

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
THE HARD ROCK PAVING COMPANY LIMITED AND THE COMPANIES LISTED
ON SCHEDULE "A"**

MOTION RECORD OF MCLENNAN FINANCING LTD.

(RETURNABLE ON SEPTEMBER 23, 2008)

September 5, 2008

SOLMON ROTHBART GOODMAN LLP

Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Melvyn L. Solmon (LSUC#: 16156J)
msolmon@srglegal.com
Cameron J. Wetmore (LSUC#: 54467V)
cwetmore@srglegal.com

Tel : 416-947-1093
Fax: 416-947-0079

Lawyers for the moving party, McLennan
Financing Limited

TO: **Service List Attached**

SERVICE LIST

1. **MINDEN GROSS LLP**

Barristers & Solicitors
145 King Street West
Suite 2200
Toronto ON M5H 4G2

Raymond M. Slattery (LSUC #20479L)
416-369-4149
416-864-9223 fax
rslattery@mindengross.com

David T. Ullmann (LSUC #42357D)
416-369-4148
416-864-9223 fax
dullmann@mindengross.com

Solicitors for The Hard-Rock Group of Companies

2. **BLAKE, CASSELS & GRAYDON LLP**

Box 25, Commerce Court West
Toronto ON M5L 1A9

Steven J. Weisz
416-863-2616
steven.weisz@blakes.com

Katherine McEachern
416-863-2566
katherine.mceachern@blakes.com

Michael McGraw
416-863-4247
416-863-2653 fax
michael.mcgraw@blakes.com

Solicitors for Caterpillar Financial Services Limited

3. **AIRD & BERLIS LLP**
BCE Place, 18th floor
Box 754, 181 Bay Street
Toronto ON M5J 2T9

D. Robb English
416-865-4748
416-863-1515 fax
renglish@airdberlis.com

Solicitors for The Toronto-Dominion Bank

4. **BORDEN LADNER GERVAIS LLP**
40 King Street West
Toronto ON M5H 3Y4

James MacLellan
416-367-6592
416-361-7350 fax
jmaclellan@blgcanada.com

Sam Rappos
416-367-6033
416-361-7306 fax
srappos@blgcanada.com

Solicitors for The Guarantee Company of North America

5. **HARRISON PENZA**
450 Talbot Street
P.O. Box 3297
London ON N6A 4K3

Timothy C. Hogan
519-661-6743
519-667-3362 fax
thogan@harrisonpensa.com

Solicitors for BDO Dunwoody Limited

6. **CHAITONS LLP**
185 Sheppard Avenue West
Toronto ON M2N 1M9

Harvey Chaiton
416-218-1129
416-218-1849 fax
harvey@chaitons.com

Christopher Staples
416-218-1147
416-218-1847 fax
chris_s@chaitons.com

Solicitors for GE Capital Canada

7. **GLAHOLT LLP**
141 Adelaide Street West
Suite 800
Toronto ON M5H 3L5

John Margie
416-368-8280
416-368-3467 fax
jm@glaholt.com

Solicitors for Lafarge Canada Inc.

8. **GOLDMAN SLOAN NASH & HABER LLP**
480 University Avenue
Suite 1600
Toronto ON M5G 1V6

Irwin D. Ozier
416-597-3381
416-597-3370 fax
ozier@gsnh.com

Solicitors for Emco Corporation

9. **KOSKIE MINSKY LLP**
20 Queen Street West
Suite 900, Box 52
Toronto ON M5H 3R3

Andrew J. Hatnay
416-595-2083
416-204-2872 fax
ahatnay@kmlaw.ca

Demetrios Yiokaris
416-595-2130
416-204-2810 fax
dyiokaris@kmlaw.ca

Solicitors for International Union of Operating Engineers, Local 793 and
Labourers International Union of North America, Local 837

10. **GOWLINGS LAFLEUR HENDERSON LLP**

Suite 1600
1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5

Kenneth W. Movat
416-369-7211
416-862-7661 fax
kenneth.movat@gowlings.com

Solicitors for Weinmann Electric Limited

11. **RICKETTS, HARRIS LLP**

Suite 816
181 University Avenue
Toronto ON M5H 2X7

Gary H. Luftspring
647-288-3362
416-364-1697 fax
gluftspring@rickettsharris.com

Solicitors for The Guarantee Company of North America as directors and officers insurer of Hard Rock Paving and its directors and officers

12. **SULLIVAN MAHONEY LLP**

40 Queen Street
Box 1360
St. Catharines ON L2R 6Z2

Joseph M. Gottli
905-688-6655
905-688-5814 fax
jmgottli@sullivan-mahoney.com

Solicitors for The Corporation of the City of Thorold

13. **TORKIN MANES COHEN ARBUS LLP**

151 Yonge Street
Suite 1500
Toronto ON M5C 2W7

Max Shafir, Q.C.
416-360-4737
416-863-0305 fax
mshafir@torkinmanes.com

Solicitors for Pre-Con Inc.

14. **FLETT BECCARIO**

190 Division Street
PO Box 340
Welland ON L3B 5P9

Steven N. Latinovich
905-732-4481
905-732-2020 fax
slatinovich@flettbeccario.com

Solicitors for Highway Clearing & Guardrail Fencing Limited

15. **PALLET VALO LLP**

90 Burnhamthorpe Road West
Suite 1600
Mississauga ON L5B 3C3

Anna M. Esposito
905-273-3022 ext. 260
905-273-6920 fax
aesposito@pallettvalo.com

Solicitors for The Murray Group Limited and Toromont Industries Inc
cob as Battlefield Equipment Rentals

16. **MALO, PILLEY AND LEHMAN**
1067 Bloor Street West
Toronto ON M6H 1M5

Brian P. Pilley
416-534-3555 ext. 205
416-534-7625 fax
bppilley@bellnet.ca

Solicitors for Harris Rebar/Harris BBR-PT

17. **LAZIER HICKEY LLP**
25 Main Street West
15th floor
Hamilton ON L8P 1H1

Peter J. Sullivan
905-525-3652
905-525-6278 fax
sullivanpj@lazierhickey.com

Solicitors for Bermingham Construction Limited

18. **XEROX CANADA LTD.**
33 Bloor Street East
Toronto ON M4W 3H1

Jason Moyse
416-413-2805
416-972-5530 fax
jason.moyse@xerox.com

19. **WATEROUS, HOLDEN, AMEY, HITCHON LLP**

20 Wellington Street
Brantford ON N3T 5V6

Patrick R. Corless

519-759-6220

519-759-8360 fax

pcorless@waterousholden.com

Solicitors for Con Cast Pipe Limited

20. **DEVRY, SMITH & FRANK LLP**

95 Barber Greene Road
Suite 100
Toronto ON M3C 3E9

Mark Mancini

416-449-1400

416-449-7071 fax

mark.mancini@devrylaw.ca

Solicitors for Fowler Construction Company Limited

21. **BLANEY MCMURTRY LLP**

2 Queen Street East
Suite 1500
Toronto ON M5C 3G5

Michele Hecke

416-593-3935

416-593-5437 fax

mhecke@blaney.com

Solicitors for Dufferin Construction Company, a division of St.
Lawrence Cement Inc.

22. **SACCO CONSTRUCTION LIMITED**

Jessica Fiore
416-777-4866
jessicafiore@live.com

Fred Sacco
905-357-4147

23. **SOLMON ROTHBART GOODMAN LLP**

375 University Avenue
Suite 701
Toronto ON M5G 2J5

Melvyn L. Solmon
416-947-1093
416-947-0079 fax
msolmon@srglegal.com

Solicitors for McLennan Financing Limited

24. **LAZIER HICKEY LLP**

25 Main Street West
15th floor
Hamilton ON L8P 1H1

Gerald B. Aggus
905-525-3652
905-525-6278 fax
aggusg@lazierhickey.com

Solicitors for Waterford Sand & Gravel Limited

25. **LANG MICHENER LLP**

Brookfield Place
181 Bay Street, Suite 2500
PO Box 747
Toronto ON M5J 2T7

David Hager

416-307-4074
416-304-3752 fax
dhager@langmichener.ca

Martin D. Rabinovitch

416-307-4115
416-365-1719 fax
mrabinovitch@langmichener.ca

Solicitors for The Miller Group

26. **CANADA REVENUE AGENCY**

c/o Department of Justice
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West
Suite 3400
Toronto ON M5X 1K6

Diane Winters

416-973-3172
416-973-0810 fax
diane.winters@justice.gc.ca

27. **MINISTRY OF FINANCE (ONTARIO)**

Legal Services Branch
33 King Street West
6th Floor
Oshawa ON L1H 8H5

Kevin J. O'Hara

905-433-6934

905-436-4510 fax

kevin.ohara@fin.gov.on.ca

28. **MINISTER OF FINANCE**

Retail Sales Tax
33 King Street West
Oshawa ON L1H 8E9

Legal Department

905-436-4510 fax

29. **CANADA CUSTOMS AND REVENUE AGENCY**

Goods and Services Tax Credit Office
1 Front Street West
Toronto ON M5J 2X6

Legal Department

416-954-5294 fax

30. **WORKPLACE SAFETY AND INSURANCE BOARD**

200 Front Street
Toronto ON M5V 3J1

Legal Department

416-344-1000

416-344-4684 fax

31. **MINISTER OF REVENUE**

Employer Health Tax
Box 640
33 King Street West
Oshawa ON L1H 8P5

905-436-4474 fax

32. **MINISTER OF LABOUR**

400 University Avenue
11th Floor
Toronto ON M7A 1T7

Legal Department

416-326-7600
416-326-7985 fax

33. **MINISTRY OF THE ENVIRONMENT**

West-Central Region
Technical Support Section
Water Resources
12th Floor
119 King Street West
Hamilton ON L8P 4Y7

Paul Odom

905-521-7640
905-521-7820 fax

34. **MINISTRY OF NATURAL RESOURCES**

Guelph District Office
1 Stone Road West
Guelph ON N1G 4Y2

Diane Schwier

519-826-4930
519-826-4929 fax

35. **541760 ONTARIO LIMITED o/a B&C AUTO AND INDUSTRIAL**
639 Main Street West
PO Box 115
Port Colborne ON L3K 5W1
- 905-835-1632
905-835-5688 fax
36. **ARCHER TRUCK SERVICES LTD.**
260 Dunkirk Road
St. Catharines ON L2R 7K6
- 905-685-6532
905-685-6119 fax
37. **ARCHER TRUCK CENTRE (WELLAND) LTD.**
475 Prince Charles Drive South
Welland ON L3B 5X1
- 905-735-6661
905-735-4733 fax
38. **ONTRAC EQUIPMENT SERVICES INC.**
1655 Britannia Road East
Mississauga ON L4W 1S5
- 905-670-1655
905-670-4129 fax
39. **TOROMONT INDUSTRIES LTD.**
3131 Hwy 7 West
Concord ON L4K 4B7
- 416-667-5511
416-667-5555 fax

40. **STRONGCO LIMITED PARTNERSHIP**
1640 Enterprise Road
Mississauga ON L4W 4L4
- 905-670-5100
905-565-3865 fax
41. **724628 ONTARIO INC.**
639 Main Street West
PO Box 115
Port Colborne ON L3K 5W1
42. **FARR FORD LTD.**
607 Niagara Street
Welland ON L3C 1L9
- 905-732-1355
905-732-4558 fax
43. **BLACK DIAMOND LP BY WAY OF ITS GENERAL PARTNER
BLACK DIAMOND GROUP INC.**
213 Bunting Road
St. Catherines ON L2M 3Y2
- 905-641-3999
905-641-2440 fax
44. **CRM SALES A DIVISION OF VOLVO ROAD MACHINERY
LTD.**
1075 Clark Boulevard
Brampton ON L6T 3W4
- 905-791-3131
905-791-8885 fax

45. **PHH ARVAL**
Legal Department
940 Ridgebrook Road
Sparks MD 51152-9390

Paul V. Danielson
410-771-2024
410-771-2530 fax
paul.danielson@phh.com

Solicitors for PHH Vehicle Management Services Inc.

46. **NATIONAL LEASING GROUP INC. (L# 2307003)**
1558 Wilson Place
Winnipeg MB R3T 0Y4

204-954-9029
800-882-0560 fax

47. **CIT FINANCIAL LTD.**
5035 South Service Road
Burlington ON L7L 6M9

905-633-2400
905-632-1332 fax

48. **NRB INC.**
115 South Service Road West
PO Box 129
Grimsby ON L3M 4G3

888-893-9990
905-945-2003 fax

49. **THE BANK OF MONTREAL**
50 Bay Street South
Hamilton ON L8P 4V9
- 905-526-2000
905-526-2025 fax
50. **BUSINESS DEVELOPMENT BANK**
39 Queen Street
Suite 100
P.O. Box 1193
St. Catharines ON L2R 7A7
- 905-988-2874
905-988-2890 fax
51. **CANADIAN IMPERIAL BANK OF COMMERCE**
c/o CIBC Mortgages Inc.
P.O. Box 115
Commerce Court Postal Station
Toronto ON M5L 1E5
- 800-310-7560 fax
52. **KWIX-MIX MATERIALS LIMITED**
314 Lake Avenue North
Hamilton ON L3K 5X7
- 905-834-6177
905-834-5160 fax

53. **WILSON, OPATOVSKY**
190 Elm Street, PO Box 99
Port Colborne ON L3K 5V7

Chris Wilson
905-835-1163
905-835-2171 fax
cwilson@wilsonop.com

Solicitors for David R. Semley

54. **HEENAN BLAIKIE LLP**
PO Box 185, Suite 2600
South Tower, Royal Bank Plaza
Toronto ON M5J 2J4

Neil C. Saxe
416-643-6912
866-299-0290 fax
nsaxe@heenan.ca

Kenneth D. Kraft
416-643-6822
416-360-8425 fax
kkraft@heenan.ca

Solicitors for Shell Energy North America (Canada) Inc.

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- 1 Notice of Motion
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- A Unsworn Affidavit of Victor Mcullough with Exhibits

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
THE HARD ROCK PAVING COMPANY LIMITED AND THE COMPANIES LISTED
ON SCHEDULE "A"**

NOTICE OF MOTION

McLennan Financing Limited, will make a Motion to a Judge on the Commercial list on Tuesday, September 23, 2008 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G or as soon a time thereafter.

PROPOSED METHOD OF HEARING: The Motion is to be orally.

THE MOTION IS FOR:

- (a) An order granting McLennan leave to bring a motion for summary judgment or an application within the C.C.A.A. proceeding against Hard Rock Paving Ltd. ("**Hard Rock**"), claiming the amount of \$100,000 for breach of contract, in that the material facts are not in dispute;
- (b) An order granting judgment against Hard Rock in favour of McLennan in the amount of \$100,000;
- (c) An order that the judgment in the amount of \$100,000 be paid from proceeds of the sale of the Hard Rock's Property (as defined in the Order of May 12, 2008 (hereinafter the "Amended Initial Order")).

- (d) In the alternative, an order amending the Amended Initial Order to include:
- (i) a declaration that the \$100,000 break fee owing by Hard Rock to McLennan was a reasonable expense necessary for the preservation of the Property or the Business; and
 - (ii) an order granting a charge in favour of McLennan in the amount of \$100,000 ranking in *pari passu* with the DIP Lender's Charge, or in the alternative first subsequent to, the DIP Lender's Charge, with the corresponding amendments to paragraphs 37 – 41 of the Amended Initial Order.
- (e) In the further alternative, an order amending the Amended Initial Order to include:
- (i) a declaration that a break fee in an amount as determined by the court is owing by Hard Rock to McLennan and that it is a reasonable expense necessary for the preservation of the Property or the Business;
 - (ii) an order granting a charge in favour of McLennan in the amount as determined by the court ranking in *pari passu* with, or in the alternative first subsequent to, the DIP Lender's Charge, with the corresponding amendments to paragraphs 37 – 41 of the Amended Initial Order;
- (f) The costs of this Motion; and,
- (g) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (h) On May 2, 2008, the Honourable Mr. Justice Spence granted an Initial C.C.A.A. order in respect of Hard Rock which provided in part that Hard

Rock could return to court on May 12, 2008, to seek debtor in possession ("DIP") financing;

- (i) Hard Rock required substantial and immediate DIP financing to continue operations and avoid liquidation and prevent the loss of employment for over 125 employees;
- (j) Hard Rock's largest secured creditor Caterpillar Financial Services Ltd. ("CAT") refused to provide the required financing preferring to have Hard Rock petitioned into bankruptcy and liquidated;
- (k) Therefore, Hard Rock commenced negotiations with McLennan for the provision of \$1,250,000 in DIP financing;
- (l) On May 6, 2008, Hard Rock accepted a commitment letter from McLennan;
- (m) Time and money for lawyers were incurred by McLennan to negotiate, draft, and complete this transaction;
- (n) McLennan put \$1,250,000 in trust with its counsel to be available for the advance of immediate funds to permit the borrowers to protect the Business;
- (o) Thereafter, CAT reversed its initial opposition to DIP financing, initially offering the same terms as McLennan and then offering significantly more favourable interest rates and commitment fees;
- (p) CAT used the exact same form of commitment letter that was prepared, drafted, and paid for by McLennan;
- (q) On May 12, 2008, the Court ordered that CAT would be the DIP Lender based on its substantial interest in Hard Rock's affairs;

- (r) As a result of the DIP financing Hard Rock was able to continue its operations and make progress towards the sale of its assets for the benefit of all its stakeholders including its work force;
- (s) McLennan incurred significant costs without compensation and its request for costs was refused by the Honourable Mr. Justice Spence on May 12, 2008;
- (t) By early June, Hard Rock required additional DIP financing to continue its operations and restructuring efforts, and prevent the loss of employment for its 125 plus workers;
- (u) At a meeting on June 5, 2008, CAT advised that it might be willing to provide additional DIP funding;
- (v) From June 5, 2008 to June 8, 2008 CAT refused to commit to providing additional DIP financing to allow Hard Rock to continue operations;
- (w) On June 8, 2008, Hard Rock approached McLennan with respect to providing additional funding;
- (x) On June 9, 2008, CAT refused to provide further DIP financing preferring to have Hard Rock petitioned into bankruptcy and liquidated;
- (y) Hard Rock agreed to pay \$10,000 as a partial payment towards legal fees as a condition precedent to negotiations;
- (z) Hard Rock and McLennan commenced negotiations;
- (aa) On June 10, 2008, Hard Rock and McLennan agreed in principle to a DIP loan facility to a maximum amount of \$4,300,000.00 and, after Court approval, to an immediate advance of \$1,000,000.00 of that facility (the "Second DIP Agreement");

- (bb) The Second DIP Agreement provided that upon execution McLennan would make funds available and that in the event that the funds were not borrowed Hard Rock would pay McLennan a break fee of \$100,000; however, if CAT delivered a bid for the DIP Financing which was subsequently approved by the Court, the break fee would be reduced by whatever commitment fee was payable to CAT, to a maximum reduction of \$50,000;
- (cc) The Second DIP Agreement was executed and McLennan arranged to have the requisite funds available.
- (dd) Again, McLennan incurred significant costs
- (ee) On June 11, 2008, CAT delivered a DIP financing proposal which was approved by the court on June 12, 2008. It did not provide for any commitment fee.
- (ff) McLennan demanded payment of the break fee;
- (gg) To date Hard Rock has not paid McLennan the \$100,000 break fee owing pursuant to the Second DIP Agreement;
- (hh) It is just, equitable, and in accordance with the spirit and intent of *Companies' Creditors Arrangement Act* for the court to enforce the break fee obligation and protect McLennan's interests and the integrity of the process that resulted in the benefits to all stakeholders as a result of McLennan's commitment and co-operation to provide immediate assistance ;
- (ii) There are no material facts in dispute;
- (jj) Rule 14 and 20 of the *Rules of Civil Procedure*; and
- (kk) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (ll) The Affidavit of Victor McCullough to be sworn September 8, 2008;
- (mm) The pleadings and proceedings herein, including Affidavits filed and orders made; and
- (nn) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

SOLMON ROTHBART GOODMAN LLP
Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Melvyn L. Solmon (LSUC#: 16156J)
msolmon@srglegal.com
Cameron J. Wetmore (LSUC#: 54467V)
cwetmore@srglegal.com

Tel : 416-947-1093
Fax: 416-947-0079

Lawyers for the moving party, McLennan Financing
Limited

File Number: 15977

RCP-E 4C (November 1, 2005)

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
THE HARD ROCK PAVING COMPANY LIMITED AND THE COMPANIES LISTED
ON SCHEDULE "A"**

AFFIDAVIT OF CAMERON WETMORE

Sworn: September 5, 2008


I, Cameron Wetmore, of the City of Toronto, MAKE OATH AND SAY:

1. I am an associate with the law firm Solmon Rothbart Goodman LLP ("**SRG**"), counsel for the moving party, McLennan Financing Ltd. ("**McLennan**"), and, as such, have knowledge, information and belief of the matters contained in this affidavit. Where I am advised of facts contained herein, I have indicated the source of that information and verily believe those facts are true.
2. On September 5, 2008 I was present along with Melvyn Solmon, a partner at SRG, for a telephone call with Victor McCullough.
3. I am advised by Victor McCullough ("Victor") and verily believe that he is the president of the moving party, McLennan.
4. Further I am advised by Victor and verily believe that he is on vacation in the Dominican Republic and will return to Canada on Sunday, September 7, 2008.
5. Victor was read the contents of his un-sworn affidavit dated September 5, 2008, over the telephone in my presence on speakerphone, and the exhibits were described to him. He was familiar with the exhibits.

6. I am advised by Victor and verily believe that the contents of the un-sworn affidavit are true and that Victor will swear the affidavit before a commissioner upon his return to Canada.

7. Now shown to me and marked **Exhibit "A"** to this my affidavit is a true copy of the unsworn affidavit of Victor McCullough and its exhibits.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario
this 5th day of September, 2008



Commissioner for Taking Affidavits
(or as may be)



CAMERON WETMORE

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE HARD ROCK
PAVING COMPANY LIMITED AND THE COMPANIES LISTED ON SCHEDULE "A"**

Court File No. 08-CL-7503

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT

SOLMON ROTHBART GOODMAN LLP

Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Melvyn L. Solmon (LSUC#: 16156J)
msolmon@srglegal.com
Cameron J. Wetmore (LSUC#: 54467V)
cwetmore@srglegal.com

Tel : 416-947-1093
Fax: 416-947-0079

Lawyers for the moving party, McLennan Financing
Limited

File Number: 15977

RCP-E 4C (November 1, 2005)

TAB A

This is exhibit A, referred to in the
affidavit of Cameron Wetmore,
sworn before me, this 5th day of
September, 2008.

A handwritten signature in black ink, appearing to read "Melvin Bell", with a long horizontal flourish extending to the right.

Commissioner for taking affidavits.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
THE HARD ROCK PAVING COMPANY LIMITED AND THE COMPANIES LISTED
ON SCHEDULE "A"

AFFIDAVIT OF VICTOR MCCULLOUGH

Sworn: September 5, 2008

I, Victor McCullough, of the City of Mississauga, MAKE OATH AND SAY:

1. I am the President of McLennan Financing Ltd. ("**McLennan**"), and, as such, have knowledge, information and belief of the matters contained in this affidavit. Where I am advised of facts contained herein, I have indicated the source of that information and verily believe those facts are true.
2. On May 2, 2008, the Honourable Mr. Justice Spence made an Initial Order pursuant to the *C.C.A.A.* with respect to Hard Rock Paving Ltd. ("**Hard Rock**") in this proceeding.
3. Extensive negotiations began between Hard Rock and McLennan with respect to McLennan providing a short term debtor-in-possession (**DIP**) loan to Hard Rock.
4. On May 5, 2008, McLennan provided a draft DIP financing commitment letter to Hard Rock for its consideration.
5. Hard Rock requested permission to provide the commitment letter to its secured creditor, Caterpillar Financial Services Ltd. ("**CAT**"). Acting in good faith, McLennan allowed Hard Rock to provide the commitment letter to CAT.

6. Further, acting in good faith, in order to have immediate funds available for Hard Rock to meet its obligations, McLennan transferred \$1,250,000 into the trust account of its counsel, Solmon Rothbart Goodman LLP, ("**SRG**") before the agreement was executed.
7. By email dated May 6, 2008, SRG requested confirmation of material information from Hard Rock. Annexed hereto and marked as **Exhibit "A"** is a true copy of that email.
8. Counsel for Hard Rock replied to the information request by email. Annexed hereto and marked as **Exhibit "B"** is a true copy of that email dated May 6, 2008.
9. On the evening of May 6, 2008, Hard Rock accepted the terms of McLennan's commitment letter. Annexed here to and Marked **Exhibit "C"** is a true copy of an email dated May 6, 2008 and the executed commitment letter.
10. Shortly after getting notice of the accepted commitment letter, CAT reversed its opposition to DIP financing and used the exact form of agreement negotiated, prepared, drafted, and reviewed by McLennan, to offer the same business terms that were offered by McLennan, to Hard Rock.
11. On May 7, 2008, CAT reduced the interest rate on the loan from 15% to 12.95% and reduced the commitment fee from \$50,000 to \$45,000.
12. McLennan agreed to match the reduced interest rate and commitment fee.
13. On May 9, 2008 CAT further reduced the interest rate to 7.1% and further reduced the commitment fee to \$30,000.
14. On May 12, 2008, there was a court attendance to decide on provision of DIP financing to Hard Rock wherein counsel for Hard Rock and GE (another secured creditor of Hard Rock) opposed provision of DIP financing from CAT and argued in favour of DIP financing from McLennan. However, based on CAT's greater financial interest in the affairs of Hard Rock the court approved DIP financing on the terms proposed by CAT.

15. SRG sought recovery of McLennan's costs, but the court refused to award those costs.
16. McLennan received no compensation while all of the stakeholders of Hard Rock benefited from avoiding a liquidation of its assets.
17. By email dated June 8, 2008 counsel for Hard Rock approached SRG on an urgent basis to ascertain if McLennan would be willing to provide immediate additional DIP financing. Annexed hereto and marked as **Exhibit "D"** is a true copy of that email.
18. McLennan required a partial upfront payment of \$10,000 as payment towards its legal costs, and in light of previous events, any agreement would have to include a break fee provision, before negotiations took place.
19. On June 10, 2008 SRG received a certified cheque for \$10,000 from Hard Rock. Annexed hereto and marked as **Exhibit "E"** is a true copy of that cheque.
20. Further, on June 10, 2008, in response to the urgency of the situation, McLennan provided a second commitment letter to Hard Rock offering a total of \$4.3 million in DIP financing with \$1,000,000 available immediately. The funds were arranged to meet the Hard Rock's urgent needs. Annexed hereto and marked as **Exhibit "F"** is a true copy of the commitment letter signed by Hard Rock, with the amendments made during the court attendance, and true copies of the emails of counsel reflecting terms of the agreement (the "**Second DIP Agreement**"). This time however, in light of previous events, the terms of the commitment letter were required to remain confidential.
21. As set out in the final form of agreement, to protect itself, McLennan included a break fee provision in the Second DIP Agreement that would become payable in the event that funds were not borrowed through no fault of McLennan, and provided, that if CAT was approved to provide additional DIP funding, the break fee would be reduced by whatever commitment fee was payable by Hard Rock to CAT to a maximum of \$50,000.

22. If there had not been an agreement to pay the break fee, McLennan would not have provided a commitment letter.

23. On June 11, 2008, CAT decided to submit its own proposal for the provision of additional DIP financing. Annexed hereto and marked **Exhibit "G"** is a true copy of an email advising of CAT's proposal.

24. On June 12, 2008, the court approved additional DIP financing to be provided by CAT. No commitment fee was payable in respect of this additional DIP financing.

25. Hard Rock did not pay the break fee owing to McLennan.

26. On July 18, 2008, SRG demanded payment from Hard Rock, annexed hereto and marked as **Exhibit "H"** is a true copy of that letter. There was no response to the letter from anyone.

27. I am on vacation in the Dominican Republic returning on Sunday, September 7, 2008, and was not aware that materials were needed by Friday of this week. I will swear this affidavit by no later than Monday September 8, 2008 at 5:00 p.m.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this day of,



Commissioner for Taking Affidavits
(or as may be)

VICTOR MCCULLOUGH

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT

SOLMON ROTHBART GOODMAN LLP

Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Melvyn L. Solmon (LSUC#: 16156J)
msolmon@srglegal.com

Cameron J. Wetmore (LSUC#: 54467V)
cwetmore@srglegal.com

Tel : 416-947-1093
Fax: 416-947-0079

Lawyers for the moving party, McLennan Financing
Limited

File Number: 15977

RCP-E 4C (November 1, 2005)

**This is exhibit A, referred to in the
affidavit of Victor McCullough,
sworn before me, this ... day of
September, 2008.**

**a Commissioner for taking
affidavits.**

David

018

From: Mel Solmon [mailto:msolmon@srglegal.com]
Sent: Tuesday, May 06, 2008 9:23 AM
To: David Ullmann
Cc: victormccullough@hotmail.com; Mel Solmon
Subject: follow up matters

David

There are a number of follow up matters. Please confirm the following

1. The \$300,000 is necessary for essential payables/expenses from May 7-17.
2. that the DIP Lender is the named loss payee pursuant to 8.c and we may have to amend par 4 of the order re CFSL to provide for the DIP Lender in first priority to the extent of its advances to a maximum of \$1,250,000
3. you will provide asap a draft of the proposed AIO (amended initial order)
4. is Ex D now schedule B still accurate
5. the contact information for the monitor and its representatives
6. that a copy of the order of Spence j (initial order) was served on the Ontario and federal governments pursuant to par 43 of the Initial Order
7. we will attach the correct schedules to the term sheet letter
8. that title to the property owned by the Borrowers is as described below and is complete re all properties owned by the Borrowers described by the following PIN numbers I believe
 - a. 64023-0065(LT) Land Registry Office #59
 - b. 64023-0066(LT) Land Registry Office #59
 - c. 64023-0069(LT) Land Registry Office #59
 - d. 64023-0071(LT) Land Registry Office #59
 - e. 64023-0073(LT) Land Registry Office #59
 - f. 64023-0075(LT) Land Registry Office #59
 - g. 64023-0344(LT) Land Registry Office #59
 - h. 64023-0349(LT) Land Registry Office #59
 - i. 64229-0138(LT) Land Registry Office #59
 - j. 64457-0112(LT) Land Registry Office #59
 - k. 64023-0076(LT) Land Registry Office #59
 - l. 64023-0077(LT) Land Registry Office #59
 - m. 64023-0074(LT) Land Registry Office #59

Thanx
E-mel

**This is exhibit B, referred to in the
affidavit of Victor McCullough,
sworn before me, this ... day of
September, 2008.**

**a Commissioner for taking
affidavits.**

Mel Solmon

020

From: David Ullmann [DUllmann@mindengross.com]
Sent: Tuesday, May 06, 2008 10:39 AM
To: Mel Solmon
Cc: 'Mel Solmon'; 'David Semley'; 'Manski, Uwe'; 'Mazur, Chris'; thogan@harrisonpensa.com;
Raymond M. Slattery
Subject: RE: follow up matters

Mel,

The company assures me that \$300,000 will be sufficient until Monday May 19th.

I will have the company look into the loss payee issue

I will work on the amended order and send it to you

Exhibit D will have to be revised, but if anything, it will likely show less money is needed by May 19th, rather than more, according to my client. In other words, we can live within Exhibit D. Please note that all time periods in Exhibit D are shifted by one week, given that the order was not received until May 2nd.

The Monitor is BDO Dunwoody Limited. The two best contact people are Uwe Manski, at 416-865-0200 and Chris Mazur at 1-905-524-1008

Their counsel is Mr. Tim Hogan at Harrison Pensa

Timothy C. Hogan
Harrison Pensa LLP
450 Talbot Street
LONDON ON N6A 4K3

Direct: 519-661-6743
Facsimile: 519-667-3362
Email: thogan@harrisonpensa.com

The Applicants will be sending out the Orders today. It will be sent to the gov't agencies.

I am not sure about the land PINs and can only say that I sent you everything that was sent to me by the company's corporate counsel, Mr. Chris Wilson. You can contact him if you have any questions about that. His contact info is 1-905-835-1163.

I can tell you that GE has consented to your term sheet. I have some minor comments from the Company that I would like to discuss with you. I have not yet heard from CAT. I am hoping for their consent as well.

In anticipation of this, I am preparing a short affidavit of David Semley requesting the Court to grant the DIP.

**This is exhibit C, referred to in the
affidavit of Victor McCullough,
sworn before me, this ... day of
September, 2008.**

**a Commissioner for taking
affidavits.**

Mel Solmon

022

From: David Ullmann [DULLmann@mindengross.com]
Sent: Tuesday, May 06, 2008 6:12 PM
To: Mel Solmon
Cc: 'David Semley'
Subject: Dip Term Sheet
Attachments: Scan001.PDF

Attached is the DIP Agreement which is being signed by my client. I confirm our agreement re the following business term amendments:

- 1) your client will agree to our client being able to repay the loan at any time prior to October 2008.
- 2) your client acknowledges that we cannot prevent liens being put on during the CCAA process
- 3) Your client will allow for assets to be sold out of the ordinary course if that sale is approved by the Court
- 4) Your client will consider allowing a variance of 10% rather than 5% on the cash flow projections
- 5) Your costs in connection with the loan up to and including tomorrow's hearing will not exceed \$15,000.

Thank you.

David

-----Original Message-----

From: David Ullmann
Sent: Tuesday, May 06, 2008 5:44 PM
To: 'David Semley'
Subject: FW: Scan from Xerox WorkCentre

Please sign. The affidavit is on its way

-----Original Message-----

From: administrator@mggg.com [mailto:administrator@mggg.com]
Sent: Tuesday, May 06, 2008 6:44 AM
To: David Ullmann
Subject: Scan from Xerox WorkCentre

Please open the attached document. It was sent to you using a Xerox WorkCentre Pro.

Sent by: Guest [administrator@mggg.com]
Number of Images: 13
Attachment File Type: PDF

WorkCentre Pro Location: MAILROOM 2178A
Device Name: XEROX55-2178a

May 5th, 2008

Hard-Rock Paving Company Limited
198 Welland St
Port Colborne, Ontario
L3K 5V8

Attn: David R. Semley, President

Dear Sirs:

We confirm that Hard-Rock Paving Company Limited ("**Hard-Rock**") and the entities listed in Schedule "A" (collectively, the "**Borrowers**") received protection under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") pursuant to the order of the Honourable Mr. Justice Spence dated May 2, 2008 (the "**Initial Order**").

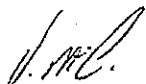
The Borrowers have requested that McLennan **Financing Limited** (the "**DIP Lender**") make available to the Borrowers a credit facility in the maximum principal amount of CAD \$1,250,000.00 for working capital purposes during the CCAA proceeding. The DIP Lender is pleased to do so on the terms outlined below. The DIP Lender confirms that it has deposited \$1,250,000.00 into the trust account of its solicitors, Solomon Rothbart Goodman LLP, who are hereby instructed to deposit \$350,000.00 of same forthwith into the Designated Account (as defined below) upon the execution and delivery of this Agreement by the Borrowers and the approval authorizing the borrowings on the terms and conditions outlined in this Term Sheet by the Superior Court of Justice for Ontario (the "**Court**").

LOAN FACILITIES

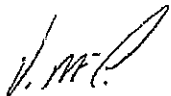
1. **BORROWERS:** Hard-Rock Paving Company Ltd. and those entities listed in Schedule "A"
2. **TYPE OF FACILITIES/AMOUNT:** The DIP Lender shall make the following credit facility (the "**DIP Loan**") available to the Borrowers subject to the terms and conditions set out herein:

a non-revolving loan in the maximum amount of CAD \$1,250,000.00 for the purpose of the Borrowers' working capital requirements. The balance of the Loan in its entirety (except for the fee referred to in paragraph 11 herein) will be deposited into a specially designated separate account in the name of the Hard-Rock Paving Company Ltd. (the "**Designated Account**"), upon the execution and delivery of this agreement and the expiry of any right to appeal or seek leave to appeal from the Order of approval authorizing the borrowings on the terms and conditions outlined in this Term Sheet, by the Court.

No further funds beyond the \$1,250,000.00 set out herein shall be borrowed from the DIP Lender by the Borrowers without the prior approval of the Court.



3. **INTEREST RATE:** 15% per annum on the daily balance outstanding under the DIP Loan. Interest shall be calculated monthly in arrears as well after and before maturity, default and judgment, with interest on overdue interest at the same rate as on principal, computed on the daily balance outstanding at the aforementioned rates based on the actual number of days lapsed divided by 365, and shall be payable as herein set forth.
- Interest shall be payable monthly, due on the last business day of each calendar month on the balance outstanding under the DIP Loan and on any other monies due and payable hereunder, both before and after maturity, default or judgment at the interest rate set forth herein. The first payment on account of interest shall be on the last business day of the month of the first advance under the DIP Loan.
4. **TERM AND REPAYMENT:** The DIP Loan, interest, fees and all other amounts payable hereunder that are still outstanding at any time, shall be due and payable on the earlier of the occurrence of an Event of Default (as hereinafter defined) or October 31, 2008.
5. **ADVANCES AND AVAILABILITY:** The signature of Hard-Rock Paving Company Ltd. and the Monitor shall be required in order to make a withdrawal from the Designated Account. The DIP Loan shall be drawn from the Designated Account at the beginning of each week based on the Borrowers' borrowing needs for that week as outlined in the Cash Flow attached as Exhibit "D" to the affidavit of David Semley sworn April 28, 2008, a copy of which Cash Flow is attached hereto as Schedule "B" (the "Projections"), or as may have been amended on the written consent of the Monitor, the DIP Lender and the Borrowers, and subject to:
- the terms contained in this Term Sheet; and
 - upon the satisfaction of the Conditions Precedent (as hereinafter defined).
- The Monitor shall report to the DIP Lender on a weekly basis as to the use of the DIP Loan by the Borrowers.
6. **DOCUMENTATION AND SECURITY:** All present and future liabilities and obligations of each of the Borrowers to the DIP Lender including, without limitation, all present and future obligations arising hereunder shall be secured and evidenced, as the case may be, by the following documents completed in form and substance satisfactory to the DIP Lender and its counsel (collectively, the "DIP Lender Security"):
- an Amended Initial Order (including the DIP Charge provided for therein) on terms in accordance with the



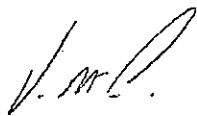
Commercial List Standard Long Form of Order);

- b. General Security Agreements from each of the Borrowers;
- c. Mortgage/charge of land over all of the real property in respect of which any of the Borrowers have an interest;
- d. all supporting authorizations certificates, acknowledgements and legal opinions as the DIP Lender may reasonably require; and
- e. such further documentation that the DIP Lender and its counsel may reasonably require.

7. **CONDITIONS:**

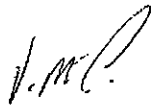
The obligation of the DIP Lender to make available the DIP Loan is subject to and conditional upon each of the following conditions (the "Conditions Precedent") which is for the exclusive benefit of the DIP Lender and, unless waived in writing by the DIP Lender, shall be fulfilled, satisfied and performed prior to the first advance under the DIP Loan:

- a. acceptance by each of the Borrowers of this Term Sheet;
- b. DIP Lender shall have received the DIP Lender Security, in form and content acceptable to the DIP Lender in its sole discretion;
- c. Each of the Borrowers obtaining an Amended Initial Order in form and content satisfactory to the DIP Lender on or by May 12th, 2008:
 - 1) authorizing the borrowings on the terms and conditions outlined in this Term Sheet and approving same;
 - 2) creating a court ordered first in priority charge (the "DIP Charge") in favour of the DIP Lender over all present and future assets, property and undertaking of each of the Borrowers, subject only to an administration charge not to exceed \$125,000.00, without the written consent of the DIP Lender, and approval of the Court, as security for all present and future liabilities and obligations of the Borrowers to the DIP Lender (whether direct or indirect, joint or several, absolute or contingent) including, without limitation, all present and future obligations arising hereunder;
 - 3) prohibiting the granting of any additional liens, charges, security interests or any other



encumbrances upon any of the assets, property or undertaking of any of the Borrowers without the prior written consent of the DIP Lender;

- 4) granting the DIP Lender the right, upon the earlier of October 31, 2008 or the occurrence of an Event of Default (as defined below), to enforce the rights and remedies available to it, upon 3 days written notice to the Borrowers by email to their solicitors Minden Gross, attention David Uilmann dulmann@mindingross.com and to the Borrowers at dsemley@hardrockgroup.com and to the Monitor at umanski@bdo.ca, pursuant to the Amended Initial Order, this Term Sheet, the DIP Lender Security, and any additional rights and remedies available to it, at law or in equity;
- 5) prohibiting any further borrowing by any of the Borrowers, without the prior written consent of the DIP Lender;
- 6) authorizing (but not obligating) the DIP Lender to effect such registrations, filings and recordings wherever the Dip Lender in its discretion deems appropriate regarding the DIP Lender Security, and the DIP Charge, including registration of the Amended Initial Order on title to any of the assets of the Borrowers, including those properties listed in Schedule "C" annexed hereto;
- 7) declaring that the granting of the security by each of the Borrowers provided for in the DIP Lender Security (including the DIP Charge) and the execution and delivery of all other documents and instruments contemplated herein, the payment of all amounts by the Borrower to the DIP Lender, including any and all fees and interest, and the actions taken to perfect and record the DIP Lender Security do not constitute settlements, reviewable transactions, fraudulent preferences, fraudulent conveyances, conduct meriting an oppression remedy, or other transactions which might be challenged or reviewed under applicable federal or provincial legislation;
- 8) declaring the Amended Initial Order, and the DIP Charge granted thereunder, binding upon a trustee in bankruptcy of any of the Borrowers,



monitor, receiver, interim-receiver, receiver-manager or any other officer of the Court;

9) staying any other secured or unsecured creditor from exercising any rights against each of the Borrowers, without further order of the Court;

10) declaring the DIP Lender to be an "unaffected creditor" under any plan or arrangement or compromise made by all or any of the Borrowers and that the indebtedness owed to the DIP Lender under the DIP Loan shall not be compromised or arranged under any such plan; and

11) such other terms and conditions as the DIP Lender may reasonably deem necessary or appropriate;

d. The Amended Initial Order shall be in full force and effect and shall not have been reversed, stayed, modified, amended or varied, without the express written consent of the DIP Lender, and no application or motion (other than the existing bankruptcy applications and motion to appoint an Interim receiver already filed as of the date hereof by Caterpillar Financial Services Limited) shall have been made to the Court for any stay, modification or amendment of the Initial Order or the Amended Initial Order and no stay, appeal or leave to appeal with respect to same shall be pending;

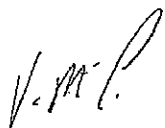
e. no Event of Default (as defined below) shall have occurred.

8. **ONGOING COVENANTS:**

In addition to those covenants set out in the DIP Lender Security, and other documentation executed or to be executed by each of the Borrowers in favour of the DIP Lender, each of the Borrowers covenant as follows:

a. none of the Borrowers shall request, obtain or consent to any reversal, stay, modification, amendment or any variation, of the Initial Order, or the Amended Initial Order that adversely affects the DIP Loan, without the prior written consent of the DIP Lender;

b. each of the Borrowers shall provide the DIP Lender with at least two business days advance notice of all court filings made by it, together with copies of all related court materials, and shall provide the DIP Lender with notice of all court filings that any other person intends to make, as indicated in any way to any of the Borrowers by such



- person, as soon as reasonably practicable after obtaining knowledge of such intended filings;
- c. each of the Borrowers shall maintain the current insurance coverage over the Borrowers' assets and property and designate the DIP Lender as loss payee as its interest may appear;
 - d. each of the Borrowers shall forthwith provide the DIP Lender with written notice of the occurrence of an Event of Default (as defined below);
 - e. none of the Borrowers shall grant any liens, charges, security interests or any other encumbrances upon any of its assets, property or undertaking, without the DIP Lender's prior written consent;
 - f. none of the Borrowers shall take any steps to sell, transfer, assign or deal in any way with any of their property, assets or undertaking out of the ordinary course of business, without the prior written consent of the DIP Lender;
 - g. each of the Borrowers shall pay, when due, all statutory liens, trusts and other Crown claims including employee source deductions, GST, PST, EHT, and any payments required by any work place safety legislation, wages, vacation pay and insurance premiums;
 - h. each of the Borrowers shall only use the DIP Loan for purposes set out in this Term Sheet, unless otherwise agreed to in writing by the DIP Lender;
 - i. each of the Borrowers shall cause its property, assets and undertaking to be maintained and operated in good working condition in accordance with industry practice and to permit the DIP Lender to inspect each of its property, assets and undertaking as the DIP Lender may request;
 - j. each of the Borrowers shall take all necessary steps to ensure all licenses used in connection with the operation of the businesses of the Borrowers are kept in good standing;
 - k. each of the Borrowers shall comply with the Projections, subject to an allowance for negative variations for total disbursements and withdrawals in the Projections (which must be satisfactory to the DIP Lender) not to exceed 5% of the Projections on a cumulative basis tested weekly; and

J.M.P.

- i. any retainers by the any of the Borrowers of a chief restructuring officer (or similar type of advisor) shall be on terms acceptable to the DIP Lender.

9. **DEFAULT:**

In addition to the events of default set out in the DIP Lender Security, the following events shall constitute events of default (each, an "Event of Default"):

- a. if any of the Borrowers fail to pay to the DIP Lender when due any amount of principal, interest, fees or other amounts under the DIP Loan or otherwise, whether by acceleration or otherwise;
- b. if any of the Borrowers default in the observance or performance of any term, covenant or condition in this Term Sheet, the DIP Lender Security or any other agreement between the DIP Lender and any of the Borrowers;
- c. if the DIP Lender determines, acting reasonably, that a material adverse change has occurred after the date hereof in respect of any of the businesses, affairs or financial condition of any of the Borrowers;
- d. if there occurs a direct or indirect change of control (as defined in the OBCA) with respect to any of the Borrowers; or
- e. if (i) the Amended Initial Order is varied without the written consent of the DIP Lender or any other order is made which is or may be prejudicial to the DIP Lender's interests; (ii) the Amended Initial Order is appealed or leave to appeal is granted; or (iii) the stay of proceedings contained in the Amended Initial Order is terminated or lifted.

10. **REMEDIES:**

Upon the earlier of the occurrence of an Event of Default or October 31, 2008, the DIP Lender may immediately terminate the DIP Facilities and enforce, upon 3 days written notice, as referred to in paragraph 7.o.4) herein, all of its rights and remedies against each of the Borrowers and their property, assets and undertaking including, without limitation, the enforcement of the DIP Lender Security; and all amounts outstanding under the DIP Loan shall immediately become due and payable without further notice, demand or delay.

11. **COMMITMENT FEE:**

The Borrowers shall pay to the DIP Lender a fee in the amount of CAD \$50,000.00 which fee shall be fully earned by the DIP Lender and payable by the Borrowers upon acceptance of this Term Sheet by each of the Borrowers and court approval of the borrowings on the terms and conditions outlined in this

V.M.C.

Term Sheet. Each of Borrowers hereby authorizes the DIP Lender to draw on the DIP Loan to satisfy these fees. For greater certainty, without limiting anything contained herein, these fees shall be secured by the DIP Lender Security.

12. **REPORTING:**

Each of the Borrowers shall provide to the DIP Lender such information that the DIP Lender may reasonably request from time to time including, without limitation:

- a. a copy of all reporting provided to the Borrowers by the Monitor and KPMG Inc. including, with respect to the cash flow variance analysis describing and explaining any changes between actual performance and budget from the most recently delivered cash flow budget and projections to the cash flow budget and projections delivered in the previous week; and
- b. regular progress reports relating to all claims by the Borrowers against the MTO.

Joint and Several

The Borrowers shall be jointly and severally liable for all obligations arising under this Term Sheet, the DIP Lender Security and the DIP Loan (and all documents related thereto).

Governing Law

This Term Sheet shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

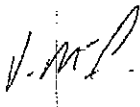
Costs and Expenses

The Borrowers shall be responsible for all reasonable costs, fees and expenses on a full indemnity basis (including, without limitation, all legal, financial and other advisory fees, disbursements and out of pocket expenses) incurred by the DIP Lender in connection with:

- (a) the transaction contemplated herein including, without limitation all fees, costs, expenses and disbursements incurred by the DIP Lender in connection with the negotiation, preparation, registration and administration of this Term Sheet, the DIP Lender Security, the DIP Loan (and all documents related thereto);
- (b) the enforcement of all rights and remedies under this Term Sheet, the DIP Lender Security, the DIP Loan (and all documents related thereto); and
- (c) all matters related to the CCAA proceedings including, without limitation, all court attendances in Canada or elsewhere in connection therewith.

All such fees and expenses shall be secured by the DIP Lender Security, whether or not any additional funds are advanced.

Facsimile



Facsimile documents pertaining to this transaction are to be considered and treated the same as original documents.

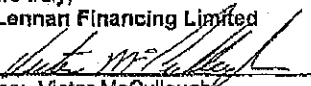
Disclosure

The Borrowers agree not to disclose this Term Sheet (or the terms contained herein) to any other person, without the prior written consent of the DIP Lender, except in connection with the Borrower's motion for court approval of the borrowings on the terms and conditions outlined in this Term Sheet.

Acceptance

If these terms and conditions are acceptable, each of the Borrowers must sign and return this Term Sheet before 7:00 PM E.S.T. on May 6th, 2008, failing which this Term Sheet is of no force and effect.

Yours truly,
McLennan Financing Limited

By: 
Name: Victor McCullough
Title: President

The undersigned hereby accept the terms and conditions of this Term Sheet and agree to be bound thereby.

Dated at Toronto, Ontario this day of May, 2008.

HARD-ROCK PAVING COMPANY LTD.

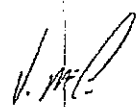
By: _____
Name:
Title:

DIAMOND STONEBRIDGE CONTRACTING INC.

By: _____
Name:
Title:

HARD-ROCK HIGHWAY MAINTENANCE INC.

By: _____
Name:
Title:



HARD-ROCK CONSTRUCTION INC.

By: _____
Name:
Title:

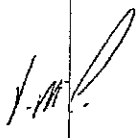
942355 ONTARIO LIMITED

By: _____
Name:
Title:

942356 ONTARIO LIMITED

By: _____
Name:
Title:

#1340784



SCHEDULE "A"

DIAMOND STONEBRIDGE CONTRACTING INC.

HARD-ROCK HIGHWAY MAINTENANCE INC.

HARD-ROCK CONSTRUCTION INC.

942355 ONTARIO LIMITED

942356 ONTARIO LIMITED

V.M.P.

**This is exhibit D, referred to in the
affidavit of Victor McCullough,
sworn before me, this ... day of
September, 2008.**

**a Commissioner for taking
affidavits.**

15977
6/8/08

036

Mel,

As you may know, we are going back to Court on Tuesday for an extension of the CCAA stay. Although I believe most parties are on board with the extension, we are once again arguing about a DIP (as the initial DIP is fully drawn). CAT was asked on Thursday if they would provide the DIP, and they have as yet not responded. I understand the company needs the DIP no later than Wednesday if it is to make payroll, etc.

Does your client have any appetite for wandering into this arena again? If it does, and if CAT refuses to provide a commitment of the DIP tomorrow morning (we are serving our materials around noon), and subject to receiving my client's instructions, then I would ask you to be available to come to court on Tuesday and advise of your client's interest/availability. In terms of a form of agreement, I assume we would just use the same form as before.

How would arguing against CAT this time be any different from last time? The new facts are: 1) we have now operated for a month within our cash flows, i.e. there is some credibility to the Company's fiscal forecasting, and the Company is generally operating well and generating receivables which it needs time to collect and there is some limited momentum to the restructuring, and 2) more importantly, we ran a short sale process in which offers were submitted on June 4. There are some real players in the group which submitted offers, but the company needs time to coral these offers and negotiate them. I think the court will be willing to give a short DIP, enough to keep the Company afloat for a few weeks, to get this done. It is likely that the offers will improve materially if given this time. It is also true that some of the offers require the company be a going concern. CAT will likely suffer a smaller loss if we can complete the going concern sales, even if they have to swallow the pill of having a DIP placed over top of them in order to do so. As our materials will show, the Company needs \$990,000 to the end of June. The Company could probably survive on \$500-600 til June 25 or so, although I am seeking confirmation from the client on that number.

I look forward to hearing from you.

David

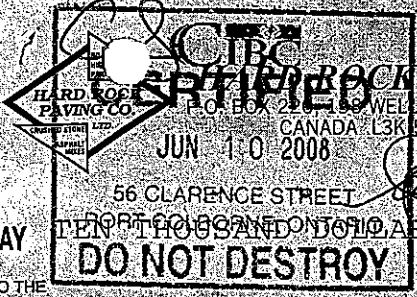
David T. Ullmann
Minden Gross LLP
145 King Street West, Suite 2200
Toronto, Ontario, Canada M5H 4G2
Tel: (416) 369-4148 Fax: (416) 864-9223
Email: dullmann@mindengross.com
www.mindengross.com
MERITAS LAW FIRMS WORLDWIDE

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**This is exhibit E, referred to in the
affidavit of Victor McCullough,
sworn before me, this ... day of
September, 2008.**

**a Commissioner for taking
affidavits.**

THIS DOCUMENT CONTAINS SECURITY FEATURES. SEE REVERSE



JUN 10 2008

56 CLARENCE STREET

PORT COLBORNE ONTARIO L3K 3E9

TEN THOUSAND DOLLARS & 00 CENTS

PAY

TO THE ORDER OF

MCLENNAN FINANCING LIMITED

CANADIAN IMPERIAL BANK OF COMMERCE
56 CLARENCE STREET
PORT COLBORNE, ONTARIO L3K 3E9

CHEQUE

006893

DATE

AMOUNT

Jun 09/08

\$10,000.00

HARD ROCK PAVING CO. LTD.

PER

PER

[Handwritten signature]
[Handwritten signature]

604

ACCOUNT NUMBER CHANGED

09 300 16

DUE TO CERTIFICATION

⑈006893⑈ ⑆06572⑈010⑆

HARD ROCK PAVING CO. LTD.

MCLE MCLENNAN FINANCING LIMITED

Jun 09/08

CHEQUE 006893

6893

Invoice No	Inv.Date	PO Number	Reference	Audit No	Gross Amt	Disct/HB	GST	Net Amt
006893	Jun 09/08	N/A	09900	CD0892	10,000.00	0.00	0.00	10,000.00

					10,000.00	0.00	0.00	10,000.00

Distribution :
11-09900-0500040 XF 10,000.00

**This is exhibit F, referred to in the
affidavit of Victor McCullough,
sworn before me, this ... day of
September, 2008.**

**a Commissioner for taking
affidavits.**

McLennan Financing Limited

June 10th, 2008

Hard Rock Paving Company Limited
198 Welland St
Port Colborne, Ontario
L3K 5V8

Attn: David R. Semley, President

Dear Sirs:

We confirm that Hard Rock Paving Company Limited ("**Hard Rock**") and the entities listed in Schedule "A" (collectively, the "**Borrowers**") received protection under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") pursuant to the orders of the Honourable Mr. Justice Spence (the "**Initial Orders**").

The Borrowers have requested that **McLennan Financing Limited** (the "**DIP Lender**") make available to the Borrowers a credit facility in the maximum principal amount of CAD \$4,300,000 for working capital purposes during the CCAA proceeding, being \$1,000,000 forthwith for the time period until June 30, 2008, and the balance to be drawn after June 30, 2008. The DIP Lender is pleased to do so on the terms outlined below. The DIP Lender confirms that it will deposit \$1,000,000 into the trust account of its solicitors, Solmon Rothbart Goodman LLP, who are hereby instructed to deposit \$1,000,000.00 into the Designated Account (as defined below) upon the execution and delivery of this Agreement by the Borrowers and the approval authorizing the borrowings on the terms and conditions outlined in this Term Sheet by the Superior Court of Justice for Ontario (the "**Court**").

LOAN FACILITIES

1. **BORROWERS:** Hard Rock Paving Company Ltd. and those entities listed in Schedule "A"
2. **TYPE OF FACILITIES/AMOUNT:** The DIP Lender shall make the following credit facility (the "**DIP Loan**") available to the Borrowers subject to the terms and conditions set out herein:

a non-revolving loan in the maximum amount of CAD \$4,300,000 for the purpose of the Borrowers' working capital requirements. The balance of the Loan in its entirety (except for the fee referred to in paragraph 11 herein) will be

deposited into a specially designated separate account in the name of the Hard-Rock Paving Company Ltd. (the "**Designated Account**"), upon the execution and delivery of this agreement and (except for funds urgently needed to protect the ongoing business in the interim) the expiry of any right to appeal or seek leave to appeal from the Order of approval authorizing the borrowings on the terms and conditions outlined in this Term Sheet, by the Court.

No further funds beyond the \$4,300,000 set out herein shall be borrowed from the DIP Lender by the Borrowers without the prior approval of the Court.

3. **INTEREST RATE:** 15% per annum on the daily balance outstanding under the DIP Loan. Interest shall be calculated monthly in arrears as well after and before maturity, default and judgment, with interest on overdue interest at the same rate as on principal, computed on the daily balance outstanding at the aforementioned rates based on the actual number of days lapsed divided by 365, and shall be payable as herein set forth.

Interest shall be payable monthly, due on the last business day of each calendar month on the balance outstanding under the DIP Loan and on any other monies due and payable hereunder, both before and after maturity, default or judgment at the interest rate set forth herein. The first payment on account of interest shall be on the last business day of the month of the first advance under the DIP Loan.

4. **TERM AND REPAYMENT:** The DIP Loan, interest, fees and all other amounts payable hereunder that are still outstanding at any time, shall be due and payable on the earlier of the occurrence of an Event of Default (as hereinafter defined) or December 31, 2008.

5. **ADVANCES AND AVAILABILITY:** The signature of Hard-Rock Paving Company Ltd. and the Monitor shall be required in order to make a withdrawal from the Designated Account. The DIP Loan shall be drawn from the Designated Account at the beginning of each week based on the Borrowers' borrowing needs for that week as outlined in the Cash Flow attached as Exhibit "D" to the affidavit of David Semley sworn April 28, 2008, a copy of which Cash Flow is attached hereto as Schedule "B" (the "**Projections**"), or as may have been amended on the written consent of the Monitor, the DIP Lender and the Borrowers; and subject to:

- a. the terms contained in this Term Sheet; and

- b. upon the satisfaction of the Conditions Precedent (as hereinafter defined).

The Monitor shall report to the DIP Lender on a weekly basis as to the use of the DIP Loan by the Borrowers.

6. **DOCUMENTATION AND SECURITY:** All present and future liabilities and obligations of each of the Borrowers to the DIP Lender including, without limitation, all present and future obligations arising hereunder shall be secured and evidenced, as the case may be, by the following documents completed in form and substance satisfactory to the DIP Lender and its counsel (collectively, the "**DIP Lender Security**"):
 - a. an Amended Order (including the DIP Charge provided for therein on terms in accordance with the Commercial List Standard Long Form of Order);
 - b. General Security Agreements from each of the Borrowers, if required;
 - c. Mortgage/charge of land over all of the real property in respect of which any of the Borrowers have an interest;
 - d. all supporting authorizations, certificates, acknowledgements and legal opinions as the DIP Lender may reasonably require; and
 - e. such further documentation that the DIP Lender and its counsel may reasonably require.
7. **CONDITIONS:** The obligation of the DIP Lender to make available the DIP Loan is subject to and conditional upon each of the following conditions (the "**Conditions Precedent**") which is for the exclusive benefit of the DIP Lender and, unless waived in writing by the DIP Lender, shall be fulfilled, satisfied and performed prior to the first advance under the DIP Loan:
 - a. acceptance by each of the Borrowers of this Term Sheet;
 - b. DIP Lender shall have received the DIP Lender Security, in form and content acceptable to the DIP Lender in its sole discretion;
 - c. Each of the Borrowers obtaining an Amended Order in form and content satisfactory to the DIP Lender on or by June 10th, 2008:
 - 1) authorizing the borrowings on the terms and conditions outlined in this Term Sheet and

approving same;

- 2) creating a court ordered first in priority charge (the “**DIP Charge**”) in favour of the DIP Lender over all present and future assets, property and undertaking of each of the Borrowers, subject only to an administration charge not to exceed \$125,000, without the written consent of the DIP Lender, and approval of the Court, as security for all present and future liabilities and obligations of the Borrowers to the DIP Lender (whether direct or indirect, joint or several, absolute or contingent) including, without limitation, all present and future obligations arising hereunder;
- 3) prohibiting the granting of any additional liens, charges, security interests or any other encumbrances upon any of the assets, property or undertaking of any of the Borrowers without the prior written consent of the DIP Lender;
- 4) granting the DIP Lender the right, upon the earlier of December 31, 2008 or the occurrence of an Event of Default (as defined below), to enforce the rights and remedies available to it, upon 3 days written notice to the Borrowers by email to their solicitors Minden Gross, attention David Ullmann dullmann@mindengross.com and to the Borrowers at dsemley@hardrockgroup.com and to the Monitor at umanski@bdo.ca, pursuant to the Amended Order, this Term Sheet, the DIP Lender Security, and any additional rights and remedies available to it, at law or in equity;
- 5) prohibiting any further borrowing by any of the Borrowers, without the prior written consent of the DIP Lender;
- 6) authorizing (but not obligating) the DIP Lender to effect such registrations, filings and recordings wherever the Dip Lender in its discretion deems appropriate regarding the DIP Lender Security, and the DIP Charge, including registration of the Amended Order on title to any of the assets of the Borrowers, including those properties listed in Schedule “C” annexed hereto;
- 7) declaring that the granting of the security by

each of the Borrowers provided for in the DIP Lender Security (including the DIP Charge) and the execution and delivery of all other documents and instruments contemplated herein, the payment of all amounts by the Borrower to the DIP Lender, including any and all fees and interest, and the actions taken to perfect and record the DIP Lender Security do not constitute settlements, reviewable transactions, fraudulent preferences, fraudulent conveyances, conduct meriting an oppression remedy, or other transactions which might be challenged or reviewed under applicable federal or provincial legislation;

- 8) declaring the Amended Order, and the DIP Charge granted thereunder, binding upon a trustee in bankruptcy of any of the Borrowers, monitor, receiver, interim-receiver, receiver-manager or any other officer of the Court;
 - 9) staying any other secured or unsecured creditor from exercising any rights against each of the Borrowers, without further order of the Court;
 - 10) declaring the DIP Lender to be an "unaffected creditor" under any plan of arrangement or compromise made by all or any of the Borrowers and that the indebtedness owed to the DIP Lender under the DIP Loan shall not be compromised or arranged under any such plan; and
 - 11) such other terms and conditions as the DIP Lender may reasonably deem necessary or appropriate;
- d. The Amended Order shall be in full force and effect and shall not have been reversed, stayed, modified, amended or varied, without the express written consent of the DIP Lender, and no application or motion (other than the existing bankruptcy applications and already filed as of the date hereof by Caterpillar Financial Services Limited) shall have been made to the Court for any stay, modification or amendment of the Initial Orders or the Amended Order and no stay, appeal or leave to appeal with respect to same shall be pending (subject to the urgent need for funds to protect the ongoing business in the interim);
- e. no Event of Default (as defined below) shall have

occurred.

8. **ONGOING COVENANTS:** In addition to those covenants set out in the DIP Lender Security, and other documentation executed or to be executed by each of the Borrowers in favour of the DIP Lender, each of the Borrowers covenant as follows:

- a. none of the Borrowers shall request, obtain or consent to any reversal, stay, modification, amendment or any variation, of the s Order, or the Amended Order that adversely effects the DIP Loan, without the prior written consent of the DIP Lender;
- b. each of the Borrowers shall provide the DIP Lender with at least two business days advance notice of all court filings made by it, together with copies of all related court materials, and shall provide the DIP Lender with notice of all court filings that any other person intends to make, as indicated in any way to any of the Borrowers by such person, as soon as reasonably practicable after obtaining knowledge of such intended filings;
- c. each of the Borrowers shall maintain the current insurance coverage over the Borrowers' assets and property and designate the DIP Lender as loss payee as its interest may appear;
- d. each of the Borrowers shall forthwith provide the DIP Lender with written notice of the occurrence of an Event of Default (as defined below);
- e. none of the Borrowers shall grant any liens, charges, security interests or any other encumbrances upon any of its assets, property or undertaking, without the DIP Lender's prior written consent;
- f. none of the Borrowers shall take any steps to sell, transfer, assign or deal in any way with any of their property, assets or undertaking out of the ordinary course of business, without the prior written consent of the DIP Lender;
- g. each of the Borrowers shall pay, when due, all statutory liens, trusts and other Crown claims including employee source deductions, GST, PST, EHT, and any payments required by any work place safety legislation, wages, vacation pay and insurance premiums;
- h. each of the Borrowers shall only use the DIP Loan for

purposes set out in this Term Sheet, unless otherwise agreed to in writing by the DIP Lender;

- i. each of the Borrowers shall cause its property, assets and undertaking to be maintained and operated in good working condition in accordance with industry practice and to permit the DIP Lender to inspect each of its property, assets and undertaking as the DIP Lender may request;
- j. each of the Borrowers shall take all necessary steps to ensure all licenses used in connection with the operation of the businesses of the Borrowers are kept in good standing;
- k. each of the Borrowers shall comply with the Projections, subject to an allowance for negative variations for total disbursements and withdrawals in the Projections (which must be satisfactory to the DIP Lender) not to exceed 5% of the Projections on a cumulative basis tested weekly; and
- l. any retainers by the any of the Borrowers of a chief restructuring officer (or similar type of advisor) shall be on terms acceptable to the DIP Lender.

9. **DEFAULT:**

In addition to the events of default set out in the DIP Lender Security, the following events shall constitute events of default (each, an "Event of Default"):

- a. if any of the Borrowers fail to pay to the DIP Lender when due any amount of principal, interest, fees or other amounts under the DIP Loan or otherwise, whether by acceleration or otherwise;
- b. if any of the Borrowers default in the observance or performance of any term, covenant or condition in this Term Sheet, the DIP Lender Security or any other agreement between the DIP Lender and any of the Borrowers;
- c. if the DIP Lender determines, acting reasonably, that a material adverse change has occurred after the date hereof in respect of any of the businesses, affairs or financial condition of any of the Borrowers;
- d. if there occurs a direct or indirect change of control (as defined in the OBCA) with respect to any of the Borrowers; or
- e. if (i) the Amended Order is varied without the written consent of the DIP Lender or any other order is made

which is or may be prejudicial to the DIP Lender's interests; (ii) the Amended Order is appealed or leave to appeal is granted; or (iii) the stay of proceedings contained in the Amended Order is terminated or lifted.

10. **REMEDIES:** Upon the earlier of the occurrence of an Event of Default or December 31, 2008, the DIP Lender may immediately terminate the DIP Facilities and enforce, upon 3 days written notice, as referred to in paragraph 7.c.4) herein, all of its rights and remedies against each of the Borrowers and their property, assets and undertaking including, without limitation, the enforcement of the DIP Lender Security; and all amounts outstanding under the DIP Loan shall immediately become due and payable without further notice, demand or delay.
11. **COMMITMENT FEE:** The Borrowers shall pay to the DIP Lender a fee in the amount of CAD \$100,000 for the first \$1,000,000, and \$500,000 for the next \$3,300,000 which fees shall be fully earned by the DIP Lender and payable by the Borrowers upon acceptance of this Term Sheet by each of the Borrowers and court approval of the borrowings on the terms and conditions outlined in this Term Sheet. Each of Borrowers hereby authorizes the DIP Lender to draw on the DIP Loan to satisfy these fees. For greater certainty, without limiting anything contained herein, these fees shall be secured by the DIP Lender Security.
12. **REPORTING:** Each of the Borrowers shall provide to the DIP Lender such information that the DIP Lender may reasonably request from time to time including, without limitation:
- a. a copy of all reporting provided to the Borrowers by the Monitor and KPMG Inc. including, with respect to the cash flow variance analysis describing and explaining any changes between actual performance and budget from the most recently delivered cash flow budget and projections to the cash flow budget and projections delivered in the previous week; and
 - b. regular progress reports relating to all claims by the Borrowers against the MTO.

Joint and Several

The Borrowers shall be jointly and severally liable for all obligations arising under this Term Sheet, the DIP Lender Security and the DIP Loan (and all documents related thereto).

Governing Law

This Term Sheet shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

Costs and Expenses

The Borrowers shall be responsible for all reasonable costs, fees and expenses on a full indemnity basis (including, without limitation, all legal, financial and other advisory fees, disbursements and out of pocket expenses) incurred by the DIP Lender in connection with:

- (a) the transaction contemplated herein including, without limitation, all fees, costs, expenses and disbursements incurred by the DIP Lender in connection with the negotiation, preparation, registration and administration of this Term Sheet, the DIP Lender Security, the DIP Loan (and all documents related thereto);
- (b) the enforcement of all rights and remedies under this Term Sheet, the DIP Lender Security, the DIP Loan (and all documents related thereto); and
- (c) all matters related to the CCAA proceedings including, without limitation, all court attendances in Canada or elsewhere in connection therewith.

All such fees and expenses shall be secured by the DIP Lender Security, whether or not any additional funds are advanced.

Facsimile

Facsimile documents pertaining to this transaction are to be considered and treated the same as original documents.

Breakout Fee

Upon execution of this Term Sheet, the Borrowers require and the DIP Lender agrees to arrange for the funds to be ready to be advanced forthwith and the Borrowers agree that if this borrowing does not occur or any event occurs that prevents this borrowing from proceeding to completion, that is not the fault of the DIP Lender, the Borrowers shall pay a break fee to the DIP Lender in the amount of \$300,000 to cover all costs and expenses, as defined herein, and for arranging the funds required for this transaction. *Provided that in the event the Borrower seeks approval of a DIP Loan in the amount of \$1,000,000, with the balance of the loan provided for herein to be subject to a separate agreement then the Disclosure break fee shall only be \$100,000.*

The Borrowers agree that this Term Sheet is confidential and not to be disclosed in any way, including the terms contained herein, to any other person, without the prior written consent of the DIP Lender. In connection with the Borrower's motion for court approval of the borrowings on the terms and conditions outlined in this Term Sheet, the Borrowers will only disclose this Term Sheet or any of its particulars, after it is signed by the Borrowers and at such time before the Borrower's motion for court approval as is determined by the DIP Lender.

Acceptance

If these terms and conditions are acceptable, each of the Borrowers must sign and return this Term Sheet before 10:00 AM E.S.T. on June 10th, 2008, failing which this Term Sheet is of no force and effect.

Yours truly,

McLennan Financing Limited

By: *[Signature]*
Name: Victor McCullough
Title: President

The undersigned hereby accept the terms and conditions of this Term Sheet and agree to be bound thereby.

Dated at Toronto, Ontario this day of June, 2008.

HARD ROCK PAVING COMPANY LTD.

By: *[Signature]*
Name: *David Semel*
Title: *Chairman*

DIAMOND STONEBRIDGE CONTRACTING INC.

By: _____
Name: _____
Title: _____

HARD-ROCK HIGHWAY MAINTENANCE INC.

By: _____
Name: _____
Title: _____

HARD-ROCK CONSTRUCTION INC.

By: _____
Name: _____
Title: _____

942355 ONTARIO LIMITED

By: _____
Name: _____
Title: _____

David R. Semel
David Semel
Chairman

942356 ONTARIO LIMITED

By: _____

Name: _____

Title: _____

[Handwritten Signature]
David Semple
Chairman

SCHEDULE "A"

DIAMOND STONEBRIDGE CONTRACTING INC.

HARD-ROCK HIGHWAY MAINTENANCE INC.

HARD-ROCK CONSTRUCTION INC.

942355 ONTARIO LIMITED

942356 ONTARIO LIMITED

SCHEDULE "B"

Cash Flow Projections
(to be attached)

SCHEDULE "C"

- a. 64023-0065(LT) Land Registry Office #59
- b. 64023-0066(LT) Land Registry Office #59
- c. 64023-0069(LT) Land Registry Office #59
- d. 64023-0071(LT) Land Registry Office #59
- e. 64023-0073(LT) Land Registry Office #59
- f. 64023-0075(LT) Land Registry Office #59
- g. 64023-0344(LT) Land Registry Office #59
- h. 64023-0349(LT) Land Registry Office #59
- i. 64229-0138(LT) Land Registry Office #59
- j. 64457-0112(LT) Land Registry Office #59
- k. 64023-0076(LT) Land Registry Office #59
- l. 64023-0077(LT) Land Registry Office #59
- m. 64023-0074(LT) Land Registry Office #59

Mel Solmon

From: David Ullmann [DUllmann@mindengross.com]
Sent: Wednesday, June 11, 2008 10:12 AM
To: Mel Solmon
Cc: victormccullough@hotmail.com; umanski@bdo.ca; Raymond M. Slattery; dsemley@hardrockgroup.com
Subject: Re: re side agreement re break fee reached at 1:35pm today

Mel,

I confirm that we reached the agreement described below in Court yesterday and that your email accurately describes the arrangement.

I am copying this email to the Monitor so that it can be considered in the Monitor's review of your client's offer.

David

David Ullmann
Minden Gross LLP
145 King Street West, Suite 2200
Toronto, Ontario, Canada M5H 4G2
TEL: (416) 369-4148 Fax : (416) 864-9223 www.mindengross.com MERITAS LAW FIRMS WORLDWIDE
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----- Original Message -----

From: Mel Solmon <msolmon@srglegal.com>
To: David Ullmann
Cc: Victor McCullough <victormccullough@hotmail.com>; Mel Solmon <msolmon@srglegal.com>
Sent: Tue Jun 10 17:50:01 2008
Subject: re side agreement re break fee reached at 1:35pm today

I confirm our discussion this morning that we agreed on behalf of our respective clients that if Caterpillar and only Caterpillar tenders a signed bid for DIP financing for Hard Rock on or before 10 am tomorrow morning ("Caterpillar DIP") that is approved by the court, (instead of the McLennan Financing DIP Loan, as reflected in the commitment letter of June 10, 2008 accepted this afternoon) and advanced to Hard Rock, then the break fee clause (entitled "Breakout Fee") in the McLennan Financing DIP commitment letter of June 10, 2008 will be amended to reduce the break fee from \$100,000. to the greater of

- (i) \$50,000 or
- (ii) \$100,000 minus the commitment fee approved by the court for the Caterpillar DIP

Please confirm by return email

**This is exhibit G, referred to in the
affidavit of Victor McCullough,
sworn before me, this ... day of
September, 2008.**

**a Commissioner for taking
affidavits.**

Mel Solmon

15977
HC 056

From: David Ullmann [DUllmann@mindengross.com]
Sent: Wednesday, June 11, 2008 10:57 AM
To: 'MCEACHERN, KATHERINE'; reenglish@airdberlis.com; kjtreacy@kpmg.ca; bradnewton@kpmg.ca; cmazur@bdo.ca; dponting@bdo.ca; diane.winters@justice.gc.ca; harvey@chaitons.com; CHRIS_S@chaitons.com; Raymond M. Slattery; ahatnay@koskieminsky.com; srappos@blgcanada.com; chill@blgcanada.com; jmaclellan@blgcanada.com; thogan@harrisonpensa.com; Mel Solmon
Cc: 'WEISZ, STEVEN'; 'MCGRAW, MICHAEL'; dsemley@hardrockgroup.com; Raymond M. Slattery; umanski@bdo.ca
Subject: Hard Rock DIP - Status

Please be advised that the Applicants did receive today a DIP Term Sheet from CFSL, which was delivered prior to the 10 AM deadline. The Applicants are reviewing the Term Sheet with the Monitor, along with the McLennan Financing Limited Term Sheet delivered yesterday. The terms of the two Term Sheets remain confidential.

David Ullmann

From: ROBINSON, WENDY [mailto:WENDY.ROBINSON@blakes.com] **On Behalf Of** MCEACHERN, KATHERINE
Sent: Wednesday, June 11, 2008 9:58 AM
To: David Ullmann; reenglish@airdberlis.com; kjtreacy@kpmg.ca; bradnewton@kpmg.ca; cmazur@bdo.ca; dponting@bdo.ca; diane.winters@justice.gc.ca; harvey@chaitons.com; CHRIS_S@chaitons.com; Raymond M. Slattery; ahatnay@koskieminsky.com; srappos@blgcanada.com; chill@blgcanada.com; jmaclellan@blgcanada.com; thogan@harrisonpensa.com; msolmon@srglegal.com
Cc: MCEACHERN, KATHERINE; WEISZ, STEVEN; MCGRAW, MICHAEL
Subject: Hard Rock

Please find attached the Supplementary Responding Record of the Applicant, Caterpillar Financial Services Limited.

Katherine

Wendy Robinson
Assistant to Katherine McEachern & Jackie Moher
wendy.robinson@blakes.com
Dir: 416-863-4186
Fax: 416-863-2653

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653
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**This is exhibit H, referred to in the
affidavit of Victor McCullough,
sworn before me, this ... day of
September, 2008.**

**a Commissioner for taking
affidavits.**

July 18, 2008

VIA FACSIMILE 416-864-9223

Minden Gross LLP
145 King Street West Suite 2200
Toronto, Ontario M5H 4G2

Attention: Mr. Raymond Slattery and Mr.
David Ullman

Dear Mr. Slattery and Mr. Ullman:

Re: McLennan Financing Limited, June 10, 2008 Commitment Letter
Our File No.: 15977 – Hard Rock

I have not received a reply to my last correspondence sent July 3, 2008.

This letter will serve as a formal demand for payment of \$100,000 currently owing by your clients pursuant to the break fee provision of the agreement executed on June 10, 2008 (the Agreement).

My client's willingness and ability to provide emergency financing to your clients on several occasions proved to be of significant value to your clients and specifically helped to preserve the value of your clients' assets. As such, your clients are entitled by court order to pay the full amount owing to my client, and they are contractually bound to do so.

As you are no doubt aware, both the Court of Appeal for Ontario and the Superior Court of Justice have recognized the value and enforceability of break fee provisions in the context of *Companies' Creditor Arrangement Act* restructurings. Further, the Superior Court of Justice has expressly stated that it will not retroactively interfere with break fee agreements which are entered into by the debtor exercising its business judgment. The break fee as negotiated by our respective clients was reasonable in the circumstances and should be honoured.

The amount of \$100,000 is now due and owing by your clients. If confirmation that payment will be made is not received by Tuesday July 22, 2008, by 4:00 p.m. my client will also be seeking interest on this amount which is accumulating at the prejudgment rate as prescribed by the *Courts of Justice Act*. Further please take notice that if full

Melvyn L. Solmon, B.A.Sc., LL.M. (Harv)**

Randall M. Rothbart, B.A., LL.B.

Mark L. Goodman, B.A., LL.B.

Avrum D. Slodovnick, LL.B.

Nancy J. Tourgis, B.Sc.H., LL.B.

James P. McReynolds, B.Comm., LL.B.

Jonathon M. Kappy, B.Comm., LL.B.

Raffaele Sparano, B.A.(Hon.), LL.B.

Matthew Valitutti, B.A., LL.B.

Cameron J. Wetmore, B.A.C.S., LL.B.

Member of the New York Bar **

msolmon@srglegal.com

375 University Ave., Suite 701, Toronto, ON M5G 2J5
T 416 947.1093 F 416 947.0079

payment is not received by Friday July 25, 2008, my client will take appropriate steps to enforce its entitlement under the Agreement.

If your clients require further time to pay please advise.

I would ask you to please provide a response as soon as possible.

Thank you very much.

Yours very truly,

SOLMON ROTHBART GOODMAN LLP



Melvyn L. Solmon
MLS/ak

cc: Mr. Stephen J. Weisz, Blake, Cassels & Graydon LLP
Mr. Christopher J. Mazur, BDO Dunwoody Limited
Mr. David Ponting, BDO Dunwoody Limited
Ms. Diane Winters, Department of Justice
Mr. Harvey Chaiton, Chaitons LLP
Mr. Andrew Hatnay, Koskie Minsky LLP
Mr. Sam P. Rappos, Borden Ladner Gervais LLP
Mr. Timothy C. Hogan, Harrison Pensa LLP
Mr. Robb English, Aird Berlis LLP
Mr. Kevin Treacy, KPMG Inc.