

CANADA

“Commercial Division”

PROVINCE OF QUÉBEC
DISTRICT OF ABITIBI

SUPERIOR COURT

No: 615-11-001311-127

IN THE MATTER OF THE RECEIVERSHIP
OF:

CENTURY MINING CORPORATION,
Debtor

-and-

DELOITTE RESTRUCTURING INC.,
formerly known as SAMSON BÉLAIR /
DELOITTE & TOUCHE INC.,

Receiver/Petitioner

-and-

COMPUTERSHARE TRUST COMPANY OF
CANADA,

Collateral Agent

-and-

DEUTSCHE BANK AG, LONDON BRANCH.,

Principal Secured Creditor

**AMENDED MOTION FOR AN ORDER APPROVING A SECOND PARTIAL
DISTRIBUTION AND OTHER FUTURE DISTRIBUTIONS OF THE PROCEEDS OF
THE SALE OF ASSETS OF CENTURY MINING CORPORATION**

Sections 243 and 249 of the *Bankruptcy and Insolvency Act*,
R.S.C. (1985) c. B-3 (the “BIA”)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF ABITIBI, THE
PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

A. PURPOSE OF THE MOTION

1. By the present Motion, for the reasons set forth hereinafter, **Deloitte Restructuring Inc., formerly known as Samson Bélaire / Deloitte & Touche Inc.**, in its capacity of court appointed receiver (the “**Receiver**”), will request from this Honourable Court that it authorizes and approves a distribution of the proceeds of the various sales of assets of the

Debtor *Century Mining Corporation*, including future sales of assets, to DB to allow for the partial repayment of the Receiver's borrowings from DB that are secured by the New Funding Charge and the Funding Charge (as these terms are defined below);

2. This Motion is brought subsequently to a motion entitled *Amended Motion for an Order Approving the Partial Distribution of the Proceeds of the Sale of Certain Assets of Century Mining Corp.* in the present matter (the **"First Motion for Distribution"**);
3. The First Motion for Distribution, for which the hearing has not taken place yet as of the date hereof, is seeking the authorization for the Receiver to proceed to various distributions in repayment of the amounts owed notably to (i) certain former employees of *Century Mining Corp.* who are part of a *Key Employees Retention Plan* (the **"Employees"** and the **"KERP"**), (ii) to the *Commission de la santé et de la sécurité au travail* (**"CSST"**), (iii) to the *Department of Human Resources and Skills Development Canada* (**"DHRSDC"**), and (iv) to the *Régie des rentes du Québec* (**"RRQ"**), the whole pursuant to the court ordered charges and statutory charges in the present matter, and as more detailed in the First Motion for Distribution;
4. The Receiver is hereby seeking the authorization to proceed with the distributions detailed in the present Motion provided that the distributions indicated in the First Motion for Distribution with respect to the Employees, [...], the DHRSDC and the RRQ have been dealt with in accordance to the judgment and order to be rendered by this Honourable Court pursuant to the First Motion for Distribution;

B. THE PARTIES

5. The Debtor *Century Mining Corporation* (**"CMC"**) is a corporation continued under the *Canada Business Corporations Act*, RSC 1985, c. C-44 and which was operating as a gold producer, with its principal mining operations in Val d'Or, Québec (the **"Lamaque Mine"**) and an indirect majority equity interest in mining operations situated in San Juan, Arequipa, Peru (the **"San Juan Mine"**), as appears from the Court record herein;
6. The Receiver was appointed receiver to all of the assets, properties and undertakings of CMC pursuant to an order from the Superior Court of Québec rendered on May 29, 2012 (the **"Receivership Order"** and the **"Receivership Proceedings"**);
7. The *Mise-en-cause Deutsche Bank AG, London Branch* (**"DB"**) is a corporation acting through its London, U.K. Branch, and is the principal secured creditor of CMC and maintains, through *Computershare Trust Company of Canada*, in its capacity as collateral agent for DB, a security over CMC's property (**"Computershare"**), the whole as appears from the Court record herein;
8. The Receivership Order was rendered by this Honourable Court at the request of DB, through Computershare, as it appears from the Court record herein. As of May 25, 2012, CMC was indebted towards DB in a total amount of **US\$66,805,018.00** (the **"Indebtedness"**);
9. The CSST was holding a legal hypothec pursuant to the *Act Respecting Industrial Accidents and Occupational Diseases*, C.Q.L.R. c. A-3.001 on June 20, 2008 under number 15 333 905 for an amount of \$1,861,382.61 (the **"CSST Hypothec"**), over a

house that was then owned by CMC and known as the “**Guesthouse**” and located at 350, rue des Buissons, Val d’Or, Québec, J9P 4N7, the whole as more fully detailed in the First Motion for Distribution;

C. THE PROCEEDINGS AND THE RECEIVERSHIP

10. Since the issuance of the Receivership Order on May 29, 2012, the Receiver has taken multiple measures in order to achieve the orderly sale of CMC’s assets, as well as taken all conservatory measures deemed necessary with respect to said assets and other measures to settle CMC’s obligations as needed during its mandate, the whole as more fully appears from the court record and notably from the eleventh Receiver’s report that was filed in support of the First Motion for Distribution (the “**Eleventh Report**”), and filed herewith as **EXHIBIT R-1**;

11. Since the issuance of the Eleventh Report, the developments in this matter can be summarized as follows:

a) The Receiver is pursuing discussions and negotiations with an interested party with respect to the sale process for the shares of CMC’s subsidiaries representing a controlling interest over the San Juan Mine and related assets (the “**Peru Assets**”);

b) The Receiver is in discussion with *New Carolin Gold Corp.* (“**NCGC**”) with respect to the closing of the sale of the “Carolin Mine” assets in British Columbia (the “**Carolin Mine Assets**”), which was approved by this Court on December 2, 2014. NCGC has requested an extension of certain deadlines and of the closing of the transaction;

c) The consideration paid by *Integra Gold Corp.* (“**Integra**”) to the Receiver for the sale of the Lamaque Mine in October 2014 included 25 000 000 ordinary shares of Integra (the “**Integra Shares**”), a publicly traded company, which then held a value of 0.23\$ per share. Pursuant to a *Lock-Up Agreement* between the Receiver and the purchaser of the Lamaque Mine (the “**Lock-Up Agreement**”), the Receiver was allowed to liquidate one third of those shares on the securities market after six months following the sale (i.e. April 7, 2015).

As such, on July 10, 2015, the Receiver sold 8.3M Integra Shares at 0.26\$ per share net of brokerage fees, which represents a net realization of \$2,158,000 (the “**First Integra Shares Liquidation**”).

d) Between April 2015 and July 2015, the Receiver and the Receiver’s attorneys held multiple discussions and negotiations with certain parties affected by the First Motion for Distribution in order to come to an agreement with respect to the distribution to occur and other related questions;

the whole as appears from the twelfth report of the Receiver, filed herewith as “**Exhibit R-2** (the “**Twelfth Report**”):

12. As mentioned in the First Motion for Distribution, since the issuance of the Receivership Order, the Receiver also obtained from this Honourable Court six modifications of the

Receivership Order, on July 13, 2012, on September 27, 2012, on December 19, 2012, on June 18, 2013, on November 27, 2013 and on September 3, 2014 in order notably to obtain and/or extend the borrowing facilities and the priority charges required for the exercise of its mandate pursuant to the Receivership Order (collectively with the Receivership Order, the “**Priority Charge Orders**”), the whole as appears from the Court record herein and from the Eleventh Report (**EXHIBIT R-1**);

13. As of the date hereof, pursuant to the Priority Charge Orders and in order to allow for the execution of the Receiver’s mandate, the following charges were constituted over the “Property”, being defined in the Receivership Order as being all the assets, undertakings and properties of CMC, including all books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business, the affairs or the Property of CMC, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information, and finally all proceeds thereof, wherever situate (collectively, the “**Property**”), and increased from time to time where applicable:

- A charge and security in favour of the Receiver, the Receiver’s attorneys and other advisors, to the extent of the aggregate amount of **\$350,000** over the Property, as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Receivership Order (the “**Administration Charge**”);
- A charge and security in favour of the Employees, to the extent of **\$835,000** over the Property, as security for the payments of the amounts owed to the Employees under the KERP (the “**Retention Bonus Charge**”);
- A charge and security in favour of DB, to the extent of **US\$ 7 791 276** over the Property, as security for the repayment of the “**PRA Funds**” (as this term is defined in paragraph [31] of the Receivership Order) and the Receiver’s borrowing from DB as authorized under the Priority Charge Orders, together with interest and charges thereon (the “**Funding Charge**”);
- A charge and security in favour of DB, to the extent of **US\$ 7,710,000** over the Property, as security for the repayment of the Receiver’s borrowing from DB as authorized under the Priority Charge Orders, together with interest and charges thereon (i.e. the **New Funding Charge**);

to be paid in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but together with other statutory charges and priorities in accordance with the following rank declared in said Priority Charge Orders:

- The Administration Charge (\$350,000);
- The Retention Bonus Charge (\$835,000);
- The statutory charge under s.14.06(7) BIA;
- The statutory charge under s.81.4 (4) BIA;

- The statutory charge under 81.6(2) BIA;
- The New Funding Charge (US\$7,710,000);
- The Funding Charge (US\$7,791,276);

the whole as appears from the Court record and the Priority Charge Orders, **EXHIBIT R-3**;

14. Since the Receivership Order, the Northbelt Property Sale, the Lot 1D Assets Sale, the Lamaque Mine Sale and the Guesthouse Sale as well as the collection of receivables resulted in a net realization amount of **\$4,640,350** available for distribution (the “**Proceeds**”), it being understood that:
- a) The proceeds of the sale of the Guesthouse are not fully available for distribution, in accordance with an agreement between the Receiver and the CSST;
 - b) This amount includes the cash consideration resulting from the sale of the “Lamaque Mine”, but not the Integra Shares consideration, which will result in additional funds once said shares are liquidated;
 - c) This amount does not include any amount that would be payable pursuant to the transaction approved by this Court for the sale of the Carolin Property, as this transaction has not closed yet;

the whole as appears from the Eleventh Report of the Receiver, **EXHIBIT R-1**.

15. It must be noted that should the orders sought pursuant to the First Motion for Distribution be granted in accordance with the conclusions of said Motion, and considering the proceeds of the First Integra Shares Liquidation, the Proceeds available for distribution pursuant to the present Motion would be of approximately **\$3,426,994** (the “**Updated Proceeds**”), it being understood that:
- a) The proceeds of the sale of the Guesthouse would still not be fully [...] distributed, in accordance with the agreement between the Receiver and the CSST considering the contestation of this agreement by the *Canada Revenue Agency* (“**CRA**”) with regards to the portion of the proceeds to be remitted to CSST;
 - b) The Updated Proceeds would still not include the remaining portion of the Integra Shares consideration from the sale of the Lamaque Mine, which will result in additional funds once said shares are liquidated;
 - c) The Receiver reiterates that this amount does not include any amount that would be payable pursuant to the transaction approved by this Court for the sale of the Carolin Property, as this transaction has not closed yet;
 - d) This amount also does not include the proceeds of an eventual sale of the Peru Assets;

D. PARTIAL DISTRIBUTION: NEW FUNDING CHARGE

16. The Receiver respectfully submits that the partial distribution of the Proceeds to DB is appropriate and justified for the reasons set forth hereinafter;
17. The Receiver was authorized by this Court pursuant to paragraphs 33 and 34 of the Receivership Order to borrow such monies from time to time as it may consider necessary (the “**Receiver’s Borrowing**”), and to issue certificates in connection with any such amount borrowed (the “**Receiver’s Borrowing Certificates**”), with the limit authorized for the Receiver’s Borrowing being **US\$ 12,850,000** pursuant to the order dated November 27, 2013;
18. As of the date hereof, the Receiver’s Borrowing Certificates totals in capital **US\$ 6,435,637.77**, as appears from a statement of account and copies of the Receiver’s Borrowing Certificates filed herewith *en liasse* as **EXHIBIT R-4**. Taking into accounts the PRA Funds used, the amounts borrowed by the Receiver total **US\$ 12,816,000** in capital;
19. As mentioned above, the repayment of the Receiver’s Borrowing is secured by the New Funding Charge, which is first ranking, save and except the charges listed in the First Motion for Distribution and for which the payment is sought by the Receiver prior to the present distribution to DB;
20. The Updated Proceeds are sufficient to pay the charges that are listed in the First Motion for Distribution, and to proceed with a partial payment of the Receiver’s Borrowings;
21. As such, the Receiver requests from this Honourable Court the authorization to proceed with the partial payment of the Receiver’s Borrowings out of the Updated Proceeds, for an amount of **\$2,800,000**;
22. Following such a distribution pursuant to the present Motion, the Updated Proceeds would amount to approximately \$626,994, which represents a reasonable and sufficient amount to (i) allow for the payment of the amounts [...] claimed by CSST, which are disputed by CRA, resulting from the sale of the Guesthouse [...] until a final judgment is rendered or a settlement out of court is entered into between CRA and CSST, and to (ii) allow for a provision for the various disbursement of the Receiver in the realization of its mandate in the coming months, as appears from the Twelfth Report, **EXHIBIT R-2**;

E. EVENTUAL DISTRIBUTIONS PURSUANT TO THE NEW FUNDING CHARGE AND FUNDING CHARGE

23. The Receiver respectfully submits that it is also appropriate and justified for this Honourable Court to provide the Receiver with the authorization to distribute to DB any future net proceeds of the sale of any future realization of assets (namely, the Carolin Mine Assets, the Peru Assets, and any further liquidation of the Integra Shares to occur pursuant to the Lock-Up Agreement), the whole up to the sums secured by the New Funding Charge and the Funding Charge as of the date hereof, including the present distribution, but for greater certainty, not including any further advances that may be made by DB to the Receiver as Receiver’s Borrowings, it being understood that the rights of the parties, including CRA with regards to its alleged deemed trust, to contest solely

the ranking of such further advances made as Receiver's Borrowings being secured by the Funding Charge and the New Funding Charge, shall be reserved until any distribution is sought by the Receiver, by way of motion with this Court, with respect to the repayment of such further advances;

24. In addition to the Receiver's Borrowings secured by the New Funding Charge, the PRA Funds are also secured in favour of DB by the Funding Charge for an amount of US\$ 7 791 276, for a total of US\$ 15,501,276 secured by said charges, which are together first ranking save and except the charges listed in the First Motion for Distribution;
25. Given the rank of the New Funding Charge and the Funding Charge, it is in the interest of the parties and of the administration of justice that the Receiver be authorized by this Motion to proceed with such future distributions up to the amount of the Funding Charges and the New Funding Charges as of the date hereof, without the necessity of further proceedings or of seeking further authorizations (other than the authorization of further sale of assets when applicable) but for greater certainty, not including any further advances that may be made by DB to the Receiver as Receiver's Borrowings in the future, it being understood that the rights of the parties, including CRA with regards to its alleged deemed trust, to contest solely the ranking of such further advances made as Receiver's Borrowings being secured by the Funding Charge and the New Funding Charge, shall be reserved until any distribution is sought by the Receiver, by way of motion with this Court, with respect to the repayment of such further advances;

F. CONCLUSIONS SOUGHT

26. In light of the foregoing, the Receiver respectfully submits to this Honourable Court that the partial distribution out of the Updated Proceeds as contemplated in this Motion is just and appropriate and should be authorized, the whole in accordance with the conclusions set forth herein;
27. DB consents to the present Motion;
28. The present Motion is well founded both in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

- [A] **GRANT** this motion (the "**Motion**") of *Samson Bélair / Deloitte & Touche Inc.* in its capacity of receiver to the assets of *Century Mining Corporation* ((the "**Receiver**").

SERVICE

- [B] **ORDER** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [C] **PERMIT** service of this order (the "**Order**") at any time and place and by any means whatsoever.

PARTIAL DISTRIBUTION AND FUTURE DISTRIBUTIONS

[D] **AUTHORIZES** the Receiver to distribute the amounts specified hereinafter (the “**Partial Distribution**”), which represent part of the sums currently being held in trust by the Receiver as proceeds of sales of assets of *Century Mining Corporation* (“**CMC**”):

(a) **\$2,800,000**, to *Deutsche Bank AG, London Branch*, as partial repayment of the Receiver’s Borrowings (as this term is defined in paragraph [33] of the receivership order issued by this Honourable Court on May 29, 2012 in the present matter, as amended (the “**Receivership Order**”));

[E] **AUTHORIZES** the Receiver, subsequently to the Partial Distribution, to distribute the net proceeds of any sale approved by this Court of any and all the assets of CMC to *Deutsche Bank AG, London Branch*, in repayment of the PRA Funds (as this term is defined in paragraph [31] of the Receivership Order, as amended) and of the Receiver’s Borrowings (as this term is defined in paragraph [33] of the Receivership Order, as amended) up to the amount of the PRA Funds and the Receiver’s Borrowings as of the date hereof, including any applicable interest (the “**Future Distributions**”) but for greater certainty, not including any further advances that may be made by DB to the Receiver as Receiver’s Borrowings in the future, it being understood that the rights of the parties, including *Canada Revenue Agency* (“**CRA**”) with regards to its alleged deemed trust, to contest solely the ranking of such further advances made as Receiver’s Borrowings being secured by the Funding Charge and the New Funding Charge, shall be reserved until any distribution is sought by the Receiver, by way of motion with this Court, with respect to the repayment of such further advances;

[F] **ORDERS** that notwithstanding:

- (a) the present receivership proceedings, and any order pursuant to such proceedings;
- (b) the provisions of any federal or provincial legislation;

the Partial Distribution and the Future Distributions to occur in accordance with this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall they give rise to an oppression or any other remedy;

[G] **ORDERS** and **DECLARES** that any distributions pursuant to this Order shall not constitute a “distribution” and the Receiver shall not constitute a “legal representative” or “representative” of CMC for the purposes of section 14 of the *Tax Administration Act*, R.S.Q., c. A-6.002, [...], or any other similar [...] provincial [...] tax legislation (collectively, the “**Tax Laws**”), given that the Receiver is only a disbursing agent pursuant to this Order and the Receivership Order, and the Receiver in making such payments is not “distributing”, nor shall be considered to “distribute” not to have “distributed”, such funds for the purpose of the Tax Laws, and the Receiver shall not incur any liability under the Tax Laws in respect of it making any payments ordered or permitted hereunder, and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Laws or otherwise at law, arising in respect of payments made pursuant to this Order and any claims of this nature are hereby forever barred;

LIMITATION OF LIABILITY

[H] **DECLARE** that no action lies against the Receiver by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph.

GENERAL

[I] **DECLARE** that this Order shall have full force and effect in all provinces and territories in Canada.

[J] **ORDER** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

[K] **THE WHOLE** without costs, save and except if contested and then, with costs against any contesting parties solidarily.

Montréal, this [...] October 13, 2015

Fasken Martineau DuMoulin
Fasken Martineau DuMoulin LLP
Attorneys for Petitioner [...] Deloitte Restructuring Inc.

“ Commercial Division ”

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ORIGINAL

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