

Court File No. CV-18-601307-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST
IN THE MATTER OF RECEIVERSHIP OF SAGE GOLD INC.

and

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.
1990, c. C.43, AS AMENDED**

**FACTUM OF THE RECEIVER,
DELOITTE RESTRUCTURING INC.
(returnable August 29, 2018)**

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Wael Rostom
Tel: 416-865-7790

Stephen Brown-Okruhlik
Tel: 416-865-7043
Fax: 416-865-7048

Lawyers for the Receiver,
Deloitte Restructuring Inc.

TO: SERVICE LIST

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

CRH FUNDING II PTE. LTD.

Applicant

- and -

SAGE GOLD INC.

Respondent

SERVICE LIST
(AS OF AUGUST 22, 2018)

GENERAL	
CRH FUNDING II PTE. LTD. 505 Fifth Avenue, 15 th Floor New York, NY 10017 USA	STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9 Guy P. Martel Tel: (514) 397-3163 Email: gmartel@stikeman.com Danny Duy Vu Tel: (514) 397-6495 Email: ddvu@stikeman.com Kathryn Esaw Tel: (416) 869-6820 Email: kesaw@stikeman.com Lawyers for CRH Funding II PTE. Ltd.

<p>DELOITTE RESTRUCTURING INC. Bay Adelaide East 8 Adelaide Street West, Suite 200 Toronto, ON</p> <p>Receiver of Sage Gold Inc.</p>	<p>Philip J. Reynolds Tel: (416) 956 9200 Email: philreynolds@deloitte.ca</p> <p>Rob Biehler Tel: (905) 315-5785 Email: rbiehler@deloitte.ca</p>
<p>McMILLAN LLP 181 Bay Street Suite 4400 Brookfield Place Toronto, ON M5J 2T3</p>	<p>Wael Rostom Tel: (416) 865-7790 Email: wael.rostom@mcmillan.ca</p> <p>Tushara Weerasooriya Email: tushara.weerasooriya@mcmillan.ca</p> <p>Stephen Brown-Okruhlik Tel: (416) 865-7043 Email: stephen.brown-okruhlik@mcmillan.ca</p> <p>Lawyers for the Receiver</p>
<p>SAGE GOLD INC. 67 Yonge Street, Suite 808 Toronto, ON M5E 1J8</p>	<p>Nigel Lees President Email: nlees@sagegoldinc.com</p>
<p>ORMSTON LIST FRAWLEY LLP 6 Adelaide Street Suite 500 Toronto, ON M5C 1H6</p>	<p>John Ormston Tel: (416) 800-1151 Email: jormston@olflaw.com</p> <p>Lindsay Moffatt Email: lmoffatt@olflaw.com</p> <p>Lawyers for Sage Gold Inc.</p>
<p>MINDEN GROSS LLP 145 King Street West, Suite 2200 Toronto, ON M5H 4G2</p>	<p>Raymond M. Slattery Tel: (416) 369-4149 Fax: (416) 864-9223 Email: rslattery@mindengross.com</p> <p>Lawyers for Cooper Equipment Rentals Limited</p>
<p>SYLVANO A. CARLESSO Barrister & Solicitor 321 Cameron Street North Timmins, ON P4N 8L4</p>	<p>Sylvano A. Carlesso Tel: (705) 365-8688 Fax: (705) 264-1450</p> <p>Lawyer for 1685300 Ontario Inc. c.o.b. LPL Contracting</p>

<p>CABO DRILLING CORP. 20 Sixth Street, New Westminster, British Columbia V3L 2Y8</p>	<p>Darren Timmer Corporate Secretary Tel: 604.527.4201 Email: darrent@cabo.ca</p>
<p>EVANS BRAGAGNOLO & SULLIVAN LLP 120 Pine Street South Timmins, ON P4N 2K4</p>	<p>Ted Tichinoff Tel: (705) 264-1285 Fax: (705) 264-7424 Email: apelletier@ebslawyers.com Lawyers for R. Ritchie Services Ltd.</p>
<p>2474397 ONTARIO INC. o/a OK TIRE MINING AND COMMERCIAL SERVICES 100 Laforest Road Timmins, ON P4P 7C7</p>	<p>Justin Murray Tel: (705) 335-8496 justinmurray@murrayoktire.ca</p>
<p>PARTIES WITH SECURITY INTERESTS OR RIGHTS REGISTERED ON THE LAND REGISTRY</p>	
<p>TOROMONT INDUSTRIES LTD./BATTELEFIELD EQUIPMENT RENTALS 1691 Riverside Drive Timmins, ON P4R 1M4</p>	<p>Pallett Valo LLP 77 City Centre Drive West Tower Suite 300 Mississauga, ON L5B 1M5 Maria Ruberto Tel: (905) 273-3300 Email: mruberto@pallettvalo.com Neeta Sandhu Email: nsandhu@pallettvalo.com Lawyers for Toromont Industries Ltd./Battlefield Equipment Rentals</p>
<p>WLAD & SONS CONSTRUCTION LTD. 746 Hwy 67 Iroquois Falls, ON</p>	<p>Tel: (705) 232-6782 Fax: (705) 232-7106 Email: inquiries@wladconstruction.com</p>
<p>2120693 ONTARIO INC. (SUNSET CONTRACTING) 1321 Sandy Falls Road Timmins, ON P4R 0H9</p>	
<p>EPITRON INC. 841 Pine Street South, Timmins, ON P4N 8S3</p>	<p>Tel: (705) 267-7382 Fax: (705) 264-2888 Email: epitron@epitroninc.com</p>

<p>TIM MCDOWELL EQUIPMENT LTD. 2870 White St Val Caron, ON P2N 1B2</p>	<p>Tim McDowell Tel: (602) 885-6560 Email: tim@mcdowellequipment.com</p>
<p>JUBILEE GOLD EXPLORATION LTD. 80 Richmond Street West Suite 605 Toronto, ON M5H 2S9</p>	<p>McLEAN & KERR LLP 130 Adelaide St. West Suite 2800 Toronto, ON M5H 3P5</p> <p>Jim Blake Tel: (416) 369-6629 Fax: (416) 366-8571 Email: jblake@mcleankerr.com</p> <p>Lawyer for Jubilee Gold Exploration Ltd</p>
<p>ST-ANDREW GOLDFIELDS LTD./ KIRKLAND LAKE GOLD 200 Bay Street, Suite 3120 Toronto, ON M5J 2J1</p>	<p>Jennifer Wagner Corporate Legal Counsel Tel: (647) 361-0198 Email: jwagner@klgold.com</p>
<p>FRANCO-NEVADA CORPORATON 199 Bay Street, Suite 2000 P.O. Box 285 Commerce Court Postal Station Toronto, ON M5L 1G9</p>	<p>Lloyd Hong Chief Legal Officer & Corporate Secretary Tel: (416) 306-6317 Email: hong@franco-nevada.com</p>
<p>Torys LLP 79 Wellington St. W. 30th Floor (deliveries) / 33rd Floor (reception) Box 270, TD South Tower Toronto, ON M5K 1N2</p>	<p>David Bish Tel: (416) 865-7353 Email: dbish@torys.com</p> <p>Lawyers for Franco-Nevada Corporation</p>
<p>Weaver, Simmons LLP 233 Brady Street, 4th Floor Sudbury, ON P3B 4H5</p>	<p>Rose Muscolino Tel: (705) 674-6421 Fax: (705) 674-9948 Email: RMuscolino@weaversimmons.com</p> <p>Lawyers for Equipment North Inc.</p>

PARTIES WITH SECURITY INTERESTS REGISTERED AT THE PPSA**ROYAL BANK OF CANADA**

Royal Bank Plaza
200 rue Bay, Tour sud, 6e étage
Toronto, ON M5J 2J5

Pascale Portelance

Conseillère juridique principale
Tel: +1 (416) 974-6531
Email: pascale.portelance@rbc.com

Sabrina Plastich

Tel:
Email: sabrina.plastich@rbc.com

ATCO STRUCTURES & LOGISTICS

115 Peacekeepers Drive SW
Calgary, AB T3E 7X4

Darlene Van Wieren

Supervisor, Accounts Receivable, Collections
Tel: (403) 292-7687
Email: Darlene.vanwieren@atco.com

XYLEM CANADA COMPANY

1298 Clementsport Road, P.O. Box 41
Clementsvalle, NS B0S 1G0

Kelley P. Caldarelli

President/Director
Email: kelley.caldarelli@xyleminc.com

GOVERNMENT AGENCIES**MINISTRY OF NORTHERN DEVELOPMENT,
MINES AND FORESTRY**

933 Ramsey Lake Road, B6
Sudbury, ON P3E 6B5

Brian McMahon

Director of Mine Rehabilitation
Tel: (705) 670-5787
Email: Brian.McMahon@ontario.ca

Legal Services Branch

M. Catherine Wyatt

Email: catherine.wyatt@ontario.ca

Michael Mercer

Email : michael.mercer@ontario.ca

CANADA REVENUE AGENCY

C/O DEPARTMENT OF JUSTICE
The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Diane Winters

Attorney General of Canada
Tel: (416) 973-3172
Fax: (416) 973-0809
Email: diane.winters@justice.gc.ca

MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 6 th Floor, 33 King Street West Oshawa, ON L1H 8H5	Kevin O'Hara Tel: (905) 436-4510 Fax: (866) 888-3850 Email: kevin.ohara@ontario.ca
MINISTRY OF LABOUR Legal Services Branch 14 th Floor, 400 University Ave Toronto, ON M7A 1T7	David McCaskill Email: david.mccaskill@ontario.ca
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE DIRECTOR OF MINE REHABILITATION	Attorney General for Ontario Crown Law Office – Civil Law 8-720 Bay Street Toronto, ON M7A 2S9 Ananthan Sinnadurai Tel: (416) 326-5539 Fax: (416) 326-4181 Email: ananthan.sinnadurai@ontario.ca

TABLE OF CONTENTS

	PAGE
PART I - INTRODUCTION	1
PART II - THE FACTS	1
A. Background to the Receivership	1
B. The SISP	3
C. Activities of the Receiver and the First Report	7
PART III - ISSUES AND THE LAW	11
A. THE SISP SHOULD BE APPROVED	11
i. Fairness, transparency and integrity of the SISP	14
ii. The commercial efficacy of the SISP	17
iii. The SISP will optimize the chances of securing the best possible price for Sage's property	18
B. THE FIRST REPORT SHOULD BE APPROVED	18
PART IV - ORDER REQUESTED	19
SCHEDULE "A" LIST OF AUTHORITIES	20
SCHEDULE "B" RELEVANT STATUTES	21

PART I - INTRODUCTION

1. In this motion, Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as court-appointed receiver (the “**Receiver**”) of Sage Gold Inc. (“**Sage**” or the “**Company**”) seeks an order:

- a) approving proposed Sales and Investor Solicitation Procedures (the “**SISP**”) in relation to Sage;
- b) approving the First Report of the Receiver to the Court, dated August 21, 2018 (the “**First Report**”), and the activities set out therein; and,
- c) granting related relief.

PART II - THE FACTS

A. Background to the Receivership

2. Sage is a publicly traded company headquartered in Toronto, Ontario. Its principal assets are mining properties in Ontario.¹

3. Sage’s principal secured creditor is CRH Funding II PTE Ltd. (“**CRH**”) pursuant to a Gold Prepayment Agreement dated November 17, 2016 (the “**GPA**”) entered into between Sage and CRH, and a Debenture dated November 17, 2016 issued by Sage in favour of CRH (the “**Demand Debenture**”, together with the GPA, the “**GPA and Security Documents**”).²

¹ First Report of the Receiver, dated August 21, 2018 [First Report], para. 3, **Motion Record of the Receiver, dated August 22, 2018 [MR], Tab 2, p. 8.**

² The Affidavit of Andrew Wehrley, dated July 10, 2018 [Wehrley Affidavit], **Application Record of the CRH Funding II PTE Ltd. (returnable July 13, 2018) [CHR Application Record], Tab 2.**

4. As a result of certain defaults occurring under the GPA and Security Documents, as more particularly described in the Affidavit of Andrew Wehrley, dated July 10, 2018, CRH commenced an application to appoint Deloitte as receiver of Sage. CRH's application was opposed by the Company. On July 13, 2018, the Honourable Justice Hainey granted an order appointing Deloitte as interim receiver over the property, assets and undertakings of Sage. Deloitte was subsequently appointed as the Receiver by order of the Honourable Justice Dunphy dated July 30, 2018 (the "**Receivership Order**"), pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act* (BIA) and Section 101 of the *Courts of Justice Act* (Ontario).³

5. The Receivership Order grants the Receiver the authority to sell the property of Sage.⁴ The Receiver has prepared the SISP, in consultation with CRH, for the purpose of marketing Sage and its assets for a potential investment or asset sale transaction that will maximize recovery for Sage's estate.

6. The First Report sets out the activities of the Receiver since the Receivership Order, describes Sage's property, and sets out the terms of the proposed SISP to facilitate the marketing, tendering and a possible investment in Sage or the sale of its assets.⁵

³ First Report, para. 2, **MR, Tab 2, p. 8**; Wehrley Affidavit, **CHR Application Record, Tab 2**.

⁴ Order of the Honourable Justice Dunphy, dated July 30, 2018 [Receivership Order], para. 3(k), **MR, Tab 2A, p. 26**.

⁵ First Report, paras. 5-6, 13-18 and 23-26, **MR, Tab 2, pp. 9-20**.

B. The SISP

7. The Receiver, in consultation with CRH, has designed the SISP as a means of facilitating a fair, transparent and efficient disposition of Sage's business.⁶ The SISP sets out procedures by which sale and investment proposals may be submitted and evaluated.

8. The SISP contemplates a process involving two 30-day phases, during which the Receiver (including through its affiliate, Deloitte Corporate Finance Inc.) will identify and solicit potential bidders to submit non-binding indications of interest and, subsequently, binding investment or sale bids for Sage or its assets.

9. At the outset of the first phase of the SISP, the Receiver will:⁷

- (a) issue a press release announcing the SISP;
- (b) compose a list of known potential bidders;
- (c) receive the names of any additional potential bidders identified by CRH;
- (d) prepare a teaser letter in respect of Sage and its assets to be sent to known potential bidders; and,
- (e) prepare a confidentiality agreement to be executed by potential bidders who wish to participate in the SISP.

10. In the first phase of the SISP, potential bidders will be invited to execute a confidentiality agreement and to provide information about themselves and the nature of their potential sale or investment proposals, and to acknowledge the terms of

⁶ First Report, para. 9(b)(i), MR, Tab 2, p. 9.

⁷ SISP, s. 2.4, MR, Tab 2G, p. 104.

the SISP.⁸ The Receiver will then determine which potential bidders qualify to participate in the first phase of the SISP. To qualify to participate in the first phase of the process, bidders must demonstrate, to the Receiver's satisfaction, their ability to consummate a sale or investment transaction.⁹

11. Bidders that are determined by the Receiver to be qualified bidders for the first phase of the SISP will then be given access to due diligence materials, on-site inspections, information relating to Sage's property, and other information.¹⁰ After performing their due diligence, qualified bidders may submit non-binding indications of interest to the Receiver by September 28, 2018.¹¹

12. In order to qualify for the second phase of the SISP, indications of interest must include certain information about the bids as well as certain acknowledgments that are specified in the SISP.¹² This required information includes details about the purchase price and the assets included in the proposed transaction, and other requirements or conditions of the contemplated transaction. The Receiver retains the power to waive compliance with the requirements specified in the SISP for qualifying indications of interest.¹³

13. The Receiver will then identify which, if any, indications of interest qualify to proceed to the second phase of the SISP.¹⁴ Bidders who advance to the second phase will

⁸ SISP, s. 2.5(1), MR, Tab 2G, pp. 104-105.

⁹ SISP, s. 2.5(2), MR, Tab 2G, p. 105.

¹⁰ SISP, s. 3(2), MR, Tab 2G, p. 105.

¹¹ SISP, s. 4.1(2), MR, Tab 2G, p. 106.

¹² SISP, s. 4.2, MR, Tab 2G, pp. 106-108.

¹³ SISP, s. 4.2(2), MR, Tab 2G, p. 108.

¹⁴ SISP, s. 4.3(4), MR, Tab 2G, p. 108.

have an opportunity to submit binding sale or investment bids by October 29, 2018.¹⁵

The requirements for qualifying sale and investment bids in the second phase are set out in the SISP.¹⁶ These requirements include details about the price and structure of the proposed transaction, evidence of the bidder's ability to consummate the proposed transaction and the absence of certain conditions.

14. Following the receipt of any binding bids in the second phase of the SISP, the Receiver will evaluate such bids with reference to criteria that are set out in the SISP, including the economic value of the bids, the identity of the parties to the proposed transaction, certain impacts that the bids are expected to have on Sage's stakeholders and the receivership proceeding, timing and the likelihood of consummating the proposed transaction.¹⁷

15. The SISP also provides for the identification of a backup bid to be consummated in the event that the winning bid cannot be consummated.¹⁸

16. Under its terms, CRH, as Sage's principal secured creditor, is permitted to participate in the SISP as a bidder. Even if CRH elects not to participate in the first phase of the SISP, it will be a qualified bidder in the second phase provided that it executes a confidentiality agreement. CRH will be permitted to make a bid in the second phase of the SISP if it delivers notice of its intention to make a bid (a "**Bid Notice**") to the Receiver within five business days of the commencement of the second phase. The

¹⁵ SISP, s. 5.1, MR, Tab 2G, p. 109.

¹⁶ SISP, ss. 5.2 and 5.3, MR, Tab 2G, pp. 109-112.

¹⁷ SISP, s. 5.6, MR, Tab 2G, p. 113.

¹⁸ SISP, s. 5.6(4), MR, Tab 2G, p. 113.

Bid Notice must include the amount of CRH's bid along with a summary of its material terms. Following delivery of the Bid Notice, CRH will not be entitled to increase the amount of its bid.¹⁹

17. CRH has advised the Court of its position as to the quantum of its secured debt under the GPA and Loan Documents.²⁰ That information is publically available on the Receiver's website. Accordingly, the amount of credit that CRH believes is available to make a credit bid for Sage's assets is publically available information. However, the SISP reserves for the Receiver the right to determine the amount of CRH's secured claim, which determination will be provided to qualified bidders before the bidding deadline of the first phase of the SISP.²¹

18. The SISP provides for consultation between the Receiver and CRH, as the principal secured creditor, in respect of the implementation of the SISP. CRH is entitled under the SISP to receive expressions of interest, bids or other offers submitted as part of the process. However, if CRH is provided with any indications of interest, it will not be permitted to make a bid of its own that exceeds that value of its secured debt.²² Furthermore, CRH's consultation rights will be suspended entirely if it elects to participate in the process as a bidder. CRH's consultation rights will be reinstated if the Receiver notifies CRH that its bid is no longer under consideration.²³ CRH's consultation rights will not be suspended if its bid meets certain conditions, namely, that

¹⁹ SISP, ss. 4.3(5) and (6), MR, Tab 2G, p. 109.

²⁰ Wehrley Affidavit, CHR Application Record, Tab 2.

²¹ SISP, ss. 1(41) and 4.3(7), MR, Tab 2G, pp. 103 and 109.

²² SISP, s. 4.3(7), MR, Tab 2G, p. 109.

²³ SISP, s. 5.7, MR, Tab 2G, p. 114.

it is a credit bid for an amount not greater than its secured debt *and* it delivers a binding undertaking not to change the economic value of its bid.²⁴

19. Finally, the SISP requires Court approval of any successful bid as a condition for proceeding with a chosen transaction and contemplates a transaction closing date of November 19, 2018 or earlier.²⁵ In the event that no qualified bidder is identified at any given stage of the process, the SISP requires the Receiver to return to Court for directions.²⁶ In those circumstances, CHR will also have the option to submit a binding credit bid, even if it elected not to submit bids in either phase one or two of the process.²⁷

C. Activities of the Receiver and the First Report

20. As highlighted in the First Report, since its appointment, the Receiver has taken steps to deal with Sage's Toronto office premises and employees, to secure and manage activities at the Clavos Property (as defined in the First Report) and to engage with environmental regulatory authorities. Among other things, the Receiver has:²⁸

Toronto Office

(a) attended the Company's premises at 67 Yonge Street, Unit 808 in Toronto, inventoried and taken possession of the Company's assets, books and records at that location, and secured the physical premises and information technology system;

²⁴ SISP, s. 5.7(3), **MR, Tab 2G, p. 114.**

²⁵ SISP, ss. 1(50) "Target Closing Date", 5.6(1) and 5.8(1), **MR, Tab 2G, pp. 103, 113-114.**

²⁶ SISP, ss. 2.1(2) and 2.5(4), **MR, Tab 2G, pp. 104-105.**

²⁷ SISP, s. 5.5(2), **MR, Tab 2G, p. 113.**

²⁸ First Report, paras. 13-18, **MR, Tab 2, pp. 7-15.**

(b) met with Sage's former Chief Financial Officer and the former accounts payable administrator (Sage's only remaining employees) to advise them of the appointment of the Receiver and, pursuant to paragraph 14 of the Receivership Order, delivered notice of termination of their employment by the Company;

(c) engaged two former employees as independent contractors to assist the Receiver with certain activities, including to prepare a listing of known creditors, Records of Employment and T4 slips, to bring the books and records of Sage up to date, to file the HST and other statutory returns, to preserve the Company's books and records, to complete a listing of Sage's records held offsite and to attend to other matters as they arose from time to time;

(d) provided Sage and its counsel with notice that it intended to terminate Sage's interest in the premises lease, following which, the Receiver issued notice of termination of lease to Sage's landlord effective August 16, 2018 and requested an accounting for occupation rent;

Clavos Property

(e) attended the Clavos Property and took possession of and inventoried the Company's assets located underground and on the surface level;

(f) made arrangements for the continuation of services with utilities, made arrangements with the Clavos Property mine manager and staff of a third party service provider regarding staffing, billing arrangements and communications with representatives of the Receiver;

(g) arranged for continued environmental testing and commissioning of regulatory and compliance reporting;

(h) issued receivership notification to Sage's suppliers and creditors and coordinated with Sage's management to obtain a list of the Company's independent contractors and consultants to advise of the receivership and to release Sage's books and records in their possession to the Receiver;

(i) continued monitoring the security and maintenance activities, movement of underground mining equipment to surface, dewatering activities related to the Care and Maintenance Program (as defined in the First Report) on-site and continued assessing the effectiveness of the monitoring and testing procedures being carried out at the Clavos Property;

(j) reviewed geological data, resource calculations, core sample inventory and drilling records, and conducted interviews of former independent contractors and representatives of a service provider (undertaken by Receiver's staff with geotechnical and mining expertise);

Other Actions

(k) established the Receiver's website and issued the Notice and Statement of Receiver pursuant to subsections 245(1) and 246(1) of the BIA. The prescribed notice pursuant to Section 245(2) was also provided to the Office of the Superintendent of Bankruptcy;

(l) notified the Company's bank, Royal Bank of Canada, of its appointment and requested all accounts be frozen for deposit only. The Receiver arranged for the opening of new bank accounts to facilitate future receipts and disbursements with respect to the administration of the receivership;

(m) provided notice of the Receiver's appointment to Hub International HKMB, the Company's insurance broker, who arranged for continued insurance coverage through the Company's insurer, Chubb Insurance Co. of Canada ("**Chubb**"). The Receiver also requested to be added as named insured and loss payee on the Company's policies with Chubb;

(n) registered with Service Canada and calculated the *Wage Earner Protection Program Act* claims for the Company's former employees and forwarded the appropriate information to Service Canada;

Environmental

(o) continued communication with representatives of provincial government ministries to provide information regarding the current status of Sage's compliance with applicable laws and requirements, the environmental condition of the Clavos Property mine and potential steps to mitigate environmental risks at the Clavos Property through the receivership proceedings;

(p) specifically, continued to conduct regular conference call meetings with representatives of the Ministry of Environment, Conservation and Parks ("**MOECP**") and Ministry of Northern Development, Mines and Forestry

(“MNDMF”), collectively referred to as “**Ministries**” in order to assess the current status of orders, discuss observations, environmental compliance and risks associated with the Clavos Property; collect copies of relevant current records and other matters;

(q) contacted two licensed companies that have the capability to inspect, remove and transport explosive materials in order to remove the existing materials on-site, and in this regard, the Receiver has prepaid for this service with the incumbent supplier;

(r) engaged a licensed contractor to inspect the septic tank system at the Clavos Property, and pumped the septic system; and,

(s) a representative of the Receiver with appropriate technical qualifications reviewed the latest laboratory test results for water quality of the discharge and the latest reports by WSP in order to confirm that water quality and volumes being discharged were within normal levels.

PART III - ISSUES AND THE LAW

21. The relief sought by the Receiver on this motion raises the following issues of law:

A. Should the SISP be approved?

B. Should the First Report be approved?

A. THE SISP SHOULD BE APPROVED

22. The Receiver requests that this Court approve the SISP.

23. Section 243 of the BIA gives the Court very broad discretion as to the powers it may grant receivers to exercise control over the property of a company in receivership and in making orders generally in a receivership:²⁹

243(1) Court may appoint receiver

Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

24. Justice Dunphy granted the Receivership Order pursuant to Section 243(1). The Receivership Order expressly authorizes the Receiver to sell Sage's property.³⁰ The SISF represents the most efficient and commercially reasonable way for the Receiver to fulfill its duty to obtain the maximum value of the estate's assets in the circumstances.

25. The Ontario Court of Appeal in *Royal Bank v. Soundair Corp.* set out the considerations that a Court should apply to a receiver's sale of a debtor's assets. The Court of Appeal summarized those considerations as follows:³¹

²⁹ *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, [Emphasis added].

³⁰ Receivership Order, para. 3(k), **MR, Tab 2A, p. 26.**

³¹ *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137 [*Soundair*], at 16, **Receiver's Brief of Authorities [BOA], Tab 1.**

- a) It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.
- b) It should consider the interests of all parties.
- c) It should consider the efficacy and integrity of the process by which offers are obtained.
- d) It should consider whether there has been unfairness in the working out of the process.

26. In *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, Justice Brown held that the criteria identified in *Soundair* informs the analysis that a Court must conduct when approving a SISP.³² Justice Brown observed the following:³³

Although the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in its decision in *Royal Bank v. Soundair Corp.*: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties. Accordingly, when reviewing a sales and marketing process proposed by a receiver a court should assess:

- (i) the fairness, transparency and integrity of the proposed process;
- (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,

³² 2012 ONSC 1750 [*CCM*], **BOA, Tab 2.**

³³ *CCM* at para. 6, **BOA, Tab 2.**

(iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

27. The considerations identified by Justice Brown in *CCM* support the approval of the SISP in the present case.

i. Fairness, transparency and integrity of the SISP

28. The SISP provides for escalating levels of disclosure to bidders at various stages of the process. This will allow potential bidders to gain a full appreciation of the assets that they propose to buy. The SISP also sets out qualification criteria that the Receiver will use to evaluate proposals at various stages of the process, so participants have transparency as to the selection process.³⁴

29. The SISP also requires bidders to provide considerable disclosure of details relating to themselves and their proposed transactions at various stages of the process. Among other things, bidders must provide evidence of available financing and the identities of any entities that would sponsor or be involved in the proposed transaction. This will allow the Receiver to ensure a degree of efficiency in the process by allocating its time and effort to parties that have a reasonable prospect of consummating a transaction.³⁵

30. Sage's principal secured creditor, CRH, supports the SISP. The special position of CRH as secured creditor is recognized in the SISP. However, the SISP includes tight

³⁴ SISP, s. 5.6, **MR, Tab 2G, p. 113.**

³⁵ SISP, ss. 5.2(d), (f) and (j), **MR, Tab 2G, p. 110.**

controls to prevent the possibility of CRH gaining any unfair advantage from its unique position within the process. The SISP achieves a necessary balance between recognizing the special position of a secured creditor and protecting the integrity of the sales process.

31. The Receiver will, subject to necessary limitations, consult with CRH and other key stakeholders at various stages of the SISP and disclose information regarding qualifying bids to CRH. However, in order to protect the fairness and efficacy of the process, such consultation rights are strictly circumscribed in the event that CRH chooses to participate as a bidder.

32. As Sage's principal secured creditor, CRH is entitled to make a bid for Sage's assets in the form of a credit bid. Credit bidding is an accepted practice in sales processes within insolvency proceedings in Canada.³⁶

33. CRH will be permitted under the SISP to make a bid at the second phase of the process even if it did not participate up to that point.³⁷ However, if CRH chooses to receive copies of the indications of interest or information about them during the first phase of the SISP, will be prohibited from making any bid in excess of the amount of its secured debt, as determined by the Receiver. Also, the details of its bid will be shared with other bidders, ensuring transparency. This mechanism allows CRH to enter the sale process in the second phase of the SISP, effectively setting a floor price that other bidders must exceed, while preventing CRH from topping up its own bid with cash after

³⁶ *CCM* at para. 7, **BOA, Tab 2**.

³⁷ SISP, ss. 4.3(5) and 5.5(2), **MR, Tab 2G, pp. 109 and 113**.

receiving information about other bids. Accordingly, CRH's ability to credit bid in the second phase will have a market enhancing effect.

34. CRH's position as to the quantum of its secured debt is publically available information. Accordingly, participants in the SISP have transparency as to the upper limit of any likely credit bid by CRH. The Receiver has not delivered any opinion as to the quantum of CRH's secured debt, and retains the right under the SISP to determine such amount, which would limit the purchase price of any credit bid by CRH.

35. Importantly, CRH's consultation rights under the SISP will be suspended in the event that it gives notice that it will make a bid in the second phase, unless the bid is for no more than its secured debt *and* CRH undertakes not to change the economic terms of the bid.³⁸ These limitations on CRH's ability to bid and on its consultation rights will maintain the integrity of the process in a situation where CRH is itself a competing bidder. To ensure transparency in the process, key terms of such credit bid will also be disclosed to other bidders.³⁹

36. Finally, approval of the SISP would not result in the sale of Sage's assets without further approval from this Court. The SISP is merely a set of procedures pursuant to which the Receiver intends to solicit bids for Sage's assets and determine what, if any, investment or sale of assets represents the best option for the estate. The Court will have a further opportunity to consider the fairness, transparency and integrity of the sale process if it results in a proposed sale or investment transaction.

³⁸ SISP, ss. 5.7(2)-(3), **MR, Tab 2G, p. 114.**

³⁹ SISP, s. 5.7(3), **MR, Tab 2G, p. 114.**

ii. The commercial efficacy of the SISP

37. The Receiver believes that the SISP represents the most commercially efficacious way of marketing Sage's property.

38. Pursuant to the terms of the SISP, the Receiver will actively identify and contact parties that it believes to be potentially interested in acquiring Sage's assets. CRH will also have an opportunity to provide the Receiver with the names of potential bidders to be contacted. As discussed above, the SISP sets out selection criteria that bidders will be able to refer to in preparing their proposals.

39. The SISP requires a reasonable amount of disclosure on the part of potential bidders to allow the Receiver to reach an informed determination as to the suitability of each proposal. At the later stage of the SISP, proposals will be binding on bidders. This will help ensure a high level of commitment among bidders and provide the Receiver with a reasonable level of certainty regarding the proposed transactions.

40. Finally, the Receiver believes the SISP contemplates a reasonable timeline for the solicitation, completion of due diligence and closing of a suitable sale or investment proposal without allowing a protracted sale process to cause Sage's estate to incur excessive professional fees and costs to maintain the condition of the Clavos Property. Under the SISP, the Receiver will retain discretion to change the projected deadlines as required to ensure the commercial efficacy of the process.

iii. The SISP will optimize the chances of securing the best possible price for Sage's property

41. The purpose of the SISP is to determine what consideration can be obtained on a possible investment in Sage or sale of Sage's assets. The SISP is reasonable in the circumstances. It represents the most efficient way for the Receiver to market the assets of Sage and attempt to realize value for Sage's creditors.

42. For the reasons set out above, the Receiver submits that the SISP is consistent with the criteria set out in *CCM* and would promote an investment or sale that satisfies the *Soundair* criteria. For these reasons, the Receiver submits that this Court should approve the SISP.

B. THE FIRST REPORT SHOULD BE APPROVED

43. Since the Receivership Order was granted, the Receiver has undertaken considerable efforts to properly administer Sage's assets and engage with the Company's stakeholders, as set out in the First Report and in paragraph 15 above.

44. The activities of the Receiver, as set out in detail in the First Report, were all necessary and undertaken in good faith in furtherance of the Receiver's duties and powers pursuant to the Receivership Order.

45. The Receiver respectfully submits that the First Report, and the Receiver's activities set out therein, reflect the proper and diligent execution of the Receiver's duties and should be approved by this Court.

PART IV - ORDER REQUESTED

46. For the reasons set out above, the Receiver respectfully requests the granting of an order substantially in the form contained in its Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of August, 2018.

A handwritten signature in black ink, appearing to read "Wael Rostom / Stephen Brown-Okruhlik", written over a horizontal line.

Wael Rostom / Stephen Brown-Okruhlik
McMillan LLP

Lawyer for the Receiver

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137
2. *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750

SCHEDULE "B"
RELEVANT STATUTES

3. *Bankruptcy and Insolvency Act R.S.C. 1985, c. B-3, S. 243(1)*

243(1) Court may appoint receiver

Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

IN THE MATTER OF RECEIVERSHIP OF SAGE GOLD INC.

and

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION
101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

Court File No. CV-18-601307-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM OF THE RECEIVER,
DELOITTE RESTRUCTURING INC.
(returnable August 29, 2018)**

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Wael Rostom
Tel: 416-865-7790

Stephen Brown-Okruhlik
Tel: 416-865-7043
Fax: 416-865-7048

Lawyers for the Receiver,
Deloitte Restructuring Inc.