

**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 December 19, 2019)**

December 16, 2019

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PART I - INTRODUCTION

1. Deloitte Restructuring Inc. in its capacity as the receiver (the “**Receiver**”) of Sage Gold Inc. (“**Sage**”) brings this motion to approve the sale of Sage’s principal remaining asset (the “**Clavos Property**”) and certain other assets pursuant to an asset purchase agreement and related relief. This motion follows the completion of a Court-approved sale and investment solicitation process and subsequent sales efforts carried out by the Receiver.

2. In January of 2019, this Court approved the sale of the Clavos Property to Mr. Eric Quint on behalf of a company to be incorporated (which became OrganiQ Mining Inc., the “**Quint Group Purchaser**”) and granted a related approval and vesting order. However, the Quint Group Purchaser failed to close and abandoned the transaction.¹ Following substantial efforts, the Receiver has negotiated an alternative sale transaction that is on substantially the same terms as the transaction already approved by this Court. In light of all the facts and circumstances, the Receiver believes that the proposed transaction represents the best way to realize value from the Clavos Property.

PART II - THE FACTS

Sage and the Clavos Property

3. Sage is a Toronto-based company incorporated under the *Business Corporations Act* (Ontario). The Clavos Property consists of a mining project located in the German, Stock and Clergue townships near Timmins, Ontario comprised of 69 patented and

¹ Order of Justice Dietrich dated January 29, 2019 [Original Clavos Approval and Vesting Order].

leased claims and 14 unpatented claims owned by Sage, along with certain structures and other infrastructure relating to the project carried on at the site.²

The Receiver's sale efforts

4. The Receiver was appointed by Order of the Honourable Justice Dunphy on July 30, 2018.³ The Receiver brought a motion on August 29, 2018 for the approval of a Sale and Investment and Solicitation Procedure (the “SISP”). On the motion, the Receiver submitted that the SISP was consistent with the criteria set out in *Royal Bank v. Soundair Corp.* for the approval of asset sales in Court-supervised insolvency proceedings.⁴ The Court granted an Order approving the SISP.⁵

5. The SISP contemplated two phases of bidding with increasing levels of commitment by bidders. It also permitted Sage's principal secured creditor (and the Applicant in this receivership proceeding), CRH Funding II Pte. Ltd. (“CRH”), to submit a binding credit bid in the second phase of the process.

6. CRH delivered a notice to the Receiver advising of its intention to make a credit bid.⁶ On November 9, 2018, CRH submitted a credit bid in the form of an executed asset

² Affidavit of Andrew Wherley, paras. 14-27, **Application Record of CRH Funding II PTE Ltd., Tab 1, pp. 3-6.**

³ Order of Justice Dunphy dated July 30, 2018 [Receivership Order], Appendix “A” to the Fourth Report of the Receiver to the Court, dated December 11, 2019 [Fourth Report], **Motion Record of the Receiver [MR], Tab 2A, pp. 23-36.**

⁴ Factum of the Receiver on motion to approve SISP (returnable August 29, 2018) [August 29, 2018 Factum], para. 42.

⁵ Order of Justice Hailey dated August 29, 2018 [SISP Order], **MR, Tab 2I, pp. 121-123.**

⁶ Third Report of the Receiver to the Court, dated January 23, 2019 [Third Report], para. 36(g), **MR, Tab 2B, p. 50.**

purchase agreement (the “**Credit Bid**”).⁷ The Credit Bid was irrevocable under its own terms (other than to permit the selection of a different Qualified Phase 2 Bid).

CRH withdraws the Credit Bid and refuses further funding of the receivership

7. At the conclusion of the SISP, the Credit Bid was the only binding bid received for the Clavos Property. On December 13, 2018, the Receiver served motion materials for a motion to approve a priority claims process in contemplation of consummating the Credit Bid. The priority claims process was required to identify priority claims that CRH would need to pay or assume in order to satisfy the terms of the Credit Bid.⁸

8. On December 14, 2018, CRH withdrew the Credit Bid and advised the Receiver that it was no longer inclined to fund this receivership without an alternative purchase bid to consider.⁹ Without additional funding from CRH, the Receiver did not have sufficient funds to continue paying for the care and maintenance program at the Clavos Property and the SISP.¹⁰ Accordingly, on December 18, 2018, the Receiver requested that the Court stand down its motion to approve a claims process and advised the Court that it may return shortly to request an Order permitting it to abandon the Clavos Property pursuant to the terms of the Receivership Order.¹¹ (Paragraph 16 of the

⁷ Confidential Appendix “C”, **Brief of Confidential Appendices filed on January 29, 2019 Motion, Tab C.**

⁸ Factum of the Receiver dated December 13, 2018 returnable December 18, 2018 [Priority Claims Motion Factum].

⁹ Third Report, paras. 8, 14, **MR, Tab 2B, p. 43-44.**

¹⁰ Second Supplement to the Second Report of the Receiver, dated January 8, 2019, para. 3, **MR, Tab 2H, p.117.**

¹¹ Supplement to Second Report, Dated December 20, 2018, paras. 9-10, **MR, Tab 2G, p.112.**

Receivership Order initially required the Receiver to obtain leave of the Court on notice to the Director of Mine Rehabilitation in order to abandon any of Sage's property).¹²

9. On December 21, 2018, the Court granted an order allowing the Receiver to abandon the Clavos Property on two business days' notice to the Director of Mine Rehabilitation, without prejudice to the Receiver's ability to market Sage's property following an abandonment.¹³ The Receiver abandoned the Clavos Property in early January 2019.

The Receiver obtains court approval for sale transactions

10. Following the abandonment of the Clavos Property, the Receiver pursued continued discussions with various bidders who expressed interest in purchasing Sage's assets during the SISF. This was done without funding for the receivership, proceeding at significant risk to the Receiver and its legal counsel of not being able to recover incremental professional fees related to such efforts if the transaction was not completed. These efforts resulted in two proposed transactions:¹⁴ (i) an agreement for the sale of Sage's Onaman Property (described in the Receiver's Third Report to the Court, the "**Onaman APA**"), and (ii) an agreement (the "**Original Clavos APA**") with the Quint Group Purchaser.

11. The Receiver brought a motion on January 29, 2019, seeking approval of the transactions contemplated in the Onaman APA and the Original Clavos APA. The Receiver submitted that the proposed transactions satisfied the test set out in *Royal Bank*

¹² Receivership Order, para. 16, **MR, Tab 2A, pp. 31-32.**

¹³ Second Supplement to Second Report, paras. 5-6, **MR, Tab 2H, pp. 117-118.**

¹⁴ Third Report, paras. 38-46, **MR, Tab 2B, pp. 51-55.**

v. *Soundair*.¹⁵ The Court approved the transactions and granted related approval and vesting orders, including an order vesting the Clavos Property in the Quint Group Purchaser (the “**Original Clavos Approval and Vesting Order**”) upon filing of a Receiver’s certificate.

12. The Onaman APA transaction closed on April 9, 2019.¹⁶

The Original Clavos APA transaction is abandoned

13. Prior to the Court’s approval of the Original Clavos APA, the Quint Group Purchaser made various representations as to the availability of financing necessary to close the transaction. This included an explicit representation as to available financing in the Original Clavos APA.¹⁷ The agreement was not conditional on the purchaser’s ability to obtain or close any financing.

14. Notwithstanding its representations, the Quint Group Purchaser advised the Receiver that it failed to secure the financing required to close the transaction. At the suggestion of the Quint Group Purchaser, the Receiver agreed to extend the time for closing in exchange for additional payment.¹⁸

15. The principals behind the Quint Group Purchaser included Eric Quint and his father, Harry Quint. It was initially led by Eric Quint (who signed the Original Clavos APA). On or around July 31, 2019, the Receiver learned that the Quint Group Purchaser proposed to enter an alternative asset purchase agreement with a re-constituted

¹⁵ Factum of the Receiver on motion returnable January 29, 2019 [January 29 Factum], paras. 31-40.

¹⁶ Fourth Report, para. 24, **MR, Tab 2, p. 14.**

¹⁷ Original Clavos APA, Section 3.1(d), **Motion Record of the Receiver on Motion Returnable January 29, 2019 [January 29 MR], Tab 2G, p. 110.**

¹⁸ Fourth Report, paras. 29-30, **MR, Tab 2, p. 15.**

purchaser, led by Harry Quint in place of Eric Quint.¹⁹ At the Quint Group Purchaser's request, the Receiver granted an extension of time to close an agreement on condition that Harry Quint make an additional payment in respect of accruing operational costs.²⁰ Despite this extension, the Quint Group Purchaser was not able to secure funding.

16. The Receiver subsequently learned following the failure of the Original Clavos APA transaction that Harry Quint and Eric Quint ceased cooperating in respect of financing the project and were each independently seeking alternative financing.²¹ It also learned that both Eric Quint and Harry Quint wanted an opportunity to pursue the acquisition of the Clavos Property, separately, supported by new investors.²²

17. In early September 2019, the Receiver was in discussions with both Harry Quint and Eric Quint independently.²³ The Receiver understood that Eric Quint was working with a prospective investor named Anthony Habib. Eric Quint described Mr. Habib in an email on September 10, 2019 as his "capital associate".²⁴

18. In an effort to preserve the prospect for a successful transaction (and thereby preserve value for Sage's estate), and to resolve the split between Eric Quint and Harry Quint, the Receiver sent substantially identical re-bid letters (the "**Re-bid Letters**") on September 12, 2019 to each of Harry and Eric Quint, setting out the terms of an alternative transaction if either of them wished to pursue one.²⁵ The Receiver undertook

¹⁹ Fourth Report, para. 29, MR, Tab 2, p. 15.

²⁰ Fourth Report, para. 30, MR, Tab 2, p. 15.

²¹ Fourth Report, para. 31, MR, Tab 2, p. 15.

²² Fourth Report, para. 31-33, MR, Tab 2, pp. 15-16.

²³ Fourth Report, paras. 31-35, MR, Tab 2, pp. 15-16.

²⁴ Fourth Report, para. 35, 37, MR, Tab 2, pp. 16-18.

²⁵ Fourth Report, para. 33-34, MR, Tab 2, p. 16.

this effort without any available funding for the receivership proceeding and at risk of the Receiver and its legal counsel not recovering any incremental professional fees if a transaction was not completed.

19. The Re-bid Letters required that any proposal be received by September 21, 2019. Only Harry Quint responded promptly with a proposal (after obtaining a short extension to the initial deadline from the Receiver).²⁶ Harry Quint secured the support of an investor, Jayson Flowers, and negotiated the key terms of an alternative deal in late September, 2019. The terms of the agreement were subsequently memorialized in a letter agreement (the “**Letter Agreement**”) executed on September 30, 2019 by Harry Quint and Jayson Flowers for and on behalf of a corporation to be incorporated.²⁷

20. On October 30, 2019, 40 days after the initial deadline to submit a proposal set out in the Re-bid Letters, Mr. Habib submitted a proposal to the Receiver. The proposal contemplated a substantial due diligence period and remained subject to modification by the parties. The Receiver remained of the opinion that the proposed transaction with Harry Quint and Mr. Flowers presented the best option for Sage’s estate in all the circumstances.²⁸

21. The parties to the Letter Agreement ultimately executed a new asset purchase agreement (the “**New Clavos APA**”) in respect of the Clavos Property dated December

²⁶ Fourth Report, para. 35, **MR, Tab 2, p. 16.**

²⁷ Fourth Report, para. 36, **MR, Tab 2, p. 17.**

²⁸ Fourth Report, paras. 37-38, **MR, Tab 2, pp. 17-19.**

6, 2019, for which approval is sought on this motion. The purchaser under the New Clavos APA is Grace Gold Ltd. (“**Grace Gold**”).²⁹

22. The terms of the New Clavos APA are substantially similar to the Original Clavos APA, allowing for some credits in favour of the purchaser and the assumption by the purchaser of additional costs that have accrued in the months following approval of the Original Clavos APA transaction. The agreement also includes additional non-refundable deposits, which have been paid by or on behalf of Grace Gold.³⁰

The Assumed Contracts

23. The New Clavos APA includes a condition in favour of Grace Gold that three commercial contracts (the “**Assumed Contracts**”) that are material to the operations of the Clavos Property be assigned to Grace Gold on closing. Grace Gold has advised the Receiver that it only requires delivery of two of the Assumed Contracts, which include no cure costs, and will not assume the third. Grace Gold has advised that the assignment of the Assumed Contracts is a crucial aspect of the transaction.³¹

24. The Court previously ordered that the Assumed Contracts be assigned to the Quint Group Purchaser upon closing of the Original Clavos APA transaction, which has been abandoned.

²⁹ Fourth Report, paras. 39-40, **MR, Tab 2, pp. 19-20, Appendix “M”, Confidential Appendix “3”**.

³⁰ Fourth Report, paras. 39, 41, **MR, Tab 2, pp. 19-20**.

³¹ Fourth Report, para. 43, **MR, Tab 2, p. 21**.

The Confidential Appendices

25. The Receiver has included a redacted version of the New Clavos APA in its Motion Record. The Receiver is filing separately with the Court confidential appendices (the “**Confidential Appendices**”), which are omitted from the Fourth Report. These include the unredacted New Clavos APA, the Letter Agreement and a copy of Mr. Habib’s October 30, 2019 offer. The Receiver seeks a sealing order in respect of the Confidential Appendices.

PART III - ISSUES AND THE LAW

26. The Receiver’s motion raises the following issues for determination:

- (a) should the New Clavos APA transaction be approved?
- (b) should the Original Clavos Approval and Vesting Order be varied?
- (c) should the Court order the assignment of the Assumed Contracts in connection with the New Clavos APA if consent to their assignment cannot be obtained? and,
- (d) should a sealing order be granted in respect of the Confidential Appendices?

A. The New Clavos APA Transaction should be approved

27. This Court has the power pursuant to Section 243 of the BIA to grant an order vesting Sage's assets in a purchaser pursuant to a Court-supervised sale transaction.³² This Court already considered the applicable legal principles and granted a vesting order in respect of the Clavos Property (the Original Clavos Approval and Vesting Order). The relief sought by the Receiver on this motion is simply a substitute for the Original Clavos Approval and Vesting Order in respect of a substantially similar transaction, and is necessitated by the inability of the Quint Purchaser Group to consummate the original transaction.

28. The Receiver sought approval of the SISP on the grounds that the SISP would lead to a transaction that satisfied the criteria set out by the Ontario Court of Appeal in *Royal Bank v. Soundair Corp.* The SISP was approved by this Court.³³

29. Following the SISP and subsequent negotiations with the Quint Purchaser Group, the Receiver sought approval of the Original Clavos APA transaction on the grounds that it satisfied the *Soundair* test.³⁴ The Court approved the Original Clavos APA transaction. The New Clavos APA is substantially similar to the Original Clavos APA and includes substantially similar economic terms.

30. The Receiver has determined that Mr. Habib's offer does not present a better option for recovery for Sage's estate. Mr. Habib's expression is not a definitive asset purchase agreement and would be subject to a due diligence period and modification of

³² *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at 87, **Receiver's Book of Authorities [BOA] Tab 1.**

³³ August 29, 2018 Factum, para. 42; SISP Order, **MR, Tab 2I.**

³⁴ January 29 Factum, paras. 31-40.

terms. By contrast, Grace Gold has substantially completed its diligence, and made significant non-refundable deposits and payments to contractors.³⁵ In addition, the Receiver understands that Grace Gold and its principals have had significant engagement with the Government concerning the transfer of the required permits and licenses relating to the Clavos Property. Accordingly, the Receiver believes that the New Clavos APA involves significantly less closing risk than an alternative transaction with Mr. Habib.³⁶

31. The Receiver believes that Mr. Habib was aware, or should have been aware, of the Re-bid Letters through his affiliation with Eric Quint, but he did not submit his expression of interest until significantly after the Re-bid deadline.³⁷

32. Given the circumstances, the Receiver believes that neither the efficacy and integrity of the sale process nor fairness to the affected parties favour pursuing discussions with Mr. Habib about an alternative sale.³⁸ This conclusion is enhanced by the absence of funding for this receivership to cover the additional professional fees that would be incurred in order to facilitate Mr. Habib's proposed diligence period and to negotiate a definitive agreement.

33. Courts will generally defer to the business judgement of a receiver, exercised based on the "*the elements then available to it.*" In *Soundair*, the Ontario Court of Appeal adopted the view that it is of the "very essence of a receiver's function to make such judgments", and they should only be rejected by the Court in the most exceptional

³⁵ Fourth Report, para. 36, 38, **MR, Tab 2, pp. 17-19.**

³⁶ Fourth Report, para. 38, **MR, Tab 2, pp. 18-19.**

³⁷ Fourth Report, para. 37-38, **MR, Tab 2, pp. 17-19.**

³⁸ Fourth Report, para. 37-38, **MR, Tab 2, pp. 17-19.**

circumstances.³⁹ To do otherwise “would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them”.⁴⁰

34. The Receiver has acted providently in this case. There are no exceptional circumstances that should lead the Court to reject the Receiver’s business judgment. Its determination that the New Clavos APA represents the best option for recovery for Sage’s estate should attract the deference of this Court.

B. The Original Clavos Approval and Vesting Order should be varied

35. The Original Clavos Approval and Vesting Order provides that the Clavos Property will vest in the Quint Group Purchaser after the transaction closes. As the Quint Purchaser Group has abandoned the transaction, it is not appropriate for property to transfer and vest as contemplated in the Order. The Original Approval and Vesting Order should therefore be varied to remove paragraphs related to the transfer and vesting of the Clavos Property to and in the Quint Group Purchaser (being paragraphs 4, 6, 7, 8, 10, 11, 12, 13 and 14 of the Order).

C. The Court should order the assignment of the Assumed Contracts

36. The Court previously ordered the assignment of the Assumed Contracts in connection with the Original Clavos APA.

37. In *Playdium Entertainment Corp., Re*, this Court held that it has the authority to assign contracts to purchasers in insolvency proceedings, including in circumstances

³⁹ *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137 at 21, citing *Crown Trust Co. v. Rosenberg*, **BOA Tab 2**.

⁴⁰ *Ibid*, **BOA Tab 2**.

where counterparties oppose the assignment.⁴¹ The Receiver is not aware of any objection to the assignment of the Assumed Contracts by any of the relevant counterparties in this case.

38. In *Playdium*, this Court considered the same factors that constitute the *Soundair* test when exercising its power to assign contracts.⁴² (The satisfaction of those criteria in this case has already been addressed).⁴³

39. The relevant Assumed Contracts have no associated cure costs. The Receiver has been advised by Grace Gold that it will be adequately capitalized and will have sufficient resources to fulfil the obligations that it would assume as a party to the Assigned Contracts. Grace Gold has indicated that the assignment of the Assumed Contracts is a crucial component of the New Clavos APA transaction. The failure to secure the assignment of the Assumed Contracts would pose a serious risk to the recovery to Sage's estate offered by the New Clavos APA transaction. It is appropriate in the circumstances for the Court to exercise its jurisdiction to order the assignment of any Assumed Contracts that are not assigned on consent by the relevant counterparties prior to closing of the transaction.

⁴¹ *Playdium Entertainment Corp., Re*, [2001] O.J. No. 4252 [*Playdium*] at para 23, **BOA Tab 3**; Additional reasons at: *Playdium Entertainment Corp., Re*, 2001 CarswellOnt 4109, [2001] O.J. No. 4459 at 38, **BOA, Tab 4**.

⁴² *Playdium* at 26-28, **BOA, Tab 3**.

⁴³ In addition to meeting the criteria set out in *Playdium*, the Receiver has considered the factors enumerated in Section 11.3 and 11.4 of the *Companies Creditors' Arrangements Act*, which address the Court's power to assign contracts in *CCAA* proceedings. While this proceeding is a receivership under Section 243 of the *Bankruptcy and Insolvency Act*, the Supreme Court of Canada has held that the two statutes should be read harmoniously and in tandem. See *Re: Century Services Inc.*, 2010 SCC 60, **BOA Tab 5**.

D. Sealing orders should be granted in respect of the Confidential Appendices

40. The Court granted a sealing order in respect of confidential materials similar to the Confidential Appendices when it approved the Original Clavos APA.

41. Section 137(2) of the *Courts of Justice Act* provides that: A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.⁴⁴

42. In the seminal decision in Canada on sealing orders, *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada set out the following two criteria for granting a sealing order:⁴⁵

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest [...]; and,

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects [...].

43. Courts have applied the test in *Sierra Club* to the granting of sealing orders in the context of receiverships, including to seal confidential appendices to receivers' reports that contain confidential information regarding bids received in the conduct of a Court-approved sale process.⁴⁶

44. The proposed sealing order would keep the purchase price and related financial figures in the New Clavos APA transaction confidential only temporarily until the time the transaction closes. This information will be available to the Court when considering

⁴⁴ R.S.O. 1990, c. C.43, s. 137.

⁴⁵ 2002 SCC 41 at para 53 [*Sierra Club*], **BOA, Tab 6**.

⁴⁶ *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, 2014 ONSC 1173 at 32, **BOA, Tab 7**.

whether to grant the relief sought on this motion. It is necessary to keep these figures confidential in case the transaction does not close for any reason, to preserve the Receiver's ability to market the assets further.

45. The salutary effects of the sealing orders outweigh any deleterious effects. The information contained in the Confidential Appendices is helpful to the Court in determining whether the proposed Receiver has acted providently in negotiating the New Clavos APA and to ensure that there has been no abuse of process. In light of the Court's supervisory role, no other party will be adversely affected if the Confidential Appendices remain sealed.

PART IV - ORDER REQUESTED

46. For the foregoing reasons, the Receiver requests that this Court grant an approval and vesting order in the form attached to the Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of December, 2019.



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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508
2. *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137.
3. *Playdium Entertainment Corp., Re*, [2001] O.J. No. 4252.
4. *Playdium Entertainment Corp., Re*, [2001] O.J. No. 4459.
5. *Re: Century Services Inc.*, 2010 SCC 60.
6. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.
7. *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, 2014 ONSC 1173.

SCHEDULE "B"
RELEVANT STATUTES

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

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.

2. *Companies Creditors' Arrangements Act*, R.S.C. 1985, c. C-36, s. 11.3.

11.3(1) Assignment of agreements

On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

11.3(2) Exceptions

Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a) an agreement entered into on or after the day on which proceedings commence under this Act;
- (b) an eligible financial contract; or
- (c) a collective agreement.

11.3(3) Factors to be considered

In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed assignment;

- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

11.3(4) Restriction

The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

3. *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137(2).

137(2) Sealing documents

A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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.
(December 19, 2019)**

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