

JUN 09 2015



NO. _____
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 THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended**

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

PETITION TO THE COURT

The Petitioner claims the right to serve this Petition on those creditors, shareholders or other interested parties of the Petitioner and each of them outside British Columbia, pursuant to s. 10(h) of the *Court Jurisdiction and Proceedings Transfer Act*, on the ground that the Petitioner carries on business in British Columbia.

ON NOTICE TO: The creditors, shareholders and other stakeholders of the Petitioner

This proceeding is brought for the relief set out in Part 1 below, by

- ☒ the person(s) named as petitioner(s) in the style of proceedings above
☐ [name(s)] (the petitioner(s))

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner is: 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8 Fax number address for service (if any) of the petitioner: 604-683-5214 E-mail address for service (if any) of the petitioner: john.sandrelli@dentons.com tevia.jeffries@dentons.com jordan.schultz@dentons.com
(3)	The name and office address of the petitioner's lawyer is: Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8 Attention: John R. Sandrelli

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. A Declaration that the Petitioner, North American Tungsten Corporation Ltd., is a corporation to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C 36 (the "**CCAA**") applies, and to which the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 as amended (the "**CBCA**") applies.
2. A Declaration that Alvarez & Marsal Canada Inc. (the "**Monitor**") be appointed as officer of the Court to monitor the assets, businesses and affairs of the Petitioner.
3. An Order that, until further order of this Court, all proceedings against the Petitioner and its directors and officers be stayed, and the Petitioner's operations be carried out in accordance with the express terms of the draft Initial Order attached to this Petition as **Schedule "A"** (the "**Initial Order**").
4. An Order authorizing the Petitioners to obtain and borrow under an interim financing credit facility to finance their working capital requirements and other general corporate purposes and capital expenditures, in an amount, with the priority, and on the terms to be determined by the Court.
5. An Order permitting the Petitioner to file with this Court a formal plan of compromise or arrangement (the "**Reorganization Plan**") between it and one or more classes of its creditors and, if appropriate, its shareholders pursuant to the provisions of the CCAA and CBCA, at such time as may be directed by the Court.
6. An Order defining the classes of the creditors of the Petitioner for the purposes of meeting with respect to and voting upon the Reorganization Plan.
7. An Order that upon filing the Reorganization Plan, the Petitioner call a meeting of classes of its creditors and shareholders (the "**Meetings**") to vote upon the Reorganization Plan.
8. Such directions as may be required from time to time respecting presentation of the Reorganization Plan to the creditors and shareholders, proofs of claim, conduct of meetings and related matters.

9. An Order sanctioning and approving the Reorganization Plan with such amendments as may be proposed by the creditors and shareholders of the Petitioner and approved by the Petitioner.
10. An Order that the Petitioner be at liberty to serve all pleadings and notices in this proceeding on any of its respective creditors or shareholders by prepaid mail, courier, personal delivery, fax transmission or electronic mail addressed to the last known address communicated by such creditor or shareholder to the Petitioner, and that such service shall be deemed to be effective on the business day following such mailing.
11. An Order that the Orders in these proceedings shall have full force and effect in all provinces and territories of Canada and any other foreign country where creditors or shareholders of the Petitioner are domiciled.
12. An Order requesting the aid and recognition of any Court or administrative body in any province of Canada, the Federal Court of Canada, any administrative tribunal or other Court constituted pursuant to the authority of the Parliament of Canada or any of its Provinces or Territories and any Federal or State court or administrative body in the United States of America or any other foreign courts of any nation or state to act in aid of and to be complementary to this Court in carrying out the terms of any Order pronounced in these proceedings.
13. Such further and other Orders as this Honourable Court may deem just and as are proper under the circumstances.

Part 2: FACTUAL BASIS

1. The Petitioner, North American Tungsten Corporation Inc. ("**NATC**"), is a company incorporated pursuant to the laws of Canada, with a head office at 1640 – 1188 West Georgia Street, P.O. Box #19, Vancouver, British Columbia.
2. NATC is extra-provincially registered in British Columbia, and extra-territorially registered in Yukon and Northwest Territories. NATC is a reporting issuer in British Columbia and Alberta and is listed on the TSX Venture Exchange and traded under the symbol "NTC".
3. NATC is engaged in the acquisition, exploration, development, mining and milling of minerals, principally tungsten.

Assets

4. The main capital assets of NATC are:
 - (a) the "Cantung Mine" and associated mine facilities, which is an operating mine located in the south-west corner of the Northwest Territories; and
 - (b) the "Mactung Property", which is an undeveloped exploration property located on the border of the Yukon Territory and the Northwest Territories.
5. The Cantung Mine has been in operation since 1962, with intermittent temporary closures for certain periods since that date. NATC acquired the Cantung Mine in or around 1997, and initially put the mine into production in 2002. The Cantung Mine is currently the principal source of revenue for NATC.
6. The Mactung Property was also acquired by NATC in 1997. It consists of several mineral claims and mining leases in Yukon and Northwest Territories. NATC released its technical report in relation to the deposits at the Mactung Property in February 2009, indicating one of the largest tungsten deposits in North America. Recently, the proposed mine project at the Mactung Property received a positive environmental assessment from the Yukon Environmental and Socio-economic Assessment Board.
7. As at March 31, 2015, NATC financial statements indicated total assets of \$74.7 million. The estimated book value of NATC's property, plant and equipment is \$27.9 million.

Liabilities

8. As at March 31, 2015, NATC had total liabilities of \$84.4 million, including approximately \$14 million in unsecured liabilities.
9. Most of NATC's secured creditors hold security over the assets of either the Cantung Mine or the Mactung Property. The secured creditors with an interest in the Cantung Mine assets include:
 - (a) Callidus Capital Corporation ("**Callidus**"), owed approximately \$13.1 million;

- (b) Various parties (the “**Debentureholders**”) holding subscription agreements for an aggregate US \$11 million of indebtedness (who also hold security over the Mactung Property assets); and
 - (c) Queenwood Capital Partners II LLC (“**Queenwood II**”), owed approximately US \$15 million (who also hold security over the Mactung Property assets).
10. The secured creditors with an interest in the Mactung Property assets include:
- (a) Minister of Environment and Natural Resources (“**GNWT**”), which holds \$5.5 million in promissory notes (in addition to a \$6.2 million cash deposit) as security for NATC’s reclamation obligations at the Cantung Mine;
 - (b) Global Tungsten & Powders Corp. and Wolfram Bergbau and Hutten AG, each of which are customers of NATC under separate supply agreements and are collectively owed approximately \$8.4 million for various loans and advance payments; and
 - (c) the Debentureholders and Queenwood II, as noted above.

Cashflow and Financial Problems

- 11. NATC has implemented strict cash conservation and cost reduction plan to attempt to maintain operations. Nevertheless, NATC is unable to meet its financial obligations as they become due and is accordingly insolvent.
- 12. For the six months ended March 31, 2015, NATC experienced a net loss of \$6.6 million. NATC’s cash balances are extremely low and additional or replacement financing will likely be required.
- 13. Absent a CCAA filing, NATC expects to have insufficient cash in the coming weeks with which to pay its suppliers, employees, and debt service payments. Key trade creditors may take steps to refuse to provide services that are essential to transport, and therefore sell, existing tungsten inventories.
- 14. NATC’s insolvency has been caused by a number of factors, including a severely depressed world market for tungsten metal resulting in lower revenues, significant finance costs, including some costs denominated in US dollars, insufficient capitalization, and recent operational interruptions.

15. NATC proposes to file a plan for consideration by its various classes of creditors in order to permit it an opportunity to restructure its affairs pursuant to the CCAA. The secured and unsecured creditors, employees, and other stakeholders will derive a greater benefit from the Petitioner's business continuing as a going concern than will result from bankruptcy, receivership or liquidation of the Petitioner's assets.
16. In advance of filing a plan and the restructuring of its affairs, NATC is in need of an initial order from this Honourable Court.

Part 3: LEGAL BASIS

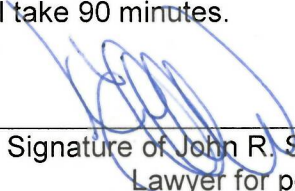
1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,
2. *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, and
3. *Supreme Court Civil Rules* and the inherent jurisdiction of this Court.

Part 4: MATERIALS TO BE RELIED ON

1. Affidavit #1 of Dennis Lindahl, made 8 / Jun / 2015; and
2. Affidavit #1 of Miriam Dominguez, made 8 / Jun / 2015.

The petitioner estimates that the hearing of the Petition will take 90 minutes.

Date: 8 / Jun / 2015



Signature of John R. Sandrelli
Lawyer for petitioner

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of
Part 1 of this Petition

☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Master

SCHEDULE "A"

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PETITIONER

O R D E R MADE AFTER APPLICATION

BEFORE THE HONOURABLE

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09 / June / 2015

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on the 9th day of June, 2015 (the "**Order Date**"); AND ON HEARING John Sandrelli and Tevia Jeffries, counsel for the Petitioner and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the First Affidavit of Dennis Lindahl sworn June 8, 2015 and the consent of Alvarez & Marsal Canada Inc. to act as Monitor; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; 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 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. The Petitioner is a company to which the CCAA applies.

SUBSEQUENT HEARING DATE

2. The hearing of the Petitioner's application for an extension of the Stay Period (as defined in paragraph 14 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smith Street, Vancouver, British Columbia at ____ a.m. on _____, July ____, 2015, or such other date as this Court may order.

PLAN OF ARRANGEMENT

3. The Petitioner shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Petitioner shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on its business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. The Petitioner shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**");
- (b) all amounts owing to or in respect of individuals working as independent contractors in connection with the Petitioner's Business;
- (c) the fees and disbursements of any Assistants retained or employed by the Petitioner or the Monitor which are related to the Petitioner's restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner and the Monitor, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioner or any subsidiaries or affiliated companies of the Petitioner are domiciled;
 - (ii) any litigation in which the Petitioner is named as a party or is otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters; and
- (d) all amounts owing for goods and services actually supplied, both prior to and subsequent to the Order Date, to the Petitioners:
 - (i) by reagent and chemical suppliers, fuel suppliers, food and janitorial service providers, personnel transport providers, utilities, and explosive and other mining materials suppliers, with the prior consent of the Monitor, if, in the opinion of the Petitioner and the Monitor the supplier is critical to the Business and the ongoing operations of the Petitioner and payment is required to ensure ongoing supply;

- (ii) by freight and logistics suppliers, freight carriers, warehousemen and shippers with the prior consent of the Monitor, if, in the opinion of the Petitioner and the Monitor the supplier is critical to the Business and the ongoing operations of the Petitioner and payment is required to ensure ongoing supply;
- (iii) by other parties providing goods or services to the Petitioner, with the prior consent of the Monitor, if, in the opinion of the Petitioner and the Monitor the supplier is critical to the Business and the ongoing operations of the Petitioner and payment is required to ensure ongoing supply; and
- (iv) with the prior consent of the Monitor, all amounts owing to creditors who, prior to the Order Date, lawfully retained Property or exercised valid and enforceable possessory liens against any asset of the Petitioner where the value of such asset exceeds the amount of the possessory or statutory liens or where the asset is deemed critical by the Petitioner and the Monitor to the Business.

6. Except as otherwise provided herein, the Petitioner shall be entitled to pay all expenses reasonably incurred by the Petitioner in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$500,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioner after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioner following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioner's obligations incurred prior to the Order Date); and

- (c) fees and disbursements of the kind referred to in paragraph 5(c) which may be incurred after the Order Date.
7. The Petitioner is authorized to remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
 - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
 - (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.
8. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioner shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioner and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

9. Except as specifically permitted herein, the Petitioner is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioner to any of its creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioner to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

10. Subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

all of the foregoing to permit the Petitioner to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Petitioner shall provide each of the relevant landlords with notice of the Petitioner's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioner's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioner's claim to the fixtures in dispute.

12. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioner and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

13. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioner, in the course of these proceedings, is permitted to,

and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioner or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

14. Until and including July 9, 2015, or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

16. Nothing in this Order, including paragraphs 14 and 15, shall: (i) empower the Petitioner to carry on any business which the Petitioner is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

17. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

18. During the Stay Period, all Persons having oral or written agreements with the Petitioner or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioner in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioner on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioner that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

21. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not

exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

23. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioner with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioner's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Petitioner in its preparation of the Petitioner's cash flow statements;

- (d) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (e) assist the Petitioner, to the extent required by the Petitioner, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioner, to the extent that is necessary to adequately assess the Petitioner's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

26. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

27. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the

British Columbia *Fish Protection Act*, the Northwest Territories *Environmental Protection Act*, the Northwest Territories *Waters Act*, the Yukon *Environment Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. The Monitor shall provide any creditor of the Petitioner with information provided by the Petitioner in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioner is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioner may agree.

29. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

30. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner on a periodic basis and, in addition, the Petitioner is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amounts of up to \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

32. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioner's restructuring. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. The priorities of the Administration Charge and the Directors' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000); and

Second - Directors' Charge (to the maximum amount of \$500,000).

34. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

35. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

36. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written consent of the Monitor and the beneficiaries of the Administration Charge and the Director's Charge.

37. The Administration Charge and the Director's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Petitioner pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner's interest in such real property leases.

SERVICE AND NOTICE

39. The Monitor shall (i) without delay, publish in the Vancouver Sun and the Whitehorse Daily Star a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioner of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

40. The Petitioner and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioner's creditors or other interested parties at their respective addresses as last shown on the records of the Petitioner and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

41. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.alvarezandmarsal.com/northamerican.

42. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.alvarezandmarsal.com/northamerican.

43. Notwithstanding paragraphs 39 and 40 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal

Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

44. The Petitioner or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

45. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

46. 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.

47. Each of the Petitioner and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioner to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

48. The Petitioner may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.

49. The Petitioner is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

50. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

51. Any interested party (including the Petitioner and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

53. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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 John R. Sandrelli
☐ Party ☒ Lawyer for the Petitioners

<Print Name>

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

No.
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

AND IN THE MATTER OF

PETITIONER

CCAA INITIAL ORDER (_____, 201__)

Counsel: _____
Matter No: _____