

Affidavit #1 of Michèle Hay
Sworn: February 22, 2024

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.

PETITIONER

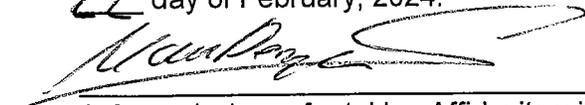
AFFIDAVIT

I, **MICHÈLE HAY**, Legal Administrative Assistant, of 2300 – 550 Burrard Street, Vancouver, BC V6C 2B5, SWEAR THAT:

1. I am employed at the firm of Gowling WLG (Canada) LLP counsel for the Petitioner, and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where they are stated to be on information and belief in which case I verily believe them to be true.
2. Capitalized terms used in this Affidavit and not otherwise defined have the meaning given to them in the Affidavit #3 of Hein Frey in these proceedings affirmed February 21, 2024.
3. Hein Frey, general manager of the Petitioner, has advised me and I verily believe it to be true, that there is an error in Exhibit "C" to the Affidavit #3 of Hein Frey and that paragraph 3 of the Breakwater Agreement should show a sale price of \$281,153.75 together with GST / HST in the amount of \$14,057.69.

4. Attached hereto and marked as **Exhibit "A"** is a copy of the revised proposed Breakwater Agreement.

SWORN BEFORE ME at Vancouver, BC, this)
22 day of February, 2024.)



A Commissioner for taking Affidavits within)
British Columbia)



MICHÈLE HAY)

MANUEL DOMINGUEZ
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1

SALE AND ASSIGNMENT OF EQUIPMENT LEASE

BETWEEN:

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

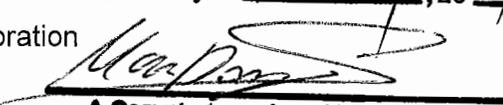
(the "Assignor")

- and -

BREAKWATER RESOURCES LTD., a corporation
existing under the laws of British Columbia

(the "Assignee")

This is Exhibit "A," referred to in the
affidavit of MICHELE HAY
sworn before me at VANCOUVER
this 22 day of FEBRUARY, 2024


A Commissioner for taking Affidavits
within British Columbia

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 an equipment lease agreement dated February 26, 2022 (the "**Lease**") between the Assignor and Epiroc Canada Inc. ("**Epiroc**") for a Simba M6 long-hole production drill rig s/n TMG21URE0514 and associated replacement parts (the "**Equipment**"). The Assignee shall assume all obligations under the Lease including obligations to make future lease payments.
- 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 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 \$281,153.75 to the Assignor together with GST / HST in the amount of \$14,057.69 (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 A** hereto (the “**Approval and Vesting Order**”) by the Court in the CCAA Proceeding; (b) the Assignor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and (c) the Assignor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (the “**ETA**”).
- 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 as “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 by Epiroc; (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 February 28, 2024.

MYRA FALLS MINE LTD.

Per: _____
Name:
Title:

BREAKWATER RESOURCES LTD.

Per: _____
Name:
Title:

CONSENT

Epiroc Canada Inc. hereby consents to the sale and assignment of the Lease as described herein **provided that** immediately after the Lease is so assigned, the Assignee shall exercise the early purchase option in accordance with the terms and conditions under the Lease and purchase the Equipment from Epiroc Canada Inc.

EPIROC CANADA INC.

Per: _____
Name:
Title:

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JBR/msh