

COURT FILE NUMBER

2001-07984

COURT

COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

CALGARY

Form 49
Rule 13.19
Clerk's Stamp

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, RSC 1985, c
C-36, as amended

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
NORTHERN SILICA CORPORATION,
HEEMSKIRK MINING PTY. LTD., CUSTOM
BULK SERVICES INC., HEEMSKIRK
CANADA LIMITED, HEEMSKIRK CANADA
HOLDINGS LIMITED and HCA MOUNTAIN
MINERALS (MOBERLY) LIMITED

APPLICANTS

QMETCO LIMITED and TAURUS RESOURCES
NO. 2 B.V.

RESPONDENTS

NORTHERN SILICA CORPORATION,
HEEMSKIRK MINING PTY. LTD., CUSTOM
BULK SERVICES INC., HEEMSKIRK
CANADA LIMITED, HEEMSKIRK CANADA
HOLDINGS LIMITED and HCA MOUNTAIN
MINERALS (MOBERLY) LIMITED

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

McMillan LLP

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Kourtney Rylands

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File No. 273913

AFFIDAVIT OF RICHARD JONES, Q.C.**Sworn September 10, 2020**

I, Richard Jones, Q.C., of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

A. INTRODUCTION

1. I am a lawyer with McMillan LLP.
2. The following facts are based on information provided to me by Adam Maerov of McMillan LLP and I verily believe them to be true:
 - (a) Attached as **Exhibit "A"** is an amendment to the asset purchase agreement entered into on July 21, 2020 between Custom Bulk, Heemskirk Canada, Heemskirk Holdings, and Moberly as sellers, Vitreo Minerals Ltd. (the "Stalking Horse Bidder"), as purchaser, and the Monitor, Alvarez & Marsal Canada Inc. (the "Amendment").
 - (b) The Amendment was requested by the Stalking Horse Bidder.
 - (c) It is expected that the Stalking Horse Bidder will execute the Amendment on the evening (Calgary time) on Thursday, September 10, 2020.
3. I make this affidavit in support of the Respondents' application for an approval and vesting order and for no improper purpose.



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**This is Exhibit "A" to the Affidavit of Richard Jones, Q.C.
Sworn September 10, 2020**


Commissioner for Oaths in and for Alberta

LOVEPREET SAINI
Barrister & Solicitor
A Commissioner for Oaths in and for Alberta

AMENDMENT TO ASSET PURCHASE AGREEMENT

This Amendment to Asset Purchase Agreement (this “**Agreement**”) is made as of September 10, 2020.

AMONG:

HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, a corporation incorporated under the laws of the Province of British Columbia

(“**Moberly**”)

- and -

CUSTOM BULK SERVICES INC., a corporation incorporated under the laws of the Province of Alberta

(“**Custom Bulk**”)

- and -

HEEMSKIRK CANADA HOLDINGS LIMITED, a corporation incorporated under the laws of the Province of British Columbia

(“**Holdings**”)

- and -

HEEMSKIRK CANADA LIMITED, a corporation incorporated under the laws of the Province of Alberta

(“**Heemskirk Canada**” and collectively with Moberly, Custom Bulk, and Holdings, the “**Sellers**”)

- and -

VITREO MINERALS LTD., a corporation incorporated under the laws of the Province of British Columbia

(together with its permitted assigns, the “**Buyer**”)

- and -

ALVAREZ & MARSAL CANADA INC., in its capacity as Monitor of the Sellers

WHEREAS:

A. The Parties entered into an asset purchase agreement dated July 21, 2020 (the “**Asset Purchase Agreement**”); and

B. Each of the Parties wish to amend the Asset Purchase Agreement to extend the Closing Date.

NOW THEREFORE, in consideration of the foregoing, and the respective mutual covenants, agreements, representations and warranties of the Parties herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the Parties covenant and agree as follows:

Definitions

1. Unless otherwise defined herein or the context requires otherwise, capitalized terms used herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

Amendments

2. The Asset Purchase Agreement is hereby amended as follows:
 - (a) The definition of "Closing Date" in Section 1.1 shall be deleted in its entirety and replaced with:

"Closing Date" means October 20, 2020, or such other date as the Buyer and Sellers agree to in writing.

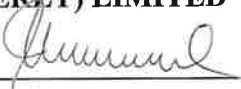
General Provisions

3. This Agreement shall form a part of the Asset Purchase Agreement for all purposes, and each of the Parties shall be bound hereby. From and after the date of this Agreement, any reference to the Asset Purchase Agreement shall be deemed to be a reference to the Asset Purchase Agreement as amended by this Agreement.
4. Each of the Parties agrees to do all such things and execute and deliver all such further instruments and documents as the other Parties may reasonably require to give effect to and implement this Agreement in accordance with its true intent.
5. Other than as amended herein, the terms and conditions of the Asset Purchase Agreement shall remain the same and time shall remain of the essence.
6. This Agreement shall be governed by the law of the Province of Alberta and the federal laws of Canada applicable therein.
7. This Agreement is binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.
8. This Agreement may be executed in several counterparts (by original or facsimile or e-mail transmitted signature), each of which when so executed shall be deemed to be an original and all counterparts, if executed by each of the Parties, shall constitute a valid and enforceable agreement among the Parties.

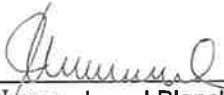
[Signature Page Follows]

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto as of the date first above written.

**HCA MOUNTAIN MINERALS
(MOBERLY) LIMITED**

By 
Name: Jerrad Blanchard
Title: Cheif Financial Officer

CUSTOM BULK SERVICES INC.

By 
Name: Jerrad Blanchard
Title: Cheif Financial Officer

**HEEMSKIRK CANADA HOLDINGS
LIMITED**

By 
Name: Jerrad Blanchard
Title: Cheif Financial Officer

HEEMSKIRK CANADA LIMITED

By 
Name: Jerrad Blanchard
Title: Cheif Financial Officer

VITREO MINERALS LTD.

By _____
Name:
Title:

ALVAREZ & MARSAL CANADA INC.,
in its capacity as Monitor and not in its
personal capacity

By _____
Name:
Title:

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto as of the date first above written.

**HCA MOUNTAIN MINERALS
(MOBERLY) LIMITED**

By _____
Name:
Title:

CUSTOM BULK SERVICES INC.

By _____
Name:
Title:

**HEEMSKIRK CANADA HOLDINGS
LIMITED**

By _____
Name:
Title:

HEEMSKIRK CANADA LIMITED

By _____
Name:
Title:

VITREO MINERALS LTD.

By _____
Name:
Title:

ALVAREZ & MARSAL CANADA INC.,
in its capacity as Monitor and not in its
personal capacity

By  _____
Name: Cassie R. Glin
Title: Senior Vice President