 10.1 Termination Rights.

- (1) This Agreement will be terminated automatically, without any action by either Party, if:
 - (a) this Agreement is not selected as the Successful Bid pursuant to and in accordance with the terms of the Sale Process; or
 - (b) if the Approval and Vesting Order is not granted by November 23, 2020, or such later date as may be agreed to be the Parties.
- (2) This Agreement may, by Notice in writing given on or prior to the Closing Date, be terminated:
 - (a) by mutual consent of the Vendor and the Purchaser;
 - (b) by the Purchaser, if:
 - (i) there has been a material breach of this Agreement by the Vendor and where such breach is capable of being cured, such breach has not been waived by the Purchaser in writing or cured within 15 days following written Notice of such breach by the Purchaser; or
 - (ii) any of the conditions in Section 8.1 have not been satisfied and it becomes reasonably apparent that any of such conditions will never be satisfied (other than as result of the failure of the Purchaser to perform any of its material obligations) and the Purchaser has not waived such condition in writing at or prior to Closing;

- (c) by the Vendor, if:
- (i) there has been a material breach of this Agreement by Purchaser and where such breach is capable of being cured, such breach has not been waived by the Vendor in writing or cured within 15 days following written Notice of such breach by the Vendor; or
 - (ii) any of the conditions in Section 8.2 have not been satisfied and it becomes reasonably apparent that any of such conditions will never be satisfied (other than as result of the failure of the Vendor to perform any of its material obligations) and the Vendor has not waived such condition in writing at or prior to Closing.

Section 10.2 Effect of Termination.

The rights of termination under this Article 10 are, subject to Section 7.2(b), in addition to any other rights the respective Party may have under this Agreement or otherwise, and the exercise of a right of termination by a Party will not constitute an election of remedies. If this Agreement is terminated pursuant to Section 10.1, this Agreement will be of no further force or effect; provided, however, that Section 7.2(b) (*Expense Reimbursement*), this Section 10.2 (*Effect of Termination*), and Article 11 (*Miscellaneous*) and provisions that by their nature should survive, will survive the termination of this Agreement.

**ARTICLE 11
MISCELLANEOUS**

Section 11.1 Notices.

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a “**Notice**”) must be in writing, sent by personal delivery, courier or email addressed:

- (a) to the Purchaser at:

2779076 Ontario Inc.
1958 Notion Road
Pickering, Ontario
L1V 2G3

Attn: Peter Bensley
Email: peter.bensley@jmxenv.com

(b) to the Vendor at:

JMX Contracting Inc., et al.
27 Anderson Blvd
Uxbridge, Ontario
L9P 0C7

Attn: Charlie Dahl, Chief Executive Officer
Email: charlie.dahl@jmxcontracting.com

with a copy by email to:

Weisz Fell Kour LLP
5600-100 King Street West
Toronto, Ontario
M5X 1C9

Attn: Caitlin Fell, Partner
Email: cfell@wfkllaw.ca

(c) to the Monitor at:

Crowe Soberman Inc.
1100-2 St. Clair Avenue East
Toronto, Ontario
M4T 2T5

Attn: Hanz Rizarri, Partner
Email: hans.rizarri@crowesoberman.com

with a copy by email to:

Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario
M2N 7E9

Attn: Harvey Chaiton, Partner
Email: harvey@chaitons.com

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (ii) if sent email, on the next Business Day. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel

as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party.

Section 11.2 Time of the Essence.

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

Section 11.3 Announcements.

No press release, public statement or announcement or other public disclosure with respect to this Agreement or the transactions contemplated in this Agreement may be made prior to Closing except with the prior written consent and joint approval of both the Vendor and the Purchaser. Where such disclosure is required by Law, the Party required to make such disclosure will use its commercially reasonable efforts to obtain the approval of the other Party as to its form, nature and extent of the disclosure. After the Closing, any disclosure by the Vendor may be made only with the prior written consent and approval of the Purchaser unless such disclosure is required by Law, in which case the Vendor shall use its commercially reasonable efforts to obtain the approval of the Purchaser as to the form, nature and extent of the disclosure. Notwithstanding the foregoing, this Agreement may be disclosed publicly in court materials filed in connection any motion to Court by the Vendor to for the Sale Process Approval Order or for the Approval and Vesting Order.

Section 11.4 Third Party Beneficiaries.

Except as otherwise provided in this Agreement, (i) the Vendor and the Purchaser intend that this Agreement will not benefit or create any right or cause of action in favour of any Person, other than the Parties and (ii) no Person, other than the Parties, is entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Parties reserve their right to vary or rescind the rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person.

Section 11.5 Expenses.

Except as otherwise expressly provided in this Agreement, each Party will pay for its own costs and expenses (including the fees and expenses of legal counsel, accountants and other advisors) incurred in connection with this Agreement or any Ancillary Agreements and the transactions contemplated by them.

Section 11.6 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser.

Section 11.7 Waiver.

No waiver of any of the provisions of this Agreement or any Ancillary Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's acceptance of any certificate delivered on Closing or failure or delay in exercising any right under this Agreement will not operate as a waiver of that. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

Section 11.8 Entire Agreement.

This Agreement together with the Ancillary Agreements, (i) constitutes the entire agreement between the Parties; (ii) supersedes all prior agreements or discussions of the Parties; and (iii) sets forth the complete and exclusive agreement between the Parties, in all cases, with respect to the subject matter herein.

Section 11.9 Successors and Assigns.

- (1) Upon execution of the Agreement by the Parties, it will be binding upon and enure to the benefit of the Vendor, the Purchaser and their respective successors and permitted assigns.
- (2) Except as provided in this Section 11.9, neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party. Upon giving Notice to the Vendor at any time on or prior to the Closing Date, the Purchaser may assign this Agreement or any of its rights and/or obligations under this Agreement to any of its Affiliates, provided that such Affiliate and the Purchaser shall be jointly and severally liable with respect to all of the obligations of the Purchaser, including the representations, warranties, covenants, indemnities and agreements of the Purchaser.

Section 11.10 Severability.

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

Section 11.11 Governing Law.

- (1) This Agreement is governed by and will be interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (2) Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Court (and appellate courts therefrom) and waives objection to the venue of any proceeding in such court or that such court provides an inappropriate forum.

Section 11.12 Counterparts.

This Agreement may be executed (including by electronic means) in any number of counterparts, each of which (including any electronic transmission of an executed signature page), is deemed to be an original, and such counterparts together constitute one and the same instrument.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF the Parties have executed this Asset Purchase Agreement.

2779076 ONTARIO INC.

By: _____
Authorized Signing Officer

JMX CONTRACTING INC.

By: _____
Authorized Signing Officer

JMX LEASING INC.

By: _____
Authorized Signing Officer

BRND PROPERTIES INC.

By: _____
Authorized Signing Officer

THIS IS **EXHIBIT "B"** REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 25TH DAY OF JANUARY, 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

SALE AGREEMENT

THIS AGREEMENT is made as of January _____, 2021

BETWEEN:

2808447 ONTARIO INC, a corporation governed by the laws of the Province of Ontario

(“Vendor”)

-and-

2779076 ONTARIO INC., a corporation governed by the laws of the Province of Ontario

(“Purchaser”)

WHEREAS:

- A. Vendor is the registered and beneficial owner of: (i) 100 common shares of JMX Leasing Inc. (“**JMX**”), being all of the issued and outstanding shares of JMX (the “**Purchased JMX Shares**”); and (ii) 200 common shares of BRND Properties Inc. (“**BRND**”), being all of the issued and outstanding shares of BRND (the “**Purchased BRND Shares**” and together with the Purchased JMX Shares, the “**Purchased Shares**”); and
- B. Upon and subject to the terms and conditions set forth herein, Vendor desires to sell to Purchaser the Purchased Shares and Purchaser desires to purchase from Vendor the Purchased Shares.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Purchase and Sale.

1.1 On the basis of the representations and agreements herein contained, and subject to the terms and conditions set forth herein, Vendor hereby sells, assigns and transfers to Purchaser, and Purchaser hereby purchases from Vendor, the Purchased Shares.

1.2 The purchase price for the Purchased JMX Shares shall be CAD \$1.00 (the “**JMX Purchase Price**”) and the purchase price for the Purchased BRND Shares shall be CAD\$1.00 (the “**BRND Purchase Price**”), being the fair market value of the Purchased JMX Shares and the Purchased BRND Shares, respectively. The sum of the JMX Purchase Price and the BRND Purchase Price is referred to herein as the “**Purchase Price**”. The Purchase Price shall be satisfied by Purchaser on the date hereof in immediately available funds as directed by Vendor.

2. Representations and Warranties.

- 2.1 Vendor represents and warrants to Purchaser that:
- (a) Vendor is a corporation duly organized, validly existing and in good standing under the laws of the Province of Ontario; and
 - (b) Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act (Canada)*.
- 2.2 Purchaser represents and warrants to Vendor that:
- (a) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Province of Ontario.
- 2.3 The representations and warranties of each party set forth above shall survive the completion of the sale and purchase of the Purchased Shares herein provided for and, notwithstanding such completion, shall continue in full force and effect indefinitely for the benefit of the other party.

3. Taxes.

3.1 Purchaser does not assume and shall not be liable for any income taxes or any other taxes whatsoever which may be imposed on Vendor including, without limiting the generality of the foregoing, any taxes resulting from or arising as a consequence of the sale by Vendor to Purchaser of the Purchased Shares herein contemplated, and Vendor shall indemnify and save harmless Purchaser from and against all such taxes. Notwithstanding the foregoing, Vendor shall be entitled to deduct and withhold from any payments to Purchaser any taxes imposed on Purchaser as required by law and shall not be required to make payment to Purchaser for such withheld taxes.

4. Miscellaneous.

- 4.1 Time is of the essence in this Agreement.
- 4.2 Each party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 4.3 This Agreement becomes effective when executed by Vendor and Purchaser. After that time, it will be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.
- 4.4 Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.
- 4.5 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements

between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

4.6 This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

4.7 This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

[Signature Page Follows]

The parties have executed this Agreement as of the date first written above.

2808447 ONTARIO INC.

By: _____
Name:
Title:

2779076 ONTARIO INC.

By: _____
Name:
Title:

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

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

**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.**

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

Proceedings commenced at Toronto

AFFIDAVIT OF CHARLIE DAHL

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Lawyers for JMX Contracting Inc., et al.

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 29th
)	
JUSTICE HAINEY)	DAY OF JANUARY, 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.**

Applicants

TRANSACTION APPROVAL AND REVERSE VESTING ORDER

THIS MOTION, made by JMX Contracting Inc. ("**JMX Contracting**"), JMX National Inc., BRND Properties Inc. ("**BRND**"), and JMX Leasing Inc. ("**JMX Leasing**" collectively, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (i) approving the reorganization transactions and steps (the "**Restructuring Transaction Steps**") as contemplated in Affidavit of Charlie Dahl sworn January 25, 2021 (the "**Dahl Affidavit**"); (ii) declaring that 2808447 Ontario Inc. ("**New ParentCo**"), 2809590 Ontario Inc. ("**Residual Leasing**") and 2809588 Ontario Inc. ("**Residual Contracting**") are companies to which the CCAA applies; (iii) approving the vesting of all liabilities of JMX Leasing, JMX Contracting and BRND other than the Assumed Liabilities (as defined in Schedule "A" hereto) in and to Residual Leasing, Residual Contracting and New ParentCo respectively was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Dahl Affidavit and the Second Report (the "**Second Report**") of Crowe Soberman Inc., in its capacity as the Court-appointed monitor of the Applicants (the

“**Monitor**”) and on hearing the submissions of counsel for the Applicants, the Monitor and such other counsel who were present and wished to be heard, and on reading the affidavit of service of Shaun Parsons sworn January 25, 2021:

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.

CCAA Applicants

2. **THIS COURT ORDERS AND DECLARES** that New ParentCo, Residual Contracting and Residual Leasing (the “**New Applicants**”) shall be companies to which the CCAA applies.

3. The New Applicants shall be added as an applicant in these CCAA proceedings and all references in any Order of this Court in respect of this CCAA proceeding to (i) an “Applicant” shall refer to and include the New Applicants and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind, whatsoever and wherever situate including all proceeds thereof of the New Applicants (the “**New Applicant Property**”) and for greater certainty, each of the Administration Charge and the DIP Lender’s Charge (each as defined in the Initial Order dated September 29, 2020) shall constitute a charge on the New Applicant Property.

Restructuring Transaction

4. **THIS COURT ORDERS AND DECLARES** that the Restructuring Transaction Steps are hereby approved and the Applicants and their successors (including New ParentCo, Residual Leasing, and Residual Contracting) to implement and complete the restructuring contemplated in the Restructuring Transaction Steps (the “**Restructuring Transaction**”), including notably the following steps:

- (a) 2542097 Ontario Inc., Dahl Demolition Corp., 2391212 Ontario Inc., and 2391213 Ontario Inc. (the “**JMX Shareholders**”) - 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 of BRND on a 1:1 basis (the “**Share Exchange**”);

- (b) Following the completion of the Share Exchange: (i) each of the JMX Shareholders will hold 25% of the common shares of New ParentCo; and (ii) JMX Leasing and BRND will be wholly owned subsidiaries of New ParentCo; and
- (c) New ParentCo will hold 100% of the shares of Residual Contracting and Residual Leasing.

5. **THIS COURT ORDERS** that the Applicants, New ParentCo, Residual Contracting and Residual Leasing 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 Restructuring Transaction.

6. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Applicants to proceed with the Restructuring Transaction and that no shareholder or other approval shall be required in connection therewith.

Reverse Vesting

7. **THIS COURT ORDERS** that the following shall occur and be deemed to occur in the following sequence:

- (a) all liabilities, debts, obligations, indebtedness, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, and charges of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise of JMX Contracting (the “**Residual Contracting Liabilities**”) other than the Assumed Liabilities shall be transferred to, assumed by and vest absolutely and exclusively in Residual Contracting and shall no longer be obligations of JMX Contracting and JMX Contracting and all of its assets, licenses, undertakings, properties of every nature and kind whatsoever and wherever situate (the “**Contracting Property**”) shall be and are hereby forever released and discharged from the Residual Contracting Liabilities and all related claims affecting or relating to the Contracting Property are hereby expunged and discharged as against the Contracting Property;

- (b) all liabilities, debts, obligations, indebtedness, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, and charges of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise of JMX Leasing (the “**Residual Leasing Liabilities**”) other than the Assumed Liabilities shall be transferred to, assumed by and vest absolutely and exclusively in Residual Leasing and shall no longer be obligations of JMX Leasing and JMX Leasing and all of its assets, licenses, undertakings, properties of every nature and kind whatsoever and wherever situate (the “**Leasing Property**”) shall be and are hereby forever released and discharged from the Residual Leasing Liabilities and all related claims affecting or relating to the Leasing Property are hereby expunged and discharged as against the Leasing Property;
- (c) all liabilities, debts, obligations, indebtedness, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies and charges, of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise of BRND (the “**Residual BRND Liabilities**”) other than the Assumed Liabilities shall be transferred to, assumed by and vest absolutely and exclusively in New ParentCo and shall no longer be obligations of BRND and BRND and all of its assets, licenses, undertakings, properties of every nature and kind whatsoever and wherever situate (the “**BRND Property**”) shall be and are hereby forever released and discharged from the Residual BRND Liabilities and all related claims affecting or relating to the BRND Property are hereby expunged and discharged as against the BRND Property; and
- (d) all rights and benefits, including causes of action, of JMX Contracting in:
- (i) 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 or any other party, arising out of or in connection with the ASNA Contract (collectively, the "**ASNA Litigation**"); and

- (ii) 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 Litigation**")

shall be transferred and vested absolutely and exclusively in and to Residual Contracting.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of the claims relating to the Residual Contracting Liabilities, the Residual Leasing Liabilities and the Residual BRND Liabilities, the net proceeds, if any, received from the ASNA Litigation or the OPG Litigation shall stand in the place and stead of the Contracting Property, the Leasing Property, and the BRND Property, respectively with the same priority as they had immediately prior to the date of this Order.

9. **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 *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Vendors and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Vendors,

the entering into of the Restructuring Transaction and the transactions approved in 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.

GENERAL

10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Vendors, 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 Vendors and the Monitor, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Vendors, the Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A"

1. the payment in cash, or the assumption of, any payables of JMX Contracting Inc., which by operation of law, are in priority to the security interest of Royal Bank of Canada;
2. the assumption of the amount, if any, comprising the secured indebtedness owing by JMX Leasing Inc. or JMX Contracting Inc. to the Royal Bank of Canada as of the Closing Date which amount as of the date hereof is \$2,647,883, less the amount of the DIP Loan;
3. the assumption of the DIP Loan in the amount of \$1,000,000 plus any accrued interest owing by JMX Contracting Inc. to the DIP Lender (as defined in the Order dated September 29, 2020).
4. the assumption of the ordinary course trade liabilities of JMX Contracting as set out below:

	\$
JMX Environmental	3,849,955
Vendors relating to current projects	68,220
CRA, Minister of Finance, Worksafe BC, WSIB	51,296
Labourers Pension Fund and Union	41,234
Miscellaneous	24,117
	4,034,821

5. the assumption of the mortgage granted to BRND by Hillmount Capital Inc., of which \$1,700,000 is outstanding as of the date hereof; and
6. the assumption of the indebtedness owing by BRND to Dahl Demolition Corp; 23912112 Ontario Inc., and 2391213 Ontario Inc. representing a total indebtedness of \$ 1,245,087.53 as of the date hereof.

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

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

**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.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**TRANSACTION APPROVAL AND REVERSE
VESTING ORDER**

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Lawyers for JMX Contracting Inc., et al.

TAB 4

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

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

THE HONOURABLE MR.)	FRIDAY, THE 29th
)	
JUSTICE HAINEY)	DAY OF JANUARY, 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 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 Hailey 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 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 except to the extent expressly contemplated by the SPA, 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)****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”)****MONITOR’S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Haaney 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:

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

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

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.

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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

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

**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.**

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

Proceedings commenced at Toronto

MOTION RECORD

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