

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 15TH
)
JUSTICE PENNY) DAY OF FEBRUARY, 2022

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 HARTE GOLD CORP., 13699404
CANADA INC. AND 13699447 CANADA INC.

Applicants

CCAA DISTRIBUTION AND TERMINATION ORDER

THIS MOTION, made by FTI Consulting Canada Inc. ("**FTI**"), in its capacity as monitor (the "**Monitor**") of Harte Gold Corp. ("**Harte**"), 13699404 Canada Inc. ("**ResidualCo. 1**") and 13699447 Canada Inc. ("**ResidualCo. 2**" and, collectively with Harte and ResidualCo. 1, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (this "**Order**"), among other things, (i) approving the Distributions specified herein, (ii) approving the activities, conduct and reports of FTI in its capacity as Monitor, (iii) approving the fees and disbursements of the Monitor and the Monitor's legal counsel, as described in the Third Report of the Monitor dated February 8, 2022 (the "**Third Report**") and the affidavits attached thereto sworn in support thereof, (iv) terminating these CCAA proceedings and discharging the Monitor at the CCAA Termination Time (as defined below), and (v) granting certain related relief, was heard this day via videoconference due to the ongoing COVID-19 pandemic.

ON READING the Notice of Motion of the Monitor, the Third Report and the affidavits attached thereto sworn in support of the approval of the fees and disbursements of the Monitor and its counsel, and on hearing the submissions of counsel for the Applicants, the Monitor, and



such other counsel as were present and wished to be heard, and on reading the affidavit of service, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Monitor's Notice of Motion, the Motion Record and the Third Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meanings given to them in the Amended and Restated Initial Order of this Court made in the within proceedings dated December 20, 2021 (the "**Initial Order**"), the Approval and Reverse Vesting Order of this Court made in the within proceedings dated January 28, 2022, or the Second Amended and Restated Subscription Agreement entered into by and between the Applicant, as issuer, 1000025833 Ontario Inc., as investor, and Silver Lake Resources Limited, as guarantor, dated January 19, 2022, as applicable.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Monitor and/or any of the Applicants, from and after the Effective Time, are hereby authorized, without further order of this Court, to make distributions from the Cash Consideration in payment of the following:

- (a) the secured obligations owing in respect of the conveyance to Harte of the land legally known as PIN 31082-0234 (LT) PCL 11183 SEC AWS; PT FARM LOCATION CK77 HUNT PT 1 1R6484; WHITE RIVER (the "**White River Property Secured Claim**"), the distribution in respect of which shall constitute the full and final satisfaction of the White River Property Secured Claim and the Applicants shall have no further liability in respect of the White River Property Secured Claim upon the payment of such distribution; and
- (b) the Appian Indebtedness, the distribution in respect of which shall constitute the full and final satisfaction of the Appian Indebtedness and the Applicants shall have no further liability in respect of the Appian Indebtedness upon the payment of such distribution ((a) and (b), collectively, the "**Distributions**").

4. **THIS COURT ORDERS** that the Monitor and/or any of the Applicants are hereby authorized to take all necessary steps and actions to effect the Distributions in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distributions.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these CCAA proceedings;
- (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or other applicable legislation in respect of the Applicants and any bankruptcy or receivership order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) any provisions of any federal or provincial legislation,

the Distributions shall be made free and clear of all Encumbrances (including the Charges) and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicants and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS** that the Monitor and/or any of the Applicants shall be entitled to deduct and withhold from any Distribution such amounts as may be required to be deducted or withheld with respect to such Distribution under the Tax Act or other Applicable Laws and to remit such amounts to the appropriate Governmental Authority or other Person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other Person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such Person as the remainder of the Distribution in respect of which such withholding or deduction was made.

7. **THIS COURT ORDERS AND DECLARES** that the Distributions shall not constitute a “distribution” for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act, 2007* (Ontario), section 159 of the *Tax Act*, section 270 of the *Excise Tax Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), or any other similar applicable federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), and the Monitor, in making the Distributions, is merely a disbursing agent and is not exercising any discretion in making the Distributions, and no Person is “distributing” such funds for the purpose of the Tax Statutes, and the Applicants and the Monitor shall not incur any liability under the Tax Statutes in respect of the Distributions and the Monitor is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of the Distributions made by it in accordance with this Order and any claims of this nature are hereby forever barred.

APPROVAL OF MONITOR’S REPORTS AND ACTIVITIES

8. **THIS COURT ORDERS** that the First Report of the Monitor dated December 15, 2021, the Second Report of the Monitor dated January 24, 2022 and the Third Report are hereby approved, and the activities and conduct of the Monitor prior to or on the date hereof in relation to the Applicants and these CCAA proceedings (including as described in the foregoing reports) are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR

9. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from December 7, 2021 to February 6, 2022, all as set out in the affidavit of Nigel Meakin sworn February 8, 2022, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of Goodmans LLP as legal counsel to the Monitor, for the period from December 7, 2021 to February 6, 2022 as set out in the affidavit of Joseph Pasquariello sworn February 8, 2022, are hereby approved.

11. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and Goodmans LLP, estimated not to exceed \$400,000 in aggregate (excluding HST), for the completion of remaining activities in connection with these CCAA proceedings, are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

12. **THIS COURT ORDERS** that, upon service by the Monitor of an executed certificate in substantially the form attached hereto as Schedule “A” (the “**Termination Certificate**”) on the service list in these CCAA proceedings certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed, these CCAA proceedings shall be terminated without any further act or formality (the “**CCAA Termination Time**”), save and except as provided in this Order, and provided that nothing herein impacts the validity of any Orders made in these CCAA proceedings or any action or steps taken by any Person pursuant thereto.

13. **THIS COURT ORDERS** that the Monitor is hereby directed to file a copy of the Termination Certificate with the Court as soon as is practicable following the service thereof on the service list in these CCAA proceedings.

14. **THIS COURT ORDERS** that the Charges shall be terminated, released and discharged as of the CCAA Termination Time without any further act or formality.

DISCHARGE OF THE MONITOR

15. **THIS COURT ORDERS** that effective at the CCAA Termination Time, FTI shall be and is hereby discharged from its duties as the Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time, provided that, notwithstanding its discharge as Monitor, FTI shall have the authority to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings following the CCAA Termination Time, as may be required, including, without limitation, as contemplated by Monitor’s Enhanced Powers Order dated January 28, 2022 (“**Monitor Incidental Matters**”).

16. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor's discharge or the termination of these CCAA proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, all of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, the Monitor's Enhanced Powers Order, any other Order of this Court in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Time, including in connection with any Monitor Incidental Matters and other actions taken by the Monitor following the CCAA Termination Time with respect to the Applicants or these CCAA proceedings.

17. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court on not less than fifteen (15) days prior written notice to the Monitor.

EXTENSION OF THE STAY PERIOD

18. **THIS COURT ORDERS** that, in the event that the Termination Certificate is not served by the Monitor in accordance with paragraph 10 of this Order on or before March 29, 2022, the Stay Period be and is hereby extended to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

GENERAL

19. **THIS COURT ORDERS** that the Applicants or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

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

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary

or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.



**SCHEDULE “A”
FORM OF TERMINATION CERTIFICATE**

Court File No. CV-21-00673304-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 13699404 CANADA INC. and 13699447
CANADA INC.**

Applicants

TERMINATION CERTIFICATE

RECITALS

1. FTI Consulting Canada Inc. (“**FTI**”) was appointed as the Monitor of the Applicants in the within proceedings commenced under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 7, 2021 (as amended, the “**Initial Order**”).
2. Pursuant to an Order of this Court dated February 15, 2022 (the “**CCAA Distribution and Termination Order**”), among other things, FTI shall be discharged as the Monitor and the Applicants’ CCAA proceedings shall be terminated upon the service of this Termination Certificate on the service list in these CCAA proceedings, all in accordance with the terms of the CCAA Distribution and Termination Order.
3. Unless otherwise indicated herein, capitalized terms used in this Termination Certificate shall have the meaning given to them in the Initial Order or the CCAA Distribution and Termination Order, as applicable.

THE MONITOR CERTIFIES the following:

1. To the knowledge of the Monitor, all matters to be attended to in connection with the Applicants' CCAA proceedings (Court File No. 21-00673304-00CL) have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the CCAA Distribution and Termination Order has occurred.

DATED at Toronto, Ontario this _____ day of _____, 2022.

FTI CONSULTING CANADA INC. in its capacity as Court-appointed Monitor of the Applicants and not in its personal or corporate capacity

Per: _____

Name:

Title:

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

Court File No: CV-21-00673304-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HARTE GOLD CORP., 13699404 CANADA INC. AND 13699447 CANADA INC.**

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**CCAA DISTRIBUTION AND
TERMINATION ORDER**

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