



No. S238572  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
MYRA FALLS MINE LTD.

**ORDER MADE AFTER APPLICATION**

**(NTM Approval and Vesting Order)**

BEFORE THE HONOURABLE )  
JUSTICE FITZPATRICK ) 02/08/2024  
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 2nd day of August, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including the Affidavit #6 of Hein Frey affirmed July 25, 2024 (the "**Frey Affidavit #6**"), and the Fourth Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**") dated July 30, 2024; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Sale and Assignment of Equipment Lease Agreement (the "**NTM Agreement**") between the Petitioner and Nyrstar Tennessee Mines – Strawberry Plains LLC (the "**Purchaser**"), in the form and substance as attached as **Schedule "B"** is hereby approved, and the NTM Agreement is commercially reasonable. The execution of the NTM Agreement by the Petitioner is hereby authorized and approved, and the Petitioner 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 to the Purchaser of the leases described in the NTM Agreement (the "**Purchased Lease**").

2. Provided that nothing in this Order shall release or otherwise affect the interest of Sandvik Canada Inc. (t/a Sandvik Customer Finance Canada) in the Leased Equipment (as defined below), upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as **Schedule "C"** hereto (the "**Monitor's Certificate**"), all of the Petitioner's right, title and interest in and to the Purchased Lease (including for greater certainty the Petitioner's right, title and interest in any leased equipment thereunder (the "**Leased Equipment**") shall be sold, assigned, transferred and 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 ARIO dated December 28, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia 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 Purchased Lease or Leased Equipment are hereby expunged and discharged as against the Purchased Lease and Leased Equipment.
3. The Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.
4. The Petitioner shall not be required to hold the Purchase Price (as defined in the NTM Agreement) in trust for the benefit of any Person but rather shall be entitled to use the funds comprising the Purchase Price in the ordinary course of its operations, subject to the ARIO and the other orders made in these proceedings.
5. Notwithstanding:
  - (a) these proceedings;

(b) any applications for a bankruptcy order in respect of the Petitioner now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Petitioner,

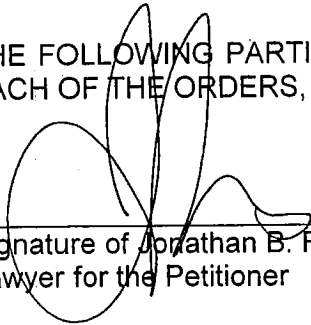
the vesting of the Purchased Lease and Leased Equipment in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable by creditors of the Petitioner, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* 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.

6. The assignment of the Purchased Lease is valid and binding upon all of the counterparties to the Purchased Lease, notwithstanding any restriction or prohibition contained in such Purchased Lease relating to the assignment thereof, including, but not limited to, any provision requiring the consent of any party to the transfer, conveyance, or assignment of the Purchased Lease.
7. No counterparty under the Purchased Lease, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of the Purchased Lease hereunder shall make or pursue any demand, claim, action or suit or exercise any right or remedy (including any termination rights) against the Purchaser related to: (a) the Petitioner having sought or obtained relief under the CCAA; (b) the insolvency of the Petitioner; or (c) any failure by the Petitioner to perform a non-monetary obligation under the Purchased Lease and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the date hereof, under the Purchased Lease other than in respect of items (a) – (c) above.
8. The Petitioner or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

9. Endorsement of this Order by counsel appearing on this application other than the counsel for the Petitioner is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or Administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

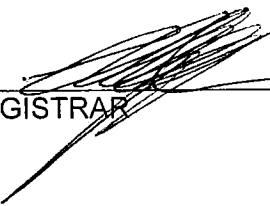
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



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Signature of Jonathan B. Ross  
Lawyer for the Petitioner

BY THE COURT



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REGISTRAR



Schedule "A"

LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED
Peter Rubin	Monitor, FTI Consulting Canada Inc.
Andrew Froh	Amalgamated Mining & Tunneling Inc.
Aminollah Sabzevari	Canada Revenue Agency
Heather Kennedy	Unifor Local 3019
Brandon Lewis Tremblay	WSP Canada Inc. and WPS E & I Canada Limited
Benjamin J. Lorimer	Sorepar Canada Inc, Frontline Machinery Ltd., and Heidelberg Materials Canada Limited.
Lauren Nykolaychuk	Langley Freight Lines (190) Ltd.
Andrea K. Glen	Ministry of Attorney General
Ashley Bowron	Wei wai kum First Nation & we wai kai First Nation

## Schedule "B"

### SALE AND ASSIGNMENT OF EQUIPMENT LEASE

#### BETWEEN:

**MYRA FALLS MINE LTD.**, a corporation existing under the laws of British Columbia

(the "Assignor")

- and -

**NYRSTAR TENNESSEE MINES – STRAWBERRY PLAINS LLC**, a corporation existing under the laws of •

(the "Assignee")

#### CONTEXT:

- A. **WHEREAS** the Assignor has agreed to sell and assign and the Assignee has agreed to buy and assume all rights and obligations under a master equipment lease agreement dated April 19, 2018 (the "**Lease**") between the Assignor and Sandvik Canada, Inc. (t/a Sandvik Customer Finance Canada) ("**Sandvik**") for certain equipment detailed on **Schedule A**. (the "**Equipment**"). The Assignee shall assume all obligations under the Lease including obligations to make outstanding lease payments as well as future lease payments all as detailed on **Schedule B**.
- B. **AND WHEREAS** on December 18, 2023, the Supreme Court of British Columbia granted the Assignor an initial order under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA Proceeding**") and thereafter, the Assignor placed the Myra Falls Mine on care and maintenance.
- C. **AND WHEREAS** the Assignee shall assume all obligations under the Lease including obligations to make outstanding lease payments, certain lease purchase option payments and future lease payments and the Assignee shall also be entitled to all benefits of the Lease including the right to use the Equipment according to the terms of the Lease and the right to acquire the Equipment under the lease purchase option.

**THEREFORE**, for good and valuable consideration as provided herein, the parties agree as follows:

#### 1. Certain Rules of Interpretation

- 1.1 In this agreement (the "**Agreement**"), words signifying the singular number include the plural and vice versa, and words signifying gender include all genders.
- 1.2 The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 1.3 References in this Agreement to a Section are to be construed as references to a Section of or to this Agreement unless otherwise specified.

## 2. Assignment

Effective from and after the effective date of this Agreement (the "**Closing Date**") and subject to satisfaction of the conditions set out herein, the Assignor sells, assigns, transfers and sets over to the Assignee for the sole use and benefit of the Assignee, all of the Assignor's right and title to and interest in the Lease together with the benefit of all covenants, guarantees and warranties under the Lease and all benefits and other advantages, if any, to be derived from the Lease.

## 3. Consideration

In consideration of the sale and assignment of the Lease by the Assignor to the Assignee, the Assignee shall pay the amount of \$2,000,000 Cdn to the Assignor together with GST / HST in the amount of \$100,000 if applicable (the "**Purchase Price**").

## 4. Assumption

The Assignee accepts the assignment as set out in Section 2 above, and effective from and after the effective date of this Agreement, the Assignee will assume all of the obligations, duties and liabilities of the Assignor arising from the Lease to the exclusion of the Assignor, and the Assignee shall indemnify and save harmless the Assignor from and against any and all claims made against the Assignor in respect of the Lease or the use of the Equipment from and after the effective date hereof.

## 5. Warranties

- 5.1 The Assignor represents and warrants to and in favour of the Assignee that: (a) the execution, delivery and performance by the Assignor of this Agreement has been duly authorized by all necessary corporate action on the part of the Assignor subject to the issuance of an approval and vesting order substantially in the form of **Schedule C** hereto (the "**Approval and Vesting Order**") by the Court in the CCAA Proceeding.
- 5.2 The Assignee represents and warrants to and in favour of the Assignor that: (a) this Agreement has been duly executed and delivered by the Assignee and constitutes a legal, valid and binding obligations of the Assignee, enforceable against it in accordance with its terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- 5.3 The Assignee acknowledges that this sale and assignment is done on an "As is; Where is" basis and the Assignor has made no representation or warranty as to the condition of the Equipment or the suitability of the Equipment for any specific purpose and the Assignee has had the opportunity to conduct such inspections and enquiries regarding the Equipment as necessary.
- 5.4 The Assignee has reviewed and is familiar with all of the terms and conditions of the Lease; and
- 5.5 The Assignee will have on the Closing Date, all funds on hand necessary to pay the Purchase Price.

## 6. Tax

The Assignor is registered under Subdivision (d) of Division V of Part IX of the ETA for the collection and remittance of goods and services tax and harmonized sales tax ("GST/HST") and its registration

number is 871209060 and such registration is in good standing and has not been varied, cancelled or revoked; and c) the Assignor shall remit to the appropriate governmental authority, all GST/HST which is payable under the ETA, in connection with the sale and transfer of the Lease, all in accordance with the ETA.

#### **7. Conditions of Closing for the Mutual Benefit of the Parties**

The obligations of either the Assignor or the Assignee to complete the assignment of the Lease are subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the mutual benefit of each of the parties and may only be waived, in whole or in part, by agreement of the parties to this Agreement: (a) the Approval and Vesting Order shall have been issued and entered by the Court and shall not be subject to a stay; (b) receipt of an executed copy of this Agreement by the parties hereto, and consented to this assignment by Sandvik; (c) no legal proceeding shall be pending which attempts to enjoin, restrict or prohibit the assignment of the Lease contemplated hereby; and (d) FTI Consulting Canada Inc. in its capacity as monitor in the CCAA Proceedings shall have provided its consent to the transaction contemplated in this Agreement.

#### **8. Governing Law**

This sale and assignment is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable in that Province.

#### **9. Further Assurances**

Each party will, at that party's own cost and expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the requesting party to give effect to this Agreement.

#### **10. Enurement**

This Agreement enures to the benefit of, and is binding upon, the parties and their respective successors and permitted assigns.

#### **11. Electronic Signatures and Delivery**

This Agreement and any counterpart of it may be:

- 11.1 signed by manual, digital or other electronic signatures; and
- 11.2 delivered or transmitted by any digital, electronic or other intangible means, including by e-mail or other functionally equivalent electronic means of transmission,

and that execution, delivery and transmission will be valid and legally effective to create a valid and binding agreement between the parties.

#### **12. Counterparts**

This Agreement may be signed and delivered by the parties in counterparts, with the same effect as if each of the parties had signed and delivered the same document, and that execution and delivery will be valid and legally effective.



DATED and Effective as of July 25, 2024.

**MYRA FALLS MINE LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

.....**NYRSTAR TENNESSEE MINES – STRAWBERRY PLAINS LLC,**

Per: \_\_\_\_\_  
Name:  
Title:

**CONSENT**

Sandvik Canada, Inc. hereby consents to the sale and assignment of the Lease as described herein **provided that**

1. Upon the assignment of the Lease, the Assignee will pay the amount of \$837,903.98 in respect of arrears lease payments for the Equipment to the date hereof
2. Immediately after the Lease is so assigned, the Assignee shall exercise the purchase option in accordance with the terms and conditions under the Lease and purchase from Sandvik Canada, Inc.

NYRSTAR MYRA FALLS 47200332 - Sandvik TH540 Rebuild - \$100,000 plus GST  
NYRSTAR MYRA FALLS 47200355 - Sandvik TH545i Rebuild - \$100,000 plus GST

3. The current guarantee issued by Trafigura Group Pte Ltd. shall continue in place until such time as the Lease is assigned to Nyrstar Tennessee Mines – Strawberry Plains LLC and a new parental guarantee acceptable to Sandvik Canada, Inc. is in place.

**SANDVIK CANADA, INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Schedule A

Equipment

- (i) "Sandvik TH540 Rebuild" (Contract Number 47200332);
- (ii) "New Sandvik TH545i" (Contract Number 47202014);
- (iii) "Sandvik TH545i Rebuild" (Contract Number 47200355); and
- (iv) "New Sandvik DL432i" (Contract Number 47200358);

Schedule B  
Lease Payments

(all figures Cdn)

ALL AMOUNTS SHOWN ARE IN CAD

**NYRSTAR MYRA FALLS 47200332**

Period	Due Date	Pmt w/tax	
34	01/02/2024	23,847.39	Past Due
35	01/03/2024	23,847.39	Past Due
36	01/04/2024	23,847.39	Past Due
		<u>71,542.17</u>	
Buyout	01/04/2024	100,000.00	PLUS TAX

**NYRSTAR MYRA FALLS 47200355**

Period	Due Date	Pmt w/tax	
32	01/02/2024	29,532.06	Past Due
33	01/03/2024	29,532.06	Past Due
34	01/04/2024	29,532.06	Past Due
35	01/05/2024	29,532.06	Past Due
36	01/06/2024	29,532.06	Past Due
		<u>147,660.30</u>	
Buyout	01/06/2024	100,000.00	PLUS TAX

**NYRSTAR MYRA FALLS 47200358**

Period	Due Date	Pmt w/tax	
31	15/01/2024	47,385.93	Past Due
32	15/02/2024	47,385.93	Past Due
33	15/03/2024	47,385.93	Past Due
34	15/04/2024	47,385.93	Past Due
35	15/05/2024	47,385.93	Past Due
36	15/06/2024	47,385.93	Past Due
37	15/07/2024	47,385.93	Past Due
38	15/08/2024	47,385.93	
39	15/09/2024	47,385.93	
40	15/10/2024	47,385.93	
41	15/11/2024	47,385.93	
42	15/12/2024	47,385.93	
43	15/01/2025	47,385.93	
44	15/02/2025	47,385.93	
45	15/03/2025	47,385.93	
46	15/04/2025	47,385.93	
47	15/05/2025	47,385.93	
48	15/06/2025	47,385.93	
		<u>852,946.74</u>	
Buyout	15/06/2025	251,918.92	PLUS TAX

**NYRSTAR MYRA FALLS 47202014**

Period	Due Date	Pmt w/tax	
20	15/01/2024	41,000.00	Past Due
21	15/02/2024	41,000.00	Past Due
22	15/03/2024	41,000.00	Past Due
23	15/04/2024	41,000.00	Past Due
24	15/05/2024	41,000.00	Past Due
25	15/06/2024	41,000.00	Past Due
26	15/07/2024	41,000.00	Past Due
27	15/08/2024	41,000.00	
28	15/09/2024	41,000.00	
29	15/10/2024	41,000.00	
30	15/11/2024	41,000.00	
31	15/12/2024	41,000.00	
32	15/01/2025	41,000.00	
33	15/02/2025	41,000.00	
34	15/03/2025	41,000.00	
35	15/04/2025	41,000.00	
36	15/05/2025	41,000.00	
		<u>697,000.00</u>	
Buyout	15/05/2025	216,117.00	PLUS TAX

**TOTAL CURRENT PAST DUE (July 25, 2024) \$837,903.98 CAD INCLUDES TAXES**

Schedule C

NTM Approval and Vesting Order

Schedule "C"

FORM OF MONITOR'S CERTIFICATE

No. S238572  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
MYRA FALLS MINE LTD.

**MONITOR'S CERTIFICATE**

**RECITALS:**

1. Pursuant to an Order of the Honourable Justice Fitzpatrick of the Supreme Court of British Columbia (the "**Court**") dated December 18, 2024, as subsequently amended and restated on December 28, 2024, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of Myra Falls Mine Ltd. (the "**Petitioner**").
2. Unless otherwise indicated herein, all capitalized terms in this Monitor's Certificate shall have the meaning ascribed to them in the NTM Agreement dated [●], 2024 among the Petitioner and Nyrstar Tennessee Mines – Strawberry Plains LLC. All references to Purchaser shall include any assignee, if any, to the Purchaser.
3. Pursuant to an Order of the Court, dated August 2, 2024 (the "**Sale Approval Order**"), among other things, the Court approved the NTM Agreement dated as of [●], 2024 (the "**NTM Agreement**") and provided for the vesting in the Purchaser of the Petitioner's right,

title, and interest in and to the Purchased Lease, which vesting is to be effective with respect to the Purchased Lease upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has been advised by the Petitioner that the sale transaction contemplated by the NTM Agreement has occurred.

**THE MONITOR CERTIFIES** the following:

1. The Monitor has been advised by the Petitioner that the sale transaction contemplated by the NTM Agreement has occurred.

This Monitor's Certificate was executed by the Monitor at Vancouver on **[insert date]**, 2024.

**FTI CONSULTING CANADA INC.**, in its capacity  
as Court-appointed Monitor of Myra Falls Mine Ltd.  
and not in its personal or corporate capacity

By: \_\_\_\_\_  
Authorized Signatory

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

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

No. S-238572  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND  
ARRANGEMENT OF MYRA FALLS MINE LTD.

PETITIONER

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**ORDER**  
**(NTM APPROVAL AND VESTING ORDER)**

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**GOWLING WLG (CANADA) LLP**  
Barristers & Solicitors  
Bentall 5, Suite 2300,  
550 Burrard Street  
Vancouver, BC V6C 2B5  
**Attention: Jonathan B. Ross**

Tel: 604.683.6498      Fax: 604.683.3558

File No. A172589

MD/SPK