

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

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

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

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

MOTION RECORD

June 24, 2020

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TO: THE SERVICE LIST

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TAB 1

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NOTICE OF MOTION
(Re: Extension of Time to File Proposal)

JMX CONTRACTING INC., JMX NATIONAL INC., BRND PROPERTIES INC.,
and JMX LEASING INC. (collectively, the “**Debtors**”) will make a motion to a Judge presiding
over the Commercial List on Monday June 29, 2020, 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. An Order, substantially in the form attached at Tab 3 of the Motion Record (the “**Extension Order**”) that, among other things:
 - a) abridges the time for service of this Motion, validates the manner of service, and declares that this Motion is properly returnable before the Court; and
 - b) extends the time for the Debtors to file a proposal with the Official Receiver by 45 days, up to and including August 15, 2020.
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

1. The Debtors are a part of a corporate group (the “**JMX Group**”) in the business of environmental contracting, demolition, abatement, remediation, and commodity salvage services to construction and decommissioning projects across Canada.
2. On April 17 and April 20, 2020, the Debtors filed a Notice of Intention to Make a Proposal (“**NOIs**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) and Crowe Soberman Inc. was appointed proposal trustee (the “**Proposal Trustee**”).
3. On May 15, 2020, the time to file a proposal was extended pursuant to the Order of the Honourable Madam Justice Conway, up to and including July 1, 2020 (the “**First Stay Extension**”).

4. The Debtors are seeking a further extension of the time to file a proposal pursuant to s. 50.4(9) of the BIA to permit them to, among other things, pursue a restructuring strategy that will maximize value for the Debtors' creditors and stakeholders, which includes a refinancing of a portion of the RBC indebtedness and may include sale of the business on a going-concern basis and/or the sale of certain equipment and assets.

5. The Debtors have worked diligently and in good faith during the restructuring period. Since the First Stay Extension was granted, JMX's management, together with the Proposal Trustee and Debtors' counsel, have, among other things:
 - a) managed the logistics associated with responding to the provincial government's COVID-19 emergency orders and returned to work on various construction projects, following the loosening of restrictions in respect thereto;

 - b) sourced and secured new profitable construction project contracts to maximize cash flow;

 - c) consented to RBC's financial advisor msi Spergel Inc. ("**Spergel**") conducting a review and preparing a report on the profitability of the JMX Group's construction projects and its compliance with section 8.1 of the *Construction Act*, RSO 1990, c C-30 (the "**Construction Act**");

 - d) dealt with lien holders and ensured the flow of funds from project owners;

 - e) dealt with litigation claims against ASNA;

- f) engaged Ritchie Bros. Auctioneers to provide an appraisal of JMX's equipment;
and,
 - g) engaged in discussions with potential buyers with respect to a potential going-concern sale of the Debtors' business and assets.
6. Prior to the filing of the NOIs, the JMX Group advised RBC that it was in the process of canvassing potential refinancing offers to retire its indebtedness to RBC.
7. The refinancing process has invariably been delayed by the onset of the COVID-19 crisis and the ability of lenders to process financing transactions expediently. Furthermore, while the Debtors have to date been focused on refinancing options to pay out the indebtedness to RBC, since the filing the Debtors have sought to examine all possible restructuring options to deal with its liabilities and, accordingly, have been pursuing both refinancing and sale/investment avenues to ensure the most favourable outcome possible for all creditors and stakeholders.
8. The JMX Group has received interest from certain potential purchasers interested in the business as a going concern. Accordingly, the JMX Group is exploring the potential of a going concern sale of the business and a possible sale of unused equipment as a restructuring strategy.
9. In the meantime, in response to RBC's demands to be refinanced immediately, the JMX Group has elected to enter into a mortgage financing arrangement with Hillmount Capital. It is expected that the financing transaction will close by July 10, 2020 and that proceeds will be applied to repay a portion of the indebtedness to RBC.

Pursuing a Viable Restructuring Plan

10. To demonstrate good faith and cooperation with its secured lender, the JMX Group consented to RBC's engagement of Spergel to analyze the profitability of the JMX Group's business operations and compliance with Section 8.1 of the Construction Act.
11. Spergel has prepared an analysis current to May 31, 2020 showing that:
 - a) the JMX Group's accounts receivable for its completed and current projects is approximately \$6.7 million and the Construction Act trust claims for the same projects is approximately \$2 million. The cash not subject to trust was approximately \$4.7 million; and
 - b) the JMX Group's projects are profitable on an aggregate basis (even including completed projects, some of which are profoundly unprofitable). If only current projects are included in the analysis, the JMX Group's profit margin increases significantly.
12. The JMX Group's business operations are viable and profitable. Since the filing of the NOI, the JMX Group have entered into new several contracts worth over \$780,000 in aggregate value. Such contracts are expected to be profitable and will contribute positively to cash flows.
13. The JMX Group requires further time to properly consider the potential interest in the sale of its business, and to negotiate binding letters of intent. In addition, the JMX Group may develop and seek approval for a sale and investment process ("SISP") to solicit further interest and test the market to ensure that any transaction is of fair value.

14. If the JMX Group is not permitted additional time to consider the options available to the company going forward, it would potentially sacrifice significant value for its general creditors and stakeholders.

Extension of Time to File a Proposal

15. The current time to file a proposal under the BIA expires on July 1, 2020. The JMX Group requires more time in order to develop an orderly restructuring strategy, either through a refinancing or a sale of the business. Accordingly, JMX is requesting a 45-day extension of time to make a proposal pursuant to Section 50.4(9) of the BIA, up to August 15, 2020.
16. The Debtors have not sought debtor-in-possession financing and are reliant on receipts to fund the restructuring proceeding and ongoing operations. It is anticipated that the JMX Group will have sufficient liquidity based on current cash flow projections to operate through the requested extension.
17. Without an extension of time, the Debtors will not be in a position to make a viable proposal to their creditors. A complete shut-down and liquidation of the JMX Group will not maximize value and will likely only benefit RBC. In contrast, a going-concern restructuring strategy that preserves the active revenue-generating potential of the JMX Group will otherwise service the best interests of the broader economic community of its stakeholders.
18. The test for an extension of time under Section 50.4(9) of the BIA is met:
 - a) the Debtors are likely to be able to make a viable proposal to their creditors if the requested extension is granted;

- b) the Debtors have acted, and are acting, in good faith and with due diligence in engaging with potential customers and creditors; and,
- c) the Debtors' material secured creditor, RBC, is fully collateralized and will not be materially prejudiced if the requested extension is granted.

Further Grounds

- 19. The Proposal Trustee supports the relief being sought by the Debtors;
- 20. Section 50.4(9) of the BIA;
- 21. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended; and
- 22. 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:

- 23. The Affidavit of Charlie Dahl, sworn June 24, 2020, with Exhibits attached thereto; and,
- 24. Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 24, 2020

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TO: THE SERVICE LIST

Schedule "A"
Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://zoom.us/j/3154597997?pwd=RXJlOCtqdHUxa2lUREtUYlE5OUUpKZz09>

Meeting ID: 315 459 7997

Password: 729363

One tap mobile

+13017158592,,3154597997# US

+13126266799,,3154597997# US (Chicago)

Dial by your location

+1 301 715 8592 US

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US

Meeting ID: 315 459 7997

Password: 729363

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

TAB 2

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JMX LEASING INC.

AFFIDAVIT OF CHARLIE DAHL

(Sworn June 24, 2020)

I, **CHARLIE DAHL**, of the City of Toronto, in the province of Ontario, **MAKE OATH**
AND SAY:

1. I am a director and shareholder of each of the debtors, JMX Contracting Inc., JMX National Inc., BRND Properties Inc., and JMX Leasing Inc. (collectively, the “**JMX Group**” or the “**Debtors**”). 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 submitted in support of a motion for an order that, among other things, extends the time for the Debtors to make a proposal to their creditors pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”).

I. OVERVIEW

3. The Debtors are a part of a corporate group in the business of environmental contracting, demolition, abatement, remediation, and commodity salvage services to construction and decommissioning projects across Canada.

4. On April 17 and April 20, 2020, the Debtors filed notices of intention to make a proposal (“**NOIs**”) and Crowe Soberman Inc. was appointed as proposal trustee (the “**Proposal Trustee**”) pursuant to the provisions of the BIA.

5. On May 15, 2020, the statutory stay of proceedings was extended pursuant to the Order of the Honourable Madam Justice Conway, up to and including July 1, 2020 (the “**First Stay Extension**”).

6. Since the First Stay Extension was granted, the JMX Group’s management, together with the Proposal Trustee and company counsel, have been engaged in, among other things:

- (i) managing the logistics associated with the provincial government’s COVID-19 emergency orders and associated shut down of project sites, including the safe wind-down of work and laying off of employees. Upon the lifting of restrictions on construction firms in May 2020, the JMX Group resumed work on its various construction projects, scaled up operations and increased its employee headcount;
- (ii) sourcing and securing new profitable construction project contracts to maximize cash flow;
- (iii) at the request of Royal Bank of Canada (“**RBC**”) and in order to ensure that RBC has full transparency and understanding of their collateral position by having RBC’s financial advisor msi Spergel Inc. (“**Spergel**”) review and prepare a report as to the ongoing

financial affairs of the Debtor and its compliance with section 8.1 of the *Construction Act*, RSO 1990, c C-30 (the “**Construction Act**”);

- (iv) dealing with two pre-filing demolition projects, which were causing cash flow challenges for the JMX Group, including the demolition projects for Ontario Power Generation (“**OPG**”) and for ASNA Robson Landmark Developments Limited (“**ASNA**”);
- (v) negotiating practical solutions with lien claimants to avoid liens being registered on active projects and disrupting cash flows;
- (vi) considering and canvassing all available refinancing and restructuring options to find a solution that benefits the Debtors’ creditor and stakeholder group as a whole;
- (vii) engaging Ritchie Bros. Auctioneers to provide an appraisal of the JMX Group’s equipment with the intention of conducting a potential auction of the JMX Group’s unused equipment and, in any event, to obtain an appraisal to be used to evaluate any going concern sale or investment offers; and
- (viii) engaging in discussions with potential buyers of the business of the JMX Group with respect to a potential going-concern sale of the Debtors’ business and assets.

7. I am of the view that continued discussions with key creditors, potential investors and purchasers, as well as the continued operation of the business, are likely to result in a restructuring plan that provides enhanced, long-term value for all stakeholders beyond a liquidation.

8. Accordingly, the JMX Group is seeking approval of a continued stay of proceedings up to and including August 15, 2020 to allow it time to develop and implement a restructuring plan and to make a viable proposal to its creditors.

II. ANALYSIS OF COMPLIANCE WITH THE CONSTRUCTION ACT AND PROFITABILITY OF THE JMX GROUP'S CONSTRUCTION PROJECTS

9. On June 4, 2020, the JMX Group agreed in good faith, to permit RBC to engage Spergel as its financial advisor with unfettered access to the company and its books and records. Spergel was specifically tasked with monitoring, reviewing and reporting, on the financial performance of the JMX Group and to evaluate RBC's security position (the "**Spergel Engagement**"). The JMX Group consented to the engagement of Spergel (notwithstanding the associated professional fees that would be incurred) in order to demonstrate that it was working cooperatively with its senior secured creditor, assuage RBC's concerns about its collateral position, increase transparency for RBC's benefit and demonstrate the JMX Group's compliance with the Construction Act.

10. The engagement of Spergel was prompted by RBC's desire to obtain further information about the JMX Group's finances in light of the company's shortage of administrative staff and the perception by RBC that it did not have sufficient insight into the JMX Group's financial condition, including the Debtors compliance with section 8.1 of the Construction Act (being the requirement to hold receivables obtained from construction owners in trust for subcontractors).

11. Spergel has produced an analysis of the JMX Group's ongoing and completed projects up to May 31, 2020 to determine compliance with s. 8.1 of the Construction Act as well as a profitability analysis. Spergel's analysis demonstrated that:

- a. as at May 31, 2020, JMX Group accounts receivable for its completed and current projects was approximately \$6.7 million and the Construction Act trust claims for the same projects was approximately \$2 million. The cash not subject to trust was approximately \$4.7 million.
 - b. as at May 31, 2020, the JMX Group's projects were profitable on an aggregate basis (even including completed projects, some of which were profoundly unprofitable). If only current projects are included in the analysis, the JMX Group's profit margin increases significantly.
12. Despite the JMX Group having very few administrative staff, and the fact that RBC's continued requests for information and Spergel's engagement have detracted from the Debtor's focus on its restructuring efforts, the JMX Group has worked on an expedited basis and diligently to meet the many requests for information. JMX is working with Spergel to update the analysis on a rolling basis. I expect that new and profitable projects will be added to the analysis further increasing the profitability of the enterprise as a whole.

III. ONGOING BUSINESS OF THE JMX GROUP

(A). Operations During the COVID-19 Public Health Crisis

13. In and around March and April, 2020, the JMX Group's cash-flows from its ongoing construction projects were temporarily disrupted by the onset of the COVID-19 public health crisis and imposition of emergency measures affecting construction firms.
14. In May 2020, restrictions on construction firms were lifted by the provincial government and the JMX Group has resumed work on most of its construction projects.

(B). Completed and Stalled Projects

OPG Contract

15. The JMX Group is engaged with respect to the demolition of OPG's Lambton Generating Station pursuant to a contract dated July 10, 2018 (the "**Demolition Contract**"). The JMX Group agreed to provide demolition services and to purchase and recycle scrap from the demolition project.

The project's intended completion date was August 21, 2020 (the "**Intended Completion Date**").

16. In accordance with the Demolition Contract, the JMX Group obtained and delivered to OPG a letter of credit ("**LC**") issued by the Royal Bank of Canada ("**RBC**") in the amount of \$3,094,775.00.

17. On December 14, 2019, OPG delivered a letter to the JMX Group alleging various deficiencies in the JMX Group's performance of the Demolition Agreement. Principally, OPG was concerned that the JMX Group would not complete the project by Intended Completion Date. OPG also alleged that the JMX Group had failed to keep the project site clear of debris, ship scrap and pay scrap revenue to OPG. In order to address these deficiencies, OPG demanded that the JMX Group submit a remedial plan for OPG's consideration by January 3, 2020.

18. The JMX Group responded to OPG on December 30, 2019. In its response, the JMX Group explained that OPG's concerns, including any delays resulting from amendments to the Proposed Schedule, resulted from unforeseeable conditions at the time the Demolition Contract was executed. For instance, the JMX Group had discovered far greater quantities of asbestos containing materials ("**ACMs**") than was represented by OPG. The additional ACMs ultimately required further work and engineering for the safe removal of the asbestos.

19. With respect to OPG's allegation that the JMX Group had failed to remove scrap from the site, the JMX Group noted in its response that the Demolition Agreement did not specify a deadline for removal of scrap. The JMX Group takes the position that it has the discretion to retain scrap on site during periods of market price decline and elected to do so given the condition of the scrap market.

20. The JMX Group received no further correspondence from OPG until February 2020 and continued to carry out demolition work pursuant to the Demolition Contract during this time. On February 3, 2020, OPG sent a further letter to the JMX Group in which it reiterated its allegations. OPG further demanded that the JMX Group attend a meeting between the parties to develop a remedial plan, barring which OPG indicated it would consider JMX in default of the Demolition Agreement. A copy of this letter is attached hereto as Exhibit "A".

21. On April 4, 2020, as a result of the COVID-19 crisis OPG issued a Notice of Suspension suspending all demolition work to its sites. Due to the Notice of Suspension, no work could be done on the OPG site regardless of any ongoing disputes between the JMX Group and OPG.

22. On May 19, 2020, while the NOI proceedings were under way, OPG drew down on the LC without notice to the JMX Group. OPG purports to rely on the alleged default of the JMX Group under the Demolition Contract. The JMX Group takes the position that it has continued to discharge its obligations under the contract and that no default existed at the time the LC was called.

23. On May 21, 2020 the JMX Group filed a lien against OPG in the amount of \$10.8 million for the JMX Group's costs incurred to deal with the additional ACMs discovered on site. Included in the lien amount is approximately \$1.7 million due and payable by OPG under the Demolition Contract, the value of the LC, the holdback amount, and JMX's claim against OPG in respect of costs and damages for the additional work done on the project. The JMX Group is aware that subcontractors

have filed further liens on the OPG project that the JMX Group has been unable to pay and discharge since the JMX Group itself has yet to be paid.

24. Notwithstanding the dispute between OPG and the JMX Group, the JMX Group has been contacted by potential purchasers and/or investors who have expressed interest in acquiring the JMX Group's business and in continuing work on the OPG project under the Demolition Agreement.

25. It is the JMX Group's understanding that whether the OPG contract is economically feasible for a potential purchaser or investor could depend on multiple factors, including the size and financial wherewithal of the purchaser, the efficiencies between the OPG Demolition Contract and the purchaser or investor's other projects, and its sensitivity to scrap market prices.

26. The JMX Group has requested a meeting with OPG to introduce a potential purchaser and to determine if the parties can agree on a global resolution of the dispute with OPG, which could involve the resumption of work on the OPG project under the purchaser. While steps have been taken by the JMX Group to schedule the meeting and the JMX Group has proposed an agenda, no date has been set for the meeting yet. The JMX Group is hopeful that OPG will act in good faith in attending and participating at the meeting to resolve issues on a practical basis.

ASNA Contract

27. On October 23, 2017, the JMX Group entered into a contract to carry out the abatement of hazardous materials and demolition of a building known as the 1400 Robson Empire Landmark Hotel in Vancouver, BC. The project was a large, high-profile project involving the demolition of a 42-storey building with a revolving restaurant at the top of the structure. The JMX Group has completed work under the contract and no longer provides any services or materials to the project.

28. The JMX Group experienced significant delays in the completion of the ASNA Contract resulting from material deficiencies in the schematics and scope of work represented to the JMX Group at the outset of the project. Namely, the JMX Group discovered after the contract was executed, that the structural drawings did not disclose a poorly reinforced slab, which required the JMX Group to significantly revise its work plan in order to safely demolish the building. Further, there were more ACMs discovered on site than were otherwise disclosed to the JMX Group at the time the contract was executed resulting in additional work and engineering to safely remove the asbestos.

29. The JMX Group filed liens on title to the Landmark Hotel relating to its costs arising from the unforeseen conditions and the delay on the project, in the amounts of \$6,595,998.52 and \$127,552.21. The liens include amounts owed to subcontractors .

30. On June 19, 2020, ASNA brought a motion to lift the stay of proceedings in order to file a petition in British Columbia to, among other things, vacate the liens of subcontractors below the JMX Group and to discharge the JMX Group's claim and vacate its lien (the "**Lift Stay Motion**"). The background and particulars of the ASNA dispute were described more fully before this Court in the Affidavit of Rob Barnett sworn June 12, 2020 and the Affidavit of John Singleton sworn June 9, 2020, each as previously filed.

31. Pursuant to the endorsement of Madam Justice Conway dated June 19, 2020, the Lift Stay Motion was adjourned to allow ASNA and the JMX Group to negotiate a consensual resolution for vacating of subcontractor liens and the posting of security by ASNA to bond off the JMX Group's lien. A copy of the endorsement of Conway J. is attached hereto as Exhibit "**B**".

32. The JMX Group's counsel has since been engaged in discussions with ASNA's counsel in respect of a potential resolution of the lien and security amounts.

(C). New Post-Filing Business

33. In addition to the Ongoing Projects, the JMX Group has been engaged to provide services to a number of new projects since filing the NOI. The total value of the new contracts is over \$780,000.00. No significant obstacles are anticipated that would hinder the performance of these contracts.

IV. RESTRUCTURING ACTIVITIES TO DATE

(A). Refinancing

34. Prior to the filing of the NOIs, the JMX Group advised RBC that it was in the process of canvassing potential refinancing offers to retire its indebtedness to RBC. This process has invariably been delayed by the onset of the COVID-19 crisis and the ability of lenders to process financing transactions expeditiously.

35. I understand that banks have been engaged in administering government mandated assistance programs and do not appear to be prioritizing private re-financing transactions at this time. Due to remote working arrangements, I also understand that banks have limited capacity to deal with new credit applications. With respect to Schedule B lenders, I understand the refinancing process is considerably slower than before the COVID-19 crisis.

36. Notwithstanding the challenges in seeking financing, to date, the Debtors have obtained various financing commitments:

Bridge Financing Commitment

37. The JMX Group received a commitment from Pillar Capital Corp. (“**Pillar**”) dated June 3, 2020.

38. The board of directors of the JMX Group (the “**Board**”) declined to sign the Pillar commitment letter as it determined that the terms of the bridge financing were too expensive and unsustainable for the JMX Group to service based on its projected cash flows. The Pillar commitment required: (i) a 4.5% commitment fee; (ii) interest at a rate at 1.2% per month; and (iv) monthly payments of principal and interest of \$77,000. The expensive pricing of the bridge loan was not outweighed by the benefits, namely, the bridge loan would not have paid out the entire amount of the RBC indebtedness.

39. The Pillar commitment also required the refinancing a significant amount of the JMX Group’s existing equipment inventory. On further consideration, the Board determined that much of the equipment to be refinanced under the Pillar commitment was not used in the JMX Group’s current or future operations. Accordingly, the JMX Group has been actively considering the sale of the unused equipment (as described below) to be conducted by way of an auction or as part of a larger going-concern transaction.

40. For these reasons, the JMX Group has elected to canvass other financing opportunities in keeping with its fiduciary duties to all stakeholders.

Mortgage Commitment

41. On June 8, 2020, the Board obtained a commitment letter from Hillmount Capital (“**Hillmount**”). This loan contemplated the registration of a first Mortgage against the JMX Group’s real property located at 27 Anderson Blvd, in Uxbridge, ON. The Hillmount commitment provides for a \$1.7 million mortgage and requires (i) a 2% commitment fee; and (ii) interest at a rate of 7.99% annually.

42. Prior to executing the commitment letter from Hillmount, the JMX Group attempted to source longer-term and more economical mortgage financing to satisfy itself that there were no reasonable alternatives to the Hillmount commitment. However, as described below, the JMX Group has not been able to obtain longer-term financing on an expedient basis and so it has elected to proceed with the Hillmount commitment in order to refinance a significant portion of its indebtedness to RBC given the demands by RBC to be refinanced promptly. A copy of the executed Hillmount commitment letter is attached as Exhibit “C” hereto (the “**Hillmount Commitment**”).

43. The Debtors have executed the Hillmount Commitment and paid the deposit. Pursuant to the Hillmount commitment, funding is to occur no later than July 10, 2020.

Long Term Financing Opportunity

44. As part of its efforts to secure less expensive financing, the Debtors sought terms from National Bank of Canada (“NBC”) for longer-term financing. The JMX Group has received preliminary terms from NBC for a long-term refinancing transaction with fees and covenants that the company can likely sustain over the long-term.

45. While the JMX Group has provided all requested deliverables to NBC and has been told that a commitment is forthcoming, the JMX Group is electing to proceed with Hillmount in the meantime to expedite refinancing for the benefit of RBC and will look to NBC to provide terms for an exit from these proceedings if necessary.

(B). Potential Sale Processes

46. Although no sale or investment solicitation process has been conducted to date, the JMX Group has received interest in the potential sale of its going-concern business. While pursuing refinancing

options, the JMX Group was approached by two parties to potentially acquire the business. The JMX Group has existing relationships with both parties and is confident in the sincerity of their interest. The JMX Group has been working with both parties to obtain a binding letter of intent.

47. The JMX Group has also considered the sale of a portion of its equipment that is no longer being used by the JMX Group. Ritchie Bros. Auctioneers are in the process of appraising the JMX Group's unused equipment. Prior to retaining Ritchie Bros. Auctioneers to perform an appraisal, the JMX Group requested that RBC provide an appraisal that RBC has in its possession and the cost of which RBC is adding to their secured debt. RBC refused to provide the appraisal on even a without prejudice basis thus necessitating the engagement of Ritchie Bros. Auctioneers to perform a *de novo* appraisal, which has taken additional time in light of COVID-19 restrictions.

48. To ensure that cash flows are optimized, the JMX Group is also considering disclaiming leases of non-essential or unused vehicles and equipment.

49. While the JMX Group intends to seriously pursue the interest expressed by the two potential acquirers, a sale and investment solicitation process ("SISP") and/or sale of the unused assets will likely be required at some point in these proceedings. A SISP will ensure that any offer submitted is of fair value. Based solely on the interest that has been expressed to date, I believe that a SISP would yield significant interest in the JMX Group's business and a sale of the business would result in greater recoveries for the JMX Group's creditor and stakeholder group than would a liquidation.

50. The JMX Group may bring a further motion before this Court for approval of a SISP and/or a sale of the unused equipment. It is the JMX Group's intention in the meantime to engage in the following steps, among others, to:

- (i) close the financing transaction with Hillmount and use the proceeds towards the repayment of a portion of the indebtedness to RBC;
- (ii) complete the equipment appraisal with the assistance of Ritchie Bros. Auctioneers;
- (iii) continue discussions with the two potential acquirers;
- (iv) participate in a meeting with a potential acquirer and OPG to discuss the prospect of continued performance of the OPG Demolition Contract in the context of a sale of the business;
- (v) develop a suitable SISP framework that would maximize realizable value for the JMX Group's creditors and stakeholders as a whole;
- (vi) evaluate the sale of the unused equipment as part and parcel of a sale of the business or on a stand-alone basis; and
- (vii) continue work on current projects in accordance with the cash flows and obtain new construction projects to preserve and enhance the JMX Group's going concern value.

V. EXTENSION OF TIME TO FILE A PROPOSAL

51. The current stay of proceedings expires on July 1, 2020. Accordingly, the Debtors are requesting a 45-day extension of time pursuant to Section 50.4(9) of the BIA, up to August 14, 2020, to develop an orderly restructuring strategy, either through a refinancing or a sale of the business, as discussed above.

52. The JMX Group has not sought debtor-in-possession financing, and it is anticipated that the JMX Group will have sufficient liquidity based on current cash flow projections to operate through

the proposed stay period. The JMX Group is reliant on the collection of receivables to fund the restructuring process and its ongoing operations and it is therefore critical that cash flows remain uninterrupted and that any claims by the JMX Group against third parties be determined promptly to allow funds to flow.

53. The JMX Group's enterprise value is derived primarily from its active construction contracts and receivables. The Spergel Report has acknowledged that the JMX Group's projects are profitable. These projects have the potential to generate significant revenue based on the current operations of the company; in fact, further contracts solicited post-filing have increased this potential and evidenced the general viability of the business. As at the date of this affidavit, the JMX Group has approximately \$7.4 million in aggregate accounts receivable, approximately \$5 million in aggregate holdbacks, and over \$780,000 in aggregate new contract value.

54. I am advised by counsel that RBC may oppose a second stay of proceedings. In my view, a liquidation scenario JMX Group will not maximize value and would only benefit RBC. In contrast, a going-concern restructuring strategy that preserves the active revenue-generating potential of the company will otherwise service the best interests of the broader economic community of stakeholders.

55. The company's primary tangible assets are the land and building at 27 Anderson Blvd in Uxbridge, Ontario, where JMX's head offices are located, as well as various equipment and inventory. Undertaking a liquidation of these assets would sacrifice the significant realizable value that could be gained through the JMX Group's continued servicing of its construction projects and/or sale on a going concern to an interested party.

56. There is no risk that RBC will be prejudiced by a continued stay of proceedings as RBC is fully secured and collateralized, and there is no evidence of erosion of the asset base. All of the JMX Group's post-filing liabilities are expected to be paid, as demonstrated in the cash flows.

57. In contrast, if the JMX Group is not permitted additional time to consider the various refinancing and potential sale options available to the company going forward, it would potentially sacrifice significant value for its general creditors and stakeholders simply for RBC to be repaid sooner than it would otherwise be paid.

58. A liquidation would also result in job losses for over 80 employees. That outcome is not equitable under the circumstances and is directly contrary to the purpose of a restructuring proceeding.

59. Considering the circumstances and the merits of each of these scenarios, it is my view that JMX is working diligently and in good faith to restructure in a manner that treats all stakeholders fairly and maximizes value.

60. The JMX Group has been under creditor protection for just over two months. Even in normal circumstances and without the challenges of the COVID-19 crisis, two months is insufficient time to finalize a restructuring strategy given the number of interested parties and complexity of issues facing a construction company.

61. The BIA permits up to 6 months for a proposal to be made and approved and debtor-in-possession proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 routinely take longer than a few months.

62. I am of the view that the JMX Group has done its diligence in developing several viable alternative restructuring strategies. The continued pursuit of these strategies is likely to result in a

restructuring plan that provides enhanced, long-term value for all stakeholders beyond a straight liquidation.

SWORN before me by video conference at the City of Toronto in the Province of Ontario this 24th day of June, 2020.



A Commissioner for Taking Affidavits
Name: Christopher McGoey
LSO No. 79679K



CHARLIE DAHL

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 24TH DAY OF JUNE, 2020

A handwritten signature in black ink, appearing to read 'Christopher McGoey', written over a horizontal dashed line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Christopher McGoey
LSO No. 79679K

February 3, 2020

Jeff Norton
President, JMX Contracting Inc.
27 Anderson Blvd.
Uxbridge, ON L9P 0C7

Re: JMX's Performance under Lambton GS Demolition Agreement

Dear Mr. Norton:

This letter is in response to JMX's letter to OPG dated December 30, 2019. OPG maintains the position set out in its December 14, 2019 letter.

JMX has failed to adequately address OPG's concerns, and specifically has failed to provide a remedial plan, which was due January 3, 2020. This breach is an Event of Default as per Section 9.1(i) of the Agreement. Further, in JMX's December 30, 2019 letter, JMX admitted it will not be able to meet the date for Substantial Completion and Final Completion, which also amounts to an Event of Default under Section 9.1(c) of the Demolition Agreement.

As you know, an Event of Default allows OPG the right to terminate the Demolition Agreement or exercise other rights of recourse set out in Section 9.3 of the Demolition Agreement. While OPG reserves all rights to exercise any and all rights of recourse it has under the Demolition Agreement, at this time OPG would like to have a without prejudice meeting with JMX to discuss a true remedial plan. OPG's position is set out below for your and your legal representative's review in advance of our meeting.

Changes under the Demolition Agreement

JMX's December 30, 2019 letter makes reference to and relies upon events and documents that precede the signing of the Demolition Agreement. As you should be aware, anything that took place prior to the execution of the Demolition Agreement is irrelevant given Section 1.11 of the Demolition Agreement, which states:

1.11 Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the subject matter and, except for any Amendment or Project Change Directive, supersedes all other agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal, including any OPG request for proposals, any Contractor bid proposal and any amendments or restatements of any such request or bid. Specifically, except as expressly provided in this Agreement, OPG has not made any representations, warranties or guarantees whatsoever respecting the Project or this Agreement, including any minimum or maximum hours of employment or respecting any statements or other information previously provided to the Contractor or respecting any physical conditions, labour conditions or scheduling. If the Contractor did not seek a clarification during the request for proposals process regarding any term in this Agreement

and there is a subsequent controversy respecting the interpretation of that term, OPG's interpretation will govern.

Further, the Demolition Agreement is a fixed price contract. As is clearly set out in Section 5 of the Demolition Agreement, JMX is not entitled to a change to the Contract Price, Contract Schedule, or Scope of Work except with OPG's prior written consent or in the event of a change in: (a) Applicable Laws (except those that relate to Taxes); or (b) Canadian taxes that was unknown or unforeseeable at signing the Demolition Agreement and directly and materially impacts the Services or Contract Schedule.

JMX's Reps and Warranties and the Scrap Market

Under the Demolition Agreement Section 2.1(d) "Representations Regarding the Project", JMX assured OPG it:

(3) has examined and satisfied itself in respect of all matters respecting the Services, Goods and Project, including:

(A) all necessary information respecting the risks, contingencies and other circumstances which may affect the Progress Schedule, the Contract Schedule, the Contract Price, the Services, the Recovered Material (including the types and quantities thereof), the Goods or the Project;

...and...

(5) has reviewed the Contract Schedule and is satisfied that it can provide and entirely finish the Services in accordance with the Contract Schedule;

Despite the above, JMX has attempted to claim relief from its obligations under the Demolition Agreement due to a downturn in the scrap market. With respect to the scrap market, in its December 30 letter, JMX claims that there were "conditions that were not evident when the proposal was made" and that global commodity circumstances could not be reasonably foreseen at the time of the contract. However, later in the same letter, JMX takes the position that during contract negotiations it specified that "the global commodity nature of scrap materials were susceptible to change". This is an obvious contradiction and fails to acknowledge the fact that the risk of a downturn in the scrap market was JMX's sole risk to bear and mitigate against as the Contractor in a fixed price contract.

JMX's recent proposal regarding the handling of scrap and changing the revenue payable to OPG remains unacceptable as per the reasons stated in our December 14, 2019 letter and above. JMX must provide OPG with a realistic and executable plan as to how to fulfil its obligations under the Demolition Agreement.

Summary and Next Steps

Taking into account all of the deficiencies stated above and JMX's failure to acknowledge and remedy said deficiencies, OPG is fully within its rights to serve JMX with a Notice of Default as per Section 9.1 of the Demolition Agreement and take any of the actions listed in Section 9.3 of the Demolition Agreement, being OPG's Recourse.

14000 Niagara Parkway, Niagara-on-the-Lake, Ontario, L0S 1J0

While OPG reserves all its rights of recourse under the Demolition Agreement, OPG would like to move forward to work with JMX to resolve the current issues and find the best path forward for the Project.

We would like to arrange for a without prejudice meeting between the parties and their respective legal representatives, with such meeting to take place on a mutually agreeable date and time within the next 2 weeks. Please provide your availability for said meeting by end of business on February 5, 2020.

Although we acknowledge that JMX has been taking corrective steps recently, at this point in time we still do not have a comprehensive remedial plan. We trust JMX is prepared to work in good faith to address the issues and ensure the Project's success. JMX's failure or refusal to participate in this process in good faith, acknowledge the issues that have caused the current circumstances, and work to correct the issues and achieve Final Completion as soon as possible will result in OPG having to reconsider its position not to exercise its rights of recourse.

Sincerely,

ONTARIO POWER GENERATION INC.



Dan Roorda

Production Manager, Southwest Operations
(289) 213 2188
dan.roorda@opg.com

Copy:

Heidi Cyfko – OPG

Tanya Rocca – OPG

Quinn Boisson – OPG

Paul Burroughs – OPG

Jamie Dreveny – OPG

Shane MacPherson - JMX

THIS IS **EXHIBIT "B"** REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 24TH DAY OF JUNE, 2020



A COMMISSIONER FOR TAKING AFFIDAVITS

Christopher McGoey
LSO No. 79679K

Subject: JMX Contracting (Court File 31-2639875)
Date: Friday, June 19, 2020 at 11:51:07 AM Eastern Daylight Time
From: Conway, Madam Justice Barbara (SCJ)
To: Sharon Kour, Caitlin Fell, Harvey G. Chaiton, Martin Sennott, Scott MacKenzie
CC: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Priority: High
Attachments: image001.jpg

I heard ASNA's lift stay motion today by Zoom videoconference call. Counsel on the motion were Ms. Kour and Ms. Fell for JMX, Mr. Chaiton, for the proposal trustee, and Mr. Sennott and Mr. MacKenzie, for ASNA.

I am adjourning the motion to **June 29, 2020 at 1 p.m.** to be heard at the same time as JMX's motion for an extension of the stay that expires on July 1, 2020.

After discussion with counsel today, it appears that there may well be a practical solution to the issue of vacating the liens on title registered by the subtrades and JMX in British Columbia. I am adjourning this matter for counsel to pursue those discussions. If they come up with a consent order, they may send it to me by email with a copy to the Commercial List office. If not, I will continue the motion on June 29th.



Superior Court of Justice (Toronto)

THIS IS **EXHIBIT "C"** REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 24TH DAY OF JUNE, 2020

A handwritten signature in black ink, appearing to read 'Christopher McGoey', written over a horizontal dashed line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Christopher McGoey
LSO No. 79679K



Mortgage Loan Commitment

June 10, 2020

BRND Properties Inc.
27 Anderson Blvd,
Uxbridge ON L9P 0C7

Attention: Charlie Dahl, Peter Bensley and Matthew Richard

Dear Sirs:

RE: 1st Mortgage against 27 Anderson Blvd, Uxbridge ON L9P 0C7 (the "Property")

We wish to confirm that, based upon and subject to the accuracy of information furnished to us, your mortgage financing on the subject security has been approved subject to the following terms and conditions set out below:

MORTGAGEE:	Hillmount Capital Inc. and/or its investors or assignees (the "Lender")
MORTGAGOR(S) / BORROWER(S):	BRND Properties Inc. (the "Borrower")
GUARANTOR(S):	Personal guarantees to be provided by Charlie Dahl, Peter Bensley and Matthew Richard on a joint and several basis and limited to the lower of the registered mortgage or the amount owing under the mortgage (the "Guarantors")
PRIORITY / SECURITY:	1 st Mortgage – 27 Anderson Blvd. Uxbridge ON
LOAN AMOUNT:	\$1,700,000.00 or a higher amount not to exceed 65% LTV of the appraised value of the Property as determined by Cornwall Appraisers – pursuant to section 28
PROPERTY DESCRIPTION:	The Property is comprised of a 2-acre site with a 14,000 square foot 2-storey industrial building constructed in 2019. The building is occupied by related parties. The building is comprised of 10,000 SF of ground floor space, 4,000 SF of upper floor space and 40% is finished as office space. The building covers only 16% of the property, leaving ample space for outdoor storage or future expansion.
FEES:	Hillmount Commitment Fee – 2.00% Hillmount Processing Fee - \$595 Lender Legal Fees, Disbursements and HST – To be determined by Lender's solicitor Appraisal Fee – Borrower to pay and deal with directly (Your acceptance of this Commitment will be your undertaking to pay the Lender Legal Fees, Disbursements and HST and the Processing Fee if the Loan Amount is not advanced because you do not fulfill a condition for funding).
INTEREST RATE & PAYMENT:	Interest shall be compounded and calculated monthly at the rate of 7.99% per annum and will be repayable monthly, in arrears, by direct withdrawal in the amount \$11,319.17 , with four (4) months prepaid interest to be held back by the Lender on or before closing. Interest adjustment date to the 1 st of the following month.
AMORTIZATION:	N/A, Interest Only Mortgage

Borrower(s)/Guarantor(s) Initials: _____

Handwritten initials in black ink, appearing to be 'BRND' or similar, written over a horizontal line.

- CLOSING DATE:** The funding date is to be no later than **July 10, 2020** or such other date as mutually agreed to by the Borrower and the Lender (and not sooner than 3 full business days from receipt of fully executed commitment, receipt of non-refundable work fee, and satisfactory receipt of material requested by the Lender). It is further conditional upon the Lender's solicitor receiving all requisitioned material on a timely basis. The closing date may be advanced as agreed to by the Lender's and Borrowers' solicitors. [In the event the funds have not been advanced pursuant to the terms of this commitment by **July 15, 2020**, the obligations of the Lender hereunder, including the obligation to make any advance of funds, shall cease and the Borrower shall remain liable for the Lender's Fees, Legal Fees & Disbursements and the Processing Fee.]
- LENDER'S SOLICITOR:** Doron Noah - Macdonald Sager Manis LLP Tel: (416) 361-2624 Fax: (416) 364-1453
Email: dnoah@msmlaw.ca
- TERMS OF LOAN & PREPAYMENT PRIVILEGE:** This loan will mature in 12 months from the interest adjustment date. When not in default and after the 3rd month of the term, the Borrower shall have the right to prepay the Loan Amount in whole or in part (in minimum increments of \$150,000) without any penalty or bonus at any time and from time to time upon providing 30 days prior written notice to the Lender.
- VALUE OF PROPERTY:** \$2,700,000.00 (to be determined by appraisal and/or realtor opinion)
- ADVANCES:** The proceeds of this Loan shall be advanced less the following:
- a) Lender fees (including processing fee);
 - b) Legal fees and disbursements plus HST thereon;
 - c) Interest adjustment payment to the 1st of the month;
 - d) Insurance consultant fees (if applicable);
 - e) 4 months prepaid interest;
 - f) 2 months interest reserve to be held in trust pursuant to section 29;
 - g) Prepayment of property taxes for the term of the Mortgage; and
 - h) Other amounts, if applicable, to be determined prior to closing.
- PURPOSE OF LOAN:** The Loan has been requested by the Borrower to refinance the Property; specifically, to pay off the RBC mortgage which is currently in special loans.
- SECURITY:**
1. 1st Mortgage registered against the Property in the principal amount of **\$2,200,000**.
 2. Personal guarantees from the Guarantor(s) limited to the amount owing under the mortgage.
 3. Title insurance.
 4. Fire and building "All Risk" insurance as determined and verified by the Lender's insurance consultant (the cost of the insurance review is the responsibility of the Borrower). The Lender will be noted on the policy as mortgagee and loss payee. Insurance coverage of replacement cost on Property (and to be not less than the full 100% "Replacement Cost") and \$2 million in liability.
 5. General Assignment of Rents and Leases and Tenant Acknowledgments in a form to be determined by the Lender's solicitor.
 6. General Security Agreement having 1st priority over any and all unencumbered personal property used in connection with or arising from or out of the Property (including without limitation, a charge (PPSA) over all equipment and machinery, vehicles, fixtures, furniture used in connection with the Property) in a form to be determined by the Lender's solicitor.
 7. Assignment, postponement and subordination of shareholder or intercompany loans and redeemable shares on terms acceptable to the Lender.
 8. Subordination agreement in form satisfactory to the Lender and its solicitor from all related parties of their respective interests and rights in the Property, including without limitation, any occupancy interests of the Property or any part thereof.

Borrower(s)/Guarantor(s) Initials: _____



9. Such other security, assurances and / or documents as may be required by the Lender or its solicitors.

**ADDITIONAL CONDITIONS
AND REPRESENTATIONS:**

This commitment is subject to the following conditions to be satisfied at the time of advance of funds under this commitment which conditions the Lender in its sole discretion may waive in full or in part:

1. Written acceptance of the Commitment by the Borrower(s)/Guarantor(s).
2. The Borrower(s)/Guarantor(s) will attend to the lawful execution and delivery of such documents as the solicitors for the Lender may deem necessary or advisable to fulfill the terms and conditions of the agreement (including a copy of an up-to-date survey of the Property (may not apply with Title insurance)).
3. We are to receive the favourable opinion Lender's solicitors with respect to the priority, validity and enforceability of the mortgage and all other requirements usual to a transaction of this nature (including any documents deemed necessary to close the transaction by Lender's solicitor).
4. Satisfactory inspection of the Property by the Lender and its agent, if so required by Lender.
5. Satisfactory review of an appraisal of the Property, performed by Cornwall Appraisers. Appraisal is to be in the Lender's name or a letter of transmittal is to be addressed to the Lender. Property values are to be no less than as stated above. Borrower to be responsible for appraisal fees.
6. Satisfactory due diligence review of the application, including:
 - a. The signed application (listing all assets of the Borrower/Guarantor) / net-worth statement / credit bureau. The applicant(s) certify that the information given in the mortgage application is true and correct and confirm authorization of a full credit investigation has been granted.
 - b. The financials of the Borrower which are to indicate that the Borrower can afford the monthly interest payments. If the Lender is not satisfied, an interest reserve may be set up as part of the Loan.
 - c. The exit strategy
 - d. Interview with the Borrower, if so required by the Lender.
 - e. The Articles of Incorporation for the corporate owner and satisfactory confirmation that it is a holding company.
 - f. Confirmation that the Borrower(s) is current on all its filings and all its deemed trust payments (i.e. WSIB, source deductions, HST), if any.
 - g. Confirmation of the names of the shareholders, directors and owners of the Borrower(s)/Guarantor(s) and confirmation that they will not sell their shares while the Loan is still outstanding.
7. All property taxes to be current at the time of closing. Any arrears in property taxes must be paid in full prior to closing or from the proceeds of this Loan. Property taxes will be prepaid for the term of the Mortgage.
8. Satisfactory review of the Phase 1 environmental report by a Lender approved environmental consultant. The environmental review is to be addressed to the Lender, indicating a non-contaminated site. Borrower to be responsible for consultant's fees.
9. Satisfactory review of the lease, if any, in place by Lender's solicitor and tenant acknowledgements of the terms of the occupancy (or lease) to be addressed to the Lender in a form satisfactory to the Lender's solicitor.
 - a.
10. Satisfactory review of all property related documents that may be required by the Lender including realty tax bills, insurance, utility bills, structure of property ownership and survey.
11. A copy of an up-to-date survey of the Property (may not apply with Title insurance) and the site layout (if one exists).

Borrower(s)/Guarantor(s) Initials: _____



12. Please see Schedule "A" for additional terms of the mortgage which are not necessarily preconditions to the closing.
13. Borrower hereby represents and warrants that they have the power, capacity and authority to enter into this commitment and to complete this transaction, which has been duly authorized, where required, by all necessary corporate action and that no consents are necessary for this transaction to be completed.
14. The Borrower hereby represents and warrants that they have the ability to service the mortgage debt.
15. The Borrower hereby represents and warrants that they have, or will have, good and marketable title to the Property to be mortgaged as security for the Loan in this Commitment and that the agreements herein, on the part of the Borrower to grant a mortgage to the Lender, constitutes an equitable charge on the Property pursuant to this Commitment.
16. No subsequent encumbrances, debt or other mortgages with respect to the Property without the Lender's written consent.
17. Satisfactory review of adequate fire and building "all risk" insurance by Lender or its independent insurance advisor. The Lender is to be added mortgagee and as loss payee (as applicable). The cost of the insurance review by the advisor is the responsibility of the Borrower.
18. Notwithstanding anything contained in the mortgage, it is hereby agreed by and between the Lender and the Borrower that any monies tendered in respect of the mortgage payments or other payments due shall be paid by 1 p.m. on the business day upon which they are due. If received after that time (i.e. for computing interest), the monies will be deemed to be received the next business day.
19. Mortgage is non-transferable and non-assumable except with the prior consent of the Lender.
20. The Borrower represents and warrants that, during their ownership of the Property, the lands and all activities comply with all environmental laws and that the lands contain no hazardous substances, have not been subject to previous remediation or clean-up of hazardous substances and there are no investigations or other actions arising under or relating to environmental laws. All existing environmental assessments, audits, tests and reports relating to the lands within the knowledge of the Borrower has been delivered to the Lender.
21. In the event the Borrower sells, conveys, transfers their interest into any agreement of sale or otherwise encumbers the title to the mortgaged premises, or defaults in the payment of any prior encumbrances or mortgages, or defaults in the payment of any taxes against the mortgaged premises, then all monies then outstanding, together with accrued interest, default fees and other prepayment penalties owed to the Lender hereunder shall forthwith become due and payable.
22. If at any time or from time to time, any default or breach of covenant occurs under any other encumbrance registered against the Property, it shall constitute a default hereunder and under the Mortgage/Charge granted pursuant hereto and any other obligation owing to the Lender. If any default or breach of covenant occurs under any other encumbrance registered against the Property, then at the Lender's option, the entire principal sum owing hereunder together with interest and all costs and fees shall become immediately due and payable.
23. The Borrower shall execute an irrevocable authorization that permits the utility companies, insurance companies, taxing authorities, and mortgage companies directly involved in the secured Property to discuss matters relevant to the Lender's interest in the event of a default in the mortgage.
24. The Borrower shall execute and deliver consents reasonably required by the Lender and its solicitors concerning the release and disclosure of information by the Lender to third parties and by third parties to the Lender in accordance with provisions of the *Personal Information Protection and Electronic Documentation Act* (Canada).

Borrower(s)/Guarantor(s) Initials: _____




25. Satisfactory confirmation by the Borrower that there are no outstanding work orders, notices of violations or other municipal or governmental authorities affecting the Property.
26. Satisfactory evidence (as determined by Lender's solicitor) that prior discharged mortgages have been paid and properly discharged.
27. Such other security, assurances and / or documents as may be required by our solicitors.
28. The maximum loan amount to be advanced on the closing of the mortgage is \$1,700,000 and the Borrower(s)/Guarantor(s) will pay fees based on the actual amount advanced to the Borrower. The Loan will be registered on title for \$2,200,000 and the Lender, at its sole discretion, may agree to increase the loan facility amount up to the amount registered on title, at the Borrower(s)/Guarantor(s) request and upon satisfactory review of the appraisal from Cornwall Appraisers. Should the loan facility amount be increased, the Lender fees on the additional loan amount will be owed and deducted from the next advance.
29. The Borrower will be responsible for making the monthly interest payments once the 4 months of prepaid interest is depleted. Should the Borrower miss any of the interest payments, the Lender will apply funds from the interest reserve on account of the missed interest payment. The Borrower will be responsible for replenishing the 2-month interest reserve within 15 days of the interest payment being applied from the interest reserve.
30. Upon written request by the Borrower and at the Lender's sole discretion, the Lender will agree to renew the mortgage for an additional 6 to 12 month term under the following conditions:
 - a. The mortgage is current and has not been in default during the term;
 - b. The value of the Property has not decreased; and
 - c. Payment of a 0.50% renewal fee for a 6 month renewal or 1.00% for a 12 month renewal.

GENERAL:

The provisions of this letter and commitment agreement resulting from your acceptance thereof shall remain binding and effective notwithstanding the closing of the mortgage transaction.

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

SCHEDULES ATTACHED:

The following attached schedule(s) form a part of this Mortgage Commitment:

SCHEDULE A – Conditions

SCHEDULE B – Borrower Disclosure

SCHEDULE C – Insurance Requirements

EXPIRY OF COMMITMENT: This commitment shall be open for acceptance until **3:00PM** on June 23, 2020 after which the commitment shall be deemed revoked.

OTHER: The Borrower hereby consents to Hillmount Capital Inc. and/or the Lender (and its authorized agents or other representatives) obtaining, using and disclosing of credit and/or any and all personal information on the Borrower from any source as may be necessary for Hillmount Capital Inc. and/or the Lender to complete its due diligence and to proceed with the transactions contemplated herein and such other collection, use and disclosure of any and all personal information about the undersigned as may be required or permitted by law. Each source is hereby authorized to provide such information to Hillmount Capital Inc. and / or the Lender. The Lender's lawyer is authorized by the Borrower to forward all information and documentation regarding this transaction to Hillmount Capital Inc. and / or the Lender.

In the event you are in agreement with the terms and conditions herein, please sign and return this letter as proof of acceptance to us by **3:00PM** on June 23, 2020. The Borrower acknowledges having received and/or executed a "Disclosure

Borrower(s)/Guarantor(s) Initials: _____

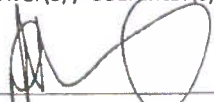


ACCEPTED


The Borrower / Guarantor hereby accept this Commitment and confirm their agreement with all of the terms and conditions thereof, having either obtained independent legal advice or having been satisfied that legal advice is not required. The Lender's Commitment Fee is fully earned by the Lender upon funding by the Lender to the Borrower (the "Commitment Fee"). The Commitment Fee is due and payable with a non-refundable deposit of \$6,700 (the "Deposit") by certified cheque or e-transfer payable to the Lender upon acceptance hereof and the balance of the Commitment Fee is due on the advance of funds hereunder. The Borrower / Guarantor agree that if the Loan is not advanced by July 10, 2020 or another closing date mutually agreed to by the Borrower and the Lender, and provided that the failure to complete the loan transaction contemplated herein is not a result of a default of the Lender, the Deposit is forfeited to the Lender as liquidated damages, and not as a penalty,, all reasonable costs incurred by the Lender in connection with this Commitment and Loan, including insurance consultant fees, and legal costs (collectively the "Lender's Costs"). Providing the Loan is advanced fully on or before the closing date, the Deposit will be applied towards the Commitment Fee. Regardless of whether the above conditions are met, or the Loan is advanced, upon signing this Commitment, the Borrower/Guarantor agree that they are liable, save if the Lender is in default, for all the Lender's costs.


Accepted this 23rd day of June 2020.

Borrower(s) / Guarantor(s)



Name: _____ ("Borrower")
Company: BRND Properties Inc.
A.S.O.

Borrower's Solicitor:
Name: Le Nguyen
Firm: LLF LAWYERS LLP
Telephone: 705-742-1674 x 231


Name: Charlie Dahl ("Guarantor")


Name: Peter Bensley ("Guarantor")


Name: Matthew Richard ("Guarantor")

Borrower(s)/Guarantor(s) Initials 

SCHEDULE A – CONDITIONS

ACCRUED AND EARNED INTEREST	Accrued interest calculated from the date that this mortgage is advanced to the Interest Adjustment Date will be deducted from the gross funds advanced. The Interest Adjustment Date is set at the Lender's option. The Borrower shall not be entitled to receive interest, if any, on any funds held in trust by the Lender. Any interest earned shall accrue to the Lender.
ASSIGNMENT OF COMMITMENT & ROLE OF BROKERAGE	Neither this Commitment nor the Mortgage/Charge loan is assignable by the Borrower(s) without the Lender's consent. The Lender is a licenced brokerage and for the purposes of this transaction, is acting as a representative of the Lender but not the Borrower (unless otherwise noted by way of a Borrower Disclosure between the Lender and Borrower).
FIRE INSURANCE	Fire and extended insurance coverage in a form and for an amount acceptable to the Lender is to be taken out with an insurance company or insurance companies approved by us for the full insurable value of the Mortgage/Charge property and assigned to Lender. Co-insurance is not acceptable.
LEGAL AND OTHER COSTS AND FEES	All legal, appraisal, survey, title insurance premiums, environmental audits, and other costs and fees incurred in connection with this Mortgage/Charge loan are payable by the Borrower(s) whether or not the loan is ultimately completed and the funds advanced.
PREPAYMENT RESTRICTIONS REGULATIONS	It is intended and agreed that the Mortgage/Charge loan may not be prepaid prior to the maturity date unless provided herein except as set out in this Mortgage Commitment. The Charged/Mortgaged property must comply with all municipal, provincial and federal statutes, regulations and requirements.
SURVEY REQUIREMENTS	Prior to any advance of funds under the mortgage loan, Lender will require a survey acceptable to it, showing the lands and the location of the buildings to be secured by this Mortgage/Charge. This survey is to be prepared, dated, signed and sealed by a duly qualified Provincial Land Surveyor and is to indicate the land area of the property and the location of all improvements and easements or rights-of-way. At the sole discretion of the Lender's lawyer, the survey requirement may not apply with title insurance.
TAXES	Any tax bills issued and unpaid at the interest adjustment date are to be paid in full from the proceeds of this mortgage loan. At closing, and at the Lender's option, the Borrower shall establish with the Lender a property tax escrow account (and undertakes to provide funds to establish the subject account satisfactory to the Lender), and the Borrower agrees to pay the Lender 1/12 of the annual taxes on a monthly basis, and the Lender will remit same to the local municipality as taxes are due. No interest will be paid to the Borrower on funds held in the property tax escrow account. If a tax escrow account is not established, the Lender can request evidence from the Borrower that all realty taxes due and owing to the municipality within which the mortgaged lands are situated have been fully paid or are current for the calendar year.
PURCHASER APPROVAL	The Charge/Mortgage will be due on sale of the property without bonus or penalty and may not be assigned by the borrower without prior written consent and approval of the Lender, which consent may be reasonably withheld.
ASSIGNMENT AND SYNDICATION BY LENDER	The Lender shall have 7 normal business days following the acceptance of this Mortgage Commitment, and upon receipt of all requested underwriting information to assign all or part of the of the loan in an amount to be determined by the Lender at its discretion and subject to terms satisfactory to the Lender. The Lender agrees that, if the Borrower is not in default hereunder, the Lender will not in whole or in part sell, assign, transfer or dispose of the Loan or any related security or guarantee delivered by the Borrower or any of the Guarantors to any entity that is a competitor of the Borrower.
TITLE INSURANCE	At the Lender's sole option, the Borrower may be required to provide title insurance for the mortgaged property. The cost of the title insurance shall be at the Borrower's expense.
ADDITIONAL PROVISIONS	Our current schedule of administration and servicing fees include (but not limited to) the following charges:
\$500.00	Missed payment fee: Payable for each missed or late installment payment and for replacing and processing each NSF cheque or returned payment for any charge on this property (ie 1 st and / or 2 nd mortgagee) or any other creditor (ie utility company, property taxes, etc).
\$300.00	Insurance: Payable for dealing with each cancellation, premium payment or other non-compliance with insurance requirements.
\$2,000.00	Default: Payable for each act or proceeding instituted.
\$100.00	Mortgage Statements: For preparation of each statement.
\$300.00	Lenders administration fee for renewal or discharge of this mortgage.
\$5,000.00	Possession: For attending to take possession following default.
\$300.00	Administration: For administering maintenance and security of the property in our possession, per day.
\$300.00	Mortgage Discharge & Statement Fee: For discharge on one property. \$100.00 for each additional property.
\$250.00	Tax Default Fee: For failure by the Borrower to provide satisfactory confirmation of tax payments.
\$200.00	Annual Tax Account Administration Fee: For administering and maintaining the tax account
\$300.00	For each written request necessitated by the mortgagor not replacing dishonoured cheques forthwith
\$250.00	Failure to notify the Lender of registration of lien by the Condominium Corporation for common maintenance arrears
\$395.00	For each hour of administrative time spent by the Lender or its agent in dealing with issues of default related to these mortgages. This rate does not apply to solicitor services
\$395.00	Mortgage Insurance Admin Fee
\$300.00	Inspection Fee (per property)
\$90.00	Bank Wire Transfer Fee
	The Lender reserves the right to charge reasonable fees for other administrative services. Renewal and renewal fee to be at the discretion of the Lender. In the event of a further occurrence of the administrative fees as set out herein, the administrative fees shall increase by a further sum of \$50.00 and this shall be on a cumulative basis.

Borrower(s)/Guarantor(s) Initials: _____



TAB 3

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

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

THE HONOURABLE MADAM)	MONDAY, THE 29 th
)	
JUSTICE CONWAY)	DAY OF JUNE, 2020

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

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

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

ORDER
(Re Extension of Time to File Proposal)

THIS MOTION, made by JMX Contracting Inc., JMX National Inc., BRND Properties Inc., and JMX Leasing Inc. (collectively, the “**Debtors**” or each a “**Debtor**”) for an Order, *inter alia*, extending the period of time for filing a proposal pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) was heard this day by video conference due to the COVID-19 crisis.

ON READING the Affidavit of Charlie Dahl sworn June 24, 2020 and on hearing the submissions of counsel for the Debtors and for Crowe Soberman Inc. in its capacity as proposal

trustee (the “**Proposal Trustee**”), 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 Christopher McGoey dated June 24, 2020, filed:

SERVICE

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.

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to August 15, 2020.

ORDER EFFECTIVE IMMEDIATELY

3. Given the inability to enter Court Orders at this time, this Order is in effect immediately.

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

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

**AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS OF
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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