



Court File No. **VLC-S-S-1812407**

NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ORION FUND JV LIMITED, in its capacity as Collateral Agent  
for ORION FUND JV LIMITED and LIBERTY METALS AND  
MINING HOLDINGS LLC

PLAINTIFF

AND:

RED EAGLE MINING CORPORATION  
REMDC HOLDINGS LIMITED  
ORION TITHECO LIMITED, as agent  
ROYAL BANK OF CANADA

DEFENDANTS

**NOTICE OF APPLICATION**

**NAME OF APPLICANT:**

Orion Fund JV Limited, in its capacity as collateral agent for  
Orion Fund JV Limited and Liberty Metals and Mining Holdings LLC  
("Orion")

**To:**

RED EAGLE MINING CORPORATION  
REMDC HOLDINGS LIMITED  
ORION TITHECO LIMITED, as agent  
ROYAL BANK OF CANADA

TAKE NOTICE that an application will be made by the applicant to the presiding Judge at the courthouse at 800 Smithe Street, Vancouver, B.C. on Wednesday, November 21, 2018 at 9:45 a.m. for the order(s) set out in Part 1 below.

## PART 1: ORDER(S) SOUGHT

1. The time for service of this Notice of Application and supporting materials is hereby abridged so that the application is properly returnable today, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with;
2. An Order appointing a Receiver in the form attached as Schedule "A", with blacklined copy from the Model Receivership Order attached as Schedule "B".

## PART 2: FACTUAL BASIS

### The Parties

3. The Plaintiff, Orion Fund JV Limited ("**Orion**") is a company duly incorporated under the laws of Bermuda, with an address for delivery for the purpose of these proceedings of c/o 1600 Cathedral Place, 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.
4. The Defendant, Red Eagle Mining Corporation ("**Red Eagle**"), is a company duly incorporated under the laws of the British Columbia with its registered and records office at Suite 2348, 666 Burrard Street, Vancouver BC V6C 2X8.
5. The Defendant, REMDC Holdings Limited ("**REMDC**"), is a company duly incorporated under the laws of British Columbia with its registered and records office at Suite 2348, 666 Burrard Street, Vancouver BC V6C 2X8.
6. REMDC is a wholly owned subsidiary of Red Eagle. REMDC is the sole owner Red Eagle Mining De Colombia S.A.S ("**Red Eagle (Colombia)**"), the Colombian Company that owns, among other things, various interests in and to the Santa Rosa Gold Project, including mining titles, either current or pending, in respect of same.
7. The Defendants, Orion Titheco Limited, as agent, and Royal Bank of Canada are each holders of financing statements registered in the British Columbia Personal Property Registry as against Red Eagle and/or REMDC, whose interests may be affected by these proceedings.

## PART 3: LEGAL BASIS

8. This application is being brought pursuant to s. 39 of the *Law & Equity Act*, R.S.B.C. (the "**LEA**") 1996, c. 253, s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), and Rules 10-1, 10-2 and 21-7 of the *Supreme Court Civil Rules*.
9. The LEA provides that the Court may appoint a receiver where it is just and convenient to do so. The BIA provides that, on application by a secured creditor, the Court may appoint a receiver, again when it is just or convenient to do

10. By virtue of the Credit Agreement and the Guarantee, the Lenders entered into a valid and binding agreement to advance credit to Red Eagle, and did so pursuant to the terms of the Credit Agreement. Red Eagle agreed to abide by those terms in exchange for that credit, and REDMC guaranteed those obligations, and each specifically granted the Security whereby they granted to the Orion, as agent for the Lenders, a security interest in all of its present and after acquired assets generally.
11. Red Eagle and REDMC are each now in breach of the terms of the Guarantee and Security, and in default of its obligations thereunder. Specifically:
  - (a) Red Eagle failed to make payments as they fell due under the Credit Agreement and Forbearance Agreements;
  - (b) REDMC failed to pay the balance due and owing upon demand;
12. Under the terms of the Security, and the provisions of the *Personal Property Security Act*, Orion is specifically entitled to the appointment of a Receiver Manager in order to enforce its security and realize the amounts due and owing to it.
13. There are two competing lines of authority as to the test the court ought to consider in making an order appointing a Receiver Manager.
14. The more historic line of authority states that the court should only exercise discretion to not appoint a receiver in those rare occasions where the debtor can show compelling commercial reasons why such an order should not be made, with the onus for that being on the debtor:

*Eaton Bay Trust Co. v. Motherlode Developments Ltd.* (1984), 1984 CanLII 676 (BC SC)

*Royal Trust Corp. of Canada v. Exeter Properties Ltd.*, [1985] B.C.J. No. 942 (S.C.);

*Ross v. Ross Mining Ltd.* (2009), 2009 YKSC 55 (CanLII),

*United Savings Credit Union v. F& R Brokers Inc.* 2003 BCSC 640, Para 17

*Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc.*, 2012 BCSC 437

15. The competing line of authorities, however, suggests that it is necessary for the applying creditor to show that it is just and convenient to make the appointment, but with the existence of the right in the security agreement being a “strong factor” for such consideration (*Maple Trade, at para 26*).

*Red Burrito Ltd. v. Hussain*, 2007 BCSC 1277 (CanLII),

*Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.* (2010), 67 C.B.R. (5th) 97 (B.C.S.C.);

*Maple Trade Finance Inc. v. C.Y. Oriental Holdings Ltd.* (2009), 2009 BCSC 1527

*Cascade Divide Enterprises, Inc. v. Laliberte*, 2013 BCSC 263

16. In *Can-Pacific Farms, supra*, Mr. Justice Burnyeat noted that the first line of authority, namely that in *United Savings Credit Union*, did not appear to have been specifically referred to by the court in *Maple Trade*, and that the Court in *Textron* then relied upon *Maple Trade* despite it being decided without having considered *United Savings Credit Union*. Mr. Justice Burnyeat then concluded that neither *Textron* or *Maple Trade* correctly stated the law in British Columbia (*at para 16*).
17. Madam Justice Fitzpatrick, however, has stated that the test is that set out in both *Textron* and *Maple Trade*, but notably without referencing the alternative line of authorities.

*Cascade Divide Enterprises, Inc. v. Laliberte*, 2013 BCSC 263

18. Madam Justice Fitzpatrick of this Court has more recently summarized the current law in this respect, particularly the divergence in this Court as to the test to be applied for such applications:

[22] I am aware that there is some divergence in our Court concerning the test to be applied in respect of appointing a receiver in these circumstances. On one hand, there are two decisions of Justice Burnyeat in *United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640 (CanLII) and *CIBC v. Can-Pacific Farms Inc.*, 2012 BCSC 437 (CanLII). In both decisions, Burnyeat J. took the view that where a receivership order is sought by a secured creditor and default under the security is proven, a receiver should be granted as a right unless there is some other compelling reason why the order should not be made.

[23] On the other hand, there is Justice Masuhara's decision in *Maple Trade Financing Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 (CanLII). At para. 25 of *Maple Trade*, the Court refers to various factors from *Bennett on Receivership* which may be considered in determining whether it is appropriate to appoint a receiver. *Maple Trade* was subsequently followed and applied in *Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477 (CanLII) by Justice Willcock, as he then was. Both of these decisions are to the effect that while it is not necessary for a secured creditor to show jeopardy before a receiver is appointed, no such presumption of appointment should be made; rather, the court should review the matter holistically and decide whether on the whole of the circumstances it is, in fact, just and convenient to appoint a receiver. The Court in *Textron* also considered and applied *Korion Investments Corporation v. Vancouver Trade Mart Inc.* [1993] B.C.J. No. 2352 (S.C.), a decision which was referred to me by Gian's counsel.

[24] I followed *Maple Trade* and *Textron* in my later decision on the issue: *Cascade Divide Enterprises, Inc. v. Laliberte*, 2013 BCSC 263 (CanLII) at para. 77. I propose to follow the same approach here. Accordingly, relying on the second line of authorities outlined above, the analysis calls for a robust review of all the circumstances.

[25] There is no dispute concerning the validity of the Bank's security. It is also not in dispute that Gian's is in default of that security. Importantly, similar to the point made in *Maple Trade*, Gian's was in default at the time the Agreement was entered into.

*Bank of Montreal v. Gian's Business Centre Inc.*, 2016 BCSC 2348

19. In this case, there can be no dispute concerning the validity of the Bank's security, or that the debtors are in default. In this respect, the debtors acknowledged as much in the Forbearance Agreements executed after default.
20. As noted by Her Ladyship in *Bank of Montreal v. Gian's*, *supra*, the terms of a forbearance agreement (or agreements) and a specific agreement to the enforcement of security by way of the appointment of a receiver is a significant factor:

[33] The other matter is the Agreement itself, upon which I place considerable reliance. There are key provisions of the Agreement which address the consequences of first entering into the Agreement and, secondly, not abiding by it. Those provisions are:

- a) paragraph 8: the respondents waive various defences against the Bank;
- b) paragraph 11: the respondents acknowledge that the Forbearance Period (to December 15, 2016) is reasonable in the circumstances;
- c) paragraph 27: in the events of a default under the Agreement, the respondents acknowledge and agree that the Bank has the immediate right to terminate the remainder of the Forbearance Period, without further demand or notice and proceed to enforce the security and recover the debt; and
- d) paragraph 28: this provision more directly addresses the right of the Bank to appoint a receiver in the event of default under the Agreement:

In the event that the Bank commences proceedings to enforce some or all of the Security, either at the expiry of the Forbearance Period or after the Forbearance Period has been terminated at the Bank's election, each of the [respondents] shall consent to the appointment of a Receiver or Receiver/Manager over any or all of the [respondent's] assets and undertakings charged by the Security or New Security, and that any such Receiver or Receiver/Manager shall have conduct of sale of the personal property and lands charged by the Security and the New Security.

[Emphasis added].

21. It is evident that the debtors are no longer operating, thus putting the Security at risk. Where there is such impairment of security, it is submitted that the *Can-Pacific* case is the more appropriate authority to follow.
22. However, applying either test, Orion submits that it has established that the order appointing the receiver should be made.

23. In this respect, Orion is not aware of any commercial reason why the order sought should not be granted. On the other hand, even if the onus is upon Orion to show that the appointment is just and convenient, given the factors as set out in *Bennett on Receivership*, the order should still be made.
24. These factors are as follows:
- (a) the irreparable harm that might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
  - (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
  - (c) the nature of the property;
  - (d) the apprehended or actual waste of the debtor's assets;
  - (e) the preservation and protection of the property pending judicial resolution;
  - (f) the balance of convenience to the parties;
  - (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
  - (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
  - (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
  - (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
  - (k) the effect of the order upon the parties;
  - (l) the conduct of the parties;
  - (m) the length of time that a receiver may be in place;
  - (n) the cost to the parties;
  - (o) the likelihood of maximizing return to the parties;
  - (p) the goal of facilitating the duties of the receiver.

*Bennett on Receivership*, 2d ed. (Toronto: Carswell, 1999), at p. 130,

25. In the case at bar, the debtors are simply unable to bring the mine into operation so as to enable it to pay any of the obligations to the Lenders and other creditors, including its employees. Further, all indications show that all business operations are being shut down. This could potentially frustrate contracts including Material Contracts, thus impairing realization potential and potentially causing irreparable harm.
26. As such, the Applicant submits that it is appropriate to make the order as sought, the terms of which are as set out in the model receivership order (*Practice Direction 47*), as attached to the Notice of Application.
27. Orion relies upon Rule 10-2 of the *Supreme Court Civil Rules*, s. 39 of the *Law and Equity Act*, ss. 63 and 66 of the *Personal Property Security Act*, and s. 243 of the *Bankruptcy and Insolvency Act*, or in the alternative, s. 47 of the *Bankruptcy and Insolvency Act*, and submits that it is just and equitable to appoint a Receiver over the assets and undertaking of the Rayne either in the ordinary course, or alternatively, as an interim receiver in order to protect Rayne's estate and interests of PVS.

**PART 4: MATERIAL TO BE RELIED ON**

28. Notice of Civil Claim.
29. Affidavit #1 of Amanda Simister, sworn November 16, 2018
30. Affidavit #1 of Jon Lamb, sworn November 17, 2018

The applicant(s) estimate(s) that the application will take 30 minutes.

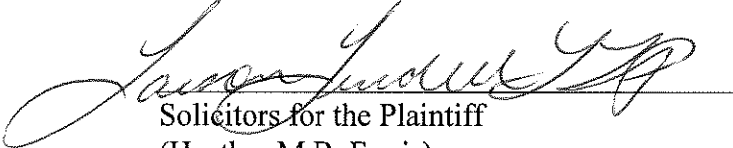
- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master as it involves inherent jurisdiction.

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

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and

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

Dated at the City of Vancouver, in the Province of British Columbia, this 17 day of November 2018.

  
 Solicitors for the Plaintiff  
 (Heather M.B. Ferris)

This Notice of Application is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

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



APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- Other – Enforcement of Security / Appointment of Receiver

# Schedule "A"

NO.  
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## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ORION FUND JV LIMITED, in its capacity as Collateral Agent  
for ORION FUND JV LIMITED and LIBERTY METALS AND  
MINING HOLDINGS LLC

PLAINTIFF

AND:

RED EAGLE MINING CORPORATION  
REMDC HOLDINGS LIMITED  
ORION TITHECO LIMITED, as agent  
ROYAL BANK OF CANADA

DEFENDANTS

### ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

JUSTICE

)  
)  
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)

THE 21<sup>st</sup> DAY OF  
NOVEMBER, 2018

ON THE APPLICATION of Plaintiff 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**") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**") appointing FTI Consulting, Inc. as Receiver and Manager (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of Red Eagle Mining Corporation and REMDC Holdings Limited (collectively, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Jon Lamb sworn November \_\_\_\_\_, 2018; Affidavit #1 of A. Simister sworn November 16, 2018, and the consent of FTI Consulting, Inc. to act as the Receiver; AND ON HEARING Heather M.B. Ferris, Counsel for the Plaintiff and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

1. This application is properly brought forward for hearing on this date, with the time for service of this application is hereby abridged accordingly.

#### **APPOINTMENT**

2. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, FTI Consulting Inc. is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor, including all proceeds (the “**Property**”).

#### **RECEIVER’S POWERS**

3. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is 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 Property and any and all receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, 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;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
  - (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
  - (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
  - (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
  - (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
    - (i) without the approval of this Court in respect of a single transaction for consideration up to \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
    - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,
- and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
  - (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
  - (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
  - (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have, including as to the power of sale in accordance with subparagraph (l) above; and
- (s) 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. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
6. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 5, 6 or 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.

7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. 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 DEBTOR OR THE PROPERTY**

9. No Proceeding against or in respect of the Debtor or the Property 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 Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

## **NO INTERFERENCE WITH THE RECEIVER**

11. 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, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

## **CONTINUATION OF SERVICES**

12. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (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**

14. Subject to the employees' right to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any

employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

## **PERSONAL INFORMATION**

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
17. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
18. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
  - (a) before the Receiver’s appointment; or,
  - (b) after the Receiver’s appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver’s gross negligence or wilful misconduct.



19. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

20. 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:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

21. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property 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(7), 81.4(4), and 81.6(2) of the BIA.
22. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
23. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

24. The Receiver is at liberty to apply for borrowings, to be secured by a charge by way of a fixed and specific charge as security for the payment of the monies borrowed, together with interest and charges thereon, with such priority and on such terms including as to allocation as may apply, and as may be granted by this Honourable Court.

## ALLOCATION

25. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

## SERVICE AND NOTICE OF MATERIALS

26. The Receiver shall establish and maintain a website in respect of these proceedings at: <http://cfcanada.fticonsulting.com> (the "**Website**") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
27. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
28. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
29. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
30. Notwithstanding paragraph 28 of this Order, service of the Notice of Application and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.

31. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

## GENERAL

32. Any interested party may apply to this Court to vary or amend this Order on not less than five (5) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
33. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
34. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
35. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are 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.
36. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and 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.
37. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff'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.

38. Endorsement of this Order by counsel appearing on this application other than the Plaintiff is dispensed with.

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

APPROVED BY:

\_\_\_\_\_  
Signature of [type of print name]  
lawyer for [Plaintiff/Applicant]

BY THE COURT

DISTRICT REGISTRAR

**Schedule "B"**

**Demand for Notice**

**TO:** **Orion Fund JV Limited**, in its capacity as Collateral Agent  
c/o Lawson Lundell LLP  
Barristers and Solicitors  
1600 - 925 West Georgia Street  
Vancouver, B.C. V6C 3L2  
Attention: Heather M.B. Ferris  
Email: hferris@lawsonlundell.com

**AND TO:** **FTI Consulting, Inc.**  
c/o Miller Thomson LLP  
Pacific Centre  
725 Granville Street  
Suite 400  
Vancouver, BC V7Y 1G5  
Attention: Gordon Plottel  
Email: gplottel@millerthomson.com

**Re: In the matter of the Receivership of Red Eagle Mining Corporation  
and REMDC Holdings Limited**

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number: \_\_\_\_\_

# Schedule "B"

NO.  
VANCOUVER REGISTRY

## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ORION FUND JV LIMITED, in its capacity as Collateral Agent  
for ORION FUND JV LIMITED and LIBERTY METALS AND  
MINING HOLDINGS LLC

PLAINTIFF

AND:

RED EAGLE MINING CORPORATION  
REMDC HOLDINGS LIMITED  
ORION TITHECO LIMITED, as agent  
ROYAL BANK OF CANADA

DEFENDANTS

### ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE )  
 )  
 ) THE 21<sup>st</sup> DAY OF  
JUSTICE ) NOVEMBER, 2018  
 )  
 )

ON THE APPLICATION of ~~Plaintiff for~~ Plaintiff 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") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing FTI Consulting, Inc. as Receiver and Manager (in such capacity, the "Receiver") without security, of all of the assets, undertakings and property of Red Eagle Mining Corporation and REMDC Holdings Limited (collectively, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Jon Lamb sworn November 16, 2018; Affidavit #1 of A. Simister sworn November 16, 2018, and the consent of FTI Consulting, Inc. to act as the Receiver; AND ON HEARING Heather M.B. Ferris, Counsel for the Plaintiff and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

1. This application is properly brought forward for hearing on this date, with the time for service of this application is hereby abridged accordingly.

### APPOINTMENT

2. ~~1-~~Pursuant to Section 243(1) of the BIA ~~{and/or}~~ Section 39 of the LEA-~~INCORPORATED~~ ~~RAMM~~, FTI Consulting Inc. is appointed Receiver, without security, of ~~RAMM~~ undertakings and property of the Debtor, including all proceeds (the "Property").

### RECEIVER'S POWERS

3. ~~2-~~The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is 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 Property and any and all receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, 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;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
  - (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of a single transaction for consideration up to \$ [REDACTED]; [REDACTED], provided that the aggregate consideration for all such transactions does not exceed \$ [REDACTED]; and
  - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;



- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have, including as to the power of sale in accordance with sub-paragraph (l) above; and
- (s) 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. ~~3-~~Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
- 5. ~~4-~~All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
- 6. ~~5-~~Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs ~~4, 5, 6~~ or ~~6~~ of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.

7. ~~6.~~ If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. ~~7.~~ 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 DEBTOR OR THE PROPERTY**

9. ~~8.~~ No Proceeding against or in respect of the Debtor or the Property 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 Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. ~~9.~~ All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

This stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

### **NO INTERFERENCE WITH THE RECEIVER**

11. ~~10.~~ 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, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

### **CONTINUATION OF SERVICES**

12. ~~11.~~ All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. ~~12.~~ All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (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**

14. ~~13.~~ Subject to the employees' right to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed

specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

## PERSONAL INFORMATION

15. ~~14.~~ Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

16. ~~15.~~ Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
17. ~~16.~~ The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
18. ~~17.~~ Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
- (a) before the Receiver’s appointment; or,

- (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

19. ~~18.~~ Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

### LIMITATION ON THE RECEIVER'S LIABILITY

20. ~~19.~~ 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:

- (a) any gross negligence or wilful misconduct on its part; or
- (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

### RECEIVER'S ACCOUNTS

21. ~~20.~~ The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property 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(7), 81.4(4), and 81.6(2) of the BIA.

22. ~~21.~~ The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

23. ~~22.~~ Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## FUNDING OF THE RECEIVERSHIP

24. ~~23.~~ The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed [REDACTED] (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged at liberty to apply for borrowings, to be secured by a charge by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, with such priority and on such terms including as to allocation as may apply, and as may be granted by this Honourable Court.
- ~~24.~~ Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
- ~~25.~~ The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
- ~~26.~~ The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## ALLOCATION

25. ~~27.~~ Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

## SERVICE AND NOTICE OF MATERIALS

26. ~~28.~~ The Receiver shall establish and maintain a website in respect of these proceedings at: ~~[WEB ADDRESS]~~ <http://cfcanada.fticonsulting.com> (the "Website") and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,

(b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

27. ~~29.~~ Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the “**Demand for Notice**”). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.

28. ~~30.~~ The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the “**Service List**”). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.

29. ~~31.~~ Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.

30. ~~32.~~ Notwithstanding paragraph ~~31~~28 of this Order, service of the Notice of Application and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.

31. ~~33.~~ The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

## GENERAL

32. ~~34.~~ Any interested party may apply to this Court to vary or amend this Order on not less than seven~~five~~ (7)5 clear business days’ notice to the Service List and to any other party

who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

33. ~~35.~~ The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
34. ~~36.~~ Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
35. ~~37.~~ This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are 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.
36. ~~38.~~ The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and 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.
37. ~~39.~~ The {Plaintiff/Applicant} shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the {Plaintiff/Applicant}'s security or, if not so provided by the {Plaintiff/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.

38. ~~40.~~ Endorsement of this Order by counsel appearing on this application other than the {Plaintiff/Applicant} is dispensed with.

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



APPROVED BY:

---

Signature of [type of print name]  
lawyer for [Plaintiff/Applicant]

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~RECEIVER'S NAME~~, the ~~Receiver and/or Receiver and Manager~~ (the "Receiver") of all of the assets, undivided and proceeds of ~~DEBTOR'S NAME~~ acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Order") made in SCBC Action No. \_\_\_\_\_ and/or SCBC Action No. \_\_\_\_\_ ~~Asata No. \_\_\_\_\_~~ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~daily/annually~~ not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

~~7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.~~

DATED the [REDACTED] day of [REDACTED], 201[REDACTED].

[REDACTED], solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule "B"**

**Demand for Notice**

**TO:** ~~{Name of Applicant}~~  
e/o ~~{Name of Counsel to the Applicant}~~ Orion Fund JV Limited, in  
its capacity as Collateral Agent  
c/o Lawson Lundell LLP  
Barristers and Solicitors  
1600 - 925 West Georgia Street  
Vancouver, B.C. V6C 3L2  
Attention: Heather M.B. Ferris  
Email: hferris@lawsonlundell.com

**AND TO:** ~~{Name of Receiver}~~ FTI Consulting, Inc.  
c/o ~~{Name of Counsel to the Receiver}~~ Miller Thomson LLP  
Pacific Centre  
725 Granville Street  
Suite 400  
Vancouver, BC V7Y 1G5  
Attention: Gordon Plottel  
Email: gplottel@millertomson.com

**Re:** In the matter of the Receivership of {DEBTOR} Red Eagle Mining Corporation  
and REMDC Holdings Limited

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number:

\_\_\_\_\_  
\_\_\_\_\_

Document comparison by Workshare 9 on Monday, November 19, 2018 2:13:36 PM

<b>Input:</b>	
Document 1 ID	interwovenSite://DMS/Lawson/15934265/1
Description	#15934265v1<Lawson> - Orion_Red Eagle_Model_Receivership_Order (downloaded Nov 16_18 - for comparison purposes)
Document 2 ID	interwovenSite://DMS/Lawson/15934261/1
Description	#15934261v1<Lawson> - Orion/Red Eagle Receivership Order (based on Nov 16_18 model order)
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved-deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
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Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	165

NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ORION FUND JV LIMITED, in its  
capacity as Collateral Agent for  
ORION FUND JV LIMITED and  
LIBERTY METALS AND MINING  
HOLDINGS LLC

PLAINTIFF

AND:

RED EAGLE MINING  
CORPORATION  
REMDC HOLDINGS LIMITED  
ORION TITHECO LIMITED, as  
agent  
ROYAL BANK OF CANADA

DEFENDANTS

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NOTICE OF APPLICATION

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Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2

Phone: (604) 685-3456  
Attention: Kimberley A. Robertson