

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

For the Matter of the
Plaintiff(s)

AND

JMX Group
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

Adjourned to: _____
 Time Table approved (as follows):

① These motions are not opposed
they are granted on the
terms of the attached
Initial Orders and First
Stay order.

Hadley J

September 29, 2020

Date

Judge's Signature

Additional Pages _____

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

THE HONOURABLE) TUESDAY, THE 29th
)
JUSTICE HAINY) DAY OF SEPTEMBER, 2020
)

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

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

**ORDER
(Consent to Lift Stay)**

WHEREAS, JMX Contracting Inc. ("JMX") filed a Notice of Intention to Make a
Proposal on April 20, 2020 and commenced proceedings (the "**NOI Proceeding**") pursuant to
the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 ("BIA");

WHEREAS, Ontario Power Generation Inc. ("OPG") brought a motion (the "**Lift Stay
Motion**") for an order, *inter alia*, lifting the stay of proceedings in favour of JMX provided for
in section 69 of the BIA solely for the limited purpose of permitting OPG to terminate the
demolition agreement made July 10, 2018 (the "**Agreement**") between OPG and JMX;

WHEREAS, on September 29, 2020, JMX made a motion to convert the NOI
Proceeding to a proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.
C-36, as amended (the "**CCAA Proceeding**") and the NOI Proceeding was terminated;

WHEREAS on September 29, 2020, the Honourable Mr. Justice Hainey granted an order (as may be amended and restated from time to time, the “**Initial Order**”) granting, among other things, a stay of proceedings;

WHEREAS, the parties have agreed to a consent order lifting the stay of proceedings put in place by the Initial Order solely for the limited purpose of permitting OPG to terminate the Agreement;

ON READING the Affidavit of Raffaele Curitti sworn August 31, 2020, and the Affidavit of Charlie Dahl sworn September 23, 2020 and on hearing the submissions of counsel for OPG, JMX., JMX National Inc., BRND Properties Inc., and JMX Leasing Inc. (the “**Debtors**”) and for Crowe Soberman Inc. in its capacity as monitor of the Debtors, and any other person as listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Caitlin McIntyre sworn September 2, 2020, filed, and on being advised of the consent of the parties:

1. **THIS COURT ORDERS AND DECLARES** that on consent of the parties, the stay of proceedings provided for in the Initial Order be and is hereby lifted solely for the limited purpose of permitting OPG to terminate the Agreement, which termination shall be effective immediately upon delivery of a notice of termination by OPG to JMX in accordance with the Agreement.

2. **THIS COURT ORDERS AND DECLARES** that the termination of the OPG Agreement pursuant to this Order shall be without prejudice to any claims or causes of action JMX or OPG may have against each other arising out of or in connection with the Agreement.

3. **THIS COURT ORDERS** that no costs are payable with respect to the Lift Stay Motion.



A handwritten signature in black ink, appearing to read "Heneley J". The signature is fluid and cursive, with a horizontal line through the middle of the "H".

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
JMX CONTRACTING INC., JMX NATIONAL INC., BRND PROPERTIES
INC., and JMX LEASING INC.

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(Consent to Lift Stay)

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

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

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

Fax: 416.613.8290

Lawyers for JMX Contracting, et al.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

INITIAL ORDER

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

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

SERVICE

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

CONTINUANCE UNDER THE CCAA

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

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

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

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES

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

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

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

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

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

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

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

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

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

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

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

SALE PROCESS

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

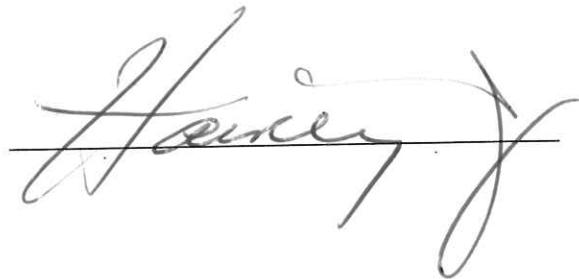
53. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in

carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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

A handwritten signature in black ink, appearing to read "Hancey J.", is positioned over a horizontal line. The signature is fluid and cursive, with a large, stylized 'H' and 'J' at the end.

SCHEUDULE "A"

STALKING HORSE SALE PROCESS ("SALE PROCESS")

For the sale of the business and/or assets of JMX Contracting Inc., JMX Leasing Inc., and BRND Properties Ltd. (collectively, the "Company")

Overview of the Company

1. The Company is a leading Canadian provider of environmental and industrial contracting services. The Company performs a wide range of sophisticated and specialized services to a variety of industries including the energy, commercial, industrial, and nuclear sectors. The Company offers field forces capable of performing demolition, decontamination, decommissioning, and environmental reclamation services (the "**Business**").
2. The Company has built a strong reputation for providing quality service for over 15 years. The Company has developed long term relationships with many of its customers, which it serves across Canada.
3. The Company is COR certified and is a member of Ontario Association of Demolition Contractors.
4. As a result of significant losses on two major contracts and resulting liquidity issues, in order to restructure, the Company filed for protection under the proposal provisions of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, which proceedings were converted to proceedings commenced under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") and an Initial Order (the "**Initial Order**") was granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on September 29, 2020.
5. Pursuant to the Initial Order, Crowe Soberman Inc. was appointed as monitor (the "**Monitor**") in order to assist the Company with its restructuring and the Court also approved a super priority Debtor-in-Possession loan for \$1,000,000, to finance the Company's operations during the CCAA proceedings, subordinate to the security interest of Royal Bank of Canada (the "**RBC Indebtedness**") and any security interest, lien or encumbrance in priority to the RBC Indebtedness by operation of law.
6. The Company believes that, despite the recently challenging financial results, there is likely to be interest from arm's length prospective buyers of the Company's business and/or assets for reasons including:
 - (a) the Company's profitable contracts which are currently being completed;
 - (b) the Company has won several new, profitable contracts;
 - (c) long term relationships with leading energy, infrastructure, and industrial companies including certain master service agreements, where applicable, which have resulted in multiple engagements for such customers over a long period of time;
 - (d) potential material recoveries on certain disputed contracts that are currently being litigated; and
 - (e) a dedicated professional staff and management team with significant experience and customer relationships in the specialty contracting sector.

7. The Company has entered into a Stalking Horse Asset Purchase Agreement with Peter Bensley and Matt Richard, in trust for a company to be incorporated (the “**Stalking Horse Purchaser**”), dated September 29, 2020, pursuant to which the Stalking Horse Purchaser has agreed to acquire substantially all of the Assets and to assume certain of the liabilities of the Company (the “**Stalking Horse Agreement**”). The Stalking Horse Agreement as well as these sale procedures were approved by the Court on September 29, 2020, pursuant to the Initial Order.
8. All capitalized terms contained herein, but not otherwise defined herein, shall have the meanings ascribed thereto in the Stalking Horse Agreement to which this schedule is appended.

Objectives and Commencement of the Sale Process

9. The objective of the Sale Process is to obtain offers to effect a sale of the Company’s Business, including its property, assets, and undertakings (the “**Assets**”) on a going concern basis for an amount and on terms which are superior to the transaction contemplated by the Stalking Horse Agreement (the “**Stalking Horse Bid**”).
10. The roles and responsibilities of the Monitor are described in further detail throughout this Sale Process, however, the Monitor’s role herein does not include managing, operating, or taking possession or control of the Company’s Business and/or Assets.
11. Any transaction consummated pursuant to this Sale Process will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature or description by the Monitor, the Company, or any of their respective directors, officers, agents, advisors, or other representatives unless otherwise agreed in a definitive agreement.
12. All of the Company’s right, title, and interest in and to any of its Assets sold pursuant to any transaction(s) contemplated herein will be sold free and clear of all liens, security interests, mortgages, charges, and other encumbrances, except those expressly assumed by the purchaser, pursuant to a Court order approving such sale.

Timeline

13. The following table sets out the key milestones and deadlines under the Sale Process, which milestones and deadlines may be extended or amended by the Monitor, in its discretion, by up to two weeks without Court approval:

Milestone	Deadline
Phase I: Marketing and Initial Due Diligence Period	September 29, 2020
Phase I Bid Deadline	October 23, 2020
Phase II: Commencement of Due Diligence for Selected Bidders	October 26, 2020
Phase II Bid Deadline	November 9, 2020
Notification of Auction (if applicable)	November 11, 2020

Auction	November 16, 2020
Selection of Successful Bid (assuming Auction)	November 16, 2020
Approval Hearing	November 20, 2020
Closing Date Deadline	November 23, 2020

Any extensions or amendments (other than the Closing Date Deadline) shall be communicated to all Bidders in writing and posted on the Monitor's Website at:
<https://www.crowesobermaninc.com/insolvency/insolvency-cases/jmx-group/>.

Solicitation of Interest: Notice of Sale Process

14. The Monitor shall be entitled, but not obligated, to arrange for a notice to be published in any newspaper or industry journal as the Monitor considers appropriate if it believes that such advertisement would be useful in the circumstances.
15. The Monitor, with the assistance of the Company, shall prepare:
 - (a) a list of potential buyers ("Interested Parties");
 - (b) an initial offering summary ("Teaser Letter");
 - (c) a form of non-disclosure agreement ("NDA");
 - (d) a confidential information memorandum describing the opportunity ("CIM");
 - (e) an electronic data room ("Data Room"); and
 - (f) the Stalking Horse Agreement for use and markup by Interested Parties.
16. The Monitor will have responsibility for managing all communication with Interested Parties prior to and after receipt of binding offers ("Offers"). This shall include facilitating the delivery of all communications, contacting prospective bidders and providing them with the Teaser Letter and CIM, coordinating the execution of NDAs, facilitating any requests for tours of the facilities, managing the process of answering inquiries from prospective bidders, coordinating any presentations that may be requested by Potential Bidders (defined below), soliciting and tracking all Offers, and reviewing and negotiating transaction documentation.
17. The Monitor will send the Teaser Letter and the form of NDA to all applicable Interested Parties as soon as reasonably practicable after the granting of the Sale Process Order and to any other Interested Party who requests a copy of the Teaser Letter and NDA, or who is identified by the Company or the Monitor as an Interested Party, as soon as reasonably practicable after such request or identification, as applicable.

Sale Process - Phase I

18. During Phase I of the Sale Process, the Monitor, with the assistance of the Company, will solicit non-binding letters of intent from Interested Parties to acquire the Business and/or Assets and/or assume liabilities of the Company.

19. Any Interested Party who wishes to participate in the Sale Process must provide to the Monitor:
 - (a) an NDA executed by it, and a letter setting forth the identity of the Interested Party, the contact information for such Interested Party, and full disclosure of the direct and indirect principals of the Interested Party. The NDA shall include an acknowledgement of the Sale Process terms; and
 - (b) if the Monitor considers it necessary, such form of financial disclosure that allows the Monitor to make a reasonable determination as to the Interested Party's financial and other capabilities to consummate a sale transaction.
20. If an Interested Party: (i) has delivered an executed NDA; and (ii) has provided the Monitor with satisfactory evidence of its capability based on the availability of financing, its experience, and other considerations, to be able to consummate a sale transaction pursuant to the Sale Process, then such Interested Party will be determined by the Monitor to be a "**Potential Bidder**". The Stalking Horse Purchaser shall be deemed to be a Potential Bidder.
21. The Monitor will provide each Potential Bidder with a copy of the CIM and access to the Data Room. Potential Bidders must rely solely on their own independent review, investigation, and/or inspection of all information and of the Business and/or Assets in connection with their participation in the Sale Process and any transaction they enter into with the Company. The Company, the Monitor, and their respective directors, officers, agents and advisors make no representation or warranty whatsoever as to the information (including, without limitation, with respect to its accuracy or completeness): (i) contained in the CIM or the Data Room; (ii) provided through the due diligence process or otherwise made available pursuant to the Sale Process; or (iii) otherwise made available to a Potential Bidder except to the extent contemplated in any definitive documentation duly executed and delivered by the Successful Bidder (as defined below) duly executed by the Company and approved by the Court.
22. At any time during the Sale Process, the Monitor may, in its reasonable business judgment, eliminate a Potential Bidder from the Sale Process, in which case such party will no longer be a Potential Bidder for the purposes of the Sale Process.
23. The Monitor shall afford each Potential Bidder such access to applicable due diligence materials and information pertaining to the Business and Assets of the Company as the Monitor deems appropriate in its reasonable business judgment. Due diligence access may include management presentations, access to the Data Room, on-site inspections, and other matters which a Potential Bidder may reasonably request and which the Monitor deems appropriate. The Monitor will designate one or more representatives to coordinate all reasonable requests for additional information and due diligence access from each Potential Bidder and the manner in which such requests must be communicated. The Monitor shall not be obligated to furnish any information relating to the Business or the Assets to any person other than to Potential Bidders. For the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders during Phase I or II of the Sale Process, if the Monitor determines such information to represent proprietary or sensitive competitive information related to the Business and/or the Assets of the Company that should not be provided to a Potential Bidder.

Phase I Bid Deadline

24. A Potential Bidder that wishes to make an offer pursuant to the Sale Process must deliver by email a non-binding letter of intent (a “**Phase I Bid**”) to the Monitor so as to be received by the Monitor not later than 5:00 PM (Toronto Time) on October 23, 2020 (the “**Phase I Bid Deadline**”), with a copy to each of the persons specified in Schedule “B” hereto.

Qualified Phase I Bids

25. A Phase I Bid will be considered a qualified bid only if (the “**Phase 1 Bid Criteria**”):

- (a) it is submitted on or before the Phase I Bid Deadline in accordance with paragraph 24 herein;
- (b) it is accompanied by a letter setting forth:
 - (i) the identity of the bidder and full disclosure of any entities and/or individuals that control the bidder; and/or the beneficial owner (if any) with the power, directly or indirectly to cause the direction of the management and policies of the bidder;
 - (ii) a specific indication of the sources of debt and equity (as applicable) capital/financing for the transaction and preliminary evidence of the sources of financing of the purchase price, the availability of such financing, steps necessary and timing to obtain such financing, and any related contingencies and financial information that would allow the Monitor to make a reasonable determination as to the bidder’s financial capabilities to consummate the transaction;
 - (iii) a detailed description of the bidder’s experience and expertise in environmental and industrial contracting services relating to demolition, decontamination, decommissioning, and environmental reclamation;
 - (iv) a statement that the bidder expects to be able to consummate a sale transaction pursuant to the Sale Process on or before the Closing Date Deadline (as defined herein); and
 - (v) such other information as reasonably requested by the Monitor, in consultation with the Company;
- (c) the Phase 1 Bid identifies or contains the following:
 - (i) the purchase price in Canadian dollars, including details of all Assets to be purchased and liabilities to be assumed by the bidder. The purchase price must be in an amount that is at least \$250,000 in cash in excess of the purchase price contained in the Stalking Horse Agreement, or is otherwise a better offer than the offer contemplated under the Stalking Horse Agreement;
 - (ii) any anticipated approvals and consents required to close the transaction and any anticipated impediments to such approvals or consents;
 - (iii) a specific statement that the purchase price or funds to be invested, are in an amount that can reasonably be expected to be sufficient to pay the indebtedness of the Company to the Royal Bank of Canada (“**RBC**”) in full;

- (iv) specific statements concerning the intended treatment of unsecured creditors, guaranteed obligations, lien claimants, subtrades who have or are continuing to provide goods or services in relation to projects, as well as receivables and liabilities associated with Ontario Power Generation and ASNA Robson Landmark Developments, including any cost of litigation associated therewith;
- (v) specific due diligence required to be conducted during Phase II, if any;
- (vi) all conditions to Closing sought by the bidder; and
- (vii) any other terms or conditions that the bidder believes are material to the transaction.

Assessment of Phase I Bids

- 26. Promptly after the Phase I Bid Deadline, the Monitor, in consultation with the Company:
 - (a) will review and assess the Phase I Bids to determine whether they are qualified (such qualified bids being the “**Qualified Phase I Bids**” and the bidder thereof, a “**Qualified Phase I Bidder**”); and
 - (b) may request clarification of the terms of the Phase I Bids.
- 27. In assessing whether the Phase I Bids received are Qualified Phase I Bids, the Monitor, in consultation with the Company, will consider, among other things, the following:
 - (a) whether they meet the Phase 1 Bid Criteria;
 - (b) the form and amount of consideration being offered, including any purchase price adjustments and/or any non-cash consideration;
 - (c) the demonstrated financial capability of the bidder to consummate the proposed transaction;
 - (d) the conditions to closing of the proposed transaction; and
 - (e) the estimated time required to complete the proposed transaction and whether, in the Monitor’s reasonable business judgment, the transaction is reasonably likely to close on or before the Closing Date Deadline.
- 28. Notwithstanding anything herein to the contrary, the offer represented by the Stalking Horse Agreement shall be deemed to be a Qualified Phase I Bid for all purposes under, and at all times in connection with, this Sales Process.
- 29. If the Monitor, after consultation with the Company determines that no Qualified Phase 1 Bid has been received other than the Stalking Horse Agreement, the Monitor shall be authorized to terminate the Sale Process, in which case, the Stalking Horse Agreement will be deemed to be the Successful Bid (as defined below).
- 30. If the Monitor, after consultation with the Company determines that one or more Qualified Phase 1 Bids are received, then the Sale Process shall proceed to Phase II.

Sale Process- Phase II

31. During Phase II of the Sale Process, each Qualified Phase I Bidder will be granted further access to such due diligence materials and information as the Monitor, in its reasonable business judgment and in consultation with the Company, determines is appropriate and available.

Phase II Bid Deadline, Phase II Bids and Removal of Conditions

32. Qualified Phase I Bidders that wish to make a formal binding Offer pursuant to the Sale Process (a “Phase II Bid”) must submit by email such Offer so as to be received by the Monitor not later than 5:00 PM (Toronto Time) on November 9, 2020 (the “Phase II Bid Deadline”), with a copy to each of the persons specified in Schedule “B” hereto.

33. In order to be considered a “Qualified Phase II Bid”, the offer shall (collectively, the “Phase II Bid Criteria”):

- (a) include a sealed, duly authorized and executed, definitive purchase agreement consistent with the form of the Stalking Horse Agreement, together with all completed schedules thereto, containing the detailed terms and conditions of the proposed transaction, including identification of the Business or the Assets proposed to be acquired, the obligations to be assumed, the purchase price for the Business or Assets proposed to be acquired, the detailed structure and financing of the proposed transaction, and a blackline comparing the purchase agreement submitted to the Stalking Horse Agreement;
- (b) be a Superior Offer. A Superior Offer means an offer that provides for consideration of at least \$250,000 in cash, in excess of the aggregate of the purchase price contemplated by the Stalking Horse Agreement;
- (c) provide for the payment in full and in cash of all of the indebtedness of the Company to RBC;
- (d) be binding and irrevocable until the earlier of: (i) 30 days after the Phase II Bid Deadline and (ii) approval by the Court of the Successful Bid;
- (e) include a refundable cash deposit in the form of a wire transfer (to a bank account specified by the Monitor or such other form of deposit as is acceptable to the Monitor), payable to the Monitor, in trust, in an amount equal to 10% of the purchase price contemplated by the Phase II Bid (the “Deposit”). All Deposits submitted by Phase II Bidders who did not submit the Successful Bid shall be returned, without interest, as soon as practicable following the date on which any such offers are rejected hereunder. The Deposit forming part of the Successful Bid shall be dealt with in accordance with the asset purchase agreement submitted by the Successful Bidder;
- (f) provide contact information (including an email address) for the bidder and disclose the identity of each entity (including its ultimate shareholders and/or sponsors) that is bidding for the Business and/or Assets or otherwise participating in a Phase II Bid and the complete terms of any such participation;
- (g) include written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction or transactions comprising the Phase II Bid, that will allow the Monitor to make a determination as to the bidder’s financial and other capabilities to consummate the proposed transaction;

- (h) include acknowledgments and representations of the bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Business and/or Assets, the Company, or otherwise, prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of the Business and/or Assets (including, without limitation, any documents in connection therewith) in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory, or otherwise, regarding the Business and/or Assets or the Company or the completeness of any information provided in connection therewith, except as expressly contemplated in any definitive documentation duly executed by the Successful Bidder and the Company and approved by the Court;
- (i) include written evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Phase II Bid;
- (j) includes details of any liabilities to be assumed;
- (k) not be subject to further due diligence;
- (l) not be subject to financing;
- (m) includes a description of any regulatory or other third-party approvals required to consummate the proposed transaction, and the time period within which the bidder expects to receive such regulatory and/or third-party approvals, and those actions the bidder will take to ensure receipt of such approvals as promptly as possible;
- (n) include a description of any desired arrangements with respect to transition services that may be required from the Company in connection with the transaction, including funding for same; not be subject to any conditions precedent except those that are customary in a transaction of this nature; not be conditional upon approval by the Court of any bid protection, such as a break-up fee, termination fee, expense reimbursement or similar type of payment; and
- (o) be received by the Phase II Bid Deadline; and contemplate closing the transaction set out therein on or before November 23, 2020 (the "**Closing Date Deadline**").

34. The Monitor may, if it deems appropriate or desirable in the circumstances, modify or amend the Phase II Bid Criteria.

35. The Monitor may make any modification to the Sale Process it considers appropriate in the circumstance and, where it considers such modification to be material, it may seek Court approval of such modification on notice to parties in the CCAA Proceeding. The extension of any date in the Sale Process by up to two weeks shall not be considered material.

Selection of Successful Bidders

36. Following the Phase II Deadline, the Monitor will determine if each Phase II Bid delivered to the Monitor meets the Phase II Bid Criteria, provided that each Phase II Bid may be negotiated among the Monitor and the applicable bidder and may be amended, modified or varied to improve such Phase II Bid as a result of such negotiations. The Monitor shall be under no obligation to negotiate identical terms with, or extend identical terms to, each bidder.

37. If a Phase II Bid meets the Phase II Bid Criteria, as determined by the Monitor in its sole discretion in consultation with the Company, such Phase II Bid will be deemed to be a "**Qualified Phase II Bid**" and the bidder in respect of each such Qualified Phase II Bid shall be a "**Qualified Phase II Bidder**" in respect to the Sale Process.
38. If no Qualified Phase II Bid (other than the Stalking Horse Bid) is received by the Phase II Bid Deadline, the Stalking Horse Bid shall be deemed the Successful Bid (defined below).
39. If more than one Qualified Phase II Bid is received by the Phase II Bid Deadline the Monitor shall extend invitations by email by 10:00 a.m. E.S.T. on the second (2nd) Business Day after the Phase II Bid Deadline to the Qualified Phase II Bidders and to the Stalking Horse Purchaser to attend an auction (the "**Auction**"). The Auction shall be held at 10:00 a.m. on the fifth (5th) Business Day after the Phase II Bid Deadline at the offices of the Monitor or by teleconference, video conference, or other form of electronic telecommunications, as the Monitor may deem fit.
40. The Monitor shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Phase II Bid, and subsequently continue in multiples of \$100,000 (the "**Minimum Bid Increment**"), or such other amount as the Monitor determines to facilitate the Auction. Additional consideration in excess of the amount set forth in the highest Qualified Phase II Final Bid must be comprised only of cash consideration. The format and other procedures for the Auction shall be determined by the Monitor in its sole discretion.
41. The successful bid (the "**Successful Bid**") shall be, either:
 - (a) in the event that no Qualified Phase I Bid other than the Stalking Horse Bid is received by the Phase I Bid Deadline, the Stalking Horse Agreement; or
 - (b) in the event that no Qualified Phase II Bid other than the Stalking Horse Bid is received by the Phase II Bid Deadline, the Stalking Horse Agreement; or
 - (c) in the event that multiple Qualified Phase II Bids are received, following the conclusion of the Auction, the Qualified Phase II Bidder submitting the highest and/or best offer through the Auction.
42. The Monitor, in consultation with the Company shall also identify the Qualified Phase II Bid constituting the second highest or otherwise best bid (the "**Back-Up Bid**", and the Qualified Bidder making such Back-Up Bid, the "**Back Up Bidder**") following the Auction. For clarity, the Stalking Horse Agreement may be deemed by the Monitor, in its sole discretion, to be a Back-Up Bid.
43. If a Successful Bidder fails to close the transaction contemplated by the Successful Bid on or before November 23, 2020 (or such other date as the Parties may agree, with the consent of the Monitor), for any reason, then the Company will be deemed to have accepted the Back-Up Bid and will proceed with the transaction pursuant to the terms thereof, in which case the Back-Up Bid shall be considered the Successful Bid for the purposes of this Sale Process.
44. The determination of any Successful Bid or Back-Up Bid by Monitor, in consultation with the Company shall be subject to approval by the Court.

Sale Approval Motion Hearing

45. At the hearing of the motion to approve any transaction with a Successful Bidder or a Back-Up Bidder (the “**Sale Approval Hearing**”), the Company shall seek, among other things, approval from the Court to consummate any Successful Bid or Back-Up Bid. All the Qualified Phase II Bids other than the Successful Bid or Back-Up Bid, if any, shall be deemed to be rejected on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

46. Each Interested Party, Qualified Phase 1 Bidder, and Qualified Phase II Bidder shall not be permitted to receive any confidential or competitive information that is not made generally available to all participants in the Sale Process relating the number or identity of bidders. The details of any bids or Phase I/Phase II Bids submitted or the details or existence of any confidential discussions or correspondence among the Company, the Monitor, and any bidder in connection with the Sale Process.
47. The Stalking Horse Purchaser shall not be entitled to review, or in any way be involved in, the consideration, negotiation, or selection of any Qualified Phase I Bid, Qualified Phase II Bid, or Successful Bid.

Supervision of the Sale Process

48. Subject to any consultation rights and other similar rights provided for herein, the Monitor will conduct the Sale Process in the manner set out herein and in the Sale Process Order. All discussions or inquiries to the Company regarding the Sale Process shall be directed to the Monitor. Under no circumstances should a representative of the Company be contacted directly or indirectly in respect of the Sale Process, including diligence requests, without the prior written consent of the Monitor. Any such unauthorized contact or communication could result in exclusion from the Sale Process, in the Monitor's sole discretion.
49. The Company and its principals, employees and professional advisors shall cooperate fully with the Monitor and provide documents and information requested as part of the Sale Process to the Monitor in a prompt fashion.
50. Other than as specifically set forth in a definitive agreement between the Company and a Successful Bidder, the Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship among the Company, the Monitor, any Interested Party, Qualified Phase I Bidder, Qualified Phase II Bidder, the Successful Bidder, or any other party.
51. Neither the Company nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions consummated under the Sale Process. Any such claim shall be the sole liability of the bidder that consummates a transaction under the Sale Process pursuant to which the claim is being made.