

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

and

CARPATHIAN GOLD INC.

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY
ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**MOTION RECORD
(Returnable April 29, 2016)**

April 22, 2016

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSUC#: 35638M
Tel: (416) 869-5623
Email: lpillon@stikeman.com

C. Haddon Murray LSUC#: 61640P
Tel: (416) 869-5239
Email: hmurray@stikeman.com

Lawyers for the Receiver

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**ONTARIO
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TAB 1

Court File No. CV-16-11359-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

and

CARPATHIAN GOLD INC.

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED**

**NOTICE OF MOTION
(Returnable April 29, 2016)
(Re Approval and Vesting and Discharge Orders)**

FTI Consulting Canada Inc. in its capacity as court-appointed receiver (the "Receiver") of certain assets, property and undertaking of Carpathian Gold Inc. (the "Debtor") will make a motion to the Honourable Justice Newbould presiding over the Commercial List on Friday, April 29, 2016 at 9:30 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form of the draft order located at Tab 4 of the Motion Record (the "**Approval and Vesting Order**"):

- (a) Approving the Share and Asset Purchase Agreement made and entered into as of April 22, 2016 (the "**SAPA**") between the Receiver and Brio Finance Holdings B.V. (in such capacity, the "**Purchaser**") for the sale of the Limited Receivership Assets (as defined below) and the transactions contemplated thereby (the "**Brio Transaction**");
- (b) Vesting all of the Limited Receivership Assets in Brio free and clear of any Encumbrances (as defined in the Approval and Vesting Order); and

2. An Order substantially in the form of the draft order located at Tab 5 of the Motion Record (the "**Discharge Order**"):

- (a) Approving the first report of the Receiver dated April 22, 2016 and the activities described therein; and
- (b) discharging the Receiver and terminating this receivership (the "**Receivership**"), each effective upon the filing with the Court by the Receiver of a certificate confirming completion of the Receiver's remaining obligations (the "**Receiver's Completion Certificate**"); and

3. Such other and further relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

4. On April 22, 2016, FTI Consulting Canada Inc. was appointed as Receiver without security, of certain of the assets, undertakings and properties of the Debtor pursuant to the order of the Honourable Justice Newbould (the "**Receivership Order**")

granted upon the application of Brio Finance Holdings B.V. (the "**Brio**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").

5. The assets of the Debtor subject to the Receivership Order are limited to the following (collectively, the "**Limited Receivership Assets**"):

- (a) The shares of Ore-Leave Capital (Brazil) Limited ("**OLC Brazil**") issued to the Debtor (the "**Barbados Pledged Securities**");
- (b) The memberships of the Debtor in OLV - Coöperatie U.A. ("**OLV**") including all of the Debtor's right, title and interest in and to such memberships as well as all rights of the Debtor in connection with such memberships including, without limitation, the Debtor's entitlement to any account held by, and rights to receive payment from, OLV under OLV articles of association (the "**Dutch Pledged Memberships**"); and
- (c) All indebtedness owing by any of Mineração Riacho Dos Machados Ltda. ("**MRDM**"), OLC Brazil, OLV or OLC Holdings B.V. (together, the "**Brazilian Subsidiaries**"), to the Debtor (the "**Intercompany Debt**").

6. The Receivership does not involve any other assets of the Debtor or its subsidiaries.

The Sale Process

7. In August of 2012 the Debtor engaged Origin Merchant Partners, an independent bank, with respect to financing alternatives and strategies for the Debtor. On or about September 2013, Origin's engagement expanded to running two global sales procedures for the sale of CPN or some or all of its assets (collectively, the "**Sale Process**").

8. The Sale Process broadly solicited potential strategic transactions to maximize value for the benefit of the Debtor's stakeholders.

9. The Sale Process was executed in two phases.

Phase 1

10. In the first phase ("**Phase 1**") the Debtor initially engaged Origin and Paradigm Capital Inc., an independent Canadian investment dealer and investment bank, to find a financial partner to fund an anticipated equity capital shortfall on a gold exploration project being undertaken by MRDM and to assess an unsolicited expression of interest in purchasing MRDM. These efforts to raise capital resulted in a \$19.4 million public common equity deal. The transaction contemplated by the unsolicited offer was not completed.

11. Phase 1 developed into an attempt to sell the Debtor or any or all of its assets. During the first phase, a total of 53 potential purchasers (the "**Phase 1 Prospects**") were contacted over a 3-4 month period. No transaction was completed during Phase 1.

Phase 2

12. In the second phase ("**Phase 2**") the Debtor engaged Origin and PCF Capital Group (together with Origin the "**Sale Administrators**") to solicit offers for the purchase of the Debtor some or all of its assets. The Sale Administrators prepared:

- (a) A sale process acknowledgment letter which they provided to all parties contacted with respect to Phase 2 of the Sale Process;
- (b) a confidential information memorandum summarizing key aspects of the RDM Project, which was provided to interested parties that executed a confidentiality agreement with the Company; and
- (c) A virtual data room containing material information in relation to, among other things, the Company, MRDM and the RDM Project.

13. Origin contacted 51 parties during Phase 2 (the "**Phase 2 Prospects**"). Expressions of interest were submitted but no transaction was completed during Phase 2.

Assignment of MBL's debt and security

14. During Phase 2 the potential of a transaction with Brio Gold Inc. ("**BGI**"), an affiliate of the Purchaser, was initiated. On November 20, 2015, Macquarie Bank Limited ("**MBL**") and BGI entered into an option agreement (the "**Option Agreement**") pursuant to which BGI was granted, among other things, the option to purchase all of MBL's rights and interest in (a) certain financial asset agreements with the Debtor (the "**Facilities**"); and, (b) the associated guarantees (the "**Facility Guarantee**") and security interests in the assets of the Debtor (the "**Security**" and, together with Facilities and the Facility Guarantee, the "**Assigned Assets**").

15. That same day, BGI, the Debtor, MBL, and the Brazilian Subsidiaries entered into a Restructuring Agreement (as amended and restated, the "**Restructuring Agreement**") which contemplated the assignment of the Assigned Assets from MBL to Brio, ultimately by way of an Assignment Agreement dated February 17, 2016 (the "**Assignment Agreement**"). The total secured indebtedness under the Facilities at the time of the Assignment Agreement was approximately \$273 million (the "**Brio Indebtedness**"). The amount paid by Brio to MBL pursuant to the Assignment Agreement was approximately \$41.9 million.

16. The Restructuring Agreement also contemplated a credit bid transaction whereby Brio would credit bid its debt position, and release the Facility Guarantee and all other obligations of the Debtor to Brio under the agreements pertaining to the Facilities and the Security, in exchange for ownership of the Limited Receivership Assets. The credit bid portion of the transaction was and is to be implemented pursuant to the SAPA.

The Share and Asset Purchase Agreement

17. Pursuant to the SAPA, Brio will purchase all of the Limited Receivership Assets for aggregate consideration of a cash purchase price of \$1 and a full and final release by Brio of the Facility Guarantee and all other obligations of the Debtor to Brio under the agreements pertaining to the Facilities and the Security.

18. Concurrent with the Brio Transaction, Brio will inject an additional \$1 million equity investment into the Debtor.

19. The Sale Process was conducted fairly and efficaciously tested the market.

20. The Brio Transaction is the highest and best transaction in respect of the Limited Receivership Assets resulting from the sale process and the consideration appears to be fair and reasonable in the circumstances. The evidence shows that no viable alternatives exist that would deliver a better recovery from the Limited Receivership Assets for the creditors ranking subordinate to the Security.

21. The Debtor's other assets are not subject to the Receivership Order and are not subject to the Brio Transaction.

22. The \$1 million equity investment into the Debtor will provide liquidity to the Debtor to help it satisfy its other debts in the ordinary course.

Discharge Order

23. If this Court grants the relief requested then, once the Brio Transaction has closed and the Receiver has completed any necessary remaining administrative procedures, the Receiver will have completed its statutory duties and those duties set out in the Limited Receivership Order. Once these matters have been completed the Receiver will file a certificate (the "Discharge Certificate") with the court, certifying same.

24. An expeditious conclusion to the Receivership will reduce the costs of these proceedings and any uncertainty in the marketplace regarding the ownership and control of the Debtor and its assets.

25. It is appropriate in the circumstances and in the interest of the just, most expeditious and least expensive conclusion to this Receivership to grant the Receiver its discharge, effective upon the filing of the Discharge Certificate.

26. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

27. Section 100 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

28. Such further grounds as counsel may advise and this Court may see fit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Joseph M. Longpre sworn April 21, 2016, without exhibits;
2. The Affidavit of Jim Meloche, sworn April 22, 2016, and the exhibits attached thereto;
3. The First Report of the Receiver dated April 22, 2016; and
4. Such further and other materials as counsel may advise and this Court may permit.

April 22, 2016

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSUC#: 35638M

Tel: (416) 869-5623

Email: lpillon@stikeman.com

C. Haddon Murray LSUC#: 61640P

Tel: (416) 869-5239

Email: hmurray@stikeman.com

Lawyers for the Receiver

BRIO FINANCE HOLDINGS B.V.

and

CARPATHIAN GOLD INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE APRIL 29, 2016)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSUC#: 35638M
Tel: (416) 869-5623
Email: lpillon@stikeman.com
C. Haddon Murray LSUC#: 61640P
Tel: (416) 869-5239
Email: hmurray@stikeman.com
Fax: (416) 947-0866

Lawyers for the Receiver

TAB 2

Court File No. CV-16-11359-00CL

**CARPATHIAN GOLD INC.
(Limited Receivership)**

FIRST REPORT OF THE RECEIVER

April 22, 2016

Court File No. CV-16-11359-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

and

CARPATHIAN GOLD INC.

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**FIRST REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS RECEIVER**

INTRODUCTION

1. On April 22, 2016, FTI Consulting Canada Inc. was appointed as receiver (in such capacity, the “**Receiver**”) without security, of certain of the assets, undertakings and properties of Carpathian Gold Inc. (“**Carpathian**”) pursuant to the order of the Honourable Mr. Justice Newbould (the “**Receivership Order**”) granted upon the application of Brio Finance Holdings B.V. (the “**Brio**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). A copy of the Receivership Order is attached as hereto as **Appendix A**.

2. The assets of Carpathian subject to the Receivership Order are limited to the following (collectively, the “**Limited Receivership Assets**”):
 - (a) All shares of Ore-Leave Capital (Brazil) Limited (“**OLC Brazil**”) issued to Carpathian (the “**Barbados Pledged Securities**”);
 - (b) The memberships of Carpathian in OLV-Coöperatie U.A. (“**OLV**”) including all of Carpathian’s right, title and interest in and to such memberships as well as all rights of Carpathian in connection with such memberships including, without limitation, Carpathian’s entitlement to any account held by, and rights to receive payment from, OLV under OLV’s articles of association (the “**Dutch Pledged Memberships**”); and
 - (c) All indebtedness owing by any of Mineração Riacho Dos Machados Ltda. (“**MRDM**”), OLC Brazil, OLV or OLC Holdings B.V. (together, the “**Brazilian Subsidiaries**”) to Carpathian (the “**Carpathian Intercompany Debt**”).
3. The Receivership does not involve any other assets of Carpathian or its subsidiaries. None of the employees or creditors of Carpathian, other than Brio, are affected by the Receivership.
4. The purpose of this, the Receiver’s First Report, is to provide information to the Court with respect to:
 - (a) The independent opinion prepared by counsel to the Receiver on the validity and enforceability of the security held by Brio (the “**Brio Security**”) in respect of the Limited Receivership Assets;

and to request the granting by the Court of:

- (b) An approval and vesting order (the “**AVO**”) contemplated in the Share and Asset Purchase Agreement dated as of April 22, 2016, entered into, subject to Court approval, between the Receiver as Vendor and Brio as Purchaser (the “**Sale Agreement**”) pursuant to which Brio will acquire the right, title and interest of the Receiver and Carpathian in the Limited Receivership Assets (the “**Brio Transaction**”); and
- (c) An Order discharging the Receiver and terminating the Receivership, each effective upon the filing with the Court by the Receiver of a certificate confirming completion of the Receiver’s remaining obligations (the “**Receiver’s Completion Certificate**”).

TERMS OF REFERENCE

- 5. In preparing this report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, Carpathian’s books and records, and discussions with various parties (collectively, the “**Information**”).
- 6. Except as described in this Report:
 - (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Receiver has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

7. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
8. The Receiver has prepared this Report in connection with its Notice of Motion dated April 22, 2016, returnable April 29, 2016 (the "**April 29 Motion**"). The Report should not be relied on for other purposes.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
10. Capitalized terms not otherwise defined herein have the meanings defined in the Receivership Order, the affidavit of Mr. Joseph Longpre sworn April 21, 2016, and filed in support of the application for the Receivership Order (the "**Longpre Affidavit**") and the affidavit of Mr. Jim Meloche, of Origin Merchant Partners, Carpathian's investment banker ("**Origin**"), sworn April 22, 2016, and filed in support of the April 29 Motion (the "**Meloche Affidavit**").

THE SECURITY OPINION

11. Counsel to the Receiver, Stikeman Elliott LLP (the "**Receiver's Counsel**"), has conducted a review of the security on the Limited Receivership Assets held by Brio securing amounts owing by Carpathian as guarantor under the Facilities and delivered an opinion on the security. In addition, to facilitate and support the opinion provided by the Receiver's Counsel, Barbadian counsel, Clarke Gittens Farmer ("**Barbadian Counsel**") and Dutch counsel, Heussen B.V. ("**Dutch Counsel**"), conducted similar reviews relevant to their jurisdictions and delivered opinions addressed to the Receiver (the opinions of Receiver's Counsel, Barbadian Counsel and Dutch Counsel collectively being the "**Security Opinion**").

12. Specifically, the Security Opinions opine on the validity and perfection of the following documents (collectively, the “**Security Documents**”):
- (a) the general security agreement (“**GSA**”) dated as of October 8, 2013, between Carpathian and Macquarie Bank Limited (“**MBL**”), as original collateral agent, as assigned to Brio pursuant to an assignment and assumption agreement (the “**Assignment**”) dated as of February 17, 2016, and a collateral agency resignation and appointment agreement (the “**CAARA**”) dated as of March 31, 2016 among, *inter alia*, Carpathian, MBL and Brio, such GSA granting security over all undertaking, property and assets of Carpathian, including the Limited Receivership Assets, other than the assets related to the Romanian Project;
 - (b) the deed of charge over shares dated January 11, 2013 between Carpathian, MBL and OLC Brazil, as assigned by the Assignment and modified by the CARAA and the deed of assumption and transfer of liabilities between Carpathian, MBL, OLC Brazil and Brio dated as of March 31, 2016 (the “**Barbados Security Document**”), charging the Barbados Pledged Securities; and
 - (c) The deed of pledge of claims and memberships dated January 11, 2013, between OLV, Carpathian and MBL, as assigned pursuant to the Assignment, CAARA and a transfer of contract agreement between OLV, Carpathian, MBL and Brio dated March 31, 2016, charging the Dutch Pledged Memberships.
13. Subject to the customary assumptions and qualifications contained in the Security Opinions, the applicable Security Opinions provide that:
- (a) The personal property security granted in favour of Brio is valid and, with respect to the GSA, the GSA is enforceable and creates valid

security interests in the personal property of Carpathian secured thereby under the Province of Ontario, including the Carpathian Intercompany Debt and the Dutch Pledged Membership;

- (b) The personal property security granted in favour of Brio is valid, and with respect to the Barbados Security Document, such Barbados Security Document is enforceable and creates, under the laws of Barbados, a valid security interest in the personal property of Carpathian secured thereby under the laws of Barbados, including the Barbados Pledged Securities;
- (c) The security interest of Brio in the Barbados Pledged Securities has been perfected by control pursuant to the laws of the Province of Ontario.

14. In summary, the Security Opinions conclude that, subject to statutory and possessory liens, security interests perfected by possession or control, purchase money security interests and claims that have priority by operation of law, Brio has a first ranking security interest in the Limited Receivership Assets.

REQUEST FOR THE AVO

15. Capitalized terms used in this section of this Report not otherwise defined are as defined in the Sale Agreement, a copy of which is attached hereto as **Appendix B**.

INTRODUCTION

16. As described in the Longpre Affidavit, the Brio Transaction is one part of an overall restructuring arrangement involving the following component parts:
- (a) The acquisition by Brio of MBL's position under the Facilities;
 - (b) The acquisition by Brio of the Limited Receivership Assets pursuant to the Sale Agreement; and

- (c) A US\$1 million subscription by Brio Gold Inc. (“**BGI**”), an affiliate of Brio, for common shares of Carpathian (the “**Equity Investment**”).
17. The acquisition by Brio of MBL’s position under the Facilities was completed on March 31, 2016.
18. The Receiver has been informed by Brio and Carpathian that the Equity Investment is to be completed immediately following the completion of the Brio Transaction if the Brio Transaction is approved by the Court.
19. The restructuring arrangement is the culmination of an extensive sale process carried out by Origin and others as described in the Meloche Affidavit. The Receiver has been informed by Carpathian that fees payable to Origin in respect of the restructuring arrangement have been paid by MBL and that no fees are payable to Origin by Carpathian. No fees will be payable to Origin in the Receivership.

THE SALE AGREEMENT

20. Pursuant to the Sale Agreement, Brio will purchase all of the Limited Receivership Assets for aggregate consideration of \$1 (the “**Cash Purchase Price**”) plus the full and final release by Brio of the CPN Guarantee and all of the obligations of Carpathian to Brio under the Financial Assets Agreements and the Security, which the Receiver is informed total approximately US\$273 million (the “**Brio Indebtedness**”).
21. Carpathian’s other assets are not subject to the Receivership Order and are not subject to the Sale Agreement.
22. Pursuant to the Sale Agreement, the Closing Date of the Brio Transaction is expected to be the same day that the AVO is issued by the Court.
23. The obligation of Brio to complete the Brio Transaction is subject to the following conditions being fulfilled or waived by the Brio:

- (a) All representations and warranties of the Receiver contained in the Sale Agreement shall be true as of the Closing Date with the same effect as though made on and as of that date;
 - (b) The Receiver shall have performed each of its obligations under the Sale Agreement to the extent required to be performed on or before the Closing Date including delivering the documents referred to in Section 5.2 of the Sale Agreement that are to be delivered by the Vendor;
 - (c) No action or proceedings shall be pending or order issued to restrain or prohibit the completion of the Brio Transaction; and
 - (d) The subscription agreement contemplated by Article 4 of the A&R Restructuring Agreement shall have been entered into by BGI and Carpathian.
24. The obligation of the Receiver to complete the Brio Transaction is subject to the following conditions being fulfilled or waived by the Receiver:
- (a) All representations and warranties of Brio contained in the Sale Agreement shall be true as of the Closing Date with the same effect as though made on and as of that date;
 - (b) Brio shall have performed each of its obligations under the Sale Agreement to the extent required to be performed on or before the Closing Date including delivering the Purchase Price and the documents referred to in Section 5.2 of the Sale Agreement that are to be delivered by the Purchaser;
 - (c) No action or proceedings shall be pending or order issued to restrain or prohibit the completion of the Brio Transaction contemplated by the Sale Agreement; and

- (d) All of the fees and disbursements of the Receiver and the Receiver's Counsel shall have been paid by BGI in accordance with the Receivership Order.
25. The obligations of the Receiver and Brio to complete the Brio Transaction are subject to the following mutual conditions being fulfilled or performed:
- (a) The AVO shall have been granted by the Court on or before April 29, 2016; and
 - (b) The AVO shall not have been stayed, varied or vacated, and no order shall have been issued which restrains or prohibits the completion of the Brio Transaction.

THE RECEIVER'S COMMENTS

26. Section 247(b) of the BIA states:

"247. A receiver shall

- (a) act honestly and in good faith; and
- (b) deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner."

27. Pursuant to the leading cases¹, in reviewing a proposed sale of assets by a receiver, the Court should consider the following:
- (a) Whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
 - (b) The interests of all parties;

¹*Royal Bank v. Soundair Corp.* (1991), 7 C.B.R. (3d) I (Ont. C.A.); *National Bank of Canada v. Global Fasteners & Clamps Ltd.* (2001), 24 C.B.R. (4th) 228, 2001 CarswellOnt 945 (Ont. S.C.J. [Commercial List]); *Textron Financial Canada Ltd. v. Beta Ltée/Beta Brands Ltd.* (2007), 2007 CarswellOnt 89, 27 C.B.R. (5th) I (Ont. S.C.J.); *Bank of Montreal v. Dedicated National Pharmacies Inc.* (2011), 2011 CarswellOnt 7972, 83 C.B.R. (5th) 155 (Ont. S.C.J. [Commercial List]).

- (c) The efficacy and integrity of the process by which offers have been obtained; and
 - (d) Whether there has been unfairness in the working out of the process.
28. In addition, when considering whether to approve a transaction without an extended sale process being carried out in a receivership, the Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the transaction would realistically be any different if an extended sale process were followed².

The Commercial Reasonableness of Proceeding with the Brio Transaction

29. The efforts to market the Limited Receivership Assets over the last two years are described in the Meloche Affidavit. The Receiver has reviewed the Meloche Affidavit and has had discussions with Mr. Meloche. The Meloche Affidavit indicates that 67 parties were contacted during the sale process, which took place over an extended period of time. While a number of expressions of interest or proposals were received at various stages of the sale process, all were at a level significantly lower than the amounts of the MBL secured debt and none resulted in a firm offer.
30. Brio is not a commercial lender and acquired the Brio Security by way of purchasing MBL's position under the Facilities at a significant discount in order to be able to acquire the Limited Receivership Assets by way of "credit bid". MBL, is however, a commercial lender and, after extensive marketing efforts, determined that, in its reasonable business judgment, the sale of its indebtedness in the approximate amount of US\$273 million for a price of approximately US\$41.9 million represented the highest and/or best offer received for the assets subject to its security.

²*Re Tool-Plas Systems Inc.*, 2008 CarswellOnt 6258, 48 C.B.R. (5th) 91, [2008] O.J. No. 4218 (Ont. S.C.J. [Commercial List])

31. Given the sale process, the results thereof and the amount of the secured indebtedness, the Receiver is of the view that it is commercially reasonable to proceed with the Brio Transaction.

Efforts to Obtain the Best Price and Efficacy and Transparency of the Process

32. As noted above, the efforts to market the Limited Receivership Assets over the last two years are laid out in the Meloche Affidavit.
33. In the Receiver's view:
 - (a) The sale process was carried out in a manner typical of, and consistent with, such marketing processes that have been approved by the courts in many receivership and other Court-supervised proceedings and the timelines provided for in the SISP were reasonable in the circumstances;
 - (b) The sale process and the opportunity to acquire the Limited Receivership Assets was widely known;
 - (c) The sale process allowed interested parties adequate opportunity to conduct due diligence and submit proposals for the acquisition of the Limited Receivership Assets; and
 - (d) The process that resulted in the execution of the Sale Agreement was fair, transparent and reasonable in the circumstances.

Interests of the Various Parties

34. As described earlier in this Report, Brio holds valid and enforceable security on the Limited Receivership Assets ranking in priority to all other known creditors. The Brio Indebtedness is approximately US\$273 million and, in the Receiver's view, the sale process has clearly demonstrated that there is no prospect of any transaction that could repay the Brio Indebtedness in full. Accordingly, Brio is the only stakeholder with any economic interest in the Limited Receivership Assets.
35. As described in the Longpre Affidavit, the Brio Transaction, is one part of the overall restructuring of Carpathian. In addition to the Brio Transaction, BGI will make the Equity Investment of US\$1 million in Carpathian. Carpathian's other assets and all of its creditors, other than Brio, and employees are unaffected by the Receivership or the Brio Transaction.
36. Accordingly, in the Receiver's view, the Brio Transaction represents the best available outcome for all stakeholders and is not prejudicial to creditors ranking subordinate to the Brio Security.

Unfairness in the Process

37. Based on the information it has available, the Receiver has not identified any unfairness in the process.

Likely Outcome of an Extended Process

38. The Receiver has considered whether reopening the sale process in the Receivership might reasonably be expected to generate a result that would repay the Brio Indebtedness.
39. As previously noted, the Receiver is of the view that the sale process was a thorough canvassing of the market and fairly demonstrated that there is no value beyond the Brio Indebtedness.

40. In the Receiver's view, since November 2015 when the Option Agreement was executed, there has been no material improvement in the business or market conditions that would suggest that a different result could be achieved if the sale process was reopened at this time.
41. Accordingly, the Receiver does not believe that there is any reasonable prospect of a new sale process generating a transaction at a value in excess of the Brio Indebtedness.

Receiver's Conclusion

42. The Brio Transaction is the highest and best transaction in respect of the Limited Receivership Assets resulting from the sale process and the consideration appears to be fair and reasonable in the circumstances. There is no evidence to suggest that viable alternatives exist that would deliver a better recovery from the Limited Receivership Assets for the creditors ranking subordinate to the Brio Security.
43. The stakeholders of Carpathian other than Brio are unaffected by the Brio Transaction and will benefit from the Equity Investment.
44. Accordingly, the Receiver respectfully requests that the Court approve the APA and authorize the Receiver to complete the Transactions contemplated therein, in accordance with the terms of the Sale Agreement and the form of Approval and Vesting Order submitted by the Receiver to the Court.

TERMINATION OF RECEIVERSHIP PROCEEDINGS

45. The sole purpose of the Receivership is to effect the sale of the Limited Receivership Assets to Brio. Accordingly, the Receivership will be complete once the Brio Transaction has closed and the Receiver has completed the necessary remaining administrative procedures.

46. The expeditious completion of the Receivership and discharge of the Receiver will minimize costs and reduce any potential confusion in the market with respect to the status of Carpathian and its ongoing operations.
47. Accordingly, in order to avoid the costs of additional Court appearances, and with the support of Brio and Carpathian, the Receiver now seeks an Order terminating the Receivership and discharging the Receiver, each effective on filing of the Receiver's Completion Certificate.
48. Paragraph 15 of the Receivership Order states:

“15. THIS COURT ORDERS that the Receiver and its legal counsel shall not be required to pass their accounts unless requested to do so by the Applicant, the Court or any other interested party, and if so requested the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”
49. The fees and expenses of the Receiver, including the fees and expenses of the Receiver's Counsel, have been or will be paid by BGI (an affiliate of the Applicant) pursuant to a fee indemnity letter dated March 22, 2016.
50. The Receiver will provide BGI with copies of all of its accounts and the accounts of the Receiver's Counsel in order to provide BGI an opportunity to review such accounts prior to the return of the April 29 Motion.
51. Given the shortfall on account of the secured claims of Brio and the fact that the fees and expenses of the Receiver and the Receiver's Counsel will be paid by BGI, the Receiver is of the view that there is no other party in interest with respect to the fees and expenses of the Receiver and the Receiver's Counsel.

52. If the Court requests the passing of the accounts of the Receiver or its legal counsel, a separate motion would be brought by the Receiver for approval of such accounts.

The Receiver respectfully submits to the Court this, its First Report.

Dated this 22nd day of April, 2016.

FTI Consulting Canada Inc.
In its capacity as Receiver of certain assets of
Carpathian Gold Inc.



Nigel D. Meakin
Senior Managing Director

TAB A

Appendix A

The Receivership Order

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.) FRIDAY, THE 22nd
JUSTICE NEWBOULD) DAY OF APRIL, 2016

BETWEEN:



BRIO FINANCE HOLDINGS B.V.

Applicant

and

CARPATHIAN GOLD INC.

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

LIMITED RECEIVERSHIP ORDER

THIS MOTION made by Brio Finance Holdings B.V. (the "**Applicant**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing FTI Consulting Canada Inc. ("**FTI**") as receiver (in such capacity, the "**Receiver**") without security, of certain of the assets, undertakings and properties of Carpathian Gold Inc. (the "**Debtor**"), as described in this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Joseph M. Longpre sworn April 21, 2016 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for the Debtor and on reading the consent of FTI to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA FTI is hereby appointed Receiver, without security, of all of the Debtor's rights and interests in or against:

- (a) all shares of Ore-Leave Capital (Brazil) Limited ("**OLC Brazil**");
- (b) the membership in OLV Coöperatie U.A. ("**OLV**") including all of the Debtor's right, title and interest in and to such membership as well as all rights of the Debtor in connection with such memberships including, without limitation, the Debtor's entitlement to any account held by, and rights to receive payment from, OLV under OLV's articles of association; and
- (c) all indebtedness owing by any of OLC Brazil, OLV, OLC Holdings B.V., or Mineração Riacho Dos Machados Ltda. (together, the "**Debtor's Brazilian Subsidiaries**"), to the Debtor

(collectively, the "**Limited Receivership Assets**").

For greater certainty, the Receiver is hereby appointed only with respect to the Limited Receivership Assets and not any of the Debtor's right, title and interest in or to any of the Debtor's other property, assets or undertakings (the "**Non-Receivership Assets**"), such that the Debtor's right, title and interest in and to the Non-Receivership Assets and the rights of the employees and creditors of the Debtor, other than the Applicant, will not be affected hereby.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Limited Receivership Assets and, without in any way

limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Limited Receivership Assets;
- (b) to receive, preserve, and protect the Limited Receivership Assets, or any part or parts thereof;
- (c) to engage counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Limited Receivership Assets, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (e) to sell, convey, transfer or assign the Limited Receivership Assets or any part or parts thereof with the approval of this Court;
- (f) to apply for any vesting order or other orders necessary to convey the Limited Receivership Assets or any part or parts thereof to a purchaser or purchasers thereof free and clear of any liens or encumbrances affecting such Limited Receivership Assets;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Limited Receivership Assets and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (h) to exercise any shareholder or other rights which the Debtor may have in or against the Limited Receivership Assets as the Receiver considers necessary or desirable; and
- (i) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver 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 below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (a) the Debtor, (b) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (c) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Limited Receivership Assets in such Person's possession or control, shall grant immediate and continued access to the Limited Receivership Assets to the Receiver, and shall deliver all such Limited Receivership Assets to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall co-operate fully with the Receiver in the exercise of its powers and discharge of its obligations and provide the Receiver with the assistance that is necessary to enable the Receiver to adequately carry out the Receiver's functions under this Order.

NO PROCEEDINGS AGAINST THE RECEIVER

6. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE LIMITED RECEIVERSHIP ASSETS

7. THIS COURT ORDERS that no Proceeding against or in respect of the Limited Receivership Assets, or any of the Debtor's rights and interests in or against the Limited Receivership Assets, shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Limited Receivership Assets, or any of the Debtor's rights and interests in or against the Limited Receivership Assets, are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

8. THIS COURT ORDERS that all rights and remedies against the Receiver, or affecting the Limited Receivership Assets, or any of the Debtor's rights and interests in or against the Limited Receivership Assets, are hereby stayed and suspended except with the written consent

of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (a) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (b) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

9. THIS COURT ORDERS that:

- (a) 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 Debtor in respect of the Limited Receivership Assets, without written consent of the Receiver or leave of this Court; and
- (b) no Person shall, solely as a result of the granting of this Order, 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 Debtor or any of the Debtor's subsidiaries without written consent of the Receiver or leave of this Court.

10. THIS COURT ORDERS that nothing herein shall affect any contracts, agreements, license or permits involving a) the Debtor in respect of assets other than the Limited Receivership Assets and/or b) the Debtor's subsidiaries.

RECEIVER TO HOLD FUNDS

11. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order, including, without limitation, from the sale of all or any of the Limited Receivership Assets, shall be deposited into one or more new accounts to be opened by the Receiver, if necessary, (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be

held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

12. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor and the Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON THE RECEIVER'S LIABILITY

13. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out 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 protections afforded the Receiver by the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

14. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid by the Applicant their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Limited Receivership Assets, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Limited Receivership Assets in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06, 81.4(4) and 81.6(2) of the BIA.

15. THIS COURT ORDERS that the Receiver and its legal counsel shall not be required to pass their accounts unless requested to do so by the Applicant, the Court or any other interested party, and if so requested the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

SERVICE AND NOTICE

16. THIS COURT ORDERS that The Guide Concerning Commercial List E-Service (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/> shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://cfcanada.fticonsulting.com/Carpathian>

17. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute 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 facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

18. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

19. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

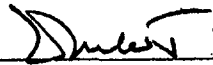
20. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States and elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

21. THIS COURT ORDERS that the Receiver 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 that the Receiver 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.

22. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

23. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than three (3) days' notice to the Receiver, the Applicant, the Debtor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 22 2016

PER / PAR: 

BRIO FINANCE HOLDINGS B.V.

Applicant

and **CARPATHIAN GOLD INC.**

Respondent

Court File No. CV-16-11359-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

LIMITED RECEIVERSHIP ORDER

Norton Rose Fulbright Canada LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto, Ontario
M5J 2Z4

Evan Cobb LSUC#: 55787N
Tel: (416) 216-1929
Fax: (416) 216-3930

Lawyers for Brio Finance Holdings B.V.

CAN_DMS: \102259540

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TAB B

Appendix B

The Sale Agreement

SHARE AND ASSET PURCHASE AGREEMENT

THIS AGREEMENT made as of the 22nd day of April, 2016

BETWEEN:

FTI CONSULTING CANADA INC., in its capacity as receiver of certain assets of Carpathian Gold Inc., and not in its personal or corporate capacity (hereinafter called the "**Vendor**")

- and -

BRIO FINANCE HOLDINGS B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands having its registered office at Prins Bernhardplein 200, 1097 JB Amsterdam, the Netherlands, in its capacity as Administrative Agent and Collateral Agent (as defined below) (hereinafter called the "**Purchaser**")

WHEREAS pursuant to an order ("**Receivership Order**") of the Ontario Superior Court of Justice (Commercial List) granted on April 22, 2016, the Vendor was appointed Receiver of certain assets of Carpathian Gold Inc. ("**Carpathian**");

AND WHEREAS the Vendor has, subject to the approval of the Court, agreed to the sale of the Limited Receivership Assets (as defined below) to the Purchaser and the Purchaser has agreed to purchase the Limited Receivership Assets from the Vendor on the terms and conditions set forth herein;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall have the respective meanings hereby assigned to them:

- (a) "**A&R Restructuring Agreement**" means the Amended and Restated Restructuring Agreement, dated February 17, 2016, between, among others, Carpathian, MRDM, Macquarie Bank Limited and Brio Gold Inc.;
- (b) "**Administrative Agent**" means Brio Finance Holdings B.V., in its capacity as Administrative Agent under the PLF;
- (c) "**Affiliate**" means, with respect to any person, any other person that controls or is controlled by or is under common control with the referent person;

- (d) "**Agreement**" means this document, together with the Schedules attached hereto and made a part hereof;
- (e) "**Approval and Vesting Order**" means an order to be granted by the Court that authorizes the Vendor's execution and performance of this Agreement and vests the Limited Receivership Assets in the Purchaser, free and clear of all Claims and Encumbrances, substantially in the form of Order attached as Schedule "A" to this Agreement;
- (f) "**Assignment and Assumption Agreement**" means the agreement pursuant to which Brio receives an assignment of, and assumes, all of Carpathian's and the Vendor's rights, interests and obligations, if any, under the Carpathian Intercompany Debt;
- (g) "**Brio**" means Brio Finance Holdings B.V.;
- (h) "**Business Day**" means any day, except Saturdays, Sundays and statutory holidays, on which banks are generally open for business in Toronto, Ontario;
- (i) "**Carpathian Intercompany Debt**" means any indebtedness of OLC Brazil, OLV, OLC Holdings B.V. or MRDM to Carpathian including, without limitation:
 - (i) intercompany loans owed by MRDM to Carpathian in the approximate aggregate amount of \$9,088,242.18;
 - (ii) intercompany loans owed by OLC Brazil to Carpathian in the approximate aggregate amount of \$49,310.49; and
 - (iii) intercompany loans owed by OLV and OLC Holdings B.V. to Carpathian in the approximate aggregate amount of \$398,855.18,

and all payments due or to become due thereunder or in connection therewith, and all claims, causes of action, and any other rights of Carpathian, as a lender, or the Vendor against any person, whether known or unknown, arising thereunder or in any way based on or relating thereto, including contract and tort claims, statutory claims, and all other claims related to the rights and obligations sold and assigned.

- (j) "**Carpathian Release**" means the release contemplated by Section 2.2 (a) (ii) hereof, in form and substance acceptable to Carpathian, acting reasonably;
- (k) "**Claims**" has the meaning ascribed thereto in the form of the Approval and Vesting Order attached hereto as Schedule "A";
- (l) "**Closing**" means the completion of the purchase and sale of the Limited Receivership Assets as contemplated by this Agreement;
- (m) "**Closing Date**" means the date on which the Approval and Vesting Order is issued by the Court or such later date as agreed to by the Parties;
- (n) "**Closing Time**" means 11:00 a.m. (Toronto time) on the Closing Date, or such other time as agreed to in writing by the Vendor and the Purchaser;
- (o) "**Collateral Agency Agreement**" means the Collateral Agency and Intercreditor Agreement, dated January 11, 2013 between, among others OLV, OLC Brazil, Macquarie Bank Limited, as collateral agent, MRDM and Carpathian, as assigned by

Macquarie Bank Limited to Brio, as replacement collateral agent pursuant to a collateral agency resignation and appointment agreement dated March 31, 2016;

- (p) "**Collateral Agent**" means Brio, in its capacity as Collateral Agent under the Collateral Agency Agreement, the PLF, the GPA and the SPA;
- (q) "**Court**" means the Ontario Superior Court of Justice (Commercial List);
- (r) "**Encumbrances**" has the meaning ascribed thereto in the form of the Approval and Vesting Order attached hereto as Schedule "A";
- (s) "**Governmental Authority**" means any government or political subdivision thereof, and any other body or agency having, or purporting to have, authority over the Limited Receivership Assets or any operation or activity thereon or with respect thereto;
- (t) "**GPA**" means the gold purchase agreement as amended, between Brio (as assignee of Macquarie Bank Limited), Carpathian and MRDM dated May 4, 2010;
- (u) "**Limited Receivership Assets**" means the OLC Brazil Shares, the OLV Membership and the Carpathian Intercompany Debt;
- (v) "**MRDM**" means Mineração Riacho Dos Machados Ltda.;
- (w) "**OLC Brazil**" means Ore-Leave Capital (Brazil) Limited;
- (x) "**OLC Brazil Shares**" means all of the issued and outstanding shares of OLC Brazil registered in the name of Carpathian;
- (y) "**OLV**" means OLV Coöperatie U.A.;
- (z) "**OLV Membership**" means the memberships in OLV registered in the name of Carpathian, including all of Carpathian's and the Vendor's right, title and interest in and to such membership as well as all rights of Carpathian in connection with such membership including, without limitation, Carpathian's entitlement to any account held by, and rights to receive payment from, OLV under OLV's articles of association;
- (aa) "**Party**" means any Person bound by this Agreement.
- (bb) "**Person**" includes individuals, executors, administrators, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities;
- (cc) "**PLF**" means the project facility agreement between MRDM, as borrower, Carpathian, OLC Holdings B.V., OLV and OLC Brazil as guarantors and Brio (as assignee of Macquarie Bank Limited) in its capacities as Administrative Agent, Collateral Agent, lender and hedge provider, dated January 11, 2013, as amended.
- (dd) "**Purchase Price**" means CDN\$1 and the Carpathian Release;
- (ee) "**Receiver**" means FTI Consulting Canada Inc. in its capacity as receiver of certain assets of Carpathian appointed pursuant to the Receivership Order and not in its personal or corporate capacity;
- (ff) "**Receivership Order**" means the Order of the Court under Court File No. CV-16-11359-00CL granted on April 22, 2016 appointing the Receiver;

- (gg) "**Sales Tax**" means any taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada), and other sales and transaction taxes or transaction fees imposed by provincial or federal governments in Canada in respect of the Transaction;
- (hh) "**SPA**" means the gold sale and purchase agreement between Brio (as assignee of Macquarie Bank Limited), Carpathian and MRDM, dated October 25, 2012, as amended.
- (ii) "**Transaction**" means the purchase and sale of the Limited Receivership Assets contemplated by a Closing pursuant to this Agreement;

1.2 Schedules

The following Schedules are attached hereto and made part of this Agreement:

- (a) Schedule "A" — Form of Approval and Vesting Order

1.3 References

The references "hereunder", "herein" and "hereof" refer to the provisions of this Agreement, and references to Articles, Clauses, Subclauses, Paragraphs or Subparagraphs herein refer to Articles, Clauses, Subclauses, Paragraphs or Subparagraphs of this Agreement. Any reference to time shall refer to Eastern Standard Time or Eastern Daylight Savings Time during the respective intervals in which each is in force.

1.4 Headings

The headings of the Articles, Clauses, Subclauses, Paragraphs, Subparagraphs or Schedules and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provisions hereof.

1.5 Singular/Plural

Whenever the singular or masculine or neuter is used in this Agreement or in the schedules, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires.

1.6 Use of Canadian Funds

All references to "dollars" or "\$" herein shall refer to lawful currency of the United States unless the contrary is specified or provided for elsewhere in this Agreement.

1.7 Derivatives

Where a term is defined herein, a capitalized derivative of such term shall have a corresponding meaning unless the context otherwise requires.

1.8 Statutory References

Unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and the regulations and ministerial orders made under that statute, as the same may, from time to time, be amended, re-enacted or replaced.

1.9 Governing Law

- (a) This Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of law principles.
- (b) Each of the Parties irrevocably attorns and submits to the exclusive jurisdiction of the Court in any action or proceeding arising out of or relating to this Agreement. Each of the Parties waives objection to the venue of any action or proceeding in the Court or any argument that the Court provides an inconvenient forum.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale

Subject to the granting of the Approval and Vesting Order and to the terms and conditions of this Agreement, the Vendor hereby covenants and agrees to sell, assign, transfer, and deliver and hereby sells, assigns, transfers and delivers to Purchaser, and the Purchaser hereby covenants and agrees to purchase and acquire and hereby purchases and acquires from the Vendor, all of the right, title, and interest of Carpathian and the Vendor in and to the Limited Receivership Assets, effective as and from the Closing Date.

The assignment and transfer of the OLV Membership shall also be evidenced by a separate agreement of assignment and transfer of a membership to be executed prior to the Closing Time by Carpathian, as transferor, the Purchaser, as Transferee, and OLV

2.2 Purchase Price

- (a) The aggregate consideration to be paid by the Purchaser to the Vendor for the Limited Receivership Assets shall be as follows:
 - (i) cash in the amount of \$1 (the "**Cash Purchase Price**"); and
 - (ii) the full and final release by the Purchaser of the CPN Guarantee (as defined in the A&R Restructuring Agreement) and all of the obligations of Carpathian to the Purchaser under the Financial Assets Agreements and the Security (in each case as defined in the A&R Restructuring Agreement).
- (b) At Closing, the Purchaser shall: (i) pay to Vendor the Cash Purchase Price; and (ii) deliver to Carpathian the Carpathian Release.
- (c) The Purchaser shall pay the applicable Sales Tax, if any, in respect of the purchase of the Limited Receivership Assets to the Vendor. The Vendor shall remit the Sales Tax in respect of the purchase of the Limited Receivership Assets, if any, according to law.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

- 3.1 The Vendor represents and warrants as follows to the Purchaser and acknowledges and confirms that the Purchaser is relying upon the representations and warranties in entering into this Agreement and purchasing the Limited Receivership Assets.
- (a) Subject to any applicable Orders of the Court, this Agreement has been validly executed and delivered by the Vendor, and this Agreement and all other documents executed and delivered on behalf of the Vendor hereunder shall constitute valid and binding obligations of the Vendor enforceable in accordance with their respective terms and conditions; and
 - (b) The Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
- 3.2 The Purchaser represents and warrants as follows to the Vendor and acknowledges and confirms that the Vendor is relying upon the representations and warranties in entering into this Agreement and selling the Limited Receivership Assets:
- (a) The Purchaser is a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands and has the requisite capacity, power and authority to execute this Agreement and to perform the obligations to which it thereby becomes subject, provided that the Purchaser shall have no liability for the discharge by it of any obligation hereunder unless and until the Approval and Vesting Order is granted;
 - (b) The Purchaser has taken all actions necessary to authorize the execution and delivery of this Agreement and, as of the Closing Date, the Purchaser shall have taken all actions necessary to authorize and complete the purchase of the **Limited Receivership Assets** in accordance with the provisions of this Agreement. This Agreement has been validly executed and delivered by the Purchaser, and this Agreement and all other documents executed and delivered on behalf of the Purchaser hereunder shall constitute valid and binding obligations of the Purchaser enforceable in accordance with their respective terms and conditions; and
 - (c) No approval or consent of any regulatory authority is required for the Purchaser to enter into this Agreement or to complete the purchase and sale contemplated herein, other than such regulatory approvals or consents, if any, as have been obtained as at the date hereof.

ARTICLE 4 CONDITIONS

4.1 Conditions - Purchaser

- (a) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Time:
 - (i) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date with the same effect as though made on and as of that date;
 - (ii) the Vendor shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date, including delivering the documents referred to in Section 5.2 to be delivered by the Vendor;

- (iii) no action or proceedings shall be pending or order issued to restrain or prohibit the completion of the Transaction contemplated by this Agreement; and
 - (iv) the subscription agreement contemplated by Article 4 of the A&R Restructuring Agreement shall have been entered into by Brio Gold Inc. (or the Purchaser) and Carpathian.
- (b) The parties hereto acknowledge that the foregoing conditions are for the exclusive benefit of the Purchaser. Any condition (other than the condition in Section 4.1(a)(iv) which cannot be waived by the Purchaser without Carpathian's consent) may be waived by the Purchaser in whole or in part.

4.2 Conditions – Vendor

- (a) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Date:
- (i) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date with the same effect as though made on and as of that date;
 - (ii) the Purchaser shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date, including delivering the Purchase Price and the documents referred to in Section 5.2 to be delivered by the Purchaser;
 - (iii) no action or proceedings shall be pending or order issued to restrain or prohibit the completion of the Transaction contemplated by this Agreement; and
 - (iv) all of the fees and disbursements of the Receiver and its counsel shall have been paid by Brio Gold Inc. in accordance with the Receivership Order.
- (b) The parties hereto acknowledge that the foregoing conditions are for the exclusive benefit of the Vendor. Any condition may be waived by the Vendor in whole or in part.

4.3 Conditions – Purchaser and Vendor

- (a) The obligations of the Vendor and the Purchaser under this Agreement are subject to the conditions that:
- (i) the Approval and Vesting Order shall have been granted by the Court on or before April 29, 2016 (the "**Court Approval Date**");
 - (ii) the Approval and Vesting Order shall not have been stayed, varied or vacated, and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
- (b) The parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser.

4.4 Efforts to Fulfil Conditions of Closing

The Parties shall use commercially reasonable efforts to take or cause to be taken such actions as are reasonably necessary to satisfy and comply with, or assist the other Party in, the

satisfaction and compliance with the conditions precedent specified in Clause 4.1, Clause 4.2 and Clause 4.3.

4.5 Non-Satisfaction of Conditions

If any condition set out in this Article 4 is not satisfied or performed on or prior to the dates specified in subsections 4.1 through 4.3, the party for whose benefit the condition is inserted may:

- (a) waive compliance with the condition in whole or in part in its sole discretion by written notice to the other party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; provided, however, that the condition in Section 4.1(a)(iv) cannot be waived by the Purchaser without Carpathian's consent; or
- (b) elect on written notice to the other party to terminate this Agreement before Closing.

ARTICLE 5 CLOSING

5.1 Closing Date

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of Stikeman Elliott LLP, 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario, M5L 1B9, or as otherwise determined by mutual agreement of the Parties in writing.

5.2 At Closing

- (a) Subject to satisfaction or waiver of the conditions of Closing by the relevant Party, at the Closing the Vendor shall:
 - (i) direct that Norton Rose Fulbright Canada LLP, as counsel to the Collateral Agent, deliver to the Purchaser the share certificate representing the OLC Brazil Shares;
 - (ii) deliver to the Purchaser the Assignment and Assumption Agreement duly executed by the Vendor;
 - (iii) deliver to the Purchaser a certificate confirming that all of the representations and warranties of the Vendor contained in this agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
 - (iv) deliver to the Purchaser such other documents, instruments or certificates as the Purchaser may reasonably request.
- (b) Upon confirmation of satisfaction of all conditions to closing having been delivered and/or waived and receiving a certificate to such effect from the Purchaser, the Vendor shall deliver to the Purchaser the Receiver's Certificate (as defined in the Approval and Vesting Order) in respect of the Closing, duly executed by the Vendor pursuant to the Approval and Vesting Order.
- (c) Subject to satisfaction or waiver of the conditions of Closing by the relevant Party, at the Closing the Purchaser shall:

- (i) deliver to the Vendor payment of the Purchase Price and the Carpathian Release;
- (ii) deliver to the Vendor the Assignment and Assumption Agreement duly executed by the Purchaser;
- (iii) deliver to the Vendor a certificate confirming that all of the representations and warranties of the Purchaser contained in this agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
- (iv) deliver to the Vendor such other documents, instruments or certificates as the Purchaser may reasonably request.

5.3 Post-Closing

Vendor shall file with the Court a copy of the Receiver's Certificate, as soon as practicable following the Closing.

5.4 Survival of Representations and Warranties

All representations, warranties, covenants and agreements of the Vendor and the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall not survive Closing.

5.5 Limited Receivership Assets Acquired On "As Is" Basis

THE PURCHASER ACKNOWLEDGES THAT THE VENDOR IS SELLING THE LIMITED RECEIVERSHIP ASSETS ON AN "AS IS, WHERE IS" BASIS AS THEY SHALL EXIST ON THE CLOSING DATE. THE PURCHASER FURTHER ACKNOWLEDGES THAT IT HAS ENTERED INTO THIS AGREEMENT ON THE BASIS THAT THE VENDOR DOES NOT GUARANTEE TITLE TO THE LIMITED RECEIVERSHIP ASSETS AND THAT THE PURCHASER HAS CONDUCTED SUCH INSPECTIONS OF THE CONDITION OF AND TITLE TO THE LIMITED RECEIVERSHIP ASSETS AS IT DEEMED APPROPRIATE AND HAS SATISFIED ITSELF WITH REGARD TO THESE MATTERS. NO REPRESENTATION, WARRANTY OR CONDITION IS EXPRESSED OR CAN BE IMPLIED AS TO TITLE, ENCUMBRANCES, DESCRIPTION, FITNESS FOR PURPOSE, MERCHANTABILITY, CONDITION, QUANTITY OR QUALITY OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER CONCERNING THE LIMITED RECEIVERSHIP ASSETS OR THE RIGHT OF THE VENDOR TO SELL OR ASSIGN SAME SAVE AND EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED HEREIN.

Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Limited Receivership Assets contained herein are for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions.

ARTICLE 6 WAIVER

6.1 Waiver Must be in Writing

No waiver by any Party of any breach (whether actual or anticipated) or any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other future breach.

ARTICLE 7 NOTICE

7.1 Service of Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by email, addressed in the case of the Purchaser, as follows:

Vendor: FTI Consulting Canada Inc.
 TD Waterhouse Tower
 79 Wellington Street West, Suite 2010
 P.O. Box 104
 Toronto, ON M5K 1G8

Attn: Nigel Meakin
 Email: Nigel.Meakin@fticonsulting.com

with a copy to: Stikeman Elliott LLP
 5300 Commerce Court West
 199 Bay Street
 Toronto, Ontario
 M5L 1B9

Attn: Elizabeth Pillon
 Email: lpillon@stikeman.com

Purchaser: Brio Finance Holdings B.V.
 Prins Bernhardplein 200
 1097 JB
 Amsterdam, the Netherlands
 Attn: L.F.M. Heine and K.A. Wouters
 Email: liselotte.heine@intertrustgroup.com
kaj.wouters@intertrustgroup.com

with a copy to: Norton Rose Fulbright Canada LLP
 Suite 3800
 Royal Bank Plaza, South Tower
 200 Bay Street
 P.O. Box 84
 Toronto, Ontario M5J 2Z4

Attn: Cathy Singer / Evan Cobb
 Email: cathy.singer@nortonrosefulbright.com
evan.cobb@nortonrosefulbright.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

A Party may change its address for service by notice to the other Parties, and, such changed address for service thereafter shall be effective for all purposes of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 Further Assurances

At the Closing Date and thereafter as may be necessary, the Parties shall execute, acknowledge and deliver such instruments and take such other actions as may be reasonably necessary to fulfil their respective obligations under this Agreement.

8.2 Time

Time shall be of the essence in this Agreement.

8.3 No Amendment Except in Writing

This Agreement may be amended only by written instrument executed by the Vendor and the Purchaser; provided, however that the condition in Section 4.1(a)(iv) cannot be amended without the consent of Carpathian.

8.4 Assignment

Neither Party may assign its interest in or under this Agreement or to the Limited Receivership Assets without the prior written consent of the other Party; provided, however, that the Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate, provided that: (a) the Purchaser shall remain liable to perform all of its obligations hereunder, and (b) the Purchaser and its assignee execute and deliver to the Vendor an assignment and assumption agreement, in form and substance satisfactory to the Vendor, acting reasonably, evidencing such assignment.

8.5 Consequences of Termination

If this Agreement is terminated in accordance with its terms prior to Closing, then except for the representations or other obligations breached prior to the time at which such termination occurs, the Parties shall be released from all of their obligations under this Agreement.

8.6 Supersedes Earlier Agreements

This Agreement supersedes all other agreements between the Parties with respect to the Limited Receivership Assets and expresses the entire agreement of the Parties with respect to the transactions contained herein. For greater certainty, nothing herein shall affect the Indemnity Agreement between FTI Consulting Canada Inc. and Brio Gold Inc., dated March 22, 2016, which shall continue in full force and effect.

8.7 Enurement

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

8.8 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereto to the other Parties by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement by the receiving party.

[Signature page follows]

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date first above written.

**FTI CONSULTING CANADA INC., in its capacity
as receiver of certain of the assets,
undertakings and properties of Carpathian Gold
Inc. and not in its personal capacity**

Per: _____

Name: Nigel D. Meakin

Title: Senior Managing Director

BRIO FINANCE HOLDINGS B.V.

Per: _____

Name:

Title:

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date first above written.

**FTI CONSULTING CANADA INC., in its capacity
as receiver of certain of the assets,
undertakings and properties of Carpathian Gold
Inc. and not in its personal capacity**

Per: _____
Name:
Title:

BRIO FINANCE HOLDINGS B.V.

Per: _____
Name: *K.A. Wouters*
Title: Managing Director β

SCHEDULE "A"

Form of Approval and Vesting Order

Court File No. _____

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE _____) _____ DAY, THE ____ DAY
JUSTICE _____) OF _____, 20__

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

- and -

CARPATHIAN GOLD INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the "Receiver") of certain assets of Carpathian Gold Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by a share and asset purchase agreement (the "Sale Agreement") between the Receiver and Brio Finance Holdings B.V., in its capacity as Administrative Agent and Collateral Agent (each as defined in the Sale Agreement) (the "Purchaser") dated ● and appended to the Report of the Receiver dated ● (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Limited Receivership Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Purchaser and the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ● filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Limited Receivership Assets to the Purchaser. The Debtor is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Limited Receivership Assets to the Purchaser including, without limitation, any documents necessary or desirable to transfer the OLV Membership to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Limited Receivership Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ● dated ●; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Limited Receivership Assets are hereby expunged and discharged as against the Limited Receivership Assets.

3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Limited Receivership Assets shall stand in the place and stead of the Limited Receivership Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances (other than those Claims and

Encumbrances released by the Purchaser pursuant to the Carpathian Release (as defined in the Sale Agreement)) shall attach to the net proceeds from the sale of the Limited Receivership Assets with the same priority as they had with respect to the Limited Receivership Assets immediately prior to the sale as if the Limited Receivership Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS that the Receiver is authorized and directed to apply any remaining proceeds of the Limited Receivership Assets in partial payment of its fees.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

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

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

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver's Certificate

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

- and -

CARPATHIAN GOLD INC.

Respondent

RECEIVER'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable ● of the Ontario Superior Court of Justice (the "Court") dated ●, FTI Consulting Canada Inc. was appointed as the receiver (the "Receiver") of certain assets of Carpathian Gold Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated ●, the Court approved the share and asset purchase agreement made as of ● (the "Sale Agreement") between the Receiver and Brio Finance Holdings B.V. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Limited Receivership Assets, which vesting is to be effective with respect to the Limited Receivership Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Limited Receivership Assets; (ii) that the conditions to Closing as set out in articles 4 and 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Limited Receivership Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in articles 4 and 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**FTI Consulting Canada Inc., in its capacity as
Receiver of certain assets of Carpathian
Gold Inc., and not in its personal capacity**

Per: _____
Name:
Title:

TAB 3

Court File No. CV-16-11359-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

and

CARPATHIAN GOLD INC.

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
*ACT, R.S.C. 1985, c. B-3, AS AMENDED***

AFFIDAVIT OF JIM MELOCHE

(Sworn April 22, 2016)

I, JIM MELOCHE, of the City of Toronto, in the Province of Ontario, **SWEAR AND SAY THAT:**

1. I am a Principal of Origin Merchant Partners ("**Origin**"). Since August, 2012, Origin has been working with Carpathian Gold Inc. (the "**Company**") regarding various financing and M&A strategies, as discussed in detail below. As such, I have personal knowledge of the matters hereinafter deposed to, save where stated to be based on information and belief, in which case I verily believe the same to be true.
2. This Affidavit is made in support of the motion by FTI Consulting Canada Inc., in its capacity as court-appointed receiver of certain of the assets, properties and undertakings

of the Company (in such capacity, the "**Receiver**") for an Order (the "**Approval and Vesting Order**"), among other things, approving the transaction (the "**Transaction**") contemplated by the Share and Asset Purchase Agreement] dated April 22, 2016 entered into between the Receiver and Brio Finance Holdings B.V. (the "**Purchaser**") (the "**Sale Agreement**", a copy of which is attached as **Exhibit "A"** to this Affidavit).

I. PROCEDURAL BACKGROUND

3. As more fully described in the affidavit of Joseph M. Longpre sworn on April 21, 2016 in support of the Applicant's application for the appointment of a limited receiver in respect of the Company (the "**Longpre Affidavit**"), the Company, together with its subsidiaries, is an exploration and development mining company. The Company's primary business interests are located in Brazil and Romania.
4. Pursuant to an Order of Justice Newbould dated April 22, 2016 the Receiver was appointed over certain of the assets, undertakings and properties of the Company.

II. ORIGIN'S EXPERIENCE

5. Origin is an independent investment bank that provides value added corporate finance, mergers and acquisitions and merchant banking services. Although it was founded only approximately five years ago, Origin has grown to become one of Canada's largest boutiques, with more than 20 people on staff.
6. Origin has extensive knowledge of the financial marketplace, significant experience in mergers, acquisitions and other corporate finance transactions, and a short but impressive record of successful transactions. Origin has extensive experience working with mining companies operating in Central and South America. More relevant to the Company, I have advised several mining companies and their operations in Brazil over the last five years. Throughout 2015, Origin has been engaged by the Board of Jaguar Mining Inc., a Brazilian gold miner with three operating gold mines, to explore strategic alternatives and balance sheet recapitalization strategies. Origin had discussions with a large number of investors and operators in the Brazilian gold sector and this work culminated in October,

2015 with the successful completion of a US\$21.5 million financing to recapitalize the balance sheet of Jaguar Mining Inc.

7. I personally have more than 22 years of experience in investment and corporate banking at both Canadian and global investment banks. Prior to joining Origin as a Principal, I was Managing Director and Co-Head of Mining at Macquarie Capital in Canada. In my approximately three years of employment at Macquarie Capital, I was involved with various equity and debt financings for the Company, in addition to other mining projects located in Brazil. Prior to that, I was Managing Director at the Canadian Imperial Bank of Commerce where I was responsible for managing several businesses including credit capital markets, derivatives marketing and developing a mid-cap mining business. I have extensive experience personally advising organizations such as the Company with respect to financing, balance sheet recapitalizations and M&A alternatives.

III. THE ORIGIN PROCESSES

8. Origin was initially engaged by the Company in or around August 2012 with respect to financing alternatives and strategies. That role was expanded in or around February 2013 to assist the Company in considering an unsolicited expression of interest expected to be received around that time. From and after September 2013, Origin's mandate included running two global sales processes to sell the Company or any or all of its assets, including Mineração Riacho Dos Machados Ltda. ("**MRDM**"). MRDM is a wholly-owned subsidiary of the Company. It owns and operates the Riachos dos Machados gold exploration, development and production project located in Brazil and undertaken by MRDM (the "**RDM Project**"). Further details regarding MRDM and the RDM Project are provided in the Longpre Affidavit.
9. The first sale process ("**Phase 1**"), which commenced in August 2012, was a co-advising role with Paradigm Capital Inc. ("**Paradigm**"). According to Paradigm's website, Paradigm is an independent Canadian investment dealer and investment bank with offices in Toronto, Calgary, and Montreal. Paradigm offers its clients a full range of services, including corporate finance and advisory services, sales, trading, and in-depth sector

based research. Paradigm specializes primarily in the mining, energy and technology sectors.

10. The second sale process ("**Phase 2**", and together with Phase 1, the "**Sale Processes**"), which commenced in or around November 2014, was a co-advising role with PCF Capital Group ("**PCF**") in Australia. According to PCF's website, PCF is an independent, corporate advisory firm focused on serving clients in the resource sector. PCF was founded in 1999, in Perth, Western Australia and it has a team with extensive experience in investment banking, corporate finance and all facets of mining and exploration activities. Its clients represent a broad range of mining companies including exploration focused juniors, growth oriented mid-tiers and globally diversified mining majors.

A. Phase 1 (August 2012 – December 2013)

11. As previously noted, in or around August 2012, Origin began working with the Company to identify and evaluate financing strategies for the Company. This limited mandate was focused on identifying and soliciting interest from a strategic financial partner to fund the anticipated equity capital shortfall on the development capital expenditures to complete the RDM Project. A proposed term sheet and public corporate information were used to approach predominantly private equity and structured finance lenders in the resource sector. Origin approached 12 parties on a selective basis given the risk profile and structured nature of the proposed investment. Ultimately, the Company completed a \$19.4 million public common equity deal with Cormark Securities, in two tranches which closed on August 29, 2013 and September 5, 2013. In February 2013, Origin's role expanded to include a mandate to assess an unsolicited expression of interest that was, at that time, expected to be received from a Canadian-based gold mining company (the "**Unsolicited Offeror**").
12. On February 12, 2013, Origin was engaged as advisor along with Paradigm to act as co-financial advisors (the "**Advisors**") to the Company in relation to a potential sale to the Unsolicited Offeror. The Company ultimately received a non-binding confidential expression of interest from the Unsolicited Offeror on or around March 7, 2013, and the Advisors worked with the Unsolicited Offeror's financial advisors to facilitate the

conduct of their due diligence of MRDM, including a site visit by the Unsolicited Offeror in June, 2013. This process did not culminate in a transaction; the Unsolicited Offeror ultimately decided not to pursue the proposed acquisition.

13. Since September 2013, Origin's mandate evolved into two global sale processes to sell MRDM or the Company itself, with Phase 1 being the first of these two processes. During Phase 1, a total of 53 prospective buyers were contacted over a 3-4 month period, of which 43 were strategic purchasers and 10 were financial purchasers. The prospective purchasers received a teaser and were invited to execute a confidentiality agreement to gain access to a data room. Of the 53 parties contacted, 28 (18 strategic and 10 financial purchasers) executed confidentiality agreements. Seven site visits were conducted by prospective buyers. Ten (6 strategic and 4 financial purchasers) submitted non-binding confidential expressions of interest ("LOIs"). Each of the LOIs for a purchase price less than the amount that was then owed to the Company's secured creditor.

14. In or around December 2013, and while Phase 1 was ongoing, the RDM Project minesite experienced flooding which resulted in, among other things, a temporary suspension of operations, a suspension of the Company's provisional License to Operate ("APO"), and an indefinite delay in the Company's ability to secure its License to Operate Permit ("LO"). As a result, all prospective buyers declined to pursue a transaction pending the outcome of the potential liability of the damage caused by the flooding incident and the delay in obtaining the LO. Accordingly, Phase 1 was suspended indefinitely until the aforementioned operational and permitting issues were resolved.

B. Phase 2 (November 2014 to February 2015)

15. The Company's APO was reinstated on February 24, 2014 and a definitive LO was announced on June 11, 2015. On November 28, 2014, the Company re-engaged Origin (but not Paradigm) and engaged PCF to re-engage the sale process to sell the Company or any or all of its assets, including MRDM. PCF's mandate was to solicit offers in Asia and Australia. Origin focused on offers from all other locations.

16. During December 2014 and January 2015, Origin and PCF prepared marketing materials, including a Confidential Information Memorandum ("CIM") summarizing key aspects of

the RDM Project, which was to be provided to interested parties that executed a confidentiality agreement with the Company. Origin and PCF also prepared a sales process acknowledgement letter (the "**Sale Process Letter**"), which was to be provided to all parties contacted by Origin and PCF. The Sale Process Letter, among other things, described the sale process, outlined the timetable for the proposed transaction (non-binding indicative offers were due on February 19, 2015), outlined the procedures prospective purchasers were expected to follow, and contained protocols relating to access to a virtual data room.

17. The virtual data room (the "**Virtual Data Room**") contained material information in relation to, among other things, the Company, MRDM and the RDM Project that was made available to all interested parties that executed confidentiality agreements. The Virtual Data Room contained information that would be pertinent to a potential purchaser, including: financial, operational, legal, and other relevant information.
18. While the CIM and Virtual Data Room were being finalized and prior to the official launch of Phase 2, several prospective purchasers that had expressed an interest during Phase 1 continued their due diligence activities.
19. On or around January 30, 2015, once the CIM and Virtual Data Room were available, Origin and PCF began contacting potential interested parties as part of Phase 2 of the sale process. To broadly and efficiently canvass the market, Origin primarily focused its marketing activities in the Americas, while PCF focused on the Asia Pacific region.
20. During Phase 2, Origin contacted a total of 51 parties in North America, of which 42 were potential strategic purchasers and 9 were potential financial purchasers. Several of the parties that had been contacted during Phase 1 were again contacted during Phase 2 to assess their interest in acquiring MRDM. Specifically, 32 strategic purchasers and 5 financial purchasers that had been contacted during Phase 1 were contacted in Phase 2.
21. Of the parties with whom Origin was engaged in discussions during Phase 2, 44 parties declined interest prior to any preliminary due diligence. Seven (7) new parties signed or

renewed a confidentiality agreement and conducted due diligence in the Virtual Data Room. During Phase 2, three (3) additional site visits were conducted.

22. During Phase 2, Origin had numerous discussions with Brio Gold Inc. ("**Brio Gold**"), an affiliate of the Purchaser, who was at the time working with one of the parties that submitted an LOI during Phase 2.

C. Final Negotiation, Documentation and Closing

23. In accordance with the Sale Process Letter, indicative offers and proposals (the "**Proposals**") were received from interested parties by late February, 2015. In total, 5 parties (the "**Potential Purchasers**") submitted Proposals, including one Potential Purchaser that was working with Brio Gold. Each of the Proposals contemplated a purchase price less than the amount then owed to the Company's secured creditor.
24. Three of the Proposals were determined to not be satisfactory to the Company or its secured creditor due to the type and amount of consideration offered, lack of definitive financing and lack of operational capabilities in Brazil.
25. Subsequent to the delivery and receipt of the Proposals, MRDM experienced several water issues due to drought conditions at the RDM Project. Thereafter, one of the Potential Purchasers substantially reduced its Proposal and ultimately withdrew its interest.
26. By May 8, 2015, only 1 Potential Purchaser remained, which was the party working with Brio Gold (the "**Remaining Potential Purchaser**"). The Remaining Potential Purchaser provided the Company with a revised proposal, which was agreed to on or around July 17, 2015, notwithstanding that it was for an amount significantly less than the amount then owed to the Company's secured creditor. Unfortunately, the transaction contemplated by the revised proposal did not progress to closing as a result of the decrease in the price of gold, increasing political risk in Brazil, land title issues, potential tax issues, increased expenditures, continuing uncertainties with respect to water issues, and the outstanding resolution of required permits to return to full scale mining. The

Company terminated discussions with the Remaining Potential Purchaser on or around August 21, 2015.

27. Subsequently, the Company and Origin continued to have discussions with certain of the other prospective purchasers from the Sale Processes, including Brio Gold.
28. On or about September 23, 2015, one such prospective purchaser provided term sheets to Macquarie Bank Limited ("MBL") and the Company in respect of a potential restructuring. The term sheet between MBL and the prospective purchaser granted the prospective purchaser a 30 day exclusive due diligence period with an option to extend such period by 15 days. The prospective purchaser continued its due diligence and discussions with MBL, but by the week of November 9, 2015, the term sheets had lapsed without any meaningful progress having been achieved.
29. On November 20, 2015, MBL and Brio Gold entered into an option agreement (the "**Option Agreement**") pursuant to which, among other things, Brio Gold was granted the option to purchase MBL's financial assets (i.e. the debt owed by the Company to MBL) at any time until February 15, 2016. Also on November 20, 2015, the Company, MBL, and Brio Gold entered into a restructuring agreement (the "**Restructuring Agreement**") which provided, among other things, that in the event that the option to purchase MBL's financial assets was exercised, the Company would work cooperatively with the Purchaser in assigning MRDM and the RDM Project to the Purchaser by way of a limited receivership in exchange for a release of the Company from its guarantee of the secured debt owed by MRDM to MBL, as assigned to the Purchaser. Pursuant to the Restructuring Agreement, following the limited receivership, the Company would continue to own its Romanian assets and would also receive a \$1 million equity subscription from the Purchaser.
30. Following the execution of the Option Agreement between MBL and Brio Gold, the Company and Origin were able to explore other options, and continued discussions with parties that had previously participated in the Sale Processes as well as with two (2) additional parties that signed new confidentiality agreements in November and

December, 2015. One (1) of those parties also conducted a site visit in January, 2016. Both of the two (2) new parties declined to submit an offer.

31. The Company and Origin continued to have discussions with MBL and Brio Gold. Those discussions culminated in a definitive assignment and assumption agreement between Brio Gold and MBL on February 17, 2016 (the "**Assignment Agreement**"), which superseded the Option Agreement. In addition, on February 17, 2016, the Company, MBL, and Brio Gold entered into an amended and restated restructuring agreement (the "**Amended Restructuring Agreement**").
32. The assignment of MBL's financial assets to the Purchaser as contemplated in the restructuring documentation was completed on March 31, 2016. The amount paid was significantly less than the amount then owing to MBL.

IV. APPLICATION FOR APPROVAL OF THE TRANSACTION

33. I believe that the Company, with the assistance of Origin, Paradigm and PCF has conducted a thorough and comprehensive canvassing of the market, and I am satisfied that all alternatives and expressions of interest were properly and thoroughly pursued. The Sales Processes, which commenced in February 2013 with an unsolicited offer for the Company, were actively marketed and open to prospective purchasers through much of the next three years, including several press releases and continuous disclosure by the Company announcing the strategic opportunity, and identifying Origin as the Company's financial advisor. Despite the lengthy process, no offers were ever received that would have allowed the Company to repay its secured creditor in full.
34. After completion of the comprehensive marketing efforts during the Sale Processes, the Receiver has reached a definitive transaction with the Purchaser that is consistent with the terms of the Amended Restructuring Agreement, and has entered into the Sale Agreement, which is subject to Court approval. I believe that the Transaction contemplated by the Sale Agreement represents the best and highest overall offer that could be obtained for MRDM and the RDM Project.

35. I swear this my Affidavit in support of the Receiver's motion to approve the Transaction and for no other or improper purpose.

SWORN BEFORE ME
at the City of Toronto, in the Province of
Ontario on April 22, 2016.



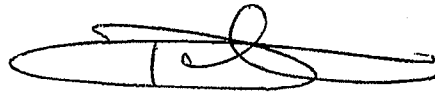
Commissioner for Taking Affidavits, etc.



JIM MELOCHE

TAB A

This is Exhibit "A" referred to in the
AFFIDAVIT OF JIM MELOCHE,
Sworn before me, this 22nd day of April, 2016



A Commissioner for Taking Affidavits

SHARE AND ASSET PURCHASE AGREEMENT

THIS AGREEMENT made as of the 22nd day of April, 2016

BETWEEN:

FTI CONSULTING CANADA INC., in its capacity as receiver of certain assets of Carpathian Gold Inc., and not in its personal or corporate capacity (hereinafter called the "**Vendor**")

- and -

BRIO FINANCE HOLDINGS B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands having its registered office at Prins Bernhardplein 200, 1097 JB Amsterdam, the Netherlands, in its capacity as Administrative Agent and Collateral Agent (as defined below) (hereinafter called the "**Purchaser**")

WHEREAS pursuant to an order ("**Receivership Order**") of the Ontario Superior Court of Justice (Commercial List) granted on April 22, 2016, the Vendor was appointed Receiver of certain assets of Carpathian Gold Inc. ("**Carpathian**");

AND WHEREAS the Vendor has, subject to the approval of the Court, agreed to the sale of the Limited Receivership Assets (as defined below) to the Purchaser and the Purchaser has agreed to purchase the Limited Receivership Assets from the Vendor on the terms and conditions set forth herein;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall have the respective meanings hereby assigned to them:

- (a) "**A&R Restructuring Agreement**" means the Amended and Restated Restructuring Agreement, dated February 17, 2016, between, among others, Carpathian, MRDM, Macquarie Bank Limited and Brio Gold Inc.;
- (b) "**Administrative Agent**" means Brio Finance Holdings B.V., in its capacity as Administrative Agent under the PLF;
- (c) "**Affiliate**" means, with respect to any person, any other person that controls or is controlled by or is under common control with the referent person;

- (d) "**Agreement**" means this document, together with the Schedules attached hereto and made a part hereof;
- (e) "**Approval and Vesting Order**" means an order to be granted by the Court that authorizes the Vendor's execution and performance of this Agreement and vests the Limited Receivership Assets in the Purchaser, free and clear of all Claims and Encumbrances, substantially in the form of Order attached as Schedule "A" to this Agreement;
- (f) "**Assignment and Assumption Agreement**" means the agreement pursuant to which Brio receives an assignment of, and assumes, all of Carpathian's and the Vendor's rights, interests and obligations, if any, under the Carpathian Intercompany Debt;
- (g) "**Brio**" means Brio Finance Holdings B.V.;
- (h) "**Business Day**" means any day, except Saturdays, Sundays and statutory holidays, on which banks are generally open for business in Toronto, Ontario;
- (i) "**Carpathian Intercompany Debt**" means any indebtedness of OLC Brazil, OLV, OLC Holdings B.V. or MRDM to Carpathian including, without limitation:
 - (i) intercompany loans owed by MRDM to Carpathian in the approximate aggregate amount of \$9,088,242.18;
 - (ii) intercompany loans owed by OLC Brazil to Carpathian in the approximate aggregate amount of \$49,310.49; and
 - (iii) intercompany loans owed by OLV and OLC Holdings B.V. to Carpathian in the approximate aggregate amount of \$398,855.18,

and all payments due or to become due thereunder or in connection therewith, and all claims, causes of action, and any other rights of Carpathian, as a lender, or the Vendor against any person, whether known or unknown, arising thereunder or in any way based on or relating thereto, including contract and tort claims, statutory claims, and all other claims related to the rights and obligations sold and assigned.

- (j) "**Carpathian Release**" means the release contemplated by Section 2.2 (a) (ii) hereof, in form and substance acceptable to Carpathian, acting reasonably;
- (k) "**Claims**" has the meaning ascribed thereto in the form of the Approval and Vesting Order attached hereto as Schedule "A";
- (l) "**Closing**" means the completion of the purchase and sale of the Limited Receivership Assets as contemplated by this Agreement;
- (m) "**Closing Date**" means the date on which the Approval and Vesting Order is issued by the Court or such later date as agreed to by the Parties;
- (n) "**Closing Time**" means 11:00 a.m. (Toronto time) on the Closing Date, or such other time as agreed to in writing by the Vendor and the Purchaser;
- (o) "**Collateral Agency Agreement**" means the Collateral Agency and Intercreditor Agreement, dated January 11, 2013 between, among others OLV, OLC Brazil, Macquarie Bank Limited, as collateral agent, MRDM and Carpathian, as assigned by

Macquarie Bank Limited to Brio, as replacement collateral agent pursuant to a collateral agency resignation and appointment agreement dated March 31, 2016;

- (p) "**Collateral Agent**" means Brio, in its capacity as Collateral Agent under the Collateral Agency Agreement, the PLF, the GPA and the SPA;
- (q) "**Court**" means the Ontario Superior Court of Justice (Commercial List);
- (r) "**Encumbrances**" has the meaning ascribed thereto in the form of the Approval and Vesting Order attached hereto as Schedule "A";
- (s) "**Governmental Authority**" means any government or political subdivision thereof, and any other body or agency having, or purporting to have, authority over the Limited Receivership Assets or any operation or activity thereon or with respect thereto;
- (t) "**GPA**" means the gold purchase agreement as amended, between Brio (as assignee of Macquarie Bank Limited), Carpathian and MRDM dated May 4, 2010;
- (u) "**Limited Receivership Assets**" means the OLC Brazil Shares, the OLV Membership and the Carpathian Intercompany Debt;
- (v) "**MRDM**" means Mineração Riacho Dos Machados Ltda.;
- (w) "**OLC Brazil**" means Ore-Leave Capital (Brazil) Limited;
- (x) "**OLC Brazil Shares**" means all of the issued and outstanding shares of OLC Brazil registered in the name of Carpathian;
- (y) "**OLV**" means OLV Coöperatie U.A.;
- (z) "**OLV Membership**" means the memberships in OLV registered in the name of Carpathian, including all of Carpathian's and the Vendor's right, title and interest in and to such membership as well as all rights of Carpathian in connection with such membership including, without limitation, Carpathian's entitlement to any account held by, and rights to receive payment from, OLV under OLV's articles of association;
- (aa) "**Party**" means any Person bound by this Agreement.
- (bb) "**Person**" includes individuals, executors, administrators, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities;
- (cc) "**PLF**" means the project facility agreement between MRDM, as borrower, Carpathian, OLC Holdings B.V., OLV and OLC Brazil as guarantors and Brio (as assignee of Macquarie Bank Limited) in its capacities as Administrative Agent, Collateral Agent, lender and hedge provider, dated January 11, 2013, as amended.
- (dd) "**Purchase Price**" means CDN\$1 and the Carpathian Release;
- (ee) "**Receiver**" means FTI Consulting Canada Inc. in its capacity as receiver of certain assets of Carpathian appointed pursuant to the Receivership Order and not in its personal or corporate capacity;
- (ff) "**Receivership Order**" means the Order of the Court under Court File No. CV-16-11359-00CL granted on April 22, 2016 appointing the Receiver;

- (gg) **"Sales Tax"** means any taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada), and other sales and transaction taxes or transaction fees imposed by provincial or federal governments in Canada in respect of the Transaction;
- (hh) **"SPA"** means the gold sale and purchase agreement between Brio (as assignee of Macquarie Bank Limited), Carpathian and MRDM, dated October 25, 2012, as amended.
- (ii) **"Transaction"** means the purchase and sale of the Limited Receivership Assets contemplated by a Closing pursuant to this Agreement;

1.2 Schedules

The following Schedules are attached hereto and made part of this Agreement:

- (a) Schedule "A" — Form of Approval and Vesting Order

1.3 References

The references "hereunder", "herein" and "hereof" refer to the provisions of this Agreement, and references to Articles, Clauses, Subclauses, Paragraphs or Subparagraphs herein refer to Articles, Clauses, Subclauses, Paragraphs or Subparagraphs of this Agreement. Any reference to time shall refer to Eastern Standard Time or Eastern Daylight Savings Time during the respective intervals in which each is in force.

1.4 Headings

The headings of the Articles, Clauses, Subclauses, Paragraphs, Subparagraphs or Schedules and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provisions hereof.

1.5 Singular/Plural

Whenever the singular or masculine or neuter is used in this Agreement or in the schedules, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires.

1.6 Use of Canadian Funds

All references to "dollars" or "\$" herein shall refer to lawful currency of the United States unless the contrary is specified or provided for elsewhere in this Agreement.

1.7 Derivatives

Where a term is defined herein, a capitalized derivative of such term shall have a corresponding meaning unless the context otherwise requires.

1.8 Statutory References

Unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and the regulations and ministerial orders made under that statute, as the same may, from time to time, be amended, re-enacted or replaced.

1.9 Governing Law

- (a) This Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of law principles.
- (b) Each of the Parties irrevocably attorns and submits to the exclusive jurisdiction of the Court in any action or proceeding arising out of or relating to this Agreement. Each of the Parties waives objection to the venue of any action or proceeding in the Court or any argument that the Court provides an inconvenient forum.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale

Subject to the granting of the Approval and Vesting Order and to the terms and conditions of this Agreement, the Vendor hereby covenants and agrees to sell, assign, transfer, and deliver and hereby sells, assigns, transfers and delivers to Purchaser, and the Purchaser hereby covenants and agrees to purchase and acquire and hereby purchases and acquires from the Vendor, all of the right, title, and interest of Carpathian and the Vendor in and to the Limited Receivership Assets, effective as and from the Closing Date.

The assignment and transfer of the OLV Membership shall also be evidenced by a separate agreement of assignment and transfer of a membership to be executed prior to the Closing Time by Carpathian, as transferor, the Purchaser, as Transferee, and OLV

2.2 Purchase Price

- (a) The aggregate consideration to be paid by the Purchaser to the Vendor for the Limited Receivership Assets shall be as follows:
 - (i) cash in the amount of \$1 (the "**Cash Purchase Price**"); and
 - (ii) the full and final release by the Purchaser of the CPN Guarantee (as defined in the A&R Restructuring Agreement) and all of the obligations of Carpathian to the Purchaser under the Financial Assets Agreements and the Security (in each case as defined in the A&R Restructuring Agreement).
- (b) At Closing, the Purchaser shall: (i) pay to Vendor the Cash Purchase Price; and (ii) deliver to Carpathian the Carpathian Release.
- (c) The Purchaser shall pay the applicable Sales Tax, if any, in respect of the purchase of the Limited Receivership Assets to the Vendor. The Vendor shall remit the Sales Tax in respect of the purchase of the Limited Receivership Assets, if any, according to law.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

- 3.1 The Vendor represents and warrants as follows to the Purchaser and acknowledges and confirms that the Purchaser is relying upon the representations and warranties in entering into this Agreement and purchasing the Limited Receivership Assets.
- (a) Subject to any applicable Orders of the Court, this Agreement has been validly executed and delivered by the Vendor, and this Agreement and all other documents executed and delivered on behalf of the Vendor hereunder shall constitute valid and binding obligations of the Vendor enforceable in accordance with their respective terms and conditions; and
 - (b) The Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
- 3.2 The Purchaser represents and warrants as follows to the Vendor and acknowledges and confirms that the Vendor is relying upon the representations and warranties in entering into this Agreement and selling the Limited Receivership Assets:
- (a) The Purchaser is a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands and has the requisite capacity, power and authority to execute this Agreement and to perform the obligations to which it thereby becomes subject, provided that the Purchaser shall have no liability for the discharge by it of any obligation hereunder unless and until the Approval and Vesting Order is granted;
 - (b) The Purchaser has taken all actions necessary to authorize the execution and delivery of this Agreement and, as of the Closing Date, the Purchaser shall have taken all actions necessary to authorize and complete the purchase of the **Limited Receivership Assets** in accordance with the provisions of this Agreement. This Agreement has been validly executed and delivered by the Purchaser, and this Agreement and all other documents executed and delivered on behalf of the Purchaser hereunder shall constitute valid and binding obligations of the Purchaser enforceable in accordance with their respective terms and conditions; and
 - (c) No approval or consent of any regulatory authority is required for the Purchaser to enter into this Agreement or to complete the purchase and sale contemplated herein, other than such regulatory approvals or consents, if any, as have been obtained as at the date hereof.

ARTICLE 4 CONDITIONS

4.1 Conditions - Purchaser

- (a) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Time:
 - (i) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date with the same effect as though made on and as of that date;
 - (ii) the Vendor shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date, including delivering the documents referred to in Section 5.2 to be delivered by the Vendor;

- (iii) no action or proceedings shall be pending or order issued to restrain or prohibit the completion of the Transaction contemplated by this Agreement; and
 - (iv) the subscription agreement contemplated by Article 4 of the A&R Restructuring Agreement shall have been entered into by Brio Gold Inc. (or the Purchaser) and Carpathian.
- (b) The parties hereto acknowledge that the foregoing conditions are for the exclusive benefit of the Purchaser. Any condition (other than the condition in Section 4.1(a)(iv) which cannot be waived by the Purchaser without Carpathian's consent) may be waived by the Purchaser in whole or in part.

4.2 Conditions – Vendor

- (a) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Date:
- (i) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date with the same effect as though made on and as of that date;
 - (ii) the Purchaser shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date, including delivering the Purchase Price and the documents referred to in Section 5.2 to be delivered by the Purchaser;
 - (iii) no action or proceedings shall be pending or order issued to restrain or prohibit the completion of the Transaction contemplated by this Agreement; and
 - (iv) all of the fees and disbursements of the Receiver and its counsel shall have been paid by Brio Gold Inc. in accordance with the Receivership Order.
- (b) The parties hereto acknowledge that the foregoing conditions are for the exclusive benefit of the Vendor. Any condition may be waived by the Vendor in whole or in part.

4.3 Conditions – Purchaser and Vendor

- (a) The obligations of the Vendor and the Purchaser under this Agreement are subject to the conditions that:
- (i) the Approval and Vesting Order shall have been granted by the Court on or before April 29, 2016 (the "**Court Approval Date**");
 - (ii) the Approval and Vesting Order shall not have been stayed, varied or vacated, and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
- (b) The parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser.

4.4 Efforts to Fulfil Conditions of Closing

The Parties shall use commercially reasonable efforts to take or cause to be taken such actions as are reasonably necessary to satisfy and comply with, or assist the other Party in, the

satisfaction and compliance with the conditions precedent specified in Clause 4.1, Clause 4.2 and Clause 4.3.

4.5 Non-Satisfaction of Conditions

If any condition set out in this Article 4 is not satisfied or performed on or prior to the dates specified in subsections 4.1 through 4.3, the party for whose benefit the condition is inserted may:

- (a) waive compliance with the condition in whole or in part in its sole discretion by written notice to the other party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; provided, however, that the condition in Section 4.1(a)(iv) cannot be waived by the Purchaser without Carpathian's consent; or
- (b) elect on written notice to the other party to terminate this Agreement before Closing.

ARTICLE 5 CLOSING

5.1 Closing Date

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of Stikeman Elliott LLP, 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario, M5L 1B9, or as otherwise determined by mutual agreement of the Parties in writing.

5.2 At Closing

- (a) Subject to satisfaction or waiver of the conditions of Closing by the relevant Party, at the Closing the Vendor shall:
 - (i) direct that Norton Rose Fulbright Canada LLP, as counsel to the Collateral Agent, deliver to the Purchaser the share certificate representing the OLC Brazil Shares;
 - (ii) deliver to the Purchaser the Assignment and Assumption Agreement duly executed by the Vendor;
 - (iii) deliver to the Purchaser a certificate confirming that all of the representations and warranties of the Vendor contained in this agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
 - (iv) deliver to the Purchaser such other documents, instruments or certificates as the Purchaser may reasonably request.
- (b) Upon confirmation of satisfaction of all conditions to closing having been delivered and/or waived and receiving a certificate to such effect from the Purchaser, the Vendor shall deliver to the Purchaser the Receiver's Certificate (as defined in the Approval and Vesting Order) in respect of the Closing, duly executed by the Vendor pursuant to the Approval and Vesting Order.
- (c) Subject to satisfaction or waiver of the conditions of Closing by the relevant Party, at the Closing the Purchaser shall:

- (i) deliver to the Vendor payment of the Purchase Price and the Carpathian Release;
- (ii) deliver to the Vendor the Assignment and Assumption Agreement duly executed by the Purchaser;
- (iii) deliver to the Vendor a certificate confirming that all of the representations and warranties of the Purchaser contained in this agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
- (iv) deliver to the Vendor such other documents, instruments or certificates as the Purchaser may reasonably request.

5.3 Post-Closing

Vendor shall file with the Court a copy of the Receiver's Certificate, as soon as practicable following the Closing.

5.4 Survival of Representations and Warranties

All representations, warranties, covenants and agreements of the Vendor and the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall not survive Closing.

5.5 Limited Receivership Assets Acquired On "As Is" Basis

THE PURCHASER ACKNOWLEDGES THAT THE VENDOR IS SELLING THE LIMITED RECEIVERSHIP ASSETS ON AN "AS IS, WHERE IS" BASIS AS THEY SHALL EXIST ON THE CLOSING DATE. THE PURCHASER FURTHER ACKNOWLEDGES THAT IT HAS ENTERED INTO THIS AGREEMENT ON THE BASIS THAT THE VENDOR DOES NOT GUARANTEE TITLE TO THE LIMITED RECEIVERSHIP ASSETS AND THAT THE PURCHASER HAS CONDUCTED SUCH INSPECTIONS OF THE CONDITION OF AND TITLE TO THE LIMITED RECEIVERSHIP ASSETS AS IT DEEMED APPROPRIATE AND HAS SATISFIED ITSELF WITH REGARD TO THESE MATTERS. NO REPRESENTATION, WARRANTY OR CONDITION IS EXPRESSED OR CAN BE IMPLIED AS TO TITLE, ENCUMBRANCES, DESCRIPTION, FITNESS FOR PURPOSE, MERCHANTABILITY, CONDITION, QUANTITY OR QUALITY OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER CONCERNING THE LIMITED RECEIVERSHIP ASSETS OR THE RIGHT OF THE VENDOR TO SELL OR ASSIGN SAME SAVE AND EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED HEREIN.

Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Limited Receivership Assets contained herein are for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions.

ARTICLE 6 WAIVER

6.1 Waiver Must be in Writing

No waiver by any Party of any breach (whether actual or anticipated) or any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other future breach.

ARTICLE 7 NOTICE

7.1 Service of Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by email, addressed in the case of the Purchaser, as follows:

Vendor: FTI Consulting Canada Inc.
 TD Waterhouse Tower
 79 Wellington Street West, Suite 2010
 P.O. Box 104
 Toronto, ON M5K 1G8

Attn: Nigel Meakin
 Email: Nigel.Meakin@fticonsulting.com

with a copy to: Stikeman Elliott LLP
 5300 Commerce Court West
 199 Bay Street
 Toronto, Ontario
 M5L 1B9

Attn: Elizabeth Pillon
 Email: lpillon@stikeman.com

Purchaser: Brio Finance Holdings B.V.
 Prins Bernhardplein 200
 1097 JB
 Amsterdam, the Netherlands
 Attn: L.F.M. Heine and K.A. Wouters
 Email: liselotte.heine@intertrustgroup.com
kai.wouters@intertrustgroup.com

with a copy to: Norton Rose Fulbright Canada LLP
 Suite 3800
 Royal Bank Plaza, South Tower
 200 Bay Street
 P.O. Box 84
 Toronto, Ontario M5J 2Z4

Attn: Cathy Singer / Evan Cobb
 Email: cathy.singer@nortonrosefulbright.com
evan.cobb@nortonrosefulbright.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

A Party may change its address for service by notice to the other Parties, and, such changed address for service thereafter shall be effective for all purposes of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 Further Assurances

At the Closing Date and thereafter as may be necessary, the Parties shall execute, acknowledge and deliver such instruments and take such other actions as may be reasonably necessary to fulfil their respective obligations under this Agreement.

8.2 Time

Time shall be of the essence in this Agreement.

8.3 No Amendment Except in Writing

This Agreement may be amended only by written instrument executed by the Vendor and the Purchaser; provided, however that the condition in Section 4.1(a)(iv) cannot be amended without the consent of Carpathian.

8.4 Assignment

Neither Party may assign its interest in or under this Agreement or to the Limited Receivership Assets without the prior written consent of the other Party; provided, however, that the Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate, provided that: (a) the Purchaser shall remain liable to perform all of its obligations hereunder, and (b) the Purchaser and its assignee execute and deliver to the Vendor an assignment and assumption agreement, in form and substance satisfactory to the Vendor, acting reasonably, evidencing such assignment.

8.5 Consequences of Termination

If this Agreement is terminated in accordance with its terms prior to Closing, then except for the representations or other obligations breached prior to the time at which such termination occurs, the Parties shall be released from all of their obligations under this Agreement.

8.6 Supersedes Earlier Agreements

This Agreement supersedes all other agreements between the Parties with respect to the Limited Receivership Assets and expresses the entire agreement of the Parties with respect to the transactions contained herein. For greater certainty, nothing herein shall affect the Indemnity Agreement between FTI Consulting Canada Inc. and Brio Gold Inc., dated March 22, 2016, which shall continue in full force and effect.

8.7 Enurement

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.


8.8 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereto to the other Parties by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement by the receiving party.

[Signature page follows]

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date first above written.

**FTI CONSULTING CANADA INC., in its capacity
as receiver of certain of the assets,
undertakings and properties of Carpathian Gold
Inc. and not in its personal capacity**

Per: 
Name: Nigel D. Meakin
Title: Senior Managing Director

BRIO FINANCE HOLDINGS B.V.

Per: _____
Name:
Title:

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date first above written.

**FTI CONSULTING CANADA INC., in its capacity
as receiver of certain of the assets,
undertakings and properties of Carpathian Gold
Inc. and not in its personal capacity**

Per: _____

Name:

Title:

BRIO FINANCE HOLDINGS B.V.

Per: _____

Name:

K.A.
K.A. Wouters

Title:

Managing Director B

SCHEDULE "A"

Form of Approval and Vesting Order

Court File No. _____

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE _____) _____ DAY, THE _____ DAY
 JUSTICE _____) OF _____, 20__

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

- and -

CARPATHIAN GOLD INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the "**Receiver**") of certain assets of Carpathian Gold Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by a share and asset purchase agreement (the "**Sale Agreement**") between the Receiver and Brio Finance Holdings B.V., in its capacity as Administrative Agent and Collateral Agent (each as defined in the Sale Agreement) (the "**Purchaser**") dated • and appended to the Report of the Receiver dated • (the "**Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Limited Receivership Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Purchaser and the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ● filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Limited Receivership Assets to the Purchaser. The Debtor is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Limited Receivership Assets to the Purchaser including, without limitation, any documents necessary or desirable to transfer the OLV Membership to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Limited Receivership Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ● dated ●; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Limited Receivership Assets are hereby expunged and discharged as against the Limited Receivership Assets.

3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Limited Receivership Assets shall stand in the place and stead of the Limited Receivership Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances (other than those Claims and

Encumbrances released by the Purchaser pursuant to the Carpathian Release (as defined in the Sale Agreement)) shall attach to the net proceeds from the sale of the Limited Receivership Assets with the same priority as they had with respect to the Limited Receivership Assets immediately prior to the sale as if the Limited Receivership Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS that the Receiver is authorized and directed to apply any remaining proceeds of the Limited Receivership Assets in partial payment of its fees.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

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

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

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver's Certificate

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

- and -

CARPATHIAN GOLD INC.

Respondent

RECEIVER'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable ● of the Ontario Superior Court of Justice (the "Court") dated ●, FTI Consulting Canada Inc. was appointed as the receiver (the "Receiver") of certain assets of Carpathian Gold Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated ●, the Court approved the share and asset purchase agreement made as of ● (the "Sale Agreement") between the Receiver and Brio Finance Holdings B.V. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Limited Receivership Assets, which vesting is to be effective with respect to the Limited Receivership Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Limited Receivership Assets; (ii) that the conditions to Closing as set out in articles 4 and 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Limited Receivership Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in articles 4 and 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**FTI Consulting Canada Inc., in its capacity as
Receiver of certain assets of Carpathian
Gold Inc., and not in its personal capacity**

Per: _____
Name:
Title:

TAB 4

Court File No. CV-16-11359-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	FRIDAY, THE 29 th DAY
)	
JUSTICE NEWBOULD)	OF APRIL, 2016

B E T W E E N:

BRIO FINANCE HOLDINGS B.V.

Applicant

- and -

CARPATHIAN GOLD INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the "**Receiver**") of certain assets of Carpathian Gold Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by a share and asset purchase agreement (the "**Sale Agreement**") between the Receiver and Brio Finance Holdings B.V., in its capacity as Administrative Agent and Collateral Agent (each as defined in the Sale Agreement) (the "**Purchaser**") dated April 22, 2016 and appended to the Report of the Receiver dated April 22, 2016 (the "**Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Limited Receivership Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Purchaser and the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ● filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Limited Receivership Assets to the Purchaser. The Debtor is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Limited Receivership Assets to the Purchaser including, without limitation, any documents necessary or desirable to transfer the OLV Membership to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Limited Receivership Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ● dated ●; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Limited Receivership Assets are hereby expunged and discharged as against the Limited Receivership Assets.

3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Limited Receivership Assets shall stand in the place and stead of the Limited Receivership Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances (other than those Claims and Encumbrances released by the Purchaser pursuant to the Carpathian Release (as defined in the Sale

Agreement)) shall attach to the net proceeds from the sale of the Limited Receivership Assets with the same priority as they had with respect to the Limited Receivership Assets immediately prior to the sale as if the Limited Receivership Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS that the Receiver is authorized and directed to apply any remaining proceeds of the Limited Receivership Assets in partial payment of its fees.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

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

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

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A - Form of Receiver's Certificate

Court File No. CV-16-11359-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

- and -

CARPATHIAN GOLD INC.

Respondent

RECEIVER'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (the "**Court**") dated April 22, 2016, FTI Consulting Canada Inc. was appointed as the receiver (the "**Receiver**") of certain assets of Carpathian Gold Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated ●, the Court approved the share and asset purchase agreement made as of April 22, 2016 (the "**Sale Agreement**") between the Receiver and Brio Finance Holdings B.V. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Limited Receivership Assets, which vesting is to be effective with respect to the Limited Receivership Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Limited Receivership Assets; (ii) that the conditions to Closing as set out in articles 4 and 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Limited Receivership Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in articles 4 and 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**FTI Consulting Canada Inc., in its capacity as
Receiver of certain assets of Carpathian Gold
Inc., and not in its personal capacity**

Per: _____

Name:

Title:

TAB 5

Court File No. CV-16-11359-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.

)

FRIDAY, THE 29th

JUSTICE NEWBOULD

)

DAY OF APRIL, 2016

)

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

- and -

CARPATHIAN GOLD INC.

Respondent

DISCHARGE ORDER

THIS MOTION, made by FTI Consulting Canada Inc. ("**FTI**") in its capacity as the Court-appointed receiver (the "**Receiver**") of certain undertaking, property and assets of Carpathian Gold Inc. (the "**Debtor**"), for an order:

1. approving the activities of the Receiver as set out in the First Report of the Receiver dated April 22, 2016 (the "**Report**"); and

2. upon the filing of a certificate;
 - (a) discharging FTI as Receiver of the Limited Receivership Assets (as defined in the Order of Justice Newbould dated April 22, 2016); and
 - (b) releasing FTI from any and all liability, save and except for any liability arising from gross negligence or wilful misconduct, as set out in paragraph 3 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and counsel for the Debtor, no one else appearing although served as evidenced by the Affidavit of [NAME] sworn [DATE], filed;

1. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Report, are hereby approved.
2. **THIS COURT ORDERS** upon the Receiver filing a certificate substantially in the form attached at Schedule "A" (the "**Discharge Certificate**") certifying that all matters to be attended to in connection with the receivership of the Limited Receivership Assets have been completed to the satisfaction of the Receiver, the Receiver shall be discharged as Receiver of the Limited Receivership Assets, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Receiver.
3. **THIS COURT ORDERS AND DECLARES** that, upon the filing of the Discharge Certificate, FTI is hereby released and discharged from any and all liability that FTI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of FTI while acting in its capacity as Receiver herein, save and except for any liability arising from gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, FTI is hereby forever released and discharged from any and all liability relating to

matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

SCHEDULE "A"

Court File No. CV-16-11358-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

and

CARPATHIAN GOLD INC.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an application by Brio Finance Holdings B.V. under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and an order (the "**Appointment Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 22, 2016, FTI Consulting Canada Inc. ("**FTI**") was appointed as Receiver without security, of certain of the assets, undertakings and properties of Carpathian Gold Inc. (the "**Debtor**");

(B) Pursuant to an Order of the Court dated [DATE] (the "**Discharge Order**"), FTI was to be discharged as Receiver of the Limited Receivership Assets (as defined

in the Appointment Order) to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership of Limited Receivership Assets have been completed to the satisfaction of the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. All matters to be attended to in connection with the receivership of the Limited Receivership Assets have been completed to the satisfaction of the Receiver.
2. This Certificate was filed by the Receiver with the Court on the ____ day of May, 2016.

FIT Consulting Canada Inc., in its capacity as the Court-appointed Receiver of the Limited Receivership Assets of Carpathian Gold Inc. and not in its personal or corporate capacity

Per: _____

Name: Nigel Meakin

Title: Senior Managing Director

**BRIO FINANCE
HOLDINGS B.V.**

and

CARPATHIAN GOLD INC.

Court File No. CV-16-11359-00CL

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

DISCHARGE ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSUC#: 35638M
Tel: (416) 869-5623
E-mail: lpillon@stikeman.com

C. Haddon Murray LSUC#: 61640P
Tel: (416) 869-5239
E-mail: hmurray@stikeman.com
Fax: (416) 947-0866

Lawyers for the Receiver

TAB 6

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BRIO FINANCE HOLDINGS B.V.

Applicant

and

CARPATHIAN GOLD INC.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AFFIDAVIT OF JOSEPH M. LONGPRE
(Sworn April 21, 2016)

I, Joseph M. Longpre of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Financial Officer of Brio Gold Inc., the parent company of Brio Finance Holdings B.V. ("**Brio**"), the administrative agent and collateral agent (in such capacity, the "**Agent**") with respect to a Project Facility (defined below) initially provided by Macquarie Bank Limited ("**MBL**") and subsequently assigned to Brio, as lender, (in such capacity, the "**Lender**") to Mineração Riacho dos Machados Ltda. ("**MRDM**"), as borrower.
2. MRDM is an indirect subsidiary of the Respondent Carpathian Gold Inc. ("**CPN**") and CPN has provided a secured guarantee in respect of the Project Facility.

3. Accordingly, I have knowledge of the matters deposed to in this affidavit. Where this affidavit is not based on my direct personal knowledge, I have stated the source of that information and believe such information to be true.
4. This affidavit is sworn in support of an application to appoint FTI Consulting Canada Inc. ("FTI") as receiver (in such capacity, the "**Receiver**"), without security, over certain limited assets, rights and interests of CPN, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") (this "**Application**").
5. As will be described in greater detail below, Brio seeks to appoint FTI as receiver of CPN's right, title and interest only in the outstanding shares and membership interests of two of CPN's subsidiaries and certain intercompany debt owed to CPN (the "**Limited Receivership Assets**"). The remaining assets of CPN, other than the Limited Receivership Assets, would remain unaffected by the Receiver's appointment.
6. Unless otherwise indicated, all references to dollars or "\$" in this Affidavit shall be a reference to United States dollars.

A. OVERVIEW

7. CPN, a public company headquartered in Toronto, together with its subsidiaries, is an exploration and development mining company.
8. CPN's primary business interests are (i) the Riacho dos Machados gold exploration, development and production project located in Brazil and undertaken by MRDM (the "**RDM Mine**"), and (ii) the Rovina Valley gold and copper exploration project located in Romania (the "**Romanian Project**"). The Romanian Project is not the subject of this Application.
9. MRDM is indebted to the Lender pursuant to the Project Facility and certain gold purchase agreements (together with the Project Facility, the "**Facilities**"), as described further below. As described above, CPN has guaranteed the obligations of MRDM and granted security to the Agent, on behalf of the Lender, in respect of that indebtedness.

10. As of March 31, 2016, the Lender was owed not less than \$273 million by MRDM under the Facilities.
11. MRDM was (and is) in default of its obligations to the Lender and, following many months of contractual amendments, default waivers and forbearance periods, continues to be unable to repay the amounts due and owing.
12. I understand from Michael Kozub, General Counsel and Corporate Secretary of CPN, that, from September 2013 to October 2015, CPN pursued a robust sales process (the "**Sales Process**") in order to identify a going concern, out-of-court solution for its business.
13. Despite the fact that the Project Facility was in default during the period of the Sales Process, funding continued to MRDM under the Project Facility during and after the Sales Process.
14. The Sales Process will be discussed in greater detail in evidence to be provided to the Court in connection with the motion for approval of the MRDM Acquisition (as defined below).
15. Late in the Sales Process, Brio Gold Inc. ("**BGI**", an affiliate of Yamana Gold Inc.) engaged in discussions with MBL regarding the acquisition of MBL's position under the Facilities with the ultimate goal of acquiring MRDM through a security enforcement process on consent of CPN. BGI also had prior involvement in the Sales Process, indirectly, as it engaged in discussions with a potential bidder in the Sales Process about possible follow-on transactions after an acquisition of the RDM Mine by such potential bidder.
16. As described in more detail below, on March 31, 2016, all of MBL's rights and obligations under the Facilities and the security associated therewith were transferred to Brio at a price of \$41,861,868.69 million, equivalent to approximately 15% of face value.
17. Brio is currently the owner of multiple gold exploration and production properties. It is not a traditional lender. Brio acquired the Facilities with the intention of moving forward

on an expedited basis to indirectly acquire MRDM through a credit bid transaction for the shares of two CPN subsidiaries that are the indirect parent companies of MRDM (the “MRDM Acquisition”).

18. Completion of the MRDM Acquisition is the purpose of this Application.
19. Brio is of the view that the granting of the relief sought in this Application will facilitate a going concern solution for MRDM in a stable, court-supervised process, and enable CPN to be fully released from its obligations to the Lender and the Agent and to move on with its plans in respect of the Romanian Project with a new equity infusion from BGI. All procedural formalities required of the Agent to commence this enforcement proceeding have been completed, and CPN consents to the appointment of the Receiver pursuant to the Order sought for the purposes set out above.
20. As described further below, Brio would not move forward with the MRDM Acquisition outside of a court process for the following reasons: (i) applicable Canadian personal property security legislation may not allow for the transfer of all of the Limited Receivership Assets; (ii) Brio requires the transparency and certainty of a court order in connection with this transaction; and (iii) absent a court order approving the transaction, the transaction may require approval of the shareholders of CPN and Brio would not move forward with the transaction if a shareholder vote (including the time and delay associated therewith, particularly given CPN's public company status) was a prerequisite.

B. CPN BACKGROUND

21. CPN, together with its subsidiaries, is an exploration and development mining company.
22. A corporate chart illustrating the corporate structure of CPN and its subsidiaries is attached hereto as **Exhibit “A”**.
23. CPN is a public company, previously listed on the Toronto Stock Exchange but now listed on the Canadian Securities Exchange, incorporated pursuant to the laws of

Canada, having its registered and head office located at 36 Toronto Street, Suite 1000, Toronto, Ontario.

24. I am advised by Mr. Kozub that CPN has no independent operations and exists solely as the parent holding company for a number of subsidiaries. Through these subsidiaries, CPN owns and operates: (i) the RDM Mine, and (ii) the Romanian Project.

C. FINANCIAL POSITION

25. CPN has been experiencing significant financial difficulties for some time.
26. The financial position of CPN is evidenced by its Interim Financial Statements for the quarter ended September 30, 2015 (the "**Interim Financial Statements**"), attached hereto and marked as **Exhibit "B"**. As set out in the Interim Financial Statements, CPN, on a consolidated basis for the reporting period, incurred a net loss of approximately \$56 million, and as at September 30, 2015 reported an accumulated deficit of approximately \$219 million. CPN's cash reserves are also depleted: as of September 30, 2015, CPN held, on a consolidated basis, unrestricted cash and cash equivalents of only approximately \$726,000.
27. The obligations under the Facilities of not less than \$273 million are currently due and payable as a result of the Existing Defaults (as described below). Based upon the outcome of the Sales Process, it is clear that the aggregate of CPN's property, at a fair valuation, is not sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of its obligations under the Facilities. Further, CPN is not, at this time able to repay its obligations under the Project Facility.
28. I am advised by Mr. Kozub that CPN does not have any unionized employees and is not the sponsor of a registered pension plan.
29. Brio believes that it is clear from all available information that the assets that are the subject of the MRDM Acquisition do not have a value that approaches the current outstanding secured debt under the Facilities. As will be described in greater detail in an affidavit of a representative of Origin Merchant Partners, CPN's financial advisor, the

Sales Process has been undertaken with respect to CPN and its subsidiaries and no viable transactions that would have repaid the debt owing under the Facilities were available through the Sales Process. Further, Brio has very recently acquired the Facilities, and the security associated therewith, at a very significant discount from a sophisticated lender, which provides an additional persuasive indication of the market value of the assets that secure the Facilities and that are the subject of the MRDM Acquisition.

D. CPN ASSETS

30. CPN's primary assets consist of the equity interests in its subsidiaries and intercompany receivables, in particular, I am advised by Mr. Kozub that the following intercompany receivables are owing to CPN:
- (a) intercompany loans owed by MRDM to CPN in the approximate aggregate amount of \$9,088,242.18;
 - (b) intercompany loans owed by CPN's Barbados subsidiary, OLC Brazil (as defined below) to CPN in the approximate aggregate amount of \$49,310.49; and
 - (c) intercompany loans owed by CPN's Dutch subsidiaries, OLV and OLC Holdings (each as defined below) to CPN in the approximate aggregate amount of \$398,855.18.

The indebtedness referred to in subparagraphs (a) through (c), above, and all payments due or to become due thereunder or in connection therewith, and all claims, causes of action, and any other rights of CPN, as a lender, or the proposed receiver against any person, whether known or unknown, arising thereunder or in any way based on or relating thereto, including contract and tort claims, statutory claims, and all other claims related to the rights and obligations sold and assigned, is collectively referred to herein as the "Carpathian Intercompany Debt".

(i) Romanian Subsidiaries and the Romanian Project

31. As set out in the corporate chart attached hereto and marked as **Exhibit "A"**, through a series of direct and indirect subsidiaries (the "**Romanian Subsidiaries**") CPN is the ultimate parent of the Romanian operating entity, SC SAMAX Romania SRL ("**SAMAX Romania**").
32. SAMAX Romania operates the Romanian Project.
33. The Facilities are not secured on the shares of the Romanian Subsidiaries or the Romanian Project. The Romanian Subsidiaries and the Romanian Project are not the subject of this Application.

(ii) Brazilian Subsidiaries

34. As set out in the corporate chart attached hereto and marked as **Exhibit "A"**, CPN owns 100% of (i) the issued and outstanding shares of Ore-Leave Capital (Brazil) Limited (a company incorporated in Barbados) ("**OLC Brazil**"), and (ii) 99.9998% of the issued and outstanding membership interests in OLV Coöperatie U.A. (Netherlands) (a co-operative established in the Netherlands) ("**OLV**"). OLC Brazil owns the remaining 0.0002% of the issued and outstanding membership interests in OLV.
35. OLV owns 100% of the issued and outstanding interests in OLC Holdings B.V. (a company incorporated in the Netherlands) ("**OLC Holdings**"). Together, OLV and OLC Holdings own 100% of the issued and outstanding quotas of MRDM, which owns and operates the RDM Mine.
36. Collectively, OLC Brazil, OLV, OLC Holdings and MRDM are referred to herein as the "**RDM Subsidiaries**".

(iii) The RDM Mine

37. The RDM Mine is an open pit gold mine, located approximately 145 kilometers from the city of Montes Claros in south-eastern Brazil. I am advised by Mr. Kozub that MRDM currently employs approximately 579 people on a full time basis at the RDM Mine.
38. I am advised by Mr. Kozub that, in November 2011, MRDM was granted a licence, known as the *Licenca Instalacao* (the "Installation License"), required to commence the installation and construction of the plant and facilities at the RDM Mine. At that time, CPN anticipated that gold production at the RDM Mine would commence around mid-2013.
39. I am advised by Mr. Kozub that construction at the mine continued throughout 2012 and 2013. However, later in 2013, it became apparent that there were delays in the progress of construction and the anticipated commencement of gold production at the RDM Mine.
40. I am advised by Mr. Kozub that in early January 2014, CPN announced its first smelting and pouring of gold at the RDM Mine.
41. The RDM Mine is currently a producing mine.

E. CARPATHIAN'S LIABILITIES AND EMPLOYEE MATTERS

42. A review of the Interim Financial Statements shows that, with the exception of the obligations under the Facilities, the liabilities of CPN and its subsidiaries on a consolidated basis were less than \$13 million as at September 30, 2015.
43. I am advised by Mr. Kozub that the liabilities of CPN on a non-consolidated basis, other than the obligations under the Facilities, are unsecured and are currently less than \$100,000. In addition, I am advised by Mr. Kozub that there are currently outstanding potential contingent unsecured claims against CPN in the amount of approximately US\$1,128,601 and CDN\$560,000 relating to wrongful dismissal allegations.

44. None of the current employees or creditors (other than Brio) of CPN or its subsidiaries will have their rights affected by the proposed receivership or the MRDM Acquisition.

F. **RDM Financing Arrangements**

Gold Purchase Arrangements

45. In addition to the Project Facility, described below, MBL entered into two gold purchase arrangements with MRDM and CPN. Those gold purchase arrangements provided that, in return for certain upfront payments totaling up to \$45 million, MBL would have the right to acquire 12.5% of RDM's gold production at a price of \$400 per ounce, subject to an inflation escalator. These arrangements were included in two gold purchase agreements, copies of which are attached hereto and marked as **Exhibits "C" and "D"** (as amended from time to time, the "**Gold Purchase Agreements**").
46. The obligations, liabilities and indebtedness of MRDM under the Gold Purchase Agreements were guaranteed by CPN.

Project Facility

47. On January 11, 2013, MRDM, as borrower, CPN and each of the other Brazilian Subsidiaries, as guarantors, and MBL entered into, among other things, a \$90 million non-revolving credit facility (the "**Project Facility**") pursuant to a project facility agreement (as subsequently amended and supplemented from time to time, the "**Project Facility Agreement**"), attached hereto and marked as **Exhibit "E"**.
48. The purpose of the Project Facility was to enable MRDM to finance costs of the construction, development and operation of the RDM Mine and was to be made available to MRDM by MBL initially in two tranches, the first being \$65 million ("**Tranche 1**") and the second being \$25 million ("**Tranche 2**").
49. MBL advanced to MRDM the aggregate amount of \$90 million available under Tranche 1 and Tranche 2 of the Project Facility in 2013.

50. The obligations, liabilities and indebtedness of MRDM with respect to the Project Facility Agreement are guaranteed by CPN and each of the RDM Subsidiaries. Attached hereto and marked as **Exhibit "F"** is a copy of the guarantee provided by CPN to the Agent, dated January 11, 2013 (the "**Facility Guarantee**").
51. In connection with the execution of the Project Facility Agreement and the Facility Guarantee, CPN granted security over certain of its assets in favour of the Agent, pursuant to various security documents, including, but not limited to:
- (a) a Disclosed Pledge of Claims and Memberships, dated as of January 11, 2013, among CPN, OLC Brazil, OLV and the Agent, in respect of CPN's and OLC Brazil's interest in and right and title to the memberships and claims in OLV, a copy of which is attached hereto and marked as **Exhibit "G"**;
 - (b) a Deed of Charge Over Shares, dated as of January 11, 2013, between CPN, OLC Brazil and the Agent, in respect of CPN's interest in and right and title to all issued and outstanding shares in OLC Brazil, a copy of which is attached hereto and marked as **Exhibit "H"**;
 - (c) a General Security Agreement, dated as of October 8, 2013, granted by CPN in favour of MBL (the "**GSA**"), a copy of which is attached hereto and marked as **Exhibit "I"**;¹
- (collectively, the "**Security**").
52. The Agent does not have security over CPN's right, title and interest in any of the shares of the Romanian Subsidiaries or any assets used in the Romanian Project.
53. I am advised by Evan Cobb of Norton Rose Fulbright Canada LLP, counsel to Brio, that searches performed of Ontario's Personal Property Security Registry current to April 5, 2016 show that Brio is the only secured party with a registration against CPN. Copies of these searches of the Ontario Personal Property Security Registry are attached hereto and marked as **Exhibit "J"**.

¹ The GSA was entered into in connection with an Amendment Letter to the Project Facility Agreement dated August 28, 2013, a copy of which is attached hereto and marked as **Exhibit "K"**.

G. DEFAULTS AND FORBEARANCES

54. CPN and the RDM Subsidiaries defaulted on certain covenants and obligations under the Project Facility Agreement starting in October 2013. The defaults are detailed in fifty-three amending and forbearance agreements entered into between MBL, CPN, and the RDM Subsidiaries. The outstanding defaults (the "**Existing Defaults**") include:
- (a) Failures to maintain required balances in the Proceeds Account and Operating Account (each as defined in the Project Facility Agreement), as required under Section 12.04 of the Project Facility Agreement;
 - (b) Failures to maintain required ratios under Section 10.04 of the Project Facility Agreement;
 - (c) Failures to deliver an updated Life of Mine Plan in breach of Section 10.01(7)(b) of the Project Facility Agreement;
 - (d) Payment defaults on March 31, 2014, June 30, 2014, December 31, 2014, March 31, 2015 and June 30, 2015; and
 - (e) Failures to maintain a TSX listing for CPN's common shares in breach of Section 13.01(29) of the Project Facility Agreement.

H. ADDITIONAL FUNDING AND SALES PROCESS

55. In order to assist and permit CPN and the RDM Subsidiaries an opportunity to identify a going concern solution to the financial difficulties facing the RDM Mine and ultimately, conduct the Sales Process, CPN and the RDM Subsidiaries and MBL executed the first Forbearance and Amendment Agreement, dated as of October 18, 2013 (the "**First Amending Agreement**"). Attached hereto and marked as **Exhibit "L"** is a copy of the First Amending Agreement.
56. Pursuant to the First Amending Agreement, MBL, agreed to, among other things, increase the amount of credit available under the Project Facility, by providing an

additional loan in the amount of US \$5 million under a new tranche 3 of the Project Facility ("**Tranche 3**").

57. As the Sales Process was being undertaken, the Agent agreed, through the execution of a series of amendment agreements, beginning on October 30, 2013, to, among other things: (i) further forbear from enforcing the Security and other rights and remedies resulting from the disclosed defaults, (ii) further increase the amount of credit available under Tranche 3 of the Project Facility, which, by February 2016 had reached an aggregate additional sum of \$184 million, and (iii) extend the repayment date under Tranche 3 of the Project Facility Agreement.
58. As will be described in greater detail in the affidavit to be filed by a representative of Origin Merchant Partners, the Sales Process was undertaken in two phases from September 2013 to October 2015, during which time not less than 50 potentially interested parties were engaged by Origin Merchant Partners and CPN's other financial advisors regarding a potential transaction. No viable transaction acceptable to the Agent and the Lender was identified.
59. The last amending agreement to the Project Facility Agreement was executed by the Agent, CPN and the RDM Subsidiaries on February 17, 2016 (the "**Final Amending Agreement**") providing for, among other things, the termination of the forbearance period on the earlier of April 1, 2016 or the completion of the assignment of the Facilities and the security associated therewith to Brio.
60. As of March 31, 2016, CPN was directly and indirectly indebted to Brio under the Project Facility in the principal amount of \$273,112,133.80 plus interest and fees. Attached hereto and marked as **Exhibit "M"** is a promissory note (the "**Promissory Note**") issued by MRDM to Brio, which confirms the outstanding obligations under the Project Facility as of that date, which was issued in connection with the Loan Acquisition Transaction (as defined below).

I. THE LOAN ASSIGNMENT AND RESTRUCTURING TRANSACTION

61. Discussions between MBL, BGI and CPN regarding a transaction having the structure of the Loan Acquisition Transaction (as defined below) and the MRDM Acquisition began in October 2015, though Yamana Gold Inc. and BGI did engage earlier in the Sales Process with respect to other potential transaction structures as well.
62. The proposed transaction was first negotiated during the month of November in the form of an Option Agreement (the "**Option Agreement**") between BGI and MBL and a Restructuring Agreement ("**Original Restructuring Agreement**") between BGI, MBL, CPN and the RDM Subsidiaries, both dated November 20, 2015. Copies of the Option Agreement and the Original Restructuring Agreement are attached hereto and marked as **Exhibit "N"** and **Exhibit "O"**.
63. Under the Option Agreement, MBL granted BGI the option to acquire MBL's right, title, benefits and interests in respect of the Facilities and the security and guarantees associated therewith, including the Project Facility, the Facility Guarantee and the Security (the "**Loan Acquisition Transaction**").
64. Under the Original Restructuring Agreement:
- (a) CPN and the RDM Subsidiaries would consent to the Loan Acquisition Transaction;
 - (b) CPN and the RDM Subsidiaries would use reasonable efforts and take reasonable steps necessary to complete the Loan Acquisition Transaction;
 - (c) CPN and the RDM Subsidiaries provided certain confirmations regarding the enforceability of the Project Facility, the Facility Guarantee and the Security and the obligations thereunder;
 - (d) CPN and the RDM Subsidiaries agreed to certain covenants regarding the operation of the RDM Mine until such time as the Loan Acquisition Transaction was completed;

- (e) CPN, MBL, BGI and the RDM Subsidiaries agreed to work cooperatively and in good faith to complete the RDM Acquisition (as defined below);
 - (f) BGI agreed to enter into a subscription agreement for the Equity Subscription (as defined below) for shares of CPN; and
 - (g) BGI agreed to provide certain releases to CPN and to the directors of each of CPN and the RDM Subsidiaries.
65. On February 17, 2016, an Assignment and Assumption Agreement was entered into between MBL and BGI (the "**Assignment Agreement**") which, subject to the terms and conditions contained therein would give effect to the Loan Acquisition Transaction. The purchase price to be received by MBL from Brio (as assignee of BGI) under the Loan Acquisition Transaction was \$45 million, subject to certain adjustments. A copy of the Assignment Agreement is attached hereto and marked as **Exhibit "P"**.
66. In connection with the Assignment Agreement, an Amended and Restated Restructuring Agreement was entered into also on February 17, 2016 between BGI, MBL, CPN and the RDM Subsidiaries (the "**A&R Restructuring Agreement**"). The A&R Restructuring Agreement amended the Original Restructuring Agreement to accommodate certain structural changes associated with the Assignment Agreement. A copy of the A&R Restructuring Agreement is attached hereto and marked as **Exhibit "Q"**.
67. The Loan Acquisition Transaction was completed on March 31, 2016.

J. **THE RDM ACQUISITION**

68. The acquisition of the shares and memberships of OLV and OLC Brazil and the Carpathian Intercompany Debt is the final step in the series of transactions for the acquisition by Brio of MRDM that began in November 2015 with the Option Agreement and continued through the entry into the Assignment Agreement on February 17, 2016 and the completion of the Loan Acquisition Transaction on March 31, 2016.

69. Through the acquisition of the shares and memberships of OLV and OLC Brazil, Brio would acquire a 100% indirect interest in MRDM and the RDM Mine (the "**RDM Acquisition**").
70. The Court's approval of the RDM Acquisition is not being sought at this time. The motion for approval of the RDM Acquisition, if Brio's receivership application is granted, is intended to be scheduled for April 29, 2016 at 9:30 a.m.
71. The transaction has been publicly disclosed through a number of press releases of CPN, beginning in November of 2015, and then again in February 2016 and March 2016. These press releases are attached hereto as **Exhibits "R" through "T"**.
72. The transaction allows Brio to acquire an asset that is strategically beneficial to Brio and, at the same time, allows CPN to move forward and focus on the Romanian Project with an injection of \$1 million of liquidity through the Equity Subscription (described below).
73. The terms of the RDM Acquisition are set out in a Share and Asset Purchase Agreement, a form of which is attached hereto and marked as **Exhibit "U"** (the "**Share Purchase Agreement**"). The material terms of the Share Purchase Agreement are set out below:
- (a) Shares to be acquired: All of CPN's right, title and interest in the shares of OLC Brazil and the membership of OLV will be acquired by Brio.
 - (b) Carpathian Intercompany Debt to be acquired: Brio will acquire all Carpathian Intercompany Debt.
 - (c) Purchase price: A cash purchase price of \$1 and a full and final release by Brio of the Facility Guarantee and all other obligations of CPN to Brio under the agreements pertaining to the Facilities and the security that secures the obligations thereunder.
 - (d) Conditions: The transaction is subject to limited conditions, including (i) the granting of an approval and vesting order substantially in the form attached to

the form of Share Purchase Agreement; (ii) payment by BGI of the receiver's and its counsel's fees in connection with the receiver's mandate; and (iii) the entry of BGI (or Brio) and Carpathian into the Subscription Agreement (as defined below).

(e) As is, where is: The RDM Acquisition is to occur on an "as is, where is" basis.

74. In connection with the RDM Acquisition, and as contemplated by the Original Restructuring Agreement and the A&R Restructuring Agreement, CPN and BGI have negotiated in good faith and entered into a subscription agreement (the "**Subscription Agreement**") for a \$1,000,000 subscription by BGI (or Brio) of common shares in the capital of CPN (the "**Equity Subscription**"). The Equity Subscription will be completed immediately following completion of the RDM Acquisition.
75. Brio is only willing to complete the proposed transaction if the transaction is implemented pursuant to an approval and vesting order substantially in the form attached to the draft Share Purchase Agreement. The approval and vesting order is an essential part of the proposed transaction as it provides Brio with the comfort it requires to move forward with this purchase transaction given the current circumstances facing CPN. Court approval of this transaction is essential in a circumstance where: (i) the shares and membership interests of OLC Brazil and OLV are interests in foreign corporations and, at least in the case of the OLV membership interests, I am advised by Evan Cobb of Norton Rose Fulbright Canada LLP, legal counsel to Brio, that the mechanisms available under the *Personal Property Security Act* (Ontario) may not be available to transfer these assets; (ii) an approval and vesting order provides the highest degree of transparency to interested parties and the highest degree of comfort available in the circumstances that the assets being acquired will be acquired free and clear of any competing encumbrances; and (iii) I am advised by Mr. Cobb that under the *Canada Business Corporations Act*, a sale transaction of this type without a court order approving the transaction may require approval of the shareholders of CPN, and Brio would not move forward with such a transaction if shareholder approval (and the cost and delay potentially associated therewith, particularly as CPN is a public company) was a prerequisite to the transaction.

76. After completion of all of the above steps:
- (a) The RDM Subsidiaries, and indirectly the RDM Mine, will be owned by Brio; and
 - (b) CPN will (i) continue as a going concern, (ii) continue to own the Romanian Subsidiaries and the Romanian Project, which will not have been the subject of the receivership proceedings, (iii) be relieved of any and all obligations in respect of the amounts due and owing under the Facilities, and (iv) obtain \$1,000,000 of liquidity through the Equity Subscription.
77. Because this Application and the RDM Acquisition relate only to the collateral held by Brio under the Project Facility and because all indications suggest that such collateral is worth significantly less at fair value than the face value of the Project Facility at this time, unsecured creditors of CPN have no economic interest in this collateral and neither this Application nor the proposed RDM Acquisition will prejudice any other creditors of CPN.

K. DEMAND AND NOTICE

78. Pursuant to paragraph 5.1 of the Facility Guarantee, the Agent, on behalf of the Lender, is entitled to make demand upon CPN at any time during the continuance of default in the performance or payment of any of the obligations under the Project Facility Agreement.
79. Pursuant to the Promissory Note, MRDM confirmed the amounts outstanding under the Project Facility as at March 31, 2016.
80. Pursuant to the Amended and Restated Restructuring Agreement, CPN and each of the RDM Subsidiaries confirmed that the Security continues to be valid, binding and is an enforceable first-priority interest and pursuant to the Final Amending Agreement, CPN and the RDM Subsidiaries confirmed that the Project Facility Agreement continues to be in default.

81. On April 21, 2016, Brio delivered to CPN a notice of intention to enforce security pursuant to Section 244 of the BIA (the "**244 Notice**"). Attached hereto and marked as **Exhibit "V"** is a copy of the 244 Notice.
82. CPN consented to the immediate enforcement of the Security. Attached hereto and marked as **Exhibit "W"** is a copy of the consent executed by CPN, dated April 21, 2016.

L. **PRIOR ENGAGEMENTS OF FTI WITH CPN**

83. I am advised by Nigel Meakin, Senior Managing Director at FTI, that since 2013, FTI, in conjunction with certain of its international affiliates, has provided a variety of financial advisory, restructuring and consulting services initially to MBL and then to CPN, which are described in greater detail below.
84. In October 2013, FTI was retained by MBL to provide analytical support and strategic assistance to MBL regarding CPN's financial and operating projections for the RDM Mine (the "**Macquarie Engagement**"). I am further advised by Mr. Meakin that only a small amount of work was performed by FTI under the Macquarie Engagement, consisting of a review of (i) actual against forecasted cash flow, and (ii) supporting documentation for a sample of payments. The last time billed under the Macquarie Engagement was charged on October 31, 2013.
85. I am further advised by Mr. Meakin that in January 2013, FTI was retained by CPN to provide certain financial advisory and consulting services, including the services of Mr. Andrew Bantock, a Senior Managing Director of FTI's Australian affiliate, to serve as Chief Restructuring Officer (the "**CRO**") of CPN (the "**CRO Engagement**").
86. Pursuant to the CRO Engagement, the scope of the CRO's duties included, among other things, the following:
 - (a) providing financial, strategic and restructuring advice to CPN;
 - (b) assisting management and the board of directors of CPN with such analysis as may be required;

- (c) monitoring the preparation and maintenance of short and medium term cash flow and financial forecasts, and the monitoring of actual performance against forecast cash flow for CPN and its subsidiaries;
 - (d) assessing the operational and financial position of the RDM Mine, including schedules, costs to complete and commissioning issues/programs;
 - (e) advising and assisting CPN in negotiations and discussions with the CPN's customers, lenders and other stakeholders;
 - (f) advising and assisting CPN and its investment bankers in the planning and execution of the continuation of their sales process;
 - (g) developing and evaluating restructuring, sale or recapitalization alternatives that may be available to CPN; and
 - (h) taking such action as authorized by CPN's Board of Directors to assist CPN in implementing the agreed restructuring strategies and initiatives.
87. I am advised by Mr. Kozub that Mr. Bantock was not an authorized signing officer of CPN and was never listed as an officer of CPN in any public filings of CPN.
88. Mr. Bantock resigned the position of CRO by mutual agreement on December 8, 2015.
89. In addition to the foregoing, In March 2014 FTI was retained by Bennett Jones LLP, in its capacity as legal counsel to CPN, to investigate and report on activities relating to the solicitation, approval and implementation of a sample of contracts and potential irregularities related thereto (the "BJ Engagement"). The BJ Engagement was completed in June 2014.
90. The activities of FTI under the BJ Engagement included, among other things, (i) reviewing available paper and electronic documentation to determine the scope of the contract irregularities and the impact on CPN, (ii) seeking to identify the individuals (internal or external to CPN) implicated in the contract irregularities, (iii) determining whether CPN's documented internal control procedures were appropriately followed,

(iv) identifying potential recourse for recovery in the event of non-performance or malfeasance.

91. All of FTI's engagements for CPN are complete. The fee arrangements of each of the FTI engagements was based on hourly rates and none of the engagements had any element of success fee or contingent compensation.
92. On March 31, 2016, FTI's Brazilian affiliate was engaged by MRDM to provide the services of Mr. Luis Moreno as restructuring advisor.

K. APPOINTMENT OF FTI AS RECEIVER

93. In Brio's view, the appointment of FTI as the Receiver is appropriate in the circumstances. FTI is a well-respected firm with significant experience in court appointed officer roles, it is familiar with the operational and financial circumstances of CPN and MRDM, it is familiar with the terms of the Assignment Agreement, the A&R Restructuring Agreement and the Share Purchase Agreement. The Receivership and the transaction contemplated by the Share Purchase Agreement are proceeding on a consensual basis and with the support of CPN, all of which will result in efficiencies.
94. I am advised by Evan Cobb of Norton Rose Fulbright Canada LLP, Brio's legal counsel, that section 13.3 of the BIA provides certain restrictions in respect of who may be appointed receiver unless otherwise permitted by the Court. In Brio's view, the prior engagements of FTI and its foreign affiliates described above should not impact FTI's ability to properly discharge its role as Receiver in this matter. The prior engagements have assisted in providing FTI with valuable information about CPN and MRDM and the proposed transaction. Further, Brio is unaware of any aspects of the prior engagements of FTI and its foreign affiliates that would provide any basis to conclude that FTI is not able to independently assess the terms of the proposed transaction. Aside from Brio's agreements with respect to FTI's fees on the Receivership mandate, as described below, Brio has no other agreements or arrangements with FTI in connection with CPN or the RDM Subsidiaries.

95. I am advised by Mr. Meakin that FTI is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
96. FTI has consented to act as Receiver and CPN has consented to the appointment of FTI as the Receiver.
97. As the sole purpose of the receivership is to complete the transaction contemplated by the Share Purchase Agreement, it is expected that the Receiver's mandate will be substantially complete upon completion of that transaction. As a result, the Receiver's appointment is not expected to last more than a few weeks. This is beneficial to both Brio and CPN from a cost and efficiency perspective and also because it limits the amount of time CPN remains subject to receivership proceedings.
98. Due to the limited purpose of the Receivership and the fact that (as described below) the Receivership will not be funded from the assets of CPN, Brio does not believe that there is any practical benefit in the circumstances of requiring that the fees of the Receiver must be subject to Court approval unless requested to do so by the Applicant, the Court or any other interested party.

N. FINANCING OF THE RECEIVERSHIP AND RECEIVER'S CHARGE

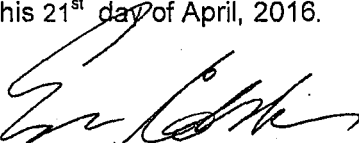
99. The fees and expenses of the Receiver and its legal counsel in completing the proposed transaction will be paid by BGI pursuant to an agreement between BGI and FTI.
100. Notwithstanding that, and without limiting BGI's commitments to make the above payments, it is proposed that the fees and expenses of the Receiver and its legal counsel in carrying out the Receiver's duties, once appointed, will be secured by a "Receiver's Charge" over the Limited Receivership Assets which will rank ahead of the Security.

O. CONCLUSION


101. This affidavit is made in support of Brio's application for the appointment of FTI as the Receiver of certain assets of CPN, together with the proposed ancillary and related

relief, as set out in the draft Receivership Order filed, and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, In the Province of Ontario, this 21st day of April, 2016.



A Commissioner for taking affidavits

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JOSEPH M. LONGPRE

TAB 7

Court File No. ~~11111~~CV-16-11359-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE _____)	WEEKDAY FRIDAY, THE #29 th
)	
<u>MR.</u>)	DAY
JUSTICE _____ <u>NEWBOULD</u>		OF MONTH <u>APRIL</u> , 20 <u>YR</u> 2016

BETWEEN:

~~PLAINTIFF~~ BRIO FINANCE HOLDINGS B.V.

Plaintiff

Applicant

- and -

~~DEFENDANT~~ CARPATHIAN GOLD INC.

Defendant

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the "Receiver") of ~~the undertaking, property and certain assets of [DEBTOR]~~ Carpathian Gold Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by ~~an~~ a share and asset purchase agreement of ~~purchase and sale~~ (the "Sale Agreement") between the Receiver and ~~[NAME OF PURCHASER]~~ Brio Finance Holdings B.V., in its capacity as Administrative Agent and Collateral Agent (each as defined in the Sale Agreement) (the "Purchaser") dated ~~[DATE]~~ April 22, 2016 and appended to the Report of the Receiver dated ~~[DATE]~~ April 22, 2016 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Limited Receivership Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ the Purchaser and the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ [NAME] sworn ~~[DATE]~~ [DATE] filed¹:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Limited Receivership Assets to the Purchaser. The Debtor is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Limited Receivership Assets to the Purchaser including, without limitation, any documents necessary or desirable to transfer the OLV Membership to the Purchaser.

¹ This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

~~CAN DMS: 102274783~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the ~~Purchased~~ Limited Receivership Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~⁴ shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME]● dated [DATE]●, and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) ~~those Claims listed on Schedule C hereto,~~ (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the ~~Purchased~~ Limited Receivership Assets are hereby expunged and discharged as against the ~~Purchased~~ Limited Receivership Assets.

3. ~~THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]~~⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real

⁴ To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

CAN_DMS: \102274783

3. ~~4.~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Limited Receivership Assets shall stand in the place and stead of the Purchased Limited Receivership Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances (other than those Claims and Encumbrances released by the Purchaser pursuant to the Carpathian Release (as defined in the Sale Agreement)) shall attach to the net proceeds from the sale of the Purchased Limited Receivership Assets with the same priority as they had with respect to the Purchased Limited Receivership Assets immediately prior to the sale⁸; as if the Purchased Limited Receivership Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS that the Receiver is authorized and directed to apply any remaining proceeds of the Limited Receivership Assets in partial payment of its fees.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

⁷ ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

⁸ ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

6. THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor. notwithstanding:

7. THIS COURT ORDERS that, notwithstanding:

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

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

Z ~~8.~~ THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

~~CAN_DMS:120192714102274783~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A - Form of Receiver's Certificate

Court File No. _____ CV-16-11359-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

~~PLAINTIFF~~ BRIO FINANCE HOLDINGS B.V.

Plaintiff

Applicant

- and -

~~DEFENDANT~~ CARPATHIAN GOLD INC.

Defendant

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [~~NAME OF JUDGE~~] Justice Newbould of the Ontario Superior Court of Justice (the "Court") dated [~~DATE OF ORDER~~], [~~NAME OF RECEIVER~~] April 22, 2016, FTI Consulting Canada Inc., was appointed as the receiver (the

"Receiver") of the ~~undertaking, property and~~ certain assets of ~~{[DEBTOR]}~~ Carpathian Gold Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated ~~{[DATE]}~~, the Court approved the ~~agreement of share and asset purchase and sale agreement~~ made as of ~~{[DATE OF AGREEMENT]}~~ April 22, 2016 (the "Sale Agreement") between the Receiver ~~{Debtor}~~ and ~~{[NAME OF PURCHASER]}~~ and Brio Finance Holdings B.V. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Limited Receivership Assets, which vesting is to be effective with respect to the Purchased Limited Receivership Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Limited Receivership Assets; (ii) that the conditions to Closing as set out in ~~section~~ articles 4 and 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Limited Receivership Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section~~ articles 4 and 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~2~~
3

~~[NAME OF RECEIVER] ETL Consulting
Canada Inc., in its capacity as Receiver of the
undertaking, property and certain assets of
[DEBTOR] Carpathian Gold Inc., and not in
its personal capacity~~

Per: _____
Name:
Title:

~~Schedule B — Purchased Assets~~

~~Schedule C — Claims to be deleted and expunged from title to Real Property~~

~~Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property~~

~~(unaffected by the Vesting Order)~~

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TAB 8

Court File No. — CV-16-11359-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE — MR.)
) WEEKDAY FRIDAY, THE #29th
)
JUSTICE — NEWBOULD) DAY OF MONTH APRIL, 20^{YR} 2016

BETWEEN:

PLAINTIFF

Plaintiff

BRIO FINANCE HOLDINGS B.V.

Applicant

- and -

DEFENDANT

Defendant

CARPATHIAN GOLD INC.

Respondent

DISCHARGE ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~FTI Consulting Canada Inc. ("FTI") in its capacity as the Court-appointed receiver (the "**Receiver**") of the certain undertaking, property and assets of ~~[DEBTOR]~~Carpathian Gold Inc. (the "**Debtor**"), for an order:

1. approving the activities of the Receiver as set out in the ~~report~~First Report of the Receiver dated ~~[DATE]~~April 22, 2016 (the "**Report**"); and
2. ~~approving the fees and disbursements of the Receiver and its counsel; upon the filing of a certificate;~~
3. ~~approving the distribution of the remaining proceeds available in the estate of the Debtor;~~
~~{and}~~
 - (a) ~~4. discharging [RECEIVER'S NAME]FTI as Receiver of the undertaking, property and assets of the Debtor~~[Limited Receivership Assets (as defined in the Order of Justice Newbould dated April 22, 2016); and
 - (b) ~~5. releasing [RECEIVER'S NAME]FTI from any and all liability, save and except for any liability arising from gross negligence or wilful misconduct, as set out in paragraph 53 of this Order~~[†],

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report, ~~the affidavits of the Receiver and its counsel as to fees (the "Fee Affidavits")~~, and on hearing the submissions of counsel for the Receiver, counsel for the

[†] If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

Applicant and counsel for the Debtor, no one else appearing although served as evidenced by the Affidavit of [NAME] sworn [DATE], filed²;

1. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Report, are hereby approved.

~~2. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, are hereby approved.~~

~~3. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]³.~~

~~4. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 3 hereof [and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report] substantially in the form attached at Schedule "A" (the "**Discharge Certificate**") certifying that all matters to be attended to in connection with the receivership of the Limited Receivership Assets have been completed to the satisfaction of the Receiver, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor Limited Receivership Assets, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of [RECEIVER'S NAME] FTI in its capacity as Receiver.~~

~~5. [THIS COURT ORDERS AND DECLARES that [RECEIVER'S NAME], upon the filing of the Discharge Certificate, FTI is hereby released and discharged from any and all liability that [RECEIVER'S NAME] FTI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of [RECEIVER'S NAME] FTI while acting in its capacity as Receiver herein, save and except for any liability arising from gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing,~~

² This model order assumes that the time for service does not need to be abridged.

³ This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

[RECEIVER'S NAME]ETI is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.]⁴



⁴The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.

SCHEDULE "A"Court File No. CV-16-11358-00CL**ONTARIO
SUPERIOR COURT OF JUSTICE****(COMMERCIAL LIST)****BETWEEN:****BRIO FINANCE HOLDINGS B.V.****Applicant****and**

CARPATHIAN GOLD INC.**Respondent****APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
*ACT, R.S.C. 1985, c. B-3, AS AMENDED*****RECEIVER'S DISCHARGE CERTIFICATE****RECITALS**

(A) Pursuant to an application by Brio Finance Holdings B.V. under section 243(1) of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, and an order (the*

"Appointment Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated April 22, 2016, FTI Consulting Canada Inc. ("FTI") was appointed as Receiver without security, of certain of the assets, undertakings and properties of Carpathian Gold Inc. (the "Debtor");

(B) Pursuant to an Order of the Court dated [DATE] (the "Discharge Order"), FTI was to be discharged as Receiver of the Limited Receivership Assets (as defined in the Appointment Order) to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership of Limited Receivership Assets have been completed to the satisfaction of the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. All matters to be attended to in connection with the receivership of the Limited Receivership Assets have been completed to the satisfaction of the Receiver.

2. This Certificate was filed by the Receiver with the Court on the _____ day of May, 2016.

EIT Consulting Canada Inc., in its capacity as the Court-appointed Receiver of the Limited Receivership Assets of Carpathian Gold Inc. and not in its personal or corporate capacity.

Per:

Name: Nigel Meakin

Title: Senior Managing Director

**BRIO FINANCE
HOLDINGS B.V.**

CARPATHIAN GOLD INC.

Court File No. CV-16-11359-00CL

and

Respondent

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

DISCHARGE ORDER

**STIKEMAN ELLIOTT LI
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9
Elizabeth Pillon LSUC#: 35638
Tel: (416) 869-56
E-mail: lpillon@stikeman.com**

**C. Haddon Murray LSUC#: 61641
Tel: (416) 869-52
E-mail: hmurray@stikeman.com
Fax: (416) 947-0866**

Lawyers for the Receiver

Document comparison by Workshare Professional on Friday, April 22, 2016
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BRIO FINANCE HOLDINGS B.V.

and

CARPATHIAN GOLD INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List**

Proceeding commenced at Toronto

MOTION RECORD
(returnable April 29, 2016)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSUC#: 35638M
Tel: (416) 869-5623
Email: lpillon@stikeman.com

C. Haddon Murray LSUC#: 61640P
Tel: (416) 869-5239
Email: hmurray@stikeman.com
Fax: (416) 947-0866

Lawyers for the Receiver