



FORCE FILED

No. S238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

PETITIONER

NOTICE OF APPLICATION

Name of Applicant: Myra Falls Mine Ltd. (the "Applicant")

TO: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Applicant, Myra Falls Mine Ltd., before Justice Fitzpatrick at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, on Friday, August 2, 2024 at 10:00 a.m. for an Order set out in Part 1 below.

The applicant estimates that the application will take **1.5 hours** (as arranged through Trial Scheduling)

This matter is before Justice Fitzpatrick.

PART 1: ORDER(S) SOUGHT

1. The Applicant seeks the following orders under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"):

- (a) An order substantially in the form attached hereto as **Schedule "A"** ("**Stay Extension and Additional Relief**"), granting *inter alia*, the following relief:
 - (i) confirming that the time for service of the Notice of Application and supporting materials is abridged such that the Notice of Application is properly returnable on August 2, 2024 and service thereof is dispensed with;

- (ii) extending the Stay Period (as such term is defined in paragraph 15 of the Amended and Restated Initial Order (the “**ARIO**”)) up to and including October 31, 2024, or such other date as this Court may deem appropriate;
 - (iii) authorizing the Applicant to enter into a financing agreement (the “**CAFO Agreement**”) with CAFO Inc. (“**CAFO**”) with respect to the financing by CAFO of the premium payable by the Applicant in relation to its property insurance Policy, and granting CAFO a first-ranking priority Court-Ordered charge to the unearned premium of such Insurance Policy;
 - (iv) authorizing the Applicant to borrow up to an additional amount of \$7,500,000 pursuant to the terms of the Amended DIP Term Sheet (as defined in the KERP Order), and granting an increase in the amount of the Interim Lender’s Charge to \$34,000,000 (plus accrued and unpaid interest, fees and expenses);
- (b) An order substantially in the form attached hereto as **Schedule “B”** (the “**AMTI Approval and Vesting Order**”), granting *inter alia*, the following relief:
- (i) authorizing the Applicant to enter into a transaction (the “**AMTI Transaction**”) contemplated by an Asset Purchase Agreement dated and effective as of July 25, 2024 (the “**AMTI Agreement**”) between the Applicant, as seller, and Amalgamated Mining & Tunnelling Inc. (“**AMTI**”), as purchaser, in respect of the Applicant’s rights, title and interest in the AMTI Equipment (as defined below), and vesting in AMTI all of the Applicant’s rights, title and interest in and to the AMTI Equipment (save and except for a 2016 Sandvik Loader) which shall be transferred to the Applicant, free and clear of all claims all in accordance with the AMTI Agreement;
- (c) An order substantially in the form attached hereto as **Schedule “C”** (the “**NTM Approval and Vesting Order**”), granting *inter alia*, the following relief:
- (i) authorizing the Applicant to enter into a transaction (the “**NTM Transaction**”) contemplated by a Sale and Assignment of Equipment

Lease Agreement, substantially in the draft form attached as Exhibit "A" to Affidavit #6 of Hein Frey affirmed on July 25, 2024 (the "**NTM Agreement**") between the Applicant, as seller, and Nyrstar Tennessee Mines – Strawberry Plains LLC ("**NTM**"), an affiliate of the Applicant, as purchaser, in respect of the Applicant's rights, title and interest in the Sandvik Lease (as defined below), and vesting in NTM all of the Applicant's rights, title and interest in and to the Sandvik Lease, free and clear of all claims;

- (d) An order substantially in the form attached hereto as **Schedule "D"** (the "**Omnibus Approval Order**"), granting *inter alia*, the following relief:
 - (i) Approving an equipment tender process (the "**Tender Process**") in respect of certain of the Applicant's equipment and parts inventory, and granting certain ancillary relief, all as described in detail below; and
- (e) such further and other relief as counsel for the Applicant may request and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

A. Capitalized Terms

1. Capitalized terms used but not otherwise defined in this Application have the meanings ascribed to them in the Affidavit #6 of Hein Frey affirmed July 25, 2024 (the "**Frey Affidavit #6**") and the ARIO.

B. Overview

2. On December 18, 2023, this Court granted the Initial Order with respect to the Applicant pursuant to the CCAA, granting, among other things:

- (a) the Stay Period in favour of the Applicant, until and including December 28, 2023;
- (b) the Administration Charge up to the maximum of \$350,000;
- (c) the Directors' Charge up to the maximum of \$650,000;

- (d) the Applicant's ability to borrow up to a maximum of \$4,000,000 under a debtor-in-possession credit facility (the "**DIP Facility**") pursuant to a DIP Term Sheet (the "**DIP Term Sheet**"), among the Applicant, as borrower and Trafigura US Inc., as interim lender (the "**Interim Lender**") and corresponding Interim Lender's Charge;
 - (e) that FTI Consulting Canada Inc. be appointed as Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"); and
 - (f) authority for the Applicant to pay the Initial Hardship Payment.
3. On December 28, 2023, this Court granted the ARIO, which, among other things:
- (a) extended the Stay Period up to and including February 29, 2024;
 - (b) authorized the Applicant to borrow up to \$21,000,000 from the Interim Lender, under the DIP Facility together with a corresponding increase in the amount of the Interim Lender's Charge;
 - (c) increased the amount of the Administration Charge to \$800,000;
 - (d) increased the amount of the Directors' Charge to \$1,200,000;
 - (e) granted the Interim Lender's Charge, the Administration Charge and the Directors' Charge priority ahead of secured creditors pursuant to ss. 11.2(2), 11.51(2) and 11.52(2) of the CCAA; and
 - (f) authorized the Applicant to, in its discretion, make a Supplemental Hardship Payment to terminated or temporarily laid off employees.
4. On February 27, 2024, this Court granted an Order (the "**SISP Order**"), which, among other things:
- (a) extended the Stay Period until June 30, 2024;
 - (b) approved a sale and investment solicitation process for offers or proposals to purchase, or invest in, all or substantially all of the Property and business of the Applicant (the "**SISP**");

- (c) approved the engagement letter dated as of February 2, 2024 between the Applicant and FTI Capital Advisors-Canada ULC (the "**Financial Advisor**"); and
- (d) granted the Financial Advisor the benefit of the Administration Charge.

5. On March 7, 2024, this Court granted an order (the "**Approval and Vesting Order**") which, among other things, approved the sale of the Applicant's interest in the Epiroc Lease (as defined in the Approval and Vesting Order) to Breakwater-Resources Ltd., pursuant to a sale and assignment agreement dated and effective as of February 28, 2024.

6. On June 28, 2024, this Court granted an Order (the "**KERP Order**") which, among other things:

- (a) extended the Stay Period up to and including August 2, 2024;
- (b) authorized the Company to borrow an additional \$5,500,000 from the Interim Lender pursuant to the DIP Facility for an aggregate principal amount of \$26,500,000, together with a corresponding increase in the amount of the Interim Lender's Charge; and
- (c) approved a KERP (as attached to, and defined in, the KERP Order) in respect of the Company's Key Employees.

C. Stay Extension

7. The current Stay Period expires on August 2, 2024. The Applicant seeks an extension of the Stay Period up to and including October 31, 2024.

8. Since the Applicant last appeared before this Court, the Applicant has:

- (a) updated the Life of Mine schedule, to incorporate the most recent geological test results resulting in a higher confidence mine plan;
- (b) developed an updated mine plan that increases the life of the Mine and, subject to improvements in operating costs and external market factors, will increase the prospects of the reopening of the Mine;

- (c) started a detailed redesign of all potential mining areas as part of optimization with an anticipated completion date of end of Q3.;
- (d) advanced discussions with contract operators with interest in potentially operating the Mine in the short to medium term;
- (e) worked and continues to work cooperatively with representatives of the Canada Revenue Agency (“**CRA**”) to provide CRA with information it requires to audit and otherwise review the Company’s input tax credits;
- (f) sought and considered financing alternatives for the financing of its Insurance Policy premium;
- (g) communicated with many of its suppliers with respect to pre-filing payments owing to them;
- (h) developed information and prepared a presentation for the Union and advanced an agenda and proposed timelines for future and further negotiations;
- (i) held discussions at a virtual meeting with the national president of the Union and locally elected representatives (collectively, the “**Union Representatives**”);
- (j) negotiated an engagement letter with Grant Thornton LLP for the purpose of providing the Report of Financial Information, which, at the present time, is anticipated to be finalized and executed in the following weeks;
- (k) exchanged drafts of a non-disclosure agreement with the Union, in order to allow the disclosure of summary performance information to the Union Representatives;
- (l) Communicated with the British Columbia Ministry of Labour, Employment Standards Branch with respect to claims commenced by former employees in breach of the ARIO;
- (m) developed the Tender Process and continues to prepare the information required for its launch;

- (n) with the input and assistance of the Monitor, developed the process by which the Sandvik Lease would be advertised for sale to third parties, prepared the materials required for such advertisement and made such advertisements for a period of two weeks all as described below;
- (o) negotiated and finalized the terms of the AMTI Agreement and executed the AMTI Agreement;
- (p) negotiated and drafted the term of the NTM Agreement, which execution is anticipated in the coming days;
- (q) discussed with, and obtained the consent of, the Interim Lender to the AMTI Transaction, the NTM Transaction and the Tender Process and confirmed the Interim Lender's support for the further stay extension;
- (r) attended to the reporting required pursuant to the Amended DIP Term Sheet;
- (s) held weekly status update meetings with the Monitor, the Monitor's advisors and the advisors to the Company;
- (t) continued work on reconciliation of underfunded amounts in the defined contribution pension plan, and addressed inquiries from the Union regarding same;
- (u) held meetings with the Wei Wai Kum First Nation and the We Wai Kai First Nation on general operational matters, potential service agreements, introduction to the new Impact Benefit Agreement representative and the life of mine committee meeting; and
- (v) with assistance of the Monitor, prepared updated cash flow forecast (the **"Updated Cash Flow Forecast"**).

9. The Applicant requires additional time to implement the Tender Process and continue its discussions with stakeholders, including the Union and the First Nations and continue discussions with potential third party operators, on the Restart Plan. The Applicant is working in good faith to advance the Restart Plan and hopefully conclude a transaction that will see a restructured Applicant resume mining operations.

D. AMTI Transaction

10. The Applicant and AMTI are parties to five financing leases (collectively the "**AMTI Financing Lease**"). AMTI has filed financing statements in the British Columbia Personal Property Registry ("**PPR**").

11. Prior to the commencement of the CCAA Proceedings, one of the pieces of equipment financed by AMTI was irretrievably buried underground following a fall of ground (the "**Destroyed AMTI Equipment**").

12. At various points during the CCAA Proceedings, the Applicant and AMTI discussed the return to AMTI, or buy out by the Applicant or one of its affiliates, of the AMTI Equipment. AMTI expressed a strong interest in the return of the AMTI Equipment.

13. Since the Mine is in care and maintenance at this time, the Applicant does not require the AMTI Equipment.

14. On May 28, 2024, AMTI's counsel on behalf of AMTI, delivered a non-binding offer to purchase the AMTI Equipment (the "**Initial AMTI Offer**") in exchange for a cancellation of the amounts owed to AMTI under the AMTI Financing Lease and a cash amount (the "**Cash Amount**"). The Initial AMTI Offer described AMTI's value assumptions for the AMTI Equipment.

15. On February 16, 2024, the Applicant had obtained an appraisal of the AMTI Equipment from Rouse Services Canada Ltd. (the "**AMTI Rouse Appraisal**"). The values ascribed to the AMTI Equipment in the Initial AMTI Offer and the AMTI Rouse Appraisal differed significantly.

16. To assist arriving at an agreed upon Cash Amount, a third appraisal was obtained from Allen Repairs & Appraisals Inc. (the "**Allen Appraisal**").

17. Following receipt of the Allen Appraisal, the Applicant and AMTI exchanged counter-offers and on July 25, 2024, entered into the AMTI Agreement. The AMTI Agreement includes a Cash Amount that is superior to that originally offered by AMTI in the AMTI Initial Offer.

18. Pursuant to the AMTI Agreement, AMTI agrees to: (i) release the Applicant of all amounts it owes under the AMTI Financing Lease, (ii) pay the Applicant a Cash Amount of \$295,000, and (iii) transfer title to the AMTI Destroyed Equipment to the Applicant, in exchange

for which the Applicant agrees to sell the AMTI Equipment to AMTI and seek an approval and vesting order in respect of it.

19. The purchase price payable by AMTI under the AMTI Agreement reflects: (i) the appraised values of the AMTI Equipment, (ii) the secured position of AMTI vis-à-vis the AMTI Equipment, and (iii) the amounts owed to AMTI, including arrears under the AMTI Financing Lease.

20. The Monitor is supportive of the AMTI Transaction.

E. NTM Transaction

21. The Applicant and Sandvik Canada, Inc. (t/a Sandvik Customer Finance Canada) ("**Sandvik**") entered into a financial lease (the "**Sandvik Lease**") with respect to 4 pieces of equipment (the "**Sandvik Equipment**"). TPTE guaranteed the Applicant's obligations under the Sandvik Lease. Sandvik has registered financing statements in the PPR in respect of the Sandvik Equipment.

22. The Applicant does not require the Sandvik Equipment.

23. NTM owns and operates 3 zinc mines in Tennessee. Earlier in the CCAA Proceedings, NTM indicated an interest in purchasing the Sandvik Equipment.

24. The Applicant obtained an appraisal of the Sandvik Equipment from Rouse (the "**Sandvik Rouse Appraisal**"). The Sandvik Rouse Appraisal revealed that the Applicant had significant equity in the Sandvik Equipment.

25. The Applicant advertised the Sandvik Lease for sale with a view to ensuring that no arm's length party would be willing to enter into a transaction with respect to the Sandvik Lease that would yield a greater return to the Applicant than the NTM Transaction.

26. The Applicant, with the assistance of the Monitor, arranged for an advertisement (the "**Sandvik Lease Ad**") to be published in the weekly and daily electronic newsletters of the Northern Miner. The Northern Miner is a well-established and widely-distributed mining and exploration publication distributed to approximately 12,000 subscribers and there are 3,500 subscribers on the daily newsletter.

27. The Sandvik Lease Ad was published in the weekly newsletter on July 11 and July 18, 2024 and in the daily newsletter from July 15th to July 22nd.

28. The Monitor received no expressions of interest regarding the assumption of the Sandvik Lease. As a result, NTM and the Applicant are expected to entered into the NTM Agreement, and Sandvik is expected to consent to such assignment.

29. The NTM Transaction contemplates that NTM will assume the lease for the Sandvik Equipment and the obligation to make ongoing lease payments and will also pay Sandvik certain arrears lease payments. In addition, NTM will pay the Applicant, in cash, the amount of \$2,000,000, which reflects the equity value of the lease for the Sandvik Equipment based on the fair market value described in the Sandvik Rouse Appraisal.

30. The NTM Agreement fully recognizes the Applicant's equity in the Sandvik Equipment since the price NTM is paying to the Applicant is based on fair market value and not a reduced forced sale value.

31. Sandvik is agreeable to NTM assuming the Sandvik Lease and the beneficiaries of the Court-Order Charges, including the Interim Lender, are expected to consent to the release of their charges vis-à-vis these assets.

32. The Monitor supports the NTM Agreement.

F. Tender Process

33. As part of the review of its operations, the Applicant is identifying pieces of equipment and equipment parts it owns but no longer requires (the "**Inventory Classification**") (collectively, the "**Tendered Assets**").

34. With the assistance of the Monitor, the Applicant has developed a process pursuant to which, following the Company's Inventory Classification, the Applicant will solicit offers for the Tendered Assets (the "**Tender Process**").

35. The Applicant has currently identified thousands of pieces of equipment to categorize. It is anticipated that the Applicant will require until the end of September to complete the Inventory Classification to ensured accurate stock valuation and categorization. To expedite the process,

the Applicant is in negotiations with a specialized company to support the Applicant to support its Inventory Classification in an expedite manner.

36. The most salient terms of the Tender Process are as follows:

- (a) the Tender Process will be conducted by the Applicant under the supervision, and with the assistance, of the Monitor;
- (b) the Tender Process canvasses interest from Prospective Purchasers in some or all of the parcels of Tendered Assets;
- (c) The Applicant, with the assistance of the Monitor, will prepare a list of Prospective Purchasers to whom Invitation for Offers will be sent;
- (d) The Applicant, with the assistance of the Monitor, will populate a virtual data room (the "VDR") containing details, and where available, pictures, of the Tendered Assets. Execution of a non-disclosure agreement will not be required in order to gain access to the VDR;
- (e) Offers for Tendered Assets must be (i) in the Form of Offer prepared by the Applicant and posted in the VDR (or if changes are made, accompanied by a comparison to the Form of Offer), (ii) received by the Applicant (with a copy to the Monitor) no later than 4PM (Pacific Time) on a day that is not later than 45 days following the date that the Invitation for Offers is sent to the Prospective Purchaser, or on such specific date as might be set by the Applicant with the Monitor's consent. and (iii) accompanied with a deposit equal to 10% of the purchase price offered for the Tendered Assets; and
- (f) if the Applicant receives one or more acceptable Offers, it will negotiate purchase agreements with Prospective Purchasers and, unless not required pursuant to the terms of the Omnibus Approval Order if granted by this Honourable Court, will seek the CCAA Court's approval of such agreements, and the vesting of the assets described therein to the purchaser party thereto free and clear of all claims.

37. The Tender Process allows Prospective Purchasers to make an Offer in respect of individual parcels of Tendered Assets. As such, the monetary value of some of the transactions arising out of the Tender Process may be relatively small (each, a “*De Minimis Transaction*”).

38. In order to mitigate transaction costs in respect of *De Minimis Transactions* (if any), the Applicant is seeking an Order (the “**Omnibus Approval Order**”): (i) authorizing the Applicant, with the prior consent of the Monitor, to dispose of redundant or non-material assets up to \$1,000,000 for individual transactions, and up to \$4,000,000 in the aggregate, for all transactions arising from the Tender Process, notwithstanding the limits set out in the ARIO; (ii) providing a mechanism to advise the Service List and any creditors with financing statements registered in the PPR over the equipment to be sold of the Applicant’s intention to complete a *De Minimis Transaction*, and (iii) if no Notice of Objection is received, allowing the Applicant to complete such transaction without the need to return to the CCAA Court. The Omnibus Approval Order, if granted, also contains a mechanism allowing purchased assets in *De Minimis Transactions* to vest in purchasers, free and clear of all claims, upon the filing of a Monitor’s certificate.

G. Interim Financing

39. On December 17, 2023, the Applicant entered into the DIP Term Sheet with the Interim Lender. The Initial Order approved the DIP Term Sheet, with a borrowing limit of up to \$4,000,000. The Initial Order also granted the Interim Lender’s Charge to secure the obligations of the Applicant to the Interim Lender under the DIP Term Sheet to a maximum amount of \$4,000,000 (plus accrued and unpaid interest, fees and expenses).

40. The ARIO was granted on December 28, 2023, which, *inter alia*, approved an increase to the borrowing limit under the DIP Term Sheet up to the principal amount of \$21,000,000, and granted an increase to the Interim Lender’s Charge accordingly.

41. The KERP Order increased the borrowing limit to \$26,500,000 and granted an increase to the Interim Lender’s Charge accordingly.

42. The Applicant now seeks authority to increase its borrowing limit by \$7,500,000, for total aggregate borrowings under the Amended DIP Term Sheet of \$34,000,000, and a commensurate increase to the Interim Lender’s Charge. The Applicant intends to utilize the funds from the Amended DIP Term Sheet in accordance with the Updated Cash Flow Forecast.

43. The Company will continue to require interim financing to fund its operations during the proposed extension of the Stay Period. Access to this additional interim financing is necessary to the Applicant's ongoing working capital requirements and the cost of these proceedings.

PART 3: LEGAL BASIS

44. The Applicant relies on:

- (a) the CCAA;
- (b) the *Supreme Court Civil Rules*, B.C. Re. 168/2009, as amended;
- (c) the inherent and equitable jurisdiction of this Honourable Court; and
- (d) such further and other legal basis as counsel may advise and this Honourable Court may allow.

The Stay of Proceedings Should be Extended

45. The current Stay Period expires on August 2, 2024. The Applicants seek an extension of the Stay Period until October 31, 2024.

46. Pursuant to section 11.02(2) of the CCAA, the Court may grant an extension of a stay of proceedings if the Court is satisfied that (a) the applicant has acted, and is acting, in good faith and with due diligence; and (b) that circumstances exist that make the order appropriate.

CCAA, s. 11.02(2).

47. Both the examination of whether a debtor has acted in good faith, and the appropriateness of a request for an order extending a stay of proceedings, must be viewed within the lens of the remedial objectives of the CCAA and in turn the purpose of a stay of proceedings.

Yukon Zinc Corporation (Re), 2015 BCSC 1219 (CanLII), paras 24-25 and 36-38;
Century Services Inc. v Canada (Attorney General), 2010 SCC 60 (CanLII), [2010] 3 SCR 379 [**“Century Services”**], para 70.

48. The purpose of a stay of proceedings under the CCAA is well established: it is designed to give companies under CCAA protection the “breathing room” required to restructure with a

view to maximizing recoveries, whether the restructuring takes place as a going concern or as an orderly liquidation or wind-down.

Target Canada Co. (Re), 2015 ONSC 303 (CanLII), at para 8;
Century Services, at para 14;
Imperial Tobacco Canada Limited, et al, Re, 2019 ONSC 1684, para 9;
Industrial Properties Regina Limited v Copper Sands Land Corp., 2018 SKCA 36, paras 19 and 21.

49. Extending the Stay Period in this case is reasonable and appropriate. The evidence is clear that the Applicant, under the supervision of the Monitor, has acted in good faith and with due diligence in the period that has elapsed since the above noted orders were granted.

50. An extension of the Stay Period will provide the Applicant with continued breathing space to commence the Tender Process and continue its discussions with stakeholders, including the Union and the First Nations, as well as continue its discussions with potential third party operators, on the Restart Plan. The Applicant is working in good faith to advance the Restart Plan and to hopefully conclude a transaction that will see a restructured Applicant resume mining operations.

51. The Monitor supports the proposed extension to the Stay Period.

52. For the reasons set out above, the Applicant submits that the Stay Period should be extended until October 31, 2024.

The Interim Financing and Increase to the DIP Lender's Charge Should be Approved

53. The Applicant is seeking to increase the borrowing limit under the DIP Facility up to the principal amount of \$34 million, together with a corresponding increase of the DIP Lender's Charge.

54. Section 11.2 of the CCAA gives the Court explicit authority to grant the DIP Lender's Charge. In turn, sub-section 11.2(4) of the CCAA provides that in determining whether to grant the DIP Lender's Charge, the Court should consider, among other things, the following factors:

- (a) The period during which the company is expected to be subject to proceedings under the CCAA;

- (b) How the company's business and financial affairs are to be managed during the proceedings;
- (c) Whether the company's management has the confidence of its major creditors;
- (d) Whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) The nature and value of the company's property;
- (f) Whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) The monitor's findings in its report, if any.

CCAA, ss. 11.2, 11.2(4).

55. The Applicant will continue to require interim financing to fund its operations during the proposed extension of the Stay Period. Access to this additional interim financing is necessary to the Applicant's ongoing working capital requirements and the cost of these proceedings.

56. An increase in the DIP Facility will allow the Applicant to, among other things, continue its restructuring efforts, and, in the interim, maintain the value of its property, assets and undertakings for the benefit of its stakeholders.

57. Based on the cash flow forecast provided by the Applicants, and prepared with the assistance of the Monitor, the Applicants will require up to \$34 million to meet its ongoing liabilities.

58. The Applicants seek an increase to the interim financing of up to \$34 million in order to facilitate an efficient and orderly restructuring. The Applicant believes this amount should be sufficient to allow it to carry out its restructuring efforts during the proposed Stay Period. Additionally, the DIP Facility increased is further supported by the Monitor.

59. Accordingly, the Applicant submits that an increase in the DIP Facility up to \$34 million is reasonable and appropriate in the circumstances.

The Tender Process Should be Approved

60. In exercising their broad powers to facilitate restructurings under the CCAA, Courts consider a number of factors in connection with the approval of a sales process, including, *inter alia*:

- (a) whether a transaction is warranted at this time;
- (b) whether the sale will benefit the whole economic community;
- (c) whether creditors have a *bona fide* reason to object to a sale of the business;
and
- (d) whether there is a better viable alternative.

Nortel Networks Corp. Re, 2009 CarswellOnt 4467, [2009] O.J. No. 3169
[**Nortel**], at para 49; *Brainhunter Inc., Re*, 2009 CarswellOnt 8207, [2009] O.J. No. 5578, at para
13.

61. Courts have also held that the factors set out in section 36(3) of the CCAA, relative to the approval of an eventual transaction, are relevant considerations in approving a sale process. The factors enumerated under section 36 are:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the Court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, s.36(3)

62. Courts have also considered additional factors in approving a sale process under the CCAA:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will, in the circumstances, optimize the chances of securing the best possible price for the assets for sale.

Walter Energy Canada Holdings, Inc., 2016 BCSC 1076 [**Walter**], at paras 20-21;
Tacora Resources Inc. (Re), 2023 ONSC 6162, at paras 166, 167.

63. The Tender Process is described in detail in the draft Tender Process Letter attached as Exhibit "G" of Frey Affidavit #6.

64. The most salient terms of the Tender Process are summarized on paragraph 36 above.

65. The Petitioner is of the view that the proposed Tender Process should be approved for the following reasons:

- (a) a transaction is warranted at this time as the Petitioner is insolvent, has a liquidity crisis, has placed the Mine in care and maintenance and has terminated or temporarily laid-off the majority of its employees. The Tender Process will provide the opportunity for the Petitioner to maximize the value of its surplus or redundant assets for the benefit of its many stakeholders, reducing its reliance on Interim Financing;
- (b) the Tender Process will benefit the whole economic community as it is designed to canvass the market broadly to identify offers for the Tendered Assets that maximize value for the Petitioner's stakeholders;
- (c) the Tender Process was developed in consultation with the Monitor; and

(d) the Monitor is supportive of the Tender Process.

66. Having regard to the circumstances of these CCAA proceedings, the Petitioner submits that the proposed Tender Process is reasonable and appropriate and should be granted.

The AMTI and the NTA Transactions should be Approved

67. The AMTI Transaction and the NTA Transaction (collectively the “**Sale Transactions**”) are described in detail in the Hein Affidavit #6. The Petitioner respectfully submits that the Sale Transactions should be approved, as it is in the best interest of the Petitioner’s estate and its stakeholders.

68. Pursuant to section 36 of the CCAA, this Court has the jurisdiction to approve a sale or disposition of assets outside of the ordinary course of business. Sections 36(1), (2), (3), (4), and (6) of the CCAA provide as follows:

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

- (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
 - (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Assets may be disposed of free and clear

- (6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Nortel, at paras 35-41 and 48; CCAA, ss 36(1), 36(2), 36(4), 36(6), 36(7)

69. Section 36(3) of the CCAA, sets out the non-exhaustive factors for the Court to consider in determining whether to approve a debtor company's sale or disposition of assets outside of the ordinary course. In addition, section 36(4) of the CCAA imposes additional factors for the Court to consider when dealing with a sale to a related party.

70. Also relevant when reviewing a sale or disposition of assets in a CCAA proceeding are the factors set out in *Royal Bank v Soundair Corp.*, which include considering whether sufficient effort was made to obtain the best price, the interests of all parties have been considered, the efficacy and integrity of the sales process and whether the process was fair.

Royal Bank v Soundair Corp., 1991 CarswellOnt 205 (ONCA) at para 16; *Nelson*, supra at paras 37-38; *Pricewaterhousecoopers Inc. v 1905393 Alberta Ltd.*, 2019 ABCA 433 at paras 10-13

71. A Court should also give effect to the business judgment rule, which affords deference to the exercise of the commercial and business judgment of the debtor company in the context of

an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient.

Re Bloom Lake, 2015 QCCS 1920 at para 28

72. The Petitioner submits that the Sale Transaction satisfies the criteria in section 36(3) of the CCAA and the *Soundair* principles as follows:

(a) **The AMTI Transaction:**

- (i) The AMTI Equipment is not required by the Petitioner as part of its care and maintenance plan for the Mine;
- (ii) The purchase price payable by AMTI under the AMTI Agreement is reasonable and reflects: (i) the appraised values of the AMTI Equipment, (ii) the secured position of AMTI vis-à-vis the AMTI Equipment, and (iii) the amounts owed to AMTI, including arrears under the AMTI Financing Lease;
- (iii) The total consideration under the AMTI Agreement represents the highest and best consideration that realistically can be obtained for the AMTI Equipment in the current circumstances;
- (iv) the interests of the affected parties, including the Petitioner's creditors and other stakeholders have been considered;
- (v) the beneficiaries of the Court-Order Charges have consented to the release of their charges vis-à-vis the AMTI Equipment;
- (vi) prior to entering into the AMTI Agreement, the Applicant discussed the terms thereof with the Monitor and its counsel; and
- (vii) The Monitor is supportive of the AMTI Agreement.

(b) **The NTM Transaction:**

- (i) The Sandvik Equipment is not required by the Petitioner as part of its care and maintenance plan for the Mine;

- (ii) The Sandvik Rouse Appraisal revealed that the Applicant had significant equity in the Sandvik Equipment;
- (iii) The Applicant advertised the Sandvik Lease for sale with a view to ensuring that no arm's length party would be willing to enter into a transaction with respect to the Sandvik Lease that would yield a greater return to the Applicant than the NTM Transaction;
- (iv) The Applicant, with the assistance of the Monitor, arranged for an advertisement to be published in the weekly and daily electronic newsletters of the Norther Miner. The Norther Miner is a well-established and widely-distributed mining and exploration publication. The weekly edition of the Northern Miner is distributed to approximately 12,000 subscribers and there are approximately 3,500 subscribers on the daily newsletter;
- (v) The Sandvik Lease Ad was published in the weekly newsletter on July 11 and July 18, 2024 and in the daily newsletter from July 15th to July 22nd;
- (vi) The Monitor received no expressions of interest regarding the assumption of the Sandvik Lease;
- (vii) The NTM Transaction contemplated that NTM will assume the lease for the Sandvik Equipment and the obligation to make ongoing lease payments and will also pay Sandvik certain arrears lease payments. In addition, NTM will pay the Applicant, in cash, the amount of \$2,000,000, which reflects the equity value of the lease of the Sandvik Equipment based on the fair market value described in the Sandvik Rouse Appraisal;
- (viii) Sandvik is agreeable to NTM assuming the Sandvik Lease;
- (ix) the interests of the affected parties, including the Petitioner's creditors and other stakeholders have been considered;
- (x) the beneficiaries of the Court-Order Charges are expected to consent to the release of their charges vis-à-vis the Sandvik Equipment; and

(xi) The Monitor is supportive of the NTM Agreement.

73. With respect to the NTM Transaction, the evidence is clear that the criteria set out in Section 36(4) of the CCAA is satisfied. Good faith efforts were made to sell the Sandvik Equipment to persons who are not related to the company. Additionally, the Monitor received no expressions of interest regarding the assumption of the Sandvik Lease.

74. Notice of this application has been given to all secured creditors of the Petitioner as required under section 36(2) of the CCAA.

75. Accordingly, the Petitioner submits that the Sale Transaction satisfies the criteria under section 36(3) of the CCAA and the *Soundair* factors and should be approved by this Honourable Court.

The CAFO Agreement and should be Approved

76. Section 11.2 (1) of the CCAA provides that “on application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made”.

77. Section 11.2(2) provides that the court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

78. Sub-section 11.2(4) of the CCAA provides that in determining whether to grant the charge, the Court should consider, among other things, the following factors:

- (a) The period during which the company is expected to be subject to proceedings under the CCAA;
- (b) How the company’s business and financial affairs are to be managed during the proceedings;
- (c) Whether the company’s management has the confidence of its major creditors;

- (d) Whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) The nature and value of the company's property;
- (f) Whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) The monitor's findings in its report, if any.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Hein Frey, affirmed December 17, 2023
2. Affidavit #2 of Hein Frey, affirmed December 21, 2023
3. Affidavit #3 of Hein Frey, affirmed February 21, 2024
4. Affidavit #4 of Hein Frey affirmed June 17, 2024
5. Affidavit #6 of Hein Frey affirmed July 25, 2024
6. Affidavit #1 of Michèle Hay, sworn February 22, 2024
7. Pre-Filing Report of the Proposed Monitor, dated December 17, 2023
8. First Report of the Monitor, dated December 21, 2023
9. Second Report of the Monitor, dated February 23, 2024;
10. Third Report of the Monitor, dated June 18, 2024, and
11. Fourth Report of the Monitor, to be filed

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:
 - (i) a copy of the filed application response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person.

Date: July 26, 2024

Per: 

Signature of Jonathan B. Ross
Counsel for the Applicant, Myra Falls
Mine Ltd.

To be completed by the Court only:
Order made

in the terms requested in paragraphs _____ of Part 1
of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Associate Judge

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

other

SCHEDULE "A"

AMTI APPROVAL AND VESTING ORDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

ORDER MADE AFTER APPLICATION

(AMTI Approval and Vesting Order)

BEFORE THE HONOURABLE)
JUSTICE FITZPATRICK) 02/08/2024
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 2nd day of August, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including the Affidavit #6 of Hein Frey affirmed July 25, 2024 (the "**Frey Affidavit #6**"), and the Fourth Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**") dated July [●], 2024; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated and effective as of July 25, 2024 (the "**AMTI Agreement**") between the Petitioner and Amalgamated Mining & Tunnelling Inc. (the "**Purchaser**"), a copy of which is attached as Exhibit "B" to the Frey Affidavit #6 is hereby approved, and the AMTI Agreement is commercially reasonable. The execution of the AMTI Agreement

by the Petitioner is hereby authorized and approved, and the Petitioner is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the AMTI Agreement (the "**Purchased Assets**");

2. upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Monitor's Certificate**"), all of the Petitioner's right, title and interest in and to the Purchased Assets described in the AMTI Agreement shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the ARIO dated December 28, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets;
3. upon delivery by the Monitor to the Purchaser of the Monitor's Certificate, all of the Purchaser's right, title and interest in and to the 2016 Sandvik LH514 Loader bearing serial number L614D818 (the "**2016 Sandvik Loader**") shall vest absolutely in the Petitioner in fee simple, free and clear of and from any Claims and Encumbrances of the Purchaser, and, for greater certainty, this Court orders that all of the Encumbrances of the Purchaser affecting or relating to the 2016 Sandvik Loader are hereby expunged and discharged as against the 2016 Sandvik Loader;
4. the Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof;

5. the Petitioner shall not be required to hold the Purchase Price (as defined in the AMTI Agreement) in trust for the benefit of any Person but rather shall be entitled to use the funds comprising the Purchase Price in the ordinary course of its operations, subject to the ARIO and the other orders made in these proceedings;
6. notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Petitioner now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Petitioner, the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable by creditors of the Petitioner, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation;
7. the Petitioner or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order;
8. endorsement of this Order by counsel appearing on this application other than the counsel for the Petitioner is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or Administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant

representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross
Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED

Schedule "B"

FORM OF MONITOR'S CERTIFICATE

No. S238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

MONITOR'S CERTIFICATE

RECITALS:

1. Pursuant to an Order of the Honourable Justice Fitzpatrick of the Supreme Court of British Columbia (the "**Court**") dated December 18, 2024, as subsequently amended and restated on December 28, 2024, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of Myra Falls Mine Ltd. (the "**Petitioner**").
2. Unless otherwise indicated herein, all capitalized terms in this Monitor's Certificate shall have the meaning ascribed to them in the AMTI Agreement dated July 25, 2024 among the Petitioner and Amalgamated Mining & Tunnelling Inc. All references to Purchaser shall include any assignee, if any, to the Purchaser.
3. Pursuant to an Order of the Court, dated August 2, 2024 (the "**Sale Approval Order**"), among other things, the Court approved the AMTI Agreement dated as of July 25, 2024 (the "**AMTI Agreement**") and provided for the vesting in the Purchaser of the Petitioner's right, title, and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate

confirming that the Monitor has been advised by the Petitioner that the sale transaction contemplated by the AMTI Agreement has occurred.

THE MONITOR CERTIFIES the following:

1. The Monitor has been advised by the Petitioner that the sale transaction contemplated by the AMTI Agreement has occurred.

This Monitor's Certificate was executed by the Monitor at Vancouver on **[insert date]**, 2024.

FTI CONSULTING CANADA INC., in its capacity
as Court-appointed Monitor of Myra Falls Mine Ltd.
and not in its personal or corporate capacity

By: _____
Authorized Signatory

Name: _____
Title: _____

No. S238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND
ARRANGEMENT OF

MYRA FALLS MINE LTD.

ORDER
(Approval and Vesting Order)

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
Bentall 5, Suite 2300,
550 Burrard Street
Vancouver, BC V6C 2B5

Attention: Jonathan B. Ross

Tel: 604.683.6498 Fax: 604.683.3558

File No. A172589

JBR/md/msh

SCHEDULE "B"

NTM APPROVAL AND VESTING ORDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

ORDER MADE AFTER APPLICATION

(NTM Approval and Vesting Order)

BEFORE THE HONOURABLE)
JUSTICE FITZPATRICK) 02/08/2024
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 2nd day of August, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including the Affidavit #6 of Hein Frey affirmed July 25, 2024 (the "**Frey Affidavit #6**"), and the Fourth Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**") dated July [●], 2024; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Sale and Assignment of Equipment Lease Agreement dated and effective as of [●], 2024 (the "**NTM Agreement**") between the Petitioner and Nyrstar Tennessee Mines – Strawberry Plains LLC (the "**Purchaser**"), a copy of which is attached as **Schedule "B"** is hereby approved, and the NTM Agreement is commercially reasonable. The execution of the NTM Agreement by the Petitioner is hereby authorized and approved, and the Petitioner

is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the leases described in the NTM Agreement (the "**Purchased Lease**").

2. Provided that nothing in this Order shall release or otherwise affect the interest of Sandvik Canada Inc. (t/a Sandvik Customer Finance Canada) in the Leased Equipment (as defined below), upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as **Schedule "C"** hereto (the "**Monitor's Certificate**"), all of the Petitioner's right, title and interest in and to the Purchased Lease (including for greater certainty the Petitioner's right, title and interest in any leased equipment thereunder (the "**Leased Equipment**") shall be sold, assigned, transferred and vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the ARIO dated December 28, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Lease or Leased Equipment are hereby expunged and discharged as against the Purchased Lease and Leased Equipment.
3. The Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.
4. The Petitioner shall not be required to hold the Purchase Price (as defined in the NTM Agreement) in trust for the benefit of any Person but rather shall be entitled to use the funds comprising the Purchase Price in the ordinary course of its operations, subject to the ARIO and the other orders made in these proceedings.

5. Notwithstanding:

- (a) these proceedings;
- (b) any applications for a bankruptcy order in respect of the Petitioner now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made by or in respect of the Petitioner,

the vesting of the Purchased Lease and Leased Equipment in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable by creditors of the Petitioner, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- 6. The assignment of the Purchased Lease is valid and binding upon all of the counterparties to the Purchased Lease, notwithstanding any restriction or prohibition contained in such Purchased Lease relating to the assignment thereof, including, but not limited to, any provision requiring the consent of any party to the transfer, conveyance, or assignment of the Purchased Lease.
- 7. No counterparty under the Purchased Lease, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of the Purchased Lease hereunder shall make or pursue any demand, claim, action or suit or exercise any right or remedy (including any termination rights) against the Purchaser related to: (a) the Petitioner having sought or obtained relief under the CCAA; (b) the insolvency of the Petitioner; or (c) any failure by the Petitioner to perform a non-monetary obligation under the Purchased Lease and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the date hereof, under the Purchased Lease other than in respect of items (a) – (c) above.

8. The Petitioner or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
9. Endorsement of this Order by counsel appearing on this application other than the counsel for the Petitioner is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or Administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross
Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED

Schedule "B"

Schedule "C"

FORM OF MONITOR'S CERTIFICATE

No. S238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

MONITOR'S CERTIFICATE

RECITALS:

1. Pursuant to an Order of the Honourable Justice Fitzpatrick of the Supreme Court of British Columbia (the "**Court**") dated December 18, 2024, as subsequently amended and restated on December 28, 2024, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of Myra Falls Mine Ltd. (the "**Petitioner**").
2. Unless otherwise indicated herein, all capitalized terms in this Monitor's Certificate shall have the meaning ascribed to them in the NTM Agreement dated [●], 2024 among the Petitioner and Nyrstar Tennessee Mines – Strawberry Plains LLC. All references to Purchaser shall include any assignee, if any, to the Purchaser.
3. Pursuant to an Order of the Court, dated August 2, 2024 (the "**Sale Approval Order**"), among other things, the Court approved the NTM Agreement dated as of [●], 2024 (the "**NTM Agreement**") and provided for the vesting in the Purchaser of the Petitioner's right,

title, and interest in and to the Purchased Lease, which vesting is to be effective with respect to the Purchased Lease upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has been advised by the Petitioner that the sale transaction contemplated by the NTM Agreement has occurred.

THE MONITOR CERTIFIES the following:

1. The Monitor has been advised by the Petitioner that the sale transaction contemplated by the NTM Agreement has occurred.

This Monitor's Certificate was executed by the Monitor at Vancouver on **[insert date]**, 2024.

FTI CONSULTING CANADA INC., in its capacity
as Court-appointed Monitor of Myra Falls Mine Ltd.
and not in its personal or corporate capacity

By: _____
Authorized Signatory

Name: _____
Title: _____

No. S-238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**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 AND
ARRANGEMENT OF MYRA FALLS MINE LTD.**

PETITIONER

**ORDER
(NTM APPROVAL AND VESTING ORDER)**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
Bentall 5, Suite 2300,
550 Burrard Street
Vancouver, BC V6C 2B5

Attention: Jonathan B. Ross

Tel: 604.683.6498 Fax: 604.683.3558

File No. A172589

MD/SPK

SCHEDULE "C"
OMNIBUS APPROVAL ORDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

ORDER MADE AFTER APPLICATION

(Omnibus Approval Order)

BEFORE THE HONOURABLE)
JUSTICE FITZPATRICK) 02/08/2024
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 2nd day of August, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including the Affidavit #6 of Hein Frey affirmed July 25, 2024 (the "**Frey Affidavit #6**"), and the Fourth Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**") dated July [●], 2024; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE AND DEFINITIONS

1. The time for service of the Notice of Application dated July 26, 2024 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

2. Capitalized terms used in this Order and not otherwise defined herein shall have the meaning given to them in the amended and restated initial order granted in these proceedings by the Honourable Justice Fitzpatrick dated December 28, 2023 (the "ARIO").

APPROVAL OF TENDER PROCESS

3. The tender process substantially in the form set out in the attached **Schedule "B"** to this Order (the "**Tender Process**") is hereby approved and the Petitioner, the Monitor and their respective advisors are hereby authorized and directed to carry out the Tender Process in accordance with its terms and the terms of this Order, and to take such steps and execute such documentation as they consider to be necessary or desirable in carrying out each of their obligations thereunder.

OMNIBUS APPROVAL OF TRANSACTIONS

4. Notwithstanding paragraph 11(a) of the ARIO, the Petitioner shall have the right, with the consent of the Monitor and the Interim Lender, to dispose of Tendered Assets (as defined in the Frey Affidavit #6) pursuant to, and in accordance with, the Tender Process, not exceeding \$1,000,000 in any one transaction or \$4,000,000 in the aggregate, without the need to obtain further approval from this Court.
5. Upon the entering into of one or more definitive transaction documents (collectively, the "**Transaction Documents**") with respect to a Transaction, the Petitioner, in consultation with the Monitor, shall forthwith provide notice of the Transaction to the Service List and to parties holding registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system with respect to the Assets to be sold (if any), substantially in the form attached hereto as **Schedule "C"** (a "**Transaction Notice**"), which Transaction Notice shall include a copy of the Transaction Documents (which Transaction Documents may contain redaction of the purchase price and other financial information if the Petitioner determines, in consultation with the Monitor, that it would be in the best interests of the Petitioner and its estate to do so).
6. Any Person who wishes to object to a Transaction for which it has received or for which it was entitled to receive a Transaction Notice must notify the Petitioner and the Monitor in writing (by service upon counsel to the Petitioner, the Monitor and counsel to the

Monitor at the addresses shown on the Service List) of such objection (a "**Notice of Objection**"), such that the Notice of Objection is received within seven (7) days of the applicable Transaction Notice being provided to the Service List and parties holding registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (if any).

7. If no Notice of Objection is provided within the timeline set out in paragraph 6 above, the Monitor shall, with respect to each Transaction and subject to the terms of the Transaction Documents, deliver a Monitor's certificate to the purchaser in the applicable Transaction (the "**Purchaser**") and the Petitioner, substantially in the form attached as **Schedule "D"** hereto (the "**Monitor's Certificate**").
8. Upon delivery of the Monitor's Certificate to the Purchaser and the Petitioner, the entering into of any such Transaction by the Petitioner is hereby approved and ratified and the execution of the Transaction Documents by the Petitioner is hereby authorized, approved and ratified with such minor amendments as the Petitioner, with the consent of the Monitor, and the Purchaser may agree to in writing.
9. The Monitor shall file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to the Purchaser and the Petitioner and post the Monitor's Certificate to the Monitor's Website.
10. The Petitioner is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of a Transaction and for the conveyance of the purchased Assets set forth in the Transaction Documents and identified in the applicable Transaction Notice (collectively, the "**Purchased Assets**") to the Purchaser, and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Transaction Documents and this Order, and shall not incur any liability as a result thereof.
11. Upon the delivery of the Monitor's Certificate with respect to a Transaction to the Purchaser and the Petitioner, all of the Petitioner's right, title and interest in and to the Purchased Assets for such Transaction shall be sold, assigned, transferred and vest absolutely in the Purchaser, free and clear of, and from, any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts

or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of those Purchased Assets (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the ARIO, and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as, the "**Encumbrances**").

12. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order in respect of the Petitioner now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made by, or in respect of, the Petitioner;

the vesting of Purchased Assets in any Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable by creditors of the Petitioner, nor shall it constitute nor be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

TRANSACTIONS WHERE COURT APPROVAL IS REQUIRED

13. If a Notice of Objection is provided within the timeline set out in paragraph 6 above, or if the amount(s) of the contemplated Transaction(s) exceed those set out in paragraph 4 above, the Petitioner shall bring a Court application to obtain approval of the applicable Transaction, on notice to the Service List, parties holding registrations pursuant to the *Personal Property Security Act* of British Columbia or any other

personal property registry system (if any), and the party who delivered the Notice of Objection (if applicable).

ADDITIONAL PROVISIONS

14. The Petitioner shall not be required to hold the proceeds from any Transaction in trust for the benefit of any Person but rather shall be entitled to use such proceeds in the ordinary course of its operations, subject to the ARIO and the other Orders made in these proceedings.
15. The Petitioner and the Monitor may, from time to time, apply for such further or other directions as may be necessary or desirable to give effect to this Order, including, without limitation, the discharge of their respective powers and duties under this Order, or any matter in connection therewith.
16. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

THIS COURT HEREBY REQUESTS the aid and recognition of other Canadian or foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America having jurisdiction in Canada or in the United States of America, to act in aid of, and to be complementary to, this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross
Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED

Schedule "B"

TENDER PROCESS LETTER - attached

TENDER PROCESS LETTER

Myra Falls Mine Ltd.

Introduction

Myra Falls Mine Ltd. ("**MFM**" or the "**Company**") is a private company that owns and operates the Myra Falls Mine (the "**Mine**") in Strathcona Provincial Park, approximately 90 kilometers southwest of Campbell River, British Columbia.

On December 18, 2023, MFM commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the Supreme Court of British Columbia in the City of Vancouver (the "**Court**") pursuant to an order granted by the Court on the same day (as amended and restated by an order of the Court made December 28, 2023, and as may be further amended or amended and restated from time to time, the "**Initial Order**").

Pursuant to the Initial Order, FTI Consulting Canada Inc., a licensed insolvency trustee, was appointed as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**").

Pursuant to an order made on August 2, 2024 (the "**Tender Process Order**"), MFM was authorized to undertake a tender process (the "**Tender Process**") for the sale of various mining equipment and parts (the "**Assets**") located at the Mine. All offers must be received by the Company, with a copy to the Monitor, no later than by 4 PM Pacific Time on the day that is not later than 45 days following the date that the Invitation for Offers is sent to the Prospective Purchaser, or on such specific date as might be set by the Company with the Monitor's consent.

The Assets available for sale are listed in the virtual data room ("**VDR**"). The rules of, and timeline for, the Tender Process are described below.

Notice of Tender Process

1. As soon as reasonably practicable after MFM's inventory classification is completed:
 - (a) MFM, in consultation and with the assistance of the Monitor, will prepare a list of prospective purchasers (the "**List of Prospective Purchasers**"), including (i) parties that have approached MFM or the Monitor indicating an interest in any of the Assets, (ii) parties suggested by MFM's creditors or their advisors, and (iii) strategic parties and auctioneers of commercial equipment, whom MFM or the Monitor believe may be interested in any of the Assets;
 - (b) MFM shall provide information and documentation to the Monitor to allow the Monitor to create a VDR with respect to the Assets available for sale to prospective purchasers (the "**Prospective Purchasers**");
 - (c) MFM, in consultation and with the assistance of the Monitor, will prepare a Tender Process summary (the "**Invitation for Offers**") outlining the process and inviting prospective purchasers (the "**Prospective Purchasers**") to provide an offer pursuant to the Tender Process;

- (d) MFM, with the assistance of the Monitor, will arrange for the Invitation for Offers to be distributed to the parties on the List of Prospective Purchasers;
- (e) MFM, in consultation and with the assistance of the Monitor, may, but is not required to, cause a notice regarding this Tender Process (the "**Tender Process Notice**"), to be published in one or more trade, industry or other publications as may be considered appropriate; and
- (f) copies of the Invitation for Offers, Tender Process Order, Form of Offer (as defined below), Additional Terms and Conditions of Sale (as defined below), and any other relevant information that the Monitor, in consultation with MFM, considers appropriate, will be published by the Monitor on the Monitor's website at: <http://cfcanada.fticonsulting.com/myrafalls/>.

Offer Submission

2. Offers by Prospective Purchasers in respect of Assets (the "**Offers**") must be submitted by Prospective Purchasers in the form of offer attached as **Schedule "1"** (the "**Form of Offer**") to the additional terms of conditions of sale attached as **Schedule "A"** hereto (the "**Additional Terms and Conditions of Sale**") with any amendments noted by way of blackline to the Form of Offer.
3. All Offers must be received by the Company, with a copy to the Monitor, no later than by **4 PM Pacific Time on the day that is not later than 45 days following the date that the Invitation for Offers is sent to the Prospective Purchaser, or on such specific date as might be set by the Company with the Monitor's consent** (the "**Bid Deadline**").
4. All submitted Offers are subject to the Additional Terms and Conditions of Sale attached as **Schedule "A"** hereto.
5. Offers must be accompanied by a non-refundable good faith cash deposit (the "**Deposit**") equal to 10% of the purchase price contained in the Offer, which Deposit shall be paid to the Monitor and held in trust in a non-interest-bearing trust account. The treatment of the Deposits is outlined in the Additional Terms and Conditions of Sale.
6. If one or more acceptable Offers are received, the Company, in consultation and with the assistance of the Monitor, will negotiate a purchase and sale agreement with one or more Prospective Purchasers, and if required pursuant to the Tender Process Order, the Company will bring an application to the Court for an order approving the transaction(s) contemplated by such purchase and sale agreement(s) and vesting the applicable Assets in the applicable purchaser(s), free and clear of all claims (an "**AVO**").

Inspection of Assets

7. In addition to receiving access to the VDR, Prospective Purchasers shall be permitted to inspect the Assets prior to submitting Offers. To schedule an inspection, Prospective Purchasers shall contact the Monitor at:

Tessa Chiricosta, Consultant
Email: tessa.chiricosta@fticonsulting.com
Phone: 1.416.649.8109

-or-

Mike Clark
Managing Director
Email: Mike.clark@fticonsulting.com
Phone: 1.604.484.9537

8. MFM, the Monitor, and their respective employees, officers, directors, agents, legal counsel other representatives and their respective advisors make no representation, warranty, condition or guarantee of any kind, nature or description as to the conditions of the Assets or the information made available in connection with the Tender Process. Prospective Purchaser must rely solely on their own independent review, investigation and/or inspection of the Assets and information in connection with their participation in the Tender Process.

Communication Protocol

9. Each Prospective Purchaser is prohibited from communicating with any other Prospective Purchaser and their respective affiliates, legal and financial advisors regarding their Offer during the term of the Tender Process, without the written consent of MFM after consultation with the Monitor.
10. To the extent that any interested Prospective Purchaser wishes to engage, discuss, or communicate with any party with an existing contractual relationship with MFM in relation to this Tender Process or the Assets, such parties may only do so after advising MFM and the Monitor and obtaining MFM and the Monitor's consent. In considering such requests, MFM and the Monitor shall impose such restrictions or conditions as they deem appropriate.

Terms and Conditions of Sale

11. Offers must be submitted according to the Form of Offer, must be accompanied by a Deposit and must be received by the Company, with a copy to the Monitor, no later than the Bid Deadline. Offers are subject to the Additional Terms and Conditions of Sale attached as **Schedule "A"** hereto, and by submitting an Offer, each Prospective Purchaser acknowledges and agrees that its Offer is subject to the terms of this Tender Process Letter and the attached Additional Terms and Conditions of Sale. Prospective Purchasers shall be permitted to make amendments to the Form of Offer provided any amendments are noted by way of blackline to the Form of Offer, however, the nature of such amendments may result in a rejection of such Offer.
12. The Assets are offered to Prospective Purchasers on an "as-is, where-is" basis without surviving representations or warranties of any kind, nature, or description by MFM or the Monitor, or their respective advisors or agents, except to the extent otherwise provided under any definitive sale agreement with the Prospective Purchaser executed by MFM. None of MFM or the Monitor, or their advisors or agents, make any representation or warranty as to the information contained in the Invitation for Offers, the Tender Process Notice, the Tender

Process or the VDR, except to the extent otherwise provided under any definitive sale agreement with the Prospective Purchaser executed by MFM.

13. Each Prospective Purchaser is deemed to acknowledge and represent that:
 - a. it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Offer;
 - b. it has relied solely on its own independent review, investigation, and/or inspection of the Assets or any document related to the Assets in making its Offer; and
 - c. it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive sale agreement executed by MFM.
14. Offers are considered irrevocable and binding upon submission until formally accepted or rejected by the Company.
15. Offers for parcels of Assets must be separate unless indicated as an *en bloc* offer, and Prospective Purchasers may bid on individual or multiple parcels of Assets, specifying the price for each.
16. Failure to comply with the terms and condition in the Tender Process Letter, including the stated Bid Deadline and the Additional Terms and Conditions of Sale, may result in rejection.
17. Prospective Purchasers shall not be entitled to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.
18. Neither MFM, Trafigura US Inc. (the "**Interim Lender**") nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transaction contemplated under the Tender Process arising out of any agreement or arrangement entered into by the parties that submitted a successful Offer.

Assessment of Offers

19. Following the Bid Deadline, MFM in consultation with the Monitor, will assess the Offers received by the Bid Deadline and determine whether such Offers constitute an Offer which complies with the terms and condition of this Tender Process Letter ("**Qualified Offer**").
20. MFM, in consultation with, and with the consent of, the Monitor, may waive strict compliance with any one or more of the requirements specified in the Tender Process Letter, including the Additional Terms and Conditions of Sale and deem such non-compliant Offer to be a Qualified Offer.
21. Offers may not be modified, amended, or withdrawn after the Bid Deadline without the written consent of MFM and the consent of the Monitor, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Offer.

22. MFM, in consultation with, and with the consent of, the Monitor, may reject any Offer if it is determined that such Offer does not constitute a Qualified Offer, is otherwise inadequate or insufficient, or is otherwise contrary to the best interest of the Interim Lender or MFM and its creditors and other stakeholders. Notwithstanding anything else herein, any such rejected Offer will be deemed not to be a Qualified Offer.

Evaluation of Qualified Offers

23. Following the Bid Deadline, MFM, in consultation with the Monitor and the Interim Lender, will review the Qualified Offers. In performing such review and assessment, the following non-exhaustive list of factors may be considered:
- a. the purchase price and net value (including assumed liabilities and other obligations to be performed by the Prospective Purchaser);
 - b. the claims likely to be created by such Offer in relation to other Offers;
 - c. the counterparties to the transaction;
 - d. the terms of transaction documents;
 - e. the closing conditions
 - f. factors affecting the value of the transaction;
 - g. the parcels of Assets included or excluded from the Offer;
 - h. any restructuring costs that would arise from the Offer;
 - i. the likelihood and timing of consummating the transaction;
 - j. whether the Interim Lender supports the Offer; and
 - k. any other factors that MFM or the Monitor may deem relevant in their sole discretion.
24. The Company is not bound to accept the highest or any specific Offer.
25. Following evaluation of the Qualified Offers, MFM may, with the consent of the Interim Lender and the Monitor, undertake one or more of the following steps:
- (g) accept one or more of the Qualified Offers (each a "**Successful Offer**", and each offeror making such a Successful Offer, a "**Successful Offeror**") and take such steps as may be necessary to finalize definitive transaction documents for Successful Offers with Successful Offerors;
 - (h) continue negotiations with Prospective Purchasers who have submitted Qualified Offers with a view to finalizing acceptable terms with one or more Prospective Purchasers that submitted Qualified Offers; or
 - (i) terminate the Tender Process without consummating a transaction.

Court Approval

26. Unless not required pursuant to the terms of the Tender Process Order, the acceptance of Offers and the completion of any transactions, are all subject to Court approval under the CCAA.

General

27. The terms of this Tender Process, including the requirements, criteria and timelines set out herein may be amended, extended or waived by MFM, with the consent of the Monitor, providing such amendments, extensions or waivers are, in the judgment of the Monitor, necessary or useful in order to give effect to the substance and purpose of the Tender Process and the Tender Process Order.
28. The Monitor shall supervise the Tender Process as outlined herein. In the event that there is a disagreement, or clarification is required, as to the interpretation or application of this Tender Process, the responsibilities of the Monitor or MFM hereunder, the Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor or MFM or any other interested party with a hearing which shall be scheduled on not less than three (3) business days' notice.

Schedule "A" to Tender Process Letter

Additional Terms and Conditions of Sale

1. Terms capitalized but not otherwise defined in these Additional Terms and Conditions of Sale shall have the meaning set out in the Tender Process Letter to which these Additional Terms and Conditions of Sale are attached.
2. Offers must be submitted by Prospective Purchasers according to the Form of Offer attached as **Schedule "1"** hereto (or, if in a revised form, with a blackline to the Form of Offer), and must be received by the Company, with a copy to the Monitor, no later than by **4 PM Pacific Time on day that is not later than 45 days following the date that the Invitation for Offers is sent to the Prospective Purchaser, or on such specific date as might be set by the Company with the Monitor's consent** (the "Bid Deadline").
3. By submitting an Offer, each Prospective Purchaser acknowledges that it has inspected the parcels of Assets to which the Offer pertains and that the Assets are sold on an "as-is, where-is" basis and that no representation, warranty or condition is expressed or implied as to title, description, fitness for purpose, merchantability, quantity, condition, cost, or quality thereof or compliance of any parcel of assets with or in respect of anything whatsoever. Without limitation, all Assets are specifically offered as they exist on the date of closing of the applicable transaction (the "**Closing Date**") with no adjustments to be allowed to any Prospective Purchaser for changes in conditions, qualities or quantities of such Assets from the Closing Date. The Prospective Purchaser shall be deemed to have relied entirely on its own inspection and investigation of any Assets to satisfy the Prospective Purchaser as to the effects of any laws, regulations or requirements upon any assets or the transfer by MFM to the Prospective Purchaser of any Assets. It shall be the Prospective Purchaser's sole responsibility to obtain, at its own expense, any consent to such transfer and any further documents of assurances which are necessary or desirable in the circumstances.
4. MFM shall not be required to produce any tax certificate, clearance certificate, abstract of title or documents or copies thereof or any evidence as to title, other than those in its actual possession.
5. MFM shall remain in possession of the applicable Assets until the Closing Date and receipt of the full purchase price in respect thereof (which shall be paid in trust to the Monitor).
6. All Offers must include a fully completed Form of Offer (attached as **Schedule "1"** hereto). Supplemental information must be in written form, signed by a duly authorized officer of the entity making the Offer.
7. All Offers must be accompanied by a bank draft or certified cheque payable to "FTI Consulting Canada Inc. – in Trust" in an amount equal to 10% of the purchase price contained in the Offer. If the Offer is accepted, this draft or cheque shall be deemed a non-refundable cash deposit and shall be forfeited to MFM on account of liquidated damages if the contemplated sale is not completed by the Prospective Purchaser by reason of the Prospective Purchaser's default.

8. If one or more acceptable Offers are received, the Company, in consultation and with the assistance of the Monitor, will negotiate a purchase and sale agreement with one or more Prospective Purchasers, and if required pursuant to the Tender Process Order, will bring an application to the Court for an approval and vesting order.
9. In consideration of MFM making available to Prospective Purchasers these Terms and Conditions of Sale, any other information, and the opportunity of inspection, and/or in consideration of receiving and considering any Offer to be submitted hereunder, each Prospective Purchaser agrees that its Offer is irrevocable and cannot be retracted, withdrawn, varied or countermanded prior to acceptance or rejection thereof.
10. MFM may, in consultation with the Interim Lender and the Monitor, call upon Prospective Purchasers to re-submit any Offer made to MFM for its reconsideration. Each Prospective Purchaser agrees that the re-submission contemplated under this section is a fair and reasonable manner of proceeding.
11. Offers may be made for all or any parcel of Assets. Offers submitted for more than one parcel of Assets must specifically allocate a separate price for each parcel and will be considered as a separate Offer for each parcel unless otherwise indicated as an *en bloc* offer.
12. Offers to liquidate the Assets must contain a net minimum guaranteed return to MFM and will be subject to the liquidator and MFM entering into an auction services agreement on terms satisfactory to MFM, the Interim Lender and the Monitor.
13. Where a Prospective Purchaser withdraws its Offer after the Bid Deadline and before the date on which the party receives notification of the decision made regarding the Offers, the Deposit shall be forfeited on account of liquidated damages by the party to MFM.
14. Cheques or drafts accompanying Offers that are not accepted by MFM shall be returned by the Monitor to the party by pre-paid registered mail, addressed to the party at the address set forth in its Offer.
15. The balance of the purchase price shall be paid on the Closing Date.
16. The Prospective Purchaser shall pay to MFM on closing, in addition to the balance of the purchase price, all applicable federal and provincial taxes, unless the applicable exemption certificates are presented to MFM on or before the Closing Date.
17. The Prospective Purchaser shall be solely responsible for costs of removing the purchased Assets.
18. The Prospective Purchaser shall assume, at its cost, complete responsibility for compliance with all municipal, provincial and federal laws insofar as the same apply to the purchased Assets and the use thereof by the Prospective Purchaser.

19. The submission of an Offer to the Company shall constitute an acknowledgement and an acceptance by the Prospective Purchaser of these Additional Terms and Conditions of Sale.
20. The validity and interpretation of these Additional Terms and Conditions of Sale shall be governed by the laws of the Province of British Columbia and the Supreme Court of British Columbia shall have exclusive jurisdiction with respect to any dispute arising out of these Additional Terms and Conditions of Sale or any transaction documents entered into pursuant hereto.
21. All stipulations as to time are strictly of the essence.

Schedule "1" to Additional Terms and Conditions of Sale

Form of Offer

To: Myra Falls Mine Ltd. – Attention: Jeff May (email: jeff.may@myrafallsmine.com)

1. _____
(Name of Purchaser issuing offer)

2. _____
(Address of Purchaser)

3. _____
(Phone Number)

4. _____
(Contact Person)

5. The total amount hereby offered is: \$ _____

6. The amount offered for each parcel of Assets is as follows:

7. Additional details of the Offer, if any:

8. This offer must be considered as an *en bloc* offer (yes/no) _____

9. This offer is irrevocable. We acknowledge and confirm that this Offer is governed by the tender process and omnibus approval and vesting order issued by the Supreme Court of British Columbia in the City of Vancouver on August 2, 2024 (the "**Tender Process Order**"), and the Tender Process and Additional Terms and Conditions of Sale attached to the Tender Process Order.

10. Enclosed is a [**bank draft/certified cheque**] payable to FTI Consulting Canada Inc.- in Trust as a deposit in the amount of \$ _____, representing 10% of the total amount of the Offer submitted herein.

Dated at _____, this _____ day of _____, 2024.

(Full legal name of Purchaser)

(Signature of Authorized Representative)

(Name of Authorized Representative of Purchaser)

Schedule "C"

FORM OF TRANSACTION NOTICE

Court File No. S238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

NOTICE IS HEREBY GIVEN pursuant to paragraph 5 of the Order of the Supreme Court of British Columbia dated August 2, 2024 (the "**Omnibus Approval and Vesting Order**") by the Petitioner, that the Petitioner, as seller, has executed definitive documents (collectively, the "**Transaction Documents**") with the Purchaser listed below in respect of the sale of the Purchased Assets listed below (the "**Transaction**"). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to them in the Omnibus Approval and Vesting Order.

PURCHASER: **[insert name of Purchaser]**

PURCHASED ASSETS: **[insert description of Purchased Assets]**

The Transaction Documents (with such redactions as the Petitioner, in consultation with the Monitor, has determined would be in the best interests of the Petitioner and its estate) with respect to this Transaction are attached as **Schedule "A"** to this Transaction Notice.

Upon the closing of this Transaction, and in accordance with the Transaction Documents and the Omnibus Approval and Vesting Order, all of the Petitioner's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of Claims and Encumbrances, and such Claims and Encumbrances shall be expunged and discharged as against the Purchased Assets.

Should any person wish to object to this Transaction, such person shall notify the Petitioner and the Monitor (by service upon counsel to the Petitioner, the Monitor and counsel to the Monitor at the addresses shown on the Service List) of such objection, in writing (such notice being a "**Notice of Objection**"), such that the Notice of Objection is received within seven (7) days of the applicable Transaction Notice being provided to the Service List. Any Notice of Objection must specify the reasons for such objection.

If no Notice of Objection is received by the Petitioner and the Monitor in accordance with the procedure and timeline set out above, the closing of this Transaction will become effective upon delivery by the Monitor of a Monitor's Certificate to the Purchaser and the Petitioner. The Monitor's Certificate filed in respect of the Transaction shall be made available on the Monitor's website at: <http://cfcanada.fticonsulting.com/myrafalls/>.

Schedule "A" to the Transaction Notice

TRANSACTION DOCUMENTS

[to be attached]

Schedule "D"

MONITOR'S CERTIFICATE

No. S238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

MONITOR'S CERTIFICATE

RECITALS:

A. Capitalized terms used herein and not otherwise defined herein shall have the meaning given to them in the Order of the Supreme Court of British Columbia (the "**Court**") dated August 2, 2024 (the "**Omnibus Approval and Vesting Order**") approving the entering into of certain Transactions by the Petitioner.

B. Pursuant to the rights granted to the Petitioner under paragraph **[4]** of the Omnibus Approval and Vesting Order, the Petitioner, as seller, has entered into definitive transaction documents with **[insert name of applicable purchaser]**, as purchaser (the "**Purchaser**"), dated **[insert date]**, 2024 (collectively, the "**Transaction Documents**"), whereby the Purchaser has agreed to purchase, and the Petitioner has agreed to sell, the Purchased Assets (as defined in the Transaction Documents) (the "**Transaction**").

C. Pursuant to the Omnibus Approval and Vesting Order, the Court approved the entering into by the Purchaser of the Transaction and the vesting in the Purchaser of the Petitioner's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Petitioner of a certificate confirming (i) that the Monitor has received confirmation from the Purchaser and the Petitioner that all conditions to closing of the Transaction have been satisfied or waived by the Purchaser and the Petitioner, as applicable; (ii) the Purchase Price and all applicable sales and transfer Taxes (each as defined in the Transaction Documents) payable by the Purchaser to the Petitioner have been received by the Monitor, and (iii) no Notice of Objection in respect of the Transaction has been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The Monitor was advised by the Purchaser and the Petitioner that all conditions to closing of the Transaction have been satisfied or waived by the Purchaser and the Petitioner, as applicable;
2. The Purchase Price and all applicable sales and transfer Taxes payable by the Purchaser to the Petitioner have been received by the Monitor; and
3. No Notice of Objection in respect of the Transaction has been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at Vancouver on
[insert date], 2024.

FTI CONSULTING CANADA INC., in its capacity
as Court-appointed Monitor of Myra Falls Mine
Ltd. and not in its personal or corporate capacity

By: _____
Name:
Title: Authorized Signatory

No. S-238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND
ARRANGEMENT OF MYRA FALLS MINE LTD.

PETITIONER

ORDER
(OMNIBUS APPROVAL ORDER)

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
Bentall 5, Suite 2300,
550 Burrard Street
Vancouver, BC V6C 2B5
Attention: Jonathan B. Ross

Tel: 604.683.6498 Fax: 604.683.3558

File No. A172589

MD/SPK

SCHEDULE "D"

STAY EXTENSION AND ADDITIONAL RELIEF

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

PETITIONER

**ORDER MADE AFTER APPLICATION
(Stay Extension and Additional Relief)**

BEFORE THE HONOURABLE)
JUSTICE FITZPATRICK) 02/08/2024
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 2nd day of August, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including the Affidavit #6 of Hein Frey, affirmed July 25, 2024 (the "**Frey Affidavit #6**") and the Fourth Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**") dated July [●], 2024; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE AND DEFINITIONS

1. The time for service of the Notice of Application dated July 26, 2024 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

2. Capitalized terms used in this Order and not otherwise defined herein shall have the meaning given to them in the amended and restated initial order granted in these proceedings by the Honourable Justice Fitzpatrick dated December 28, 2023 (the "**ARIO**") or the Affidavit .

STAY EXTENSION

3. The Stay Period is hereby continued and extended to and including October 31, 2024.

DIP AMENDMENT AND INCREASE IN INTERIM LENDER'S CHARGE

4. The Petitioner is hereby authorized and empowered to borrow up to an additional \$7.5 million for an aggregate principal amount of \$34 million pursuant to the DIP Term Sheet (as amended by the first amendment to the DIP Term Sheet dated February 16, 2024 and the second amendment to the DIP Term Sheet dated June 20, 2024 (the "**Amended DIP Term Sheet**").

5. The Interim Lender shall be entitled to the benefit of the Interim Lender's Charge provided for in the ARIO to secure amounts advanced under the Amended DIP Term Sheet. The Interim Lender's Charge shall be increased to the maximum amount of \$34 million (plus accrued and unpaid interest, fees and expenses).

6. The Interim Lender's Charge, as amended herein, shall continue to have the priority set out in paragraphs 40 and 42 of the ARIO.

CONTINUOUS PREMIUM INSTALMENT CONTRACT

7. The Petitioner is hereby authorized and empowered to enter into a Continuous Premium Instalment Contract (the "**PIC**") with CAFO Inc. ("**CAFO**") pursuant to which CAFO shall provide financing to the Petitioner for the purchase of one or more policies of insurance (the "**Financed Policies**").

8. In the event of a payment default under the PIC, CAFO shall be permitted without further order of the Court, to exercise its rights under the PIC to cancel the Financed Policies and to receive any unearned premiums (the "**Unearned Premiums**") that may be refunded by the insurers as a result of the same.

9. Notwithstanding any provision in the ARIO or any other order in these proceedings, none of the Charges, or any Encumbrances existing as of the date hereof or any further security interests, trusts liens, mortgages, charges and encumbrances and claims, statutory or otherwise in favour of any person, including those which may be created in this proceeding, apply to the Unearned Premiums.

GENERAL

10. The Petitioner, the Monitor, or the Interim Lender, may from time to time apply for such further or other directions as may be necessary or desirable to give effect to this Order, including, without limitation, the discharge of their respective powers and duties under this Order, or any matter in connection therewith.

11. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

12. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the date this Order is made.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative

status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross
Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED

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NOTICE OF APPLICATION

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