

OCT 31 2022



S-2287 23

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 THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF  
PURE GOLD MINING INC.

PETITIONER

**PETITION TO THE COURT**

ON NOTICE TO: Sprott Resource Lending Corp.

**This proceeding is brought by the Petitioner for the relief set out in Part 1 below.**

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: 800 Smithe Street, Vancouver, British Columbia
(2)	The ADDRESS FOR SERVICE of the Petitioners is: Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street Vancouver, BC V7X 1L3 Attention: Peter L. Rubin/Peter Bychawski/ Claire Hildebrand/Alison Burns
	E-mail address for service of the Petitioners: <u>Vancouver.service@blakes.com</u> ; <u>peter.rubin@blakes.com</u> ; <u>peter.bychawski@blakes.com</u> ; <u>claire.hildebrand@blakes.com</u> ; <u>alison.burns@blakes.com</u>
(3)	The name and office address of the Petitioner's lawyer is: Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street Vancouver, BC V7X 1L3 Attention: Peter L. Rubin/Peter Bychawski/ Claire Hildebrand/Alison Burns

### CLAIM OF THE PETITIONER

#### Part 1: ORDERS SOUGHT

1. The petitioner, Pure Gold Mining Inc. ("**Pure Gold**" or the "**Petitioner**") seeks an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), substantially in the form attached as **Schedule "A"** (the "**Initial Order**") to this Petition, among other things:

- (a) declaring the Petitioner to be a company to which the CCAA applies;
- (b) appointing KSV Restructuring Inc. ("**KSV**") as an officer of this Court to monitor the assets, business, and affairs of the Petitioner (in such capacity, the "**Monitor**");
- (c) ordering that, until further order of this Court, all proceedings against the Petitioner and its directors and officers be stayed;

- (d) authorizing the Petitioner to make payment of certain pre-filing amounts or to honor cheques issued to providers of goods and services prior to the date of the Initial Order that the Petitioner, in consultation and with the consent of the Monitor and the Interim Lender (as defined below), considers to be necessary to facilitate the Petitioner's ongoing operations and to preserve value in these CCAA proceedings;
- (e) authorizing and empowering the Petitioner to obtain and borrow under an interim financing credit facility from Sprott Private Resource Lending (II) Collector LP (in such capacity, the "**Interim Lender**") to finance the continuation of its business and preservation of its property on the terms and subject to the conditions set forth in the "**Interim Financing Term Sheet**" between the Petitioner and the Interim Lender.
- (f) granting the following charges over the assets, properties, and undertakings of the Petitioner as security for the obligations of the Petitioner to the beneficiaries of such charges, in each case as set out in the Initial Order, and having the following relative priorities as among such charges:
  - (i) First, an "**Administration Charge**" as security for the respective fees and disbursements incurred by the Monitor, counsel to the Monitor, and counsel to the Petitioner at the standard rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order, which are related to the Petitioner's restructuring;
  - (ii) Second, a "**D&O Charge**" as security for the Petitioner's obligation pursuant to the Initial Order to 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; and
  - (iii) Third, an "**Interim Lender's Charge**" as security for the Petitioner's obligations to the Interim Lender pursuant to the Interim Financing Term Sheet; and

- (g) granting such further and other orders as this Honourable Court may deem just and convenient and as may be appropriate in the circumstances.

## **Part 2: FACTUAL BASIS**

### ***Capitalized Terms and Currency References***

2. Capitalized terms used but not otherwise defined in this Petition have the meanings ascribed to them in Affidavit #1 of Chris Haubrich, made October 30, 2022 (the "**Haubrich Affidavit**").
3. All references to monetary amounts in this affidavit are in Canadian dollars, Pure Gold's functional currency, unless otherwise stated.

### ***Pure Gold's Business Operations***

4. Pure Gold is a Vancouver-based publicly listed British Columbia corporation principally engaged in the acquisition, exploration, development, and operation of Canadian precious metal properties, or interests in companies controlling mineral properties, which feature high metal grades, meaningful size, and access to existing infrastructure. Pure Gold is listed on the TSX Venture Exchange under the symbol "PGM" and the London Stock Exchange under the symbol "PUR".
5. Pure Gold's current principal asset is the "Pure Gold Mine Project", which consists of an operating gold producing underground mine (the "**Mine**") located on an area covering more than 4,600 hectares in the Red Lake mining district of Northwestern Ontario. The Mine's operating infrastructure includes double ramp access from surface, a 1,275-meter-deep shaft, an ore processing facility with a current design capacity of 800 tonnes of ore per day ("**tpd**"), a water treatment facility, tailings and rock storage facilities, and related infrastructure. As of October 1, 2022, approximately 275 of Pure Gold's approximately 285 employees worked at the Mine site. As discussed below, the number of employees working at the Mine site was reduced to approximately 50 as of October 25, 2022 due to the Mine being transitioned to care and maintenance status.
6. Since the completion of a feasibility study for the Mine in 2019, Pure Gold has invested more than \$300 million, raised through equity and debt financings and the sale of a gold stream, in the development and operation of the Mine.

7. Pure Gold's senior secured, and largest single, creditor is Sprott Private Resource Lending II (Collector) LP ("**Sprott LP**") and its affiliated entities (collectively, "**Sprott**"). Pure Gold's obligations to the Sprott entities include: (a) obligations under a second amended and restated credit agreement dated July 12, 2022 under which Pure Gold has drawn approximately US\$91 million since December 31, 2020; (b) obligations under a participation payment agreement dated August 6, 2019 pursuant to which Pure Gold received an advance payment of approximately US\$4 million; and (c) obligations with respect to a gold stream agreement dated August 6, 2019 pursuant to which Pure Gold received a US\$25 million advance on August 7, 2019 as a prepayment for future gold production from the Mine.

8. As of June 30, 2022, Pure Gold's liabilities to Sprott were (a) approximately \$123 million for loans and borrowings; and (b) approximately \$33 million on account of the gold stream derivative liability. Pure Gold's obligations to Sprott are secured by first ranking charges against the company's assets.

#### ***Circumstances Leading to this Petition***

9. Notwithstanding Pure Gold's significant investment in bringing the Mine into commercial production, established track record of raising funds on the capital and debt markets, and strong mill performance at the Mine since start-up, the Mine faced significant operational challenges in 2021 that resulted in (a) gold production falling materially short of feasibility and design capacity; (b) costs of operations being significantly higher than feasibility study forecasts; and, consequently, (c) Pure Gold facing significant short-term liquidity challenges.

10. The operational challenges facing the Mine that contributed to the financial challenges that ultimately led to the October 24, 2022 decision to place the Mine on care and maintenance status were the subject matter of a press release dated March 28, 2022, in which Pure Gold advised that (a) the company's cash balance as of that date was approximately \$9 million; (b) the company expected that it would need to seek additional financing in the next 30 days to fund operations and to service the interest on its debt; and (c) the company would require approximately \$50 million in total new funding over the next six months (i.e., April – September 2022) to address its short-term operational challenges.

11. In recent months, Pure Gold implemented new initiatives to (a) stabilize the company's liquidity position including through cost reduction and rationalization measures; (b) improve the performance and efficiency of the Mine; and (c) assess strategic alternatives for the company and

the Mine going forward. These efforts have resulted in improvements to the company's financial outlook.

12. **First**, Pure Gold has implemented initiatives including cost rationalizations that have resulted in an approximately \$4 million per month reduction in Pure Gold's operating expenses in the second and third quarters of 2022. Compared to the first quarter of 2022, this represents an absolute reduction in costs of approximately 25% and a cost-per-tonne reduction of approximately 50%. Prior to transitioning the Mine to care and maintenance, additional cost rationalization efforts were underway, and the company was targeting additional savings equating to \$1 million per month (approximately 10%) in early 2023.

13. **Second**, on April 22, 2022, Pure Gold announced that it had entered into an agreement with its senior-secured lender, Sprott LP, pursuant to which Sprott LP conditionally agreed to: (a) provide an additional, secured, first-priority, non-revolving credit facility ("**Additional Credit Facility**") up to a maximum principal amount of US\$6 million; and (b) waive any existing defaults under agreements between Pure Gold and the Sprott entities for a period of time ending no later than May 15, 2022 (which waiver period was subsequently extended on account of the commercial arrangements described below). Sprott LP's financing commitment was initially conditional upon, among other things, Pure Gold closing an equity financing for net proceeds of not less than US\$5 million to be received on or before May 15, 2022 (which deadline was subsequently extended).

14. **Third**, on May 6, 2022, Pure Gold announced a non-brokered private placement of 200 million units of the company at a price of \$0.15 per unit for aggregate gross proceeds of approximately \$31 million (the "**Equity Raise**"). The Equity Raise closed in two tranches on May 25, 2022 and May 27, 2022.

15. **Fourth**, on May 24, 2022, Pure Gold announced that it would enter into securities for debt settlement agreements with certain service contractors pursuant to which it would issue 20,922,914 units of the company at a price of \$0.15 per unit to settle outstanding debts totaling \$3,138,437.

16. **Fifth**, on July 12, 2022, Pure Gold announced that it had finalized several agreements with the Sprott entities including with respect to the closing of the previously mentioned US\$6 million Additional Credit Facility and the implementation of a new debt repayment schedule for the company's existing debt obligations to Sprott.

17. **Sixth**, also on July 12, 2022, and as part of Pure Gold's arrangements with Sprott, the company announced that it had initiated a strategic review process (the "**Strategic Review Process**"), which might include a potential sale or merger of the company, sale of some or all the Mine, or various other potential long-term financing alternatives.

18. **Seventh**, on August 10, 2022, Pure Gold announced the release of an updated Mineral Resource Estimate ("**MRE**") prepared in accordance with National Instrument 43-101 Standards of Disclosure for Mineral Projects. The updated MRE is intended to form the basis of a new Pre-Feasibility Study and updated Life of Mine plan. The MRE and the anticipated Pre-Feasibility and updated Life of Mine plan will re-establish the company's long-term development and production plans for the Mine and are also expected to re-instill investor and stakeholder confidence in the Mine and the associated value proposition following significant deviations in actual operations, when compared to the 2019 Feasibility Study.

19. The measures described above have allowed Pure Gold to take significant steps towards optimizing its operations to address design capacity issues and rationalizing and reducing its costs, all with a view of growing production and unlocking long term value for stakeholders.

20. However, notwithstanding these significant improvements in the operation and cost profile of the Mine since March 2022, Pure Gold has fallen short of raising the \$50 million that it advised in March 2022 it would require to address its short-term operational challenges and remains in a liquidity crisis.

21. On October 24, 2022, Pure Gold announced that the company's current cash balance was approximately \$2 million, that its net working capital deficit is approximately \$13 million, and that the company has been unable to obtain alternative outside financing to continue operations, complete its ongoing Pre-Feasibility Study and Life-of-Mine plan, and continue its ongoing Strategic Review Process. For these reasons, Pure Gold made the decision to suspend operations and place the Mine on care and maintenance immediately.

#### ***The Need for Creditor Protection***

22. Given its present financial and liquidity challenges, Pure Gold urgently requires a stay of proceedings under the CCAA to maintain the status quo and obtain the "breathing room" required to consider strategic restructuring alternatives and pursue and implement a restructuring strategy.

23. It is imperative for the success of any such strategy that current and potential actions against Pure Gold be stayed, that its current customer and supplier contracts and arrangements be preserved to the extent necessary, and that Pure Gold be given authorizations under the CCAA to obtain interim financing given its present liquidity position.

24. With the benefit of the protection afforded by the CCAA, Pure Gold will be able to maintain the value of its assets, and generally stabilize its financial position for the continued benefit of its stakeholders as restructuring alternatives are considered by the company.

25. In the absence of the imposition of a stay of proceedings and the granting of other relief afforded by the CCAA, there is the risk that Pure Gold's care and maintenance operations at the Mine would be negatively affected. Any potential disruption of care and maintenance operations could put at risk the well-being of Pure Gold's employees and the environment and local communities surrounding the Mine.

26. To protect against such negative effects and to address the company's current financial difficulties and liquidity challenges, Pure Gold's current plan while under CCAA protection involves, among other things, efforts to:

- (a) safely transition the Mine to a state of care and maintenance to reduce costs and stabilize operations pending the implementation of the company's restructuring strategy;
- (b) provide comfort to Pure Gold's stakeholders of the company's ability to continue operating as a going concern as the company continues with its restructuring efforts;
- (c) revitalize and continue with the Strategic Review Process with the assistance of the Monitor and under the supervision of this Court;
- (d) consult with key stakeholders; and
- (e) obtain interim financing to address the company's operating needs to facilitate the implementation of the foregoing restructuring efforts.

27. In furtherance of the above restructuring efforts, and to align its operations with its current liquidity position, Pure Gold has transitioned the Mine to temporary care and maintenance status



and expects to maintain this status while under CCAA protection. This step will significantly reduce the variability in the company's net cash flows and allow management to focus on restructuring objectives, while ensuring the continuation of essential functions at the Mine to protect the integrity of the operation of the Mine for eventual restart.

28. With respect to the Strategic Review Process, Pure Gold is currently engaged in consultations with its advisors and Sprott and the Monitor on how to revitalize and continue with the Strategic Review Process in the context of these CCAA proceedings. It is currently anticipated that Pure Gold will be bringing an application to this Court in the near term for an order approving a sales and investment solicitation process to be conducted under the supervision of this Court.

29. While the company is currently in a challenging financial position, it has implemented several initiatives that in recent months have resulted in cost savings, production improvements, the potential for further enhancements to operations in the future, and a path forward for the company. Given a reasonable period to advance its restructuring efforts, with the protections afforded by the CCAA, the overall value of the company's business will likely be enhanced to the benefit of its stakeholders.

30. Preserving the going concern value of Pure Gold's business will likely achieve a better long-term result for the company's stakeholders than a forced liquidation of its assets.

#### ***The Need for Interim Financing***

31. As demonstrated in Pure Gold's cash-flow projections filed in support of this Petition, Pure Gold will require interim financing to pursue its restructuring efforts in the context of these CCAA proceedings and to allow payment of financial obligations, including obligations to employees and trade creditors, as well as to allow Pure Gold to properly retain both the proposed Monitor and legal counsel to assist and advise Pure Gold in relation to restructuring options.

32. To address its urgent liquidity needs, the company has agreed with Sprott on the terms of an "**Interim Financing Term Sheet**" pursuant to which Sprott LP will make the necessary "**Interim Financing**" available to Pure Gold.

33. The Interim Financing provides for a credit facility up to a maximum amount of US\$10 million. However, Pure Gold is only requesting at this time that it be authorized by this Court to

immediately obtain advances under the Interim Financing of up to US\$2 million to meet its immediate cash needs as indicated in the Cash-flow Projections.

34. Pure Gold's current cash on hand is only \$260,000. The expected monthly cost of the care and maintenance program is approximately \$1.8 million excluding offsite costs. Pure Gold projects that it will in total require approximately \$3 million to \$4 million per month to keep the Mine on care and maintenance, meet its offsite costs, and to fund the costs of these proceedings.

35. Absent the authorization to borrow an initial amount of US\$2 million, Pure Gold will not have the liquidity it requires to fund its immediate operational needs, including payroll for employees critical to mine maintenance and preservation. Without the injection of this immediate working capital, the value of the Mine will erode rapidly and there is a materially increased risk of significant environmental issues. Pure Gold will seek authorization to borrow up to the maximum principal amount of the Interim Financing facility on a future application to this Court.

36. The terms of the proposed Interim Financing, which are more fully set out in the Interim Financing Term Sheet, are as follows (with capitalized terms not otherwise defined in this paragraph having the meanings ascribed to them in the Interim Financing Term Sheet):

<b>Borrower</b>	Pure Gold Mining Inc.
<b>Lender</b>	Sprott Private Resource Lending II (Collector), LP
<b>Purpose</b>	To fund, among other things, payment of Pure Gold's professional fees and restructuring costs, interest under the Interim Facility, and operating expenses, as well as other such costs as agreed to by the Interim Lender (as consented to by the Monitor).
<b>Interim Facility</b>	A super-priority, debtor-in-possession interim, non-revolving credit facility up to a maximum principal amount of US \$10,000,000.
<b>Interest Rate</b>	15% per annum
<b>Fees</b>	None
<b>Interim Lender Charge</b>	All Interim Financing Obligations shall be secured by the "Interim Lender Charge", granted by the Court on terms and conditions satisfactory to the Interim Lender in their sole discretion.
<b>Priority of Interim Lender Charge</b>	The Interim Lender Charge will rank after the Administration Charge and the D&O Charge.

<b>Maturity Date:</b>	The Petitioner will repay all of the Interim Financing Obligations in full, on the earlier of: (i) the occurrence of any Event of Default which is continuing and has not been cured; (ii) the implementation of a plan of compromise or arrangement within the CCAA proceedings which has been approved by the requisite majorities of the Petitioner's creditors and by an order of the Court; (iii) conversion of the CCAA proceedings into a proceeding under the <i>Bankruptcy and Insolvency Act</i> (Canada); and (iv) the date that is six months from the date of the Initial Advance
<b>Conditions Precedent:</b>	Usual and customary (but material) for an interim facility of this type.
<b>Affirmative Covenants:</b>	Covenants include delivery to the Interim Lender of documents required pursuant to the Interim Financing Term Sheet, providing to the Interim Lender regular updates as to the status of these CCAA proceedings, and conducting all activities in a manner consistent with the Agreed Budget.
<b>Negative Covenants:</b>	Covenants include not to transfer, lease, farm-out or otherwise dispose of property, assets or undertakings, except for Permitted Dispositions up to a maximum amount of \$500,000 or enter into any contract or agreement that involves potential expenditures in excess of \$200,000 without prior consent of the Interim Lender, and that the Petitioner shall not agree to or consent to any Liens over Collateral except for Permitted Liens.
<b>Events of Default:</b>	Events of Default include the issuance of an order dismissing these CCAA proceedings or lifting the stay of proceedings to permit the enforcement of a Lien against the Petitioner, and any Revised Budget that (a) contemplates or forecasts an adverse change or changes from the then-existing Agreed Budget, and such change(s) constitute a Material Adverse Change or (b) contemplates or forecasts a cash flow deficit in excess of \$500,000 or the equivalent amount thereof in any other currency or (ii) there shall exist an overall negative expense variance in excess of the greater of 15% % or \$100,000 in the then current Agreed Budget.

### Part 3: LEGAL BASIS

#### ***Applicable Legislation***

37. The Petitioner relies on:

- (a) the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (b) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**");
- (c) the inherent jurisdiction of this Honourable Court; and

- (d) such further and other legal basis as counsel may advise and this Honourable Court may allow.

***The Remedial Purpose of the CCAA***

38. The CCAA is remedial legislation, affording Canadian courts with broad jurisdiction to approve and implement restructuring arrangements:

The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.

*Century Services Inc. v. Canada (Attorney General)*,  
2010 SCC 60 at para. 59 [**Century Services**].

39. The Petitioner submits that the granting of the Initial Order would further the objective of the CCAA.

40. With the benefit of the protection afforded by the CCAA, the Petitioner will be able to maintain the value of its assets, and generally stabilize Pure Gold's business operations for the continued benefit of its stakeholders as restructuring alternatives are considered.

41. In the absence of the granting of the relief sought by the Petitioner, including the imposition of a stay of proceedings and approval of the Interim Financing, there is the risk that the Petitioner's care and maintenance operations at the Mine would be negatively affected. Any potential disruption of care and maintenance operations could put at risk the well-being of Pure Gold's employees and the environment and local communities surrounding the Mine.

42. Preserving the going concern value of Pure Gold's business will likely achieve a better long-term result for the company's stackholders than a fixed liquidation of its assets.

***The CCAA Applies to the Petitioner***

43. The CCAA applies in respect of a "debtor company" where the total amount of claims against the debtor exceed five (5) million dollars. The term "debtor company" is defined in Section 2 of the CCAA to include any company that is "insolvent."

CCAA, ss. 2(1) and 3(1).

44. The claims against Pure Gold are substantially more than the CCAA's statutory \$5-million threshold. Pure Gold is also insolvent.

45. Although the term "insolvent" is not defined in the CCAA, Canadian courts have applied the BIA definition of "insolvent "person" for the purposes of assessing entitlement to apply for relief under the CCAA, which term includes persons who are for any reason unable to meet their obligations as they generally become due. Courts have interpreted this test expansively to include a company that "is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring".

*Re Stelco Inc.*, 2004 CarswellOnt 1211 at paras. 21-22, 26 and 28, [2004] OJ No 1257 (Ont Sup Ct), leave to appeal to Ont CA refused, 2004 CarswellOnt 2936, leave to appeal to SCC refused, 2004 CarswellOnt 5200.

46. Pure Gold meets this statutory definition. The company is in the midst of a liquidity crisis. It cannot meet its obligations generally as they become due. Absent CCAA protection and the approval of the Interim Financing, Pure Gold will also not be able to meet its post-filing obligations to its creditors, employees, and stakeholders generally.

***This Court Has the Jurisdiction to Receive the Petitioner's Application for CCAA Protection***

47. Section 9(2) of the CCAA provides that any application under the CCAA may be made to the court that has jurisdiction in the province within which the "head office" or "chief place of business" of the company in Canada is situated.

48. Pure Gold's head office and chief place of business for the purposes of the CCAA is in British Columbia within the jurisdiction of this Court.

***The Petitioner Has Satisfied the Statutory Filing Requirements***

49. Section 10(2) of the CCAA provides that an initial application under the CCAA must be accompanied by:

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

50. Each of these conditions have been satisfied based on the evidence provided in the Haubrich Affidavit.

***The Requested Stay of Proceedings Is Appropriate***

51. Section 11.02(1) of the CCAA provides that a court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days, among other things, restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

52. A stay order under section 11.02(1) is the first step in all CCAA proceedings as it maintains the *status quo* while the debtor company consults with its creditors and stakeholders, allowing breathing room for reorganization.

*Re JTI-Macdonald Corp.*, 2019 ONSC 1625 at para. 12.

53. Consistent with the purpose of the CCAA, a stay of proceedings facilitates the ongoing operations of the debtor company's business to preserve its value and prevents any creditor from gaining an unfair advantage over other creditors.

54. In the circumstances, given its present financial and liquidity challenges, the Petitioner urgently requires a stay of proceedings under the CCAA to maintain the *status quo* and obtain the breathing room required to consider strategic restructuring alternatives and pursue and implement a restructuring strategy.

55. It is imperative for the success of any such strategy that current and potential actions against the Petitioner be stayed, and that its current customer and supplier contracts and arrangements be preserved.

56. With the benefit of the protection afforded by the CCAA, the Petitioner will be able to maintain the value of the Petitioner's assets, and generally stabilize its business operations for the continued benefit of its stakeholders as restructuring alternatives are considered.

57. As noted above, in the absence of the imposition of a stay of proceedings and the granting of other relief afforded by the CCAA, there is the risk that the Petitioner's care and maintenance operations at the Mine could be negatively affected. Any potential disruption of care and maintenance operations could put at risk the well-being of Pure Gold's employees and the environment and local communities surrounding the Mine.

***An Administration Charge is Appropriate***

58. The Petitioner seeks an Administration Charge for \$750,000 to secure the collective fees and disbursements incurred both before and after the commencement of these proceedings of legal counsel for the Petitioner, the proposed Monitor, and legal counsel for the proposed Monitor.

59. Section 11.52 of the CCAA expressly provides the Court with the power to grant a charge in respect of professional fees and disbursements. In determining whether to grant an administration charge, Canadian courts have considered several factors including:

- (a) the size and the complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

CCAA, s. 11.52.  
*Mountain Equipment Co-Operative (Re)*, 2020  
BCSC 2037 at para. 58.

60. Courts have recognized that, unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA would be frustrated because professionals would be unlikely to risk offering their services without any

assurance of ultimately being paid. Specifically, any failure to provide protection for professional fees will "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings".

*Re Timminco Ltd.*, 2012 ONSC 506 at para. 66.

61. The Petitioner requires the specialized expertise, knowledge, and continuing participation of the proposed beneficiaries of the Administration Charge to complete the restructuring, and the Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.

62. The Petitioner believes that an Administration Charge in the amount sought is fair and reasonable and will provide the level of appropriate protection for the payment of the Petitioner's essential professional services given the size and complexity of the Petitioner's business.

63. There will be no duplication of the roles of the beneficiaries of the Administration Charge. Each of these professionals will have a unique and distinct focus in the restructuring, and their joint efforts will produce a better result overall.

64. The proposed Monitor has reviewed the underlying assumptions upon which the Petitioner has based the quantum of the proposed Administration Charge, the anticipated complexity of these CCAA proceedings, and the services to be provided by the beneficiaries of the Administration Charge, and is of the view that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.

***The D&O Charge is Appropriate***

65. Pursuant to section 11.51 of the CCAA, a court may make an order declaring that all or part of the property of the debtor company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

CCAA, s. 11.51.

66. The Petitioner seeks a D&O Charge of \$650,000 to secure the Petitioner's obligation pursuant to the Initial Order to 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.

67. The D&O Charge is vital to encouraging the continued participation of the Petitioner's directors and officers in these CCAA proceedings. The Petitioner's directors and officers will provide necessary experience and stability to the Petitioner's business and guide the Petitioner's restructuring efforts. It is critical that a level of continuity be maintained within the Petitioner to ensure focus on achieving a restructuring plan that will benefit the Petitioner's stakeholders.

68. Consistent with both the statutory requirements and the British Columbia Model CCAA Initial Order, the D&O Charge is not intended to duplicate coverage already in place under the Petitioner's existing directors' and officers' liability insurance policies, but rather, to supplement such coverage if any claim is not insured under those policies.

69. The proposed Monitor has reviewed the underlying assumptions upon which the Petitioner has based the estimate of the potential liability in respect of directors' and officers' statutory obligations and is of the view that the D&O Charge is reasonable in the circumstances and that the continued involvement of the directors and officers is beneficial to the Petitioner's and the advancement of these proceedings.

***Interim Financing Should be Approved***

70. As recently stated by the Supreme Court of Canada, interim financing protects the going-concern value of the debtor company while it develops a workable solution to its insolvency issues, enabling the preservation and realization of the value of a debtor's assets.

*9354-9186 Québec inc. v. Callidus Capital Corp.*,  
2020 SCC 10 at para. 85.

71. This Court has jurisdiction to approve the Interim Financing Term Sheet and the Interim Lenders' Charge pursuant to section 11.2 of the CCAA, which sets out a list of non-exhaustive factors to be considered by courts in deciding whether to approve interim financing and grant an interim lenders' charge, including:

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

- (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 the charge; and
- (g) the views of the Monitor.

72. No one factor set out in s. 11.2(4) governs or limits the Court's consideration. The exercise is necessarily one of balancing the respective interests of the debtors and its stakeholders towards ensuring, if appropriate, that the financing will assist the debtor company to obtain the "breathing room" said to be needed to hopefully achieve a restructuring acceptable to the creditors and the court.

*1057863 B.C. Ltd. (Re)*, 2020 BCSC 1359 at para. 35

73. In addition to the statutory factors set out above, courts have determined that several additional factors are relevant to an application under section 11.2. These include whether:

- (a) the petitioner would be forced to stop operating without interim financing and whether bankruptcy would be in the interest of the petitioner's stakeholders;
- (b) the proposed interim financing will support the Applicants' restructuring plans, including implementation of a sales process; and
- (c) the proposed facility has been approved by the Applicants' management.

*North American Tungsten Corp. (Re)*, 2015 BCSC 1376 at paras. 33-35; *8440522 Canada Inc. (Re)*, 2013 ONSC 6167 at para. 32.

74. The proposed Interim Financing and corresponding Interim Lenders' Charge are necessary and appropriate for the following reasons, among others:

- (a) the Interim Financing will allow the Petitioner to preserve value for the Mine, its principal and most valuable asset;
- (b) the Interim Financing will also enhance the prospects of a viable restructuring, allowing the Petitioner to revitalize and implement the Strategic Review Process under the supervision of this Court in the interest of its stakeholders;
- (c) the amount the Interim Financing and terms of the Interim Financing Term Sheet are appropriate having regard to how the Petitioner's affairs will be managed during these CCAA proceedings and the period during which the Petitioner expects to be under CCAA protection, including specifically with respect to the Petitioner's projected cashflow needs and the anticipated Strategic Review Process; and
- (d) Sprott, being the Petitioner's senior ranking and largest creditor, supports the relief sought on this application, including approval of the Interim Financing Term Sheet.

75. In summary, the terms of the Interim Financing Term Sheet are the best terms available to the Petitioner in the circumstances given (a) the Petitioner's urgent need for funding to implement its restructuring efforts, (b) the need to allocate funds to preserve the value of the Mine, and (c) the approval of the Interim Financing Term Sheet by Sprott.

76. The proposed Monitor is of the view that the terms of the Interim Financing are reasonable, and that such facility and the Interim Lender Charge are necessary and would serve the best interests of the Petitioner and its stakeholders.

77. No creditor will be materially prejudiced because of the approval of the Interim Financing or the granting of the Interim Financing Charge.

#### ***The Monitor***

78. Section 11.7 of the CCAA provides that the court shall appoint a person to monitor the business and affairs of a debtor company granted relief under the CCAA.

79. Section 11.7 of the CCAA provides restrictions on who may be appointed as a monitor.

80. KSV is a licensed trustee within the meaning of section 2 of the BIA and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. KSV is qualified to act as Monitor in these CCAA proceedings.

***The Form of the Initial Order is Appropriate in the Circumstances***

81. In accordance with this Court's Practice Direction-47, the form of proposed Initial Order is based upon this Court's form of Model CCAA Initial Order and pursuant to section 11.02(1) of the CCAA seeks only such relief as is necessary in the circumstances.

82. The relief sought in the Initial Order is appropriate in the circumstances and within this Court's jurisdiction to grant pursuant to, among other provisions of the CCAA, section 11 as being appropriate in the circumstances.

83. The proposed Monitor is supportive of the Petitioner's application for inclusion in the Initial Order of a provision authorizing the Petitioner to pay certain pre-filing obligations. The Monitor will review each proposed payment in accordance with the criteria set out in the Initial Order prior to providing (or not providing) the Monitor's required consent.

*Index Energy Mills Road Corporation (Re)*, 2017 ONSC  
4944 at para. 30.

***Notice***

84. Rule 8-5(6) provides that "[t]he court may make an order without notice in the case of urgency."

85. Section 11 of the CCAA further provides that:

...if an application is made under this Act in respect of a debtor  
Petitioner, the court, on the application of any person interested in  
the matter, may, subject to the restrictions set out in this Act, on  
notice to any other person or without notice as it may see fit, make  
any order that it considers appropriate in the circumstances.

86. The Initial Order is being sought on notice only to Sprott.

87. The limited notice being provided with respect to this Petition is necessitated by the urgency of the Petitioner's need for the relief sought in the Petition and the fact that Pure Gold is a publicly traded company. Provision of advance notice of the Petitioner's intention to seek the relief CCAA protection is impractical and could compromise the integrity of the public markets.


88. The charges granted by the Court in the initial order will not rank in priority to any person who is defined as a "Secured Creditor" under the CCAA that has not been served with this Petition. The Petitioner will, on a subsequent application on notice to those Secured Creditors likely to be affected by the charges sought on this Petition, to seek priority of such charges over such Secured Creditors.

**Part 4: MATERIALS TO BE RELIED ON**

- 89. Affidavit #1 of Chris Haubrich, affirmed October 30, 2022;
- 90. Pre-filing Report of the Proposed Monitor, to be filed; and
- 91. Such further and other materials as counsel may advise and this Court may allow.

The Petitioners estimate that the hearing of the Petition will take two hours.

Date: October 31, 2022



Signature of Peter L. Rubin / Peter Bychawski  
Lawyers for Pure Gold Mining Inc.

<b>To be completed by the court only:</b>	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs ..... of Part 1 of this petition	
<input type="checkbox"/> with the following variations and additional terms:	
.....	
.....	
.....	
Date: ....[dd/mmm/yyyy].....	..... Signature of [ ] Judge [ ] Master

**SCHEDULE "A"**

**Initial Order**

**SCHEDULE "A" TO PETITION**

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 THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57  
AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF  
PURE GOLD MINING INC.

PETITIONER

**O R D E R MADE AFTER APPLICATION**

**INITIAL ORDER**

BEFORE THE HONOURABLE JUSTICE        )  
WALKER                                        )       October 31, 2022  
  )

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on the 31<sup>st</sup> day of October, 2022 (the "**Order Date**"); AND ON HEARING Peter L. Rubin, Peter Bychawski, and Claire Hildebrand, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Affidavit of Chris Haubrich affirmed October 30, 2022 (the "**Haubrich Affidavit**") and the consent of KSV Restructuring Inc. to act as Monitor; AND ON NOTICE TO Sprott Resource Lending Corp.; 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 Smithe Street, Vancouver, British Columbia at \_\_\_\_\_ on \_\_\_\_\_, the \_\_\_\_\_ day of November, 2022 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) the fees and disbursements of any Assistants retained or employed by the Petitioner 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, 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
- (c) with the consent of the Monitor and as permitted under the Interim Financing Term Sheet (as defined below) amounts owing for goods or services actually supplied to the Petitioner prior to the date of this Order by third party suppliers, with factors to be considered by the Monitor including whether:
  - (i) the supplier or service provider is critical to the Business and ongoing operations of the Petitioner and the payment is required to ensure ongoing supply;
  - (ii) making such payment will preserve, protect or enhance the value of the Property or the Business;
  - (iii) making such payment is required to address any environmental concerns; and
  - (iv) the supplier or service provider is required to continue to provide goods or services to the Petitioner after the date of this Order, including pursuant to the terms of this Order.

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 \$250,000 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(b)]** 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 and such covenants as may be contained in the Definitive Documents (as hereinafter defined), 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 and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or in the aggregate;
- (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 November 10, 2022, 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 "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$650,000, as security for the indemnity provided in paragraph 21 of this Order. The D&O Charge shall have the priority set out in paragraphs 39 and 41 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 D&O Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the D&O 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. KSV Restructuring 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) assist the Petitioner, to the extent required by the Petitioner, in its dissemination, to the Interim Lender (as hereinafter defined) and its counsel financial and other information as agreed to between the Petitioner and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (d) advise the Petitioner in its preparation of the Petitioner's cash flow statements and reporting as reasonably required by the Interim Lender;
- (e) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (f) 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;
- (g) 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;
- (h) 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
- (i) 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*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the Ontario *Environmental Protection Act*, R.S.O. 1990, c. E.19, the Ontario *Water Resources Act*, R.S.O. 1990, c. O.40, and the Ontario *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 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 and the Interim Lender 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, 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 each of the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amounts of \$75,000, \$50,000 and \$100,000 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 \$750,000, 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 39 and 41 hereof.

## **INTERIM FINANCING**

33. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility from Sprott Private Resource Lending II (Collector) LP (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed USD \$2,000,000 unless permitted by further Order of this Court.

34. Such credit facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet between the Petitioner and the Interim Lender dated as of October 30, 2022 (the "**Interim Financing Term Sheet**") attached to the Haubrich Affidavit.

35. The Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Interim Financing Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

37. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender may immediately cease making advances to the Petitioner and, upon 5 business days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents and the Interim Lender's Charge, including without limitation, to cease making advances to the Petitioner and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioner against the obligations of the Petitioner to the Interim Lender under the Interim Financing Term Sheet, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate

payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

38. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

39. The priorities of the Administration Charge, the D&O Charge and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$750,000);

Second – D&O Charge (to the maximum amount of \$650,000); and

Third - Interim Lender's Charge.

40. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the D&O Charge and the Interim Lender's 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.

41. 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

for (a) any person who is defined as a "**Secured Creditor**" under the CCAA that has not been served with the Petition for this Order; and (b) those claims contemplated by section 11.8(8) of the CCAA.

42. The Petitioner shall be entitled, on a subsequent application on notice to those Secured Creditors likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrances over which the Charges have not obtained priority pursuant to this Order.

43. 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, the Interim Lender and the beneficiaries of the Administration Charge and the Director's Charge.

44. The Administration Charge, the Director's Charge, the Interim Financing Term Sheet, the Definitive Documents and the Interim Lender'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**") and/or the Interim Lender 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) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet or the Definitive Documents shall 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 Petitioner entering into the Interim Financing Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioner pursuant to this Order, the Interim Financing Term Sheet or the Definitive Documents, 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.

45. THIS COURT ORDERS that 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**

46. The Monitor shall (i) without delay, publish in The Globe and Mail and The Northern Miner 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 \$1,000, 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.

47. 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.

48. 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: <https://www.ksvadvisory.com/experience/case/pure-gold-> (the “**Website**”).

49. 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 the Website.

50. Notwithstanding paragraphs 47 and 49 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, British Columbia and Ontario 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, the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, and in respect of the British Columbia Crown, and the *Crown Liability and Proceedings Act*, S.O. 2019 c.7, Sch 17, in respect of the Ontario Crown.

## **GENERAL**

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

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

60. 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:

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Signature of Peter L. Rubin  
Lawyer for the Petitioner

BY THE COURT

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REGISTRAR

**Schedule "A"**

<b>Counsel Name</b>	<b>Party Represented</b>
Kibben Jackson	KSV Restructuring Inc.
Colin Brousson	Sprott Resource Lending Corp and Sprott Private Resource Lending II (Collector) LP