

NO. S-154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

AMENDED NOTICE OF APPLICATION

Name of applicant: North American Tungsten Corporation Ltd. ("NATC" or the "Petitioner")

TO: The Service List

AND TO: Secured creditors of the Petitioner not on the Service List

TAKE NOTICE that an application will be made by the applicant to the Honourable Mr. Justice Butler at the courthouse at 800 Smithe Street, Vancouver, B.C. on 16/November/2015 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order substantially in the form attached hereto as **Schedule "B"**, *inter alia*, extending the Stay Period (as defined in the Amended and Restated Initial Order made July 9, 2015) to 11:59 p.m. on March 31, 2016; and
2. Such other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

BACKGROUND

1. On June 9, 2015, Mr. Justice Butler granted the Initial Order providing for a stay of proceedings to July 8, 2015, and a come-back hearing was set for July 8, 2015 at 9:00 a.m.
2. On July 9, 2015, Mr. Justice Butler granted the Amended and Restated Initial Order, pursuant to which (among other things) the Stay Period was extended to 11:59 p.m. on July 17, 2015.
3. In previous applications, the Petitioner developed and disclosed an operating plan to:
 - (a) run production at the Cantung Mine until the end of October 2015, recognizing that shipments will continue for a period of time thereafter;
 - (b) conduct an orderly wind down of underground mining activities;
 - (c) undertake a staged disposition of underground mining equipment to reduce the amount outstanding to one of its senior secured lenders, Callidus Capital Corporation ("**Callidus**"); and
 - (d) move the Cantung Mine to care and maintenance over the winter

(the "**Operating Plan**").
4. On July 17, 2015, Mr. Justice Butler granted an order, *inter alia*, (a) extending the Stay Period to 11:59 p.m. on October 31, 2015, (b) approving a Sale and Investment Solicitation Process (the "**SISP**") to identify long term investors or purchasers of some or all of its assets, and (c) approving the engagement of Alvarez & Marsal Canada Securities ULC as financial advisor to assist the Petitioner to implement the SISP (the "**Financial Advisor**").
5. It was intended that the SISP would run parallel to the Operating Plan, with the aim of closing a transaction by late 2015.
6. On July 22, 2015, the Petitioner received a letter from Global Tungsten & Powders Corp ("**GTP**") notifying the Petitioner of GTP's intention to set off amounts due to the Petitioner in respect of post-filing invoices against amounts advanced to the Petitioner under a pre-filing loan agreement.

7. On July 27, 2015, Mr. Justice Butler made an order declaring that set off was stayed by the ARIO and requiring GTP to make immediate payment of all amounts due to the Petitioner for shipments made before July 22, 2015.

8. On July 31, 2015, Mr. Justice Butler made an order declaring that GTP had a valid right of set off and staying GTP from exercising its right of set off during the Stay Period, as may be extended by order of the Court (the "**Set-Off Order**"). GTP sought leave to appeal to the British Columbia Court of Appeal (the "**BCCA**").
9. On August 12, 2015, Mr. Justice Savage of the BCCA denied GTP's application for leave to appeal. GTP applied to vary this order.
10. On August 20, 2015, Mr. Justice Butler granted an order authorizing and empowering the Petitioner to enter into a revolving credit facility with Callidus (the "**AR Facility**") to finance accounts receivable owed to the Petitioner by GTP, secured by a super-priority charge over the Petitioner's assets.
11. An amendment to the SISP was approved by order of Mr. Justice Butler on September 14, 2015, which saw the Monitor play a larger and expanded role in regards to the SISP.
12. On September 30, 2015, a panel of three judges of the BCCA dismissed GTP's application to vary the order by Mr. Justice Savage of the Court of Appeal of British Columbia, and confirmed the denial of leave to appeal the Set-Off Order.
13. On October 14, 2015, the Stay Period was extended to 11:59p.m. on November 30, 2015.

AR FACILITY

14. After the AR Facility was approved, the Petitioner resumed regular shipments to GTP in order the access funding under the AR Facility.
15. The Petitioner and Callidus were not able to settle the AR Facility term sheet with Callidus. However, Callidus did advance \$1.17 million on or about September 18, 2015 (the "**Advance**").
16. On October 1, 2015, Callidus and the Petitioner came to an agreement regarding the AR Facility and the Advance whereby Callidus agreed to continue to provide the revolving facility at the limit of that initial Advance and secured by the security described in the AR Facility term sheet.

17. GTP is currently stayed from exercising its right of set off until the end of November 2015. As a result, GTP is bound to pay for all outstanding shipments and has been doing so.
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TRANSITION TO CARE AND MAINTENANCE

18. The mill at the Cantung Mine was shut down on October 26, 2015. The Petitioner is carrying out the Operating Plan to transition the Cantung Mine to care and maintenance over the winter.
19. As part of the transition to care and maintenance, over the weeks following shut down of the mill, the Petitioner is preparing final shipments of production and performing various tasks related to the transition to care and maintenance, including underground shutdown and preparedness, mill shutdown, water treatment and environmental inspections, tailings ponds inspections, surface area deactivation work, building winterization, equipment maintenance, and various administrative and regulatory management.
20. Given the Petitioner's liquidity constraints, it has advised its employees that their last day of work will be November 18, 2015, subject to a limited number of employees kept on by the Petitioner to assist in caring for and maintaining the mine.

OUTCOME OF SISP

21. The deadline for potential bidders to submit Qualified Bids (as defined in the SISP) was September 30, 2015.
22. The Financial Advisor, the Monitor and the Petitioner assessed all Qualified Bids received, in consultation with Callidus and the Government of the Northwest Territories ("GNWT"), to determine whether there was sufficient support for any of the Qualified Bids so as to justify continuing the SISP.
23. As a result of the discussions among the Financial Advisor, the Monitor, the Petitioner, Callidus and GNWT, the Monitor determined that none of the Qualified Bids received in the SISP were likely to result in consummation of a transaction with the support of the Petitioner's stakeholders.
24. Accordingly, as contemplated by paragraph 24 of the SISP, the Monitor terminated the SISP and notified each Qualified Bidder of the termination of the SISP effective October 21, 2015.
25. The Financial Advisor, the Monitor and the Petitioner also assessed bids on equipment at the Cantung Mine, in consultation with Callidus, in accordance with the Operating

Plan. At present, and having regard to the bids received, there is no immediate plan to proceed with any sales of the equipment.

EXTENSION OF THE STAY PERIOD AND EXPANSION OF THE POWERS OF THE MONITOR

26. Throughout October 2015, the Petitioner had numerous discussions with the Monitor, Callidus and GNWT in relation to, among other things, the transition of the Cantung Mine to care and maintenance and the funding of that process and ongoing care and maintenance over the winter.
27. GNWT involved the Government of Canada ("GC") in such discussions.
28. Given that the transition of the Cantung Mine to care and maintenance in accordance with the Operating Plan will be largely complete as of November 18, 2015, and the Petitioner will have no funds to continue operations, the Petitioner's management and directors will step down on the earlier of November 18, 2015, and the date the order sought hereby is made expanding the powers of the Monitor.
29. Given the Petitioner's lack of liquidity and the resignation of management, the Petitioner will require funding to support the ongoing operations of the Petitioner, which after mid-November 2015 will consist of care and maintenance of the Cantung Mine through the requested extension of the Stay Period.
30. GNWT and GC are in discussions in relation to the funding of the environmental care and maintenance of the Cantung Mine, and the security and trust arrangements currently in place, in favour of GNWT, to secure, among other things, costs in respect of environmental management and compliance, site reclamation and site restoration at the Cantung Mine (the "**Reclamation Obligations**").
31. It is expected that GNWT and GC will make arrangements, on or before the date scheduled for hearing this Application, for the funding of the carrying out of Reclamation Obligations at the Cantung Mine by the Petitioner as directed by the Monitor within these CCAA proceedings.
32. It is contemplated that the Petitioner will continue to operate under the supervision of the Monitor, in consultation with Callidus, GNWT and GC, as applicable.
33. If the Stay Period is extended, the cash flow forecast attached to the Thirteenth Affidavit of Dennis Lindahl, to be sworn, demonstrates that the Petitioner can satisfy its post-filing liabilities through the end of March 2016.

34. The Petitioner is working in good faith and with due diligence towards a responsible transition of its assets to those creditors with security over same, and operation of the Cantung Mine in care and maintenance funded by GNWT and/or GC. It is appropriate in the circumstances to extend the Stay Period to enable the Petitioner to work towards these aims.

SECOND ADMINISTRATION CHARGE

35. On November 6, 2015, GNWT filed an application to be heard on the same date as this Application which seeks Court approval of a sale of the Mactung Property to GNWT (the "**Mactung Transaction**").
36. The purchase price proposed in the Mactung Transaction comprises a credit-bid component and a payment by GNWT of all amounts outstanding under the existing priority charges granted in these CCAA proceedings, namely the Administration Charge, the Interim Lender's Charge, the Directors' Charge (each as defined in the Amended and Restated Initial Order) and the AR Lender's Charge (as defined in the Order pronounced herein August 13, 2015, and collectively the "**CCAA Charges**"), provided however that upon making such payment, GNWT is to subrogated to the rights, claims and security of the beneficiaries of the CCAA Charges.
37. The structure of the Mactung Transaction is intended to reflect that GNWT's security on the Mactung Property is subordinate only to the amount of the CCAA Charges allocable to Mactung, GNWT is taking the position that it should be entitled to recover such amounts as are allocable to the Cantung Mine and realizable from the proceeds of such assets, if any.
38. To reflect that the Petitioner's counsel will have a limited role going forward and to ensure that the Monitor and its counsel continue to benefit from a priority charge in respect of their fees, without being supplanted by, subordinate to or diluted by GNWT, the Petitioner is proposing that (a) the existing Administration Charge be amended to secure fees and expenses incurred on or before the date the order expanding the powers of the Monitor is made, and (b) a second or replacement charge be granted to secure the fees and expenses of the Monitor and its counsel commencing on the date following the date the order expanding the powers of the Monitor is made (the "**Second Administration Charge**").

Part 3: LEGAL BASIS

1. Sections 11, 11.02, and 11.52 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "**CCAA**"); and
2. The inherent and equitable jurisdiction of this Honourable Court.

3. The Petitioner has been, and is, acting in good faith and with due diligence.

Part 4: MATERIAL TO BE RELIED ON

1. Amended and Restated Initial Order, made July 9, 2015;
2. Order Made After Application, made July 17, 2015;
3. Order Made After Application, made July 27, 2015;
4. Set-Off Order, made July 30, 2015;
5. Order Made After Application, made August 13, 2015;
6. Order Made After Application, made September 14, 2015;
7. Order Made After Application, made October 14, 2015;
8. Affidavit #1 of Dennis Lindahl, sworn June 8, 2015;
9. Affidavit #6 of Dennis Lindahl, sworn July 15, 2015;
10. Affidavit #9 of Dennis Lindahl, sworn July 21, 2015;
11. Affidavit #12 of Dennis Lindahl, sworn October 12, 2015
12. Affidavit #13 of Dennis Lindahl, to be sworn, 2015;
13. The Fifth Report of the Monitor, dated July 15, 2015;
14. The Sixth Report of the Monitor, dated July 23, 2015;
15. The Seventh Report of the Monitor, dated August 10, 2015;
16. The Ninth Report of the Monitor, filed October 13, 2015;
17. The Tenth Report of the Monitor, filed October 23, 2015;
18. The Eleventh Report of the Monitor, to be filed; and
19. Other pleadings and materials filed in this proceeding.

The applicant(s) estimate(s) that the application will take 1/2 day.


This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master. Mr. Justice Butler is seized of these proceedings and this application has been scheduled to be heard before Mr. Justice Butler by Trial Scheduling.

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

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 10 / November / 2015



Signature of lawyer for filing party
John R. Sandrelli

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:
_____ _____ _____	
Date:	_____
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master	

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

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

SCHEDULE "A"

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PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE) THE HONOURABLE)
)) 16 / Nov / 2015
) MR. JUSTICE BUTLER)

ON THE APPLICATION of North American Tungsten Corporation Ltd. coming on for hearing at Vancouver, British Columbia on this day and on hearing John Sandrelli, counsel for North American Tungsten Corporation Ltd., and those counsel listed in **Schedule "A"** hereto;

THIS COURT ORDERS AND DECLARES that:

NOTICE

1. The time for service of the Notice of Application herein be and is hereby abridged such that the Notice of Application is properly returnable today and service upon any interested party, other than those parties on the service list maintained by the Petitioner and Alvarez & Marsal Canada Inc. (the "**Monitor**") in these proceedings is hereby dispensed with.
2. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Initial Order granted by this Court on June 9, 2015 (as the same has been amended and restated by the Amended and Restated Initial Order made July 9, 2015, as the same may be amended or amended and restated further from time to time, the "**ARIO**").

EXTENSION OF STAY

3. The relief granted in the Initial Order and ARIO, as extended by further Order in this proceeding on July 17, 2015, and October 14, 2015, including the Stay Period as defined therein, is hereby continued and extended to 11:59 p.m. on March 31, 2016.

EXPANSION OF THE MONITOR'S POWERS

4. The powers and duties of Alvarez & Marsal Canada Inc., in its capacity as Monitor and not in its personal capacity (the "Monitor") are hereby modified and expanded such that the Monitor, in addition to its powers set forth in the ARIO, is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and Business and, without in any way limiting the generality of the foregoing, is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:
- (a) take any and all steps in order to direct or cause the Petitioner to exercise rights under paragraph 11 of the ARIO;
 - (b) take any and all steps in order to direct or cause the Petitioner to administer the Property and operations of the Petitioner or to perform such other functions or duties as the Monitor considers necessary or desirable to deal with the Property or Business, including restructuring, wind-down, liquidation, disposal of assets, or other activities;
 - (c) monitor, review, and direct the Petitioner's receipts and disbursements and implement such measures of control as the Monitor deems reasonably necessary to ensure the appropriate monitoring of the Petitioner's expenses and disbursements, including adding or removing signing authorities to or from the Petitioner's bank accounts;
 - (d) initiate and administer any claims bar and/or claims resolution process, or protocol as may be approved by Order of this Court within these proceedings;
 - (e) subject to the requirement for Court approval set forth in section 36 of the CCAA, direct or cause the Petitioner to complete one or more transactions for the sale of all or any part of the Business, Property or any part thereof, and conduct, supervise and recommend to the Court any procedure regarding the allocation and/or distribution of proceeds of any sales;
 - (f) settle, extend or compromise any indebtedness owing to or by the Petitioner;
 - (g) engage or cause the Petitioner to engage consultants, assistants, advisors, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, as the Monitor deems necessary or desirable to carry out the Monitor's powers and duties, including, without limitation, those conferred by the ARIO and this Order and all such persons shall be deemed to be "Assistants" under the ARIO;
 - (h) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter; and

- (i) meet with management of the Petitioner, if any, with respect to any of the foregoing including, without limitation, operational, transactional and restructuring matters,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined in the ARIO), including the Petitioner and its past or present directors and officers, and without interference from any other Person, provided, however, that the Monitor shall comply with all applicable laws and shall not have any authority or power to elect or to cause the election or removal of directors of the Petitioner or to take any action to restrict or to transfer to the Monitor any of their powers, duties or obligations, except in accordance with section 11.5(1) of the CCAA.

5. Without limiting the provisions of the ARIO, the Petitioner shall remain in possession and control of the Property and the Business and the Monitor shall not take, nor by carrying out its duties hereunder and under the ARIO be deemed to take, possession of the Property or the Business or any part thereof.

CASH MANAGEMENT

6. The Petitioner shall be entitled to continue to utilize the Cash Management System under the supervision of the Monitor and the Monitor shall be authorized and empowered to implement such controls and procedures as it considers necessary, including adding or removing signing authorities to or from the Petitioner's bank accounts, to control the Petitioner's receipts and disbursements including receipt of all funds, monies, cheques, instruments, and other forms of payments received or collected from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any part of the Property or Business and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence.

EMPLOYEES

7. Subject to the right of employees to terminate their employment, all employees of the Petitioner shall remain the employees of the Petitioner until such time as the Petitioner, under the direction of the Monitor, may terminate the employment of such employees. The Monitor shall not be liable for any employee-related liabilities of the Petitioner, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee-related liabilities of the Petitioner, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.
8. The enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Petitioner of any person under the direction of the Monitor in connection with the Monitor's

appointment and the exercise and performance of its powers and duties shall not constitute the Monitor, the employer, successor employer or related employer of the employees of the Petitioner within the meaning of the *Employment Standards Act* of British Columbia, the *Pension Benefits Standards Act* of British Columbia, the *Canada Labour Code*, the *Pension Benefits Standards Act* of Canada or any other provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by the Petitioner. In particular, the Monitor shall not be liable to any of the employees for any wages (as "wages" are defined in the *Employment Standards Act* of British Columbia or in the *Employment Standards Act* of the Northwest Territories, as applicable), including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.

9. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Monitor may disclose personal information of identifiable individuals to Her Majesty in right of Canada or the Government of the Northwest Territories (each a "**Government**"), but only to the extent desirable to transition operation of the Property or Business to the Government. The applicable Government shall maintain and protect the privacy of such information and limit the use of such information to its administration of the Property or Business of the Petitioner and shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Petitioner, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

10. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor is not, and shall not be deemed to be, an owner of any of the Property for any purpose including without limitation, for purposes of Environmental Legislation (for purposes of this Order, the term "**Environmental Legislation**" shall mean any federal, provincial, territorial or other jurisdictional legislation, statute, regulation or rule of law or equity (whether in effect in Canada or any other jurisdiction) 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 *Environmental Protection Act*, R.S.N.T. 1988, c E-7, and the *Environmental Rights Act*, R.S.N.W.T. 1988, c 83 (Supp), and regulations thereunder.

11. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purposes of this Order, the term "**Adverse Environmental Condition**" shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the date of the Initial Order.
12. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof that arose, occurred or continued after the date of this Order unless such Adverse Environmental Condition is caused by the gross negligence or wilful misconduct of the Monitor.
13. Notwithstanding the immediately preceding paragraph, the Monitor shall not be liable beyond the net realized cash value received and available to the Monitor from the Property under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof which is caused by the gross negligence or wilful misconduct of the Monitor.
14. Nothing contained in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "**Possession**"), or require the Monitor to take Possession, of any part of the Property which may be a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any Environmental Legislation.
15. The Monitor is not, and shall not be or be deemed to be, a director, officer or employee of the Petitioner.
16. Notwithstanding anything to the contrary contained in this or any other order in these proceedings, the Monitor shall not incur any liability or obligation as a result of the enhancement of the Monitor's powers and duties hereunder, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except as may result from the gross negligence or wilful misconduct of the Monitor. Any liability of the Monitor in respect of the performance of its duties hereunder shall not in any event exceed the aggregate of the quantum of fees and disbursement paid to or incurred by the Monitor in connection with the performance of its duties hereunder.
17. In the event of a conflict between this Order and any previous Order, including the ARIO, this Order shall govern, but the terms of the ARIO and all subsequent Orders shall not otherwise be affected by this Order, including without limitation:
 - (a) the creation and priority of the Administration Charge (as that term is defined in the ARIO);
and

- (b) the limitation on the Monitor's liability as set forth in paragraph 30 of the ARIO.

FUNDING OF ENVIRONMENTAL CARE AND MAINTENANCE ACTIVITIES

18. Her Majesty in Right of Canada as represented by the Department of Indian Affairs and Northern Development Canada ("**DIAND**"), shall fund the Petitioner's expenditures as set out in the operating budget as set out in the Eleventh Report of the Monitor (the "**Budget**") for the period November 18, 2015, to March 31, 2016 (the "**Budget Period**"), including any Budget Adjustment made pursuant to paragraph 19 herein (the "**DIAND Funding**").
19. If the Monitor anticipates any material increase in the cumulative amount to be spent by the Petitioner during the Budget Period, including without limitation with respect to the operating costs and environmental costs of the Petitioner and the fees and disbursements of the Petitioner, the Monitor and their respective counsel incurred during the Budget Period (a "**Budget Adjustment**"), the Monitor shall notify DIAND of such Budget Adjustment and DIAND shall notify the Monitor within three business days of such notice whether DIAND consents to an amendment to the Budget to include the Budget Adjustment.
20. The DIAND Funding shall be secured by a charge upon the real property related to the Cantung Mine, including mineral tenures and surface leases, which charge shall rank in priority to all other charges and encumbrances of any nature and kind upon such real property.

SECOND ADMINISTRATION CHARGE

21. Paragraph 33 of the ARIO is hereby deleted in its entirety and replaced with the following:

"33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order, which are related to the Petitioner's restructuring. the Administration Charge shall secure only those fees and disbursements incurred for the period up to 11:59 p.m. on November 16, 2015, and shall have the priority set out in paragraphs 41 and 43 hereof.

33A. The Monitor and counsel to the Monitor, if any, shall be entitled to the benefit of and are hereby granted a charge (the "**Second Administration Charge**") on the Property other than the Property known as the "**Mactung Property**" which is located in the Selwyn mountain range in an area straddling the territorial border between Yukon and the Northwest Territories, which charge shall not exceed an aggregate amount of \$500,000, as security for their respective fees and disbursements incurred at the

standard rates and charges of the Monitor and such counsel, after 12:00 a.m. on November 17, 2015. The Second Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof."

22. Paragraphs 41 and 42 of the ARIO are hereby deleted in their entirety and replaced with the following:

"41. The priorities of the Administration Charge, the Interim Lender's Charge and the Directors' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000) and Second Administration Charge (to the maximum amount of \$500,000, and only as against the Property other than the Mactung Property), with priority as between these charges as follows:

Until payment in full to the then-beneficiaries of the Administration Charge of all amounts then-outstanding thereunder, in conjunction with the closing of a sale of the Mactung Property to the Government of the Northwest Territories or otherwise, the Administration Charge shall be senior in priority to the Second Administration Charge; and

After payment in full to the then-beneficiaries of the Administration Charge of all amounts then-outstanding thereunder, in conjunction with the closing of a sale of the Mactung Property to the Government of the Northwest Territories or otherwise, the Second Administration Charge shall be senior in priority to the Administration Charge;

Second – Interim Lenders' Charge and the GSA (to the maximum amount of \$2,500,000 plus all interest, costs, fees and expenses as provided in the Term Sheet);

Third – the AR Lender's Charge (to the maximum amount of \$2,500,000 plus all interest, costs, fees and expenses as provided in the AR Term Sheet); and

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

42. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Second Administration Charge, the Interim Lenders' Charge, the GSA, the AR Lender's Charge and the Directors' Charge (collectively, the "Charges") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming

into existence, notwithstanding any failure to file, register or perfect any such Charges; provided, however, that the Second Administration Charge shall not attach to the Mactung Property."

23. Paragraph 44 of the ARIO is hereby deleted in its entirety and replaced with the following:

"44. 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, the AR Lender and the beneficiaries of the Administration Charge, the Second Administration Charge and the Director's Charge."

GENERAL

24. The Petitioner and its advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and shall provide the Monitor with such assistance as the Monitor may request from time to time to enable the Monitor to carry out its duties and exercise its powers as set out in the ARIO, this Order or any other Order of this Court; provided, however, that any obligation on the part of any of the Petitioner's advisors to cooperate with the Monitor and follow its directions shall be predicated on suitable compensation and payment arrangements' being made as between the Monitor and each such advisor.

25. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor, on notice to the Service List, may apply to this Court to seek its discharge in the event it believes it is necessary or appropriate to do so.

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

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

Signature of _____
Lawyer for _____.

By the Court.

Registrar

34. The Petitioner is working in good faith and with due diligence towards a responsible transition of its assets to those creditors with security over same, and operation of the Cantung Mine in care and maintenance funded by GNWT and/or GC. It is appropriate in the circumstances to extend the Stay Period to enable the Petitioner to work towards these aims.

SECOND ADMINISTRATION CHARGE

35. On November 6, 2015, GNWT filed an application to be heard on the same date as this Application which seeks Court approval of a sale of the Mactung Property to GNWT (the "Mactung Transaction").
36. The purchase price proposed in the Mactung Transaction comprises a credit-bid component and a payment by GNWT of all amounts outstanding under the existing priority charges granted in these CCAA proceedings, namely the Administration Charge, the Interim Lender's Charge, the Directors' Charge (each as defined in the Amended and Restated Initial Order) and the AR Lender's Charge (as defined in the Order pronounced herein August 13, 2015, and collectively the "CCAA Charges"), provided however that upon making such payment, GNWT is to subrogated to the rights, claims and security of the beneficiaries of the CCAA Charges.
37. The structure of the Mactung Transaction is intended to reflect that GNWT's security on the Mactung Property is subordinate only to the amount of the CCAA Charges allocable to Mactung, GNWT is taking the position that it should be entitled to recover such amounts as are allocable to the Cantung Mine and realizable from the proceeds of such assets, if any.
38. To reflect that the Petitioner's counsel will have a limited role going forward and to ensure that the Monitor and its counsel continue to benefit from a priority charge in respect of their fees, without being supplanted by, subordinate to or diluted by GNWT, the Petitioner is proposing that (a) the existing Administration Charge be amended to secure fees and expenses incurred on or before the date the order expanding the powers of the Monitor is made, and (b) a second or replacement charge be granted to secure the fees and expenses of the Monitor and its counsel commencing on the date following the date the order expanding the powers of the Monitor is made (the "Second Administration Charge").

Part 3: LEGAL BASIS

1. Sections 11, 11.02, and 11.52 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "CCAA"); and
2. The inherent and equitable jurisdiction of this Honourable Court.