

COURT FILE NUMBER &  
BANKRUPTCY ESTATE  
NUMBER

**25-3009380**

Clerk's Stamp

COURT

COURT OF KING'S BENCH OF ALBERTA,  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

Calgary

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

AND IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
ATHABASCA MINERALS INC., AMI SILICA  
INC., AMI AGGREGATES INC., AMI  
ROCKCHAIN INC., TERRASHIFT  
ENGINEERING LTD., 2132561 ALBERTA  
LTD., and 2140534 ALBERTA LTD.

APPLICANT

ATHABASCA MINERALS INC., AMI SILICA  
INC., AMI AGGREGATES INC., AMI  
ROCKCHAIN INC., TERRASHIFT  
ENGINEERING LTD., 2132561 ALBERTA  
LTD., and 2140534 ALBERTA LTD.

DOCUMENT

**AFFIDAVIT OF JOHN DAVID  
CHURCHILL**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Fasken Martineau DuMoulin LLP**  
Attn: Robyn Gurofsky / Jessica Cameron  
3400 First Canadian Centre  
350-7 Avenue SW  
Calgary, AB T2P 3N9  
Telephone: (403) 261-9469/261-9468  
Facsimile: (403) 261-5351  
Email: [rgurofsky@fasken.com](mailto:rgurofsky@fasken.com) /  
[jcameron@fasken.com](mailto:jcameron@fasken.com)  
File No. 318938.00024

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**AFFIDAVIT NO. 2 OF JOHN DAVID CHURCHILL**

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**Sworn on January 15, 2024**

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I, John David Churchill, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Chief Financial Officer (“**CFO**”) of the Applicant, Athabasca Minerals Inc. (“**AMI**”). I have been the CFO of AMI since May 2022. I am also a director of all of the Applicants, excepting AMI. I have over 33 years of financial experience including 15 years in oilfield services, aggregates and industrial minerals industry, focusing on financial and accounting management and corporate finance. I have personal knowledge of the matters to which I depose in this Affidavit, except where such matters are stated to be based on information and belief, in which case I have stated the source of my information and, in all cases, I believe such information to be true. In preparing this Affidavit, I consulted with the Companies’ management team and advisors and reviewed relevant documents and information concerning the Companies’ operations, financial affairs and restructuring activities.
2. I previously swore an Affidavit in these proceedings on December 6, 2023 (my “**First Affidavit**”). All capitalized terms used but not otherwise defined herein have the meaning given to them in my First Affidavit or as in the Court-approved sales and investment solicitation process (“**SISP**”), as the case may be.
3. I am authorized to swear this Affidavit as a corporate representative of the Companies.
4. All monetary references in this Affidavit are in Canadian dollars, unless otherwise stated.
5. On November 13, 2023, AMI together with its affiliates AMI Silica Inc. (“**Silica**”), AMI Aggregates Inc. (“**Aggregates**”), AMI RockChain Inc. (“**RockChain**”), TerraShift Engineering Ltd. (“**TerraShift**”), 2132561 Alberta Ltd. (“**213**”), and 2140534 Alberta Ltd. (“**214**” and collectively with AMI, Silica, Aggregates, RockChain, TerraShift and 213 the “**Companies**”), each filed a notice of intention to make a proposal to their creditors pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) with the Office of the Superintendent of Bankruptcy (collectively the “**Proposal**”).

**Proceedings**”). KSV Restructuring Inc. was appointed as proposal trustee of each of the Companies (in such capacity, the “**Proposal Trustee**”) respecting the Proposal Proceedings.

6. Subsequently, on December 12, 2023, the Companies obtained an order from this Court (the “**First Order**”) which, amongst other things, extended the stay of proceedings and time to file a proposal to their creditors to and including January 26, 2024, and approved the stalking horse SISP.
7. The Court-approved SISP provides for a final bid deadline of January 31, 2024, with the potential for a run-off auction to be held on February 9, 2024 in the event there are Superior Bids pursuant to the SISP.
8. I swear this Affidavit in support of the Companies’ application for an order that, amongst other things:
  - (a) extends the time by which the Companies may file a proposal to their creditors pursuant to the BIA, and the corresponding stay of proceedings (the “**Stay Extension**”), for 45 days to and including March 11, 2024 (the “**Stay Period**”); and
  - (b) grants such further and other relief as the Companies may request and this Honourable Court may deem just.
9. I have been advised by the Proposal Trustee that it supports this application.

## **BACKGROUND**

10. Since the granting of the First Order, the Companies have been acting in good faith and with due diligence to advance the within Proposal Proceedings in a manner that will maximize value for the benefit of all of their creditors and stakeholders. As outlined in my First Affidavit, the Companies’ Management Team, myself included, strongly believe that the best way to maximize value here is to run a robust SISP, utilizing the Stalking Horse Bid from JMAC to set a baseline price and creating competitive tension amongst potential bidders in that process.

11. In order to advance the SISP, and otherwise advance these Proposal Proceedings in a timely and cost-effective manner, since the granting of the First Order, the Companies have taken the following steps:
- (a) On December 13, 2023, held a SISP kick-off meeting with the Sales Advisor and the Proposal Trustee in order to commence the SISP as soon as possible following Court approval of that process;
  - (b) Assisted the Sales Advisor and the Proposal Trustee in the preparation of the marketing materials for the SISP, including the Teaser and Newspaper Advertisement of same;
  - (c) In consultation with its legal counsel, developed a template non-disclosure agreement for use in the SISP;
  - (d) Reviewed and negotiated several NDAs with potential bidders in the SISP;
  - (e) On December 15, 2023, issued a press release on SEDAR advising of the relief the Company obtained through the First Order, including approval of the SISP;
  - (f) Conducted weekly update calls with the Proposal Trustee and Sales Advisor to discuss the status of the SISP;
  - (g) Created a robust Virtual Data Room (the “VDR”) and have responded to various due diligence requests made by Qualified Bidders in the course of administering the SISP;
  - (h) Consulted with JMAC regarding several document disclosure requests made with respect to information of AMIS LLC, and arrived at satisfactory arrangements for the disclosure of certain of that information to Qualified Bidders in the SISP;
  - (i) Conducted management presentations with certain Qualified Bidders;

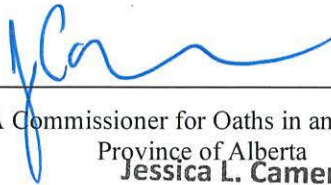
- (j) Arranging site visits for Qualified Bidders in the SISP;
  - (k) In consultation with its legal counsel, drafted template transaction documents for Qualified Bidders to utilize in the course of making a bid in the SISP; and
  - (l) Otherwise continued ongoing communication and engagement with various other stakeholders, including creditors, suppliers and employees.
12. The Companies, in consultation with the Proposal Trustee, have prepared an updated Cash Flow Forecast for the week ending January 15, 2024 to the week ending April 14, 2024 (the “**Cash Flow Forecast**”). The Companies’ principal use of cash during the Stay Extension will consist of operational costs, including payment of goods and services in the ordinary course, employee wages and benefits, general administrative expenses, and payment of the professional advisors engaged to assist the Companies with their restructuring efforts. A copy of the Cash Flow Forecast is attached hereto as **Exhibit “A”**.
13. Under the Cash Flow Forecast, it is not anticipated that the Companies will require a further draw on the already approved \$2.85 million Interim Financing Facility with JMAC, despite the fact that that facility is presently fully drawn.
14. The Companies utilized \$2,671,328 of the Interim Financing Facility on December 19, 2023 to fund a USD \$2.0 million cash call issued by AMIS LLC on or about December 15, 2023. As stated at paragraphs 67 to 69 of my First Affidavit, AMI was required to pay that cash call in order to prevent the dilution of its equity interest in AMIS LLC, one of AMI’s most significant assets. Attached hereto and marked as **Exhibit “B”** is a copy of the AMIS LLC cash call.
15. The remaining balance of the Interim Financing Facility of \$178,672 is being used as part of ongoing working capital requirements of AMI.
16. The Cash Flow Forecast assumes that JMAC will continue to factor accounts receivable of AMIS LLC in the ordinary course, and pursuant to the Factoring Agreement between the parties dated June 10, 2022 (the “**Factoring Agreement**”), a copy of which is attached

hereto as **Exhibit “C”**. The invoices AMIS LLC anticipates factoring pursuant to the Factoring Agreement are all existing customers that are currently factored by JMAC, and therefore it is AMI’s expectation that the factoring will continue in the normal course.

17. Pursuant to the terms of the Factoring Agreement, JMAC retains discretion over which accounts receivable it will factor, and thereby the funding it will provide to AMIS LLC. Given AMIS LLC’s historical reliance upon the Factoring Agreement as a part of its financing, declining to factor a particular account receivable could have significant implications for AMIS LLC’s liquidity and cash flows, possibly necessitating a further cash call on the members or other form of working capital contribution.
18. Since the Companies’ last Court appearance on December 12<sup>th</sup>, 2023, JMAC has continued to factor AMIS LLC’s accounts receivable in accordance with the terms of the Factoring Agreement. As at the date of the swearing of this Affidavit, JMAC has not declined to factor any account receivable requested by AMIS LLC. On this basis, and as noted above, the Companies’ Cash Flow Forecast assumes that AMIS LLC’s accounts will continue to be factored in the normal course by JMAC, and that there will not be a further cash call, or other funding request, made by AMIS LLC in the forecast period.
19. As noted above, the present stay expires on January 26, 2024, while the final bid deadline under the SISP is the following week on January 31, 2024. Additionally, there is a potential for a run-off auction to be held on February 9, 2024 if Superior Offers are received pursuant to the SISP.
20. Extending the Stay Period is necessary and appropriate in the circumstances to allow the Companies to implement the SISP through to conclusion, including holding the potential run-off auction. The Stay Extension will also enable the Companies to seek this Court’s approval of the Successful Bid pursuant to and emanating from the SISP.
21. I honestly believe that following the conclusion of the SISP, the Companies will be in a position to advance a viable proposal to their creditors and that no creditors will be materially prejudiced by the requested Stay Extension.



This is Exhibit "A"  
Referred to in the Affidavit of  
JOHN DAVID CHURCHILL  
Sworn before me this 15<sup>th</sup> day of  
January, 2024.



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A Commissioner for Oaths in and for the  
Province of Alberta  
**Jessica L. Cameron**  
Barrister & Solicitor  
3400, 350 – 7th Avenue SW  
Calgary, Alberta T2P3N9  
Ph: 1-403-261-9468



**Athabasca Minerals Inc., 2132561 Alberta Ltd., 2140534 Alberta Ltd.,  
Cash Flow Forecast  
January 08, 2024 to April 07, 2024**

**DISCLAIMER**

Our scope does not constitute an audit conducted in accordance with generally accepted auditing standards, an examination of internal controls or other attestation or review services in accordance with standards established by the Chartered Professional Accountants of Canada ("CPAC"). Accordingly, we do not express an opinion or any other form of assurance on the financial statements of Athabasca Minerals Inc. (the "Company") or any financial or other information, or operating and internal controls of the Company. In order to effectively carry out the engagement, our work is to be based primarily on information supplied by the Company and carried out on the basis that such information is accurate and complete. The Company's information is not subject to checking or verification procedures, except to the extent expressly stated to form part of the scope of work.

This model was created at the direction of and exclusively for the Company's sole benefit and use. Any work product, schedules, reports or documents that we may produce are not intended for general circulation or publication, nor should they be reproduced, relied upon by any party or used for any purpose, without our prior written consent.

We accept no duty, obligation, liability or responsibility to any party, other than the Company, with respect to the services provided. We make no representation regarding the sufficiency of the services for any purpose.

With respect to prospective financial information relative to the Company, we did not examine, compile or apply agreed-upon procedures to such information in accordance with standards established by the CPAC, and we express no assurance of any kind on such information. We did not assist in the development of any assumptions therein. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We take no responsibility for the achievement of predicted results.

Responsibility for the ultimate review of the cash flow and any underlying assumptions which are a part of, or which flow from it, remain with the Company.

Athabasca Minerals Inc., 2132561 Alberta Ltd., 2140534 Alberta Ltd.,  
 AMI Aggregates Inc., AMI RockChain Inc., AMI Silicia Inc., TerraShift Engineering Ltd.  
 Cash Flow Forecast  
 January 08, 2024 to April 07, 2024

For the week ending, in CAD	Notes	Forecast Week 1 14-Jan-24	Forecast Week 2 21-Jan-24	Forecast Week 3 28-Jan-24	Forecast Week 4 04-Feb-24	Forecast Week 5 11-Feb-24	Forecast Week 6 18-Feb-24	Forecast Week 7 25-Feb-24	Forecast Week 8 03-Mar-24	Forecast Week 9 10-Mar-24	Forecast Week 10 17-Mar-24	Forecast Week 11 24-Mar-24	Forecast Week 12 31-Mar-24	Forecast Week 13 07-Apr-24	Total
Opening cash balance	1	1,024,520	992,500	814,400	736,400	1,173,531	1,023,331	927,331	934,331	590,762	418,462	365,462	353,462	255,462	1,024,520
<b>Cash Receipts</b>															
Cash Collections	2	-	-	-	580,978	25,000	32,000	25,000	139,460	60,000	-	-	-	4,460	866,898
		-	-	-	580,978	25,000	32,000	25,000	139,460	60,000	-	-	-	4,460	866,898
<b>Cash Disbursements</b>															
<b>Operating Expenses</b>															
Wages, salaries, and benefits	3	31,865	19,200	-	62,000	-	53,000	-	53,000	-	53,000	-	53,000	-	325,065
Utilities	4	156	-	2,000	-	200	-	2,000	-	200	-	2,000	-	-	6,556
Other operating expenses	5	-	33,000	26,000	31,987	20,000	40,000	16,000	50,169	27,100	-	10,000	-	17,100	271,356
Rent	6	-	-	-	14,860	-	-	-	14,860	-	-	-	-	14,860	44,580
		32,021	52,200	28,000	108,847	20,200	93,000	18,000	118,029	27,300	53,000	12,000	53,000	31,960	647,557
<b>Other Disbursements</b>															
AMI Silica LLC - funding	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total other disbursements	7	-	-	-	-	-	-	-	315,000	50,000	-	-	-	-	365,000
Anticipated capital expenditures	8	-	-	-	35,000	-	35,000	-	-	-	-	-	-	-	70,000
		-	-	-	35,000	-	35,000	-	315,000	50,000	-	-	-	-	435,000
<b>Debt Repayment</b>															
Interest & principal		-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total disbursements</b>		32,021	52,200	28,000	143,847	20,200	128,000	18,000	433,029	77,300	53,000	12,000	53,000	31,960	1,082,557
<b>Professional Costs</b>	9														
Company counsel legal fees		-	50,200	50,000	-	75,000	-	-	50,000	75,000	-	-	45,000	-	345,200
Trustee fees		-	65,700	-	-	50,000	-	-	-	50,000	-	-	-	-	165,700
Trustee's counsel fees		-	10,000	-	-	30,000	-	-	-	30,000	-	-	-	-	70,000
Total Professional Costs		-	125,900	50,000	-	155,000	-	-	50,000	155,000	-	-	45,000	-	580,900
<b>Net cash flow</b>		(32,021)	(178,100)	(78,000)	437,131	(150,200)	(96,000)	7,000	(343,569)	(172,300)	(53,000)	(12,000)	(98,000)	(27,500)	(796,559)
<b>Interim financing</b>															
Interim financing advances / (repayments)	10	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Closing cash (operating line) balance</b>		992,500	814,400	736,400	1,173,531	1,023,331	927,331	934,331	590,762	418,462	365,462	353,462	255,462	227,962	227,962

Management of Athabasca Minerals Inc., 2132561 Alberta Ltd., 2140534 Alberta Ltd., AMI Aggregates Inc., AMI RockChain Inc., AMI Silicia Inc., TerraShift Engineering Ltd. (collectively "AMI" or the "Companies") has prepared this forecasted cash-flow statement (the "Cash Flow Forecast") based on probable and hypothetical assumptions detailed in Notes 1 to 10. The Cash Flow Forecast has been prepared on a consolidated basis, as the Companies have been granted a consolidation order by the Court. The Cash Flow Forecast has been prepared solely for the purpose of supporting the Notice of Intention to Make a Proposal ("NOI") filed by each of the Companies on November 13, 2023. As such, readers are cautioned that it may not be appropriate for their purposes. The Cash Flow Forecast of the Companies is prepared in accordance with the provisions of the *Bankruptcy and Insolvency Act* and should be read in conjunction with the Trustee's Report on the Cash-flow Statement.

Dated at the City of Calgary in the Province of Alberta, this 15th day of January 2024.

Athabasca Minerals Inc., 2132561 Alberta Ltd., 2140534 Alberta Ltd.,  
 AMI Aggregates Inc., AMI RockChain Inc., AMI Silicia Inc., TerraShift Engineering Ltd.  
 Per:

David Churchill  
 Chief Financial Officer

KSV Restructuring Inc.

Per:

Andrew Basi, CPA, CA, CIRP, LIT  
 Managing Director

**Athabasca Minerals Inc., 2132561 Alberta Ltd., 2140534 Alberta Ltd.,  
AMI Aggregates Inc., AMI RockChain Inc., AMI Silicia Inc., TerraShift Engineering Ltd.  
Notes to the Cash Flow Forecast  
January 08, 2024 to April 07, 2024**

**Note 1**

Consolidated cash balance for all Athabasca entities. Please note only the following entities have bank accounts: Athabasca Minerals Inc., AMI RockChain Inc. (formerly Aggregates Marketing Inc.), AMI Silicia Inc., TerraShift Engineering Ltd. 2132561 Alberta Ltd. and 2140534 Alberta Ltd. The following entities do not have bank accounts: AMI Aggregates Inc.,

**Note 2**

Athabasca Minerals Inc. owns a 50% interest in AMI Silicia LLC. The only cash flow for AMI is through monthly management fees and reimbursement of expenses from AMI Silicia LLC. There are some small AR balances in RockChain and TerraShift with no further revenue from these entities. A significant amount of this balance relates to the repayment of cash collateral provided for letters of credit for sold aggregate leases with approximately \$450,000 forecasted to be received in week 4. AMI Silicia LLC is currently experiencing a working capital shortfall that has been funded with a cash call by its two equity holders. The advances to AMI Silicia LLC represents AMI's 50% share.

**Note 3**

Athabasca Minerals Inc. has 9 employees. The other entities do not have employees. Payroll is mid month and month end. Employee benefits are through Equitable Life and are paid at month end. There are payments to the sole AMI independent Director for the payroll for January 31, 2024.

**Note 4**

Utilities are for EPCOR and Direct Energy for the Edmonton office. Calgary office utilities are included in rent

**Note 5**

Other operating expenses are as follows: Third party IT support, office supplies, water for office, Xerox for photocopier in Edmonton office, Telus mobility, Shaw internet, Shaw phone, Website management, fuel for company vehicles, janitorial services for the Edmonton office.

**Note 6**

Rent for both office leases in Calgary and Edmonton. Property taxes are included in the monthly lease payments.

**Note 7**

Other disbursements include amounts for D&O run-off insurance. A Prosvita Land option payment is forecasted to be paid in March which is required to retain the asset. There are outstanding royalty payments of \$120,000 for the Prosvita project that are required to retain ownership of the asset and these will be deferred until the closing of a transaction.

**Note 8**

Capital expenditures are required to maintain the in-basin sand development project leases in Montney BC.

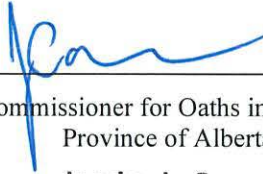
**Note 9**

Trustee fees to KSV Restructuring and their legal counsel, Bennett Jones and to Fasken as AMI counsel.

**Note 10**

AMI has reached an agreement with JMAC Energy Services LLC to advance a DIP facility in the amount of \$2,850,000 less \$25,000 as a DIP facility fee. This was advanced in December 2023. This cash flow assumes no further DIP financing is required and that the current factoring arrangements between JMAC and AMIS LLC will continue in the normal course.

This is Exhibit "B"  
Referred to in the Affidavit of  
JOHN DAVID CHURCHILL  
Sworn before me this 15<sup>th</sup> day of  
January, 2024



---

A Commissioner for Oaths in and for the  
Province of Alberta

**Jessica L. Cameron**  
Barrister & Solicitor  
3400, 350 – 7th Avenue SW  
Calgary, Alberta T2P3N9  
Ph: 1-403-261-9468

RESOLUTION OF THE GOVERNORS OF **AMI SILICA LLC** (THE "CORPORATION") PASSED EFFECTIVE AS OF DECEMBER 15, 2023 PURSUANT TO THE NORTH DAKOTA BUSINESS CORPORATION ACT

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**WHEREAS:**

- A. The Governors have determined that the Corporation's operations require additional capital in order for the Corporation to meet its obligations, to continue in its business, and to pursue opportunities available to the Corporation;
- B. Due to the Corporation's current financial challenges, and the uncertainty that may exist in respect of the Corporation's Members, the Corporation is unable to obtain conventional financing and the Governors have determined that a form of cash call upon the Members is in the best interests of the Corporation;
- C. The Corporation has determined that a Member Capital Contribution in the amount of US\$4,000,000 (the "Capital Contribution") is required to cover the working capital shortfall to the end of February 2024;
- D. The Members of the Corporation, being Athabasca Minerals Inc. and JMAC Energy Services LLC (the "Members"), have agreed to provide the Capital Contribution to the Corporation. The Capital Contribution funds will be provided proportionately based on Member units with each Member contributing fifty (50) percent of the required Capital Contribution;
- E. The Members have the option of providing the Capital Contribution as either, (i) a single installment on or before December 18, 2023, or (ii) in two (2) installments, the first being on or before December 18, 2023 and the second being on or before December 30, 2023;
- F. The Governors appoint, and require, both Todd Erickson and John David Churchill to review and approve the weekly cash forecasts in order to ensure that Capital Contribution funds are allocated in a financially prudent manner for the day-to-day operations of the Corporation.

**NOW THEREFORE BE IT RESOLVED THAT:**

The Corporation be and is hereby authorized and directed to receive the amount of the Capital Contribution from the Corporation's Members. The funds may be repayable at such a time as the Corporation is financially able and upon terms approved by the Corporation's Governors.

**GENERAL**

BE IT RESOLVED THAT any Governor or officer of the Corporation be and is hereby authorized to execute and deliver all such deeds, documents and assurances and do all such things as may be necessary to give effect to this resolution.

The undersigned, being all the Governors of the Corporation, hereby pass the foregoing Resolution.

Todd Erickson  
Todd Erickson (Dec 15, 2023 12:43 MST)

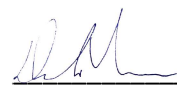
Todd Erickson

J David Churchill  
J David Churchill (Dec 15, 2023 14:06 MST)

John David Churchill

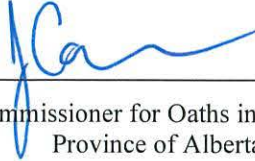
Jon McCreary  
Jon McCreary (Dec 15, 2023 11:54 PST)

Jonathan McCreary

  
\_\_\_\_\_

Dale Nolan

This is Exhibit "C"  
Referred to in the Affidavit of  
JOHN DAVID CHURCHILL  
Sworn before me this 15<sup>th</sup> day of  
January, 2024.



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A Commissioner for Oaths in and for the  
Province of Alberta

**Jessica L. Cameron**  
Barrister & Solicitor  
3400, 350 – 7th Avenue SW  
Calgary, Alberta T2P3N9  
Ph: 1-403-261-9468

## SECURITY AGREEMENT

This Security Agreement (hereinafter called the "Agreement"), dated for purposes of reference June 10, 2022 between the undersigned (hereinafter called the "Client") and JMAC Resources, Inc., its successors and assigns (hereinafter called "JMAC"). Client and JMAC agree as follows:

1. **PURPOSE:** Client desires to obtain financing by factoring, selling and assigning to JMAC acceptable accounts receivable at a discount below the face value. Such financing is subject to the terms and conditions of the Agreement and is commercial in nature, and not for household, family, and/or personal use.

2. **DEFINITIONS:** The following definitions shall be used in determining the terms of this Agreement:

"ACCOUNT" shall have the same meaning as it does in the Uniform Commercial Code; an "Invoice" is the tangible statement of an Account and is interchangeable with "Account" in this Agreement; references to an Account include factored and non-factored accounts.

"ACCEPTABLE ACCOUNT" means an Account conforming to the warranties and terms set forth herein and in Schedules of Accounts. "CUSTOMER" means Client's customer; a Customer is also referred to as an "Account Debtor."

"CLIENT" means the seller and assignor of the Accounts; the Client is a "Debtor" to JMAC under the Uniform Commercial Code.

"COLLATERAL" shall have the same meaning as it does in the Uniform Commercial Code; Collateral granted to JMAC by Client is specifically described in Section 4 below.

"CREDIT PROBLEM" means a Customer is unable to pay its debts because of its insolvency, dissolution, termination of existence, business failure, or the filing of any bankruptcy petition or other proceeding of Customer such that payment on the Account is or will be impaired.

"CUSTOMER DISPUTE" means a claim by Customer against Client of any kind whatsoever that reduces the amount collectible from Customer by JMAC; a Customer Dispute may arise from any kind of disagreement between Customer and Client whatsoever, *valid or invalid*, and may arise at any time, both before and after the signing of this Agreement or the purchase of any Account by JMAC.

"INDEBTEDNESS" means all debts, liabilities, loans, obligations, covenants and duties owing by Client to JMAC, direct or indirect, absolute or contingent, due or to become due, including all principal, interest, charges, costs, expenses and fees, and attorney's fees.

"WARRANT" means to guarantee, as a material element of this Agreement. Each warranty herein and pursuant to any Schedule of Accounts is an independent condition to JMAC's duties under this Agreement.

3. **REPRESENTATIONS WARRANTIES. & DISCLOSURES:** As an inducement for JMAC to enter into this Agreement, Client hereby incorporates by reference each representation and warranty included in each Schedule of Accounts executed by Client and, with the full knowledge that JMAC is relying upon the truth and accuracy of these statements, Client further represents that:
  - (a) **TAXES:** Client has made and shall continue to make timely payment of all required state and federal taxes; Client agrees to provide to JMAC proof of payment and/or compliance of all taxes required by law and to notify JMAC of



- any levy issued against Client;
- (b) RECORDS: All financial records, accounts, statements, books, or documents shown to JMAC by Client at any time are true, complete, accurate, and represent the true financial condition of Client; Client agrees to furnish JMAC financial statements upon request;
  - (c) CHANGES IN BUSINESS: Client will notify JMAC in writing prior to any change in the location of Client's state of registration and/or principal place of business; the location where Client's books and records concerning Accounts are kept; the Client's name, identity, legal entity or structure whether by merger, acquisition, or sale of substantially all of Client's assets; use of trade name(s); and/or any proposed change in any of the officer, principals, managers, directors, partners, and/or owners of the Client; Client will promptly notify JMAC of any attachment, lien, levy, garnishment, seizure or any other legal process taken against Client or any Customer.
  - (d) CUSTOMER CREDIT: Each Customer's business is solvent to the best of Client's information and knowledge, and Client has not received any notice, verbal or written, of a Credit Problem concerning any Customer that has not been disclosed to JMAC in writing;
  - (e) NO PLEDGE: Client will not pledge the credit of JMAC to any person or business for any purpose;
  - (f) CUSTOMER TERMS: Client will not modify any term of its Accounts with any Customer unless JMAC first consents in writing;
  - (g) OWNERSHIP: Client is the lawful owner of, and has undisputed title to, the Accounts sold to JMAC by Client; Client will not factor, sell, or assign Accounts except to JMAC for the period of this Agreement and for as long as any Account remains unpaid to JMAC by Client or any Customer;
  - (h) SECURITY: Client has not transferred, pledged or granted a security interest in the Collateral described below to any party not disclosed in writing to JMAC; Client will not transfer, pledge, or grant a security interest or lien to any other party in the Collateral described below for the term of this Agreement and for long as any Account remains unpaid to JMAC by Client or any Customer.
4. SECURITY INTEREST IN COLLATERAL SALE/ASSIGNMENT. & NOTIFICATION: As a further inducement for JMAC to enter into this Agreement, Client gives to JMAC a security interest in the following described property as collateral for the repayment of any and all obligations and liabilities whatsoever of Client to JMAC under the Uniform Commercial Code in the following described property, hereinafter collectively called "Collateral": All presently existing or hereafter arising, now owned or hereafter acquired accounts, accounts receivable, deposit accounts, contract rights, chattel paper, electronic chattel paper, documents, instruments, reserves, reserve accounts, rebates, and general intangibles, and all books and records pertaining to accounts and all proceeds of the foregoing property, and the stock and/or member interest in entity of Client.
- (a) APPROVAL: Client shall from time to time sell and transfer Acceptable Accounts to JMAC subject to JMAC's instructions and approval. Accounts offered to JMAC for sale shall be identified by separate and subsequent bills of sale known as Schedule of Accounts; Client must supply JMAC with original invoices, inclusive of supporting documents required for payment, and true and accurate copies of the same. JMAC will not purchase an Account unless Client first submits such Account to JMAC for approval.
  - (b) NO OBLIGATION: JMAC is not obligated to buy any Account from Client and shall have no liability to Client, any Customer, or any supplier of Client for JMAC's failure or refusal to purchase an Account.
  - (c) ASSIGNMENT OF ALL INVOICES: Notwithstanding Client's election to sell select Accounts to JMAC, *Client hereby fully assigns to JMAC all Accounts of Client*; JMAC may notify any Customer of this assignment and direct payment of all Accounts of Client to JMAC in order to secure the repayment of Client's obligations to JMAC; Client may not terminate or modify this assignment without JMAC's written

consent in the form of a release letter signed by JMAC; JMAC shall release the assignment if and only if all obligations and indebtedness owed by Client to JMAC are discharged or, in JMAC's sole discretion, a partial release of the assignment pertaining to a specific Customer is issued by JMAC in a separate writing.

- (d) **AUTHORITY:** JMAC shall have the right to, in Client's name or in JMAC's name, whether Client is in default of this Agreement or not, demand, sue, collect, settle, and give releases for any and all monies due or to become due on any Account or Collateral.
- (e) **NOTIFICATION:** JMAC will, at any time within its discretion, notify any Customer to make payment(s) directly to JMAC.
- (f) **SOLE PROPERTY:** Once JMAC has purchased an Account, the Account is the *sole and exclusive property* of JMAC. Client shall make proper entries on its books and records disclosing the absolute sale of the Account to JMAC.

5. **MAXIMUM ACCOUNT LIMIT, FEES, & CHARGES:** JMAC agrees to buy Acceptable Accounts, at a discount, from Client that have been approved for purchase from Client, subject to the limits, fees, and charges described in this Agreement.

- (a) **FACTORING FEE:** JMAC shall withhold a *Fee Deposit* of Ten Percent (10.0%) from the face value of each Account. From the fee deposit, Client agrees to pay to JMAC a *Factoring Fee* equal to the sum of (1) One and Eight-Tenths Percent (1.8%) of the face value of each Account and (2) Eight-Tenths Percent (0.8%) of the face value of each Account for every Ten (10) day period, or portion thereof, that an Account remains unpaid to JMAC beyond Thirty (30) days. *The Factoring Fee shall not exceed the Fee Deposit of each Account.*
- (b) **FEE REBATES:** As an inducement to Client to sell only the Accounts from which JMAC can expect prompt payment in full *directly from Customer*, JMAC agrees to return monthly to Client, when said Account(s) is/are paid in full by Customer, the amount of Fee Deposit in excess of the Factoring Fee in the form of a Fee Rebate. Any such rebate to Client may be retained by JMAC at JMAC's sole discretion as further security for payment of any and all obligations and indebtedness owing by Client. In the event of a default by Client for any reason, no rebate shall be due or payable to Client.
- (c) **RESERVE & REFUNDS:** In addition to the Fee Deposit, JMAC will reserve and withhold an amount in a reserve account (the 'reserve amount') equal to Zero Percent of the gross face amount of all Accounts purchased. Said reserve amount may be held and/or applied by JMAC against any chargebacks or obligations of Client to JMAC, known or anticipated, and said reserve amount is not due and payable to Client until any and all obligations and indebtedness arising hereunder are paid in full. If there is no outstanding indebtedness of Client to JMAC known or anticipated, JMAC will return to Client the reserve amount of any individual Account that is not subject to offset *when said Account is paid in full*. Reserve refunds will be released N/A, unless otherwise agreed to by JMAC in writing. The reserve shall be a book balance maintained on the records of JMAC and shall not be a segregated fund.
- (d) **CHARGES:** JMAC will deduct wire transfer fees or courier charges, if used by Client, from each Schedule of Accounts.

6. **RECOURSE, EXCEPTIONS, DISPUTES, & CHARGEBACKS: FULL RECOURSE:** JMAC will have full recourse against CLIENT when an account is not paid by Customer when due, including the following:

- (a) **DISPUTES:** Client will immediately notify JMAC of any dispute between Customer and Client and shall pay to JMAC the full amount of any Account subject to the Customer Dispute. Mistaken, incorrect, or erroneous invoices submitted by Client to JMAC may be, at JMAC's discretion, deemed a disputed invoice.
- (b) **CHARGEBACKS:** If Client does not fully settle the dispute with Customer within 24 hours, JMAC may, in addition to any other remedies under this Agreement: (i) settle

or compromise such dispute with Customer without receiving additional consent or authority of Client even if settlement reduces Client's recourse against Customer, (ii) charge back or sell the Account to Client, subject however to JMAC's security interest therein. JMAC will provide Client a written statement of any charge-backs taken.

7. COLLECTION & PAYMENTS: JMAC has the right to receive payment directly from Customers on *all* Client Accounts.
- (a) HOLD HARMLESS: Client shall hold JMAC harmless against any claim, cause of action, liability in tort, contract, or equity, or Customer ill- will arising from JMAC's collecting or attempting to collect any Account(s).
  - (b) HOLD IN TRUST: If any payment is received by Client on an Account assigned to JMAC, Client will hold in trust said payment as the property of JMAC, and immediately turn over to JMAC the *identical* check or other form of payment received, *whether or not the payment includes payment on Accounts not purchased by JMAC*; this provision *does not* authorize Client to receive payments from any Customer and is not a waiver of JMAC's rights against any Customer for failing to honor any notice of assignment. If applicable, JMAC will refund Client's portion subject to any indebtedness or obligation of Client to JMAC.
  - (c) DOUBLE PAYMENTS & NON-FACTORED ACCOUNTS: JMAC may, in its sole discretion, carry unidentified, duplicate, or non-factored payments as open accounting entries and return said payments to the payor or, in the case of non-factored payments only, forward the payment to Client upon proper identification, subject to any outstanding obligations or charge-backs due JMAC.
8. POWER OF ATTORNEY: In order to carry out this Agreement, Client irrevocably appoints JMAC or any person designated by JMAC, its special attorney-in-fact, or agent, whose authority granted should remain in full force and effect until all Accounts are paid in full and any indebtedness of Client to JMAC is discharged, with power to:
- (a) Notify Customers that Client's Accounts have been assigned to JMAC and that JMAC has a security interest therein;
  - (b) Direct Client's Customers to make payment of all Accounts direct to JMAC and forward invoices directly to such Customers;
  - (c) Strike out Client's address on all Accounts mailed to Customers and put JMAC's address on all Accounts;
  - (d) Receive, open and dispose of all mail addressed to Client via JMAC's address;
  - (e) Endorse Client's name(s) on any checks, forms of payment, or documents relating to any Account or Collateral that are delivered to JMAC;
  - (f) In Client's name(s), demand, sue for, collect, and give releases for any and all monies due or to become due to Client;
  - (g) In Client's name(s), compromise, settle, prosecute, defend against, or release any contract or tort claim of Client, and any claim against Client by third parties, arising out of the relationship between Client and any Customer or supplier of Client;
  - (h) Do any and all things necessary and proper to protect JMAC's interest in any Account or the Collateral.
9. DEFAULT: Any one or more of the following shall be a default hereunder and may cause the cessation of purchasing by JMAC:
- (a) Client shall fail to pay an indebtedness to JMAC when due;
  - (b) Client shall breach any term, provision, covenant, warranty or representation contained in this Agreement or a Schedule of Accounts;
  - (c) Any documentation, report or other statement made by Client to JMAC shall be false, erroneous, or misleading in any respect;

- (d) Client shall become insolvent or unable to pay debts as they mature including trade accounts payable, make a general assignment for the benefit of creditors, be subject to an appointment of a receiver or trustee over any portion of Client's assets, or voluntarily file under any bankruptcy or similar law;
  - (e) Any involuntary petition in bankruptcy shall be filed against Client and shall not be dismissed within sixty (60) days;
  - (f) Any judgment, levies of attachment, executions, tax liens or similar process shall be issued against Client or any of the Collateral;
  - (g) Client shall cease factoring while JMAC has factored Accounts outstanding, the collectibility of which is uncertain, in whole or part;
  - (h) Client, without prior notice or disclosure to JMAC, terminates, discontinues or suspends the operations of its business.
10. REMEDIES AFTER DEFAULT: In the event of a default, JMAC may do any one or more of the following without notice or demand to Client except as expressly required under this Agreement:
- (a) declare any and all indebtedness immediately due and payable in full;
  - (b) notify any Customers and take possession of Collateral and collect any Accounts without judicial process;
  - (c) take control in any manner of any goods, equipment, inventory or other personal property relating to any Account;
  - (d) require Client to assemble the Collateral, and records pertaining to Accounts, and deliver them to JMAC's offices;
  - (e) exercise all or any of the rights and remedies of a secured creditor under the Uniform Commercial Code, any other law, or in equity;
  - (f) grant extensions, compromise claims of, or against, Client in contract or in tort, and settle Accounts or Collateral for less than face value;
  - (g) hold Client liable for any deficiency;
  - (h) Charge interest on any indebtedness at the highest rate permitted by law, which interest shall become part of the indebtedness.
11. CONTRACT TERM: This Agreement becomes effective when it is accepted and executed by an authorized representative of JMAC and shall continue until either party terminates. *JMAC continues to have a security interest in the Collateral of Client until all outstanding factored accounts and all indebtedness of Client to JMAC are paid in full.*
12. MERGER. INTERPRETATION LEGAL FEES, & OTHER RIGHTS: This Agreement together with each Schedule of Accounts contain the entire Agreement between the parties and any modification hereto must be signed by Client and JMAC. Client disclaims the existence of, or reliance upon, any oral representation by JMAC. This Agreement inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties and may not be assigned by Client without JMAC's prior written consent.
- (a) SEVERABILITY: If any provision of this Agreement shall be declared illegal or contrary to law, it is agreed that such provision shall be disregarded and this Agreement shall continue in force as though such provision had not been incorporated herein.
  - (b) CUMULATIVE RIGHTS: All rights, remedies and powers granted to JMAC in this Agreement, or in any note or other agreement given by Client to JMAC, are cumulative and may be exercised singularly or concurrently with such other rights as JMAC may have and from time to time as to all or any part of the pledged Collateral as JMAC in its discretion may determine.
13. INDEMNIFICATION: Client agrees to indemnify and hold JMAC harmless from any and all liability,

obligations, claims, losses, damages, actions and suits, including counsel fees, costs of suit and interest which JMAC may incur in any way relating to or resulting from this Agreement or the failure of the Client to pay withholding taxes and/or any other amounts due and payable to any taxing authority.

14. FIDUCIARY DUTY: Client understands and agrees that *neither* this Agreement nor any transaction or any totality of circumstances related hereto and/or arising hereunder creates a fiduciary duty owed by JMAC to Client and that JMAC owes no fiduciary duty to Client whatsoever.
  
15. CHOICE OF LAW & JURISDICTION: This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. CLIENT CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE LOCAL, STATE, OR FEDERAL COURTS LOCATED WITHIN THE STATE OF NORTH DAKOTA AND EXPRESSLY WAIVES ANY RIGHT TO OBJECT TO THE FORUM AS AN INCONVENIENT FORUM (*FORUM NON CONVENIENS*).

*Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver the Agreement, that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.*

EXECUTED AND AGREED BY THE UNDERSIGNED:

AMI Silica, LLC

1505 N Miller St, Ste 260, Wenatchee, WA 98801

BY:



Dana Archibald, President

Date August 25, 2022

JMAC Resources, Inc.

1550 N Miller St, #260, Wenatchee, WA 98801

BY:



Shela Pistoresi, Chief Financial Officer

Date

9-29-2022