

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF NEVADA COPPER, INC.,  
NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP.,  
NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC.  
UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

Applicant

**APPLICATION RECORD**

June 19, 2024

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Lawyers for Nevada Copper, Inc., Nevada Copper  
Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC  
Farms LLC and NC Ditch Company LLC

TO: **Service List**

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Commercial List Court File No.:

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Applicant

**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location:

8<sup>th</sup> floor, 330 University Avenue, Toronto, Ontario, M5G 1R7

On June 21, 2024 at 12:00 p.m. (EST) for one hour. Please advise if you intend to join the hearing by emailing Hanna Singer ([hsinger@torys.com](mailto:hsinger@torys.com)).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyers or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE

APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyers or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: \_\_\_\_\_

Issued by \_\_\_\_\_

Local registrar

Address of court office 330 University Avenue, 7<sup>th</sup> Floor  
Toronto, Ontario M5G 1R7

TO: **Attached Service List**

## APPLICATION

1. The applicant, Nevada Copper, Inc. (“**NCI**”, or the “**Applicant**”), in its capacity as the foreign representative of itself as well as its affiliates Nevada Copper Corp. (“**NCU**”), 0607792 B.C. Ltd. (“**0607 BC**”), Lion Iron Corp. (“**Lion Iron**”), NC Farms LLC (“**NC Farms**”) and NC Ditch Company LLC (“**NC Ditch**”) (collectively, “**Nevada Copper**”, or the “**Debtors**”), brings this application for:
  - (a) An Initial Recognition Order (Foreign Main Proceeding):
    - (i) abridging and validating the time for service;
    - (ii) declaring that the Applicant is the “foreign representative” of the Debtors as defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”);
    - (iii) declaring that the centre of main interest for each of the Debtors is the United States of America and recognizing the cases commenced by such entities in the United States under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) before the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”) as the “foreign main proceedings” under Part IV of the CCAA; and
    - (iv) granting a stay of proceedings in respect of the Debtors and ordering the other mandatory relief set out in section 48(1) of the CCAA;
  - (b) A Supplemental Order (Foreign Main Proceeding):
    - (i) recognizing and enforcing certain First Day Orders (as defined below) entered by the Bankruptcy Court, including for debtor-in-possession financing for the Debtors and a superpriority charge against the Debtor’s property in Canada as security for that financing;

- (ii) granting additional stays and protections in respect of the Debtors and their directors and officers consistent with the Model Supplemental Order in Ontario;
  - (iii) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as information officer (in such capacity, the “**Information Officer**”) in these proceedings; and
  - (iv) granting the Administration Charge (as defined below) against the Debtors’ property in Canada; and
- (c) such further and other relief, advice and directions as counsel may advise and this Court may deem just and appropriate.

2. The grounds for the application are:

**The Nevada Copper Group**

- (a) The Debtors are in the business of mining copper and other minerals and operating a processing plant that refines copper ore into copper concentrate. The bulk of the mining operations are focused on the development of the Pumpkin Hollow project (the “**Project**”), a mining development located about 90 kilometers southeast of Reno, Nevada. The Project consists primarily of two development projects:
  - (i) a constructed underground mine and processing facility (the “**Underground Mine**”), which, in 2021 produced around 7,271 tons of copper concentrate per year at an average grade of 23%; and
  - (ii) a pre-feasibility stage open pit project, which is fully permitted and in the process of being developed but does not currently produce copper concentrate.
- (b) Only two of the Debtors—the Applicant and NCU—are active and operational. The Applicant is an operating company that owns, develops and operates the Project. It carries on substantially all the business of the Debtors and is the owner of substantially all the Debtors’ assets.

- (c) NCU is a TSX-listed public company whose only material assets are its interests in the Applicant. NCU owns all the equity of the Applicant and holds unsecured intercompany loans payable by the Applicant.
- (d) The remaining Debtors—0607 BC, Lion Iron, NC Farms and NC Ditch—are dormant shell companies with no material assets.
- (e) The centre of main interest of each of the Debtors is the United States:
- (f) ***The Applicant, Lion Iron, NC Farms and NC Ditch.*** Four of the six Debtors—the Applicant, Lion Iron, NC Farms and NC Ditch—are incorporated under the laws of, and have registered offices in, Nevada. Without limitation, they: (i) have substantially all of their assets in Nevada, and (ii) are not licensed or registered to conduct business in Canada, nor do they directly carry on any business in Canada.
- (g) ***0607 BC.*** As noted, 0607 BC is a dormant shell company. While 0607 BC is incorporated under the *Business Corporations Act* (British Columbia) (“**BCBCA**”) and has a listed registered office in Vancouver, B.C., it does not have any Canadian presence. It has no operations of its own, nor does it have any assets in Canada or elsewhere.
- (h) ***NCU.*** NCU is incorporated under the BCBCA, has a registered office in Vancouver, B.C., and maintains a public listing at the Toronto Stock Exchange. However, NCU has no business operations or assets in British Columbia and cannot operate independently from the mining business in Nevada. Without limitation:
  - (i) NCU’s only material assets are its interests in NCI, a Nevada-based company whose primary business is to own and operate the Project in Nevada, in the form of all the equity of NCI and unsecured intercompany loans payable by NCI;
  - (ii) NCU does not have any independent business revenue streams or sources of income;

- (iii) NCU has only three employees located in Canada and they provide management and accounting functions jointly for all the Debtors;
- (iv) only one member of NCU's key management team resides in Canada;
- (v) other than accounting and finance, NCU does not employ personnel for any of its key management functions that it would require if NCU were to operate on a standalone basis. NCU is not staffed to operate independently of NCI; and
- (vi) only two of NCU's current five directors reside in Canada; of the remaining directors, two reside in the United States and one resides in South Africa.

### **Liquidity Crisis**

- (i) In the third quarter of 2022, certain geotechnical challenges in the Debtors' Nevada mining area caused the suspension of mining operations. A previously unidentified weak rock structure was discovered in the main ramp to the East South mining area, which required drilling and geotechnical mitigation work to reinforce the area and created operational and geotechnical challenges. This further delayed the resumption of stope mining in the Underground Mine.
- (j) This event eliminated the Debtors' only source of operating income at that time. To preserve liquidity, the Debtors suspended most mining operations, with only limited activities being undertaken to protect the Debtors' assets.
- (k) In October 2022, the Debtors and their key stakeholders entered into agreements that provided the Debtors with a finance package that enabled the Debtors to restart and ramp up operations at the Underground Mine. Those agreements were supplemented in 2023 by additional financing agreements with the Debtors' key stakeholders.
- (l) While the Debtors were eventually able to restart ore processing operations in October 2023, those operations were periodically paused to address commissioning complications and to stabilize operating conditions. As a result, the Debtors could

not maintain continuous processing operations necessary to declare commercial production in the fourth quarter of 2023, as planned.

- (m) This lack of production from the Underground Mine deprived NCI of operating revenue and created a sizeable gap between the Debtors' available cash and their funding needs. In later 2023, as the desire of its existing stakeholders to continue to fund its cash needs began to wane, the Debtors decided to pursue a marketing and sale process for an investment in or sale transaction in respect of their business.
- (n) While that marketing process resulted in some interest in the Debtors' business, the Debtors were ultimately unable to consummate a binding transaction that would address the Debtors' diminishing liquidity.
- (o) In the absence of a sale agreement on a viable timeline, the Debtors determined that commencing formal insolvency proceedings was the only path forward in the circumstances. The Debtors commenced the Chapter 11 Cases before the Bankruptcy Court on June 10, 2024.

**The Chapter 11 Cases each constitute a “foreign main proceeding” in which the Applicant is the “foreign representative”**

- (p) The Debtors are each currently parties to the Chapter 11 Cases that were commenced pursuant to voluntary petitions for relief, filed in the Bankruptcy Court.
- (q) The Chapter 11 Cases constitute “foreign proceedings” under section 45(1) of the CCAA.
- (r) The Applicant has been appointed as “foreign representative” of each of the Debtors in the Chapter 11 Cases and, as such, falls within the definition of “foreign representative” under section 45(1) of the CCAA.
- (s) Pursuant to section 46(1) of the CCAA, the foreign representative may apply to this Court for recognition of the Chapter 11 Cases.



- (t) Pursuant to section 47(1) of the CCAA, this Court shall make an order recognizing the Chapter 11 Cases if it is satisfied that the application relates to a “foreign proceeding” and that the Applicant is a “foreign representative.”
- (u) Each of the Debtors’ centre of main interest is located in the United States and, as such, the Chapter 11 Cases are a “foreign main proceeding” under section 45(1) of the CCAA.

**The requested stay is appropriate in the circumstances**

- (v) Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action, suit, or proceeding against the Debtors, subject to any terms and conditions it considers appropriate.
- (w) The Applicant seeks a stay of proceedings that, among other things, prohibits: (i) the commencement or furtherance of any action, suit, or proceeding against the Debtors; (ii) the exercise of any rights or remedies against the Debtors, subject to certain exceptions; and (iii) any person from discounting, failing to honour, altering, interfering with, repudiating, terminating, or ceasing to perform any right, renewal right, contract, agreement, licence, or permit of the Debtors.
- (x) The requested stay is essential to protect the efforts of the Debtors to proceed with the Chapter 11 Cases and to pursue a restructuring transaction.

**Recognition of the First Day Orders is appropriate**

- (y) The Debtors filed the following first day motions (the “**First Day Motions**”) with the Bankruptcy Court:
  - (i) Motion for Entry of an Order Directing Joint Administration of Debtors’ Related Chapter 11 Cases Under Federal Rule of Bankruptcy Procedure 1015(b) and Local Rule of Bankruptcy Practice 1015;

- (ii) Debtors' Motion for an Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions, (IV) Use Their Existing Business Forms, and (V) Granting Related Relief;
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- (v) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief.
- (z) At the hearing on June 13, 2024 the Bankruptcy Court indicated that it will enter interim and/or final orders in respect of the First Day Motions (the “**First Day Orders**”).
- (aa) For the purposes of ensuring harmony between the Canadian and United States jurisdictions, and to ensure that all interested parties cooperate in the efforts of the

Debtors, the Applicant requests that the terms of the First Day Orders be recognized by this Court pursuant to section 49 of the CCAA.

**The extended stay of proceedings is necessary and appropriate**

- (bb) The Applicant seeks the broader stay of proceedings typically granted in Part IV proceedings, including in favour of the Debtors' current and former directors and officers. This broader stay of proceedings is appropriate.
- (cc) For the Debtors to maintain stability and continue their operations during the Chapter 11 Cases, they require the active and committed involvement of those directors and officers. The directors and officers will be vital to the Debtors' restructuring due to their historical knowledge of the financial and operational aspects of the Debtors' complex business and mining operations.

**The appointment of A&M as Information Officer is appropriate**

- (dd) A&M has consented to act as the Information Officer in these Part IV proceedings and will assist the Court and Canadian stakeholders of the Debtors. It is appropriate that A&M be appointed as the Information Officer in these circumstances.

**The Administration Charge is appropriate**

- (ee) The Applicant is requesting that this Court grant the proposed Information Officer, its legal counsel, and the Debtors' Counsel, Torys, an administration charge securing their fees and disbursements in the maximum amount of C\$500,000 (the "**Administration Charge**") on the Debtors' property in Canada and authorize the Debtors' payment of reasonable retainers to the proposed Information Officer and its counsel. The proposed Information Officer is currently holding a retainer of \$100,000 in relation to these proceedings, which is held in Toronto, Ontario.
- (ff) The proposed Information Officer and its counsel will play a key and distinct role in advancing the Debtors' restructuring. The quantum of the Administration Charge is fair and reasonable in these circumstances.

## General

- (gg) the CCAA, including Part IV thereof; and
  - (hh) such further and other grounds as counsel may advise and this Court may deem just.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the affidavit of Gregory J. Martin, to be filed;
  - (b) the factum of the Applicant, to be filed;
  - (c) the pre-filing report of A&M, to be filed;
  - (d) the consent of A&M to act as the Information Officer, to be filed; and
  - (e) such further and other evidence as counsel may advise and this Court may deem just.

Date: June 17, 2024

**Torys LLP**

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Lawyers for Nevada Copper, Inc., Nevada  
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Company LLC

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**ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST**

Proceeding commenced at TORONTO

**NOTICE OF APPLICATION**

**Torys LLP**

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Lawyers for Nevada Copper, Inc., Nevada  
 Copper Corp., 0607792 B.C. Ltd., Lion Iron  
 Corp., NC Farms LLC and NC Ditch Company  
 LLC

Electronically filed / Déposé par voie électronique : 19-Jun-2024  
 AMENDED THIS 19 Jun 2024 PURSUANT TO  
 MODIFIÉ CONFORMÉMENT À  
 ① RULE/LA RÈGLE 26.02 ( A )  
 ② THE ORDER OF  
 L'ORDONNANCE DU  
 DATED/FAIT LE  
 REGISTRAR GREFFIER  
 SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Commercial List Court File No.: CV-24-00722252-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Maggie A Sawka  
 Digitally signed by Maggie A Sawka  
 REGISTRAR GREFFIER  
 SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE  
 Date: 2024.06.19 16:30:18 -04'00'

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IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE

APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyers or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: \_\_\_\_\_

Issued by \_\_\_\_\_

Local registrar

Address of court office 330 University Avenue, 7<sup>th</sup> Floor  
 Toronto, Ontario M5G 1R7

TO: **Attached Service List**

## APPLICATION

1. The applicant, Nevada Copper, Inc. (“**NCI**”, or the “**Applicant**”), in its capacity as the foreign representative of itself as well as its affiliates Nevada Copper Corp. (“**NCU**”), 0607792 B.C. Ltd. (“**0607 BC**”), Lion Iron Corp. (“**Lion Iron**”), NC Farms LLC (“**NC Farms**”) and NC Ditch Company LLC (“**NC Ditch**”) (collectively, “**Nevada Copper**”, or the “**Debtors**”), brings this application for:

- (a) An Initial Recognition Order (Foreign Main Proceeding):

- (i) abridging and validating the time for service;
- (ii) declaring that the Applicant is the “foreign representative” of the Debtors as defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”);
- (iii) declaring that the centre of main interest for each of the Debtors is the United States of America and recognizing the cases commenced by such entities in the United States under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) before the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”) as the “foreign main proceedings” under Part IV of the CCAA; and
- (iv) granting a stay of proceedings in respect of the Debtors and ordering the other mandatory relief set out in section 48(1) of the CCAA;

- (b) A Supplemental Order (Foreign Main Proceeding):

- (i) recognizing and enforcing certain First Day Orders (as defined below) entered by the Bankruptcy Court, including for debtor-in-possession financing for the Debtors and a superpriority charge against the Debtor’s property in Canada as security for that financing;
- (ii) granting additional stays and protections in respect of the Debtors and their directors and officers consistent with the Model Supplemental Order in Ontario;



-T-

- (iii) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as information officer (in such capacity, the “**Information Officer**”) in these proceedings; and
    - (iv) granting the Administration Charge (as defined below) against the Debtors’ property in Canada; and
  - (c) such further and other relief, advice and directions as counsel may advise and this Court may deem just and appropriate.

2. The grounds for the application are:

**The Nevada Copper Group**

- (a) The Debtors are in the business of mining copper and other minerals and operating a processing plant that refines copper ore into copper concentrate. The bulk of the mining operations are focused on the development of the Pumpkin Hollow project (the “**Project**”), a mining development located about 90 kilometers southeast of Reno, Nevada. The Project consists primarily of two development projects:
  - (i) a constructed underground mine and processing facility (the “**Underground Mine**”), which, in 2021 produced around 7,271 tons of copper concentrate per year at an average grade of 23%; and
  - (ii) a pre-feasibility stage open pit project, which is fully permitted and in the process of being developed but does not currently produce copper concentrate.
- (b) Only two of the Debtors—the Applicant and NCU—are active and operational. The Applicant is an operating company that owns, develops and operates the Project. It carries on substantially all the business of the Debtors and is the owner of substantially all the Debtors’ assets.
- (c) NCU is a TSX-listed public company whose only material assets are its interests in the Applicant. NCU owns all the equity of the Applicant and holds unsecured intercompany loans payable by the Applicant.

- (d) The remaining Debtors—0607 BC, Lion Iron, NC Farms and NC Ditch—are dormant shell companies with no material assets.
- (e) The centre of main interest of each of the Debtors is the United States:
- (f) ***The Applicant, Lion Iron, NC Farms and NC Ditch.*** Four of the six Debtors—the Applicant, Lion Iron, NC Farms and NC Ditch— are incorporated under the laws of, and have registered offices in, Nevada. Without limitation, they: (i) have substantially all of their assets in Nevada, and (ii) are not licensed or registered to conduct business in Canada, nor do they directly carry on any business in Canada.
- (g) ***0607 BC.*** As noted, 0607 BC is a dormant shell company. While 0607 BC is incorporated under the *Business Corporations Act* (British Columbia) (“**BCBCA**”) and has a listed registered office in Vancouver, B.C., it does not have any Canadian presence. It has no operations of its own, nor does it have any assets in Canada or elsewhere.
- (h) ***NCU.*** NCU is incorporated under the BCBCA, has a registered office in Vancouver, B.C., and maintains a public listing at the Toronto Stock Exchange. However, NCU has no business operations or assets in British Columbia and cannot operate independently from the mining business in Nevada. Without limitation:
  - (i) NCU’s only material assets are its interests in NCI, a Nevada-based company whose primary business is to own and operate the Project in Nevada, in the form of all the equity of NCI and unsecured intercompany loans payable by NCI;
  - (ii) NCU does not have any independent business revenue streams or sources of income;
  - (iii) NCU has only three employees located in Canada and they provide management and accounting functions jointly for all the Debtors;
  - (iv) only one member of NCU’s key management team resides in Canada;

- (v) other than accounting and finance, NCU does not employ personnel for any of its key management functions that it would require if NCU were to operate on a standalone basis. NCU is not staffed to operate independently of NCI; and
- (vi) only two of NCU's current five directors reside in Canada; of the remaining directors, two reside in the United States and one resides in South Africa.

### **Liquidity Crisis**

- (i) In the third quarter of 2022, certain geotechnical challenges in the Debtors' Nevada mining area caused the suspension of mining operations. A previously unidentified weak rock structure was discovered in the main ramp to the East South mining area, which required drilling and geotechnical mitigation work to reinforce the area and created operational and geotechnical challenges. This further delayed the resumption of stope mining in the Underground Mine.
- (j) This event eliminated the Debtors' only source of operating income at that time. To preserve liquidity, the Debtors suspended most mining operations, with only limited activities being undertaken to protect the Debtors' assets.
- (k) In October 2022, the Debtors and their key stakeholders entered into agreements that provided the Debtors with a finance package that enabled the Debtors to restart and ramp up operations at the Underground Mine. Those agreements were supplemented in 2023 by additional financing agreements with the Debtors' key stakeholders.
- (l) While the Debtors were eventually able to restart ore processing operations in October 2023, those operations were periodically paused to address commissioning complications and to stabilize operating conditions. As a result, the Debtors could not maintain continuous processing operations necessary to declare commercial production in the fourth quarter of 2023, as planned.
- (m) This lack of production from the Underground Mine deprived NCI of operating revenue and created a sizeable gap between the Debtors' available cash and their

funding needs. In later 2023, as the desire of its existing stakeholders to continue to fund its cash needs began to wane, the Debtors decided to pursue a marketing and sale process for an investment in or sale transaction in respect of their business.

- (n) While that marketing process resulted in some interest in the Debtors' business, the Debtors were ultimately unable to consummate a binding transaction that would address the Debtors' diminishing liquidity.
- (o) In the absence of a sale agreement on a viable timeline, the Debtors determined that commencing formal insolvency proceedings was the only path forward in the circumstances. The Debtors commenced the Chapter 11 Cases before the Bankruptcy Court on June 10, 2024.

**The Chapter 11 Cases each constitute a “foreign main proceeding” in which the Applicant is the “foreign representative”**

- (p) The Debtors are each currently parties to the Chapter 11 Cases that were commenced pursuant to voluntary petitions for relief, filed in the Bankruptcy Court.
- (q) The Chapter 11 Cases constitute “foreign proceedings” under section 45(1) of the CCAA.
- (r) The Applicant has been appointed as “foreign representative” of each of the Debtors in the Chapter 11 Cases and, as such, falls within the definition of “foreign representative” under section 45(1) of the CCAA.
- (s) Pursuant to section 46(1) of the CCAA, the foreign representative may apply to this Court for recognition of the Chapter 11 Cases.
- (t) Pursuant to section 47(1) of the CCAA, this Court shall make an order recognizing the Chapter 11 Cases if it is satisfied that the application relates to a “foreign proceeding” and that the Applicant is a “foreign representative.”

- (u) Each of the Debtors' centre of main interest is located in the United States and, as such, the Chapter 11 Cases are a "foreign main proceeding" under section 45(1) of the CCAA.

**The requested stay is appropriate in the circumstances**

- (v) Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action, suit, or proceeding against the Debtors, subject to any terms and conditions it considers appropriate.
- (w) The Applicant seeks a stay of proceedings that, among other things, prohibits: (i) the commencement or furtherance of any action, suit, or proceeding against the Debtors; (ii) the exercise of any rights or remedies against the Debtors, subject to certain exceptions; and (iii) any person from discounting, failing to honour, altering, interfering with, repudiating, terminating, or ceasing to perform any right, renewal right, contract, agreement, licence, or permit of the Debtors.
- (x) The requested stay is essential to protect the efforts of the Debtors to proceed with the Chapter 11 Cases and to pursue a restructuring transaction.

**Recognition of the First Day Orders is appropriate**

- (y) The Debtors filed the following first day motions (the "**First Day Motions**") with the Bankruptcy Court:
  - (i) Debtors' Motion to Authorize Nevada Copper Inc., to Act as Foreign Representative of the Debtors;
  - ~~(i)~~ (ii) Motion for Entry of an Order Directing Joint Administration of Debtors' Related Chapter 11 Cases Under Federal Rule of Bankruptcy Procedure 1015(b) and Local Rule of Bankruptcy Practice 1015;
  - ~~(ii)~~ (iii) Debtors' Motion for an Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain

Existing Bank Accounts, (III) Continue Intercompany Transactions, (IV) Use Their Existing Business Forms, and (V) Granting Related Relief;

~~(iii)~~(iv) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief;

~~(iv)~~(v) Debtors' Motion for Entry of an Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts that Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing; and

~~(v)~~(vi) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief.

(z) At the hearing on June 13, 2024 the Bankruptcy Court indicated that it will enter interim and/or final orders in respect of the First Day Motions; *it has since entered those orders* (the “**First Day Orders**”).

(aa) For the purposes of ensuring harmony between the Canadian and United States jurisdictions, and to ensure that all interested parties cooperate in the efforts of the Debtors, the Applicant requests that the terms of the First Day Orders be recognized by this Court pursuant to section 49 of the CCAA.

**The extended stay of proceedings is necessary and appropriate**

- (bb) The Applicant seeks the broader stay of proceedings typically granted in Part IV proceedings, including in favour of the Debtors' current and former directors and officers. This broader stay of proceedings is appropriate.
- (cc) For the Debtors to maintain stability and continue their operations during the Chapter 11 Cases, they require the active and committed involvement of those directors and officers. The directors and officers will be vital to the Debtors' restructuring due to their historical knowledge of the financial and operational aspects of the Debtors' complex business and mining operations.

**The appointment of A&M as Information Officer is appropriate**

- (dd) A&M has consented to act as the Information Officer in these Part IV proceedings and will assist the Court and Canadian stakeholders of the Debtors. It is appropriate that A&M be appointed as the Information Officer in these circumstances.

**The Administration Charge is appropriate**

- (ee) The Applicant is requesting that this Court grant the proposed Information Officer, its legal counsel, and the Debtors' Counsel, Torys, an administration charge securing their fees and disbursements in the maximum amount of C\$500,000 (the "**Administration Charge**") on the Debtors' property in Canada and authorize the Debtors' payment of reasonable retainers to the proposed Information Officer and its counsel. The proposed Information Officer is currently holding a retainer of \$100,000 in relation to these proceedings, which is held in Toronto, Ontario.
- (ff) The proposed Information Officer and its counsel will play a key and distinct role in advancing the Debtors' restructuring. The quantum of the Administration Charge is fair and reasonable in these circumstances.

**General**

- (gg) the CCAA, including Part IV thereof; and

(hh) such further and other grounds as counsel may advise and this Court may deem just.

3. The following documentary evidence will be used at the hearing of the application:

- (a) the affidavit of Gregory J. Martin, to be filed;
- (b) the factum of the Applicant, to be filed;
- (c) the pre-filing report of A&M, to be filed;
- (d) the consent of A&M to act as the Information Officer, to be filed; and
- (e) such further and other evidence as counsel may advise and this Court may deem just.

Date: June ~~17~~ 19, 2024

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Company LLC



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

Commercial List Court File No.:

AND IN THE MATTER OF NEVADA COPPER CORP., NEVADA COPPER, INC., 0607792 B.C. LTD., LION  
IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER CORP. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**NOTICE OF APPLICATION**

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LLC

Court File No.: CV-24-00722252-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

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

AND IN THE MATTER OF NEVADA COPPER, INC.,  
NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP.,  
NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC.  
UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**AFFIDAVIT OF GREGORY J. MARTIN (SWORN JUNE 19, 2024)**

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I, Gregory J. Martin, of the City of Vancouver, in the Province of British Columbia, in the Country of Canada, MAKE OATH AND SAY:

1. I am a member of the board of directors and the Interim President and Chief Executive Officer of Nevada Copper, Inc. (“**NCI**”), a member of the board of directors and the President and Chief Financial Officer of its affiliates Lion Iron Corp. (“**Lion Iron**”) and 0607792 B.C. Ltd. (“**0607 BC**”), and the Interim President and Chief Executive Officer of the Applicant’s parent company, Nevada Copper Corp. (“**NCU**”). NCI is the parent company of the other companies in the Nevada Copper corporate group, being NC Farms LLC (“**NC Farms**”) and NC Ditch Company LLC (“**NC Ditch**”) (collectively with NCI, NCU, Lion Iron and 0607 BC, “**Nevada Copper**” or the “**Debtors**”).

2. In these capacities and prior roles with the Debtors I have been involved in, or worked with the Debtors’ other respective officers, executives, and senior management in connection with, all aspects of the Debtors’ business, as well as the Debtors’ efforts to address their current financial difficulties. In addition, I have extensive experience in the mining field, and have worked in various capacities with the Debtors and other companies in the field for over 28 years.

3. I, or members of the Debtors’ management team, review and work with the books and records of the Debtors, including their respective business plans, financial statements and projections, business analyses and reports, contracts and other legal documents, and similar items. Based upon that review and work, as well as my discussions with the Debtors’ management team, board members, investors, and legal and financial advisors, I have developed a familiarity with: (i) the Debtors’ books and records that have been maintained in the ordinary course of business under the control of the Debtors’ executives and senior management; (ii) the Debtors’ respective business and financial histories, and their current business and financial situations; and (iii) the financial and operational details of the Debtors’ business operations.

4. As a result of my roles, I am familiar with the Debtors’ day-to-day operations, business and financial affairs, and books and records, and I have personal knowledge of the matters deposed to in this affidavit, except where otherwise stated. Where I have relied on information received from others, I have stated the source of such information and I believe it to be true. In the preparation of this affidavit, I have consulted with the Debtors’ Canadian and U.S. legal counsel.

I have also reviewed the records, news releases, and public filings of the Debtors and have spoken with certain of the directors, officers and/or employees of the Debtors, as necessary to inform my knowledge of the matters deposed to in this affidavit.

5. On June 17, 2024, NCI was appointed by the Bankruptcy Court (defined below) as the foreign representative of itself and the other Debtors (in such capacity, the “**Foreign Representative**”) and authorized to seek recognition of the Debtors’ Chapter 11 Cases (defined below) in Canada by way of an Order Authorizing Nevada Copper, Inc. to Act as Foreign Representative of the Debtors (the “**Foreign Representative Order**”). A copy of the Foreign Representative Order is attached hereto as **Exhibit “A”**.

6. I swear this affidavit in support of the Foreign Representative’s application for certain relief for itself and the other Debtors under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

7. Specifically, the Foreign Representative seeks, among other things, the following relief:

- (a) an Initial Recognition Order (Foreign Main Proceeding), in substantially the form at Tab 3 of NCI’s application record:
  - (i) abridging and validating the time for service;
  - (ii) declaring that NCI is the “foreign representative” of the Debtors as defined in section 45 of the CCAA;
  - (iii) declaring that the centre of main interest for each of the Debtors is the United States of America and recognizing the Chapter 11 Cases (as defined below) as a “foreign main proceeding” under Part IV of the CCAA; and
  - (iv) granting a stay of proceedings in respect of the Debtors and ordering the other mandatory relief set out in section 48(1) of the CCAA; and
- (b) a Supplemental Order (Foreign Main Proceeding), in substantially the form at Tab 4 of NCI’s application record:
  - (i) recognizing and enforcing certain First Day Orders (as defined below) entered by the Bankruptcy Court;

- (ii) granting additional stays and protections in respect of the Debtors and their directors and officers consistent with the Model Supplemental Order in Ontario;
- (iii) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as information officer (in such capacity, the “**Information Officer**”) in these proceedings; and
- (iv) granting the DIP Charge and the Administration Charge (as respectively defined below) against the Debtors’ property in Canada.

8. All references in this affidavit to dollar amounts are expressed in U.S. dollars (“\$”), unless otherwise specified. Amounts expressed in Canadian dollars are indicated by “C\$.”

## I. OVERVIEW

9. NCI, the Foreign Representative, is a Nevada-based operating subsidiary that owns, develops and operates a mining development located approximately eight miles southeast of Yerington, Nevada called the Pumpkin Hollow project (the “**Project**”). The Project, which contains substantial mineral reserves and resources, including not only copper, but gold, silver, and iron magnetite, consists primarily of two development projects:

- (a) an underground mine and processing facility (the “**Underground Mine**”); and
- (b) an open-pit project (the “**Open Pit Development**”), that is in the pre-feasibility stage of development.

10. NCI’s parent, NCU, is a publicly traded, B.C.-incorporated, TSX-listed company whose material assets are its wholly-owned equity interest in NCI and unsecured intercompany loans payable by NCI. Each of the remaining Debtors other than NCU and NCI are dormant shell companies with no material assets.

11. The Debtors’ recent operational and financial challenges started in April 2022, when a primary ramp to planned ore stopes failed and required re-design and additional development to complete, delaying critical ore delivery and impacting operations at the Project. This work stoppage eliminated the Debtors’ only source of revenue, leading to an acute liquidity crisis. In October 2022, in response to these challenges, the Debtors developed a restart plan to resume

production at the Underground Mine and secured additional financing from their major stakeholders.

12. While the Debtors have made significant progress with their mine restart plan since that time and were eventually able to restart ore processing operations in October 2023, the Debtors have not yet been able to maintain continuous processing operations necessary to declare commercial production. This lack of production, in turn, has deprived NCI of operating revenue and has created a sizeable gap between the Debtors' available cash and their funding needs.

13. In late 2023, as the desire of its existing stakeholders to fund its cash needs began to wane, the Debtors decided to pursue a marketing and sale process for an investment in or sale transaction in respect of their business, which was led by Citigroup Global Capital Markets Inc. as further described below. While that marketing process resulted in some interest in the Debtors' business, the Debtors were ultimately unable to consummate a binding transaction that would address the Debtors' diminishing liquidity. In 2023, the Debtors generated approximately \$4.5 million in annual revenue.

14. On June 10, 2024 (the "**Petition Date**"), as a result of their strained liquidity and the unsuccessful marketing process, the Debtors commenced cases (the "**Chapter 11 Cases**") pursuant to chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") before the United States Bankruptcy Court for the District of Nevada (the "**Bankruptcy Court**") by filing voluntary petitions for relief pursuant to the Bankruptcy Code (collectively, the "Petitions"). Certified copies of the Petitions are attached hereto as **Exhibits "B" to "G"**.

15. A comprehensive overview of the Chapter 11 Cases and the Debtors' business is provided in my Omnibus Declaration Of Gregory J. Martin in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings (the "**First Day Declaration**"), which was filed in connection with the Chapter 11 Cases. The First Day Declaration is attached as **Exhibit "H"**. I hereby affirm and adopt the contents of the First Day Declaration in its entirety.

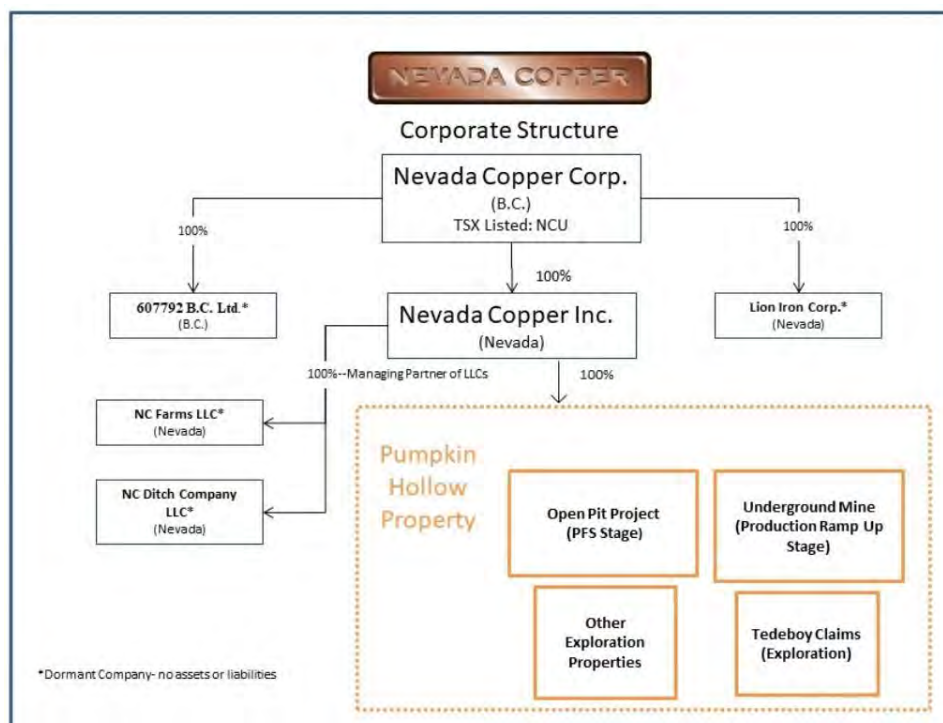
16. As discussed in the remainder of this affidavit, the Foreign Representative seeks recognition of the Chapter 11 Cases in Canada and additional related relief under Part IV of the CCAA. I believe that this relief will support the Debtors' efforts in the Chapter 11 Cases to find a

sustainable, long-term solution to our operational and financial challenges in a manner that maximizes value for their creditors, valued employees and other stakeholders. Due to the deep level of integration between NCU and the remaining Debtors, any solution to the Debtors' challenges in the Chapter 11 Cases will necessarily involve cooperation between the Canadian court and the Bankruptcy Court.

17. To the best of my knowledge, the Chapter 11 Proceedings are the only insolvency proceedings commenced to date with respect to the Debtors.

## II. CORPORATE STRUCTURE AND U.S. CENTRE OF MAIN INTEREST

18. The Debtors' corporate structure, and their inseverable connection to the United States, are summarized in this section. The Debtors' corporate structure is illustrated by the following organizational chart:



### (i) *Nevada Copper, Inc.*

19. NCI was initially incorporated in Nevada on February 1, 2006 under the name "Pumpkin Copper, Inc.". NCI's articles of incorporation were amended on February 29, 2008 to change its



name to “Nevada Copper, Inc.”. Its registered head office is located at 61 E. Pursel Lane, P.O. Box 1640, Yerington, Nevada. As noted, NCI owns and operates the Project.

20. Without limitation, NCI: (i) has substantially all of its assets in Nevada, and (ii) is not licensed or registered to conduct business in Canada, nor does it directly carry on any business in Canada.

**(ii) Nevada Copper Corp.**

21. NCU was initially incorporated under the *Business Corporations Act* (Yukon) on June 16, 1999 under the name “African Venture Corporation”. NCU’s articles of incorporation were amended on July 26, 1999, and November 16, 2006 to change its name to, respectively, “Astron Resources Corporation” and “Nevada Copper Corp.” NCU was continued into British Columbia under the *Business Corporations Act* (British Columbia) (the “**BCBCA**”) on November 16, 2006, at which time it adopted fresh articles. NCU’s registered office is located at 700 W Georgia St #2500, Vancouver, B.C.

22. NCU’s common shares are listed for trading on the Toronto Stock Exchange under the symbol “NCU.” As of the date of the Debtors’ recent public filing, NCU’s largest shareholder is Pala Investments Limited (“**Pala**”), which holds approximately 61.66% of NCU’s shares. Mercuria Energy Trading S.A. is believed to own approximately 17.24% of NCU’s shares, and management and directors own approximately 0.18%. The remainder of NCU’s common shares are held by other investors.

23. While NCU is a B.C.-incorporated company, it has no business operations or assets in British Columbia and does not and cannot operate separately from NCI’s mining business in Nevada; it is fundamentally inseverable from, and entirely dependent on, those mining operations. NCU’s deep connection to Nevada is illustrated by, among other things, the following:

- (a) NCU’s principal material asset is its wholly-owned equity interest in NCI, a Nevada-based company whose primary business is to own and operate the Project in Nevada;
- (b) NCU’s other material asset is in the form of intercompany loans payable by NCI, as described below;

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- (c) NCU does not have any independent business revenue streams or sources of income;
- (d) NCU has only three employees, one of whom is myself, and all of whom are located in Canada and provide management and accounting functions jointly for all the Debtors;
- (e) The Debtors do not have any physical office, assets, operations or material business activities in British Columbia;
- (f) only one member of NCU's key management team resides in Canada (that being me);
- (g) other than accounting and finance, NCU does not employ personnel for any key management functions that it would require if NCU were to operate on a standalone basis; NCU is not staffed to operate independently of NCI; and
- (h) only two of NCU's current five directors reside in Canada; of the remaining directors, two reside in the United States and one resides in South Africa.

**(iii) 0607792 B.C. Ltd.**

24. 0607 BC was incorporated under the BCBCA on May 26, 2000. It was dissolved on February 4, 2008, and subsequently restored under the BCBCA on June 22, 2010. NCU acquired 0607 BC pursuant to a reverse take-over transaction with the former shareholders of 0607 BC which was completed on August 15, 2006.

25. As with NCU, 0607 BC cannot operate independently from the Debtors' Nevada mining operations. It is currently a dormant shell company with no material assets or business in Canada (or elsewhere).

**(iv) Lion Iron Corp.**

26. Lion Iron was incorporated in Nevada on June 4, 2012. Its registered head office is located at 61 E. Pursel Lane, P.O. Box 1640, Yerington, Nevada. It is currently a dormant shell company with, among other things, no: (i) known assets or liabilities; (ii) employees; (iii) establishment or leased real property; or (iv) licenses to conduct business in Canada.

(v) *NC Farms LLC*

27. NC Farms was formed in the State of Nevada on March 13, 2014. Its registered head office is located at 61 E. Pursel Lane, P.O. Box 1640, Yerington, Nevada. It is currently a dormant shell company with, among other things, no: (i) known assets or liabilities; (ii) employees; (iii) establishment or leased real property; or (iv) licenses to conduct business in Canada.

(vi) *NC Ditch Company LLC*

28. NC Ditch was formed in the State of Nevada on April 8, 2014. Its registered head office is located at 61 E. Pursel Lane, P.O. Box 1640, Yerington, Nevada. It is currently a dormant shell company with, among other things, no: (i) known assets or liabilities; (ii) employees; (iii) establishment or leased real property; or (iv) licenses to conduct business in Canada.

### III. NEVADA MINING BUSINESS AND OPERATIONS

29. Nevada Copper is in the business of mining copper and other minerals and operating a processing plant that refines copper ore into copper concentrate. The mining operations are focused on the development of the Project, located approximately 90 kilometers southeast of Reno, Nevada. As noted, the Project consists of two development projects: (i) the Underground Mine—a constructed underground mine and processing facility; and (ii) the Open Pit Development—a pre-feasibility stage open pit project.

30. As disclosed in the NCU's Annual Information Form for the year ended December 31, 2023, the Underground Mine contains indicated copper mineral resources of 1.8 billion pounds. Based upon a technical report dated April 16, 2019, the Open Pit Development contains measured and indicated mineral resources of 5.0 billion pounds of copper. Both the Underground Mine and the Open Pit Development have exploration upside.

31. The Project is comprised of: (i) 37.6 square kilometres of land, including related surface and mineral rights, that is owned directly by the Debtors; (ii) 6.2 square kilometres of land, including surface and mineral rights, that is leased by the Debtors from RGGS Land & Minerals, Ltd., LP (the "**RGGS Lease**"); and (iii) unpatented claims owned by the Debtors on 54.6 square kilometres of federal lands surrounding the Project. Following investigation of surrounding land

in April 2019, the Debtors staked approximately 5,700 acres of federal land (the “**Tedeboy Area**”) situated to the northeast of the Underground Mine and the Open Pit Development, and adjacent to the rest of the Project. NCI has also acquired 295 unpatented lode mining claims in the Tedeboy Area, which shows significant surface mineralization.

**A. Underground Mine**

32. The first stage of the Project was the development of the Underground Mine, which commenced operations in December 2019. The Underground Mine is principally designed for “stope” mining—the process of extracting ore by drilling, blasting and extracting minerals from underground pockets of rock known as stopes.

33. The Underground Mine’s processing facility was designed and constructed to process approximately 5,000 tons per day of copper ore and produce a marketable concentrate targeted at 24% copper or greater. The plant consists of an ore storage facility, a semi-autogenous grinding mill, ball mill crusher and comminution circuit (which crushes the ore, reducing its particle size), rougher flotation, regrind circuit and cleaner flotation (which collectively extract the valuable minerals from the ore by suspending it in a “flotation” slurry fluid). Flotation concentrate is thickened, filtered and sent to a concentrate load-out stockpile for subsequent transport and shipping.

34. It is projected that the Underground Mine, if producing at full capacity, could produce an annual average of 60 million pounds of copper, 9,000 ounces of gold, and 173,000 ounces of silver over its first five years of operation, and an annual average of 50 million pounds of copper, 8,000 ounces of gold, and 150,000 ounces of silver over the life of the mine.

35. In 2020, the Underground Mine produced 5,532 tons of copper concentrate at an average grade of 24%, and in 2021, it produced 7,271 tons of copper concentrate at an average grade of 23%. The Underground Mine did not produce material amounts of gold or silver during 2020 and 2021.

36. At the beginning of the third quarter of 2022, due to geotechnical challenges that restricted access to the Underground Mine, the Debtors had to temporarily suspend mining operations in the Underground Mine, which in turn, eliminated the Debtors’ primary source of operating income at

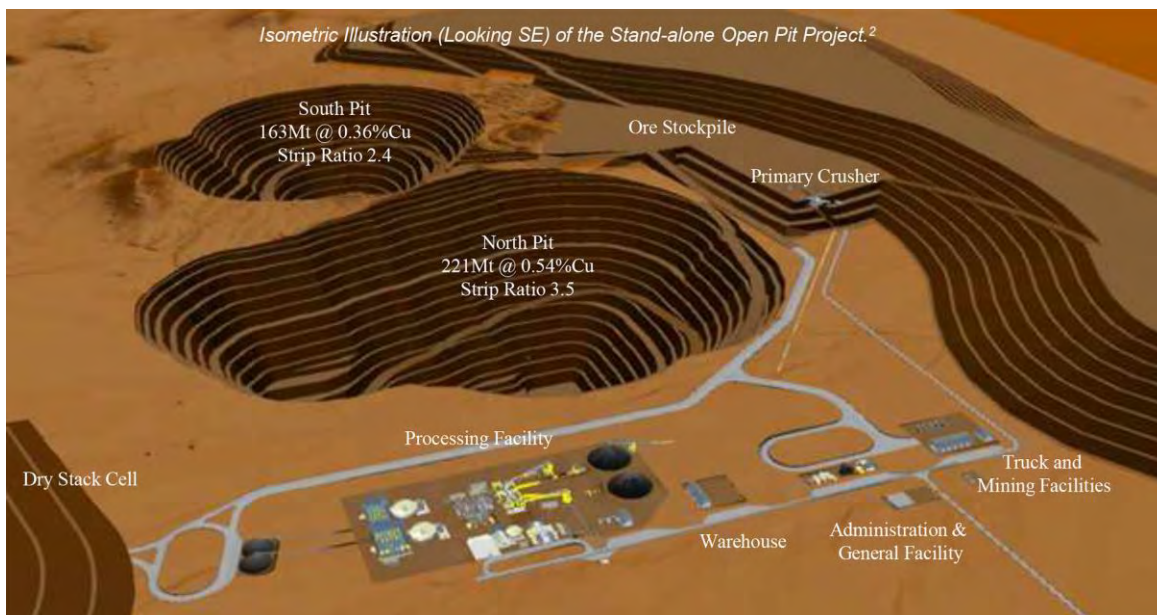
that time. The Debtors ultimately were able to negotiate and execute definitive agreements with key stakeholders on October 28, 2022, to provide a financing package that enabled the Debtors to restart and commence ramp up operations at the Underground Mine, which was supplemented in May 2023 by additional financing agreements with the Debtors' key stakeholders (the "**Restart Financing Packages**").

37. As further described below, the Restart Financing Packages provided much-needed liquidity to the Debtors that enabled the Debtors to resume milling operations at the Underground Mine in the fourth quarter of 2023. Although milling operations at the Underground Mine resumed, production was occasionally halted to fix commissioning issues, particularly with respect to filter press complications, and to stabilize operations. The stoppages prevented the Debtors from maintaining continuous processing operations needed for commercial production and resulted in lower-than-expected production and revenues. In total in 2023, the Underground Mine produced approximately 3,274 dry short tons ("**dst**") of copper concentrate at an average copper grade of 22%, and in the first quarter of 2024, it produced approximately 2,746 dst of copper concentrate at an average copper grade of 20%. The Underground Mine did not produce material amounts of gold or silver in 2023 or the first quarter of 2024.

38. With limited financial resources, significant capital and operating costs, and substantial debt from construction of the Underground Mine and the Restart Financing Packages, the Debtors began exploring a sale process in the fall of 2023 (the "**Sale Process**"). The Sale Process identified several potential interested purchasers. Although the Debtors were able to get to a non-binding term sheet with one prospective purchaser and then an indicative term sheet with another party, the Debtors ultimately were not able to enter into definitive agreements with the prospective purchasers (the "**Primary Prospective Purchasers**"). While the Debtors were engaged in the Sale Process, they experienced significant liquidity constraints and required additional funding from certain of their stakeholders. As discussed in greater detail below, due to the liquidity constraints, after the Debtors' Sale Process and negotiations with the Primary Prospective Purchasers proved unsuccessful, the Debtors curtailed certain activities related to their ongoing operations and pursued a strategy that focused on maintaining limited operations and preserving their assets.

## B. Open Pit Development

39. The Open Pit Development is an open-pit mining project, which is permitted and at the pre-feasibility study stage. It is located approximately 4 kilometres west of the Underground Mine and includes two near surface deposits and areas of potential expansion both inside and outside of the projected walls of the pits. A rendering of the Open Pit Development's anticipated layout is shown below:



40. The Open Pit Development pre-feasibility study anticipated the mine being built in two phases: (i) Phase I, which would process 37,000 tons of ore per day; and (ii) Phase II, which would expand the processing capacity to 70,000 tons of ore per day.

41. Once completed, the Open Pit Development processing facility would liberate, recover and upgrade copper from the extracted ores. The facility layout consists of a crushing station and overland conveyor, a coarse ore stockpile and reclaim, comminution circuits and flotation circuits. Flotation concentrate will be thickened, filtered and stored in concentrate containers for subsequent transport and shipping. The completed processing facility if constructed in accordance with the pre-feasibility study would produce a marketable concentrate targeted at 25.5% copper or greater. The Open Pit Development has approximately 772 billion pounds (386 Mst) of mineral reserves with an average copper equivalent grade of approximately 0.50%.

#### IV. FINANCIAL POSITION

##### A. Financial Statements

42. A copy of the Debtors' consolidated audited financial statements for the fiscal year ended December 31, 2023 and December 31, 2022, are attached as **Exhibit "I"**. Additionally, a copy of the Debtors' consolidated unaudited interim Q1 financial statements for the three months ended March 31, 2024 (the "**Debtors' Balance Sheet**") is attached as **Exhibit "J"**.

##### B. Assets

43. As described in the Debtors' Balance Sheet, as at March 31, 2024, the Debtors' assets had an unaudited book value of approximately \$726,670,000, which consisted of the following:

Assets	Approximate (\$)
<b>Current assets</b>	
Cash and cash equivalents	287,000
Accounts receivable	288,000
Prepaid expenses and advance royalty	8,290,000
Inventory	8,806,000
<b>Non-current assets</b>	
Restricted cash	380,000
Mineral properties, plant and equipment	708,619,000
<b><u>Total</u></b>	<b><u>726,670,000</u></b>

##### C. Liabilities

44. As described in the Debtors' Balance Sheet, as at March 31, 2024, the Debtors' liabilities had an unaudited book value of approximately \$493,069,000, which consisted of the following:

- 13 -

<b>Liabilities</b>	<b>Approximate (\$)</b>
<b>Current liabilities</b>	
Accounts payable and accrued liabilities	28,092,000
Related party payable	2,482,000
Share-based compensation liabilities	1,334,000
Warranty derivative	905,000
Current portion of stream and royalty deferral	7,580,000
Working capital facility	4,127,000
Short-term debt	66,013,000
Current portion of long-term debt	22,495,000
<b>Non-current liabilities</b>	
Share based compensation liabilities	187,000
Stream and royalty deferral	184,641,000
Long-term debt	169,882,000
Asset retirement obligation	5,331,000
<b><u>Total</u></b>	<b><u>493,069,000</u></b>

## V. CAPITAL STRUCTURE AND INDEBTEDNESS

45. The description of the Debtors' indebtedness in this affidavit is provided for informational purposes only and is qualified in its entirety by reference to the documents setting forth the specific terms of such obligations. Nothing herein is intended, nor should anything herein be deemed, to be an admission as to the validity of any security interest or other rights purportedly granted under such documents and agreements.



## A. Secured Obligations

46. The Debtors' secured debt obligations are summarized in the following table and described in the remainder of this subsection:

Secured Debt Obligations			
Facility	Obligors	Priority	Amount Outstanding <sup>1</sup>
Second A&R Facility	Debtors Pala (Tranche B Guarantor)	1 <sup>st</sup> lien in Project Collateral; 2 <sup>nd</sup> Lien in APA Collateral	\$188 million
Advance Payment Facility	NCI	1 <sup>st</sup> lien in APA Collateral; 3 <sup>rd</sup> lien in Project Collateral	\$3 million
Stream Agreement Deposits	Debtors	2 <sup>nd</sup> lien in Project Collateral; 3 <sup>rd</sup> lien in APA Collateral	\$78.2 million
Third A&R Loan Facility	Debtors	4 <sup>th</sup> lien in Project Collateral and APA Collateral	\$10 million
Total			\$279.2 million <sup>2</sup>

### (i) *Second A&R Credit Agreement*

47. On May 6, 2019, NCI, as borrower, entered into a credit agreement (the “**Senior Secured Credit Agreement**”) with KfW IPEX-Bank GmbH (“**KfW**”) as sole lead arranger and UFK Agent, KfW as administrative agent, and the initial senior lenders party thereto (the “**Initial Senior Lenders**”), pursuant to which the Initial Senior Lenders funded \$115 million to NCI under what would eventually become the first tranche (the “**Tranche A Loans**”) of the Senior Secured Credit Agreement. The Senior Secured Credit Agreement was amended and restated on December 8,

<sup>1</sup> The approximate total amount in this chart consists of the aggregate principal amount as of the Petition Date (including capitalized interest, where applicable).

<sup>2</sup> Excluded from this chart are certain secured obligations to Trisura Insurance Company to secure potential reimbursement obligations under surety bonds, as explained below in more detail.

2020 (as amended on December 22, 2020, and on October 11, 2021, the “**A&R Senior Secured Credit Agreement**”), at which time the Initial Senior Lenders agreed to commit an additional \$15 million (the “**Tranche B Loans**”).

48. In connection with the Restart Financing Packages, the A&R Senior Secured Credit Agreement was amended and restated for a second time on October 28, 2022 (as amended, restated, supplemented, and modified from time to time, the “**Second A&R Credit Agreement**”) to provide for a new tranche of up to \$15 million (the “**Tranche A-2 Loans**”), funded by Pala, Triple Flag International Ltd. (“**Triple Flag**”), and Mercuria Investments US, Inc. (“**Mercuria**”).

49. The Debtors ultimately required additional financing to restart processing operations at the Underground Mine. In order to provide the necessary financing, the Tranche A-2 Lenders (defined below) agreed to support the expansion of the Tranche A-2 Loans by an additional \$10 million, subject to the Debtors obtaining the necessary consents from its other secured lenders. On September 8, 2023, the Debtors obtained the necessary consents, and Pala, Mercuria, and TF R&S Canada Ltd. (“**TF Canada**”, and together with Pala, Mercuria, and Triple Flag, the “**Tranche A-2 Lenders**”) funded an additional \$10 million of Tranche A-2 Loans on a pro rata basis. The Tranche A-2 Lenders agreed to further support the expansion of the Tranche A-2 Loans by an additional \$6 million, subject to the Debtors again obtaining the necessary consents from its other secured lenders. Such consents were obtained in late May 2024, permitting the Debtors to enter into an amendment to the Second A&R Credit Agreement dated May 29, 2024, pursuant to which certain advances funded by each of TF Canada and Pala, in each case, in an aggregate principal amount of \$2.775 million, were incorporated into the principal amount of the Tranche A-2 Loans.

50. The Tranche A Loans bear interest at a rate of SOFR plus 2.10% per annum, the Tranche B Loans bear interest at a rate of SOFR plus 5.40% per annum, and the Tranche A-2 Loans bear interest at a rate of SOFR plus 5% per annum. Pursuant to Amendment Agreement No. 2 to the Second A&R Credit Agreement, dated March 15, 2023, all interest was capitalized on: (i) the Tranche A Loan and Tranche B Loan for the interest payments scheduled for July 31, 2022, January 31, 2023, July 31, 2023, and January 31, 2024; and (ii) each interest payment date for the Tranche A-2 Loans. The Tranche A Loans and Tranche A-2 Loans have a scheduled maturity date of July 31, 2029, and the Tranche B Loans have a scheduled maturity date of July 31, 2025.

51. The obligations owing to the Initial Senior Lenders and Tranche A-2 Lenders (together, the “**Senior Lenders**”) are secured by a first-lien security interest in substantially all of the property and assets of the Debtors, except for the APA Collateral (as defined below), pursuant to that certain Amended and Restated Collateral Agency, Accounts and Security Agreement dated October 28, 2022. This first-lien security package includes all of NCI’s property, assets, undertakings, approvals, licenses, permits, and rights in and relating to the Project, including the real property, water and mineral rights, accounts, cash, contracts, proceeds, and books and records, all pledges of the equity interests of NCI and each of 0607 BC, Lion Iron, NC Farms, and NC Ditch (collectively, the “**Subsidiary Guarantors**”), and security agreements on all present and after-acquired property of all of the Debtors (collectively, the “**Project Collateral**”). In addition, the obligations owing to the Senior Lenders under the Second A&R Credit Agreement are secured by a second-lien security interest in all marketable metal-bearing material that is extracted or otherwise recovered from the Project (the “**APA Collateral**”).

52. The obligations of NCI under the Second A&R Credit Agreement and related documents are guaranteed by NCU and the Subsidiary Guarantors pursuant to a Completion Agreement, dated May 22, 2019. NCI’s obligations with respect to the Tranche B Loans are guaranteed by Pala, under a separate guarantee agreement, dated December 8, 2020. As of the Petition Date, the outstanding amount, including accrued and unpaid interest, under the Second A&R Credit Agreement is approximately \$188 million.

*(ii) Advance Payment Agreement*

53. On May 6, 2019, NCI, as seller, entered into an advance payment agreement (as subsequently amended, the “**Advance Payment Agreement**”) with Concord Resources Limited (“**Concord**”). Pursuant to the Advance Payment Agreement and offtake agreements entered into in connection therewith, Concord agreed to make advance payments for the Material (as defined below) in the form of a revolving advance payment facility in the amount of up to \$35 million (the “**Advance Payment Facility**”), and NCI agreed to sell and deliver to Concord flotation copper concentrates produced at and originating from the Project (the “**Material**”). Concord also agreed (as NCI’s agent) to sell and deliver copper concentrates to certain other parties (Aurubis AG and Aurubis Bulgaria AD) who had contracted for copper deliveries. On December 8, 2020, the parties

to the Advance Payment Agreement executed a deed of amendment, by which, among other things, they increased the amount of the Advance Payment Facility to up to \$40 million.

54. Through the Advance Payment Facility, Concord advanced amounts, on a monthly basis, that were calculated to approximate the value of the projected copper concentrate deliveries for the period four months from the advance. The Advance Payment Facility contemplates that, in the ordinary course, amounts thereunder would be repaid through copper concentrate deliveries. On a monthly basis, the Advance Payment Facility contains a “true-up” mechanism that compares the amounts advanced with respect to the anticipated deliveries for such month to the value of the amounts actually delivered for the month. If the value of deliveries in a particular month ultimately is lower than the amount advanced based on the anticipated deliveries for such month, NCI would be obligated to make a cash payment equal to the difference between the value of the advanced amount and the value of the actual deliveries. Payments due under the Advance Payment Facility are secured by a first-lien security interest in the APA Collateral and a third-lien security interest in the Project Collateral.

55. As of the Petition Date, the outstanding amount, including accrued and unpaid interest, under the Advance Payment Agreement is approximately \$3 million.

**(iii) Stream Agreement**

56. The Debtors are party to a metal purchase and sale agreement, initially dated as of December 21, 2017, which agreement was subsequently amended (as amended, the “**Stream Agreement**”), with Triple Flag, whereby NCI agreed to sell refined gold and refined silver mined from the Underground Mine to Triple Flag. Pursuant to the terms of the Stream Agreement, NCI is obliged to deliver to Triple Flag 97.5% of the gold and silver production from the Underground Mine, calculated based on a fixed ratio of 162.5 ounces of gold and 3,131.0 ounces of silver for each one million pounds of copper in concentrate produced. The Stream Agreement has an initial term of 40 years, with automatic extension for 10-year periods thereafter.

57. Upon its entry into the Stream Agreement, Triple Flag paid NCI a deposit of \$70 million, which, pursuant to an amendment dated March 27, 2020 (the “**2020 Triple Flag Amendment**”), was increased by \$10 million (the “**Deposit**”). Deliveries made to Triple Flag under the Stream Agreement will be credited until the Deposit is depleted, at which point Triple Flag will be required

to make additional payments for the refined gold and refined silver that are delivered under the Stream Agreement.

58. As security for NCI's obligations under the Stream Agreement, Triple Flag has a second-lien security interest in the Project Collateral and a third-lien security interest in the APA Collateral. Since inception, the Debtors have made approximately \$2.68 million worth of deliveries under the Stream Agreement, and approximately \$78.2 million of the Deposit remains outstanding as of the Petition Date. NCI's obligations under the Stream Agreement are guaranteed by NCU and the Subsidiary Guarantors.

59. In connection with the 2020 Triple Flag Amendment, on March 27, 2020, NCI and an affiliate of Triple Flag, Triple Flag USA Royalties Ltd. ("**TF USA**"), entered into a new royalty agreement (the "**Open Pit Royalty Agreement**"). Under the Open Pit Royalty Agreement, TF USA made a payment of \$17 million to NCI in exchange for a 0.7% net smelter return royalty in respect of the Open Pit Development. Under a separate new royalty agreement, NCI agreed to a 2% net smelter return royalty in respect of the Tedeboy Area, in exchange for a payment of \$3 million by TF USA to NCI, and an additional contingent payment of \$5 million to be made upon the commencement of commercial production in respect of the Tedeboy Area (the "**Conditional Tedeboy Payment**").

60. On October 28, 2022, the parties amended the Open Pit Royalty Agreement (the "**Amended Open Pit Royalty Agreement**") to increase the existing net smelter return royalty from 0.7% to 2% for a purchase price of approximately \$26.2 million. The Amended Open Pit Royalty Agreement allowed NCI to buy back 100% of the increased royalty for \$33 million until the earlier of: (i) October 28, 2024; or (ii) a change of control of NCI or NCU. Pursuant to an amendment executed on February 29, 2024, the buyback period was extended to October 28, 2025, with certain escalating monthly increases to the existing buyback amount up to a maximum of \$38.1 million if the buyback occurs after October 28, 2024. In addition, the amendment provides that if the buyback does not occur by October 28, 2024, then TF USA is no longer required to make the Conditional Tedeboy Payment.]

(iv) ***Third A&R Loan Facility***

61. On December 21, 2023, as part of the Restart Financing Packages, NCU, NCI, the Subsidiary Guarantors, and Pala executed the Third Amended and Restated Loan Agreement (the “**Third A&R Loan Agreement**”) to add approximately \$5.6 million advanced by Pala pursuant to certain promissory notes to the total amount under the prior existing loan agreement. The NCU is the obligor under the Third A&R Pala Loan Agreement, and the obligations under the Third Pala A&R Loan Agreement are guaranteed by NCI and the Subsidiary Guarantors.

62. The loan facility under the Third A&R Loan Agreement (the “**Third A&R Loan Facility**”) bears interest at SOFR plus 9% per annum and could be paid in NCU common stock or paid in kind at Pala’s option. The obligations under the Third A&R Loan Facility are secured by a fourth lien security interest that is governed in accordance with the terms of the Pala Fourth Lien Intercreditor Agreement (as defined below).

63. The maturity date under the Third A&R Loan Agreement is January 31, 2026. As of the Petition Date, the outstanding principal amount, together with accrued and unpaid interest owed under the Third A&R Loan Agreement is approximately \$10 million.

(v) ***Intercreditor Agreements***

64. The relationship between Triple Flag’s and KfW’s respective security interests is governed by that certain intercreditor agreement, dated as of May 22, 2019, among KfW, as administrative agent and collateral agent, Triple Flag, and the Debtors (the “**KfW/Triple Flag Intercreditor Agreement**”).

65. The relationship between Concord’s security interest and the security interests of KfW and Triple Flag is governed by that certain working capital facility intercreditor agreement, dated as of May 22, 2019, among KfW, as administrative agent and senior collateral agent, Triple Flag, Concord, and NCI (the “**APA Intercreditor Agreement**”).

66. The relationship between Pala’s fourth lien security interest and the security interests of KfW, Triple Flag, and Concord, is governed by that certain intercreditor agreement, dated as of October 28, 2022, among KfW, Triple Flag, Concord and the Debtors (the “**Pala Fourth Lien**”).

**Intercreditor Agreement**”, and, collectively with the KfW/Triple Flag Intercreditor Agreement and APA Intercreditor Agreement, the “**Intercreditor Agreements**”).

(vi) ***Trisura Surety Bonds***

67. Although not funded indebtedness, NCU has granted a fourth lien on its assets to secure potential reimbursement obligations that may arise in favor of Trisura Insurance Company (“**Trisura**”), with respect to surety bonds securing certain obligations of NCI. The Debtors have two outstanding surety bonds (the “**Surety Bonds**”) provided by Trisura. The Surety Bonds have been issued in favor of: (i) Sierra Pacific Power Company d/b/a NV Energy in connection with the High Voltage Distribution Agreement, dated January 7, 2019, as amended on February 21, 2019 (the “**NV Energy Bond**”); and (ii) Nevada Division of Environmental Protection to secure future mine reclamation requirements (the “**Reclamation Bond**”).

68. The NV Energy Bond and the Reclamation Bond expire on June 25, 2024. The Surety Bonds generally are renewed on an annual basis, and the Debtors pay an annual premium to Trisura for the Surety Bonds, which as of the last renewal totaled \$321,000 in the aggregate. Pursuant to an indemnity agreement and a security agreement between Trisura and NCU, dated as of June 28, 2021, in the event that a Surety Bond were to be called, it is expected that Trisura would seek, under applicable surety law, to exercise its subrogation rights against NCI, which in some instances could be secured by mechanic’s liens. The Debtors’ obligation to reimburse the surety also is secured by a fourth lien (behind KfW, Triple Flag, and Concord) on substantially all of NCU’s personal property, including its shares in NCI.

**B. Unsecured Funded Debt Obligations**

69. NCU’s and NCI’s unsecured debt obligations are summarized in the following table and described in the remainder of this subsection.

<b>Unsecured Funded Debt Obligations</b>		
Facility	Obligor	Amount Outstanding
Unsecured Loans	NCU	\$78.3 million
Intercompany Loans	NCI	\$148.3 million
Total		\$226.6 million <sup>3</sup>

(i) *The Unsecured Loans*

70. On May 30, 2023, NCU entered into a deferred funding agreement with Pala and Mercuria (the “**Deferred Funding Agreement**”) pursuant to which Pala agreed to advance \$15 million and Mercuria agreed to advance \$10 million to NCU upon NCU meeting certain terms and conditions set forth therein. In the third quarter of 2023, NCU met the conditions for funding under the Deferred Funding Agreement and subsequently drew down the \$25 million in order to finance the construction, ramp up and working capital requirements of the Underground Mine. To fund additional cash requirements, on November 13, 2023, Pala and NCU entered into an arrangement pursuant to which Pala advanced to NCU an additional \$15 million (the “**Deferred Funding Arrangement**”).

71. On December 21, 2023, NCU entered into two separate unsecured loan agreements with Pala (the “**Pala Unsecured Loan Agreement**”) and Mercuria (the “**Mercuria Unsecured Loan Agreement**” and, together with the Pala Unsecured Loan Agreement, the “**Unsecured Loan Agreements**”) with respect to the amounts previously funded under the Deferred Funding Agreement and the Deferred Funding Arrangement. The Unsecured Loan Agreements are on substantially similar terms as the Third A&R Pala Loan Agreement, except that the loans (each, an “**Unsecured Loan**”) pursuant to the Unsecured Loan Agreements are not secured, are not guaranteed by the Subsidiary Guarantors, and have a maturity date of December 21, 2024. In connection with the Unsecured Loans, NCU issued 280,044,832 and 95,122,130 NCU common stock warrants to Pala and Mercuria, respectively. On exercise of these warrants, the exercise price

<sup>3</sup> The approximate total amount in this chart consists of the aggregate principal amount as of the Petition Date (including capitalized interest, where applicable).



would be payable by way of deemed repayment and set-off of outstanding amounts under the applicable Unsecured Loan.

72. Under the terms of the Unsecured Loan Agreements, NCU had the ability to request additional advances, which Pala and Mercuria could elect to fund to provide in their discretion (the “**Additional Unsecured Advances**”). From December 29, 2023, through the Petition Date, Pala provided NCU with a total of fourteen Additional Unsecured Advances.

73. As of the Petition Date, the total amount owed, including outstanding principal and accrued interest, is approximately \$56.7 million under the Pala Unsecured Loan Agreement and approximately \$10.3 million under the Mercuria Unsecured Loan Agreement. The interest rate for the Unsecured Loans is SOFR plus 9% per annum, provided that with respect to the portion of the Pala Unsecured Loan that was advanced under the Deferred Funding Arrangement and with respect to Additional Unsecured Advances funded by Pala, the interest rate is SOFR plus 10% per annum. Pursuant to the Pala Unsecured Loan Agreement, NCU also agreed to pay a facility fee equivalent to 5% of the principal amount funded under the Deferred Funding Arrangement and each Additional Unsecured Advance, which is paid in kind on the date of each Additional Unsecured Advance.

74. In addition, in April and May of 2024, Pala provided NCI with a total of approximately \$5.3 million in unsecured funding through a series of advances and Triple Flag contributed an additional \$4.9 million in unsecured funding. Both of those were memorialized in separate unsecured promissory notes prior to the commencement of the Chapter 11 Cases.

75. Finally, in relation to entering into an exclusivity agreement as part of the Sale Process, as described in more detail below, NCU issued promissory notes to parties connected with the Primary Prospective Purchasers (each, a “**Potential Purchaser Finance Parties**”) in the principal amount of \$500,000 each (each, an “**Investor Promissory Note**” and, together, the “**Investor Promissory Notes**”). Interest on each Investor Promissory Note was fixed at \$9,250 if the Investor Promissory Note was paid in full within 45 days of its issuance (the “**Investor Note Maturity Date**”), or 15% per annum if not paid in full by the Investor Note Maturity Date. The obligations under the Investor Promissory Notes are guaranteed by Pala pursuant to two separate guaranty agreements between Pala and each Potential Purchaser Finance Parties, solely to the extent Pala

receives any cash payments from NCI under the Tranche A-2 Loans. As of the Petition Date, the aggregate outstanding principal amount, together with accrued and unpaid interest owed under the Investor Promissory Notes is approximately \$1.0 million.

(ii) ***Intercompany Loans***

76. As of the Petition Date, there is approximately \$148.3 million (principal) due to NCU from NCI under documented intercompany loans from NCU to NCI (the “**Intercompany Loans**”). The Intercompany Loans comprise: (i) an intercompany loan from NCU to NCI in the aggregate principal amount of \$85 million, pursuant to the intercompany loan agreement dated May 31, 2019 (as amended, “**NCU Loan I**”), and (ii) an intercompany loan from NCU to NCI in the aggregate principal amount of \$30 million, pursuant to an intercompany loan agreement dated December 31, 2010 (as amended, “**NCU Loan II**”); and (iii) in the first quarter of 2024, a loan from NCU to NCI in the aggregate principal amount of approximately \$33.3 million. Both NCU Loan I and II have a maturity date of December 31, 2025, but NCU I accrues interest at a rate of LIBOR plus 7.25%, to be paid on the maturity date and NCU Loan II accrues interest at a rate of 10% per annum.

## VI. FINANCIAL DIFFICULTIES

### A. 2022 Ramp Re-design and Ramp-Up Efforts

77. In the third quarter of 2022, certain geotechnical challenges in the Debtors’ mining area caused the suspension of mining operations. A previously unidentified weak rock structure was discovered in the main ramp to the East South mining area, which required drilling and geotechnical mitigation work to reinforce the area, and created operational and geotechnical challenges, which further delayed the resumption of stope mining in the Underground Mine.

78. However, with much-needed liquidity provided by the Restart Financing Packages, the Debtors immediately began a three-phase restart process.

- (a) Phase I. Phase I involved certain critical underground capital projects and the development of the Debtors’ workforce to restart operations. As part of that process, the Debtors engaged a leading mining construction company, who began

working in January 2023 on critical underground capital projects including the completion of the ventilation shaft construction and installation of larger fans, construction and installation of an underground crusher and the installation of a dewatering system.

- (b) Phase II. Phase II of the restart process involved resuming underground lateral development and establishing developed stope inventory. As part of this phase, the Debtors entered into a 24-month 66,000-foot unit rate lateral development contract with Small Mines Development (“**SMD**”), a U.S. based underground development contractor, to ramp up lateral development.
- (c) Phase III. Phase III involved restarting processing operations and concentrate sales. The Debtors were able to restart processing operations in October 2023; however, processing operations were periodically paused to address commissioning complications, particularly in respect of the high-pressure tailing filtration systems, and to stabilize operating conditions.

79. As a result of the periodic pausing of operations, the Debtors could not maintain the continuous processing operations necessary to declare commercial production in the fourth quarter of 2023, as planned. The operational challenges with the process plant continued into the first half of 2024 and, with limited financial resources and mounting expenditures, the Debtors curtailed many of their ongoing operations in June 2024 and pursued a strategy that focused primarily on maintaining and preserving their assets as they continue to pursue a sale process. In making this shift, the Debtors determined that a reduction in the number of employees in its workforce is necessary to operate within the constraints of the amount of financing available until a new owner can recapitalize their business. To ensure compliance with laws that may be or may become applicable to this process, and to facilitate the transition of affected employees, the Debtors issued advance notice to 120 affected employees at least 60-days before termination of employment (such noticed employees, the “**Affected Employees**”). During this notice period, certain of the Affected Employees may be instructed to report to work onsite or remotely for a portion of the notice period, and the remainder will be instructed to stay home. The Affected Employees are eligible to be paid during the notice period, regardless of whether they report to work or are instructed to remain home.

80. The Debtors may ultimately conclude that they need the services of some or all Affected Employees depending on the outcome of their Sale Process.

**B. Pre-Filing Marketing and Sale Process**

81. The slower-than-planned ramp up of the Underground Mine deprived NCI of operating revenue and created a sizeable gap between the Debtors' available cash and their funding needs. As the desire of its existing stakeholders to continue to fund its cash needs began to wane, the Debtors ultimately decided to pursue a marketing and sale process for their business.

82. On October 17, 2023, the Debtors engaged Citigroup Global Markets Inc. and commenced the Sale Process. As part of the Sale Process, the Debtors contacted over 30 parties, and ultimately received four proposals from potential purchasers interested in acquiring substantially all or a portion of the Debtors' business.

83. Ultimately, the Debtors could not agree to binding terms with any party that would allow the Debtors to consummate a sale that would close on the timeline required for the Debtors to meet their funding needs.

84. In the absence of a sale agreement on a viable timeline, and diminishing financial support from its lenders, the Debtors determined it was necessary to file the Chapter 11 Cases to provide additional time to continue pursuing a sale process under the protections provided by the Bankruptcy Code.

**VII. CHAPTER 11 CASES**

85. In light of the unsuccessful Sale Process, and in order to address the Debtors' acute liquidity crisis, the Debtors sought bankruptcy protection and obtained a stay of proceedings under Chapter 11 of the Bankruptcy Code before the Bankruptcy Court.

86. A description of the intended components and objectives in the Chapter 11 Cases is set out in more detail in the First Day Declaration.

**A. Stay and First Day Orders**

87. By operation of the Bankruptcy Code, the Debtors obtained the benefit of a stay of proceedings upon filing the voluntary Petitions with the Bankruptcy Court on June 10, 2024. A stay of proceedings in Canada with respect to the Debtors is essential to protect the efforts of the Debtors to proceed with the Chapter 11 Cases.

88. NCI is seeking recognition for the interim and/or final orders of the Bankruptcy Court (the “**First Day Orders**”) in respect of the following first day motions (collectively, the “**First Day Motions**”):

- (a) Debtors’ Motion to Authorize Nevada Copper Inc., to Act as Foreign Representative of the Debtors;
- (b) Motion for Entry of an Order Directing Joint Administration of Debtors' Related Chapter 11 Cases Under Federal Rule of Bankruptcy Procedure 1015(b) and Local Rule of Bankruptcy Practice 1015;
- (c) Debtors’ Motion for an Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions, (IV) Use Their Existing Business Forms and (V) Granting Related Relief;
- (d) Debtors’ Motion for Entry of an Interim and Final Orders (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief;
- (e) Debtors’ Motion for Entry of an Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries and Other Accrued Compensation (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts That Were Awarded Under the Debtors’ 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing; and

- (f) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief.

89. Copies of the First Day Motions are attached as **Exhibits “K” to “P”** of this affidavit. The First Day Motions are described in detail in the First Day Declaration.

90. The Bankruptcy Court entered the following First Day Orders, which correspond to the First Day Motions between June 14 - 18, 2024:

- (a) Order Authorizing Nevada Copper, Inc., to Act as Foreign Representative of the Debtors;
- (b) Order Authorizing Joint Administration of Chapter 11 Cases;
- (c) Interim Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions and (IV) Use Their Existing Business Forms;
- (d) Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief;
- (e) Interim Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts That Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing; and
- (f) Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority

Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief (the “**Interim DIP Order**”).

91. Copies of the First Day Orders as they were entered by the Bankruptcy Court are attached as **Exhibits “Q” to “V”** of this affidavit.

## **B. DIP Credit Agreement**

92. In order to provide the Debtors with sufficient liquidity to fund their day-to-day operations and professional costs during the Chapter 11 Cases and these Part IV recognition proceedings, the Debtors entered into a debtor-in-possession financing agreement (the “**DIP Credit Agreement**”) with two affiliates of Elliott Investment Management L.P.<sup>4</sup> (together, the “**DIP Lender**”) on June 9, 2024. A copy of the DIP Credit Agreement is attached as **Exhibit “W”**.

93. The DIP Lender and the Debtors agreed on the principal terms and conditions of a senior secured superpriority debtor-in-possession term loan in the aggregate principal amount of \$60 million (the “**DIP Facility**”), comprising an initial new money term loan in the aggregate principal amount of \$20 million, and, subject to entry of a final order approving the DIP Facility, a new money delayed-draw term loan in the aggregate principal amount of \$40 million.<sup>5</sup> The DIP Facility is secured by all of the Debtors’ assets except for (i) the APA Collateral, provided that upon the repayment of all obligations under the Advance Payment Agreement, the DIP Facility shall automatically receive a first-priority lien on all collateral that currently constitutes APA Collateral; and (ii) pending entry of a final order by the Bankruptcy Court, liens on the proceeds of avoidance actions.

94. The Debtors require access to borrowings under the DIP Facility to fund the costs of administering the insolvency proceedings, near-term working capital needs, and ongoing business

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<sup>4</sup> Elliott Investments Management L.P. is an affiliate of TF Canada.

<sup>5</sup> A description of the terms of the DIP Facility and the facts and circumstances leading to entry of the DIP Facility can be found in the Declaration of Zul Jamal in support of the Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief (the “**DIP Declaration**”) at **Exhibit “X”**.

operations. Specifically, based on the Debtors' forecasts, the Debtors anticipate that they will be unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover the projected restructuring costs of the insolvency proceedings without access to the DIP Facility. The DIP Facility will also allow for the Debtors to continue a sale process and facilitate obtaining the highest and best bid. In addition, the DIP Charge is subordinate to the "Carve-Out" in favour of professionals retained in the Chapter 11 Cases, as set forth in the Interim DIP Order.

95. As part of the DIP financing, the DIP Lender requires a charge over the Debtors' assets, property, and undertakings in order to secure the DIP Facility (the "**DIP Lender's Charge**" or "**DIP Charge**"). Therefore, the DIP Lender will be entitled to the benefit of a charge on the property in Canada. The DIP Lender's Charge will be consistent with the liens and charges created by the Interim DIP Order, which was granted on June 14, 2024. As such, the DIP Charge provides a superpriority charge on the Canadian Collateral in favor of the DIP Lender, as outlined under the Interim DIP Order. The DIP Charge will have the priorities as set out in the proposed Supplemental Recognition Order, attached as Tab 4 to the Application Record.

96. The DIP Credit Agreement establishes case milestones to ensure that the insolvency proceedings proceed at an appropriate and efficient pace, culminating in the consummation of a sale of the Debtors' business within four months. The key milestones are as follows:

Date	Proposed Milestone
No later than five business days following the Petition Date	Entry of Interim DIP Order
No later than 14 days following the entry of the interim DIP order	Canadian Court shall have entered an order recognizing the Interim DIP Order
No later than ten days following the Petition Date	Filing of bidding procedures motion
No later than 45 days following the Petition Date	Entry of final DIP order
	Entry of order approving bidding procedures
No later than 14 days following entry of the final DIP order and the order approving bidding procedures	Canadian Court shall have entered an order recognizing the final DIP order and the bidding procedures order
No later than 108 days following the Petition Date Entry of order approving of a sale transaction	Entry of order approving of a sale transaction



Date	Proposed Milestone
No later than 14 days following the entry of the order approving the sale	Canadian Court shall have entered an order recognizing such sale order
No later than 120 days following the Petition Date	Consummation of a sale of the Debtors' business

97. The Debtors' failure to obtain Canadian recognition of the Chapter 11 Cases and orders under Part IV of the CCAA within the deadlines listed above constitutes an event of default under the DIP Credit Agreement.

### **VIII. PART IV RECOGNITION PROCEEDINGS**

98. Due to the deep level of integration between the Canadian and the U.S. Debtors, any solution to the Debtors' operational and financial challenges in the Chapter 11 Cases will necessarily involve cooperation between the Canadian court and the Bankruptcy Court. In particular, because NCU and 0607 BC are wholly dependent upon the other Debtors' employees and business (without which they cannot operate independently), it is appropriate that NCU and 0607 BC participate in this global restructuring effort through the Chapter 11 Cases.

99. In seeking to recognize and give effect in Canada to the Chapter 11 Cases and the relief that the Bankruptcy Court granted therein, NCI is seeking customary relief from this Court under Part IV of the CCAA.

#### **A. Ontario and Canada**

100. While NCU and 0607 BC have registered head office addresses in British Columbia, none of the Debtors have any physical office, assets, operations or material business activities in that province. The Debtors' primary business dealings in Canada are situated in Ontario and include:

- (a) NCU's public stock listing with the Toronto-based TSX;
- (b) longstanding principal corporate counsel, and insolvency counsel for purposes of these proceedings, at the Toronto offices of Torys LLP;
- (c) a prepaid retainer to Alvarez & Marsal in Canada;
- (d) a surety bond arrangement with Trisura, a Toronto-based insurer; and

- (e) cash management accounts with Bank of Montreal, whose operational headquarters are in Toronto.

101. NCU has two Canadian resident directors: Ernest Nutter, based in Ontario, and Anna Ladd-Kruger, based in British Columbia.

## **B. Recognition of Foreign Main Proceedings**

102. The Foreign Representative believes that a recognition order, including a stay of proceedings affecting all Canadian creditors of the Debtors, will support the Debtors' goals in the Chapter 11 Cases and assist the Debtors in developing and implementing a strategic process to find a going-concern solution to their operational and financial challenges. This process will benefit not only the Debtors' creditors but also its employees, suppliers and other stakeholders.

103. In addition to the Canadian stay of proceedings in favour of the Debtors and their Canadian property, the Foreign Representative seeks a stay of proceedings in favour of the Debtors' directors and officers. This relief is necessary to ensure that the Debtors' directors and officers are able to focus on the restructuring efforts and to prevent creditors and other potential claimants from seeking to do in Canada what is prohibited in the Chapter 11 Cases. The directors and officers will be vital to the Debtors' restructuring due to their historical knowledge of the financial and operational aspects of the Debtors' complex business and mining operations.

104. To the best of my knowledge, Canadian unsecured creditors are owed a total of less than \$115,000.

## **C. Appointment of A&M as Information Officer**

105. A&M has consented to act as the Information Officer of the Debtors, subject to this Court's approval. A&M has retained Cassels Brock & Blackwell LLP as its legal counsel in this matter. A copy of A&M's consent to act is attached as an Appendix to A&M's pre-filing report.

106. While A&M's role will not be that of a monitor in these Part IV proceedings, I am nonetheless advised by the Debtors' Canadian legal counsel that A&M is: (i) a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada); and (ii) not subject to any of the restrictions set forth in section 11.7(2) of the CCAA on who may be a monitor, as that

section applies to the Debtors. None of A&M or its affiliates have provided accounting or auditing services or advice to any member of the Nevada Copper group.

107. I understand that A&M has considerable expertise in Part IV CCAA proceedings of this nature. I believe that A&M is well-suited to act as Information Officer of the Debtors. Since the Debtors retained A&M on May 10, 2024, it has become familiar with the assets and operations of the Nevada Copper group.

**D. Administration Charge**

108. The Debtors seek the Administration Charge on the Debtors' property in Canada up to a maximum amount of C\$500,000 to secure the fees and disbursements of the Information Officer, the Information Officer's legal counsel, and the Debtors' Canadian legal counsel, Torys LLP, in connection with services rendered to the Debtors in preparing for, and during, these Part IV Proceedings.

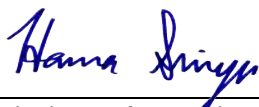
109. The Administration Charge is proposed to rank in priority to all other security interests, claims of secured creditors, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person against the Debtors' Canadian property.

110. The Debtors have worked with the Information Officer to estimate the proposed quantum of the Administration Charge. The Information Officer has reviewed the quantum of the Administration Charge and has advised that it believes that the Administration Charge (including its proposed quantum) is reasonable and appropriate in the circumstances, given the services already provided and to be provided by the beneficiaries of the Administration Charge, and the complexities of these Part IV (and the Chapter 11) Proceedings.

## IX. CONCLUSION

111. For the reasons set out in this affidavit, I believe that it is in the interests of the Debtors and their stakeholders that this Court recognize the Debtors' Chapter 11 Cases in Canada and grant the additional relief that NCI seeks in this application under the Part IV of the CCAA, all in accordance with the terms of the proposed Initial Recognition Order (Foreign Main Proceeding) and Supplemental Order (Foreign Main Proceeding).

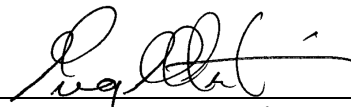
**SWORN REMOTELY** by Gregory J. Martin  
at the City of Vancouver, in the Province of  
British Columbia, in the Country of Canada,  
before me on June 19, 2024 in accordance  
with O.Reg. 431/20, Administering Oath or  
Declaration Remotely.




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Commissioner for Taking Affidavits  
(or as may be)

**HANNA SINGER**  
(LSO#: 81994W)




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Gregory J. Martin

This is **Exhibit “A”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

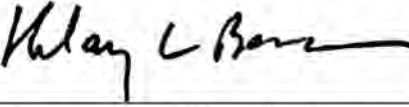


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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

  
 Honorable Hilary L. Barnes  
 United States Bankruptcy Judge



Entered on Docket  
 June 17, 2024

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566-hlb  
 Chapter 11

Hearing Date: June 13, 2024  
 Hearing Time: 1:30 p.m.

**ORDER AUTHORIZING NEVADA COPPER, INC.,  
 TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order (this “*Order*”), pursuant to sections 105(a) and 1505 of the Bankruptcy Code and Bankruptcy Rule 6003, (i) authorizing, but not directing, Debtor Nevada Copper, Inc. (“*NCT*”), to (a) act as the foreign representative of the Debtors; (b) seek recognition by the Canadian Court (as defined below) of the Chapter 11 Cases and of certain orders made by this Court in the Chapter 11 Cases from time to time; (c) request that the Canadian Court lend assistance to this Court and grant comity to the foreign representative; and (d) seek any other appropriate relief from the Canadian Court that is just and proper, and (ii) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 may enter a final order consistent with Article III of the United States Constitution; and, under the  
2 circumstances, proper and adequate notice of the Motion and the hearing thereon having been  
3 given; and it appearing that no other or further notice is necessary; and this Court having reviewed  
4 the Motion and having heard the statements in support of the relief requested therein at a hearing  
5 before this Court; and it appearing that the legal and factual bases set forth in the Motion establish  
6 just cause for the relief granted herein; and this Court having determined that the relief sought in  
7 the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in  
8 interest; and after due deliberation and sufficient cause appearing therefor;

9 IT IS HEREBY ORDERED THAT:

10 1. The Motion is GRANTED as set forth herein.

11 2. Nevada Copper, Inc. ("**NCI**"), is authorized, but not directed, (i) to act as the foreign  
12 representative of the Debtors, (ii) to seek recognition by the Canadian Court of the Chapter 11  
13 Cases and of certain orders made by the Court in the Chapter 11 Cases from time to time, (iii) to  
14 request that the Canadian Court lend assistance to this Court and grant comity to the foreign  
15 representative, and (iv) to seek any other appropriate relief from the Canadian Court that the  
16 Debtors deem just and proper.

17 3. This Court requests the aid and assistance of the Canadian Court to recognize these  
18 Chapter 11 Cases as a "foreign main proceeding" and NCI as a "foreign representative" pursuant  
19 to the Companies' Creditors Arrangement Act and to recognize and give full force and effect to  
20 this Order in all provinces and territories of Canada.

21 4. This Court requests the assistance of the Canadian Court to act in aid of and be  
22 auxiliary to this Court in relation to the protection of the Debtors' assets in Canada, including by  
23 giving effect to the automatic stay under section 362(a) of the Bankruptcy Code in Canada.

24 5. Nothing in the Motion or this Order shall be deemed or construed as: (i) an  
25 admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights  
26 to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an  
27 admission that any particular claim is of a type specified or defined hereunder; (v) a request to  
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1 assume any executory contract or unexpired lease; or (vi) a waiver of the Debtors' rights under the  
2 Bankruptcy Code or any other applicable law.

3 6. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of  
4 the Motion or otherwise deemed waived.

5 7. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
6 contrary, the Debtors are not subject to any stay in the implementation, enforcement, or realization  
7 of the relief granted in this Order, and the Debtors may, in their discretion and without further  
8 delay, take any action and perform any act necessary to implement the relief granted in this Order.

9 8. This Court shall retain jurisdiction over any and all matters arising from or related  
10 to the interpretation or implementation of this Order.

11 **IT IS SO ORDERED.**

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In accordance with LR 9021, counsel submitting this **ORDER AUTHORIZING NEVADA COPPER, INC., TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS** certifies that the order accurately reflects the court's ruling and that (check one):

☐ The Court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document].

JARED A. DAY  
*United States Trustee*

**APPROVED** / ~~DISAPPROVED~~

STEVEN D. JEROME  
*Attorneys for RAM Enterprise, Inc.*

**APPROVED** / ~~DISAPPROVED~~

KATE DOORLEY  
*Attorneys for DIP Lenders*

**APPROVED** / ~~DISAPPROVED~~

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Prepared and submitted by:

McDONALD CARANO LLP

/s/ Ryan J. Works

Ryan J. Works (NSBN 9224)  
Amanda M. Perach (NSBN 12399)  
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ALLEN OVERY SHEARMAN STERLING US LLP  
Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)  
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[sara.coelho@aoshearman.com](mailto:sara.coelho@aoshearman.com)

*Proposed Counsel to the Debtors and Debtors in Possession*

This is **Exhibit “B”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

\_\_\_\_ District of **Nevada**  
(State)Case number (if known): \_\_\_\_\_ Chapter **11**☐ Check if this is an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy**

06/22

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

**1. Debtor's name** 0607792 B.C. Ltd.**2. All other names debtor used in the last 8 years** 607792 British Columbia Ltd.Include any assumed names, trade names, and *doing business* as names**3. Debtor's federal Employer Identification Number (EIN)** N/A**4. Debtor's address****Principal place of business**PO Box 10026, Pacific Centre South  
25th Floor, 700 W Georgia Street

Number Street

Vancouver, BC, Canada V7Y 1B3

City State ZIP Code

County

**Mailing address, if different from principal place of business**

Number Street

P.O. Box

City State ZIP Code

**Location of principal assets, if different from principal place of business**

Number Street

City State ZIP Code

**5. Debtor's website (URL)** \_\_\_\_\_

Debtor 607792 British Columbia Ltd. Case number (if known) \_\_\_\_\_  
 Name

**6. Type of debtor**

- ☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
☐ Partnership (excluding LLP)  
☐ Other. Specify: \_\_\_\_\_

**7. Describe debtor's business***A. Check one:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))  
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))  
☐ Railroad (as defined in 11 U.S.C. § 101(44))  
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))  
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))  
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))  
☒ None of the above

*B. Check all that apply:*

- ☐ Tax-exempt entity (as described in 26 U.S.C. § 501)  
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)  
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

*C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.*2 1 2 2**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

*Check one:*

- ☐ Chapter 7  
☐ Chapter 9  
☒ Chapter 11. *Check all that apply:*

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$3,024,725. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

Debtor	607792 British Columbia Ltd. <small>Name</small>	Case number (if known) _____
--------	---	------------------------------

---

**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

☒ No

☐ Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

---

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

☐ No

☒ Yes. Debtor See attached list. Relationship \_\_\_\_\_

District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

List all cases. If more than 1, attach a separate list. Case number, if known \_\_\_\_\_

---

**11. Why is the case filed in this district?**

*Check all that apply:*

☐ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

---

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** *(Check all that apply.)*

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other \_\_\_\_\_

**Where is the property?**

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State ZIP Code \_\_\_\_\_

**Is the property insured?**

☐ No

☐ Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

---

Statistical and administrative information

Debtor 607792 British Columbia Ltd.  
Name

Case number (if known) \_\_\_\_\_

**13. Debtor's estimation of available funds**

Check one:

- ☐ Funds will be available for distribution to unsecured creditors.
- ☒ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000   | <input type="checkbox"/> 25,001-50,000     |
| <input type="checkbox"/> 50-99           | <input type="checkbox"/> 5,001-10,000  | <input type="checkbox"/> 50,001-100,000    |
| <input type="checkbox"/> 100-199         | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999         |  |  |

**15. Estimated assets**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000      | <input type="checkbox"/> \$10,000,001-\$50 million   | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000     | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million   | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**16. Estimated liabilities**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million               | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million              | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million             | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input checked="" type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

x

Signature of authorized representative of debtor

Title EVP & CFO

Gregory J. Martin

Printed name

Debtor 0607792 B.C. Ltd.  
Name

Case number (if known) \_\_\_\_\_

18. Signature of attorney

 Ryan J. Works  
Signature of attorney for debtor

Date 06/10/2024  
MM / DD / YYYY

Ryan J. Works

Printed name

McDonald Carano LLP

Firm name

2300 West Sahara Avenue, Suite 1200

Number Street

Las Vegas

City

NV

State

89102

ZIP Code

(702) 873-4100

Contact phone

rworks@mcdonaldcarano.com

Email address

9224

Bar number

NV

State

Debtor 0607792 B.C. Ltd.  
Name

Case number (if known) \_\_\_\_\_

**Pending Bankruptcy Cases Filed by Affiliates of the Debtor:**

Debtor	Nevada Copper Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Nevada Copper, Inc.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Farms LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Ditch Company LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Lion Iron Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known



**SECRETARY'S CERTIFICATE**  
(0607792 B.C. Ltd.)

**Date:** June 9, 2024

This Secretary's Certificate is furnished in connection with that certain meeting of the board of directors (the "Board") of 0607792 B.C. Ltd., a British Columbia corporation (the "Company"), held on June 9, 2024.

The undersigned, Clare Devincenzi, as Secretary of the Company, hereby certifies as follows:

1. She is the duly elected and acting Secretary of the Company and, as such, is authorized to execute and deliver this certificate for and on behalf of the Company.
2. A duly noticed meeting of the Board of the Company took place on Sunday, June 9, 2024, at 1:00 p.m. (prevailing Pacific Time) (the "Meeting")
3. A quorum was declared present at the Meeting, based on the presence of all of the members of the Board.
4. At the Meeting, the Board considered and adopted several resolutions authorizing that a voluntary chapter 11 bankruptcy petition be filed by the Company, seeking relief under the provisions of chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the "Resolutions").
5. A true and accurate copy of the Resolutions adopted at the Meeting is attached hereto as **Exhibit 1**, and such resolutions have not been amended, modified, or rescinded and remain in full force and effect as of the date hereof.

I hereby verify that the foregoing and that the attached Resolutions are true and correct.  
EXECUTED as of the date first written above.



---

Name: Clare Devincenzi

Title: Secretary

**Exhibit 1**

**Resolutions**

**RESOLUTION OF  
THE BOARD OF DIRECTORS OF  
0607792 B.C. LTD.**

June 9, 2024

**WHEREAS** the members of the board of directors (the “**Board**”) of 0607792 B.C. Ltd., a company existing under the laws of the province of British Columbia (the “**Company**”), have determined, after due consideration and deliberation, that it is desirable and in the best interests of the Company, its creditors, and other interested parties that the Company file a petition seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

**CHAPTER 11 CASE**

**NOW, THEREFORE, BE IT RESOLVED** that the Company be, and hereby is, authorized and empowered to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”) and to initiate recognition proceedings under the Companies’ Creditors Arrangement Act in Canada to follow the chapter 11 case in the Bankruptcy Court.

**IT IS FURTHER RESOLVED** that each officer of the Company (each, an “**Authorized Officer**” and collectively, the “**Authorized Officers**”) be, and each of them individually hereby is, authorized, and in such capacity, acting alone or together, with power of delegation, in the name and on behalf of the Company, to execute and file a petition to commence a case and obtain relief under chapter 11 of the Bankruptcy Code (the case commenced as a result of such voluntary petition, the “**Chapter 11 Case**” and collectively, with the cases to be commenced by the Company’s affiliates, the “**Chapter 11 Cases**”), and to cause such schedules, lists, applications, pleadings, and other motions, papers, agreements, consents, or documents to be filed, and take any and all actions that they deem necessary or proper, to obtain relief from the Bankruptcy Court, including, without limitation, any action necessary to maintain the ordinary course operation of the Company’s businesses.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and hereby is, authorized, empowered and directed to authorize or to execute and file all petitions, schedules, motions, lists, applications, pleadings, and other papers in connection with the commencement of the Chapter 11 Case, and to employ and retain all assistance by legal counsel, accountants, financial advisors, and other professionals and to take and perform any and all further acts and deeds that each Authorized Officer deems necessary, proper, or desirable in connection with the Chapter 11 Case, with a view to the successful prosecution of such case.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and each of them, acting alone or in any combination, hereby is, authorized, directed and empowered from time to time in the name and on behalf of the Company, to perform the obligations of the Company under the Bankruptcy Code, including the obligations of the Company, in each case, as a debtor in possession, with all such actions to be performed in such manner, and all such certificates,

instruments, guaranties, notices and documents to be executed and delivered in such form, as the Authorized Officer performing or executing the same shall approve, and the performance or execution thereof by such Authorized Officer shall be conclusive evidence of the approval thereof by such Authorized Officer and by the Company.

### RETENTION OF PROFESSIONALS

**IT IS FURTHER RESOLVED** that each of the Authorized Officers be, and hereby is, authorized and directed to employ or continue to employ the following firms (the “**Professionals**”) to represent and assist the Company in carrying out their duties under the Bankruptcy Code, and to take any and all actions to advance the Company’s rights and obligations in connection with their restructuring or recapitalization: the law firm of Allen Overy Shearman Sterling US LLP, as general bankruptcy counsel; the firm of AlixPartners LLP, as financial and restructuring advisor; the law firm of McDonald Carano LLP, as Nevada bankruptcy counsel; the law firm of Torys LLP, as special Canadian and corporate counsel; the firm of Moelis & Company LLC, as financial advisor and investment banker; and the firm of Epiq Corporate Restructuring, LLC, as notice and claims agent and administrative advisor; and in connection therewith, each of the Authorized Officers, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed appropriate applications for authority to retain the services of the Professionals.

### DIP FINANCING

**IT IS FURTHER RESOLVED** that, in connection with the commencement of the Chapter 11 Cases and in the sound business judgment of the Board, it is advisable and in the best interests of the Company, its creditors, and other interested parties that the Company, along with its affiliates, obtain the debtor-in-possession financing contemplated by that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of or about the date provided herein, by and among Nevada Copper, Inc., as Borrower, Nevada Copper Corp., the Company and each other subsidiary guarantor from time to time party thereto, as guarantors, U.S. Bank Trust Company, National Association, as Administrative Agent, and the lenders listed on Schedule A thereto (the “**DIP Financing**”).

**IT IS FURTHER RESOLVED** that each of the Authorized Officers is authorized to take all actions necessary in connection with the DIP Financing, including, without limitation: (i) executing, delivering, and filing (as necessary), the credit agreement, guarantees, security agreements, and related ancillary documents, certificates, instruments and/or related term sheets, and with respect to each of the foregoing, any amendments, supplements, modifications, extensions, and renewals thereto (collectively, the “**DIP Facility Documents**”); (ii) executing, delivering or filing (as necessary) each other agreement, instrument or document to be executed, delivered, or filed (as necessary) in connection with the DIP Financing (collectively with the DIP Facility Documents, the “**DIP Documents**”), in the name and on behalf of the Company; (iii) granting liens on and security interests in any and all assets of the Company, and, as applicable, executing and delivering security agreements (and amendments, supplements, and/or modifications thereto, as appropriate) with respect to real property, personal property (including intellectual property) and any other property to evidence such liens; (iv) authorizing the filing and recording, as applicable, of financing statements, agreements, mortgages, or any other documents

evidencing or perfecting such liens or security interests and amendments to such financing statements, agreements, mortgages, or other documents; (v) executing and delivering deposit, securities and other account control agreements (and amendments, supplements and other modifications thereto, as appropriate); and (vi) performing the Company's obligations under the DIP Documents and taking any other actions, and paying all fees, taxes, and other expenses in connection with the foregoing.

### **GENERAL**

**IT IS FURTHER RESOLVED** that in addition to the specific authorizations heretofore conferred upon the Authorized Officers, each of the Authorized Officers (and their designees and delegates) be, and they hereby are, authorized and empowered, in the name of and on behalf of the Company, to take or cause to be taken any and all such other and further action, and to execute, acknowledge, deliver and file any and all such agreements, certificates, instruments and other documents and to pay all expenses, including but not limited to filing fees, in each case as in such Authorized Officer's reasonable discretion, as shall be necessary, advisable, or desirable in order to fully carry out the intent and accomplish the purposes of the resolutions adopted herein.

**IT IS FURTHER RESOLVED** that any and all lawful acts, actions and transactions relating to the matters contemplated by the foregoing resolutions done in the name of and on behalf of the Company, which acts would have been approved by the foregoing resolutions except that such acts were taken before the adoption of these resolutions, are hereby in all respects approved and ratified as the true acts and deeds of the Company with the same force and effect as if each such act, transaction, agreement, or certificate has been specifically authorized in advance by resolution of the Board.

**IT IS FURTHER RESOLVED** that the secretary and any other appropriate officer of the Company are, and each individually hereby is, authorized and empowered to certify and furnish such copies of these resolutions and such statements as to the incumbency of the Company's officers, as may be requested, and any person receiving such certified copy is and shall be authorized to rely upon the contents thereof.

**IT IS FURTHER RESOLVED** that the Board has received sufficient notice of the actions and transactions relating to the matters contemplated by the foregoing resolutions, as may be required by the organizational documents of the Company, or hereby waives any right to have received such notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Fill in this information to identify the case:**

Debtor name 0607792 B.C. Ltd.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (If known): \_\_\_\_\_

☐ Check if this is an amended filing

**Official Form 204**

## **Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders**

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	None.						
2							
3							
4							
5							
6							
7							
8							

Debtor

607792 British Columbia Ltd.

Name

Case number (if known)

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

**Fill in this information to identify the case and this filing:**Debtor Name 0607792 B.C. Ltd.United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (if known): \_\_\_\_\_

**Official Form 202****Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended Schedule \_\_\_\_\_
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☒ Other document that requires a declaration List of Equity Security Holders, Corporate Ownership Statement

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

**x**


Signature of individual signing on behalf of debtor

Gregory J. Martin

Printed name

EVP & CFO

Position or relationship to debtor



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

0607792 B.C. LTD.

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**LIST OF EQUITY SECURITY HOLDERS  
PURSUANT TO FED. R. BANKR. P. 1007(a)(3)**

0607792 B.C. Ltd. hereby submits, pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, the following list of equity security holders:

<b>Name and address of interest holder</b>	<b>Percentage interest</b>
<b>Nevada Copper Corp.</b> PO Box 10026, Pacific Centre South 25th Floor, 700 W Georgia Street Vancouver, BC Canada V7Y 1B3	100%

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

0607792 B.C. Ltd.

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**CORPORATE OWNERSHIP STATEMENT**

Pursuant to the Federal Rules of Bankruptcy Procedure 1007(a)(1) and 7007.1 and Local Rule 7007.1 of the Bankruptcy Court for the District of Nevada, 0607792 B.C. Ltd. (the “***Debtor***”) certifies that the following parent corporation directly or indirectly owns 10% or more of any class of the Debtor’s equity interests:

- Nevada Copper Corp.

This is **Exhibit “C”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

\_\_\_\_ District of Nevada  
(State)Case number (if known): \_\_\_\_\_ Chapter 11☐ Check if this is an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy**

06/22

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name Lion Iron Corp.

2. All other names debtor used in the last 8 years

N/A

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN)

N/A

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

61 E. Pursel Lane

Number Street

Number Street

P.O. Box

Yerington, NV 89447

City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Lyon

County

Number Street

City State ZIP Code

5. Debtor's website (URL) \_\_\_\_\_

Debtor

Lion Iron Corp.

Name

Case number (if known)

**6. Type of debtor**

- ☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
☐ Partnership (excluding LLP)  
☐ Other. Specify: \_\_\_\_\_

**7. Describe debtor's business***A. Check one:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))  
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))  
☐ Railroad (as defined in 11 U.S.C. § 101(44))  
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))  
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))  
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))  
☒ None of the above

*B. Check all that apply:*

- ☐ Tax-exempt entity (as described in 26 U.S.C. § 501)  
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)  
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

*C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.*2 1 2 2**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

*Check one:*

- ☐ Chapter 7  
☐ Chapter 9  
☒ Chapter 11. *Check all that apply:*

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$3,024,725. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

Debtor	<u>Lion Iron Corp.</u>	Case number (if known) _____
	Name	

---

**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

If more than 2 cases, attach a separate list.

☒ No

☐ Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

---

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

List all cases. If more than 1, attach a separate list.

☐ No

☒ Yes. Debtor See attached list. Relationship \_\_\_\_\_

District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

Case number, if known \_\_\_\_\_

---

**11. Why is the case filed in this district?**

*Check all that apply:*

☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

---

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** *(Check all that apply.)*

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
 What is the hazard? \_\_\_\_\_

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number                      Street

\_\_\_\_\_

\_\_\_\_\_

City                                      State ZIP Code

\_\_\_\_\_

**Is the property insured?**

☐ No

☐ Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

Statistical and administrative information

Debtor Lion Iron Corp.  
Name

Case number (if known) \_\_\_\_\_

**13. Debtor's estimation of available funds**

Check one:

- ☐ Funds will be available for distribution to unsecured creditors.
- ☒ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000   | <input type="checkbox"/> 25,001-50,000     |
| <input type="checkbox"/> 50-99           | <input type="checkbox"/> 5,001-10,000  | <input type="checkbox"/> 50,001-100,000    |
| <input type="checkbox"/> 100-199         | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999         |  |  |

**15. Estimated assets**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000      | <input type="checkbox"/> \$10,000,001-\$50 million   | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000     | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million   | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**16. Estimated liabilities**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million               | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million              | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million             | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input checked="" type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YY

x

Signature of authorized representative of debtor

Title EVP & CFO

Gregory J. Martin

Printed name

Debtor Lion Iron Corp. Case number (if known) \_\_\_\_\_  
Name

**18. Signature of attorney****X** Ryan J. Works

Signature of attorney for debtor

Date 06/10/2024

MM / DD / YYYY

Ryan J. Works

Printed name

McDonald Carano LLP

Firm name

2300 West Sahara Avenue, Suite 1200

Number Street

Las Vegas

City

NV

State

89102

ZIP Code

(702) 873-4100

Contact phone

rworks@mcdonaldcarano.com

Email address

9224

Bar number

NV

State



Debtor Lion Iron Corp.  
Name

Case number (if known) \_\_\_\_\_

**Pending Bankruptcy Cases Filed by Affiliates of the Debtor:**

Debtor	Nevada Copper Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Nevada Copper, Inc.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Farms LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Ditch Company LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	0607792 B.C. Ltd.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known

**SECRETARY'S CERTIFICATE**  
(Lion Iron Corp.)

**Date:** June 9, 2024

This Secretary's Certificate is furnished in connection with that certain meeting of the board of directors (the "Board") of Lion Iron Corp., a Nevada corporation (the "Company"), held on June 9, 2024.

The undersigned, Clare Devincenzi, as Secretary of the Company, hereby certifies as follows:

1. She is the duly elected and acting Secretary of the Company and, as such, is authorized to execute and deliver this certificate for and on behalf of the Company.
2. A duly noticed meeting of the Board of the Company took place on Sunday, June 9, 2024, at 1:00 p.m. (prevailing Pacific Time) (the "Meeting")
3. A quorum was declared present at the Meeting, based on the presence of all of the members of the Board.
4. At the Meeting, the Board considered and adopted several resolutions authorizing that a voluntary chapter 11 bankruptcy petition be filed by the Company, seeking relief under the provisions of chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the "Resolutions").
5. A true and accurate copy of the Resolutions adopted at the Meeting is attached hereto as **Exhibit 1**, and such resolutions have not been amended, modified, or rescinded and remain in full force and effect as of the date hereof.

I hereby verify that the foregoing and that the attached Resolutions are true and correct.  
EXECUTED as of the date first written above.



\_\_\_\_\_  
Name: Clare Devincenzi

Title: Secretary

**Exhibit 1**

**Resolutions**

**RESOLUTION OF  
THE BOARD OF DIRECTORS OF  
LION IRON CORP.**

June 9, 2024

**WHEREAS** the members of the board of directors (the “**Board**”) of Lion Iron Corp., a company existing under the laws of the state of Nevada (the “**Company**”), have determined, after due consideration and deliberation, that it is desirable and in the best interests of the Company, its creditors, and other interested parties that the Company file a petition seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

**CHAPTER 11 CASE**

**NOW, THEREFORE, BE IT RESOLVED** that the Company be, and hereby is, authorized and empowered to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”) and to initiate recognition proceedings under the Companies’ Creditors Arrangement Act in Canada to follow the chapter 11 case in the Bankruptcy Court.

**IT IS FURTHER RESOLVED** that each officer of the Company (each, an “**Authorized Officer**” and collectively, the “**Authorized Officers**”) be, and each of them individually hereby is, authorized, and in such capacity, acting alone or together, with power of delegation, in the name and on behalf of the Company, to execute and file a petition to commence a case and obtain relief under chapter 11 of the Bankruptcy Code (the case commenced as a result of such voluntary petition, the “**Chapter 11 Case**” and collectively, with the cases to be commenced by the Company’s affiliates, the “**Chapter 11 Cases**”), and to cause such schedules, lists, applications, pleadings, and other motions, papers, agreements, consents, or documents to be filed, and take any and all actions that they deem necessary or proper, to obtain relief from the Bankruptcy Court, including, without limitation, any action necessary to maintain the ordinary course operation of the Company’s businesses.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and hereby is, authorized, empowered and directed to authorize or to execute and file all petitions, schedules, motions, lists, applications, pleadings, and other papers in connection with the commencement of the Chapter 11 Case, and to employ and retain all assistance by legal counsel, accountants, financial advisors, and other professionals and to take and perform any and all further acts and deeds that each Authorized Officer deems necessary, proper, or desirable in connection with the Chapter 11 Case, with a view to the successful prosecution of such case.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and each of them, acting alone or in any combination, hereby is, authorized, directed and empowered from time to time in the name and on behalf of the Company, to perform the obligations of the Company under the Bankruptcy Code, including the obligations of the Company, in each case, as a debtor in possession, with all such actions to be performed in such manner, and all such certificates, instruments, guaranties, notices and documents to be executed and delivered in such form, as the

Authorized Officer performing or executing the same shall approve, and the performance or execution thereof by such Authorized Officer shall be conclusive evidence of the approval thereof by such Authorized Officer and by the Company.

### RETENTION OF PROFESSIONALS

**IT IS FURTHER RESOLVED** that each of the Authorized Officers be, and hereby is, authorized and directed to employ or continue to employ the following firms (the “**Professionals**”) to represent and assist the Company in carrying out their duties under the Bankruptcy Code, and to take any and all actions to advance the Company’s rights and obligations in connection with their restructuring or recapitalization: the law firm of Allen Overy Shearman Sterling US LLP, as general bankruptcy counsel; the firm of AlixPartners LLP, as financial and restructuring advisor; the law firm of McDonald Carano LLP, as Nevada bankruptcy counsel; the law firm of Torys LLP, as special Canadian and corporate counsel; the firm of Moelis & Company LLC, as financial advisor and investment banker; and the firm of Epiq Corporate Restructuring, LLC, as notice and claims agent and administrative advisor; and in connection therewith, each of the Authorized Officers, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed appropriate applications for authority to retain the services of the Professionals.

### DIP FINANCING

**IT IS FURTHER RESOLVED** that, in connection with the commencement of the Chapter 11 Cases and in the sound business judgment of the Board, it is advisable and in the best interests of the Company, its creditors, and other interested parties that the Company, along with its affiliates, obtain the debtor-in-possession financing contemplated by that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of or about the date provided herein, by and among Nevada Copper, Inc., as Borrower, Nevada Copper Corp., the Company and each other subsidiary guarantor from time to time party thereto, as guarantors, U.S. Bank Trust Company, National Association, as Administrative Agent, and the lenders listed on Schedule A thereto (the “**DIP Financing**”).

**IT IS FURTHER RESOLVED** that each of the Authorized Officers is authorized to take all actions necessary in connection with the DIP Financing, including, without limitation: (i) executing, delivering, and filing (as necessary), the credit agreement, guarantees, security agreements, and related ancillary documents, certificates, instruments and/or related term sheets, and with respect to each of the foregoing, any amendments, supplements, modifications, extensions, and renewals thereto (collectively, the “**DIP Facility Documents**”); (ii) executing, delivering or filing (as necessary) each other agreement, instrument or document to be executed, delivered, or filed (as necessary) in connection with the DIP Financing (collectively with the DIP Facility Documents, the “**DIP Documents**”), in the name and on behalf of the Company; (iii) granting liens on and security interests in any and all assets of the Company, and, as applicable, executing and delivering security agreements (and amendments, supplements, and/or modifications thereto, as appropriate) with respect to real property, personal property (including intellectual property) and any other property to evidence such liens; (iv) authorizing the filing and recording, as applicable, of financing statements, agreements, mortgages, or any other documents evidencing or perfecting such liens or security interests and amendments to such financing

statements, agreements, mortgages, or other documents; (v) executing and delivering deposit, securities and other account control agreements (and amendments, supplements and other modifications thereto, as appropriate); and (vi) performing the Company's obligations under the DIP Documents and taking any other actions, and paying all fees, taxes, and other expenses in connection with the foregoing.

### **GENERAL**

**IT IS FURTHER RESOLVED** that in addition to the specific authorizations heretofore conferred upon the Authorized Officers, each of the Authorized Officers (and their designees and delegates) be, and they hereby are, authorized and empowered, in the name of and on behalf of the Company, to take or cause to be taken any and all such other and further action, and to execute, acknowledge, deliver and file any and all such agreements, certificates, instruments and other documents and to pay all expenses, including but not limited to filing fees, in each case as in such Authorized Officer's reasonable discretion, as shall be necessary, advisable, or desirable in order to fully carry out the intent and accomplish the purposes of the resolutions adopted herein.

**IT IS FURTHER RESOLVED** that any and all lawful acts, actions and transactions relating to the matters contemplated by the foregoing resolutions done in the name of and on behalf of the Company, which acts would have been approved by the foregoing resolutions except that such acts were taken before the adoption of these resolutions, are hereby in all respects approved and ratified as the true acts and deeds of the Company with the same force and effect as if each such act, transaction, agreement, or certificate has been specifically authorized in advance by resolution of the Board.

**IT IS FURTHER RESOLVED** that the secretary and any other appropriate officer of the Company are, and each individually hereby is, authorized and empowered to certify and furnish such copies of these resolutions and such statements as to the incumbency of the Company's officers, as may be requested, and any person receiving such certified copy is and shall be authorized to rely upon the contents thereof.

**IT IS FURTHER RESOLVED** that the Board has received sufficient notice of the actions and transactions relating to the matters contemplated by the foregoing resolutions, as may be required by the organizational documents of the Company, or hereby waives any right to have received such notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Fill in this information to identify the case:**

Debtor name Lion Iron Corp.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (If known): \_\_\_\_\_

☐ Check if this is an amended filing

**Official Form 204**

## **Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders**

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	None.						
2							
3							
4							
5							
6							
7							
8							

Debtor

Lion Iron Corp.

Name

Case number (if known)

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							



**Fill in this information to identify the case and this filing:**

Debtor Name Lion Iron Corp.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (if known): \_\_\_\_\_

**Official Form 202****Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended Schedule \_\_\_\_\_
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☒ Other document that requires a declaration List of Equity Security Holders, Corporate Ownership Statement

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

x

  
Signature of individual signing on behalf of debtor

Gregory J. Martin

Printed name

EVP & CFO

Position or relationship to debtor

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

LION IRON CORP.

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**LIST OF EQUITY SECURITY HOLDERS  
PURSUANT TO FED. R. BANKR. P. 1007(a)(3)**

Lion Iron Corp. hereby submits, pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, the following list of equity security holders:

<b>Name and address of interest holder</b>	<b>Percentage interest</b>
<b>Nevada Copper Corp.</b> PO Box 10026, Pacific Centre South 25th Floor, 700 W Georgia Street Vancouver, BC Canada V7Y 1B3	100%

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

LION IRON CORP.

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**CORPORATE OWNERSHIP STATEMENT**

Pursuant to the Federal Rules of Bankruptcy Procedure 1007(a)(1) and 7007.1 and Local Rule 7007.1 of the Bankruptcy Court for the District of Nevada, Lion Iron Corp. (the “**Debtor**”) certifies that the following parent corporation directly or indirectly owns 10% or more of any class of the Debtor’s equity interests:

- Nevada Copper Corp.

This is **Exhibit “D”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**  
LSO #: 81994W

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

\_\_\_\_ District of Nevada  
(State)Case number (if known): \_\_\_\_\_ Chapter 11☐ Check if this is an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy**

06/22

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name NC Ditch Company LLC

2. All other names debtor used in the last 8 years

N/A

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN)

N/A

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

61 E. Pursel Lane

Number Street

P.O. Box 1640

Number Street

P.O. BoxYerington, NV 89447

City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Lyon

County

Number Street

City State ZIP Code

5. Debtor's website (URL) \_\_\_\_\_

Debtor NC Ditch Company LLC Case number (if known) \_\_\_\_\_  
 Name

**6. Type of debtor**

- ☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
☐ Partnership (excluding LLP)  
☐ Other. Specify: \_\_\_\_\_

**7. Describe debtor's business***A. Check one:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))  
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))  
☐ Railroad (as defined in 11 U.S.C. § 101(44))  
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))  
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))  
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))  
☒ None of the above

*B. Check all that apply:*

- ☐ Tax-exempt entity (as described in 26 U.S.C. § 501)  
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)  
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

*C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.*2 1 2 2**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

*Check one:*

- ☐ Chapter 7  
☐ Chapter 9  
☒ Chapter 11. *Check all that apply:*

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$3,024,725. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11**. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

Debtor NC Ditch Company LLC Case number (if known) \_\_\_\_\_  
Name

**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

☒ No

☐ Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

☐ No

☒ Yes. Debtor See attached list. Relationship \_\_\_\_\_

District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

*Check all that apply:*

☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** *(Check all that apply.)*

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other \_\_\_\_\_

**Where is the property?**

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State ZIP Code \_\_\_\_\_

**Is the property insured?**

☐ No

☐ Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

Debtor NC Ditch Company LLC  
Name

Case number (if known) \_\_\_\_\_

**13. Debtor's estimation of available funds**

Check one:

- ☐ Funds will be available for distribution to unsecured creditors.
- ☒ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000   | <input type="checkbox"/> 25,001-50,000     |
| <input type="checkbox"/> 50-99           | <input type="checkbox"/> 5,001-10,000  | <input type="checkbox"/> 50,001-100,000    |
| <input type="checkbox"/> 100-199         | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999         |  |  |

**15. Estimated assets**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000      | <input type="checkbox"/> \$10,000,001-\$50 million   | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000     | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million   | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**16. Estimated liabilities**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million               | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million              | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million             | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input checked="" type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

x

Signature of authorized representative of debtor

Title Authorized Representative

Gregory J. Martin

Printed name



Debtor NC Ditch Company LLC Case number (if known) \_\_\_\_\_  
Name

**18. Signature of attorney****X** Ryan J. Works

Signature of attorney for debtor

Date 06/10/2024  
MM / DD / YYYYRyan J. Works

Printed name

McDonald Carano LLP

Firm name

2300 West Sahara Avenue, Suite 1200

Number Street

Las Vegas

City

NV 89102  
State ZIP Code(702) 873-4100

Contact phone

rworks@mcdonaldcarano.com  
Email address9224

Bar number

NV  
State

Debtor NC Ditch Company LLC  
Name

Case number (if known)

**Pending Bankruptcy Cases Filed by Affiliates of the Debtor:**

Debtor	Nevada Copper Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Nevada Copper, Inc.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Farms LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Lion Iron Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	0607792 B.C. Ltd.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known

**WRITTEN CONSENT OF  
THE MANAGING MEMBER OF  
NC DITCH COMPANY LLC**

June 9, 2024

**WHEREAS** Nevada Copper, Inc., a company existing under the laws of Nevada, as the sole member and manager (in such capacity, the “*Managing Member*”) of NC Ditch Company LLC, a limited liability company existing under the laws of Nevada (the “*Company*”), has determined, after due consideration and deliberation, that it is desirable and in the best interests of the Company, its creditors, and other interested parties that the Company file a petition seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”).

**CHAPTER 11 CASES**

**NOW, THEREFORE, BE IT RESOLVED** that the Company be, and hereby is, authorized and empowered to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the “*Bankruptcy Court*”) and to initiate recognition proceedings under the Companies’ Creditors Arrangement Act in Canada to follow the chapter 11 case in the Bankruptcy Court.

**IT IS FURTHER RESOLVED** that Gregory J. Martin (the “*Authorized Officer*”) be, and hereby is, authorized and empowered, in the name and on behalf of the Company, to execute and file a petition to commence a case and obtain relief under chapter 11 of the Bankruptcy Code (the case commenced as a result of such voluntary petition, a “*Chapter 11 Case*” and collectively, with the cases to be commenced by the Company’s affiliates, the “*Chapter 11 Cases*”), and to cause such schedules, lists, applications, pleadings, and other motions, papers, agreements, consents, or documents to be filed, and take any and all actions that he deems necessary or proper, to obtain relief from the Bankruptcy Court, including, without limitation, any action necessary to maintain the ordinary course operation of the Company’s business.

**IT IS FURTHER RESOLVED** that the Authorized Officer be, and hereby is, authorized, empowered and directed to authorize or to execute and file all petitions, schedules, motions, lists, applications, pleadings, and other papers in connection with the commencement of the Chapter 11 Case, and to employ and retain all assistance by legal counsel, accountants, financial advisors, and other professionals and to take and perform any and all further acts and deeds that the Authorized Officer deems necessary, proper, or desirable in connection with the Chapter 11 Case, with a view to the successful prosecution of such case.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and each of them, acting alone or in any combination, hereby is, authorized, directed and empowered from time to time in the name and on behalf of the Company, to perform the obligations of the Company under the Bankruptcy Code, including the obligations of the Company, in each case, as a debtor in possession, with all such actions to be performed in such manner, and all such certificates, instruments, guaranties, notices and documents to be executed and delivered in such form, as the

Authorized Officer performing or executing the same shall approve, and the performance or execution thereof by such Authorized Officer shall be conclusive evidence of the approval thereof by such Authorized Officer and by the Company.

### RETENTION OF PROFESSIONALS

**IT IS FURTHER RESOLVED** that each of the Authorized Officers be, and hereby is, authorized and directed to employ or continue to employ the following firms (the “**Professionals**”) to represent and assist the Company in carrying out their duties under the Bankruptcy Code, and to take any and all actions to advance the Company’s rights and obligations in connection with their restructuring or recapitalization: the law firm of Allen Overy Shearman Sterling US LLP, as general bankruptcy counsel; the firm of AlixPartners LLP, as financial and restructuring advisor; the law firm of McDonald Carano LLP, as Nevada bankruptcy counsel; the law firm of Torys LLP, as special Canadian and corporate counsel; the firm of Moelis & Company LLC, as financial advisor and investment banker; and the firm of Epiq Corporate Restructuring, LLC, as notice and claims agent and administrative advisor; and in connection therewith, each of the Authorized Officers, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed appropriate applications for authority to retain the services of the Professionals.

### DIP FINANCING

**IT IS FURTHER RESOLVED** that, in connection with the commencement of the Chapter 11 Cases and in the sound business judgment of the Managing Member, it is advisable and in the best interests of the Company, its creditors, and other interested parties that the Company, along with its affiliates, obtain the debtor-in-possession financing contemplated by that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of or about the date provided herein, by and among Nevada Copper, Inc., as Borrower, Nevada Copper Corp., the Company and each other subsidiary guarantor from time to time party thereto, as guarantors, U.S. Bank Trust Company, National Association, as Administrative Agent, and the lenders listed on Schedule A thereto (the “**DIP Financing**”).

**IT IS FURTHER RESOLVED** that the Authorized Officer is authorized to take all actions necessary in connection with the DIP Financing, including, without limitation: (i) executing, delivering, and filing (as necessary), the credit agreement, guarantees, security agreements, and related ancillary documents, certificates, instruments and/or related term sheets, and with respect to each of the foregoing, any amendments, supplements, modifications, extensions, and renewals thereto (collectively, the “**DIP Facility Documents**”); (ii) executing, delivering or filing (as necessary) each other agreement, instrument or document to be executed, delivered, or filed (as necessary) in connection with the DIP Financing (collectively with the DIP Facility Documents, the “**DIP Documents**”), in the name and on behalf of the Company; (iii) granting liens on and security interests in any and all assets of the Company, and, as applicable, executing and delivering security agreements (and amendments, supplements, and/or modifications thereto, as appropriate) with respect to real property, personal property (including intellectual property) and any other property to evidence such liens; (iv) authorizing the filing and recording, as applicable, of financing statements, agreements, mortgages, or any other documents evidencing or perfecting such liens or security interests and amendments to such financing

statements, agreements, mortgages, or other documents; (v) executing and delivering deposit, securities and other account control agreements (and amendments, supplements and other modifications thereto, as appropriate); and (vi) performing the Company's obligations under the DIP Documents and taking any other actions, and paying all fees, taxes, and other expenses in connection with the foregoing.

### **GENERAL**

**IT IS FURTHER RESOLVED** that in addition to the specific authorizations heretofore conferred upon the Authorized Officer, the Authorized Officer (and [her] designees and delegates) be, and hereby is, authorized and empowered, in the name of and on behalf of the Company or the Managing Member, as applicable, to take or cause to be taken any and all such other and further action, and to execute, acknowledge, deliver and file any and all such agreements, certificates, instruments and other documents and to pay all expenses, including but not limited to filing fees, in each case as in the Authorized Officer's reasonable discretion, as shall be necessary, advisable, or desirable in order to fully carry out the intent and accomplish the purposes of the resolutions adopted herein.

**IT IS FURTHER RESOLVED** that any and all lawful acts, actions and transactions relating to the matters contemplated by the foregoing resolutions done in the name of and on behalf of the Company or the Managing Member, as applicable, which acts would have been approved by the foregoing resolutions except that such acts were taken before the adoption of these resolutions, are hereby in all respects approved and ratified as the true acts and deeds of the Company and the Managing Member with the same force and effect as if each such act, transaction, agreement, or certificate has been specifically authorized in advance by resolution of the Managing Member.


**IT IS FURTHER RESOLVED** that facsimile or electronic copies of signatures to this consent shall be deemed to be originals and may be relied on to the same extent as the originals.

**IT IS FURTHER RESOLVED** that the secretary and any other appropriate officer of the Company are, and each individually hereby is, authorized and empowered to certify and furnish such copies of these resolutions and such statements as to the incumbency of the Company's officers, as may be requested, and any person receiving such certified copy is and shall be authorized to rely upon the contents thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the undersigned Managing Member has duly executed this Consent as of the date provided herein.

**NEVADA COPPER, INC., as Managing Member**

  
\_\_\_\_\_  
By: Gregory J. Martin

Title: EVP & CFO

*[Signature Page to Written Consent of The Managing Member of NC Ditch Company LLC]*

**Fill in this information to identify the case:**

Debtor name NC Ditch Company LLC

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (If known): \_\_\_\_\_

☐ Check if this is an amended filing

**Official Form 204**
**Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders**

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	None.						
2							
3							
4							
5							
6							
7							
8							

Debtor

NC Ditch Company LLC

Name

Case number (if known)

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							



**Fill in this information to identify the case and this filing:**

Debtor Name NC Ditch Company LLC

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (If known): \_\_\_\_\_

**Official Form 202****Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

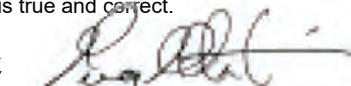
I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended Schedule \_\_\_\_\_
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☒ Other document that requires a declaration List of Equity Security Holders, Corporate Ownership Statement

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

x



Signature of individual signing on behalf of debtor

Gregory J. Martin

Printed name

Authorized Representative

Position or relationship to debtor

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NC DITCH COMPANY LLC

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**LIST OF EQUITY SECURITY HOLDERS  
PURSUANT TO FED. R. BANKR. P. 1007(a)(3)**

NC Ditch Company LLC hereby submits, pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, the following list of equity security holders:

Name and address of interest holder	Percentage interest
<b>Nevada Copper, Inc.</b> 61 E. Pursel Lane Yerington, Nevada USA 89447	100%

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NC DITCH COMPANY LLC

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

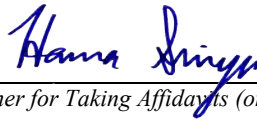
Time: [\_\_\_\_]

**CORPORATE OWNERSHIP STATEMENT**

Pursuant to the Federal Rules of Bankruptcy Procedure 1007(a)(1) and 7007.1 and Local Rule 7007.1 of the Bankruptcy Court for the District of Nevada, NC Ditch Company LLC (the “*Debtor*”) certifies that the following corporations directly or indirectly own 10% or more of any class of the Debtor’s equity interests:

- Nevada Copper Corp.
- Nevada Copper, Inc.

This is **Exhibit “E”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**  
LSO #: 81994W

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

\_\_\_\_ District of Nevada  
(State)Case number (if known): \_\_\_\_\_ Chapter 11☐ Check if this is an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy**

06/22

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name NC Farms LLC

2. All other names debtor used in the last 8 years

N/A

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN)

N/A

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

61 E. Pursel Lane

Number Street

Number Street

P.O. Box

Yerington, NV 89447

City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Lyon

County

Number Street

City State ZIP Code

5. Debtor's website (URL)

N/A

Debtor	NC Farms LLC <small>Name</small>	Case number (if known) _____
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**6. Type of debtor**

☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
☐ Partnership (excluding LLP)  
☐ Other. Specify: \_\_\_\_\_

---

**7. Describe debtor's business**

*A. Check one:*

☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))  
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))  
☐ Railroad (as defined in 11 U.S.C. § 101(44))  
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))  
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))  
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))  
☒ None of the above

---

*B. Check all that apply:*

☐ Tax-exempt entity (as described in 26 U.S.C. § 501)  
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)  
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

---

*C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.*

2 1 2 2

---

**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

*Check one:*

☐ Chapter 7  
☐ Chapter 9  
☒ Chapter 11. *Check all that apply:*

☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$3,024,725. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).  
☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).  
☐ A plan is being filed with this petition.  
☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).  
☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.  
☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

Debtor	<b>NC Farms LLC</b> <small>Name</small>	Case number (if known) _____
--------	--	------------------------------

---

**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?** ☒ No

☐ Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

---

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?** ☐ No

☒ Yes. Debtor See attached list. Relationship \_\_\_\_\_  
District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

List all cases. If more than 1, attach a separate list. Case number, if known \_\_\_\_\_

---

**11. Why is the case filed in this district?** *Check all that apply:*

☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

---

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?** ☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** *(Check all that apply.)*

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number                      Street

\_\_\_\_\_

City                                      State ZIP Code

\_\_\_\_\_

**Is the property insured?**

☐ No

☐ Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

---

**Statistical and administrative information**

Debtor NC Farms LLC  
Name

Case number (if known) \_\_\_\_\_

**13. Debtor's estimation of available funds**

Check one:

- ☐ Funds will be available for distribution to unsecured creditors.
- ☒ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000   | <input type="checkbox"/> 25,001-50,000     |
| <input type="checkbox"/> 50-99           | <input type="checkbox"/> 5,001-10,000  | <input type="checkbox"/> 50,001-100,000    |
| <input type="checkbox"/> 100-199         | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999         |  |  |

**15. Estimated assets**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000      | <input type="checkbox"/> \$10,000,001-\$50 million   | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000     | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million   | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**16. Estimated liabilities**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million               | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million              | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million             | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input checked="" type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**


The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

x 

Signature of authorized representative of debtor

Gregory J. Martin

Printed name

Title Authorized Representative



Debtor NC Farms LLC  
Name

Case number (if known) \_\_\_\_\_

18. Signature of attorney

X /s/ Ryan J. Works  
Signature of attorney for debtor

Date 06/10/2024  
MM / DD / YYYY

Ryan J. Works

Printed name

McDonald Carano LLP

Firm name

2300 West Sahara Avenue, Suite 1200

Number Street

Las Vegas

City

NV

State

89102

ZIP Code

(702) 873-4100

Contact phone

rworks@mcdonaldcarano.com

Email address

9224

Bar number

NV

State

Debtor **NC Farms LLC**  
 Name \_\_\_\_\_

Case number (if known) \_\_\_\_\_

**Pending Bankruptcy Cases Filed by Affiliates of the Debtor:**

Debtor	Nevada Copper Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Nevada Copper, Inc.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Ditch Company LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Lion Iron Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	0607792 B.C. Ltd.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known

**WRITTEN CONSENT OF  
THE MANAGING MEMBER OF  
NC FARMS LLC**

June 9, 2024

**WHEREAS** Nevada Copper, Inc., a company existing under the laws of Nevada, as the sole member and manager (in such capacity, the “*Managing Member*”) of NC Farms LLC, a limited liability company existing under the laws of Nevada (the “*Company*”), has determined, after due consideration and deliberation, that it is desirable and in the best interests of the Company, its creditors, and other interested parties that the Company file a petition seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) and to initiate recognition proceedings under the Companies’ Creditors Arrangement Act in Canada to follow the chapter 11 case in the Bankruptcy Court.

**CHAPTER 11 CASES**

**NOW, THEREFORE, BE IT RESOLVED** that the Company be, and hereby is, authorized and empowered to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the “*Bankruptcy Court*”).

**IT IS FURTHER RESOLVED** that Gregory J. Martin (the “*Authorized Officer*”) be, and hereby is, authorized and empowered, in the name and on behalf of the Company, to execute and file a petition to commence a case and obtain relief under chapter 11 of the Bankruptcy Code (the case commenced as a result of such voluntary petition, a “*Chapter 11 Case*” and collectively, with the cases to be commenced by the Company’s affiliates, the “*Chapter 11 Cases*”), and to cause such schedules, lists, applications, pleadings, and other motions, papers, agreements, consents, or documents to be filed, and take any and all actions that he deems necessary or proper, to obtain relief from the Bankruptcy Court, including, without limitation, any action necessary to maintain the ordinary course operation of the Company’s business.

**IT IS FURTHER RESOLVED** that the Authorized Officer be, and hereby is, authorized, empowered and directed to authorize or to execute and file all petitions, schedules, motions, lists, applications, pleadings, and other papers in connection with the commencement of the Chapter 11 Case, and to employ and retain all assistance by legal counsel, accountants, financial advisors, and other professionals and to take and perform any and all further acts and deeds that the Authorized Officer deems necessary, proper, or desirable in connection with the Chapter 11 Case, with a view to the successful prosecution of such case.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and each of them, acting alone or in any combination, hereby is, authorized, directed and empowered from time to time in the name and on behalf of the Company, to perform the obligations of the Company under the Bankruptcy Code, including the obligations of the Company, in each case, as a debtor in possession, with all such actions to be performed in such manner, and all such certificates, instruments, guaranties, notices and documents to be executed and delivered in such form, as the Authorized Officer performing or executing the same shall approve, and the performance or

execution thereof by such Authorized Officer shall be conclusive evidence of the approval thereof by such Authorized Officer and by the Company.

### RETENTION OF PROFESSIONALS

**IT IS FURTHER RESOLVED** that each of the Authorized Officers be, and hereby is, authorized and directed to employ or continue to employ the following firms (the “**Professionals**”) to represent and assist the Company in carrying out their duties under the Bankruptcy Code, and to take any and all actions to advance the Company’s rights and obligations in connection with their restructuring or recapitalization: the law firm of Allen Overy Shearman Sterling US LLP, as general bankruptcy counsel; the firm of AlixPartners LLP, as financial and restructuring advisor; the law firm of McDonald Carano LLP, as Nevada bankruptcy counsel; the law firm of Torys LLP, as special Canadian and corporate counsel; the firm of Moelis & Company LLC, as financial advisor and investment banker; and the firm of Epiq Corporate Restructuring, LLC, as notice and claims agent and administrative advisor; and in connection therewith, each of the Authorized Officers, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed appropriate applications for authority to retain the services of the Professionals.

### DIP FINANCING

**IT IS FURTHER RESOLVED** that, in connection with the commencement of the Chapter 11 Cases and in the sound business judgment of the Managing Member, it is advisable and in the best interests of the Company, its creditors, and other interested parties that the Company, along with its affiliates, obtain the debtor-in-possession financing contemplated that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of or about the date provided herein, by and among Nevada Copper, Inc., as Borrower, Nevada Copper Corp., the Company and each other subsidiary guarantor from time to time party thereto, as guarantors, U.S. Bank Trust Company, National Association, as Administrative Agent, and the lenders listed on Schedule A thereto (the “**DIP Financing**”).

**IT IS FURTHER RESOLVED** that the Authorized Officer is authorized to take all actions necessary in connection with the DIP Financing, including, without limitation: (i) executing, delivering, and filing (as necessary), the credit agreement, guarantees, security agreements, and related ancillary documents, certificates, instruments and/or related term sheets, and with respect to each of the foregoing, any amendments, supplements, modifications, extensions, and renewals thereto (collectively, the “**DIP Facility Documents**”); (ii) executing, delivering or filing (as necessary) each other agreement, instrument or document to be executed, delivered, or filed (as necessary) in connection with the DIP Financing (collectively with the DIP Facility Documents, the “**DIP Documents**”), in the name and on behalf of the Company; (iii) granting liens on and security interests in any and all assets of the Company, and, as applicable, executing and delivering security agreements (and amendments, supplements, and/or modifications thereto, as appropriate) with respect to real property, personal property (including intellectual property) and any other property to evidence such liens; (iv) authorizing the filing and recording, as applicable, of financing statements, agreements, mortgages, or any other documents evidencing or perfecting such liens or security interests and amendments to such financing statements, agreements, mortgages, or other documents; (v) executing and delivering deposit,

securities and other account control agreements (and amendments, supplements and other modifications thereto, as appropriate); and (vi) performing the Company's obligations under the DIP Documents and taking any other actions, and paying all fees, taxes, and other expenses in connection with the foregoing.

### **GENERAL**

**IT IS FURTHER RESOLVED** that in addition to the specific authorizations heretofore conferred upon the Authorized Officer, the Authorized Officer (and his designees and delegates) be, and hereby is, authorized and empowered, in the name of and on behalf of the Company or the Managing Member, as applicable, to take or cause to be taken any and all such other and further action, and to execute, acknowledge, deliver and file any and all such agreements, certificates, instruments and other documents and to pay all expenses, including but not limited to filing fees, in each case as in the Authorized Officer's reasonable discretion, as shall be necessary, advisable, or desirable in order to fully carry out the intent and accomplish the purposes of the resolutions adopted herein.

**IT IS FURTHER RESOLVED** that any and all lawful acts, actions and transactions relating to the matters contemplated by the foregoing resolutions done in the name of and on behalf of the Company or the Managing Member, as applicable, which acts would have been approved by the foregoing resolutions except that such acts were taken before the adoption of these resolutions, are hereby in all respects approved and ratified as the true acts and deeds of the Company and the Managing Member with the same force and effect as if each such act, transaction, agreement, or certificate has been specifically authorized in advance by resolution of the Managing Member.


**IT IS FURTHER RESOLVED** that facsimile or electronic copies of signatures to this consent shall be deemed to be originals and may be relied on to the same extent as the originals.

**IT IS FURTHER RESOLVED** that the secretary and any other appropriate officer of the Company are, and each individually hereby is, authorized and empowered to certify and furnish such copies of these resolutions and such statements as to the incumbency of the Company's officers, as may be requested, and any person receiving such certified copy is and shall be authorized to rely upon the contents thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the undersigned Managing Member has duly executed this Consent as of the date provided herein.

**NEVADA COPPER, INC., as Managing Member**

  
\_\_\_\_\_  
By: Gregory J. Martin

Title: EVP & CFO

*[Signature Page to Written Consent of The Managing Member of NC Farms LLC]*

**Fill in this information to identify the case:**

Debtor name NC Farms LLC

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (If known): \_\_\_\_\_

☐ Check if this is an amended filing

**Official Form 204**
**Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders**

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	None.						
2							
3							
4							
5							
6							
7							
8							

Debtor

NC Farms LLC

Name

Case number (if known)

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							



**Fill in this information to identify the case and this filing:**

Debtor Name NC Farms LLC

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (If known): \_\_\_\_\_

**Official Form 202****Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended Schedule \_\_\_\_\_
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☒ Other document that requires a declaration List of Equity Security Holders, Corporate Ownership Statement

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

**x**

Signature of individual signing on behalf of debtor

Gregory J. Martin

Printed name

Authorized Representative

Position or relationship to debtor

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NC FARMS LLC

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**LIST OF EQUITY SECURITY HOLDERS  
PURSUANT TO FED. R. BANKR. P. 1007(a)(3)**

NC Farms LLC hereby submits, pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, the following list of equity security holders:

<b>Name and address of interest holder</b>	<b>Percentage interest</b>
<b>Nevada Copper, Inc.</b> 61 E. Pursel Lane Yerington, Nevada USA 89447	100%

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NC FARMS LLC

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**CORPORATE OWNERSHIP STATEMENT**

Pursuant to the Federal Rules of Bankruptcy Procedure 1007(a)(1) and 7007.1 and Local Rule 7007.1 of the Bankruptcy Court for the District of Nevada, NC Farms LLC (the “**Debtor**”) certifies that the following corporations directly or indirectly own 10% or more of any class of the Debtor’s equity interests:

- Nevada Copper Corp.
- Nevada Copper, Inc.

This is **Exhibit “F”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

\_\_\_\_ District of Nevada  
(State)Case number (if known): \_\_\_\_\_ Chapter 11☐ Check if this is an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy**

06/22

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name Nevada Copper, Inc.2. All other names debtor used in the last 8 years N/A  
Include any assumed names, trade names, and *doing business* as names3. Debtor's federal Employer Identification Number (EIN) 20 - 467 1157

4. Debtor's address	Principal place of business	Mailing address, if different from principal place of business
	<u>61 E. Pursel Lane</u>	
	Number Street	Number Street
	<u>P.O. Box 1640</u>	
		P.O. Box
	<u>Yerington, NV 89447</u>	
	City State ZIP Code	City State ZIP Code
	<u>Lyon</u>	Location of principal assets, if different from principal place of business
	County	
		Number Street
		City State ZIP Code

5. Debtor's website (URL) https://nevadacopper.com/

Debtor Nevada Copper, Inc. Case number (if known) \_\_\_\_\_  
 Name

**6. Type of debtor**

- ☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
☐ Partnership (excluding LLP)  
☐ Other. Specify: \_\_\_\_\_

**7. Describe debtor's business***A. Check one:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))  
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))  
☐ Railroad (as defined in 11 U.S.C. § 101(44))  
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))  
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))  
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))  
☒ None of the above

*B. Check all that apply:*

- ☐ Tax-exempt entity (as described in 26 U.S.C. § 501)  
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)  
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

*C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.*2 1 2 2**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

*Check one:*

- ☐ Chapter 7  
☐ Chapter 9  
☒ Chapter 11. *Check all that apply:*

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$3,024,725. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

Debtor Nevada Copper, Inc. Case number (if known) \_\_\_\_\_  
Name

**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

☒ No

☐ Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

☐ No

☒ Yes. Debtor See attached list. Relationship \_\_\_\_\_

District \_\_\_\_\_ When \_\_\_\_\_

MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

*Check all that apply:*

☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** *(Check all that apply.)*

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other \_\_\_\_\_

**Where is the property?**

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State ZIP Code \_\_\_\_\_

**Is the property insured?**

☐ No

☐ Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

Debtor Nevada Copper, Inc.  
Name

Case number (if known) \_\_\_\_\_

**13. Debtor's estimation of available funds**

Check one:

- ☐ Funds will be available for distribution to unsecured creditors.
- ☒ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors**

- |                                  |   |  |
|----------------------------------|---|--|
| <input type="checkbox"/> 1-49    | <input checked="" type="checkbox"/> 1,000-5,000 | <input type="checkbox"/> 25,001-50,000     |
| <input type="checkbox"/> 50-99   | <input type="checkbox"/> 5,001-10,000           | <input type="checkbox"/> 50,001-100,000    |
| <input type="checkbox"/> 100-199 | <input type="checkbox"/> 10,001-25,000          | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999 |   |  |

**15. Estimated assets**

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input checked="" type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input type="checkbox"/> \$1,000,000,001-\$10 billion         |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion        |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion               |

**16. Estimated liabilities**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million               | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million              | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million             | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input checked="" type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

x

Signature of authorized representative of debtor

Title EVP & CFO

Gregory J. Martin


Printed name



Debtor Nevada Copper, Inc.  
Name

Case number (if known) \_\_\_\_\_

18. Signature of attorney

 Ryan J. Works  
Signature of attorney for debtor

Date 06/10/2024  
MM / DD / YYYY

Ryan J. Works

Printed name

McDonald Carano LLP

Firm name

2300 West Sahara Avenue, Suite 1200

Number Street

Las Vegas

City

NV

State

89102

ZIP Code

(702) 873-4100

Contact phone

rworks@mcdonaldcarano.com

Email address

9224

Bar number

NV

State

Debtor Nevada Copper, Inc.  
Name

Case number (if known) \_\_\_\_\_

**Pending Bankruptcy Cases Filed by Affiliates of the Debtor:**

Debtor	Nevada Copper Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Farms LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Ditch Company LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Lion Iron Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	0607792 B.C. Ltd.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known

**SECRETARY'S CERTIFICATE**

(Nevada Copper, Inc.)

**Date:** June 9, 2024

This Secretary's Certificate is furnished in connection with that certain meeting of the board of directors (the "Board") of Nevada Copper, Inc., a Nevada corporation (the "Company"), held on June 9, 2024.

The undersigned, Clare Devincenzi, as Corporate Secretary of the Company, hereby certifies as follows:

1. She is the duly elected and acting Corporate Secretary of the Company and, as such, is authorized to execute and deliver this certificate for and on behalf of the Company.
2. A duly noticed meeting of the Board of the Company took place on Sunday, June 9, 2024, at 1:00 p.m. (prevailing Pacific Time) (the "Meeting")
3. A quorum was declared present at the Meeting, based on the presence of a majority of the members of the Board.
4. At the Meeting, the Board considered and adopted several resolutions authorizing that a voluntary chapter 11 bankruptcy petition be filed by the Company, seeking relief under the provisions of chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the "Resolutions").
5. A true and accurate copy of the Resolutions adopted at the Meeting is attached hereto as **Exhibit 1**, and such resolutions have not been amended, modified, or rescinded and remain in full force and effect as of the date hereof.

I hereby verify that the foregoing and that the attached Resolutions are true and correct. EXECUTED as of the date first written above.



Name: Clare Devincenzi

Title: Corporate Secretary

**Exhibit 1**

**Resolutions**

**RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
NEVADA COPPER, INC.**

June 9, 2024

**WHEREAS** the members of the board of directors (the “**Board**”) of Nevada Copper, Inc., a company existing under the laws of Nevada (the “**Company**”), has determined, after due consideration and deliberation, that it is desirable and in the best interests of the Company, its creditors, and other interested parties that the Company file a petition seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

**WHEREAS** the Company, as the sole member and manager (in such capacity, the “**Managing Member**”), of NC Farms LLC and NC Ditch Company LLC, each of which is a limited liability company existing under the laws of Nevada (the “**Subsidiary LLCs**”), has determined, after due consideration and deliberation, that it is desirable and in the best interests of the Subsidiary LLCs, their creditors, and other interested parties that the Subsidiary LLCs file petitions seeking relief under the provisions of chapter 11 of the Bankruptcy Code.

**CHAPTER 11 CASES**

**NOW, THEREFORE, BE IT RESOLVED** that the Company be, and hereby is, authorized and empowered to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”) and to initiate recognition proceedings under the Companies’ Creditors Arrangement Act in Canada to follow the chapter 11 case in the Bankruptcy Court.

**IT IS FURTHER RESOLVED** that the Subsidiary LLCs be, and hereby are, authorized and empowered to file voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

**IT IS FURTHER RESOLVED** that each officer of the Company, on behalf of the Company, and Gregory J. Martin, on behalf of the Company as Managing Member of the Subsidiary LLCs (each, an “**Authorized Officer**” and collectively, the “**Authorized Officers**”) be, and each of them individually hereby is, authorized, and in such capacity, acting alone or together, with power of delegation, in the name and on behalf of the Company, to execute and file petitions to commence cases, for the Company and the Subsidiary LLCs, and obtain relief under chapter 11 of the Bankruptcy Code (each case commenced as a result of such voluntary petitions, a “**Chapter 11 Case**” and collectively, with the cases to be commenced by the Company’s affiliates, the “**Chapter 11 Cases**”), and to cause such schedules, lists, applications, pleadings, and other motions, papers, agreements, consents, or documents to be filed, and take any and all actions that they deem necessary or proper, to obtain relief from the Bankruptcy Court, including, without limitation, any action necessary to maintain the ordinary course operation of the Company’s and the Subsidiary LLCs’ businesses.

**IT IS FURTHER RESOLVED** that each of the Authorized Officers be, and hereby is, authorized, empowered and directed to authorize or to execute and file all petitions, schedules, motions, lists, applications, pleadings, and other papers in connection with the commencement of the Chapter 11 Cases, and to employ and retain all assistance by legal counsel, accountants, financial advisors, and other professionals and to take and perform any and all further acts and deeds that each of the Authorized Officers deem necessary, proper, or desirable in connection with the Chapter 11 Cases, with a view to the successful prosecution of such cases.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and each of them, acting alone or in any combination, hereby is, authorized, directed and empowered from time to time in the name and on behalf of the Company, to perform the obligations of the Company under the Bankruptcy Code, including the obligations of the Company, in each case, as a debtor in possession, with all such actions to be performed in such manner, and all such certificates, instruments, guaranties, notices and documents to be executed and delivered in such form, as the Authorized Officer performing or executing the same shall approve, and the performance or execution thereof by such Authorized Officer shall be conclusive evidence of the approval thereof by such Authorized Officer and by the Company.

#### **RETENTION OF PROFESSIONALS**

**IT IS FURTHER RESOLVED** that each of the Authorized Officers be, and hereby is, authorized and directed to employ or continue to employ the following firms (the “**Professionals**”) to represent and assist the Company and the Subsidiary LLCs in carrying out their duties under the Bankruptcy Code, and to take any and all actions to advance the Company’s and the Subsidiary LLCs’ rights and obligations in connection with their restructuring or recapitalization: the law firm of Allen Overy Shearman Sterling US LLP, as general bankruptcy counsel; the firm of AlixPartners LLP, as financial and restructuring advisor; the law firm of McDonald Carano LLP, as Nevada bankruptcy counsel; the law firm of Torys LLP, as special Canadian and corporate counsel; the firm of Moelis & Company LLC, as financial advisor and investment banker; and the firm of Epiq Corporate Restructuring, LLC, as notice and claims agent and administrative advisor; and in connection therewith, each of the Authorized Officers, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed appropriate applications for authority to retain the services of the Professionals.

#### **DIP FINANCING**

**IT IS FURTHER RESOLVED** that, in connection with the commencement of the Chapter 11 Cases and in the sound business judgment of the Board, it is advisable and in the best interests of the Company and the Subsidiary LLCs, their creditors, and other interested parties that the Company and the Subsidiary LLCs, along with their affiliates, obtain the debtor-in-possession financing contemplated by that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of or about the date provided herein, by and among the Company, as Borrower, Nevada Copper Corp., the Subsidiary LLCs and each other subsidiary guarantor from time to time party thereto, as guarantors, U.S. Bank Trust Company, National Association, as Administrative Agent, and the lenders listed on Schedule A thereto (the “**DIP Financing**”).

**IT IS FURTHER RESOLVED** that each of the Authorized Officers is authorized to take all actions necessary in connection with the DIP Financing, including, without limitation: (i) executing, delivering, and filing (as necessary), the credit agreement, guarantees, security agreements, and related ancillary documents, certificates, instruments and/or related term sheets, and with respect to each of the foregoing, any amendments, supplements, modifications, extensions, and renewals thereto (collectively, the “**DIP Facility Documents**”); (ii) executing, delivering or filing (as necessary) each other agreement, instrument or document to be executed, delivered, or filed (as necessary) in connection with the DIP Financing (collectively with the DIP Facility Documents, the “**DIP Documents**”), in the name and on behalf of the Company and the Subsidiary LLCs; (iii) granting liens on and security interests in any and all assets of the Company and the Subsidiary LLCs, and, as applicable, executing and delivering security agreements (and amendments, supplements, and/or modifications thereto, as appropriate) with respect to real property, personal property (including intellectual property) and any other property to evidence such liens; (iv) authorizing the filing and recording, as applicable, of financing statements, agreements, mortgages, or any other documents evidencing or perfecting such liens or security interests and amendments to such financing statements, agreements, mortgages, or other documents; (v) executing and delivering deposit, securities and other account control agreements (and amendments, supplements and other modifications thereto, as appropriate); and (vi) performing the Company’s and Subsidiary LLCs’ obligations under the DIP Documents and taking any other actions, and paying all fees, taxes, and other expenses in connection with the foregoing.

**IT IS FURTHER RESOLVED** that the Company be, and it hereby is, authorized to borrow the loans from the lenders pursuant to the DIP Facility Documents, the execution thereof by such officer to be conclusive evidence of such approval and determination.

### **GENERAL**

**IT IS FURTHER RESOLVED** that in addition to the specific authorizations heretofore conferred upon the Authorized Officers, each of the Authorized Officers (and their designees and delegates) be, and they hereby are, authorized and empowered, in the name of and on behalf of the Company or the Managing Member, as applicable, to take or cause to be taken any and all such other and further action, and to execute, acknowledge, deliver and file any and all such agreements, certificates, instruments and other documents and to pay all expenses, including but not limited to filing fees, in each case as in such Authorized Officer’s reasonable discretion, as shall be necessary, advisable, or desirable in order to fully carry out the intent and accomplish the purposes of the resolutions adopted herein.

**IT IS FURTHER RESOLVED** that any and all lawful acts, actions and transactions relating to the matters contemplated by the foregoing resolutions done in the name of and on behalf of the Company or the Managing Member, as applicable, which acts would have been approved by the foregoing resolutions except that such acts were taken before the adoption of these resolutions, are hereby in all respects approved and ratified as the true acts and deeds of the Company and the Managing Member with the same force and effect as if each such act, transaction, agreement, or certificate has been specifically authorized in advance by resolution of the Board.

**IT IS FURTHER RESOLVED** that the secretary and any other appropriate officer of the Company are, and each individually hereby is, authorized and empowered to certify and furnish

such copies of these resolutions and such statements as to the incumbency of the Company's officers, as may be requested, and any person receiving such certified copy is and shall be authorized to rely upon the contents thereof.

**IT IS FURTHER RESOLVED** that the Board has received sufficient notice of the actions and transactions relating to the matters contemplated by the foregoing resolutions, as may be required by the organizational documents of the Company, or hereby waives any right to have received such notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



## Fill in this information to identify the case:

Debtor name: Nevada Copper, Inc.

United States Bankruptcy Court for the District of Nevada

Case number (if known): \_\_\_\_\_

☐ Check if this is an amended filing

## Official Form 204

## Chapter 11 or Chapter 9 Cases: List of Creditors the 20 Who Have Unsecured Claims and Are Not Insiders

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor

disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by

secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1 Small Mine Development LLC 670 E. Riverpark Lane, Suite 100 Boise, ID 83706 USA	Cody Birch, CPA (p) 208-338-8880 (f) 208-338-8881 (e) CBirch@undergroundmining.com	Services	Unliquidated	\$0	\$0	\$5,549,741
2 RAM Enterprises 1225 West Main Street Elko, NV 89801 USA	Laila Miguel, CFO (p) 775-738-3997 ext. 100 (f) 775-738-4226 (e) lmiguel@ram-enterprise.com	Services		\$0	\$0	\$3,879,456
3 NV Energy 6226 W. Sahara Ave. Las Vegas, NV 89146 USA	Josia Galliett, Major Acct. Executive (p) 775-834-5742 (e) Josia.Galliett@nvenergy.com	Services		\$0	\$0	\$1,501,918
4 Lyon County Treasurer 27 South Main Street Yerington, NV 89447 USA	Josh Foli, Comptroller (p) 775-463-6510 (e) jfoli@lyon-county.org	Services		\$0	\$0	\$1,355,115
5 Caterpillar Financial SARL 2120 West End Ave. Nashville, TN 37203 USA	Roman Mebert, Director, Structured Finance (p) +41-043-222-6141 (f) +41-043-222-6140	Services		\$0	\$0	\$1,132,922
6 Boart Longyear Company 2455 South 3600 West West Valley City, Utah 84119 USA	Jen Connor, Contracts Administrator (p) 801-952-8486 (e) jennifer.connor@boartlongyear.com	Services		\$0	\$0	\$1,021,713
7 Cashman Equipment Company 3300 Saint Rose Parkway Henderson, NV, 89052 USA	Michele McLean, Credit Mining Rep (p) 775-778-6590 (e) michelemclean@cashmanequipment.com	Services		\$0	\$0	\$830,891
8 Epiroc Financial Solutions USA LLC 7 Campus Drive, Suite 200 Parsippany, NJ 7054 USA	Nashiba Walker, Contract Manager (p) 972-414-7562 (e) nashiba.walker@epiroc.com	Services		\$0	\$0	\$816,473
9 Epiroc USA LLC 3700 East 68th Avenue Commerce City, CO 80022 USA	Cindy Minch, Credit & Collections Mgr. (p) 800-284-2373 (e) cindy.minch@epiroc.com	Services		\$0	\$0	\$791,675
10 Western Nevada Supply 950 S. Rock Blvd Sparks, NV 89431 USA	Greg Coppola, Sales (p) 775-223-2849 (e) gcoppola@goblueatm.com	Services		\$0	\$0	\$586,670
11 FLSmidth Dept. 3238 PO Box 123238 Dallas, TX 75312-3238 USA	Stacie Reeves, Sales (p) (801) 758-5778 (e) stacie.reeves@flsmidth.com	Services		\$0	\$0	\$508,985
12 Southwest Energy LLC 2040 West Garner Lane Tucson, AZ 85705 USA	Jenine Dalrymple, CFO (p) 520-696-9495 (e) JDalrymple@swenergy.com	Services		\$0	\$0	\$462,122
13 Dumas Contracting USA, Inc. 865 Mountjoy South Timmins, ON P4N 7W7 CAN	Lola Prael, CFO (p) +1 416-594-4665 (e) lprela@dumasmining.com	Services	Disputed	\$0	\$0	\$418,661
14 Tech-Flow, LLC P.O. Box 219 Layton, UT 84041 USA	Willie Church, Outside Sales Representative (p) 801-444-9900 (e) willie@tech-flow.com	Services		\$0	\$0	\$394,105
15 Jenmar Corporation of Utah, Inc. 258 Kappa Drive Pittsburgh, Pennsylvania 15238 USA	Tony Hruska, Credit Manager (p) 412-963-5423 (e) ahruska@jenmar.com	Services		\$0	\$0	\$332,866
16 Nevada Cement Co. P.O. Box 840, I-80 @ Exit 46 Fernley, NV 89408-0840 USA	Jared Kupcak, VP, Operations (p) 775-575-2281 (f) 775-575-4387 (e) Jkupcak@nevadacement.com	Services		\$0	\$0	\$326,651
17 Savage Services Corporation 901 West Legacy Center Way Midvale, UT 84047 USA	Daniel Price, VP Business Development (p) 219-322-0004 (e) danielprice@savageservices.com	Services		\$0	\$0	\$318,482
18 Jim Menesini Petroleum Products 817 27 Bulk Plant Road Yerington, NV 89447 USA	Jim Menesini, Owner (p) 775-530-0009 (e) jim.76petroleum@gmail.com	Services		\$0	\$0	\$282,988
19 NewField Companies, LLC 1349 W. Peachtree St. NW, Ste 1950 Atlanta, GA 30309 USA	James Sullivan, Sr. Project Manager/Associate (p) 720-508-3300 (e) jsullivan@newfields.com	Services		\$0	\$0	\$242,687
20 Guy F. Atkinson Construction, LLC 7509 Menchaca Rd., Bldg 3, Suite 303 Austin, TX 78745 USA	Brian Barker, Project Sponsor (p) 240-383-0066 (e) brian.barker@atkn.com	Services		\$0	\$0	\$195,722

**Fill in this information to identify the case and this filing:**

Debtor Name Nevada Copper, Inc.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (If known): \_\_\_\_\_

**Official Form 202****Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended Schedule \_\_\_\_\_
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☒ Other document that requires a declaration List of Equity Security Holders, Corporate Ownership Statement

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

**x**


Signature of individual signing on behalf of debtor

**Gregory J. Martin**

Printed name

**EVP & CFO**

Position or relationship to debtor

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**LIST OF EQUITY SECURITY HOLDERS  
PURSUANT TO FED. R. BANKR. P. 1007(a)(3)**

Nevada Copper, Inc. hereby submits, pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, the following list of equity security holders:

Name and address of interest holder	Percentage interest
<b>Nevada Copper Corp.</b> PO Box 10026, Pacific Centre South 25th Floor, 700 W Georgia Street Vancouver, BC Canada V7Y 1B3	100%

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**CORPORATE OWNERSHIP STATEMENT**

Pursuant to the Federal Rules of Bankruptcy Procedure 1007(a)(1) and 7007.1 and Local Rule 7007.1 of the Bankruptcy Court for the District of Nevada, Nevada Copper, Inc. (the “*Debtor*”) certifies that the following parent corporation directly or indirectly owns 10% or more of any class of the Debtor’s equity interests:

- Nevada Copper Corp.

This is **Exhibit “G”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

\_\_\_\_ District of **Nevada**  
(State)Case number (if known): \_\_\_\_\_ Chapter **11**☐ Check if this is an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy**

06/22

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

**1. Debtor's name** Nevada Copper Corp.**2. All other names debtor used in the last 8 years** N/A  
Include any assumed names, trade names, and *doing business* as names**3. Debtor's federal Employer Identification Number (EIN)** 9 8 - 0 6 3 1 7 2 2

<b>4. Debtor's address</b>	<b>Principal place of business</b>	<b>Mailing address, if different from principal place of business</b>
	PO Box 10026, Pacific Centre South, 25th Floor, 700 W Georgia Street	
	Number Street	Number Street
		P.O. Box
	Vancouver, BC Canada V7Y 1B3	
	City State ZIP Code	City State ZIP Code
		<b>Location of principal assets, if different from principal place of business</b>
	County	Number Street
		City State ZIP Code

**5. Debtor's website (URL)** https://nevadacopper.com/

Debtor Nevada Copper Corp. Case number (if known) \_\_\_\_\_  
 Name

**6. Type of debtor**

- ☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
☐ Partnership (excluding LLP)  
☐ Other. Specify: \_\_\_\_\_

**7. Describe debtor's business***A. Check one:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))  
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))  
☐ Railroad (as defined in 11 U.S.C. § 101(44))  
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))  
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))  
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))  
☒ None of the above

*B. Check all that apply:*

- ☐ Tax-exempt entity (as described in 26 U.S.C. § 501)  
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)  
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

*C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.*2 1 2 2**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

*Check one:*

- ☐ Chapter 7  
☐ Chapter 9  
☒ Chapter 11. *Check all that apply:*

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$3,024,725. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

Debtor	Nevada Copper Corp.	
	Name	Case number (if known)

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**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

☒ No  
☐ Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY  
 If more than 2 cases, attach a separate list. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

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**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

☐ No  
☒ Yes. Debtor See attached list. Relationship \_\_\_\_\_  
 District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY  
 List all cases. If more than 1, attach a separate list. Case number, if known \_\_\_\_\_

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**11. Why is the case filed in this district?**

Check all that apply:

☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.  
☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

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**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

☒ No  
☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
 What is the hazard? \_\_\_\_\_  
☐ It needs to be physically secured or protected from the weather.  
☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).  
☐ Other \_\_\_\_\_

**Where is the property?**

Number \_\_\_\_\_ Street \_\_\_\_\_  
 \_\_\_\_\_  
 City \_\_\_\_\_ State ZIP Code \_\_\_\_\_

**Is the property insured?**

☐ No  
☐ Yes. Insurance agency \_\_\_\_\_  
 Contact name \_\_\_\_\_  
 Phone \_\_\_\_\_

**Statistical and administrative information**



Debtor **Nevada Copper Corp.**

Name

Case number (if known) \_\_\_\_\_

**13. Debtor's estimation of available funds**

Check one:

- ☐ Funds will be available for distribution to unsecured creditors.
- ☒ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors**

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> 1-49               | <input type="checkbox"/> 1,000-5,000   | <input type="checkbox"/> 25,001-50,000     |
| <input type="checkbox"/> 50-99              | <input type="checkbox"/> 5,001-10,000  | <input type="checkbox"/> 50,001-100,000    |
| <input type="checkbox"/> 100-199            | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input checked="" type="checkbox"/> 200-999 |  |  |

**15. Estimated assets**

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input checked="" type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input type="checkbox"/> \$1,000,000,001-\$10 billion         |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion        |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion               |

**16. Estimated liabilities**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million               | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million              | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million             | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input checked="" type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |

**Request for Relief, Declaration, and Signatures**

**WARNING** — Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

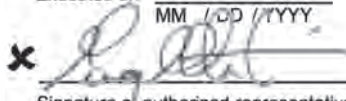
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

  
Signature of authorized representative of debtor

Gregory J. Martin

Printed name

Title EVP & CFO

Debtor Nevada Copper Corp.  
Name

Case number (if known) \_\_\_\_\_

18. Signature of attorney

X /s/ Ryan J. Works  
Signature of attorney for debtor

Date 06/10/2024  
MM / DD / YYYY

Ryan J. Works

Printed name

McDonald Carano LLP

Firm name

2300 West Sahara Avenue, Suite 1200

Number Street

Las Vegas

City

NV

State

89102

ZIP Code

(702) 873-4100

Contact phone

rworks@mcdonaldcarano.com

Email address

9224

Bar number

NV

State

Debtor Nevada Copper, Corp.  
Name

Case number (if known) \_\_\_\_\_

**Pending Bankruptcy Cases Filed by Affiliates of the Debtor:**

Debtor	Nevada Copper, Inc.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Farms LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	NC Ditch Company LLC	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	Lion Iron Corp.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known
Debtor	0607792 B.C. Ltd.	Relationship to you	Affiliate
District	<b>Nevada</b>	When	Case number, if known

**SECRETARY'S CERTIFICATE**  
(Nevada Copper Corp.)

**Date:** June 9, 2024

This Secretary's Certificate is furnished in connection with that certain meeting of the board of directors (the "Board") of Nevada Copper Corp., a British Columbia corporation (the "Company"), held on June 9, 2024.

The undersigned, Clare Devincenzi, as Corporate Secretary of the Company, hereby certifies as follows:

1. She is the duly elected and acting Corporate Secretary of the Company and, as such, is authorized to execute and deliver this certificate for and on behalf of the Company.
2. A duly noticed meeting of the Board of the Company took place on Sunday, June 9, 2024, at 1:00 p.m. (prevailing Pacific Time) (the "Meeting")
3. A quorum was declared present at the Meeting, based on the presence of a majority of the members of the Board.
4. At the Meeting, the Board considered and adopted several resolutions authorizing that a voluntary chapter 11 bankruptcy petition be filed by the Company, seeking relief under the provisions of chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the "Resolutions").
5. A true and accurate copy of the Resolutions adopted at the Meeting is attached hereto as **Exhibit 1**, and such resolutions have not been amended, modified, or rescinded and remain in full force and effect as of the date hereof.

I hereby verify that the foregoing and that the attached Resolutions are true and correct. EXECUTED as of the date first written above.



\_\_\_\_\_  
Name: Clare Devincenzi

Title: Corporate Secretary

**Exhibit 1**

**Resolutions**

**RESOLUTION OF  
THE BOARD OF DIRECTORS OF  
NEVADA COPPER CORP.**

June 9, 2024

**WHEREAS** the members of the board of directors (the “**Board**”) of Nevada Copper Corp., a company existing under the laws of the province of British Columbia (the “**Company**”), has determined, after due consideration and deliberation, that it is desirable and in the best interests of the Company, its creditors, and other interested parties that the Company file a petition seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

**CHAPTER 11 CASE**

**NOW, THEREFORE, BE IT RESOLVED** that the Company be, and hereby is, authorized and empowered to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”) and to initiate recognition proceedings under the Companies’ Creditors Arrangement Act in Canada to follow the chapter 11 case in the Bankruptcy Court.

**IT IS FURTHER RESOLVED** that each officer of the Company (each, an “**Authorized Officer**” and collectively, the “**Authorized Officers**”) be, and each of them individually hereby is, authorized, and in such capacity, acting alone or together, with power of delegation, in the name and on behalf of the Company, to execute and file a petition to commence a case and obtain relief under chapter 11 of the Bankruptcy Code (the case commenced as a result of such voluntary petition, the “**Chapter 11 Case**” and collectively, with the cases to be commenced by the Company’s affiliates, the “**Chapter 11 Cases**”), and to cause such schedules, lists, applications, pleadings, and other motions, papers, agreements, consents, or documents to be filed, and take any and all actions that they deem necessary or proper, to obtain relief from the Bankruptcy Court, including, without limitation, any action necessary to maintain the ordinary course operation of the Company’s businesses.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and hereby is, authorized, empowered and directed to authorize or to execute and file all petitions, schedules, motions, lists, applications, pleadings, and other papers and, in connection with the commencement of the Chapter 11 Case, to employ and retain all assistance by legal counsel, accountants, financial advisors, and other professionals and to take and perform any and all further acts and deeds that each Authorized Officer deems necessary, proper, or desirable in connection with the Chapter 11 Case, with a view to the successful prosecution of such case.

**IT IS FURTHER RESOLVED** that each Authorized Officer be, and each of them, acting alone or in any combination, hereby is, authorized, directed and empowered from time to time in the name and on behalf of the Company, to perform the obligations of the Company under the Bankruptcy Code, including the obligations of the Company, in each case, as a debtor in possession, with all such actions to be performed in such manner, and all such certificates,

instruments, guaranties, notices and documents to be executed and delivered in such form, as the Authorized Officer performing or executing the same shall approve, and the performance or execution thereof by such Authorized Officer shall be conclusive evidence of the approval thereof by such Authorized Officer and by the Company.

### RETENTION OF PROFESSIONALS

**IT IS FURTHER RESOLVED** that each of the Authorized Officers be, and hereby is, authorized and directed to employ or continue to employ the following firms (the “**Professionals**”) to represent and assist the Company in carrying out their duties under the Bankruptcy Code, and to take any and all actions to advance the Company’s rights and obligations in connection with their restructuring or recapitalization: the law firm of Allen Overy Shearman Sterling US LLP, as general bankruptcy counsel; the firm of AlixPartners LLP, as financial and restructuring advisor; the law firm of McDonald Carano LLP, as Nevada bankruptcy counsel; the law firm of Torys LLP, as special Canadian and corporate counsel; the firm of Moelis & Company LLC, as financial advisor and investment banker; and the firm of Epiq Corporate Restructuring, LLC, as notice and claims agent and administrative advisor; and in connection therewith, each of the Authorized Officers, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed appropriate applications for authority to retain the services of the Professionals.

### DIP FINANCING

**IT IS FURTHER RESOLVED** that, in connection with the commencement of the Chapter 11 Cases and in the sound business judgment of the Board, it is advisable and in the best interests of the Company, its creditors, and other interested parties that the Company, along with its affiliates, obtain the debtor-in-possession financing contemplated by that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of or about the date provided herein, by and among Nevada Copper, Inc., as Borrower, the Company and each other subsidiary guarantor party from time to time thereto, as guarantors, U.S. Bank Trust Company, National Association, as Administrative Agent, and the lenders listed on Schedule A thereto (the “**DIP Financing**”).

**IT IS FURTHER RESOLVED** that each of the Authorized Officers is authorized to take all actions necessary in connection with the DIP Financing, including, without limitation: (i) executing, delivering, and filing (as necessary), the credit agreement, guarantees, security agreements, and related ancillary documents, certificates, instruments and/or related term sheets, and with respect to each of the foregoing, any amendments, supplements, modifications, extensions, and renewals thereto, (collectively, the “**DIP Facility Documents**”); (ii) executing, delivering or filing (as necessary) each other agreement, instrument or document to be executed, delivered, or filed (as necessary) in connection with the DIP Financing (collectively with the DIP Facility Documents, the “**DIP Documents**”), in the name and on behalf of the Company; (iii) granting liens on and security interests in any and all assets of the Company, and, as applicable, executing and delivering security agreements (and amendments, supplements, and/or modifications thereto, as appropriate) with respect to real property, personal property (including intellectual property) and any other property to evidence such liens; (iv) authorizing the filing and recording, as applicable, of financing statements, agreements, mortgages, or any other documents

evidencing or perfecting such liens or security interests and amendments to such financing statements, agreements, mortgages, or other documents; (v) executing and delivering deposit, securities and other account control agreements (and amendments, supplements and other modifications thereto, as appropriate); and (vi) performing the Company's obligations under the DIP Documents and taking any other actions, and paying all fees, taxes, and other expenses in connection with the foregoing.

### **GENERAL**

**IT IS FURTHER RESOLVED** that in addition to the specific authorizations heretofore conferred upon the Authorized Officers, each of the Authorized Officers (and their designees and delegates) be, and they hereby are, authorized and empowered, in the name of and on behalf of the Company, to take or cause to be taken any and all such other and further action, and to execute, acknowledge, deliver and file any and all such agreements, certificates, instruments and other documents and to pay all expenses, including but not limited to filing fees, in each case as in such Authorized Officer's reasonable discretion, as shall be necessary, advisable, or desirable in order to fully carry out the intent and accomplish the purposes of the resolutions adopted herein.

**IT IS FURTHER RESOLVED** that any and all lawful acts, actions and transactions relating to the matters contemplated by the foregoing resolutions done in the name of and on behalf of the Company, which acts would have been approved by the foregoing resolutions except that such acts were taken before the adoption of these resolutions, are hereby in all respects approved and ratified as the true acts and deeds of the Company with the same force and effect as if each such act, transaction, agreement, or certificate has been specifically authorized in advance by resolution of the Board.

**IT IS FURTHER RESOLVED** that the secretary and any other appropriate officer of the Company are, and each individually hereby is, authorized and empowered to certify and furnish such copies of these resolutions and such statements as to the incumbency of the Company's officers, as may be requested, and any person receiving such certified copy is and shall be authorized to rely upon the contents thereof.

**IT IS FURTHER RESOLVED** that the Board has received sufficient notice of the actions and transactions relating to the matters contemplated by the foregoing resolutions, as may be required by the organizational documents of the Company, or hereby waives any right to have received such notice.

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## Fill in this information to identify the case:

Debtor name: Nevada Copper Corp.

United States Bankruptcy Court for the District of Nevada

Case number (if known): \_\_\_\_\_

☐ Check if this is an amended filing

## Official Form 204

## Chapter 11 or Chapter 9 Cases: List of Creditors the 20 Who Have Unsecured Claims and Are Not Insiders

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor

disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by

secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1 Pala Investments Limited 12 Castle Street St Helier, JE2 3RT Jersey	Evgenij Iorich, Managing Partner; Melchior Studer, Finance Manager (p) +41 41 560 9070 (e) eiorich@pala.com; mstuder@pala.com	Bank Loans		\$0	\$0	\$60,386,042
2 Mercuria Investments US, Inc. 20 E. Greenway Plaza, Suite 650 Houston, TX 77046 USA	Guillaume de Dardel, Head of Energy Transition Metals; Matteo Bugnone, Investment Associate - Energy Transition Metals (p) +41 22 594 70 00 (e) gdedardel@mercuria.com; mbugnone@mercuria.com	Bank Loans		\$0	\$0	\$10,973,395
3 Pala Investments Limited 12 Castle Street St Helier, JE2 3RT Jersey	Evgenij Iorich, Managing Partner; Melchior Studer, Finance Manager (p) +41 41 560 9070 (e) eiorich@pala.com; mstuder@pala.com	Bank Loans		\$0	\$0	\$5,454,038
4 Triple Flag International Ltd. Cumberland House, 5th Floor, 1 Victoria Street Hamilton, HM 11 Bermuda M5J 2S1	Sheldon Vanderkooy, CFO (p) +1 416-304-9741 (e) svanderkooy@tripleflagpm.com	Bank Loans		\$0	\$0	\$5,043,203
5 Hannam Investments 3rd Floor, 7-10 Chandos Street London W1G 9DQ GBR	Ian Hannam, Director (p) +44 (0)20 7907 8500 (e) ich@hannam.partners	Bank Loans		\$0	\$0	\$516,233
6 NIU Invest SE Joachimsthaler Str. 24 10719 Berlin Germany	Nicole Kontrabecki, General Counsel (p) +49 30 96535790300 (e) n.kontrabecki@niu-invest.com	Bank Loans		\$0	\$0	\$501,849
7 Workiva Inc. 2900 University Blvd Ames, IA 50010 USA	Michelle Melby, Accounting Supervisor (p) 515-817-6109 (e) ar@accounting.workiva.com	Services		\$0	\$0	\$60,462
8 Hugessen Consulting 3200 Royal Bank Plaza, South Tower Toronto, ON M5J2J4 CAN	John Skinner, Managing Member (p) 416-868-1288 (e) js Skinner@hugessen.com	Services		\$0	\$0	\$13,046
9 DMI Digital Media Innovations Canada, Inc PO Box 60171 RPO Fraser Vancouver, BC V5W 4B5 CAN	Erik Carlson, COO & CFO (p) 833-559-2635 (e) billing.support@notified.com	Services		\$0	\$0	\$5,013
10 McInnes Cooper 1969 Upper Water St Halifax, NS B3J2V1 CAN	Basia Dzierzanowska, Office Lead Partner (p) 902-444-8485 (e) basia.dzierzanowska@mcinnescooper.com.	Professional Services		\$0	\$0	\$3,596
11 Computershare 100 University Ave., 11th Floor Toronto, ON M5J 2Y1 CAN	Pam Hosfield, Relationship Manager (p) 604-661-9435 (e) pam.hosfield@computershare.com	Services		\$0	\$0	\$1,593
12 Proactive Investors North American Inc Suite 1130 - 1090 West Georgia St. Vancouver, BC V6E 3V7 CAN	Betty Soares, CFO (p) +1 604-688-8158 (e) action@proactiveinvestors.com	Services		\$0	\$0	\$1,382

**Fill in this information to identify the case and this filing:**

Debtor Name Nevada Copper Corp.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Nevada  
(State)

Case number (If known): \_\_\_\_\_

**Official Form 202****Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

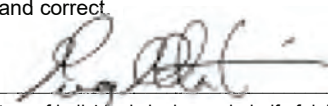
I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended Schedule \_\_\_\_\_
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☒ Other document that requires a declaration List of Equity Security Holders, Corporate Ownership Statement

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/09/2024  
MM / DD / YYYY

x

  
Signature of individual signing on behalf of debtor

Gregory J. Martin  
Printed name

EVP & CFO  
Position or relationship to debtor

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER CORP.

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**LIST OF EQUITY SECURITY HOLDERS  
PURSUANT TO FED. R. BANKR. P. 1007(a)(3)**

Nevada Copper Corp. (the “**Debtor**”) hereby submits, pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, the following list of equity security holders:<sup>1</sup>

Name and address of interest holder	Percentage interest	Type of interest
<b>Pala Investments Limited<sup>2</sup></b> 12 Castle Street St. Helier, Jersey Canada JE2 3RT	60.96%	Common Shares
<b>Mercuria Energy Holdings (Singapore) Pte. Ltd.</b> 12 Marina View #26-01 Asia Square Tower 2 Singapore (018961)	17.24%	Common Shares

<sup>1</sup> There are approximately 1,429,567,214 outstanding Common Shares of the Debtor. The Debtor does not maintain a list of all its equity security holders. Preparing a list of, and sending notice to, all the holders of the Debtor’s Common Shares would be unduly expensive and time consuming. Accordingly, this list includes only those equity security holders holding 10% or more of the Debtor’s Common Shares, and the Debtor has requested a waiver of the requirement to list the other equity security holders in its *Motion for an Order (i) Extending the Time to File Schedules and Statements (ii) Authorizing the Filing of a Consolidated Creditor Matrix with the Debtors’ Chapter 11 Petitions (iii) Authorizing the Debtors to Redact Certain Personal Identifiable Information; and (iv) Modifying the Requirement to File a Complete List of Equity Holders*.

<sup>2</sup> The above table includes the Common Shares held by both Pala Investments Limited and Pala Assets Holdings Limited, an affiliated entity of Pala Investments Limited. Pala Investments Limited and Pala Assets Holdings Limited hold 871,470,074 Common Shares and 10,000,000 Common Shares, respectively, representing approximately 60.96% and 0.70% of the issued and outstanding Common Shares, respectively.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER CORP.

Debtor.

Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]

Chapter 11

Date: [\_\_\_\_]

Time: [\_\_\_\_]

**CORPORATE OWNERSHIP STATEMENT**

Pursuant to the Federal Rules of Bankruptcy Procedure 1007(a)(1) and 7007.1 and Local Rule 7007.1 of the Bankruptcy Court for the District of Nevada, Nevada Copper Corp. (the “*Debtor*”) certifies that no publicly held corporation directly or indirectly owns 10% or more of any class of the Debtor’s equity interests.

This is **Exhibit “H”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

ALLEN OVERY SHEARMAN STERLING US LLP  
 Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
 Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)  
 599 Lexington Avenue  
 New York, New York 10022  
 Telephone: (212) 848-4000  
[fsosnick@aoshearman.com](mailto:fsosnick@aoshearman.com)  
[sara.coelho@aoshearman.com](mailto:sara.coelho@aoshearman.com)

McDONALD CARANO LLP  
 Ryan J. Works (NSBN 9224)  
 Amanda M. Perach (NSBN 12399)  
 2300 West Sahara Avenue, Suite 1200  
 Las Vegas, Nevada 89102  
 Telephone: (702) 873-4100  
[rworks@mcdonaldcarano.com](mailto:rworks@mcdonaldcarano.com)  
[aperach@mcdonaldcarano.com](mailto:aperach@mcdonaldcarano.com)

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
 Chapter 11

**Hearing Date: *OST REQUESTED***  
**Hearing Time: *OST REQUESTED***

**OMNIBUS DECLARATION OF GREGORY J. MARTIN IN SUPPORT  
 OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Gregory J. Martin, being duly sworn, hereby depose and declare under penalty of perjury:

1. I am the Executive Vice President and Chief Financial Officer of Nevada Copper, Inc. ("**NCI**"), and its parent, Nevada Copper Corp. ("**NCU**"), and its subsidiaries Lion Iron Corp. and 0607792 B.C. Ltd., as well as a member of the board of directors of NCI. I am over the age of 18, and if called upon to testify as to the statements made herein, I could and would do so.

<sup>1</sup> The relief requested herein is sought for each of the following Debtors, and joint administration has been requested. The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

1           2.       On the date hereof (the “**Petition Date**”), NCI and NCU, together with NCU’s direct  
2 or indirect subsidiaries, 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC, and NC Ditch  
3 Company LLC (collectively, the “**Subsidiary Guarantors**”), filed voluntary petitions (the  
4 “**Petitions**”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C.  
5 §§ 101-1532, as amended (the “**Bankruptcy Code**”), which commenced the above-captioned  
6 chapter 11 cases (the “**Chapter 11 Cases**”) in which NCI, NCU, and the Subsidiary Guarantors are  
7 debtors and debtors in possession (collectively, the “**Debtors**”). I submit this declaration in support  
8 of the Debtors’ chapter 11 petitions and motions for “first day” emergency relief (the “**First Day**  
9 **Motions**”). As of the Petition Date, the Debtors continue to operate their businesses and manage  
10 their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy  
11 Code. No trustee, examiner, or statutory committee has been appointed in the Debtors’ cases.

12           3.       In my roles with the Debtors, I have been involved in, or worked with the Debtors’  
13 other respective officers, executives, and senior management in connection with, all aspects of the  
14 Debtors’ business, as well as the Debtors’ efforts to address their current financial difficulties. In  
15 addition, I have extensive experience in the mining field, and have worked in various capacities  
16 with the Debtors and other companies in the field for over 28 years.

17           4.       Except as otherwise indicated, all facts set forth in this Declaration are based upon  
18 my personal knowledge, my review of relevant documents, information supplied to me by the  
19 Debtors’ professionals and other parties in interest, or my opinion based upon experience,  
20 knowledge, and information concerning the operations of the Debtors. Except as otherwise  
21 indicated, references to the Bankruptcy Code, the chapter 11 process, and related legal matters are  
22 based upon my own understanding of such matters, as well as my reliance on explanations  
23 provided by other employees of the Debtors, consultation with the Debtors’ financial advisors, and  
24 advice of counsel.

25           5.       I, or members of my management team, review and work with the books and  
26 records of the Debtors, including their respective business plans, financial statements and  
27 projections, business analyses and reports, contracts and other legal documents, and similar items.  
28

1 Based upon that review and work, as well as my discussions with the Debtors' management team,  
2 board members, investors, and legal and financial advisors, I have developed a familiarity with:  
3 (i) the Debtors' books and records that have been maintained in the ordinary course of business  
4 under the control of the Debtors' executives and senior management; (ii) the Debtors' respective  
5 business and financial histories, and their current business and financial situations; and (iii) the  
6 financial and operational details of the Debtors' business operations.

7 6. Together with the filing of the Petitions, the Debtors filed their First Day Motions,  
8 which seek to allow them, individually and collectively, to operate efficiently and effectively in  
9 the Chapter 11 Cases. I have reviewed the Petitions and the First Day Motions, and as set forth  
10 below, it is my belief that the relief sought in the First Day Motions is designed to facilitate a  
11 smooth transition by the Debtors into chapter 11 and is critical to the Debtors' ability to maintain  
12 their business operations. As a result, I believe that the relief requested in each of the First Day  
13 Motions is necessary and appropriate under the circumstances of the Debtors and these Chapter 11  
14 Cases and is in the best interest of the Debtors' estates, creditors, and other parties in interest.

15 7. This Declaration is divided into two main parts. Part I provides an overview of the  
16 Debtors' business, the circumstances affecting the Debtors and the events leading to the Debtors'  
17 chapter 11 filing. Part II sets forth relevant facts in support of the Debtors' various First Day  
18 Motions.

19 **I. Nature of the Debtors' Business and Statement of Circumstances Leading to Debtors'**  
20 **Chapter 11 Filing**

21 **A. General Background**

22 8. An organizational chart depicting the Debtors is attached as **Exhibit 1** hereto. As  
23 set forth in the organizational chart, NCU is the ultimate parent of each of the other Debtors,  
24 including NCI. NCI is the Debtors' primary operating company and the holder of substantially all  
25 of the Debtors' mining-related assets. With respect to the Subsidiary Guarantors: (i) 0607792 B.C.  
26 Ltd. and Lion Iron Corp. are direct subsidiaries of NCU; and (ii) NC Farms LLC and NC Ditch  
27  
28



Company LLC are direct subsidiaries of NCI. Each of the Subsidiary Guarantors is an inactive company that presently conducts no business and has no employees.

9. Each of NCI, Lion Iron Corp., NC Farms LLC, and NC Ditch Company LLC are organized under the laws of the State of Nevada. NCI's principal place of business is in the State of Nevada, and its principal assets have been located in the State of Nevada for more than 180 days prior to the Petition Date. Lion Iron Corp., NC Farms LLC, and NC Ditch Company LLC are largely dormant entities; however, to the extent they maintain a principal place of business and have assets, they are located in the State of Nevada. Both NCU and 0607792 B.C. Ltd. are organized under the laws of the Province of British Columbia, Canada.

10. NCU is a public company traded on the Toronto Stock Exchange under the symbol "NCU." As of the date of the Debtors' recent public filing, NCU's largest shareholder is Pala Investments Limited ("**Pala**"), which holds approximately 61.66% of NCU's stock. Mercuria Energy Trading S.A. is believed to own approximately 17.24%, and management and directors own approximately 0.18% of NCU's stock. The remainder of NCU's common stock is held by other investors.

11. It is anticipated that, after the Petition Date, each of the Debtors will commence recognition proceedings under Part IV of the Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36 (Can.) (Canada) (the "**Recognition Proceedings**") in the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") for purposes of, among other things, implementing the relief obtained in the Chapter 11 Cases.

**B. Nature of the Debtors' Business**

12. The Debtors, principally through NCI, are in the business of mining copper and other minerals, and operating a processing plant that refines copper ore into copper concentrate. The bulk of the Debtors' operations have been focused on the development of the Pumpkin Hollow project (the "**Project**"), which is located approximately eight miles southeast of Yerington, Nevada. The Project, which contains substantial mineral reserves and resources, including not only copper, but gold, silver, and iron magnetite, consists of an underground mine and processing

1 facility (the “**Underground Mine**”), together with an open-pit project (the “**Open Pit**  
2 **Development**”) that is in the pre-feasibility stage of development.

3 13. The Project comprises: (i) 14.5 square miles of land, including related surface and  
4 mineral rights, that is owned in fee directly by the Debtors; (ii) 2.4 square miles of land, including  
5 surface and mineral rights, that is leased by the Debtors from RGGGS Land & Minerals, Ltd., LP  
6 (the “**RGGGS Lease**”); and (iii) unpatented claims owned by the Debtors on 21.1 square miles of  
7 federal lands surrounding the Project. Following investigation of surrounding land in April 2019,  
8 the Debtors staked approximately 5,700 acres of federal land (the “**Tedeboy Area**”) situated to the  
9 northeast of the Underground Mine and the Open Pit Development, and adjacent to the rest of the  
10 Project. NCI also acquired 295 unpatented lode mining claims in the Tedeboy Area, which shows  
11 significant surface mineralization. As disclosed in the NCU’s Annual Information Form for the  
12 year ended December 31, 2023, the Underground Mine indicated mineral resources of 1.8 billion  
13 pounds. Based upon a technical report dated April 16, 2019, the Open Pit Development contained,  
14 measured and indicated mineral resources of 5.0 billion pounds of copper. Both the Underground  
15 Mine and the Open Pit Development have exploration upside.

16 14. The first stage of the Project was the development and opening in December 2019  
17 of the Underground Mine, which principally is designed for stope mining (*i.e.*, the process of  
18 extracting ore through pockets known as “stopes”). It is projected that the Underground Mine, if  
19 producing at full capacity, could produce an annual average of 60 million pounds of copper, 9,000  
20 ounces of gold, and 173,000 ounces of silver over its first five years of operation, and an annual  
21 average of 50 million pounds of copper, 8,000 ounces of gold, and 150,000 ounces of silver over  
22 the life of the mine.

23 15. At the beginning of the third quarter of 2022, due to geotechnical challenges that  
24 restricted access to the Underground Mine, the Debtors had to temporarily suspend mining  
25 operations in the Underground Mine, which, in turn, eliminated the Debtors’ primary source of  
26 operating income at that time. The Debtors ultimately were able to negotiate and execute definitive  
27 agreements with key stakeholders on October 28, 2022, to provide a financing package that  
28

1 enabled the Debtors to restart and commence ramp up operations at the Underground Mine, which  
2 was supplemented in May 2023 by additional financing agreements with the Debtors' key  
3 stakeholders (the "***Restart Financing Packages***").

4 16. As further described below, the Restart Financing Packages provided much-needed  
5 liquidity to the Debtors that enabled the Debtors to resume milling operations at the Underground  
6 Mine in the fourth quarter of 2023. Although milling operations at the Underground Mine  
7 resumed, production occasionally was halted to fix commissioning issues, particularly with respect  
8 to filter press complications, and to stabilize operations. The stoppages prevented the Debtors  
9 from maintaining continuous processing operations needed for commercial production and  
10 resulted in lower-than-expected production and revenues. In total in 2023, the Underground Mine  
11 produced approximately 3,274 dry short tons ("***dst***") of copper concentrate at an average copper  
12 grade of 22%, and in the first quarter of 2024, it produced approximately 2,746 dst of copper  
13 concentrate at an average copper grade of 20%. The Underground Mine did not produce material  
14 amounts of gold or silver in 2023 or the first quarter of 2024.

15 17. With limited financial resources, significant capital and operating costs, and  
16 substantial debt from construction of the Underground Mine and the Restart Financing Packages,  
17 the Debtors began exploring a sale process in the fall of 2023 (the "***Sale Process***"). The Sale  
18 Process identified several potential interested purchasers. Ultimately, the Debtors entered  
19 exclusivity agreements with one of the two interested parties. Although the Debtors were able to  
20 get to a non-binding term sheet with one prospective purchaser and then an indicative term sheet  
21 with another party, the Debtors ultimately were not able to enter into definitive agreements with  
22 the prospective purchasers (the "***Primary Prospective Purchasers***"). While the Debtors were  
23 engaged in the Sale Process, they experienced significant liquidity constraints and required  
24 additional funding from certain of their stakeholders. As discussed in greater detail below, due to  
25 the liquidity constraints, after the Debtors' Sale Process, including negotiations with the Primary  
26 Prospective Purchasers, proved unsuccessful, the Debtors curtailed certain activities related to their  
27  
28

ongoing operations and pursued a strategy that focused on maintaining limited operations and preserving their assets.

### ***C. Capital Structure***

18. The description of the Debtors' indebtedness provided herein is for informational purposes only and is qualified in its entirety by reference to the documents setting forth the specific terms of such obligations. Nothing herein is intended, nor should anything herein be deemed, to be an admission as to the validity of any security interest or other rights purportedly granted under such documents and agreements. As described below, the Debtors' principal debt obligations consist of both secured and unsecured debt obligations.

#### ***1. Secured Debt Obligations***

Facility	Obligors	Priority	Amount Outstanding <sup>2</sup>
Second A&R Facility	Debtors Pala (Tranche B Guarantor)	1 <sup>st</sup> lien in Project Collateral; 2 <sup>nd</sup> lien in APA Collateral	\$188 million
Advance Payment Facility	NCI	1 <sup>st</sup> lien in APA Collateral; 3 <sup>rd</sup> lien in Project Collateral	\$3 million
Stream Agreement Deposits	Debtors	2 <sup>nd</sup> lien in Project Collateral; 3 <sup>rd</sup> lien in APA Collateral	\$78.2 million
Third A&R Loan Facility	Debtors	4 <sup>th</sup> lien in Project Collateral and APA Collateral	\$10 million
Total			\$279.2 million <sup>3</sup>

#### ***a. Second A&R Credit Agreement***

19. On May 6, 2019, NCI, as borrower, entered into a credit agreement (the “***Senior Secured Credit Agreement***”) with KfW IPEX-Bank GmbH (“***KfW***”) as sole lead arranger and UFK Agent, KfW as administrative agent, and the initial senior lenders party thereto (the “***Initial Senior Lenders***”), pursuant to which the Initial Senior Lenders funded \$115 million to NCI under

<sup>2</sup> The approximate total amount in this chart consists of the aggregate principal amount as of the Petition Date (including capitalized interest, where applicable).

<sup>3</sup> Excluded from this chart are certain secured obligations to Trisura Insurance Company to secure potential reimbursement obligations under surety bonds, as explained below in more detail.

1 what would eventually become the first tranche (the “**Tranche A Loans**”) under the Senior  
2 Secured Credit Agreement. The Senior Secured Credit Agreement was amended and restated on  
3 December 8, 2020 (as amended on December 22, 2020, and on October 11, 2021, the “**A&R Senior**  
4 **Secured Credit Agreement**”), at which time the Initial Senior Lenders agreed to commit an  
5 additional \$15 million (the “**Tranche B Loans**”). In connection with the Restart Financing  
6 Packages, the A&R Senior Secured Credit Agreement was amended and restated for a second time  
7 on October 28, 2022 (as amended, restated, supplemented, and modified from time to time, the  
8 “**Second A&R Credit Agreement**”) to provide for a new tranche of up to \$15 million (the “**Tranche**  
9 **A-2 Loans**”), funded by Pala, Triple Flag International Ltd. (“**Triple Flag**”), and Mercuria  
10 Investments US, Inc. (“**Mercuria**”).

11 20. The Debtors ultimately required additional financing to restart processing  
12 operations at the Underground Mine. In order to provide the necessary financing, the Tranche A-  
13 2 Lenders (defined below) agreed to support the expansion of the Tranche A-2 Loans by an  
14 additional \$10 million, subject to the Debtors obtaining the necessary consents from its other  
15 secured lenders. On September 8, 2023, the Debtors obtained the necessary consents, and Pala,  
16 Mercuria, and TF R&S Canada Ltd. (“**TF Canada**” and, together with Pala, Mercuria, and Triple  
17 Flag, the “**Tranche A-2 Lenders**”) funded an additional \$10 million of Tranche A-2 Loans on a  
18 pro rata basis. The Tranche A-2 Lenders agreed to further support the expansion of the Tranche  
19 A-2 Loans by an additional \$6 million, subject to the Debtors again obtaining the necessary  
20 consents from its other secured lenders. Such consents were obtained in late May 2024, permitting  
21 the Debtors to enter into an amendment to the Second A&R Credit Agreement dated May 29,  
22 2024, pursuant to which certain advances funded by each of TF Canada and Pala, in each case, in  
23 an aggregate principal amount of \$2.775 million, were incorporated into the principal amount of  
24 the Tranche A-2 Loans.

25 21. The Tranche A Loans bear interest at a rate of SOFR plus 2.10% per annum,  
26 Tranche B Loans bear interest at a rate of SOFR plus 5.40% per annum, and Tranche A-2 Loans  
27 bear interest at a rate of SOFR plus 5% per annum. Pursuant to Amendment Agreement No. 2 to  
28

1 the Second A&R Credit Agreement, dated March 15, 2023, all interest was capitalized on (i) the  
2 Tranche A Loan and Tranche B Loan for the interest payments scheduled for July 31, 2022,  
3 January 31, 2023, July 31, 2023, and January 31, 2024, and (ii) each interest payment date for the  
4 Tranche A-2 Loans. The Tranche A Loans and Tranche A-2 Loans have a scheduled maturity date  
5 of July 31, 2029, and the Tranche B Loans have a scheduled maturity date of July 31, 2025.

6 22. The obligations owing to the Initial Senior Lenders and Tranche A-2 Lenders  
7 (together, the “**Senior Lenders**”) are secured by a first-lien security interest in substantially all of  
8 the property and assets of the Debtors, except for the APA Collateral (as defined below), pursuant  
9 to that certain Amended and Restated Collateral Agency, Accounts and Security Agreement dated  
10 October 28, 2022. This first-lien security package includes all of NCI’s property, assets,  
11 undertakings, approvals, licenses, permits, and rights in and relating to the Project, including the  
12 real property, water and mineral rights, accounts, cash, contracts, proceeds, and books and records,  
13 all pledges of the equity interests of NCI and the Subsidiary Guarantors, and security agreements  
14 on all present and after-acquired property of all of the Debtors (collectively, the “**Project**  
15 **Collateral**”). In addition, the obligations owing to the Senior Lenders under the Second A&R  
16 Credit Agreement are secured by a second-lien security interest in all marketable metal-bearing  
17 material that is extracted or otherwise recovered from the Project (the “**APA Collateral**”).

18 23. The obligations of NCI under the Second A&R Credit Agreement and related  
19 documents are guaranteed by NCU and the Subsidiary Guarantors pursuant to a Completion  
20 Agreement, dated May 22, 2019. NCI’s obligations with respect to the Tranche B Loans are  
21 guaranteed by Pala, under a separate guarantee agreement, dated December 8, 2020. As of the  
22 Petition Date, the outstanding amount, including accrued and unpaid interest, under the Second  
23 A&R Credit Agreement is approximately \$188 million.

24 **b. Advance Payment Agreement**

25 24. On May 6, 2019, NCI, as seller, entered into an advance payment agreement (as  
26 subsequently amended, the “**Advance Payment Agreement**”) with Concord Resources Limited  
27 (“**Concord**”). Pursuant to the Advance Payment Agreement and offtake agreements entered into  
28

1 in connection therewith, Concord agreed to make advance payments for the Material (as defined  
2 below) in the form of a revolving advance payment facility in the amount of up to \$35 million  
3 (the “**Advance Payment Facility**”), and NCI agreed to sell and deliver to Concord flotation copper  
4 concentrates produced at and originating from the Project (the “**Material**”). Concord also agreed  
5 (as NCI’s agent) to sell and deliver copper concentrates to certain other parties (Aurubis AG and  
6 Aurubis Bulgaria AD) who had contracted for copper deliveries. On December 8, 2020, the parties  
7 to the Advance Payment Agreement executed a deed of amendment, by which, among other things,  
8 they increased the amount of the Advance Payment Facility to up to \$40 million.

9 25. Through the Advance Payment Facility, Concord advanced amounts, on a monthly  
10 basis, that were calculated to approximate the value of the projected copper concentrate deliveries  
11 for the period four months from the advance. The Advance Payment Facility contemplates that,  
12 in the ordinary course, amounts thereunder would be repaid through copper concentrate deliveries.  
13 On a monthly basis, the Advance Payment Facility contains a “true-up” mechanism that compares  
14 the amounts advanced with respect to the anticipated deliveries for such month to the value of the  
15 amounts actually delivered for the month. If the value of deliveries in a particular month ultimately  
16 is lower than the amount advanced based on the anticipated deliveries for such month, NCI would  
17 be obligated to make a cash payment equal to the difference between the value of the advanced  
18 amount and the value of the actual deliveries. Payments due under the Advance Payment Facility  
19 are secured by a first-lien security interest in the APA Collateral and a third-lien security interest  
20 in the Project Collateral. As of the Petition Date, the outstanding amount, including accrued and  
21 unpaid interest, under the Advance Payment Agreement is approximately \$3 million.

22 *c. Stream Agreement*

23 26. The Debtors are party to a metal purchase and sale agreement, initially dated as of  
24 December 21, 2017, which agreement was subsequently amended (as amended, the “**Stream**  
25 **Agreement**”), with Triple Flag, whereby NCI agreed to sell refined gold and refined silver mined  
26 from the Underground Mine to Triple Flag. Pursuant to the terms of the Stream Agreement, NCI  
27 is obliged to deliver to Triple Flag 97.5% of the gold and silver production from the Underground  
28



1 Mine, calculated based on a fixed ratio of 162.5 ounces of gold and 3,131.0 ounces of silver for  
2 each one million pounds of copper in concentrate produced. The Stream Agreement has an initial  
3 term of 40 years, with automatic extension for 10-year periods thereafter.

4 27. Upon its entry into the Stream Agreement, Triple Flag paid NCI a deposit of \$70  
5 million, which, pursuant to an amendment dated March 27, 2020 (the “**2020 Triple Flag**  
6 **Amendment**”), was increased by \$10 million (the “**Deposit**”). Deliveries made to Triple Flag  
7 under the Stream Agreement will be credited until the Deposit is depleted, at which point Triple  
8 Flag will be required to make additional payments for the refined gold and refined silver that are  
9 delivered under the Stream Agreement.

10 28. As security for NCI’s obligations under the Stream Agreement, Triple Flag has a  
11 second-lien security interest in the Project Collateral and a third-lien security interest in the APA  
12 Collateral. Since inception, the Debtors have made approximately \$2.68 million worth of  
13 deliveries under the Stream Agreement, and approximately \$78.2 million of the Deposit remains  
14 outstanding as of the Petition Date. NCI’s obligations under the Stream Agreement are guaranteed  
15 by NCU and the Subsidiary Guarantors.

16 29. In connection with the 2020 Triple Flag Amendment, on March 27, 2020, NCI and  
17 an affiliate of Triple Flag, Triple Flag USA Royalties Ltd. (“**TF USA**”), entered into a new royalty  
18 agreement (the “**Open Pit Royalty Agreement**”). Under the Open Pit Royalty Agreement, TF USA  
19 made a payment of \$17 million to NCI in exchange for a 0.7% net smelter return royalty in respect  
20 of the Open Pit Development. Under a separate new royalty agreement, NCI agreed to a 2% net  
21 smelter return royalty in respect of the Tedeboy Area, in exchange for a payment of \$3 million by  
22 TF USA to NCI, and an additional contingent payment of \$5 million to be made upon the  
23 commencement of commercial production in respect of the Tedeboy Area (the “**Conditional**  
24 **Tedeboy Payment**”). On October 28, 2022, the parties amended the Open Pit Royalty Agreement  
25 (the “**Amended Open Pit Royalty Agreement**”) to increase the existing net smelter return royalty  
26 from 0.7% to 2% for a purchase price of approximately \$26.2 million. The Amended Open Pit  
27 Royalty Agreement allowed NCI to buy back 100% of the increased royalty for \$33 million until  
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the earlier of (i) October 28, 2024, or (ii) a change of control of NCI or NCU. Pursuant to an amendment executed on February 29, 2024, the buyback period was extended to October 28, 2025, with certain escalating monthly increases to the existing buyback amount up to a maximum of \$38.1 million if the buyback occurs after October 28, 2024. In addition, the amendment provides that if the buyback does not occur by October 28, 2024, then TF USA is no longer required to make the Conditional Tedeboy Payment.

***d. Third A&R Loan Facility***

30. On December 21, 2023, as part of the Restart Financing Packages, NCU, NCI, the Subsidiary Guarantors, and Pala executed the Third Amended and Restated Loan Agreement (the “***Third A&R Loan Agreement***”) to add approximately \$5.6 million advanced by Pala pursuant to certain promissory notes to the total amount under the prior existing loan agreement. NCU is the obligor under the Third A&R Pala Loan Agreement, and the obligations under the Third A&R Pala Loan Agreement are guaranteed by NCI and the Subsidiary Guarantors.

31. The loan facility under the Third A&R Loan Agreement (the “***Third A&R Loan Facility***”) bears interest at SOFR plus 9% per annum and could be paid in NCU common stock or paid in kind at Pala’s option. The obligations under the Third A&R Loan Facility are secured by a fourth lien security interest that is governed in accordance with the terms of the Pala Fourth Lien Intercreditor Agreement (as defined below). The maturity date under the Third A&R Loan Agreement is January 31, 2026. As of the Petition Date, the outstanding principal amount, together with accrued and unpaid interest owed under the Third A&R Loan Agreement is approximately \$10 million.

***2. Intercreditor Agreements***

32. The relationship between Triple Flag’s and KfW’s respective security interests is governed by that certain intercreditor agreement, dated as of May 22, 2019, among KfW, as administrative agent and collateral agent, Triple Flag, and the Debtors (the “***KfW/Triple Flag Intercreditor Agreement***”). The relationship between Concord’s security interest and the security interests of KfW and Triple Flag is governed by that certain working capital facility intercreditor

1 agreement, dated as of May 22, 2019, among KfW, as administrative agent and senior collateral  
2 agent, Triple Flag, Concord, and NCI (the “**APA Intercreditor Agreement**”). The relationship  
3 between Pala’s fourth lien security interest and the security interests of KfW, Triple Flag, and  
4 Concord, is governed by that certain intercreditor agreement, dated as of October 28, 2022, among  
5 KfW, Triple Flag, Concord, and the Debtors (the “**Pala Fourth Lien Intercreditor Agreement**”,  
6 and, collectively with the KfW/Triple Flag Intercreditor Agreement and APA Intercreditor  
7 Agreement, the “**Intercreditor Agreements**”).

8 **3. Trisura Surety Bonds**

9 33. Although not funded indebtedness, NCU has granted a fourth lien on its assets to  
10 secure potential reimbursement obligations that may arise in favor of Trisura Insurance Company  
11 (“**Trisura**”), with respect to surety bonds securing certain obligations of NCI. The Debtors have  
12 two outstanding surety bonds (the “**Surety Bonds**”) provided by Trisura. The Surety Bonds have  
13 been issued in favor of: (i) Sierra Pacific Power Company d/b/a NV Energy in connection with the  
14 High Voltage Distribution Agreement, dated January 7, 2019, as amended on February 21, 2019  
15 (the “**NV Energy Bond**”); and (ii) Nevada Division of Environmental Protection to secure future  
16 mine reclamation requirements (the “**Reclamation Bond**”).

17 34. The NV Energy Bond and the Reclamation Bond expire on June 25, 2024. The  
18 Surety Bonds generally are renewed on an annual basis, and the Debtors pay an annual premium  
19 to Trisura for the Surety Bonds, which as of the last renewal totaled \$321,000 in the aggregate.  
20 Pursuant to an indemnity agreement and a security agreement between Trisura and NCU, dated as  
21 of June 28, 2021, in the event that a Surety Bond were to be called, it is expected that Trisura  
22 would seek, under applicable surety law, to exercise its subrogation rights against NCI, which in  
23 some instances could be secured by mechanic’s liens. The Debtors’ obligation to reimburse the  
24 surety also is secured by a fourth lien (behind KfW, Triple Flag, and Concord) on substantially all  
25 of NCU’s personal property, including its shares in NCI.

#### 4. *Unsecured Funded Debt Obligations*

Facility	Obligor	Amount Outstanding
Unsecured Loans	NCU	\$78.3 million
Intercompany Loans	NCI	\$148.3 million
Total		\$226.6 million <sup>4</sup>

##### a. *The Unsecured Loans*

35. On May 30, 2023, NCU entered into a deferred funding agreement with Pala and Mercuria (the “***Deferred Funding Agreement***”) pursuant to which Pala agreed to advance \$15 million and Mercuria agreed to advance \$10 million to NCU upon NCU meeting certain terms and conditions set forth therein. In the third quarter of 2023, NCU met the conditions for funding under the Deferred Funding Agreement and subsequently drew down the \$25 million in order to finance the construction, ramp up and working capital requirements of the Underground Mine. To fund additional cash requirements, on November 13, 2023, Pala and NCU entered into an arrangement pursuant to which Pala advanced to NCU an additional \$15 million (the “***Deferred Funding Arrangement***”).

36. On December 21, 2023, NCU entered into two separate unsecured loan agreements with Pala (the “***Pala Unsecured Loan Agreement***”) and Mercuria (the “***Mercuria Unsecured Loan Agreement***”) and, together with the Pala Unsecured Loan Agreement, the “***Unsecured Loan Agreements***”) with respect to the amounts previously funded under the Deferred Funding Agreement and the Deferred Funding Arrangement. The Unsecured Loan Agreements are on substantially similar terms as the Third A&R Pala Loan Agreement, except that the loans (each, an “***Unsecured Loan***”) pursuant to the Unsecured Loan Agreements are not secured, are not guaranteed by the Subsidiary Guarantors, and have a maturity date of December 21, 2024. In connection with the Unsecured Loans, the NCU issued 280,044,832 and 95,122,130 NCU common stock warrants to Pala and Mercuria, respectively. On exercise of these warrants, the exercise

<sup>4</sup> The approximate total amount in this chart consists of the aggregate principal amount as of the Petition Date (including capitalized interest, where applicable).

price would be payable by way of deemed repayment and set-off of outstanding amounts under the applicable Unsecured Loan.

37. Under the terms of the Unsecured Loan Agreements, NCU had the ability to request additional advances, which Pala and Mercuria could elect to fund to provide in their discretion (the “***Additional Unsecured Advances***”). From December 29, 2023, through the Petition Date, Pala provided NCU with a total of fourteen Additional Unsecured Advances.

38. As of the Petition Date, the total amount owed, including outstanding principal and accrued interest, is approximately \$56.7 million under the Pala Unsecured Loan Agreement and approximately \$10.3 million under the Mercuria Unsecured Loan Agreement. The interest rate for the Unsecured Loans is SOFR plus 9% per annum, provided that with respect to the portion of the Pala Unsecured Loan that was advanced under the Deferred Funding Arrangement and with respect to Additional Unsecured Advances funded by Pala, the interest rate is SOFR plus 10% per annum. Pursuant to the Pala Unsecured Loan Agreement, NCU also agreed to pay a facility fee equivalent to 5% of the principal amount funded under the Deferred Funding Arrangement and each Additional Unsecured Advance, which is paid in kind on the date of each Additional Unsecured Advance.

39. In addition, in April and May of 2024, Pala provided NCI with a total of approximately \$5.3 million in unsecured funding through a series of advances and Triple Flag contributed an additional \$4.9 million in unsecured funding. Both of those were memorialized in separate unsecured promissory notes prior to the commencement of the Chapter 11 Cases.

40. Finally, in relation to entering into an exclusivity agreement as part of the Sale Process, as described in more detail below, NCU issued promissory notes to parties connected with the Primary Prospective Purchasers (each, a “***Potential Purchaser Finance Parties***”) in principal amount of \$500,000 each (each, an “***Investor Promissory Note***” and, together, the “***Investor Promissory Notes***”). Interest on each Investor Promissory Note was fixed at \$9,250 if the Investor Promissory Note was paid in full, 45 days of its issuance (the “***Investor Note Maturity Date***”), or 15% per annum if not paid in full by the Investor Note Maturity Date. The obligations

under the Investor Promissory Notes are guaranteed by Pala pursuant to two separate guaranty agreements between Pala and each Potential Purchaser Finance Parties, solely to the extent Pala receives any cash payments from NCI under the Tranche A-2 Loans. As of the Petition Date, the aggregate outstanding principal amount, together with accrued and unpaid interest owed under the Investor Promissory Notes is approximately \$1.0 million.

***b. Intercompany Loans***

41. As of the Petition Date, there is approximately \$148.3 million (principal) due to NCU from NCI under documented intercompany loans from NCU to NCI (the “***Intercompany Loans***”). The Intercompany Loans comprise: (i) an intercompany loan from NCU to NCI in the aggregate principal amount of \$85 million, pursuant to the intercompany loan agreement dated May 31, 2019 (as amended, “***NCU Loan I***”); and (ii) an intercompany loan from NCU to NCI in the aggregate principal amount of \$30 million, pursuant to an intercompany loan agreement dated December 31, 2010 (as amended, “***NCU Loan II***”); and (iii) in the first quarter of 2024, a loan from NCU to NCI in the aggregate principal amount of approximately \$33.3 million. Both NCU Loan I and II have a maturity date of December 31, 2025, but NCU I accrues interest at a rate of LIBOR plus 7.25%, to be paid on the maturity date and NCU Loan II accrues interest at a rate of 10% per annum.

**II. Events Leading to Chapter 11 Cases**

***A. Operational/Geotechnical Challenges and Resulting Liquidity Impact***

42. As discussed above, in the third quarter of 2022, certain geotechnical challenges in the Debtors’ mining area caused the suspension of mining operations. A previously unidentified weak rock structure was discovered in the main ramp to the East South mining area, which required drilling and geotechnical mitigation work to reinforce the area, and created operational and geotechnical challenges, further delayed the resumption of stope mining in the Underground Mine. However, with much-needed liquidity provided by the Restart Financing Packages, the Debtors immediately began a three-phase restart process.

1 43. Phase one involved certain critical underground capital projects and the  
2 development of the Debtors' workforce to restart operations. As part of that process, the Debtors  
3 engaged a leading mining construction company, who began working in January 2023 on critical  
4 underground capital projects including the completion of the ventilation shaft construction and  
5 installation of larger fans, construction and installation of an underground crusher and the  
6 installation of a de-watering system.

7 44. Phase two of the restart process involved resuming underground lateral  
8 development and establishing developed stope inventory. As part of this phase, the Debtors  
9 entered into a 24-month 66,000-foot unit rate lateral development contract with Small Mines  
10 Development ("**SMD**"), a U.S.-based underground development contractor, to ramp up lateral  
11 development.

12 45. Phase three involved restarting processing operations and concentrate sales. The  
13 Debtors were able to restart processing operations in October 2023; however, processing  
14 operations were periodically paused to address commissioning complications, particularly in  
15 respect of the high-pressure tailing filtration systems, and to stabilize operating conditions.

16 46. As a result of the periodic pausing of operations, the Debtors could not maintain  
17 the continuous processing operations necessary to declare commercial production in the fourth  
18 quarter of 2023, as planned. The operational challenges with the process plant continued into the  
19 first half of 2024 and, with limited financial resources and mounting expenditures, the Debtors  
20 curtailed many of their ongoing operations in June 2024 and pursued a strategy that focused  
21 primarily on maintaining and preserving their assets as they continue to pursue a sale process. In  
22 making this shift, the Debtors determined that a reduction in the number of employees in its  
23 workforce is necessary to operate within the constraints of the amount of financing available until  
24 a new owner can recapitalize their business. To ensure compliance with laws that may be or may  
25 become applicable to this process, and to facilitate the transition of affected Employees, the  
26 Debtors issued or may issue advance notice (the "**Advance Notices**") to 120 affected Employees  
27 at least 60-days before termination of employment (such noticed Employees, the "**Affected**  
28

1 *Employees*”). During this notice period, certain of the Affected Employees may be instructed to  
2 report to work onsite or remotely for a portion of the notice period, and the remainder will be  
3 instructed to stay home. The Affected Employees are eligible to be paid during the notice period,  
4 regardless of whether they report to work or are instructed to remain home.

5 47. The Debtors may ultimately conclude that they need the services of some or all  
6 Affected Employees depending on the outcome of their sale process. If the sale is successful, the  
7 Debtors expect to recall as many Affected Employees as possible. However, there are no  
8 guarantees of this outcome, which is why notice was given to the Affected Employees.

9 ***B. Prepetition Marketing and Sale Process***

10 48. The slower-than-planned ramp up of the Underground Mine deprived NCI of  
11 operating revenue and created a sizeable gap between the Debtors’ available cash and their funding  
12 needs. As the desire of its existing stakeholders to fund its cash needs began to wane, the Debtors  
13 ultimately decided to pursue a sale of their business.

14 49. On October 17, 2023, the Debtors engaged Citigroup Global Markets Inc. and  
15 began the Sale Process. As part of the Sale Process, the Debtors contacted over 30 parties, and  
16 ultimately received four proposals from potential purchasers interested in acquiring substantially  
17 all or a portion of the Debtors’ business. After considering the proposals they received, the Debtors  
18 entered into two separate exclusivity agreements with the Primary Prospective Purchasers  
19 regarding a proposal for additional financing and/or a potential sale of the Debtors’ business.  
20 Ultimately, the Debtors could not agree to terms with either of the Primary Potential Purchasers  
21 that would allow the Debtors to consummate a sale that would close on the timeline required for  
22 the Debtors to meet their funding needs. In the absence of a sale agreement on a viable timeline,  
23 and diminishing financial support from its lenders, the Debtors determined it was necessary to file  
24 these Chapter 11 Cases to provide additional time to continue pursuing a sale process under the  
25 protections provided by the Bankruptcy Code.



**C. DIP Financing and Cash Collateral**

50. The Debtors require additional financing and use of cash collateral to continue pursuing a marketing and sale process in these Chapter 11 Cases. To that end, with the assistance of their advisors, the Debtors worked on obtaining proposals for debtor-in-possession financing (“**DIP Financing**”). In light of their current capital structure, with its multiple layers of secured indebtedness, the Debtors could not identify any party that would be willing to provide DIP Financing on a junior basis. Triple Flag and Pala consented to the Debtor’s DIP Financing and the priming of their prepetition liens as well as the use of cash collateral, so long as such DIP Financing is provided by a Senior Secured Lender or an affiliate of such Senior Secured Lender pursuant to their prepetition intercreditor agreements. *See, e.g.*, Pala Fourth Lien Intercreditor § 5.2 (“Until the Discharge of the Senior Obligations . . . no Junior Secured Party will . . . contest . . . and hereby consents in advance to, (x) any use, sale, or lease of ‘cash collateral’ . . . and (y) any [Debtor] obtaining DIP Financing from, or with the consent of any Senior Secured Party or any affiliate of a Senior Secured Party.”); KfW/Triple Flag Intercreditor Agreement § 6.2 (“Until the Discharge of the Loan Obligations . . . the Purchaser will not . . . contest . . . and hereby consents in advance to, (x) any use, sale, or lease of ‘cash collateral’ . . . and (y) any [Debtor] obtaining DIP Financing from, or with the consent of any Senior Secured Party or any affiliate of a Senior Secured Party.”). Concord, under the APA Intercreditor Agreement, consented to the Debtors’ use of cash collateral and DIP Financing not secured by the APA Collateral, which, as described below, is the case for the DIP Facility (defined below). *See, e.g.*, WCF Intercreditor Agreement § 5.2 (“The Buyer . . . hereby consents in advance to, (x) any use, sale, or lease of ‘cash collateral’ . . . and (y) any [Debtor] obtaining DIP Financing from any Senior Secured Loan Party or any affiliate of a Senior Secured Loan Party; provided, that . . . the APA Collateral shall not secure such DIP Financing.”).

51. KfW separately provided its consent to the Debtors’ use of cash collateral and the Debtors’ DIP Financing, however, to date that consent is only for a financing of up to \$51.4 million, which is in excess of the interim DIP Financing. The Debtors will be pursuing a consent



1 for the full amount of the DIP Financing prior to the entry of a final order. KfW's consent was  
2 conditioned on KfW receiving adequate protection in these Chapter 11 Cases.<sup>5</sup>

3 52. Ultimately, the Debtors identified two affiliates of Elliott Investment Management  
4 L.P.,<sup>6</sup> Manchester Securities Corp. and Ziwa Investments Limited (together, the "**DIP Lenders**"),  
5 as the best source of debtor in possession financing. Following several rounds of negotiations, the  
6 Debtors and the DIP Lenders agreed on the principal terms and conditions of a senior secured  
7 superpriority debtor-in-possession term loan in the aggregate principal amount of \$60 million (the  
8 "**DIP Facility**"), comprising an initial new money term loan in the aggregate principal amount of  
9 \$20 million, and, subject to entry of a final order approving the DIP Facility, a new money delayed-  
10 draw term loan in the aggregate principal amount of \$40 million.<sup>7</sup> The DIP Facility is secured by  
11 all of the Debtors' assets except for the APA Collateral, provided that upon the repayment of all  
12 obligations under the Advance Payment Agreement, the DIP Facility shall automatically receive a  
13 first-priority lien on all collateral that currently constitutes APA Collateral.

14 53. As further outlined in the DIP Declaration, the Debtors require access to borrowings  
15 under the DIP Facility to fund the costs of administering these Chapter 11 Cases, near-term  
16 working capital needs, and ongoing business operations. Specifically, based on the Debtors'  
17 forecasts, the Debtors anticipate that they will be unable to generate sufficient levels of operating  
18 cash flow in the ordinary course of business to cover the projected restructuring costs of these  
19 Chapter 11 Cases without access to the DIP Facility. The DIP Facility will also allow for the  
20 Debtors to continue a sale process and facilitate obtaining the highest and best bid.

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23 <sup>5</sup> The Debtors' DIP Financing will not prime the liens of Trisura, except upon entry of a final order approving the  
24 Debtors' DIP Financing.

25 <sup>6</sup> Elliott Investments Management L.P. an affiliate of TF Canada.

26 <sup>7</sup> A description of the terms of the DIP Facility and the facts and circumstances leading to entry of the DIP Facility  
27 can be found in the *Declaration of Zul Jamal in support of the Debtors' Motion for Entry of Interim and Final  
28 Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior  
Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II)  
Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV)  
Scheduling Final Hearing; and (V) Granting Related Relief* (the "**DIP Declaration**").

54. The DIP Facility credit agreement establishes case milestones to ensure that these Chapter 11 Cases proceed at an appropriate and efficient pace, culminating in the consummation of a sale of the Debtors' business within four months. The key milestones are as follows:

Date	Proposed Milestone
No later than five business days following the Petition Date	Entry of interim DIP order
No later than 14 days following the entry of the interim DIP order	Canadian Court shall have entered an interim DIP recognition order
No later than ten days following the Petition Date	Filing of bidding procedures motion
No later than 45 days following the Petition Date	Entry of final DIP order
	Entry of order approving bidding procedures
No later than 14 days following entry of the final DIP order and the order approving bidding procedures	Canadian Court shall have entered an order recognizing the final DIP order and the bidding procedures order
No later than 108 days following the Petition Date	Entry of order approving of a sale transaction
No later than 14 days following the entry of the order approving the sale	Canadian Court shall have entered an order recognizing such sale order
No later than 120 days following the Petition Date	Consummation of a sale of the Debtors' business

### III. Summary of First Day Motions

55. The Debtors request that "first day" orders of the types mentioned below be entered. Factual information in support of the motions seeking such first day orders is provided below.

***A. Motion for Entry of an Order Directing Joint Administration of Debtors' Related Chapter 11 Cases Under Federal Rule of Bankruptcy Procedure 1015(b) and Local Rule of Bankruptcy Practice 1015 (the "Joint Administration Motion")***

56. Through the Joint Administration Motion, the Debtors, which consist of NCU, NCI, and the Subsidiary Guarantors, are seeking entry of an order directing joint administration of their Chapter 11 Cases for procedural purposes only. All of the Debtors are affiliates of one another: NCI, 0607792 B.C. Ltd., and Lion Iron Corp. are wholly-owned subsidiaries of NCU; and NC Farms LLC and NC Ditch Company LLC are wholly-owned subsidiaries of NCI.

57. Joint administration also is appropriate because joint administration will promote efficiency and judicial economy. The Debtors anticipate that numerous notices, applications, motions, other pleadings, hearings, and orders in these Chapter 11 Cases will affect all Debtors.

1 The Debtors believe, therefore, that joint administration will save time and money and avoid  
2 duplicative and potentially confusing filings by permitting counsel for all parties in interest to file  
3 all notices, applications, motions, and other pleadings under a single case number.

4 ***B. Debtors' Motion for an Order Authorizing the Debtors to Continue to (I) Use***  
5 ***Their Existing Cash Management System, (II) Use and Maintain Existing Bank***  
6 ***Accounts, (III) Continue Intercompany Transactions, (IV) Use Their Existing***  
***Business Forms, and (V) Granting Related Relief (the "Cash Management***  
***Motion")***

7 58. Through the Cash Management Motion, the Debtors are seeking entry of interim  
8 and final orders authorizing use of their existing cash management system. The Debtors also seek,  
9 among other things, authorization to continue utilizing their existing bank accounts, continue  
10 intercompany transactions in the ordinary course of business, grant administrative expense or  
11 superpriority status to intercompany transactions, and continue using their existing business forms.

12 59. The Debtors use and maintain a centralized cash management system, a schematic  
13 of which is annexed as Exhibit 3 to the Cash Management Motion (the "***Cash Management***  
14 ***System***"), in the ordinary course of business, to collect and transfer funds, as well as to disburse  
15 funds to satisfy their financial obligations. The Cash Management System allows the Debtors to  
16 manage cash efficiently in a manner that allows the Debtors to maintain control over the  
17 administration of their accounts, while helping to facilitate the Debtors' cash monitoring,  
18 forecasting and reporting functions. As of the Petition Date, the Debtors' Cash Management  
19 System includes a total of 11 accounts (the "***Bank Accounts***"), of which seven are Bank Accounts  
20 of NCI and four are Bank Accounts of NCU. All of NCI's Bank Accounts are at BMO Harris  
21 Bank, N.A. ("***BMO Harris***"). All of NCU's Bank Accounts are at Bank of Montreal (together  
22 with BMO Harris, the "***Banks***").

23 60. The Bank Accounts include: (i) a "proceeds account" that receives deposits of  
24 certain revenues, capital contributions, loan proceeds, and other amounts payable to or received  
25 by NCI in order for the Debtors to be able to pay for operating and construction costs (the ***Proceeds***  
26  
27  
28

1 *Account*”);<sup>8</sup> (ii) a “concentration account” that holds funds for NCU, from which NCU disburses  
2 funds directly to vendors or through NCU’s Disbursement Accounts for operating costs (the “*NCU*  
3 *Concentration Account*”); (iii) four disbursement accounts maintained by the Debtors, including  
4 accounts held by each of NCI and NCU for processing their (a) respective payments on account of  
5 U.S. and Canadian payroll and related flexible spending and health savings accounts, and  
6 (b) operational costs (collectively, the “*Disbursement Accounts*”); and (iv) five other accounts  
7 that were opened to facilitate certain cash management practices required by their prepetition  
8 financing arrangements, but which currently hold no deposits (collectively, the “*Inactive*  
9 *Accounts*”).<sup>9</sup>

10 61. The Debtors incur periodic service charges and other fees in connection with the  
11 maintenance of the Cash Management System, including monthly bank fees on three Bank  
12 Accounts (collectively, the “*Bank Fees*”). Bank Fees generally are debited directly against the  
13 applicable Bank Accounts in the middle of each month. As of the Petition Date, the Debtors  
14 estimate that approximately \$5,600 in accrued and unpaid Bank Fees are owed to the Banks.

15 62. In the ordinary course of business, the Debtors enter into intercompany transactions  
16 with each other through the operation of their Cash Management System in order to manage their  
17 resources in the most efficient manner (collectively, the “*Intercompany Transactions*”). If the  
18 Intercompany Transactions were to be discontinued, the Cash Management System would be  
19 disrupted, to the detriment of the Debtors and their estates.

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22 <sup>8</sup> Transfers from the Proceeds Account to the NCI Disbursement Account (as defined below) are made in order for  
23 the Debtors, among other things, to be able to pay for operating and construction costs. Transfers from the  
24 Proceeds Account to the NCU Concentration Account and Disbursement Accounts (each as defined below) are  
25 made in order for the Debtors, among other things, to be able to pay for costs disbursed from NCU.

26 <sup>9</sup> The Inactive Accounts comprise: (i) the restricted payment account that was established to allow NCI to pay  
27 dividends and make distributions when certain conditions are met, (ii) the debt service account that was  
28 established by NCI to allow for the payment of debt service and certain other obligations, (iii) the approved open  
pit account that was established by NCI to pay for certain surface mining exploration activities funded by capital  
contributions from NCU to NCI, (iv) the loss proceeds account that was established by NCI to hold deposits of  
proceeds of, among other things, asset sales and insurance, and (v) the cost overrun account that was established  
by NCU to hold funds in connection unexpected cost overruns at the Project.

63. NCI relies on NCU for various services that are essential to maintain NCI's business as a going concern, including general financial functions and contracting and coordinating with external audit and legal service providers. Historically, NCU raised funds through the issuance of equity capital in the Canadian capital markets or through private raises of capital and loans, including loans and equity raised from NCU's largest shareholder, Pala. These funds, less a small holdback that NCU uses to fund its expenses (such as payroll, taxes, miscellaneous fees, and other operating costs in Canada), typically are transferred in turn to NCI in the form of equity or debt contributions. The Debtors track all Intercompany Transactions in their accounting system and can ascertain, trace, and account for them as needed.

***C. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief (the "Insurance Motion")***

64. In the Insurance Motion, the Debtors are requesting entry of an order authorizing the Debtors to (i) continue their prepetition insurance policies and satisfy payment obligations related thereto, (ii) continue and renew their prepetition surety bond program on an uninterrupted basis, and (iii) revise, extend, renew, supplement, replace or enter into new premium financing agreements as needed.

65. In the ordinary course of their business, the Debtors maintain insurance policies (collectively, the "***Insurance Policies***") provided by various carriers (collectively, the "***Insurance Carriers***") to cover, among other things, workers' compensation, property, general commercial liability, directors' and officers' liability, umbrella liability, and excess liability. From time to time, the Debtors finance the payment of insurance premiums pursuant to agreements with an insurance finance provider. Premiums paid to Insurance Carriers (the "***Insurance Premiums***") typically are required to be paid in a lump sum at the beginning of an applicable period, other than workers' compensation premiums, which are paid on a monthly basis. Certain Insurance Premiums may include amounts paid to the Debtors' insurance broker, Marsh Canada Limited. In addition, depending upon the type of claim and insurance policy involved, the Debtors may also

1 be required to pay various deductibles and retention amounts (collectively, the “**Insurance**  
2 **Deductibles**”). The Debtors estimate that they pay, in the aggregate, \$2.85 million annually for  
3 Insurance Premiums.

4 66. Along with the Insurance Policies, as previously mentioned, the Debtors have  
5 Surety Bonds provided by Trisura, which they use to secure the payment or performance of certain  
6 of their obligations. As of the Petition Date, the Debtors do not believe that they owe any amounts  
7 relating to the Surety Bonds.<sup>10</sup>

8 67. In order to spread the economic impact of lump-sum annual insurance premiums  
9 throughout the year, NCI and NCU, respectively, enter into premium financing agreements (the  
10 “**Premium Financing Agreements**”) in the ordinary course of their business with First Insurance  
11 Funding (a division of Lake Forest Bank & Trust Company) (“**First Insurance**”). Pursuant to the  
12 Premium Financing Agreements, a portion of the Insurance Premiums for the Insurance Policies  
13 covering property, general commercial liability and umbrella liability is financed by NCI or NCU,  
14 respectively. To finance its property insurance, NCI agreed to pay First Insurance eight monthly  
15 installments of \$129,382.00, reflecting the amount of financed Insurance Premiums plus total  
16 finance charges of \$39,704.50 (which imputes to a 10.53% annual interest rate). NCU agreed to  
17 finance policies for general commercial liability and umbrella liability by agreeing to pay First  
18 Insurance eight monthly installments of \$52,338.77, reflecting the amount of financed Insurance  
19 Premiums plus total finance charges of \$16,061.64 (which imputes to a 10.53% annual interest  
20 rate) (the foregoing First Insurance policy payment obligations, together with the Insurance  
21 Premiums, Insurance Deductibles, and other costs of obtaining insurance, the “**Insurance**  
22 **Obligations**”). The last of the monthly payments was made in early May 2024. As of the Petition  
23 Date, the Debtors estimate that approximately \$857,000 remains unpaid under the Premium  
24 Financing Agreements.

25  
26 <sup>10</sup> Although not a part of the relief requested in the Insurance Motion, the Debtors note that NCI also has a cash  
27 “bond” of \$25,370.00 that has been deposited with the United States Department of the Interior Bureau of Land  
28 Management in connection with reclamation of exploration work in areas located on public land for which the  
Debtors hold mining claims.

68. The Insurance Policies, Surety Bonds, and Premium Financing Agreements, described in further detail in the Insurance Motion, are important tools for managing risk in the Debtors' business, both to protect the Debtors' assets and to provide counterparties with the assurance they need to do business with the Debtors. The Debtors' Premium Financing Agreements contain market terms that are typical for such agreements. In light of the prevailing market practice and the Debtors' current financial circumstances, it is highly unlikely that the Debtors would obtain financing for their Insurance Premiums on more favorable terms. As such, payment of the Insurance Obligations is essential to the preservation of the value of the Debtors' business, properties, and assets. Failure to continue such programs in the ordinary course of business would have a material adverse impact on the Debtors' business and efforts to maximize estate value.

69. Additionally, in many instances, the maintenance of these insurance and surety bond programs is required by statute or regulation. Furthermore, it is my understanding that the Debtors are obligated to maintain certain insurance coverage, as provided by certain of the policies included in the insurance program, during these Chapter 11 Cases. Consequently, authority to pay the Insurance Obligations — to the extent that the Debtors determine that such payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment of the coverage, benefits or proceeds provided — is imperative.

***D. Debtors' Motion for Entry of an Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts that Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing (the "Wages Motion")***

70. As of the Petition Date, the Debtors owe prepetition wages, salaries and other accrued compensation to their employees (the "***Employees***" or the "***Workforce***"). In addition, the Debtors have obligations on account of benefits for their Workforce (collectively, the "***Employee Benefits***") that accrued prepetition and remain outstanding as of the Petition Date. The Employee Benefits include health benefits, life and disability insurance, workers' compensation insurance,



1 various reimbursable expenses, and other benefits that the Debtors provide in the ordinary course  
2 of business.

3 71. Specifically, in the Wages Motion, the Debtors are requesting entry of interim and  
4 final orders authorizing, but not directing, the Debtors, in accordance with their policies, to: (i) pay  
5 prepetition employee wages, salaries, and other compensation (the “*Prepetition Wage Claims*”);  
6 (ii) reimburse prepetition business expenses; (iii) continue prepetition employee benefits programs  
7 (including by making contributions in connection therewith, and continuing such programs on a  
8 postpetition basis); (iv) make payments for which prepetition payroll deductions have been  
9 withheld and pay certain employment-related taxes; (v) pay amounts that were awarded under the  
10 Debtors’ 2023 short term incentive program (the “*2023 STIP*”); and (vi) pay all costs and expenses  
11 incident to the foregoing.

12 72. As of the Petition Date, the Debtors have 197 full-time Employees, of which 136  
13 are paid on an hourly basis (collectively, the “*Hourly Employees*”) and 61 are paid an annual  
14 salary. Of the Debtors’ 197 full-time Employees, 194 are employed by NCI and are located in the  
15 United States, and three are employed by NCU and are located in Canada.

16 73. The Debtors depend upon their Workforce to perform services that are vital for the  
17 continued operation of their business, including mine maintenance, technical, management  
18 services, health & safety services, environmental services, administrative work, information  
19 technology services, and other tasks on behalf of the Debtors. The specific skills, knowledge and  
20 understanding of the Debtors’ operations possessed by the Employees are essential to preserving,  
21 and ultimately maximizing, the value of their estates. As a result, if the Debtors were unable to  
22 maintain the continued, uninterrupted services of their Employees, it would upend the Debtors’  
23 restructuring and jeopardize their ability to continue their business as a going concern. Having  
24 initiated a process to reduce the size of their Workforce to just those essential to preserve the  
25 Debtors’ assets and facilitate a sale, the Debtors rely more than ever on the remaining Workforce  
26 to preserve and protect the Debtors’ business and value.



1           74. Employee morale is of paramount concern in the mining and metals processing  
2 industries. Even if Affected Employees ultimately are not continued with the business, it is  
3 imperative that the Debtors provide reassurance to the remaining Employees, many of whom play  
4 vital roles for the preservation of the Debtors' assets. For example, the Underground Mine is a  
5 key asset of the Debtors and requires continuous water pumping, or else the Debtors run the risk  
6 of ruining its value. The Debtors rely on their Employees' continued employment to prevent the  
7 Underground Mine from becoming defunct and devastating the overall value of the estates.

8           75. In addition to the critical role that the Employees play for the Debtors, the  
9 Employees depend upon the Debtors for their livelihood. The Employees rely on the Debtors for  
10 the compensation that they need to continue to pay their daily living expenses, but also for the  
11 continuation of the benefits and related programs the Debtors historically have provided to  
12 members of the Workforce, and their dependents, in the ordinary course and in line with mining  
13 industry standards. As further described and defined below and in the Wages Motion, the  
14 Employee Benefits provided by the Debtors include: Leave Policies, Reimbursable Expenses,  
15 U.S. Medical Plans, Basic Life Insurance, AD&D Insurance, Short-Term Disability Insurance,  
16 Long-Term Disability Insurance, Workers' Compensation Insurance, U.S. Additional Benefits,  
17 Canadian Benefits, Canadian Workers' Compensation Insurance, Employee Savings Plans,  
18 Employee Deductions, Payroll Taxes, Modified Business Tax, Provincial Medical Taxes, and  
19 Third-Party Administrative Costs (collectively with the Prepetition Compensation Obligations (as  
20 defined below) and the 2023 STIP, the "***Wages and Benefits***").

21           76. I believe that the ability of the Debtors to maximize their value in these Chapter 11  
22 Cases depends upon the retention and motivation of their Workforce, whose efforts will be critical  
23 to the success of these Chapter 11 Cases. Any disruption from unplanned resignations or  
24 deterioration of morale among the Workforce could have devastating effects on the Debtors'  
25 efforts to stabilize and sell their business and preserve value. For the Debtors to retain the services  
26 of their go-forward Workforce, it is essential that they be permitted to continue to pay and honor,  
27 in their discretion, Prepetition Compensation Obligations and amounts arising under, or in  
28

1 connection with, the Employee Benefits, the Leave Policies, the 2023 STIP and other obligations  
2 owing to their Workforce. In order to minimize the personal hardship to the Workforce, as well  
3 as to maintain the stability of the Debtors' operations, for which the wellbeing of their Workforce  
4 is imperative, the Debtors request authority to continue to honor these obligations, in their  
5 discretion, by paying amounts owed on account of such obligations that accrued prepetition and  
6 remain unpaid as of the Petition Date.

7 **1. Workforce Compensation**

8 77. Employees of NCU receive their compensation semi-monthly, on or around the first  
9 and fifteenth day of each month, while Employees of NCI receive their compensation on a bi-  
10 weekly basis (*i.e.*, every other Friday). All Employees are paid in arrears, with Employees of NCI  
11 being paid one week after the pay period concludes, and Employees of NCU being paid for the  
12 period through the date of payment. For example: (i) the payroll to Employees of NCI made on  
13 Friday, May 24, 2024, covered the period of service from May 5 through May 18 and (ii) the  
14 payroll to Employees of NCU made on May 15, 2024, covered the period of service from May 1  
15 through May 15.

16 78. The Debtors' payroll is administered by the following third-party service providers  
17 (the "**Payroll Vendors**"): (i) Paychex, Inc. ("**Paychex**") for U.S. payrolls; and (ii) ADP, LLC  
18 ("**ADP**"), for Canadian payrolls. Prior to each payroll, the Debtors provide the Payroll Vendors  
19 with information regarding, among other things, the current employment status of the Employees  
20 and the amount of salary and benefits they earned. Generally, in advance of the date on which  
21 payroll payments are to be made, the Debtors wire funds from their payroll accounts to the Payroll  
22 Vendors. On the day that payroll is required to be paid, amounts then are disbursed by the Payroll  
23 Vendors to fund paychecks, direct deposits, and other wages and attachments, less a holdback to  
24 cover periodic payroll taxes. The Debtors average approximately \$1,210,000 in aggregate gross  
25 payroll, including wages and the Hourly Employees Bonus Program, to the Workforce per pay  
26 period. As of the Petition Date, the Debtors estimate that approximately \$660,000 of the  
27  
28

1 Prepetition Wage Claims remain unpaid. The Prepetition Wage Claims include, as applicable,  
2 wages for salaried and Hourly Employees.

3 79. In addition to base wages, consistent with industry practice, the Debtors provide a  
4 discretionary monthly cash bonus to eligible underground Hourly Employees and a quarterly cash  
5 bonus to eligible surface Hourly Employees (the “**Hourly Employees Bonus Program**” and,  
6 together with the Prepetition Wage Claims, the “**Prepetition Compensation Obligations**”), none  
7 of whom participates in senior management, that meet certain performance milestones, which are  
8 adjusted from time to time, including, but not limited to, absence of or number of safety incidents  
9 and/or environmental incidents (and the severity of any such safety or environmental incidents),  
10 equipment damage, and construction production. The amount paid per month on account of the  
11 Hourly Employees Bonus Program fluctuates and has been as high as approximately \$206,000 in  
12 the aggregate and as low as approximately \$56,000 in the aggregate for the four months leading  
13 up to the Petition Date. The Debtors estimate that, as of the Petition Date, approximately \$190,000  
14 is due to the Employees under the Hourly Employees Bonus Program.

15 **2. Paid Time Off, Vacation and Other Leave**

16 80. The Debtors provide PTO (as defined below), sick day, holiday pay, vacation,  
17 FMLA Leave (as defined below) and other leave policies (collectively, the “**Leave Policies**”). All  
18 full-time Employees are eligible for paid time off (“**PTO**”). For full-time Employees based in the  
19 United States (the “**U.S. Employees**”), PTO can be used for absences for illness or personal  
20 reasons, while full-time Employees based in Canada (the “**Canadian Employees**”) are entitled to  
21 PTO in the form of five paid sick days each calendar year. Non-exempt U.S. Employees (*i.e.*,  
22 those who would be eligible for overtime) are permitted to cash out any PTO they do not use during  
23 the calendar year, while exempt U.S. Employees and Canadian Employees forfeit unused PTO at  
24 the end of each calendar year. Upon separation of employment, all U.S. Employees forfeit unused  
25 PTO. Full-time U.S. Employees are also eligible to receive holiday pay for observed holidays.  
26 For eligible Hourly Employees, when a holiday falls on their shift, the Employee receives one and  
27 one-half times their regular rate for hours worked, plus pay for eight (8) hours of work at the  
28

1 regular hourly rate. Eligible Employees that do not work on the relevant holiday receive pay at  
2 their regular hourly rate. Hourly Employees also receive two (2) annual 8-hour floating holidays  
3 at the beginning of the year, which allows Hourly Employees to be paid for eight (8) hours of pay  
4 at their regular rates for the observance dates. Unused floating holidays are not paid out upon  
5 termination.

6 81. Full-time U.S. Employees are eligible for vacation time, in amounts based on length  
7 of service, and U.S. Employees may carry over their available vacation accrual balance, up to their  
8 maximum accrual amount, into the next calendar year. Vacation accruals cease once the  
9 Employee's balance reaches the maximum accrual amount, which varies between 80 hours and  
10 200 hours, depending on length of service. Upon separation from employment, a U.S. Employee  
11 will be paid for unused vacation time accrued during the calendar year of separation, but not for  
12 any unused accrued vacation time from a prior period. Canadian Employees are eligible for a set  
13 number of vacation days per year, which are eligible for rollover with no cap. Upon separation  
14 from employment, a Canadian Employee will be paid for accrued but unused vacation time. As  
15 of the Petition Date, the accrued vacation potentially subject to payout is approximately \$650,000  
16 for U.S. Employees and \$60,000 for Canadian Employees.

17 82. Eligible U.S. Employees may take up to a total of 12 weeks of unpaid leave (the  
18 "**FMLA Leave**") for certain qualifying reasons, among other things, the birth or adoption of a  
19 child, a serious health condition of a family member, a serious health condition of the Employee  
20 or an exigency involving a U.S. Employee's spouse, parent or child who is on active duty in the  
21 United States armed forces. Additionally, on a case-by-case basis, Employees also may be able to  
22 take an unpaid personal leave of absence if they do not qualify for or have exhausted their FMLA  
23 Leave, or for other reasons, as authorized by the Debtors' human resources department. In addition  
24 to FMLA, the Debtors permit other leaves of absence, which may be paid or unpaid, depending on  
25 the reason for leave.  
26  
27  
28

### 3. *Reimbursable Business Expenses*

83. In the ordinary course of business, the Debtors reimburse their Workforce for approved, reasonable expenses incurred in the performance of their employment or service (the “*Reimbursable Expenses*”), including, among other things, business-related travel expenses. Under the Debtors’ policies, expense reports are required to be submitted for Reimbursable Expenses (together with applicable supporting documentation) for review by the Debtors’ accounts payable team, who ensure that the reimbursements sought comply with the Debtors’ Reimbursable Expenses policy.

84. Although the Debtors request that Reimbursable Expenses get submitted promptly, there is often a delay between the time that expenses are incurred and the time that reports are submitted. As a result, Debtors cannot provide a precise total of unpaid prepetition Reimbursable Expenses owed as of the Petition Date (the “*Unpaid Reimbursable Expenses*”), as it is possible that prepetition Reimbursable Expenses could be submitted days, if not weeks, after the Petition Date. Nevertheless, based upon historical figures, the Debtors estimate that they may owe approximately \$35,000 of Unpaid Reimbursable Expenses as of the Petition Date.

### 4. *Employee Benefits — United States*

85. The Debtors pay, incur, and make contributions to a number of programs for Employee Benefits (the “*Employee Benefits Programs*”). The Employee Benefits Programs include medical, dental and vision benefits, life insurance, AD&D insurance, short-term and long-term disability insurance, workers’ compensation insurance, retirement plans, various reimbursable expenses and other company benefits that the Debtors provided in the ordinary course. Set forth below is a summary description of the various Employee Benefits and Employee Benefits Programs, which is for descriptive purposes only and qualified entirely by the Debtors’ official policies, or other practices, programs or agreements, whether written or unwritten, evidencing an arrangement among the Debtors and their Employees, including, in each case, the terms of the applicable official Employee Benefits Program.

### 5. *Employee Medical, Dental, and Vision Plans*

86. The Debtors currently offer U.S. Employees: (i) medical coverage through Cigna Health Insurance Co. (“*Cigna*”); (ii) dental and vision coverage through Cigna; and (iii) emergency air transportation services<sup>11</sup> (collectively, the “*U.S. Medical Plans*”). As of the Petition Date, the Debtors provide health, dental, and vision coverage to approximately 188 U.S. Employees and certain of their dependents. For Employees who choose to participate in high deductible health plans, the Debtors contribute amounts based upon the amount the individual Employee contributes to their Health Savings Account (“*HSA*”) as well other factors, including whether the Employee elects for single or family coverage. The Debtors estimate that, on a monthly basis, they pay approximately \$345,000 for premiums for the U.S. Medical Plans and approximately \$20,000 for employer contributions to the Employees’ HSAs. As of the Petition Date, the Debtors estimate that approximately \$410,000 of premiums for U.S. Medical Plans and \$6,000 in matching contributions for the Employee HSAs remain outstanding.

### 6. *Employee Life, Disability, and Other Insurance Benefits*

87. The Debtors provide eligible U.S. Employees with basic life insurance (the “*Basic Life Insurance*”) and accidental death and dismemberment insurance (the “*AD&D Insurance*”) through a group policy with Prudential Financial, Inc. (“*Prudential*”). The Debtors estimate that the Basic Life Insurance and AD&D Insurance coverage for all Employees costs approximately \$15,000 per month. As of the Petition Date, the Debtors estimate that they have outstanding Basic Life Insurance and AD&D Insurance coverage expenses of approximately \$20,000.

88. The Debtors also provide eligible U.S. Employees with short-term disability insurance through a policy with Prudential (the “*Short-Term Disability Insurance*”). The premiums for the Short-Term Disability Insurance are paid by the Debtors. The Short-Term

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<sup>11</sup> Due to the remote location of the Project, many of the Debtors’ Employees work or live in areas of Nevada that are more than an hour’s drive from acute medical care. Although medical insurance covers the cost of most medical emergencies, air ambulance services often are excluded from in-network coverage. In order to fill that gap, the Debtors provide Employees with access to air ambulance services from Care Flight, a program offered by the Regional Emergency Medical Services Authority (a private non-profit entity) for transport from the location of the patient to regional acute-care facilities.

1 Disability Insurance replaces lost income, subject to a cap, for a limited time. The Debtors estimate  
2 that the Short-Term Disability Insurance coverage for all Employees costs approximately \$8,000  
3 per month. As of the Petition Date, the Debtors estimate that they have approximately \$10,000 of  
4 prepetition amounts outstanding with respect to Short-Term Disability Insurance coverage.

5 89. Eligible U.S. Employees also receive long-term disability insurance through a  
6 policy with Prudential (the “**Long-Term Disability Insurance**”). The premiums for the Long-  
7 Term Disability Insurance are paid by the Debtors. The Debtors estimate that the Long-Term  
8 Disability Insurance coverage for all Employees costs approximately \$9,000 per month. As of the  
9 Petition Date, the Debtors estimate that they have approximately \$11,000 in prepetition amounts  
10 outstanding with respect to Long-Term Disability Insurance coverage expenses.

11 90. The Debtors maintain workers’ compensation insurance programs (“**Workers’**  
12 **Compensation Insurance**”) through Berkley Industrial Comp and Carolina Casualty Insurance  
13 Company. The Debtors pay premiums in respect of Workers’ Compensation Insurance on a  
14 monthly basis and periodically pay for audits performed by the insurer to establish the correct  
15 premium. Such monthly premiums may vary based upon the number of employees and the  
16 functions such employees perform. Historically, the Debtors accrued premiums of approximately  
17 \$225,000 annually for Workers’ Compensation Insurance and audit costs of approximately  
18 \$109,000. The Debtors estimate that, as of the Petition Date, approximately \$148,000 in unpaid  
19 premiums and audit costs have accrued, but remain unpaid, for Workers’ Compensation Insurance.

## 20 7. **Additional Benefits for U.S. Employees**

21 91. In the ordinary course of business, as part of the Employee Benefits, the Debtors  
22 provide optional benefits to their U.S. Employees, including but not limited to employee assistance  
23 plans for emotional wellbeing, pet insurance, voluntary additional coverage (e.g., for accidents,  
24 individual disabilities, cancer), wellness incentive programs, travel assistance, a prescription safety  
25 eyeglasses program and safety steel-toed boots (the “**U.S. Additional Benefits**”). The cost of the  
26 U.S. Additional Benefits is funded primarily by participating Employees and the health insurance  
27 providers, with *de minimis* funding by the Debtors.  
28



## 8. *Employee Benefits — Canada*

92. The Debtors, through their third-party administrator, Victor Insurance Managers, Inc., provide a package of benefits to their Canadian Employees (collectively, the “**Canadian Benefits**”). The Canadian Benefits include extended medical services to Canadian Employees (e.g., dental, eyecare, certain prescription drugs, counseling), which, among other things, cover items not covered under the provincial government healthcare plans. Other Canadian Benefits include basic and dependent life insurance, weekly indemnity (for disability pay), long-term disability, and emergency travel assistance. The Debtors pay approximately \$2,200 in monthly premiums in respect of the Canadian Benefits. As of the Petition Date, the Debtors estimate that \$4,000 of premiums remain outstanding for the Canadian Benefits.

93. In addition, the Debtors maintain a Canadian workers’ compensation insurance program through a statutory agency in British Columbia known as the Workers’ Compensation Board of British Columbia, operating as WorkSafe BC (the “**Canadian Workers’ Compensation Insurance**”). The Debtors pay annual premiums on account of the Canadian Workers’ Compensation Insurance that vary based upon employee compensation and statutory rates set by the Canadian government. Historically, the Debtors accrued premiums of less than \$1,000 annually on account of the Canadian Workers’ Compensation Insurance. The Debtors estimate that less than \$500 in unpaid premiums have accrued as of the Petition Date on account of Canadian Workers’ Compensation Insurance.

## 9. *Employee Savings and Retirement Plans and Benefits*

94. The Debtors maintain employee savings plans for eligible Employees in United States and contribute to employee savings plans for eligible Employees in Canada (each, an “**Employee Savings Plan**”).

95. Approximately 80% of Employees currently participate in the Employee Savings Plans, with a total of approximately \$100,000 withheld each month from Employees’ paychecks for Employee contributions (the “**Employee Contributions**”). The Debtors match the first five percent of salary contributed by eligible Employees as Employee Contributions to the Employee



1 Savings Plans (the “**Savings Plan Match**”). The Debtors estimate that, as of the Petition Date,  
2 they owe approximately \$24,000 outstanding under the Savings Plan Match. The Employee  
3 Savings Plans are integral components of Employee compensation and are critical for employee  
4 morale and the smooth operation of the Debtors’ business during these Chapter 11 Cases.

5 **10. Gross Pay Deductions, Governmental Withholdings, and Taxes**

6 96. The Debtors in the ordinary course make payments for prepetition payroll  
7 deductions, garnishments, and withhold certain employment-related taxes (collectively the  
8 “**Employee Deductions**”), to the appropriate designees. The Debtors routinely deduct certain  
9 amounts from Employee paychecks for Employee Deductions, including without limitation:  
10 (i) garnishments and similar deductions; (ii) pre-tax contributions to health and dependent care  
11 flexible spending accounts; and (iii) other pre-tax and after-tax deductions payable pursuant to  
12 certain of the Employee Benefits Programs. An aggregate of approximately \$202,000 per month  
13 typically is withheld from Employees’ paychecks in the form of Employee Deductions.

14 97. The Debtors also withhold amounts related to income, social security, and Medicare  
15 taxes (collectively, the “**Withholding Taxes**”) for remittance to the appropriate taxing authority,  
16 both in the United States and Canada and make payments from their own funds on account of  
17 social security and Medicare taxes and to pay, based on a percentage of gross payroll (and subject  
18 to state-imposed limits), additional amounts to the taxing authorities for, among other things, state  
19 and federal unemployment insurance (together with the Withholding Taxes, the “**Payroll Taxes**”).  
20 The Payroll Taxes, including portions paid by both Employees and the Debtors, total  
21 approximately \$586,000 per month for the U.S. Employees and \$11,700 per pay period for the  
22 Canadian Employees, which amounts are deducted from the Debtors’ payroll account and  
23 periodically remitted on the Debtors’ behalf. The Debtors estimate that approximately \$160,000  
24 of Payroll Taxes (including portions paid by both Employees and the Debtors) have accrued prior  
25 to the Petition Date and remain unpaid on behalf of the U.S. Employees, and \$7,500 of Payroll  
26 Taxes have accrued prior to the Petition Date and remain unpaid on behalf of the Canadian  
27 Employees.  
28

1           98. The Debtors pay certain additional employment-related taxes, including, in the case  
2 of NCI, Nevada's modified business tax ("**Modified Business Tax**") and, in the case of NCU,  
3 provincial medical taxes applicable to employers in Canada ("**Provincial Medical Taxes**"). The  
4 Modified Business Tax is a tax on wages paid to employees, calculated based on a flat percentage  
5 for all wages paid to employees in excess of \$50,000 in a given quarter. The Debtors last payment  
6 of Modified Business Taxes was for approximately \$78,500 and was made on April 22, 2024, for  
7 the first quarter. Modified Business Taxes for the second quarter will be due on July 31, 2024.  
8 The Debtors estimate that the aggregate amount of prepetition Modified Business Taxes accrued,  
9 but not yet due and owing, is approximately \$67,000. Although NCU estimates that \$3,000 in  
10 Provincial Medical Taxes have accrued and remain unpaid for the prepetition period, the Debtors  
11 have a credit for unused overpayments with respect to previous tax years, which they expect will  
12 be offset against any prepetition cash liability for Provincial Medical Taxes.

13                   **11. 2023 STIP**

14           99. On an annual basis, the Debtors also award short-term incentive plan (STIP) cash  
15 payments based upon overall company results and individual factors applicable to the Employee,  
16 the receipt of which are viewed by Employees as a key component of their annual compensation.  
17 For 2023, consistent with prior practice, the 2023 STIP determination was a combination of a  
18 percentage based on the corporate scorecard result and a percentage based on personal objective  
19 results. The percentages vary by level, with lower-level Employees weighted towards personal  
20 objective results and higher levels focused more on the overall corporate scorecard result.

21           100. The 2023 STIP awards were approved on March 27, 2024 and communicated to 54  
22 Employees on or around April 15, 2024. STIP awards were made to all eligible Employees as a  
23 basic component of the Debtors compensation structure and ranged from approximately \$1,200 to  
24 approximately \$200,000. However, due to limited cash resources at the time, the 2023 STIP  
25 awards were not paid pending completion of a funding transaction that would enable payment.  
26 Given the 2023 STIP is standard employee compensation for many of the Debtors' Employees and  
27 consistent with industry practice in Nevada, the Debtors cannot afford to delay the disbursement  
28

1 of this compensation. The Debtors believe that failure to pay the 2023 STIP would alienate  
2 Employees, who have been expending significant efforts on behalf of all stakeholders while  
3 accommodating a payment delay and would put the Debtors at a risk of losing a significant number  
4 of Employees unpredictably, potentially damaging the ability of the Debtors to maintain their  
5 operations. The 2023 STIP recipients perform essential functions for the Debtors and will be  
6 critical in running the Debtors' business and supporting their sale and restructuring efforts.

7 **12. Administrative Costs**

8 101. As referenced above, the ordinary course of business, the Debtors use the services  
9 of Third-Party Administrators to whom they outsource tasks associated with the administration of  
10 Employee Benefits. In connection therewith, the Debtors are obligated to pay certain processing  
11 costs and administrative expenses (the "**Third-Party Administrative Costs**"). Examples of the  
12 most significant Third-Party Administrators utilized by the Debtors are the following entities:

- 13 i. Paychex. As described above in Section D.1 above ("Workforce  
14 Compensation"), the Debtors rely on Paychex for several Employee-related  
15 services, including the administration of the Debtors' United States payroll  
16 and Employee Savings Plans, and payment of all withholding and payroll  
17 taxes to applicable parties. The Debtors pay an aggregate of approximately  
18 \$117,000 per year for Paychex's services. The Debtors estimate that, as of  
19 the Petition Date, they owe approximately \$9,000 in Third-Party  
20 Administrative Costs to Paychex.
- 21 ii. ADP. As described above in Section D.1 above ("Workforce  
22 Compensation"), the Debtors rely on ADP for the administration of the  
23 Debtors' Canadian payroll and payment of all withholding and payroll taxes  
24 to applicable parties. The Debtors pay an aggregate of approximately \$100  
25 per pay period for ADP's services. The Debtors estimate that, as of the  
26 Petition Date, they owe approximately \$100 in Third-Party Administrative  
27 Costs to ADP.
- 28 iii. MacLean Financial Group. MacLean Financial Group ("**MacLean**") serves  
as the broker/advisor for the Debtors' Employee Savings Plans. The  
Debtors pay an aggregate of approximately \$15,000 per year for MacLean's  
services. The Debtors estimate that, as of the Petition date, they owe  
approximately \$5,100 in Third-Party Administrative Costs to MacLean.

The services provided by the Third-Party Administrators allow the Employee Benefits to be  
administered in the most cost-efficient manner that complies with applicable laws. The Debtors  
pay approximately \$16,000 per month in Third-Party Administrative Costs. The Debtors estimate

1 that, as of the Petition Date, the amount of unpaid Third-Party Administrative Costs was  
2 approximately \$16,000. The services provided by the Third-Party Administrators are provided in  
3 the ordinary course of business and are critical for ensuring that the Employees will continue to be  
4 paid and receive benefits without interruption.

5 ***E. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, but not***  
6 ***Directing, the Debtors to Pay Prepetition Claims Held by Critical Vendors and***  
7 ***Lien Claimants, and (II) Granting Related Relief (the "Vendors Motion")***

8 102. Pursuant to the Vendors Motion, the Debtors are seeking entry of interim and final  
9 orders authorizing the Debtors to pay, in their sole discretion, prepetition claims (collectively, the  
10 "***Vendor Claims***") held by Critical Vendors and Lien Claimants (each as defined below). The  
11 Critical Vendors provide goods and services that are essential for the Debtors to continue their  
12 operations. The Debtors believe that many of their vendors will make — or already have made —  
13 credible and actionable threats that, unless their prepetition claims are paid, they will cease to  
14 supply the Debtors with the specialized goods and services that are necessary for the Debtors to  
15 operate their business. Accordingly, to avoid jeopardizing the Debtors' ability to service their  
16 customers going forward, I believe that the relief requested in the Vendors Motion should be  
17 granted.

18 103. The Debtors have identified a group of vendors and suppliers that they deem to be  
19 critical to their operations (collectively, the "***Critical Vendors***"). In the process of identifying the  
20 Critical Vendors, the Debtors considered numerous factors, including whether:

- 21 i. the vendor's services are essential to the safety or preservation of the value  
22 of the Project;
- 23 ii. a vendor is a sole or limited-source or high-volume supplier;
- 24 iii. a contract exists by which the Debtors could compel the vendor's continued  
25 performance on prepetition terms and, if so, whether the Debtors could  
26 enforce it in a timely manner;
- 27 iv. certain specifications and requirements unique to the Debtors' operations  
28 exist that would prevent obtaining goods or services from alternative  
sources;

- v. failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to ship goods or to provide critical services on a postpetition basis;
- vi. the vendor provides goods or services that, if lost, would impair the safety of the mine; and
- vii. failure to pay a particular vendor could result in a problematic contraction of trade terms.

104. Following that analysis, the Debtors identified the group of Critical Vendors from among those vendors and contractors that provide the Debtors with the services, equipment, parts and materials that are vital to the Debtors' operations. Due to the specialized goods and services required to operate the Debtors' business and the remote geographic location of the Project, the Debtors have a limited universe of suppliers that can satisfy their operational needs for some goods and services. In many instances, the Critical Vendors are the sole or limited-source providers of a given good or service in Yerington, Nevada, a rural location approximately seventy miles from Reno. As a result, replacing the Critical Vendors — if even possible — would result in delay in obtaining necessary materials and services, as well as substantially higher costs for the Debtors and their estates.

105. The Debtors' Critical Vendors generally comprise the following categories: (i) safety and regulatory compliance vendors; (ii) equipment, parts and materials vendors; (iii) maintenance and repair vendors; and (iv) lease vendors. Each category is discussed below.

***1. Safety and Regulatory Compliance Vendors***

106. Operational safety is of paramount concern to the Debtors. To ensure their Employees' safety and comply with a broad array of federal and state regulations, the Debtors contract with certain vendors that provide specialized equipment and services to maintain safe working conditions. For example, the Debtors must purchase specialized products for roof and other structural supports that meet specific regulatory standards to mitigate the risk of future collapse. The Debtors also must purchase specialized operating equipment to comply with federal and state safety regulations.

1           107. Because of the industry-specific nature of these and similar goods and services, the  
2 remote location of the Project, and the strict regulatory conditions under which the vendors and  
3 the Debtors operate, the Debtors work with a limited number of safety and regulatory compliance  
4 suppliers and service providers. There are few, if any, ready substitutes in the market to meet the  
5 Debtors' demands. Thus, if the Debtors were suddenly forced to change these and similar vendors,  
6 they would be forced to spend time and money searching for qualified replacements. Such delays  
7 and increased expenses could have material consequences for the value of the Debtors' estates.

8                           **2.     *Equipment, Parts and Materials Vendors***

9           108. To conduct the day-to-day business of mining, the Debtors require a continuous  
10 and reliable supply of equipment, parts and materials that are critical to their operations. Although  
11 the Debtors routinely purchase new equipment for their mining operations, wear and tear on  
12 existing equipment creates suboptimal performance over time, forcing the Debtors, in the ordinary  
13 course of business, to stock, maintain, or replace the most in-demand parts and components on a  
14 continuous basis.

15           109. Given the unique and highly technical nature of the copper mining industry, much  
16 of the Debtors' mining equipment and parts can only be purchased from the original equipment  
17 manufacturer or certain after-market manufacturers and suppliers. Equipment and parts are usually  
18 only available from sole-source or limited-source suppliers, and many of these suppliers sell  
19 equipment and parts to the Debtors based on one-off purchase orders. Also, many of the Debtors'  
20 materials suppliers are local or regionally based and are the only available option to satisfy the  
21 Debtors' demands. Thus, any attempt to locate substitute suppliers of equipment, parts and  
22 materials would be costly and time-consuming, and there is no assurance that it is even possible to  
23 find adequate replacement vendors.

24           110. If the Debtors fail to make timely payments to certain vendors, the vendors may  
25 delay or refuse to deliver the equipment, parts and materials that are essential to providing care  
26 and maintenance to the Project. Failing to pay these vendors would thus significantly compromise  
27 the Debtors' efforts to sell substantially all their assets, thereby harming their employees and  
28

creditors. It is therefore critical that the Debtors have the authority to pay their vendors and continue these essential relationships.

### ***3. Repair and Maintenance Vendors***

111. The Debtors rely on a number of key service providers for the maintenance and repair of equipment, infrastructure and facilities. Although the Debtors perform routine maintenance and repair work during the ordinary course of business, the Debtors rely on specialized service providers for this work, which requires service providers with specially trained personnel, of which there are a limited number. The Debtors' current maintenance and repair vendors offer high-quality services, in some cases requiring certification, that the Debtors are unable to replicate from other providers. Preserving the Debtors' access to these service providers is thus critically important to maintaining the Debtors' estates.

### ***4. Lease and Regulatory Payments***

112. The Debtors lease certain of the land upon which they carry out mining and other critical operations. The Debtors currently lease the rights to enter into and extract minerals from certain areas of land in exchange for lease payments, royalties, and other obligations under their real property lease. Failure to pay amounts owing under lease agreements, or otherwise comply with obligations thereunder, including maintain the property free of liens, gives rise to breaches that could result in termination and the loss of critical rights necessary to operate the Debtors' business. Accordingly, the Debtors must be able to perform under their real property lease, including by paying prepetition amounts owing thereunder, curing any breaches that arise by virtue of rights asserted by third-party vendors, to ensure that the lease is not at risk of termination. The rights derived from real property leases are at the heart of the value of the Debtors' estates, and therefore the Debtors submit that payment of amounts necessary to ensure compliance with real property leases is in the best interest of all creditors and the Debtors' other stakeholders. Additionally, the Debtors pay certain amounts to regulatory authorities to maintain permits and satisfy other obligations required by regulators to ensure that they may continue to maintain their property, or as applicable, operate their business, in accordance with applicable law.



1           113. Although the Debtors typically conduct business with their Critical Vendors on a  
2 purchase order basis without long-term contracts, certain of the Critical Vendors that the Debtors  
3 seek to pay pursuant to this motion have contracts with the Debtors. Even for the Critical Vendors  
4 that have contracts, however, the goods and services that those Critical Vendors supply to the  
5 Debtors are so vital that any loss of access to, or delay in the delivery of, such goods or services  
6 resulting from the Critical Vendors' termination or threatened termination of those contracts (or  
7 the delay associated with the Debtors' attempt to enforce the contracts in the event that the Critical  
8 Vendors refuse to perform thereunder) would materially, if not irreparably, harm the Debtors'  
9 operations. Accordingly, the Debtors seek authority, but not direction, to honor their prepetition  
10 obligations to Critical Vendors where such party may, in the Debtors' reasonable business  
11 judgment, terminate their contract, refuse to perform under their contract, or where the delay  
12 associated with the Debtors' attempt to enforce the applicable contract would threaten the Debtors'  
13 operations.

14           114. Finally, the Debtors believe that many of their vendors are unfamiliar with  
15 reorganization under chapter 11 and may be unwilling to do business on existing terms — even  
16 assuming such parties will continue to supply the Debtors. Loss of trade terms (whether on account  
17 of demands for cash in advance, cash on delivery, or otherwise) could materially impair the  
18 Debtors' liquidity position at this critical juncture.

19           115. I believe that the payment of Critical Vendor Claims is essential to avoid costly  
20 disruptions to the Debtors' businesses during these Chapter 11 Cases. In order to mitigate the  
21 harms identified above, and to obtain critically necessary goods and services on a postpetition  
22 basis, the Debtors are seeking authority to pay the Critical Vendor Claims, in their sole discretion  
23 based on their reasonable business judgment, in an amount not to exceed: (i) \$1.7 million pursuant  
24 to the Interim Order and (ii) \$3.7 million pursuant to the Final Order, which represents around  
25 51% of the approximately \$7.1 million in accrued payables the Debtors had outstanding on the  
26 Petition Date  
27  
28



1           116. The Debtors routinely engage a number of third parties that work on the Project  
2 (collectively, “**Lien Claimants**” and, together with the Critical Vendors, “**Vendors**”) that have  
3 asserted, or may be able to assert and perfect liens, including mechanic’s liens, construction liens,  
4 transportation and freight liens, and other similar liens (“**Statutory Liens**”) against the Debtors’  
5 property (real or personal) or in which the Debtors’ have an interest. The imposition of Statutory  
6 Liens could harm the Debtors and interfere with their ability to reorganize successfully. It is my  
7 understanding that the perfection of Statutory Liens would transform unsecured claims into  
8 secured claims that have enhanced rights under the Bankruptcy Code, and potentially entitle the  
9 Lien Claimants to receive postpetition interest. Accordingly, the Debtors seek authority, but not  
10 direction, to pay the Lien Claims in an amount not to exceed: (i) \$0.7 million pursuant to an  
11 interim order and (ii) \$2.2 million pursuant to a final order.

12           117. The Debtors will use commercially reasonable efforts to require, as a condition to  
13 the payment of a Vendor’s claim, that the respective Vendor provides the Debtors with favorable  
14 trade terms in line with historical practice for the postpetition delivery of goods and services, or  
15 otherwise continue to supply the Debtors with goods and services for the duration of the Chapter  
16 11 Cases. The Debtors, therefore, seek authority to condition payment of the Vendors’ claims  
17 upon such Vendor claimants’ entry into a vendor agreement, substantially in the form annexed to  
18 the Vendors Motion as Exhibit 3.

19           118. Material disruption to the Debtors’ businesses that may result from nonpayment of  
20 the Vendors’ claims could threaten the Debtors’ ability to consummate their restructuring. The  
21 goods and services that the Vendors provide are absolutely necessary for the Debtors to conduct  
22 their business in the ordinary course, and it is prudent that the Debtors take any and all reasonable  
23 steps necessary to avoid imperiling the restructuring, including paying the Vendors’ claims. It is  
24 essential, therefore, that the Debtors obtain approval to pay Vendors in order to facilitate the  
25 Debtors’ continued operation following the commencement of their Chapter 11 Cases.

***F. Debtors' Motion for Interim and Final Orders (I) Prohibiting Utility Providers from Discontinuing, Altering, or Refusing Service, (II) Deeming Utility Providers to Have Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests for Additional Assurance (the "Utilities Motion")***

119. The Debtors seek entry of interim and final orders (i) prohibiting utility providers from discontinuing, altering, or refusing service, (ii) deeming utility providers to have adequate assurance of payment, and (iii) establishing procedures for resolving requests for adequate assurance.

120. In connection with the operation of the Debtors' business, various utility providers (the "***Utility Providers***") may provide electricity, natural gas, telecommunications, internet connectivity, waste disposal, and other similar services (collectively, the "***Utility Services***") to the Debtors. The Debtors utilize the Utility Services to operate and maintain the Project and their other business operations, including their office-based functions. Due to the critical nature of the Utility Services, the Debtors cannot operate their business in the absence of continuous Utility Services.

121. The termination or cessation of the Utility Services — even if only temporary — would result in a significant disruption to the Debtors' business. Any interruption of the Utility Services would impair the Debtors' efforts to preserve and maximize the value of their estates during their Chapter 11 Cases. It is critical, therefore, that the Utility Services continue uninterrupted. The relief requested in the Utilities Motion would allow the Debtors to avoid unexpected and inopportune interruptions in their business operations during the pendency of their Chapter 11 Cases and would provide the Utility Providers and the Debtors with an orderly, fair procedure for determining adequate assurance of payment.

***G. Debtors' Motion for an Order (I) Extending the Time to File Schedules and Statements, (II) Authorizing the Filing of a Consolidated Creditor Matrix with the Debtors' Chapter 11 Petitions, (III) Authorizing the Debtors to Redact Certain Personal Identifiable Information; and (IV) Modifying the Requirement to File a Complete List of Equity Holders (the "Extension Motion")***

122. The Debtors are seeking entry of an order (i) extending the 14-day period to file their Schedules and Statements for an additional 30 days, for a total of 44 days, without prejudice to the Debtors' ability to request additional time or to seek other relief, (ii) authorizing the filing

1 by the Debtors of a consolidated creditor matrix with their chapter 11 petitions, (iii) authorizing  
2 the Debtors to redact creditors' personal identifiable information, including names and addresses,  
3 from all documents filed or to be filed with the Court; and (iv) modifying the requirement to file a  
4 complete list of equity holders.

5 123. I believe that the Court's grant of an extension of time to file the Schedules and  
6 Statements would be appropriate in light of the circumstances surrounding these Chapter 11 Cases.  
7 It is my understanding that in order to prepare the Schedules and Statements, the Debtors must  
8 compile information from books, records, and documents relating to the claims of their creditors,  
9 as well as the Debtors' assets and contracts. Collecting the necessary information will require a  
10 substantial expenditure of time and effort on the part of the Debtors and their professional advisors  
11 in the near term — when these resources would be best used to ensure a smooth transition of the  
12 Debtors into chapter 11. Due to the amount of work entailed in completing the Schedules and  
13 Statements for cases of this size, and the competing demands upon the limited number of  
14 Employees available to assist the Debtors and their professionals, the Debtors likely will not be  
15 able to complete the Schedules and Statements properly and accurately within the required 14-day  
16 time period provided for under Bankruptcy Rule 1007(c), and, therefore, believe that ample cause  
17 exists for the requested extension.

18 124. It is my understanding that the Debtors are submitting a single consolidated creditor  
19 matrix rather than separate matrices for each Debtor. Preparation of a separate creditor matrix for  
20 each Debtor would be expensive, time-consuming, and administratively burdensome.

21 125. Cause exists to authorize the Debtors to redact the personal identifiable  
22 information, including names and addresses, of individual creditors from any documents filed or  
23 to be filed with the Court. Absent such relief, the Debtors (i) may be in violation of applicable  
24 data privacy laws, thereby exposing them to monetary and possibly other penalties, (ii) would  
25 unjustifiably render individuals more susceptible to identity theft and other unlawful injury, and  
26 (iii) could jeopardize the safety of employees, contract workers, former employees, and other  
27 individual creditors or individual equity holders who, unbeknownst to the Debtors, are survivors  
28

1 of domestic violence, harassment, or stalking, by publishing their personal identifiable  
2 information, including names and home addresses, without any advance notice or opportunity to  
3 opt out or take protective measures.

4 126. NCU is a public company and, as of the Petition Date, it had approximately  
5 1,429,567,214 shares of common stock outstanding. Accordingly, the Debtors submit that  
6 preparing a list of all equity holders with last-known mailing addresses, if even possible, would be  
7 an extremely time-consuming and expensive undertaking. In lieu of a full list of equity holders  
8 for NCU, the Debtors propose to file a list of equity holders holding greater than 10% of the equity  
9 in NCU, which would include all of the material equity holders. The Debtors submit that such a  
10 list would provide an appropriate level of detail in light of NCU's status as a public company with  
11 a widely dispersed set of equity holders.

12 ***H. Application for Entry of an Order (I) Authorizing Debtors to Employ and Retain***  
13 ***Epiq Corporate Restructuring, LLC as Notice, Claims, Administrative, &***  
14 ***Solicitation Agent and (II) Granting Related Relief (the "Claims Agent***  
***Application")***

15 127. The Debtors seek entry of an order authorizing the Debtors' employment and  
16 retention of Epiq Corporate Restructuring, LLC ("***Epiq***"), as notice, claims, administrative and  
17 solicitation agent in connection with these Chapter 11 Cases, effective as of the Petition Date.  
18 Among other things, Epiq will: (i) serve as the noticing agent to mail notices to the various  
19 creditors, equity security holders, and additional constituencies and parties in interest in these  
20 Chapter 11 Cases; (ii) provide computerized claims, objection, solicitation, and balloting database  
21 services; and (iii) provide the Debtors with expertise, consultation, and assistance in claim and  
22 ballot processing and other administrative services.

23 128. The Debtors selected Epiq because it is one of the nation's leading bankruptcy  
24 administrators, and has extensive experience performing these tasks in cases of this size. I believe  
25 that Epiq is well-qualified to perform the services contemplated in its retention application. I  
26 believe that Epiq's rates are competitive and reasonable given Epiq's quality of services and  
27 expertise. The terms of Epiq's retention are set forth in the Service Agreement attached to the  
28

1 Claims Agent Application as Exhibit 2; *provided* that Epiq is seeking approval solely of the terms  
2 and provisions as set forth in their application and the proposed order attached thereto.

3 129. Given the number of anticipated claimants and the complexity of the Debtors'  
4 business, I believe that the appointment of Epiq as claims and noticing agent is in the best interest  
5 of the Debtors' estates and their creditors, because the distribution of notices and the processing  
6 of claims will be expedited, and the Office of the Clerk of the Court will be relieved of the  
7 administrative burden of processing what may be an overwhelming number of claims.

8 ***I. Debtors' Motion to Authorize Nevada Copper, Inc., to Act as Foreign***  
9 ***Representative of the Debtors (the "Foreign Representative Motion")***

10 130. The Debtors are seeking entry of an order authorizing, but not directing, Debtor  
11 NCI to (i) act as the foreign representative of the Debtors, (ii) seek recognition by the Canadian  
12 Court of the Chapter 11 Cases and of certain orders made by this Court in the Chapter 11 Cases  
13 from time to time, (iii) request that the Canadian Court lend assistance to this Court and grant  
14 comity to the foreign representative, and (iv) seek any other appropriate relief from the Canadian  
15 Court that is just and proper.

16 131. As stated above, it is anticipated that, after the Petition Date, each of the Debtors  
17 will commence Recognition Proceedings in the Canadian Court for purposes of, among other  
18 things, implementing the relief obtained in the Chapter 11 Cases. NCI, as the proposed foreign  
19 representative for the Debtors in the Ancillary Proceeding, intends to seek recognition in Canada  
20 of these Chapter 11 Cases and certain orders entered by the Court. If the relief sought by this  
21 Motion is granted, NCI expects to submit immediately an application to the Canadian Court that  
22 seeks recognition of the Chapter 11 Cases as foreign main proceedings.

23 132. Immediate relief is necessary here because the appointment of NCI as foreign  
24 representative is a necessary precondition to the Debtors' commencement of the Ancillary  
25 Proceeding, pursuant to which NCI, on behalf of the Debtors, will seek, among other things, the  
26 Canadian Court's granting of a stay of proceedings to protect the Debtors' assets and operations  
27 in Canada. As stated above, both NCU and 0607792 B.C. LTD. are organized under the laws of  
28

1 the Province of British Columbia, Canada, and NCU has employees and assets in Canada. The  
2 Debtors believe that the commencement of the Ancillary Proceeding is critical to the success of  
3 these Chapter 11 Cases and that any delay in granting the relief requested could hinder the Debtors'  
4 operations and cause irreparable harm to the Debtors' estates. In addition, the Debtors are required  
5 under the DIP Facility to secure initial recognition of the Chapter 11 Cases in the Canadian Court  
6 as foreign main proceedings no later than 14 days following entry of the interim DIP order.  
7 Accordingly, the failure to receive the requested relief during the first 21 days of these Chapter 11  
8 Cases would jeopardize the success of the Chapter 11 Cases at this critical juncture.

9 **Conclusion**

10 I hereby certify that the foregoing statements are true and correct to the best of my  
11 knowledge, information and belief, and respectfully request that all of the relief requested in the  
12 First Day Motions be granted, together with such other and further relief as is warranted and just.

13 Executed this 9th day of June, 2024

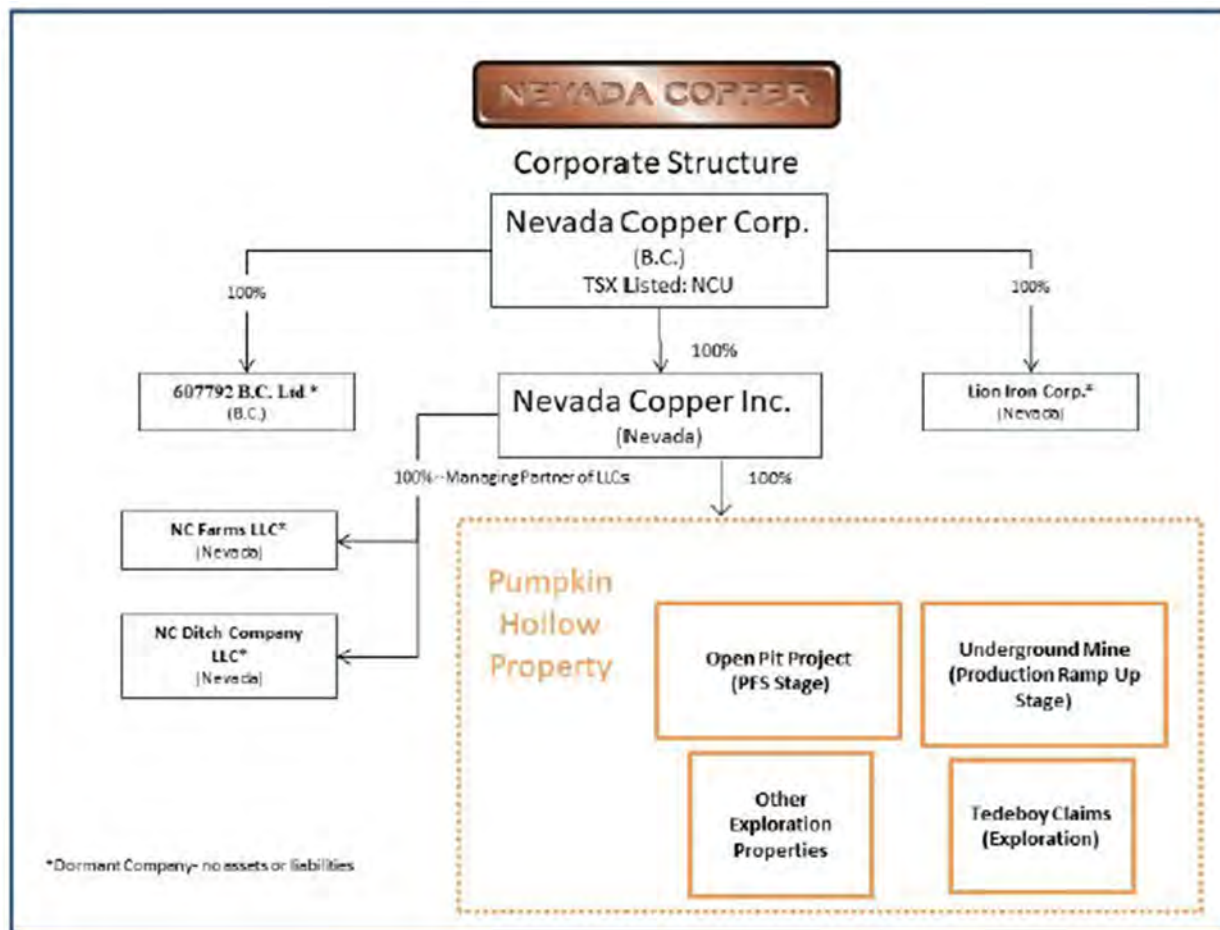
14  
15 /s/ Gregory J. Martin

16 Gregory J. Martin  
17 Executive Vice President and Chief Financial  
18 Officer  
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**EXHIBIT 1**


**Organizational Chart**

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This is **Exhibit “I”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W



**TEAMWORK. INNOVATION. EXECUTION.**

Consolidated Financial Statements  
For the year ended December 31, 2023 and December 31, 2022



## Independent auditor's report

To the Shareholders of Nevada Copper Corp.

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### Our opinion

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of Nevada Copper Corp. and its subsidiaries (together, the Company) as at December 31, 2023 and 2022, and its financial performance and its cash flows for the years then ended in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS).

### What we have audited

The Company's consolidated financial statements comprise:

- the consolidated statements of financial position as at December 31, 2023 and 2022;
- the consolidated statements of operations and comprehensive loss for the years then ended;
- the consolidated statements of changes in equity for the years then ended;
- the consolidated statements of cash flows for the years then ended; and
- the notes to the consolidated financial statements, comprising material accounting policy information and other explanatory information.

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### Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the consolidated financial statements* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### Independence

We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.

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### Material uncertainty related to going concern

We draw attention to note 1 to the consolidated financial statements, which describes events or conditions that indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.

PricewaterhouseCoopers LLP  
 PricewaterhouseCoopers Place, 250 Howe Street, Suite 1400, Vancouver, British Columbia, Canada V6C 3S7  
 T: +1 604 806 7000, F: +1 604 806 7806, ca\_vancouver\_main\_fax@pwc.com

"PwC" refers to PricewaterhouseCoopers LLP, an Ontario limited liability partnership.



## Key audit matters

Key audit matters are those matters that, in our professional judgment, were of most significance in our audit of the consolidated financial statements for the year ended December 31, 2023. These matters were addressed in the context of our audit of the consolidated financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters. In addition to the matter described in the *Material uncertainty related to going concern* section, we have determined the matters described below to be the key audit matters to be communicated in our report.

Key audit matter	How our audit addressed the key audit matter
<p><b>Assessment of impairment indicators for mineral properties, plant and equipment (PP&amp;E)</b></p> <p><i>Refer to note 2 – Material accounting policies and note 5 – Mineral properties, plant and equipment to the consolidated financial statements.</i></p> <p>As at December 31, 2023, the total net book value of PP&amp;E amounted to \$686 million, which relates to the Pumpkin Hollow cash-generating unit (CGU). Management assesses at each reporting period whether there is any indication of impairment at its CGU and applies significant judgment in assessing whether there are any indicators of impairment. If any such indicator exists, then an impairment test is performed. In determining whether an indicator of impairment for impairment exists, management considers external sources of information, such as: (i) significant decline in the Company's market capitalization; (ii) decreases in future metal prices; and (iii) potential impact of increases in interest rates; and internal sources of information such as: (i) decreases in quantity of recoverable mineral reserves and resources; (ii) increases in capital or operating costs; (iii) timing of ramp-up of the Company's underground mine; and (iv) the timing of a development decision for the Company's open pit mining project. No impairment indicators were identified by management as at December 31, 2023.</p> <p>We considered this a key audit matter due to (i) the significance of the PP&amp;E balance and (ii) the</p>	<p>Our approach to addressing the matter included the following procedures, among others:</p> <ul style="list-style-type: none"> <li>• Evaluated management's assessment of indicators of impairment, which included the following: <ul style="list-style-type: none"> <li>– Assessed the completeness of external or internal factors that could be considered as indicators of impairment of the PP&amp;E, including consideration of evidence obtained in other areas of the audit; and</li> <li>– Assessed the changes in the Company's market capitalization relative to its net assets, decreases in future metal prices, increases in interest rates, decreases in quantities of recoverable mineral reserves and mineral resources, increases in capital or operating costs, timing of ramp-up of the Company's underground mine and the timing of a development decision for the Company's open pit mining project.</li> </ul> </li> </ul>



#### Key audit matter

#### How our audit addressed the key audit matter

significant judgment by management in its assessment of indicators of impairment, which resulted in a high degree of subjectivity in performing audit procedures related to these judgments applied by management.

#### Other information

Management is responsible for the other information. The other information comprises the Management's Discussion and Analysis.

Our opinion on the consolidated financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the consolidated financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the consolidated financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

#### Responsibilities of management and those charged with governance for the consolidated financial statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with IFRS, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.




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## Auditor's responsibilities for the audit of the consolidated financial statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Company to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.



We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

From the matters communicated with those charged with governance, we determine those matters that were of most significance in the audit of the consolidated financial statements of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

The engagement partner on the audit resulting in this independent auditor's report is Dean Larocque.

**/s/PricewaterhouseCoopers LLP**

Chartered Professional Accountants

Vancouver, British Columbia  
April 2, 2024

# NEVADA COPPER CORP.

Consolidated Statements of Financial Position  
(Expressed in thousands of United States dollars)

	December 31, 2023	December 31, 2022
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$739	\$18,506
Accounts receivable	244	37
Prepaid expenses and advance royalty (Note 3)	8,179	5,297
Inventory (Note 4)	7,637	4,908
<b>Total Current Assets</b>	16,799	28,748
Restricted cash	380	380
Mineral properties, plant and equipment (Note 5)	686,193	615,411
Non-current advance royalty	—	3,230
<b>Total Assets</b>	<b>\$703,372</b>	<b>\$647,769</b>
<b>Liabilities and Shareholders' Equity</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	\$18,974	\$26,699
Related party payable (Note 11)	1,957	—
Share-based compensation liabilities (Note 13)	1,641	2,289
Warrant derivative (Note 14)	1,921	9,309
Current portion of stream and royalty deferral (Note 9)	11,580	3,655
Working Capital Facility (Note 6)	8,624	20,687
Short-term debt (Note 7)	42,910	—
Current portion of long-term debt (Note 8)	12,776	8,491
<b>Total Current Liabilities</b>	100,383	71,130
Long-term payable	—	975
Share based compensation liabilities (Note 13)	357	546
Stream and royalty deferral (Note 9)	175,977	166,678
Long-term debt (Note 8)	172,549	210,043
Asset retirement obligation (Note 10)	5,474	5,263
<b>Total Liabilities</b>	454,740	454,635
<b>Shareholders' Equity</b>		
Share capital (Note 12)	830,954	717,971
Other equity reserve	35,550	32,144
Accumulated other comprehensive loss	(3,578)	(3,578)
Deficit	(614,294)	(553,403)
<b>Total Shareholders' Equity</b>	248,632	193,134
<b>Total Liabilities and Shareholders' Equity</b>	<b>\$703,372</b>	<b>\$647,769</b>

General Information, Nature of Operations and Going Concern (Note 1)

Commitments and Contractual Obligations (Note 15)

Subsequent Events (Note 25)

The accompanying Notes are an integral part of these consolidated financial statements.

Approved by the Board of Directors on April 2, 2024

(Signed) "Anna Ladd-Kruger", Director

(Signed) "Ernest Nutter", Director



# NEVADA COPPER CORP.

Consolidated Statements of Operations and Comprehensive Loss  
(Expressed in thousands of United States dollars, except per share amounts)  
Years ended December 31, 2023 and December 31, 2022

	December 31, 2023	December 31, 2022
<b>Revenue (Note 16)</b>	\$4,570	\$9,086
<b>Cost of Sales</b>		
Production costs (Note 17)	6,721	28,844
Net realizable value adjustment (Note 4)	25,270	2,273
Depreciation	666	—
Transportation	475	2,025
Royalty	216	476
<b>Total cost of sales</b>	<b>33,348</b>	<b>33,618</b>
<b>Gross loss</b>	<b>(28,778)</b>	<b>(24,532)</b>
<b>Operating Expenses</b>		
Care and maintenance and restart expenses (Note 18)	24,889	23,034
General and administrative	6,398	5,744
Share-based compensation (Note 13)	1,779	1,068
Impairment of mineral properties development costs (Note 5)	—	298,975
Plant and equipment written off	—	632
<b>Loss from operations</b>	<b>(61,844)</b>	<b>(353,985)</b>
Interest income	421	36
Interest and finance expenses (Note 19)	(25,350)	(20,321)
Financing related transaction costs	—	(1,466)
Derivative fair value gain (Note 8 and 14)	27,721	19,057
Debt extinguishment loss (Note 8)	(3,089)	(2,998)
Debt modification gain (Note 8)	410	1,373
Other income	814	—
Foreign exchange gain	26	358
	<b>953</b>	<b>(3,961)</b>
<b>Loss and comprehensive loss</b>	<b>(\$60,891)</b>	<b>(\$357,946)</b>
<b>Loss per share</b>		
Basic and diluted	(\$0.06)	(\$0.74)
<b>Weighted average number of common shares outstanding</b>		
Basic and diluted	1,091,994,365	486,012,523

The accompanying Notes are an integral part of these consolidated financial statements.

## NEVADA COPPER CORP.

### Consolidated Statements of Changes in Equity

(Expressed in thousands of United States dollars, except per share amounts)

Years ended December 31, 2023 and December 31, 2022

	Share Capital		Other Equity Reserve	Accumulated Other Comprehensive Loss	Deficit	Total
	Number of Shares	Amount				
<b>Balance at December 31, 2021</b>	<b>448,437,559</b>	<b>\$681,690</b>	<b>\$31,900</b>	<b>(\$3,578)</b>	<b>(\$195,457)</b>	<b>\$514,555</b>
Shares issued	275,071,141	37,047	—	—	—	37,047
Shares issuance costs	—	(766)	—	—	—	(766)
Share-based compensation (Note 13)	—	—	244	—	—	244
Comprehensive loss	—	—	—	—	(357,946)	(357,946)
<b>Balance at December 31, 2022</b>	<b>723,508,700</b>	<b>\$717,971</b>	<b>\$32,144</b>	<b>(\$3,578)</b>	<b>(\$553,403)</b>	<b>\$193,134</b>

	Share Capital		Other Equity Reserve	Accumulated Other Comprehensive Loss	Deficit	Total
	Number of Shares	Amount				
<b>Balance at December 31, 2022</b>	<b>723,508,700</b>	<b>\$717,971</b>	<b>\$32,144</b>	<b>(\$3,578)</b>	<b>(\$553,403)</b>	<b>\$193,134</b>
Shares issued	706,058,514	115,771	—	—	—	115,771
Shares issuance costs	—	(2,788)	—	—	—	(2,788)
Warrants issued (Note 7(b) and 8(b))	—	—	1,555	—	—	1,555
RSU liability reclassified to equity	—	—	1,073	—	—	1,073
Share-based compensation (Note 13)	—	—	778	—	—	778
Comprehensive loss	—	—	—	—	(60,891)	(60,891)
<b>Balance at December 31, 2023</b>	<b>1,429,567,214</b>	<b>\$830,954</b>	<b>\$35,550</b>	<b>(\$3,578)</b>	<b>(\$614,294)</b>	<b>\$248,632</b>

The accompanying Notes are an integral part of these consolidated financial statements.

# NEVADA COPPER CORP.

## Consolidated Statements of Cash Flows

(Expressed in thousands of United States dollars)

Years ended December 31, 2023 and December 31, 2022

	December 31, 2023	December 31, 2022
<b>Cash flows used in operating activities</b>		
Loss and comprehensive loss	(\$60,891)	(\$357,946)
Adjustments and items not affecting cash:		
Derivative fair value gain (Note 8 and 14)	(27,721)	(19,057)
Impairment of mineral properties development costs (Note 5)	—	298,975
Depreciation	2,319	1,962
Debt extinguishment loss (Note 8)	(410)	(1,373)
Loss on extinguishment of debt (Note 8)	3,089	2,998
Interest and finance expenses	24,587	18,811
Plant and equipment written off	—	632
Share-based compensation	1,779	1,068
Interest income	—	(36)
Financing related transaction costs	—	1,466
	(57,248)	(52,500)
Changes in non-cash working capital items:		
Amounts receivable	(207)	35
Inventories	(4,906)	—
Prepaid expenses	(2,268)	(1,217)
Accounts payable and accrued liabilities	(1,444)	7,875
<b>Cash used in operating activities</b>	<b>(66,073)</b>	<b>(45,807)</b>
<b>Cash flows used in investing activities</b>		
Interest received	—	36
Proceeds from sale of royalties & stream amendment (Note 9)	—	30,000
Stream payments	(385)	(672)
Mineral property development cost, plant and equipment	(54,912)	(78,385)
<b>Cash used in investing activities</b>	<b>(55,297)</b>	<b>(49,021)</b>

# NEVADA COPPER CORP.

## Consolidated Statements of Cash Flows

(Expressed in thousands of United States dollars)

Years ended December 31, 2023 and December 31, 2022

	December 31, 2023	December 31, 2022
<b>Cash flows from financing activities</b>		
Units issued	38,860	20,000
Shares issuance costs	(1,059)	—
Costs incurred in relation to financing	(287)	(2,592)
Proceeds from the Deferred Funding Facility	25,000	(2,500)
Proceeds from Promissory Notes (Note 7)	5,550	42,500
Proceeds from the Unsecured Loan from Pala	18,300	—
Proceeds from Pala Credit Facility	—	15,000
Exercise of warrants	5,000	25
Proceeds from KfW Tranche A-2 Loan (Note 8)	35,376	—
Proceeds from Working Capital Facility	4,131	22,533
Repayment of Working Capital Facility	(16,987)	(23,218)
Lease payments (Note 8)	(7,484)	(7,552)
Interest paid	(1,993)	(2,478)
Withholding tax on interest paid	(804)	—
<b>Cash provided by financing activities</b>	<b>103,603</b>	<b>61,718</b>
<b>Decrease in cash and cash equivalents</b>	<b>(17,767)</b>	<b>(33,110)</b>
<b>Cash and cash equivalents, beginning of year</b>	<b>18,506</b>	<b>51,616</b>
<b>Cash and cash equivalents, end of year</b>	<b>\$739</b>	<b>\$18,506</b>

Supplemental cash flow disclosures (Note 22)

The accompanying Notes are an integral part of these consolidated financial statements.

# Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

## 1. General Information, Nature of Operations and Going Concern

Nevada Copper Corp. is the parent company of its consolidated group (the "Company" or "Nevada Copper"). The Company was incorporated on June 16, 1999 under the Business Corporations Act (Yukon) and was continued into British Columbia under the Business Corporations Act (British Columbia) on November 16, 2006. Nevada Copper is incorporated and domiciled in Canada, and its registered office is at Suite 250-200 Burrard Street, Vancouver, British Columbia, V6C 3L5. The Company is a mining company engaged in the development, operation and exploration of its copper project (the "Project") at its Pumpkin Hollow Property (the "Property") in Western Nevada, USA, and in particular, the ramp up of its underground mine to its nameplate milling capacity of 5,000 tons per day ("tpd") at the Property (the "Underground Mine").

These consolidated financial statements have been prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS") applicable to a going concern entity.

At December 31, 2023, the Company had a working capital deficiency (current assets less current liabilities) of \$83,584 (December 31, 2022 - \$42,382) and cash and cash equivalents of \$739 (December 31, 2022 - \$18,506). For the year ended December 31, 2023, the Company recorded a net loss of \$60,891 (December 31, 2022 - \$357,946), cash used in operating activities was \$66,073 (December 31, 2022 - \$45,807), and cash used in investing activities was \$55,297 (December 31, 2022 - \$49,021).

The Company currently has limited financial resources and the aggregate amount of capital and operating costs (net of cash inflows from sale of concentrate) for the next twelve months combined with residual vendor payments, debt service costs and corporate costs exceeds the amount of cash and funding currently available to the Company. Refer to note 23 for the contractual obligations of the Company.

Subsequent to December 31, 2023, the Company received \$24,650 from Pala Investments Limited ("Pala"). The Company requires further funding to complete the commissioning and ramp-up of the Underground Mine and continue carrying on business in the normal course. While Pala has continued to support the Company by providing additional advances, it is under no obligation to continue to do so and the amount of such funding has been decreasing, resulting in an accumulation of trade payables. Additional funding or negotiating a deferral of debt payments is required as the Company has debt and other contractual obligations owed in the next twelve months (Refer note 23). The Company has entered into an exclusivity agreement with a third party regarding a proposal for additional financing and a potential change of control transaction. There can, however, be no assurance that additional financing will be obtained and that such transaction will be entered into or completed.

During the fourth quarter ended December 31, 2023, the Company received the remaining \$12,330 and \$10,000 committed by Pala and Mercuria Holdings (Singapore) PTE Ltd. ("Mercuria"), respectively, pursuant to a financing agreement entered by the Company with Pala, Mercuria and TF R&S Canada Ltd. (together with its affiliates, "Triple Flag") (the "2023 Financing Package Agreement") in May 2023. Additionally, Pala provided incremental funding of \$18,300 during the quarter ended December 31, 2023. These amounts were funded as debt (refer note 8(b)).

Also, during the fourth quarter ended December 31, 2023, the Company issued common shares of the Company to settle \$3,000 outstanding under the KfW Tranche A-2 Loan (refer note 8(a)) in accordance with the terms agreed with Pala, Mercuria and Triple Flag in the 2023 Financing Package Agreement (\$1,000 each of Pala, Mercuria and Triple Flag). The refreshed draw room now available under the KfW

# Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

Tranche A-2 Loan is committed by Triple Flag to finance certain metal deliveries that become due under the Company's stream agreement with Triple Flag, subject to certain conditions.

The ability of the Company to continue as a going concern, to realize the carrying value of its assets, and to discharge its liabilities when due, is dependent on, amongst other things, positive cash flow being generated from operations, the ability to complete the commissioning and ramp-up the Underground Mine to its nameplate milling capacity of 5,000 tpd in accordance with the Company's timing and cost expectations, an increase in copper concentrate production and sales, favorable copper market conditions, and securing further funding. There can be no assurance that these requirements will be achieved and in the absence of additional funding being arranged, the Company may not be able to continue to carry on business in the ordinary course. The combination of these factors give rise to material uncertainties that may cast significant doubt on the Company's ability to continue as a going concern.

If the going concern basis was not appropriate for these consolidated financial statements, then adjustments would be necessary to the carrying values of assets and liabilities and these adjustments could be material.

## 2. Material Accounting Policies

### a) Statement of compliance

These consolidated financial statements have been prepared in accordance with the material accounting policies presented below and are in compliance with IFRS. These consolidated financial statements have been prepared under the historical cost convention, except for certain financial assets and financial liabilities measured at fair value.

These consolidated financial statements are presented in United States dollars ("USD").

These consolidated financial statements were approved for issue by the board of directors of the Company on April 2, 2024.

### b) Basis of consolidation

These consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, Nevada Copper, Inc. ("NCI") incorporated in Nevada, United States and NCI's wholly owned subsidiaries, NC Ditch Company LLC (inactive) and NC Farms LLC (inactive) incorporated in Nevada, United States, Lion Iron Corp. (inactive) and 607792 British Columbia Ltd. (inactive). Control is achieved when the Company is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee. All significant intercompany transactions and balances are eliminated on consolidation.

### c) Use of judgments and estimates

The preparation of consolidated financial statements in conformity with IFRS requires management to make estimates, assumptions, and judgements that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingencies at the date of the consolidated financial statements, along with reported amounts of revenues and expenses during the period. Actual results may differ from these estimates, and as such, estimates and underlying assumptions are reviewed on an ongoing basis. Changes in estimates are recognized in the period in which the estimates are revised and in any future periods affected.

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

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For the year ended December 31, 2023 and December 31, 2022

The areas that require significant estimations or where measurements are uncertain are as follows:

i) Mineral reserve and resource estimates

The Company estimates its mineral reserves and resources based on information compiled by Qualified Persons as defined in accordance with National Instrument 43-101 – *Standards for Disclosure of Mineral Projects* (NI 43-101). Mineral reserves are used in the calculation of depreciation, impairment assessment, and for forecasting the timing of mine closure, reclamation, and rehabilitation costs. There are uncertainties inherent in estimating mineral reserves, and assumptions that are valid at the time of estimation may change significantly when new information becomes available. Changes in the forecasted prices of commodities, production costs, or recovery rates could have a material impact in the future on the Company's financial position and results of operations.

ii) Recoverable amount of mineral properties, plant and equipment

When an impairment test is required, the recoverable amount is assessed by reference to the higher of value in use ("VIU") and fair value less costs of disposal ("FVLCD"). The VIU is the net present value of expected future pre-tax cash flows from the relevant cash-generating unit in its current condition, both from continuing use and ultimate disposal. FVLCD is estimated either from the value obtained from an active market where applicable, or by using a discounted post-tax cash flow model based on detailed life-of-mine ("LOM") and/or production plans. FVLCD will exceed VIU at the Project because there is incremental value in its mineral resources that cannot be included in a VIU assessment. Significant assumptions used in the discounted cash flow model include estimates of production based on quantities of recoverable mineral reserves and resources, future metal prices, capital and operating costs and discount rate.

These inputs are based on the Company's best estimates of what an independent market participant would consider appropriate. Changes to these inputs may alter the results of the impairment test.

iii) Provision for reclamation and remediation

The Company assesses its provision for reclamation and remediation on an annual basis or when new material information becomes available. Mining and exploration activities are subject to various laws and regulations governing the protection of the environment.

In general, these laws and regulations are continually changing, and the Company has made, and intends to make in the future, expenditures to comply with such laws and regulations. Accounting for reclamation and remediation obligations requires management to make estimates of the future costs the Company will incur to complete the reclamation and remediation work required to comply with existing laws and regulations. Actual costs incurred may differ from those amounts estimated. Also, future changes to environmental laws and regulations could increase the extent of reclamation and remediation work required to be performed by the Company. Increases in future costs could materially impact the amounts charged to operations for reclamation and remediation. The provision represents management's best estimate of the present value of the future reclamation and remediation obligation. The actual future expenditures may differ from the amounts currently provided.

iv) Fair valuation of warrant derivatives

The fair value of warrant derivatives that are not traded in an active market is determined using various other valuation techniques. The Company uses its judgment to select a method for valuation of warrant derivatives and make assumptions that are based on market conditions existing at the end of each reporting period. Inputs to the estimation are taken from observable markets where

# Nevada Copper Corp.

## Notes to Consolidated Financial Statements

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possible, but where this is not feasible, an increased degree of estimation uncertainty arises when establishing fair values. The estimates include considerations of inputs such as volatility, credit risk and risk free rate. Changes in assumptions about these factors could affect the reported fair value of financial instruments.

The areas that require significant judgment are as follows:

i) Going concern

The assessment of the Company's ability to continue as a going concern and to generate or raise sufficient funds to pay its ongoing operating and capital expenditures and to meet its liabilities for the ensuing year, involves significant judgment based on historical experience and other factors, including the impact of management's expectations for other future events that are believed to be reasonable under the circumstances.

ii) Assessment of impairment indicators for mineral properties, plant and equipment

Significant judgement is required in assessing whether certain factors would be considered an indicator of impairment. In determining whether any indicator for impairment exists, management considers external sources of information such as a significant decline in the Company's market capitalization, changes in future metal prices, and potential impact of changes in interest rates; and internal sources of information such as quantity of recoverable mineral reserves and resources, changes in capital or operating costs, timing of ramp-up of the Underground mine, and timing of a development decision for the open pit mining project.

iii) Achievement of commercial production

In determining whether commercial production is achieved, management considers number of factors including substantial completion of the processing plant, surface site infrastructure and underground infrastructure necessary to support sustained production, and achievement of operating targets for a defined period. Once the commercial production is achieved, depreciation of capitalized costs begins. Significant judgment is required to determine if commercial production is achieved. At December 31, 2023, commercial production had not been achieved in relation to the Underground Mine.

**d) Foreign currency translation**

The functional currency of the Company and its subsidiaries is USD. Monetary assets and liabilities denominated in foreign currencies are translated to the functional currency at the rates of exchange at the consolidated statements of financial position date. Non-monetary assets and liabilities are translated at transaction date exchange rates. Revenue and expenses are translated at the exchange rate at the date of the transaction, except depreciation, amortization, and derivative fair value change which are translated at the rates of exchange applicable to the related assets, and stock-based compensation expense, which is translated at the rates of exchange applicable at the date of grant of the stock-based compensation. Translation gains and losses are included in the statement of operations and comprehensive loss.

**e) Financial instruments**

Financial assets and liabilities are initially recorded at fair value less transaction cost, if measured subsequently at amortized costs. Subsequent measurement of financial assets and liabilities depends on the classification of such assets and liabilities.



## Nevada Copper Corp.

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### (i) Classification and measurement of financial assets

Financial assets are classified after initial recognition as measured at Amortized Cost, Fair Value through Profit or Loss ("FVTPL"), or Fair Value through Other Comprehensive Income ("FVOCI"). The determination of classification of financial assets is based on the business model in which a financial asset is managed and its contractual cash flow characteristics.

#### *Amortized Cost:*

Financial Assets that meet the following conditions are measured subsequently at amortized cost:

- a) The financial asset is held within a business model whose objective is to hold financial assets in order to collect contractual cash flows, and
- b) The contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding.

The amortized cost of a financial asset is the amount at which the financial asset is measured at initial recognition minus the principal repayments, plus the cumulative amortization using the effective interest method of any difference between that initial amount and the maturity amount, adjusted for any loss allowance. Interest income is recognized using the effective interest method.

The Company's financial assets classified as subsequently measured at amortized cost include cash and cash equivalents, interest and other receivables, and deposits.

#### *Financial Assets measured subsequently at FVOCI:*

Financial assets that meet the following conditions are measured at FVOCI:

- a) The financial asset is held within a business model whose objective is achieved by both collecting contractual cash flows and selling financial assets, and
- b) The contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding.

#### *Financial assets measured subsequently at FVTPL:*

By default, all other financial assets are measured subsequently at FVTPL. Financial assets measured at FVTPL are measured at fair value at the end of each reporting period, with any fair value gains or losses recognized in profit or loss.

At December 31, 2023 and 2022 the Company did not have any financial assets subsequently measured at FVTPL or FVOCI.

### (ii) Classification and measurement of Financial Liabilities

Financial liabilities that are not contingent consideration in a business combination, held for trading or designated as FVTPL, are measured at amortized cost less transaction cost using effective interest method.

The Company's financial liabilities measured at amortized cost include accounts payable and accrued liabilities, related party payables, the Working Capital Facility, the Company's current and long-term debt (other than lease liabilities), and other long term payables.

The Company's financial liabilities classified as FVTPL include warrants and embedded derivatives. Financial liabilities are classified as current or non-current based on their maturity date.

## Nevada Copper Corp.

### Notes to Consolidated Financial Statements

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#### (iii) *Impairment*

At each reporting date, the Company measures the loss allowance for a financial asset held at amortized cost at an amount equal to the lifetime expected credit losses if the credit risk on the financial asset has increased significantly since initial recognition. If at the reporting date, the credit risk on the financial asset has not increased significantly since initial recognition, the Company measures the loss allowance for the financial asset at an amount equal to twelve month expected credit losses.

#### (iv) *Derivative assets or liabilities*

Derivatives are classified as FVTPL and initially recognized at their fair value on the date into which the derivative contract is entered. Transaction costs are expensed. Derivatives are subsequently re-measured at their fair value at each statement of financial position date with changes in fair value recognized in the statement of operations and comprehensive loss. Fair values for derivative instruments are determined using valuation techniques, with assumptions based on market conditions existing at the statement of financial position date or settlement date of the derivative.

Derivatives embedded in other financial liabilities or non-financial host contracts are treated as separate derivatives when their risks and characteristics are not closely related to their host contracts.

#### *Fair value measurement*

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value hierarchy establishes three levels to classify the inputs to valuation techniques used to measure fair value, by reference to the reliability of the inputs used to estimate the fair values. The various fair value levels are described in Note 23.

#### **g) Asset retirement obligations and reclamation costs**

The Company recognizes and records the fair value of the liability for an asset retirement obligation in the period in which it is incurred and records a corresponding increase in the carrying value of the related asset using the present value of the estimated future cash outflows. The liability is subsequently adjusted for the passage of time, and the related asset is amortized using either the unit of production or the straight-line method commencing with commercial production. The liability is also adjusted for the changes to the current market-based discount rate, long term inflation rates, or the amount or timing of the underlying cash flows needed to settle the obligation.

#### **h) Exploration and evaluation assets**

Once the legal right to explore an area has been secured, expenditures on exploration and evaluation activities are capitalized as exploration and evaluation assets and classified as a component of mineral properties, plant and equipment. Exploration expenditure relates to the initial search for deposits with economic potential. Expenditures incurred before the Company has obtained legal rights to explore a specific area are expensed.

The recovery of the carrying amount of exploration and evaluation assets is dependent upon the future commercial success of the mineral properties or from proceeds of disposition. The amounts shown for exploration and evaluation assets represent costs incurred to date and are not intended to reflect present or future values.

Once technical feasibility and commercial viability has been determined for an area and the decision to proceed with development has been approved, exploration and evaluation assets attributable to

# Nevada Copper Corp.

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that area are first tested for impairment and then reclassified to mineral property development costs within mineral properties, plant and equipment.

## i) Mineral properties, plant and equipment

Mineral properties, plant and equipment are stated at cost which includes the acquisition price and any direct costs to bring the asset into productive use at its intended location including development costs for mineral properties transferred from exploration and evaluation assets, an estimate of asset retirement costs, and capitalized borrowing costs.

Amortization of plant and equipment is calculated using the straight-line method to expense the cost, net of any estimated residual value, over their estimated economic lives as follows:

Building	Lower of 20 years or LOM
Processing plant	Lower of economic life or LOM
Mobile equipment	5 to 7 years
Right to use assets	Lower of economic life or lease term
Computer equipment and software	2 years

On the date commercial production is achieved, mineral properties subject to depletion, are depleted on a unit-of-production basis. In applying the units-of-production basis over the recoverable tons to which the asset specifically relates, depletion is calculated using ore tons extracted from the mine in the period as a percentage of the total ore tons expected to be extracted in current and future periods based on estimated mineral reserves.

Construction in process assets are not depreciated until available for their intended use.

## j) Impairment of non-financial assets

At each reporting date, the carrying amounts of the Company's non-financial assets are reviewed to determine whether there is any indication that those assets are impaired. If any such indication exists, the recoverable amount of the asset is estimated in order to determine the extent of the impairment, if any. The recoverable amount is the higher of fair value less costs to sell and value in use, which is the present value of future cash flows expected to be derived from the asset. If the recoverable amount of an asset is estimated to be less than its carrying amount, the carrying amount of the asset is reduced to its recoverable amount and the impairment loss is recognized in the statement of operations and comprehensive loss for the period.

For the purposes of impairment testing, plant and equipment and exploration and evaluation assets are allocated to cash-generating units to which the exploration or development activity relates. Where an impairment loss subsequently reverses, the carrying amount of the asset (or cash-generating unit) is increased to the revised estimate of its recoverable amount, so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognized for the asset (or cash-generating unit) in prior years. A reversal of an impairment loss is recognized in the statement of operations and comprehensive loss for the period.

## k) Income taxes

Income tax expense comprises current and deferred income taxes. Current and deferred income taxes are recognized in the statement of operations and comprehensive loss except to the extent that it relates to a business combination, or items recognized directly in equity or other comprehensive income.

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Current tax is the expected tax payable or receivable on the taxable income or loss for the year, using tax rates enacted or substantively enacted at the reporting date, and any adjustment to tax payable in respect of previous years.

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is not recognized for the following temporary differences: the initial recognition of assets or liabilities in a transaction that is not a business combination and that affects neither accounting nor taxable profit or loss, and differences relating to investments in subsidiaries and jointly controlled entities to the extent that it is probable that they will not reverse in the foreseeable future. In addition, deferred tax is not recognized for taxable temporary differences arising on the initial recognition of goodwill. Deferred tax is measured at the tax rates that are expected to be applied to the temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date. Deferred tax assets and liabilities are offset if there is a legally enforceable right to offset current tax assets and liabilities, and they relate to income taxes levied by the same tax authority on the same taxable entity, or on different tax entities, but they intend to settle current tax liabilities and assets on a net basis or their tax assets and liabilities will be realized simultaneously.

A deferred tax asset is recognized for unused tax losses, tax credits, and deductible temporary differences, to the extent that it is probable that future taxable profits will be available against which they can be utilized. Deferred tax assets are reviewed at each reporting date and are reduced to the extent that it is no longer probable that the related tax benefit will be realized.

### **I) Stock-based compensation**

The Company applies the fair value method to stock-based compensation for all awards including grants of share purchase options and direct awards of stock. The fair value is measured at grant date and each vesting tranche is recognized as a separate award. Compensation expense is recognized over the applicable vesting period with a corresponding increase in other equity reserve. When the options are exercised, the exercise price proceeds, together with the related other equity reserve amounts are credited to share capital.

Deferred share units ("DSUs") may be granted to directors as part of their compensation package entitling them to receive cash, common shares of the Company or a combination thereof at the relevant time. A liability for DSUs is measured at fair value on the grant date and is subsequently adjusted at each consolidated statement of financial position date for changes in fair value.

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The Company had a Performance Share Unit Plan and a Restricted Share Unit Plan for incentive compensation. PSUs under the Performance Share Unit Plan entitle the holder to a cash payment at the end of a three-year performance period equal to the number of PSUs granted, adjusted for a performance factor and multiplied by the quoted market value of a common share. RSUs issued under the Restricted Share Unit Plan entitle the holder to a cash payment upon vesting equal to the number of RSUs vested multiplied by the market value of a common share. On May 11, 2023, the Performance Share Unit Plan and the Restricted Share Unit Plan were replaced by a new equity incentive plan (the "Omnibus Equity Incentive Plan"). Pursuant to the Omnibus Equity Incentive Plan, the Board can elect to settle vested RSUs or PSUs granted under the Omnibus Equity Incentive Plan through the issuance of common shares of the Company or cash payment or a combination of each. A liability for PSUs and RSUs is measured at fair value on the grant date and is subsequently adjusted at each consolidated statement of financial position date for changes in fair value according to the estimation made by management of the number of PSUs and RSUs that will eventually vest. The liability is recognized over the vesting period, with a corresponding charge to stock-based compensation. Subsequently if the Board elects to settle vested RSUs and PSUs through the issuance of common shares of the Company, the liability recognized for such RSUs and PSUs on the date of modification is reclassified to other equity reserve. The expense for the remainder of the vesting period is recognized based on the fair value of RSUs and PSUs on the date of modification, with a corresponding increase in other equity reserve.

### **m) Provisions**

Provisions are recognized when a legal or constructive obligation has been incurred as a result of past events, it is probable that an outflow of resources embodying economic benefit will be required to settle the obligation, and a reliable estimate of the amount of the obligation can be made. Provisions are measured at the present value of the expenditures expected to be required to settle the obligation. The increase in any provision due to passage of time is recognized as an accretion expense.

### **n) Income (loss) per share**

Basic income (loss) per share is calculated by dividing net income (loss) available to the shareholders by the weighted average number of common shares outstanding during the period. Diluted earnings per share is calculated to reflect the dilutive effect of exercising outstanding share purchase options and warrants by application of the treasury stock method. Outstanding share purchase options and share purchase warrants that would potentially dilute basic loss per share have not been included in the computation of diluted loss per share because to do so would be anti-dilutive.

### **o) Interest income and finance costs**

Interest income comprises interest income on funds invested. Interest income is recognized as it accrues in profit or loss, using the effective interest method. Finance costs comprise interest expense on borrowings and the unwinding of the discount on provisions. Borrowing costs that are not directly attributable to the acquisition, construction or production of a qualifying asset are recognized in the statement of operations and comprehensive loss using the effective interest method. Deferred financing costs are initially deferred and subsequently reclassified as part of the loan on a pro-rata basis of the loan amount drawn.

### **p) Segmented information**

The Company conducts its business in a single segment, being the acquisition, exploration and development of mineral properties. All of its mineral properties are located in the United States.

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### q) Stream and royalty agreements

The stream and royalty agreements entered into by the Company with Triple Flag have been accounted for as a sale of mineral interest. The up-front payments received by the Company in consideration for future commitments as specified in its stream and royalty agreements are recognized as stream and royalty deferral. Also, in accordance with IFRS 15 Revenue from Contracts with Customers, the Company identified a significant financing component resulting from a difference in the timing of the up-front consideration received and the expected future deliveries of metal. The interest rate is determined based on the rate implicit in the stream and royalty agreements.

The Company satisfies its obligation to deliver metal contained in concentrate under the Stream Agreement at the time control of the Property's copper concentrate is transferred to the end customer or offtaker, which occurs upon shipment. Concurrent with the satisfaction of the Company's obligation under the Stream Agreement, the Company reduces the portion of stream and royalty deferral and recognizes a gain or loss on sale of mineral interest in the statement of operations and comprehensive loss. Stream and royalty deferral is subsequently adjusted for accretion, which is recognized as a finance cost.

### r) Leases

At inception of a contract, the Company assesses whether a contract is, or contains, a lease. A contract is, or contains, a lease if the contract conveys the right to control the use of an identified asset for a period in exchange for consideration. At inception or on reassessment of a contract that contains a lease component, the Company allocates the consideration in the contract to each lease component based on their relative stand-alone prices.

The Company recognizes a right-of-use asset and a lease liability at the lease commencement date. The right-of-use asset is initially measured at cost, which comprises the initial amount of the lease liability, plus any initial direct costs incurred and an estimate of costs to dismantle and remove the underlying asset or to restore the underlying asset or the site on which it is located, less any lease incentives received.

The right-of-use asset is subsequently depreciated on a straight-line basis from the commencement date to the earlier of the end of the economic life of the right-of-use asset or the end of the lease term. If the lease transfers ownership of the underlying asset to the Company by the end of the lease term or if the cost of the right-of-use asset reflects that the Company will exercise a purchase option, the right-of-use asset is depreciated from the commencement date to the end of the economic life of the underlying asset. The estimated economic lives of right-of-use assets are determined on the same basis as those of property, plant, and equipment assets. In addition, the right-of-use asset is periodically reduced by impairment losses, if any, and adjusted for certain re-measurements of the lease liability.

The lease liability is initially measured at the present value of the lease payments that are not paid at the commencement date, discounted using the interest rate implicit in the lease or, if that rate cannot be readily determined, the Company's incremental borrowing rate. The lease liability is measured at amortized cost using the effective interest rate method and is re-measured when there is a change in future lease payments. When the lease liability is re-measured, a corresponding adjustment is made to the carrying amount of the right-of-use asset or is recorded in profit or loss if the carrying amount of the right-of-use asset has been reduced to zero. The Company presents right-of-use assets in 'property, plant & equipment', and lease liabilities in 'lease liabilities' in the statement of financial position. The Company has elected not to recognize right-of-use assets and

# Nevada Copper Corp.

## Notes to Consolidated Financial Statements

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lease liabilities for short-term leases that have a lease term of 12 months or less and leases of low-value assets. The Company recognizes the lease payments associated with these leases as an expense on a straight-line basis over the lease term.

### s) Revenue from contracts with customers

Under IFRS 15 Revenue from contracts with customers, revenue is recognized when a customer obtains control of the goods or services and the Company has satisfied its performance obligations. Determining the timing of the transfer of control of such goods and services, at a point in time or over time, requires judgment.

Cash received in advance of meeting these conditions is recorded as advance receipts on product sales. In the case of the Property's copper concentrate, control is generally transferred when risk of loss is assumed by the buyer which may occur upon the concentrate being released in railcars and in limited circumstances, upon delivery to the concentrate at the shipping port or when delivered to the port of discharge. Under the terms of the Company's concentrate sales contracts, the final sales amount is based on final assay results and quoted market prices which may be in a period subsequent to the date of sale. Revenues for these sales, net of treatment and refining charges are recorded when the customer obtains control of the concentrate, based on an estimate of metal contained using initial assay results and forward market prices for the expected date that final sales prices will be fixed.

The period between provisional pricing and final settlement can be up to four months. This settlement receivable is recorded at fair value each reporting period by reference to forward market prices until the date of final pricing, with the changes in fair value recorded in the statement of operations and comprehensive loss.

### t) Warrants

Warrants issued with an exercise price in a currency other than the Company's functional currency are a derivative and shown as a derivative liability on the statement of financial position. At the end of each period the warrants are measured at fair value using an appropriate valuation method unless the warrants are traded on a public exchange. Publicly traded warrants are measured at fair value using the last traded price at the period end. The mark-to-market gain/loss is recorded as a derivative gain/loss in the statement of operations and comprehensive loss. Warrants issued with an exercise price in the Company's functional currency are classified as equity and are measured at either at residual value or relative fair value depending on the nature of the transaction giving rise to issuance of such warrants.

### u) Debt modification and extinguishments

Modifications to debt can occur when the borrower and lender negotiate changes to the terms of the debt such as increasing the interest rate or amending the timing of payment of interest and principal amount. Under IFRS 9 Financial Instruments, a change that is considered "substantial" (substantial is when the net present value of the cash flows under the new terms, discounted at the original effective interest rate, is at least 10% different from the carrying amount of the original debt) would be accounted for as an extinguishment. This means that the original debt is derecognized and the difference between the fair value of the modified debt and the carrying value of original debt is recorded as a gain or loss in the statement of operations and comprehensive loss, and a new financial liability is recorded based on the new terms. If the change is not considered to be substantial, the original debt remains on the books and the difference between the net present value of the revised cash flows discounted at original effective interest rate and the carrying value of original debt at the date of the modification is recognized, as a gain or loss in the statement

# Nevada Copper Corp.

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of operations and comprehensive loss. In addition, if there were any costs or fees incurred to change the terms, they would be adjusted to the carrying amount of the modified debt and amortized over the remaining term of the modified debt.

### v) Materials and supplies inventory

Materials and supplies inventories represent consumables used in the production process, as well as spare parts and other maintenance supplies that are not classified as capital items. Materials and supplies inventories are valued at the lower of weighted average cost and net realizable value, less any allowances for obsolescence. Replacement costs of materials and spare parts are generally used as the best estimate of net realizable value.

A periodic review is undertaken of material and supplies inventory to determine the extent of any provision for obsolescence. Major spare parts and standby equipment are included in plant and equipment when they are expected to be used during more than one period and if they can only be used in connection with an item of plant and equipment.

### w) Inventory

Inventories are valued at the lower of cost and net realizable value. Cost is determined on a weighted average basis and includes direct labour and materials; non-capitalized development costs; freight; and overhead costs. Net realizable value is determined with reference to relevant market prices, less applicable variable selling costs and estimated remaining costs of completion to bring the inventories into saleable form.

Ore stockpiles represent stockpiled ore that has not yet completed the production process, and are not yet in a saleable form. Finished goods inventories represent metals concentrates in saleable form that have not yet been sold.

The quantity of recoverable metal in stockpiled ore and in the processing circuits is an estimate which is based on the tons of ore added and removed, expected grade and recovery. The quantity of recoverable metal in concentrate is an estimate using aerial surveys and assay results.

### x) New accounting standards not yet adopted

#### Amendments to IAS 1 - Presentation of Financial Statements

Amendments made to IAS 1 Presentation of Financial Statements ("IAS 1") in 2020 and 2022 clarified that liabilities are classified as either current or non-current, depending on the rights that exist at the end of the reporting period. Classification is unaffected by the entity's expectations or events after the reporting date (e.g. the receipt of a waiver or a breach of covenant). Covenants of loan arrangements will not affect classification of a liability as current or non-current at the reporting date if the entity must only comply with the covenants after the reporting date. However, if the entity must comply with a covenant either before or at the reporting date, this will affect the classification as current or non-current even if the covenant is only tested for compliance after the reporting date.

The amendments also clarify what IAS 1 means when it refers to the 'settlement' of a liability. Terms of a liability that could, at the option of the counterparty, result in its settlement by the transfer of the entity's own equity instrument can only be ignored for the purpose of classifying the liability as current or non-current if the entity classifies the option as an equity instrument. However, conversion options that are classified as a liability must be considered when determining the current/non-current classification of a convertible note.



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The effective date of this amendment is for annual periods beginning on or after January 1, 2024, with early adoption permissible. The Company is in the process of assessing the impact of adoption of this amendment.

### 3. Prepaid expenses and advance royalty

	December 31, 2023	December 31, 2022
Deferred financing costs (a)	\$—	\$2,372
Advance royalty (Refer note 5)	5,961	2,295
Other prepayments and vendor deposits	2,218	630
<b>Total</b>	<b>\$8,179</b>	<b>\$5,297</b>

- (a) On October 28, 2022, Pala provided the Company with a backstop funding commitment of up to \$25,000 for future funding to be provided in exchange for issuances of common shares of the Company, convertible and/or non-convertible debt of the Company (the “Backstop”). In connection with the Backstop, Pala received 6,271,759 common shares of the Company at a price equal to C\$0.2160 per share representing a 4% commitment fee amounting to \$1,000, which was included in deferred financing costs. Deferred financing costs also included legal expenses incurred in relation to the Backstop (\$729) and the KfW Tranche A-2 Loan (\$643). During the second quarter of 2023, the Backstop was satisfied through Pala's participation in the 2023 Unit Offering.

### 4. Inventory

	December 31, 2023	December 31, 2022
Ore stockpile	\$407	\$—
Copper concentrate	404	—
Materials and supplies	6,826	4,908
<b>Total</b>	<b>\$7,637</b>	<b>\$4,908</b>

During the year ended December 31, 2023, the Company recognized a net realizable value adjustment of \$25,270 (December 31, 2022 - \$2,273) in relation to ore stockpile and copper concentrate. The net realizable value adjustment resulted from higher production costs in the pre-commercial production period.

# Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

## 5. Mineral properties, plant and equipment

	Mineral Properties Development Costs	Plant & Equipment	Rights of Use Assets	Deposits	Total
<b>Cost:</b>					
<b>As at December 31, 2021</b>	<b>\$829,666</b>	<b>\$3,405</b>	<b>\$38,599</b>	<b>\$67</b>	<b>\$871,737</b>
Additions	68,023	649	—	(67)	68,605
Plant and equipment written off	—	—	(1,215)	—	(1,215)
Lease modification / reassessment	—	—	(1,082)	—	(1,082)
<b>Balances, December 31, 2022</b>	<b>\$897,689</b>	<b>\$4,054</b>	<b>\$36,302</b>	<b>\$—</b>	<b>\$938,045</b>
Additions	75,350	354	386	—	76,090
<b>As at December 31, 2023</b>	<b>\$973,039</b>	<b>\$4,408</b>	<b>\$36,688</b>	<b>\$—</b>	<b>\$1,014,135</b>
<b>Accumulated depreciation and impairment:</b>					
<b>As at December 31, 2021</b>	<b>\$—</b>	<b>\$1,414</b>	<b>\$16,940</b>	<b>\$—</b>	<b>\$18,354</b>
Depreciation	—	32	5,856	—	5,888
Impairment	298,865	—	110	—	298,975
Plant and equipment written off	—	—	(583)	—	(583)
<b>As at December 31, 2022</b>	<b>\$298,865</b>	<b>\$1,446</b>	<b>\$22,323</b>	<b>\$—</b>	<b>\$322,634</b>
Depreciation	—	186	5,122	—	5,308
<b>As at December 31, 2023</b>	<b>\$298,865</b>	<b>\$1,632</b>	<b>\$27,445</b>	<b>\$—</b>	<b>\$327,942</b>
<b>Net Book Value</b>					
<b>As at December 31, 2021</b>	<b>\$829,666</b>	<b>\$1,991</b>	<b>\$21,659</b>	<b>\$67</b>	<b>\$853,383</b>
<b>As at December 31, 2022</b>	<b>\$598,824</b>	<b>\$2,608</b>	<b>\$13,979</b>	<b>\$—</b>	<b>\$615,411</b>
<b>As at December 31, 2023</b>	<b>\$674,174</b>	<b>\$2,776</b>	<b>\$9,243</b>	<b>\$—</b>	<b>\$686,193</b>

Additions to mineral properties development costs during the year ended December 31, 2023, included borrowing costs of \$22,787 (December 31, 2022 - \$13,193), depreciation of plant and equipment of \$2,989 (December 31, 2022 - \$3,925) and stock-based compensation expense of \$166 (December 31, 2022 - \$235).

### ***Pumpkin Hollow Copper Development Property***

The Company has a 100% interest in the Property situated near Yerington, Nevada. The Property is comprised of private land owned directly by the Company and leased patented claims.

The Company entered into the Lease Agreement (the “Lease”) for the leased patented claims with RGGS Land & Minerals Ltd. (“RGGS”) in May 2006. The Lease had an initial term of ten years, has been renewed for a further ten-year term, and is renewable for up to two more additional ten-year terms for a total of 40 years. Under the terms of the Lease, the Company is required to pay advance royalty payments of \$600 annually until the second expiry date of the Lease in May 2026. Following the completion of the second ten-year term the Lease can be extended for two further ten-year terms if it has made \$10,000 in production royalties and minimum royalty payments to RGGS in the previous term or if it pays to RGGS the difference between \$10,000 and what was actually paid during the previous ten-year term.

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

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The Company must pay RGGS a net production royalty on copper obtained from leased patented claims. The royalty rate is 4% on copper when the copper price is less than \$1.00 per pound, 5% when the copper price is between \$1.00 per pound and \$2.00 per pound, and 6% when the price of copper is greater than \$2.00 per pound. On all other minerals, such as gold and silver, except iron, the royalty rate is 5%. These royalties will be offset by earlier advance royalty payments subject to the annual minimums ("accrued minimum royalty balance"). There is also a smaller royalty payable to RGGS on copper, gold, silver and taconite (iron) on any production derived from a defined Area of Interest ("AOI") surrounding, and extending approximately 1 mile from the boundary of, the leased patented claims. The royalty rate on production from within the AOI is 2% for non-ferrous metals and the royalty rate for ferrous metals is \$0.20 per ton.

During a future month within which the accrued minimum recoverable royalty balance is reduced to a value that is between 100-130% of the sum of the next three months of projected production royalty, the Company shall provide RGGS with a standing irrevocable letter of credit in favor of RGGS in an amount generally equivalent to the sum of three months projected production royalty to be received by RGGS.

The Company is current with all required lease payments and advance royalty payments.

### *Asset impairments*

When an impairment indicator of mineral properties, plant and equipment exists, an impairment assessment is conducted at the level of the cash-generating unit (the "CGU" or a group of assets that generate independent cash inflows). An impairment loss is recognized if the carrying amount of a CGU exceeds its recoverable amount.

At December 31, 2023, based on management's impairment indicator assessment, it was determined that there were no new indicators of impairment or reversal of impairment that would require the Company to perform an impairment test. The assessment included an evaluation of any changes to significant assumptions used in the last impairment test at September 30, 2022.

During the third quarter of 2022, the suspension of mining, development and milling activities at the Underground Mine along with a decrease in analyst's consensus short term copper prices and estimated recoverable ounces, were identified as impairment indicators. As a result management performed an impairment test on the Pumpkin Hollow CGU as at September 30, 2022 and recognized an impairment loss of \$298,865 in the consolidated statements of operations and comprehensive loss.

Key assumptions used by management for the impairment test at September 30, 2022 were:

- Long term copper price of \$3.60/lb based on analysts' consensus price estimates.
- Underground mine operating costs and capital expenditures based on life-of-mine ("LOM") plans and forecasts using management's best estimate as at September 30, 2022.
- Future estimated production based on recoverable mineral reserves and resources estimates by qualified persons when preparing the technical report released in January 2019 and management's LOM model as at September 30, 2022.
- Real after tax discount rate of 11% for the Underground Mine and 12% for the open pit mining project based on weighted average cost of capital for similar companies.

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

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For the year ended December 31, 2023 and December 31, 2022

### 6. Working Capital Facility

<b>Balance at December 31, 2021</b>	<b>\$20,095</b>
Advance	22,533
Interest accrual	2,196
Transaction costs incurred for modification	(319)
Repayments	(23,818)
<b>Balance at December 31, 2022</b>	<b>\$20,687</b>
Advances	4,131
Interest accrual	3,036
Repayments	(19,230)
<b>Balance at December 31, 2023</b>	<b>\$8,624</b>

NCI entered into a revolving working capital facility (the "Working Capital Facility") with Concord Resources Limited ("Concord") for up to \$40,000 which provides for advances, subject to certain conditions, of up to 85% of the value of expected copper concentrate deliveries up to four months in advance of deliveries prior to commercial production at the Underground Mine, and three months thereafter, on a revolving basis. Interest on advance payments is payable at LIBOR (synthetic) plus 7.5% prior to commercial production at the Underground Mine and LIBOR (synthetic) plus 5% thereafter. The Working Capital Facility matures on September 1, 2026, unless terminated in accordance with the terms of offtake agreements with Concord.

During the year ended December 31, 2023, the Company made repayments of \$19,230 (December 31, 2022 - \$23,818), of which \$3,771 (December 31, 2022 - \$7,718) was in concentrate deliveries and \$15,459 (December 31, 2022 - \$16,100) was settled in cash. As at December 31, 2023, the Company was in compliance with the covenants under the Working Capital Facility.

### 7. Short-term debt

	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Unsecured Loans (b)	\$42,910	\$—
<b>Total short-term debt</b>	<b>\$42,910</b>	<b>\$—</b>

**2022 Promissory Notes** - During 2022, the Company received \$42,500 from Pala pursuant to various promissory notes (the "2022 Promissory Notes"). On October 28, 2022, the outstanding balance of \$20,538 including accrued interest of \$538 was added to the principal amount under the 2022 A&R Pala Credit Facility (refer note 8(b)), \$20,000 was converted into equity of the Company (refer note 12) and the remaining balance of \$2,841 including accrued interest of \$341 was settled in cash.

#### a) Promissory Notes

**2023 Promissory Notes** - During April and May 2023, the Company received \$5,550 from Pala pursuant to various promissory notes (the "2023 Promissory Notes"). The 2023 Promissory Notes were repayable on October 31, 2023 and carried interest at 12% per annum.

On December 21, 2023, the Company and Pala agreed to amend and restate the credit facility with Pala (refer note 8(b)) and the outstanding balance of \$6,006 including accrued interest of \$456 pursuant to the 2023 Promissory Notes was added to the amended credit facility with Pala and the 2023 Promissory Notes were cancelled.

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

### b) Unsecured Loans

The 2023 Financing Package Agreement entered on May 9, 2023 included a commitment from Pala and Mercuria to provide up to \$15,000 and \$10,000, respectively, subject to certain conditions, to be drawn pro rata by the Company (the "Deferred Funding Facility"). The Company has drawn the full \$15,000 and \$10,000 committed by Pala and Mercuria, respectively, under the Deferred Funding Facility. Also during the fourth quarter of 2023, through the date of the Unsecured Loans (as defined below), additional funding of \$14,000 pursuant to a new commitment was provided by Pala (the "Incremental Funding Commitment").

On December 21, 2023, the Company entered into separate loan agreements with Pala and Mercuria (together referred as the "Unsecured Loans" and individually as the "Unsecured Loan") with respect to:

- i. the outstanding amount of \$29,545 including interest accrued of \$545 payable to Pala under the Deferred Funding Facility and the Incremental Funding Commitment.
- i. the outstanding amount of \$10,268 including interest accrued of \$268 payable to Mercuria under the Deferred Funding Facility.

The Unsecured Loans have the following terms:

- The loans are unsecured, unguaranteed and will mature on December 21, 2024.
- The loans carry interest at adjusted Term Secured Overnight Financing Rate ("Term SOFR") plus margin with interest payable on maturity. Adjusted Term SOFR equals Term SOFR plus 0.15%. Margin is 9% for the amounts received pursuant to the Deferred Funding Facility and 10% for the amounts received pursuant to the Incremental Funding Commitment.
- A 5% disbursement fee is payable on the amounts drawn pursuant to the Incremental Funding Commitment, which is added to the principal amount, when amounts are drawn.
- In connection with these loans, the Company issued 280,044,832 common share purchase warrants to Pala (together with any additional warrants issued to Pala in relation to the Unsecured Loan, the "Pala Unsecured Loan Warrants") and 95,122,130 common share purchase warrants to Mercuria (the "Mercuria Unsecured Loan Warrants"). Each warrant entitles the holder thereof to acquire one common share at an exercise price of Canadian dollar (C\$) 0.14 per warrant and the warrants expire on December 21, 2024 unless the amounts under these loans are repaid at an earlier time, in which case the warrants will expire on such applicable date. Upon exercise of these warrants, the exercise price is payable by way of deemed repayment and set-off of outstanding amounts under the loans. The exchange rate used to calculate the number of warrants will be used to calculate the amount of debt, in USD, to be extinguished. Accordingly, these warrants are classified as equity. Exercise of these warrants are subject to the Company obtaining shareholder approval, which it will seek to obtain at its next annual meeting of shareholders.

Additionally, Pala may opt to provide, when requested by the Company, additional advances to the Company pursuant to and subject to terms and conditions of the Unsecured Loan with Pala ("Additional Advances"). During the fourth quarter of 2023, the Company received Additional Advances of \$4,300 and \$15,955 of Additional Advances were received subsequent to December 31, 2023.

## Nevada Copper Corp.

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	Pala	Mercuria
<b>Unsecured Loans</b>		
Unsecured Loans recognized at fair value	\$ 28,664	\$ 9,925
Costs incurred	\$ (58)	\$ (20)
Additional Advance received, recognized at fair value	\$ 4,191	\$ —
Interest accrued	\$ 161	\$ 47
	<b>\$ 32,958</b>	<b>\$ 9,952</b>

The Unsecured Loans including Additional Advances were recognized at fair value and residual value of \$990 and \$343 was allocated to the Pala Unsecured Loan Warrants and the Mercuria Unsecured Loan Warrants respectively, which are recognized in Other Equity Reserve.

The fair value of debt was determined using the risk free rate of 4.6%, credit spread of 9.88% and collateral spread of 2.5%.

### 8. Long-term debt

	December 31, 2023	December 31, 2022
Current portion of long-term debt:		
KfW IPEX-Bank Facility (a)	\$5,991	\$—
Pala Credit Facility (b)	\$—	\$1,784
Lease liabilities (c)	\$6,785	\$6,707
<b>Total current portion of long-term debt</b>	<b>\$12,776</b>	<b>\$8,491</b>
KfW IPEX-Bank Facility (a)	\$164,330	\$123,342
Pala Credit Facility (b)	\$5,796	\$78,048
Lease liabilities (c)	\$2,423	\$8,653
<b>Total long-term debt</b>	<b>\$172,549</b>	<b>\$210,043</b>

# Nevada Copper Corp.

## Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

### a) KfW IPEX Bank Facility

	KfW Tranche A Loan	KfW Tranche B Loan	KfW Tranche A-2 Loan	Total
<b>Balance at December 31, 2021</b>	<b>\$105,239</b>	<b>\$13,540</b>	<b>\$—</b>	<b>\$118,779</b>
Interest and accretion expense	6,237	1,652	—	7,889
Interest payments	(1,134)	(402)	—	(1,536)
Transaction costs incurred for modification	(339)	(78)	—	(417)
(Gain) on modification	(1,103)	(270)	—	(1,373)
<b>Balance at December 31, 2022</b>	<b>\$108,900</b>	<b>\$14,442</b>	<b>\$—</b>	<b>\$123,342</b>
Drawdown	—	—	35,376	35,376
Interest and accretion expense	10,962	2,469	2,404	15,835
Loan payments	—	—	(3,000)	(3,000)
Transaction costs incurred for modification	—	—	(989)	(989)
(Gain) / loss on modification	(281)	(39)	77	(243)
<b>Balance at December 31, 2023</b>	<b>\$119,581</b>	<b>\$16,872</b>	<b>\$33,868</b>	<b>\$170,321</b>

The table below shows the current and long-term portion of KfW IPEX-Bank Facility:

	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Current portion	\$5,991	\$—
Long-term debt	\$164,330	\$123,342

The Company, through its wholly owned subsidiary NCI, entered into a credit agreement (as amended, the "KfW IPEX-Bank Facility") with KfW IPEX-Bank Limited ("KfW") for construction and operating costs in respect of the Underground Mine. Pursuant to the KfW IPEX-Bank Facility, KfW funded \$115,000 (the "KfW Tranche A Loan") in May 2019, \$15,000 (the "KfW Tranche B Loan") in December 2020 and agreed to expand the KfW IPEX-Bank Facility by \$25,000 (the "KfW Tranche A-2 Loan") in October 2022 based on commitment from Pala, Triple Flag and Mercuria on a pro rata basis. The 2023 Financing Package Agreement entered on May 9, 2023 included a commitment from Pala, Mercuria and Triple Flag to expand the KfW Tranche A-2 Loan to \$35,000. In September 2023, KfW consent for the expansion of the KfW Tranche A-2 Loan was obtained.

KfW Tranche A Loan carries interest at Term SOFR plus 2.1% and is payable every six months on January 31 and July 31 until the maturity date. KfW Tranche A Loan is repayable in thirteen semi-annual installments starting from July 31, 2025 and matures on July 31, 2029.

KfW Tranche B Loan carries interest at Term SOFR plus 5.4% and is payable every six months on January 31 and July 31 until the maturity date. KfW Tranche B Loan is repayable in three semi-annual installments starting from July 31, 2024 and matures on July 31, 2025.

KfW Tranche A-2 Loan carries interest at Term SOFR plus 5%, interest accrued on each semi-annual payment date is added to the principal amount of the loan and is payable on the maturity date. KfW Tranche A-2 Loan is repayable in a single bullet payment on July 31, 2029.

On October 28, 2022 and March 15, 2023, the Company and KfW entered into an amendment agreement to add the interest accrued and payable on July 31, 2022, January 31, 2023, July 31, 2023 and January 31, 2024 to the principal balance of the KfW Tranche A Loan and the KfW Tranche B Loan. These amendments were determined as modifications in accordance with IFRS and

## Nevada Copper Corp.

### Notes to Consolidated Financial Statements

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accordingly, a modification gain of \$320 (December 31, 2022 - \$1,373) was recognized in the statement of operations and comprehensive loss.

On March 15, 2023, the Company and KfW amended the KfW IPEX-Bank Facility to extend the final date to meet the requirements of the project completion test under the KfW IPEX-Bank Facility to June 2024.

In December 2023, the KfW Tranche A-2 Loan principal amount of \$3,000 related to the KfW Tranche A-2 Loan was converted into equity of the Company in accordance with the 2023 Financing Package Agreement (\$1,000 to each of Pala, Mercuria and Triple Flag). The refreshed draw room now available under the KfW Tranche A-2 Loan is committed by Triple Flag and is required to be used to finance certain metal deliveries that become due under the Company's stream agreement with Triple Flag in 2024.

The KfW IPEX-Bank Facility contains certain financial and non-financial affirmative and restrictive covenants. As at December 31, 2023, the Company is in compliance with the covenants.

#### b) Pala Credit Facility

	Debt Liability	Derivative	Total
<b>December 31, 2021</b>	<b>\$33,293</b>	<b>\$—</b>	<b>\$33,293</b>
Advance	15,000	—	15,000
Interest and accretion expense until October 28, 2022	4,334	—	4,334
Extinguishment of 2021 A&R Pala Credit Facility	(52,627)	—	(52,627)
Recognition of 2022 A&R Pala Credit Facility at fair value	72,456	3,707	76,163
Interest and accretion expense on 2022 A&R Pala Credit Facility	1,932	—	1,932
Fair value adjustment	—	1,737	1,737
<b>Balance at December 31, 2022</b>	<b>\$74,388</b>	<b>\$5,444</b>	<b>\$79,832</b>
Interest and accretion expense - 2022 A&R Pala Credit Facility	5,706	—	5,706
Gain on modification	(167)	—	(167)
Fair value adjustment	—	(17,234)	(17,234)
Pala 2022 Warrants exercised	(76,156)	11,790	(64,366)
Pala interest repayment	(6,858)	—	(6,858)
Loss on settlement	3,089	—	3,089
Recognition of Third A&R Pala Credit Facility at fair value	5,783	—	5,783
Costs incurred	(13)	—	(13)
Interest and accretion expense - Third A&R Pala Credit Facility	24	—	24
<b>Balance at December 31, 2023</b>	<b>\$5,796</b>	<b>\$—</b>	<b>\$5,796</b>

The table below shows the current and long-term portion of Pala Credit Facility:

	December 31, 2023	December 31, 2022
Current portion	\$—	\$1,784
Long-term debt	\$5,796	\$78,048



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The Company entered into a credit facility with Pala (as amended and restated on October 28, 2022, the "2021 A&R Pala Credit Facility"), which had a principal amount of \$50,000 (inclusive of a \$15,000 accordion feature thereunder). The 2021 A&R Pala Credit Facility was maturing on January 31, 2026 and carried interest at LIBOR plus 9% per annum. The Company was eligible to voluntarily prepay the 2021 A&R Pala Credit Facility subject to a prepayment premium.

On October 28, 2022, the Company and Pala further amended and restated the 2021 A&R Pala Credit Facility (the "2022 A&R Pala Credit Facility"), on substantially the same terms as the 2021 A&R Pala Credit Facility, other than the interest rate which was carried at adjusted Term SOFR plus 9% per annum. Adjusted term SOFR equals SOFR plus 0.15%. In connection with the 2022 A&R Pala Credit Facility, 398,723,212 common share purchase warrants of the Company were issued to Pala ("Pala 2022 Warrants"). Each warrant entitled Pala to acquire one common share at an exercise price equal to C\$0.26 per warrant.

In connection with the 2022 A&R Pala Credit Facility, the Company issued 5,330,995 common shares of the Company to Pala in satisfaction of its reimbursable expenses totaling \$850.

The 2022 amendments noted above were determined to be an extinguishment of the 2021 A&R Pala Credit Facility and recognition of the 2022 A&R Pala Credit Facility. In relation to 2021 A&R Pala Credit Facility, an extinguishment loss of \$2,998 was recognized in the statement of operations and comprehensive loss. The Pala 2022 Warrants, together with the Company's ability to voluntarily prepay the 2022 A&R Pala Credit Facility ("Call Option"), was recognized and accounted for as a derivative liability.

In May and June 2023, Pala exercised all of the Pala 2022 Warrants, resulting in the settlement of all of the principal outstanding amount of \$76,156 under the 2022 A&R Pala Credit Facility. On the date of settlement, the fair value of Pala 2022 Warrants was \$11,790 (derivative asset) and the fair value of the Call Option was Nil.

In August 2023, the Company issued 49,934,708 common share purchase warrants (the "Pala Interest Warrants") to Pala in relation to the outstanding interest in accordance with the 2022 A&R Pala Credit Facility on the same terms as the Pala 2022 Warrants with an exercise price of C\$0.1834 per warrant. The Pala Interest Warrants were exercised by Pala in August 2023 resulting in the settlement of all of the outstanding interest under the 2022 A&R Pala Credit Facility. In relation to the Pala Interest Warrants, the Company recognized a net derivative gain of \$216.

On December 21, 2023, the Company entered into an amended and restated credit facility with Pala (the "Third A&R Pala Credit Facility") on substantially the same terms as the 2022 A&R Pala Credit Facility, including a maturity date of January 31, 2026. The outstanding amount of \$6,006 pursuant to the 2023 Promissory Notes was added to the Third A&R Pala Credit Facility and the 2023 Promissory Notes were cancelled. In connection with the Third A&R Pala Credit Facility, the Company issued 55,610,514 common share purchase warrants (the "Third A&R Pala Credit Facility Warrants") of the Company to Pala. Each warrant will entitle Pala to acquire one common share at an exercise price of C\$0.14 per warrant and the warrants will expire on January 31, 2026 unless the amounts under the Third A&R Pala Credit Facility are repaid at an earlier time, in which case the warrants would expire on such applicable date. On exercise of these warrants, the exercise price would be payable by way of deemed repayment and set-off of outstanding amounts under the loan. The exchange rate used to calculate the number of warrants will be used to calculate the amount of debt, in USD, to be extinguished. Accordingly, these warrants are classified as equity. Exercise of these warrants by Pala will be subject to the Company obtaining shareholder approval, which it will seek to obtain at its next annual meeting of shareholders.

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The Third A&R Pala Credit Facility was recognized at fair value and residual value of \$223 was allocated to the Third A&R Pala Credit Facility Warrants, which is recognized in other equity reserve.

The fair value of debt was determined using the risk free rate of 4.6% and credit spread of 9.88%.

As at December 31, 2023, the Company is in compliance with the financial and non-financial affirmative and restrictive covenants under the Third A&R Pala Credit Facility.

Subsequent to December 31, 2023, the Company received \$3,945 pursuant to the 2023 Pala Credit Facility.

### c) Lease liabilities

The following table shows the change to the Company's lease liabilities:

	December 31, 2023	December 31, 2022
<b>Opening balance</b>	<b>\$15,360</b>	<b>\$22,762</b>
Additions	381	—
Accretion	951	1,232
Lease modification	—	(1,082)
Lease payments	(7,484)	(7,552)
<b>Closing balance</b>	<b>\$9,208</b>	<b>\$15,360</b>
Current portion	6,785	6,707
Long-term portion	2,423	8,653

The undiscounted minimum lease payments in respect of the above lease liabilities are expected to be \$7,195 for the next twelve months.

Further, the average remaining term of the Company's lease liabilities ranges from 12 months to 24 months. The undiscounted lease payments exclude leases that are classified as short-term and leases for low-value assets, which are not recognized as lease liabilities.

### 9. Stream and royalty deferral

	Stream deferral	Royalty deferral
<b>Balance at December 31, 2021</b>	<b>\$107,263</b>	<b>\$21,118</b>
Deposit received under the Stream Agreement	3,199	609
Consideration for increase in royalty on the Open Pit Project	—	26,192
Accretion	9,888	2,736
Amounts delivered under the stream	(672)	—
<b>Balance at December 31, 2022</b>	<b>\$119,678</b>	<b>\$50,655</b>
Accretion	11,203	6,406
Amounts delivered under the stream	(385)	—
<b>Balance at December 31, 2023</b>	<b>\$130,496</b>	<b>\$57,061</b>

## Nevada Copper Corp.

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(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

The table below shows the current and long-term portion of stream and royalty deferral liability.

	December 31, 2023	December 31, 2022
<b>Stream deferral</b>		
Current portion	\$ 11,580	\$ 3,655
Long-term portion	118,916	116,023
<b>Royalty deferral</b>		
Current portion	\$ —	\$ —
Long-term portion	57,061	50,655

The Company and Triple Flag entered into the metals purchase and sale agreement (as amended from time to time, the “Stream Agreement”) whereby Triple Flag provided \$85,000 (the “Stream Deposit”) against the future delivery by Nevada Copper of 97.5% of the gold and silver production from the Underground Mine. The gold and silver production is to be calculated based on a fixed ratio of 162.5 ounces of gold and 3,131 ounces of silver for each 1 million pounds of copper in concentrate produced. The Company will receive an ongoing payment of 5% of the spot price for each ounce of gold and silver delivered to Triple Flag. The Company and its subsidiaries have provided subordinated security for the performance of the obligations under the Stream Agreement over all of their respective assets.

Also, the Company entered into a series of agreements with Triple Flag (or its affiliates) which provided for (i) the issuance of a 2% net smelter return royalty in respect of the Open Pit Project (the “Open Pit Royalty”), including 1.3% royalty issued in October 2022 for a consideration of \$26,192 and (ii) the issuance of a 2% net smelter return royalty in respect of the Tedeboy area exploration property (the “Tedeboy Royalty”) for an aggregate consideration of \$46,192. The Company has right to buyback 1.3% Open Pit Royalty for a consideration of \$38,100 till October 28, 2025.

As at December 31, 2023, the Company is in compliance with the covenants under the Stream Agreement.

### 10. Asset retirement obligation

The asset retirement obligation has been recorded as a liability, assuming a risk-free discount rate of 4.04% (2022 – 4.01%) and an inflation factor of 2.40% (2022 – 2.40%). The liability for retirement and remediation on an undiscounted basis before an inflation factor of 2.40% (2022 – 2.40%) is estimated to be approximately \$6,655 (2022 - \$6,396). As of December 31, 2023, settlement is expected by December 31, 2036.

<b>Balance at December 31, 2021</b>	<b>\$5,971</b>
Change in timing and increase in estimated closure costs	(966)
Accretion	258
<b>Balance at December 31, 2022</b>	<b>\$5,263</b>
Accretion	211
<b>Balance at December 31, 2023</b>	<b>\$5,474</b>

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

### 11. Related party payable and transactions

Pala is a related party to the Company because of its significant shareholding (61.7% as at December 31, 2023 and 43.5% as at December 31, 2022) in the Company. Additionally, as at December 31, 2023, two of the nine directors of the Company were Pala executives.

During the year ended December 31, 2023 and December 31, 2022, the Company entered into the following transactions with Pala:

- In relation to the 2022 A&R Pala Credit Facility, the Company accrued interest of \$5,091 (2022 \$5,764) and added nil (2022 - \$3,973) to the principal amount of the Pala Credit Facility. (Refer Note 8(b))
- In relation to the Third A&R Pala Credit Facility, the Company accrued interest of \$24. (Refer Note 8(b))
- The Company received \$5,550 pursuant to the 2023 Promissory Notes and accrued interest and costs incurred of \$456. On December 21, 2023, the full outstanding balance of \$6,006 was added to the Third A&R Pala Credit Facility and the 2023 Promissory Notes were cancelled. During the year ended December 31, 2022, the Company received \$42,500 pursuant to the 2022 Promissory Notes and accrued interest of \$879 on the 2022 Promissory Notes, repaid \$2,500 in cash, settled \$20,000 by issuing common shares of the Company and \$20,879 was added to the 2022 A&R Pala Credit Facility. (Refer Note 7(a))
- The Company recognized an expense of \$1,369 (2022 - \$1,254) for guarantee fees and \$17 (2022 - \$1,336) for technical and other services.
- The Company received \$11,667 from Pala, its share of the drawdown under the KfW Tranche A-2 Loan and repaid \$1,000 by issuing 10,013,991 common shares of the Company. (Refer Note 8(a))
- Pala purchased 108,442,714 units in the 2023 Unit Offering for gross proceeds of approximately \$21,505. (Refer Note 12)
- Pala exercised 448,657,920 common share purchase warrants resulting in the settlement of principal debt and accrued interest amounting to \$71,007 payable to Pala. (Refer Note 8(b))
- The Company received \$15,000 from Pala pursuant to drawdown under the Deferred Funding Facility and \$18,300 pursuant to the Incremental Funding Commitment and accrued interest of \$545 in relation to these advances. On December 21, 2023, the full balance of \$29,545 was added to the Unsecured Loan. The Company also received Additional Advances of \$4,300 pursuant to the Unsecured Loan and accrued interest of \$134. (Refer Note 7(b))

As of December 31, 2023, the Company owed Pala \$1,595 (2022 - \$226) for fees accrued in connection with the guarantee provided by Pala for the KfW IPEX- Bank Facility and \$17 for reimbursement of expenses incurred by Pala on the Company's behalf.

Mercuria is a related party to the Company because of its significant shareholding (16.55% as at December 31, 2023 and 24.28% as at December 31, 2022) in the Company. Also, a Mercuria executive is a director of the Company.

During the year ended December 31, 2023 and December 31, 2022, the following transactions were entered with Mercuria:

- The Company received \$11,667 from Mercuria, its share of the drawdown under the KfW Tranche A-2 Loan and repaid \$1,000 by issuing 10,013,991 common shares of the Company. (Refer Note 8(a))

## Nevada Copper Corp.

### Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

- Mercuria purchased 24,814,814 units in the 2023 Unit Offering for gross proceeds of \$5,000. (Refer Note 12)
- Mercuria exercised 25,848,765 common share purchase warrants of the Company for the exercise proceeds of \$5,000. (Refer Note 12)
- The Company received \$10,000 from Mercuria pursuant to drawdown under the Deferred Funding Facility and accrued \$268 in interest. On December 21, 2023, the Company entered into the Unsecured Loan agreement with Mercuria for the outstanding amount of \$10,268 payable to Mercuria under the Deferred Funding Facility and accrued \$41 in interest. (Refer note 9(b))

As of December 31, 2023, the Company owed its Directors \$346 (2022 - nil) for accrued Directors fees.

The Company has a committee of independent directors to review and approve related party transactions.

### Key Management Personnel Compensation

The remuneration of the chief executive officer, chief financial officer and directors, being those persons having authority and responsibility for planning, directing, and controlling activities of the Company, are as follows:

	2023	2022
Salary and benefits	\$1,350	\$1,224
Stock-based compensation	556	102
Directors fees and director equity awards	345	1,718
Total	<b>\$2,251</b>	<b>\$3,044</b>

### 12. Share Capital

#### Authorized and issued

The Company is authorized to issue an unlimited number of common shares without par value.

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

During the year ended December 31, 2023, the Company issued the following common shares:

	Number of Common Shares	Amount
<b>Outstanding December 31, 2021</b>	<b>448,437,559</b>	<b>\$681,690</b>
Warrants exercised	15,200	25
October 2022 Private Placement (iv)	251,564,318	32,507
Reimburse legal fees to Pala, Mercuria and Triple Flag (iv)	7,661,465	1,225
Pala expenses and guarantee fees (iv)	9,558,399	1,524
Pala backstop commitment fee (iv)	6,271,759	1,000
Issued during the year ended December 31, 2022	275,071,141	\$36,281
<b>Outstanding December 31, 2022</b>	<b>723,508,700</b>	<b>\$717,971</b>
2023 Unit Offering (i)	196,038,400	33,225
Pala 2022 Warrants exercised (Refer note 8(b))	398,723,212	64,366
Pala Interest Warrants exercised (Refer note 8(b))	49,934,708	6,641
Mercuria 2022 Warrants exercised (ii)	25,848,765	5,000
DSUs settled (Refer note 13(b))	2,563,833	355
RSUs settled (Refer note 13(c))	1,185,274	231
KfW Tranche A-2 Loan repayment (iii)	30,041,973	2,965
Triple Flag Fee	1,722,349	200
Issued during the year ended December 31, 2023	706,058,514	\$112,983
<b>Outstanding December 31, 2023</b>	<b>1,429,567,214</b>	<b>\$830,954</b>

### 2023 Offering

- i) 2023 Unit Offering: On May 30, 2023, the Company completed a public offering of units of the Company (the "2023 Unit Offering"), wherein the Company issued 196,038,400 units at a price of C\$0.27 per unit for aggregate gross proceeds of \$38,860. Each unit consisted of one common share and one-half common share purchase warrant of the Company. Share issuance costs totaled \$2,753 for the 2023 Unit Offering resulting in net proceeds of \$36,107. Of the total proceeds received, \$2,882 was allocated to the warrants.
- ii) Mercuria 2022 Warrants: On May 8, 2023, Mercuria exercised 25,848,765 Mercuria 2022 Warrants (as defined below) for proceeds of \$5,000.
- iii) KfW Tranche A-2 Loan: On December 15, 2023, the Company issued 10,013,991 common shares of the Company to each of Pala, Mercuria and Triple Flag to settle an aggregate principal amount of \$3,000 in relation to KfW Tranche A-2 Loan. The Company incurred share issuance costs of \$35 in relation to issuance of these shares.

### 2022 Offering

- iv) The Company closed the financing package on October 28, 2022 wherein.
  - The Company issued 125,435,185 common shares of the Company to Pala for an aggregate consideration of \$20,000. The aggregate \$20,000 consideration consisted of the settlement of the principal amount outstanding under the 2022 Promissory Notes. The Company also issued to Pala 5,330,995 common shares, 9,558,399 common shares and 6,271,759 common shares of the Company for reimbursement of legal costs totaling \$850, outstanding Pala expenses and guarantee fees of \$1,524 and the Backstop commitment fee of \$1,000, respectively.

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

- The Company issued 126,129,133 common shares of the Company to Mercuria for aggregate consideration of \$20,000. Mercuria also received 127,720,000 common share purchase warrants of the Company (the "Mercuria 2022 Warrants") each entitling Mercuria to acquire one common share of the Company at an exercise price of C\$0.2592 until January 31, 2026. The aggregate consideration received was first allocated to the Mercuria 2022 Warrants \$6,728 based on fair value determined using the Black-Scholes valuation method (refer note 14 for assumptions) and the residual value was allocated to the common shares of the Company. The Company also issued 871,261 common shares of the Company to Mercuria in satisfaction of its reimbursable expenses totaling \$139.
- The Company issued Triple Flag 1,459,208 common shares of the Company in satisfaction of its reimbursable expenses totaling \$233.

### 13. Share-Based Compensation

#### a) Share Purchase Options

	Number of Options	Weighted average exercise price (CAD)
<b>Outstanding December 31, 2021</b>	<b>4,661,881</b>	<b>4.27</b>
Granted	821,342	0.64
Forfeited	(1,012,287)	1.16
<b>Outstanding December 31, 2022</b>	<b>4,470,936</b>	<b>3.02</b>
Granted	7,369,481	0.20
Forfeited	(942,943)	0.20
Expired	(1,094,909)	6.34
<b>Outstanding December 31, 2023</b>	<b>9,802,565</b>	<b>0.80</b>
<b>Exercisable December 31, 2023</b>	<b>2,822,129</b>	<b>2.18</b>

As at December 31, 2023, there were 85,473,220 share purchase options available for issuance under the Company's Stock Option Plan.

During the year ended December 31, 2023, \$388 (2022 - \$244) in stock-based compensation was recorded related to share purchase options of which nil (2022 - \$35) was capitalized to development costs.

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

The following table summarizes the share purchase options outstanding and exercisable as at December 31, 2023:

Exercise price (in CAD)	Outstanding		Exercisable	
	Number outstanding	Weighted average remaining life (years)	Number outstanding	Weighted average remaining life (years)
\$0.20 - \$0.95	7,570,988	4.05	590,552	2.83
\$1.60-\$4.40	2,231,577	0.90	2,231,577	0.90
	9,802,565	3.33	2,822,129	1.31

b) Deferred share units ("DSUs")

	Number of DSUs
<b>Outstanding December 31, 2021</b>	<b>3,270,331</b>
Granted	4,135,123
<b>Outstanding December 31, 2022</b>	<b>7,405,454</b>
Granted	7,663,539
Settled	(2,563,833)
<b>Outstanding December 31, 2023</b>	<b>12,505,160</b>

At December 31, 2023, the DSU payable amount was \$1,230 compared to \$1,586 on December 31, 2022. During the year ended December 31, 2023, the Company recognized a stock-based compensation expense of \$1,228 (December 31, 2022 - \$472) for DSUs granted during the year and stock-based compensation gain of \$1,230 (December 31, 2022 - stock-based compensation gain of \$1,157) as a result of the fair value adjustment of outstanding DSUs in the consolidated statement of operations and comprehensive loss. The fair value of DSU settled during the quarter was \$355 (December 31, 2022 - Nil).

c) Performance and Restricted Share Units

The following grants and cancellations occurred during the year:

	Cash settled PSU's (Note i)	Omnibus Plan PSU's (Note ii)
<b>Outstanding December 31, 2021</b>	<b>1,298,881</b>	
Granted	934,465	
Forfeited	(1,011,436)	
<b>Outstanding December 31, 2022</b>	<b>1,221,910</b>	—
Granted	—	2,865,184
Forfeited	(241,692)	—
<b>Outstanding December 31, 2023</b>	<b>980,218</b>	<b>2,865,184</b>



## Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

	Cash settled RSU's (Note i)	Equity settled RSU's (Note iii)	Omnibus Plan RSU's (Note ii)
<b>Outstanding December 31, 2021</b>	<b>4,256,861</b>		
Granted	21,255,157		
Settled	(430,588)		
Forfeited	(1,485,339)		
<b>Outstanding December 31, 2022</b>	<b>23,596,091</b>	—	—
Granted	—	—	13,952,323
Reclassified	(15,664,017)	15,664,017	—
Settled	(2,068,022)	—	(1,185,274)
Forfeited	(1,019,026)	(1,270,055)	(1,247,072)
<b>Outstanding December 31, 2023</b>	<b>4,845,026</b>	<b>14,393,962</b>	<b>11,519,977</b>

Note i - Cash settled PSUs and Cash settled RSUs were granted under the Performance Share Unit Plan and the Restricted Share Unit Plan.

Note ii - Omnibus Plan PSUs and RSUs were granted under the Omnibus Equity Incentive Plan.

Note iii - During the year, the Company modified the option to settle 15,664,017 RSUs granted in October 2022 (the "Equity settled RSUs") from cash to common shares. As a result, the fair value of the October 2022 RSU's amounting to \$1,073 on the date of modification were reclassified from share-based compensation liability to other equity reserve.

At December 31, 2023, the settlement amount related to cash settled RSUs and the Omnibus Plan RSUs was \$768 compared to \$1,250 on December 31, 2022.

During the year ended December 31, 2023, the Company recognized a stock-based compensation expense of \$1,558 (2022 - stock-based compensation expense of \$459) in relation to RSUs, of which \$1,392 (2022 - \$248) was recognized in the statement of operations and comprehensive loss and \$166 (2022 - stock-based compensation expense of \$211) was capitalized to development costs.

### 14. Warrant derivative

The table below shows the changes to the warrant derivative liability:

	Total
<b>Balance at December 31, 2021</b>	<b>\$23,374</b>
Initial valuation for warrants issued	6,728
Fair value adjustment	(20,793)
<b>Balance at December 31, 2022</b>	<b>\$9,309</b>
Initial valuation for warrants issued	2,882
Fair value adjustment	(10,270)
<b>Balance at December 31, 2023</b>	<b>\$1,921</b>

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

The table below summarizes the activities related to warrants:

	Number of Warrants	Weighted average exercise price [CAD]
<b>Balance at December 31, 2021</b>	<b>197,044,678</b>	<b>0.44</b>
Issued	526,443,212	0.26
Expired	(48,170,236)	2.06
<b>Balance at December 31, 2022</b>	<b>675,317,654</b>	<b>0.42</b>
Issued	578,731,384	0.18
Exercised	(474,506,685)	0.25
Expired	(132,374,442)	1.00
<b>Balance at December 31, 2023</b>	<b>647,167,911</b>	<b>0.21</b>

Summary of outstanding warrants as at December 31, 2023:

	December 31, 2023		December 31, 2022	
	Number of outstanding warrants	Exercise price [CAD]	Number of outstanding warrants	Exercise price [CAD]
Triple Flag 2020 Warrants (v)	1,500,000	2.25	1,500,000	2.25
November 2021 Offering Warrants	—	—	132,374,442	1.00
Pala 2021 Credit Facility Warrants (v)	15,000,000	0.86	15,000,000	0.86
Mercuria 2022 Warrants (i)	101,871,235	0.26	127,720,000	0.26
Pala 2022 Warrants (ii)	—	—	398,723,212	0.26
2023 Unit Offering Warrants (iii)	98,019,200	0.34	—	—
Pala 2023 Credit Facility Warrants (iv)	55,610,514	0.14	—	—
Pala 2023 Unsecured Loan Warrants (iv)	280,044,832	0.14	—	—
Mercuria 2023 Unsecured Loan Warrants (iv)	95,122,130	0.14	—	—
	<b>647,167,911</b>	<b>0.21</b>	<b>675,317,654</b>	<b>0.42</b>

(i) Mercuria 2022 Warrants are issued in connection with Mercuria's participation in the financing package closed by the Company on October 28, 2022. At issuance, these warrants were recognized as a liability at a fair value of \$6,728. As at the year end, these warrants are fair valued using Black-Scholes valuation model. During the year ended December 31, 2023, Mercuria exercised 25,848,765 warrants (refer note 12).

(ii) Pala 2022 Warrants were issued in connection with the 2022 A&R Pala Credit Facility and were accounted as an embedded derivative (refer note 8(b)). During the year ended December 31, 2023, the Company issued 49,934,708 warrants to Pala in connection with interest accrued on the 2022 A&R Pala Credit Facility. All of the Pala 2022 Warrants including the related interest warrants were exercised during the year.

(iii) 2023 Unit Offering Warrants were issued in connection with the 2023 Unit Offering (refer note 12). At issuance, these warrants were recognized as liabilities with a fair value of \$2,882. As at year end, the

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

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fair value of these warrants were determined based on the quoted price of these warrants on Toronto Stock Exchange.

(iv) Pala 2023 Credit Facility Warrants, Pala 2023 Unsecured Loan Warrants and Mercuria 2023 Unsecured Loan Warrants were issued in connection with the Third A&R Pala Credit Facility and the Unsecured Loans. These warrants are recorded as equity (refer note 7(b) and 8(b)).

(v) Triple Flag 2020 Warrants and Pala 2021 Credit Facility Warrants were recognized as liabilities and at the year end, fair valued using Black-Scholes valuation model.

The input assumptions used in the Black-Scholes valuation are listed below:

	December 31, 2023	December 31, 2022
Risk-free interest rate	3.77%	4.20%
Expected dividend yield	0	0
Expected stock price volatility	61.0%	68.4%
Expected life in years	1.2 - 2.1	2.2 - 3.1

### 15. Commitments and Contractual Obligations

Significant capital expenditures contracted for at the end of the reporting period but not recognized as liabilities are as follows:

	December 31, 2023	December 31, 2022
Property, plant, and equipment	\$5,702	\$2,540

#### a) Sedgman Claim

In February 2021, the Company entered into a settlement agreement with Sedgman USA Inc. ("Sedgman") in order to resolve the dispute related to delay in the commissioning of the plant and the parties' contractual obligations.

During 2022, the Company failed to make a payment pursuant to a settlement agreement dated February 3, 2021 with Sedgman. Consequently, Sedgman filed a complaint seeking compensatory damages and pre-judgment writ of attachment against certain property belonging to the Company for the satisfaction of any judgment that may be recovered by Sedgman. The Second Judicial District Court granted the application for pre-judgment writ of attachment in favor of Sedgman. On November 28, 2022, the Company and Sedgman entered into a standstill arrangement to stay court proceedings and agree for a revised schedule to pay the outstanding amount. During the year ended December 31, 2023, the Company made final payment and all outstanding claims in relation to Sedgman were dismissed.

#### b) Offtake Arrangements

As a condition to the KfW IPEX-Bank Facility, NCI entered into a copper concentrate sales agreement with Aurubis AG and Aurubis Bulgaria AD (collectively, "Aurubis") under which NCI will deliver not less than 40,000 dry metric tonnes ("dmt") (+/- 5% at NCI's option) of copper concentrate per annum to Aurubis for a term linked to the KfW IPEX-Bank Facility (the "Aurubis Offtake Agreement") for a period of eight contractual years from the commencement of commercial production at the Underground Mine, unless terminated earlier in accordance with its terms. In light of logistical challenges of making deliveries from the Underground Mine to Aurubis' smelters in Germany and

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

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For the year ended December 31, 2023 and December 31, 2022

Bulgaria, NCI and Concord may elect to deliver alternative clean copper concentrates acceptable to Aurubis pursuant to a side letter entered into by Aurubis, NCI and Concord on or about the date of the Aurubis Offtake Agreement (the "Aurubis Side Letter"). NCI sells and delivers copper concentrate required for the swap agreement arrangement contemplated by the Aurubis Side Letter under a copper concentrate sales agreement between NCI and Concord (the "Swap Volumes Offtake Agreement"). A prior offtake agreement with MF Investments exists for 25.5% of the copper concentrate production derived from the Eastern Area deposits that are from underground mining. This contract is now owned by Transamine, a metals trader.

Drawdowns under the Working Capital Facility are linked to deliveries to Concord under the Swap Volumes Offtake Agreement and a separate copper concentrate sales agreement with Concord (the "Additional Volumes Offtake Agreement" and collectively with the Swap Volumes Offtake Agreement and the Aurubis Offtake Agreement, the "Offtake Agreements") for a term of 3.5 years, linked to the term of the Working Capital Facility. Under the terms of the Additional Volumes Offtake Agreement, NCI will deliver not less than 30,000 dmt (+/- 10% at NCI's option) of copper concentrate and other uncontracted volumes from the Underground Mine per annum to Concord for a period of eight contractual years from the commencement of commercial production at the Underground Mine, unless the agreement is terminated earlier in accordance with its terms. Both the Swap Volumes Offtake Agreement and the Additional Volumes Offtake Agreement provide for NCI to deliver monthly shipments to Concord.

### 16. Revenue

	December 31, 2023	December 31, 2022
Metal contained in concentrate	\$4,709	\$10,213
Less: Treatment and refining cost	(314)	(416)
<b>Revenue from contract with customers</b>	<b>4,395</b>	<b>9,797</b>
Gain (loss) on trade receivables at fair value	175	(711)
<b>Total</b>	<b>\$4,570</b>	<b>\$9,086</b>

Revenue during the years ended December 31, 2023 and December 31, 2022 relates to sale of concentrate during the pre-commercial production period.

Loss on trade receivables at fair value includes the changes in the fair value of concentrate trade receivables due to changes in base metal prices.

### 17. Production costs

	December 31, 2023	December 31, 2022
Salaries and wages	\$3,774	\$7,012
Consumables	10,876	7,851
Contractor services and site costs	18,152	16,254
(Increase) in Inventory (Refer Note 5)	(26,081)	(2,273)
<b>Total production costs</b>	<b>\$6,721</b>	<b>\$28,844</b>

The Company previously presented the analysis of production costs based on their function. However, management considers it to be more relevant if the analysis is presented based on their nature. Accordingly, comparatives for the year ended December 31, 2022 are reclassified.

## Nevada Copper Corp.

Notes to Consolidated Financial Statements

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For the year ended December 31, 2023 and December 31, 2022

### 18. Care and maintenance and restart expenses

In July 2022, the Company temporarily suspended mining and milling operations at the Underground Mine to significantly reduce the Underground Mine site and operational expenditures. Effective September 2022, the Company carried out limited operations focusing on dike crossings and certain critical capital projects necessary to support production once the development of the Underground Mine is complete. The Company commenced development activities in June 2023 and commissioning of the mill in October 2023. Care and maintenance and restart expenditures incurred and expensed during the suspension period included:

	December 31, 2023	December 31, 2022
Salaries and wages	\$11,016	\$7,498
Contractor services	7,215	11,020
Consumables	4,453	(186)
Legal costs	552	2,740
Depreciation	1,653	1,962
<b>Total</b>	<b>\$24,889</b>	<b>\$23,034</b>

### 19. Interest and finance expense

Interest and finance expense during the year included:

	December 31, 2023	December 31, 2022
KFW IPEX Bank Facility	\$15,835	\$7,889
Working Capital Facility	3,036	2,196
Pala Credit Facility	5,730	6,266
Promissory Notes	698	879
Pala Unsecured Loan	706	—
Mercuria Unsecured Loan	315	—
Stream and royalty deferral accretion	17,609	12,624
Lease liabilities	951	1,232
Pala guarantee fee and other interests	3,257	2,428
<b>Total interest and finance expense</b>	<b>\$48,137</b>	<b>\$33,514</b>
Borrowing costs capitalized	<b>(\$22,787)</b>	<b>(\$13,193)</b>
<b>Total - net of borrowing costs capitalized</b>	<b>\$25,350</b>	<b>\$20,321</b>

# Nevada Copper Corp.

Notes to Consolidated Financial Statements

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## 20. Income Taxes

### (a) Effective tax rate

The provision for income taxes differs from the amount calculated using the Canadian federal and provincial statutory income tax rates of 27.0% (2022 - 27.0%) as follows:

	December 31, 2023	December 31, 2022
<b>Loss Before Taxes</b>	(\$60,891)	(\$357,946)
Expected income tax (recovery)	(16,441)	(96,645)
Stock based compensation, mark to market adjustment and other permanent items	(6,954)	(4,658)
Difference in foreign tax rates	5,024	22,037
Impact of share issue costs	(353)	(207)
Deferred tax assets not recognized	18,724	79,482
Impact of foreign exchange and other	—	(9)
<b>Total income tax expense</b>	<b>\$—</b>	<b>\$—</b>

### (b) Deferred income tax assets and liabilities

Deferred tax assets and liabilities have been recognized with respect to the following:

	December 31, 2023	December 31, 2022
Mineral properties	(\$28,600)	(\$9,129)
Non-capital losses	17,977	6,643
Other temporary differences	10,623	2,486
<b>Net deferred income tax liabilities</b>	<b>\$—</b>	<b>\$—</b>

Deferred tax assets and liabilities have not been recognized with respect to the following temporary differences:

	December 31, 2023	December 31, 2022
Unrecognized deductible temporary differences and unused tax losses:		
Non-capital losses	\$430,782	\$277,798
Other temporary difference	184,854	221,534
	<b>\$615,636</b>	<b>\$499,332</b>

The Company has Canadian tax losses of approximately \$73,919 (2022 - \$70,965) and the losses can offset future taxable income in Canada and expire between 2026 and 2042. The Company has a total US tax loss of approximately \$442,768. Losses in 2018 and earlier tax years can be used to offset future taxable income and expire between 2026 and 2037, and losses after 2018 of approximately \$383,976 carry forward indefinitely and can be used to offset 80% of future taxable income, subject to section 382 limitation.

# Nevada Copper Corp.

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

## 21. Loss per Share

	December 31, 2023	December 31, 2022
Net loss - Basic and diluted	(\$60,891)	(\$357,946)
Weighted-average number of common shares	1,091,994,365	486,012,523
Effect of share options	—	—
Weighted-average number of diluted shares	1,091,994,365	486,012,523
Basic loss per share	(0.06)	(0.74)
Diluted loss per share	(0.06)	(0.74)

## 22. Supplemental cash flow information

	December 31, 2023	December 31, 2022
<b>Non-cash investing and financing activities:</b>		
Depreciation capitalized in mineral properties, plant and equipment	\$2,989	\$3,925
Stock based compensation included in mineral properties	\$166	\$235
Borrowing costs capitalized in mineral properties, plant and equipment	\$22,787	\$13,193
KfW Tranche A-2 Loan repaid in common shares of the Company	\$3,000	\$—
Mineral properties, plant and equipment in accounts payable and accrued liabilities change	(\$6,924)	(\$24,311)
Mineral properties, plant and equipment in prepaid expenses change	(\$400)	\$—
Asset retirement obligation change	\$—	(\$806)
Share issue costs in prepaid change	\$1,729	\$—
Shares issued to settle legal fees	\$200	\$1,225
Shares issued to settle RSU and DSU liability	\$586	\$—
Shares issued to settle Pala guarantee fee and backstop committee fee	\$—	\$2,524

## 23. Financial Instruments

### a) Fair value measurements

The carrying amounts for cash and cash equivalents, restricted cash, accounts payable and accrued liabilities, approximate fair values due to the immediate or short-term maturities of these financial instruments. The following is a classification of fair value measurements using a fair value hierarchy that reflects the significance of the inputs used in making the measurements.

- Level-1 Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.
- Level-2 Quoted prices in markets that are not active, or inputs that are observable, either directly or indirectly, for substantially the full term of the asset or liability.
- Level-3 Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (supported by little or no market activity).

# Nevada Copper Corp.

## Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

The fair value of the Company's debt was determined using Level 2 inputs:

	December 31, 2023		December 31, 2022	
	Carrying value	Fair value	Carrying value	Fair value
Working Capital Facility (Note 6)	\$8,624	\$8,624	\$20,687	\$20,687
KfW IPEX-Bank Facility (Note 8a)	170,321	182,809	123,342	136,027
Pala Credit Facility (Note 8b)	5,796	5,796	79,832	84,929
Unsecured Loans (Note 7b)	42,910	45,203	—	—

### b) Financial risk factors

The Company manages its exposure to financial risks, including foreign exchange risk and interest rate risk, based on a conservative framework to protect itself against adverse rate movements. All transactions undertaken are to support the Company's ongoing business and the Company does not acquire or issue derivative financial instruments for trading or speculative purposes. The Company's board of directors oversees management's risk management practices by setting trading parameters and reporting requirements.

The Company's activities are exposed to financial risks: market risk (including currency exchange risk and interest rate risk), commodity price risk, credit risk and liquidity risk.

### c) Market risks

#### i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate due to changes in market interest rates. The KfW IPEX-Bank Facility (Note 8a), the Working Capital Facility (Note 6) and the Third A&R Pala Credit Facility (Note 8b) and the Unsecured Loans (Note 7b) currently provide for interest at a market rate plus a fixed margin. A 1% decrease or increase in market rates of interest would have an impact of \$2,498 on the Company's interest expense.

#### ii) Foreign currency risk

The Company is exposed to currency fluctuations on its foreign currency monetary assets and liabilities. A significant change in the currency exchange rate between the U.S. dollar relative to the Canadian dollar could have an effect on the Company's results of operations, financial position and/or cash flows. The Company has not hedged its exposure to currency fluctuations.

At December 31, 2023, the Company held C\$35 (2022 - C\$23) in cash and cash equivalents in its parent entity with a functional currency of U.S. dollars. At December 31, 2023, the Company had C\$449 (2022 - C\$815) in accounts payable.

A +/- 10% change in the Canadian exchange rate would have had an immaterial impact for the year ended December 31, 2023.

#### iii) Commodity price risk

Fluctuations in the market price of copper and other metals may significantly adversely affect the value of the Company's securities and the ability of the Company to develop the Project.

Market prices can be affected by numerous factors beyond the Company's control, including levels of supply and demand for a broad range of industrial products, economic growth rates of various international economies, expectations with respect to the rate of inflation, the relative strength of various currencies, interest rates, speculative activities, global or regional political or



## Nevada Copper Corp.

### Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

economic circumstances and sales or purchases of copper or other metals by holders in response to such factors.

#### iv) Credit risk

Credit risk is the risk that one party to a financial instrument will fail to discharge an obligation and cause the other party to incur a financial loss. Financial instruments that potentially subject the Company to credit risk consist of cash and cash equivalents, restricted cash, reclamation bond, and amounts receivable. The Company has reduced its credit risk by investing its cash and cash equivalents in high quality Canadian and US chartered banks. The Company's maximum exposure to credit risk is \$1,304 as at December 31, 2023 (2022 - \$18,886), being the carrying value of cash and cash equivalents, restricted cash and amounts receivable.

#### v) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet the obligations associated with its financial liabilities (refer to Note 1 for more details). The Underground Mine is in the ramp-up stage and undergoing a re-start of operations and as a result has not yet generated sufficient revenue to support the Company's obligations. The Company is reliant on its current cash balance, cash flow from pre-commercial production revenue and cash inflows from its financing transactions to fund the completion of the construction and commissioning of the Underground Mine.

As at December 31, 2023, the Company had the following consolidated contractual cash flow obligations:

Contractual obligations	Payments due by period				
	Total	1 year	2-3 years	4-5 years	5 years+
Accounts payable, accrued liabilities and related party payables	\$20,931	\$20,931	\$—	\$—	\$—
Construction contractual obligations	5,702	5,702	—	—	—
Working Capital Facility	8,624	8,624	—	—	—
KfW IPEX-Bank Facility	249,248	12,229	75,247	67,892	93,880
Equipment leases	9,119	7,195	1,924	—	—
Third A&R Pala Credit Facility	7,874	—	7,874	—	—
Pala Unsecured Loan	40,081	40,081	—	—	—
Mercuria Unsecured Loan	11,782	11,782	—	—	—
Asset retirement obligation	5,474	—	—	—	5,474
<b>Total obligations</b>	<b>\$358,835</b>	<b>\$106,544</b>	<b>\$85,045</b>	<b>\$67,892</b>	<b>\$99,354</b>

The Company continuously assesses its cash requirements and its sources of funds in order to optimize its financing strategy.

## 24. Management of Capital

The Company's objectives of capital management are intended to safeguard the Company's ability to support the Company's development and exploration of its mineral properties and support any expansionary plans.

## **Nevada Copper Corp.**

Notes to Consolidated Financial Statements

(Expressed in thousands of United States dollars, except per share amounts)

For the year ended December 31, 2023 and December 31, 2022

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The capital of the Company consists of the items included in shareholders' equity, stream deferral and debt obligations. The Company manages the capital structure and makes adjustments in light of changes in economic conditions and the risk characteristics of the Company's underlying assets.

To effectively manage the entity's capital requirements, the Company has in place a planning and budgeting process to help determine the funds required to ensure the Company has the appropriate liquidity to meet its objectives. The Company, from time to time, seeks to raise capital through the issuance of equity or debt or the granting of royalty or streaming interests.

As at December 31, 2023, the Company is compliant with its debt covenants.

There were no changes in the Company's approach to capital management during the year ended December 31, 2023.

### **25. Subsequent events**

Subsequent to December 31, 2023, the Company received \$3,945 under the Third A&R Pala Credit Facility and \$20,705 under the Unsecured Loan from Pala.

This is **Exhibit “J”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W



**TEAMWORK. INNOVATION. EXECUTION.**

Condensed Consolidated Interim Financial Statements  
For the three months ended March 31, 2024 and March 31, 2023  
(Unaudited)

# NEVADA COPPER CORP.

Condensed Consolidated Interim Statements of Financial Position  
(Unaudited and expressed in thousands of United States dollars)

	March 31, 2024	December 31, 2023
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$287	\$739
Accounts receivable	288	244
Prepaid expenses and advance royalty (Note 3)	8,290	8,179
Inventory (Note 4)	8,806	7,637
<b>Total Current Assets</b>	17,671	16,799
Restricted cash	380	380
Mineral properties, plant, and equipment (Note 5)	708,619	686,193
<b>Total Assets</b>	<b>\$726,670</b>	<b>\$703,372</b>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities		
Accounts payable and accrued liabilities	\$28,092	\$18,974
Related party payable (Note 10)	2,482	1,957
Share-based compensation liabilities (Note 11)	1,334	1,641
Warrant derivative (Note 12)	905	1,921
Current portion of stream and royalty deferral (Note 9)	7,580	11,580
Working Capital Facility (Note 6)	4,127	8,624
Short-term debt (Note 7)	66,013	42,910
Current portion of long-term debt (Note 8)	22,495	12,776
<b>Total Current Liabilities</b>	133,028	100,383
Share based compensation liabilities (Note 11)	187	357
Stream and royalty deferral (Note 9)	184,641	175,977
Long-term debt (Note 8)	169,882	172,549
Asset retirement obligation	5,331	5,474
<b>Total Liabilities</b>	493,069	454,740
<b>Shareholders' Equity</b>		
Share capital	830,954	830,954
Other equity reserve	36,514	35,550
Accumulated other comprehensive loss	(3,578)	(3,578)
Deficit	(630,289)	(614,294)
<b>Total Shareholders' Equity</b>	233,601	248,632
<b>Total Liabilities and Shareholders' Equity</b>	<b>\$726,670</b>	<b>\$703,372</b>

General Information, Nature of Operations and Going Concern (Note 1)

Subsequent Events (Note 19)

The accompanying Notes are an integral part of these condensed consolidated interim financial statements.

Approved by the Board of Directors on May 8, 2024

(Signed) "Anna Ladd-Kruger", Director

(Signed) "Ernest Nutter", Director

# NEVADA COPPER CORP.

## Condensed Consolidated Interim Statements of Operations and Comprehensive Loss

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

Three months ended March 31, 2024 and March 31, 2023

	March 31, 2024	March 31, 2023
<b>Revenue (Note 13)</b>	\$3,554	\$—
<b>Cost of Sales</b>		
Production cost (Note 14)	3,858	—
Net realizable value adjustment (Note 4)	12,969	562
Depreciation	781	—
Transportation	444	—
Royalty	167	—
<b>Total cost of sales</b>	18,219	562
<b>Gross loss</b>	(14,665)	(562)
<b>Operating Expenses</b>		
Care and maintenance and restart expense (Note 15)	—	9,789
General and administrative expense	2,297	1,783
Share-based compensation (Note 11)	(149)	2,102
<b>Loss from operations</b>	(16,813)	(14,236)
Interest income	—	53
Interest and finance expense (Note 16)	—	(12,253)
Derivative fair value gain (loss) (Note 12)	1,016	(9,449)
Debt modification (loss) gain (Note 7)	(303)	487
Other income	130	—
Foreign exchange loss	(25)	(2)
	818	(21,164)
<b>Loss and comprehensive loss</b>	<b>(\$15,995)</b>	<b>(\$35,400)</b>
<b>Loss per share</b>		
Basic and diluted	(\$0.01)	(\$0.05)
<b>Weighted average number of common shares outstanding</b>		
Basic and diluted	1,429,567,214	723,508,700

The accompanying Notes are an integral part of these condensed consolidated interim financial statements.

## NEVADA COPPER CORP.

### Condensed Consolidated Interim Statements of Changes in Equity

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

Three months ended March 31, 2024 and March 31, 2023

	Share Capital		Other Equity Reserve	Accumulated Other Comprehensive Loss	Deficit	Total
	Number of Shares	Amount				
<b>Balance at December 31, 2022</b>	<b>723,508,700</b>	<b>\$717,971</b>	<b>\$32,144</b>	<b>(\$3,578)</b>	<b>(\$553,403)</b>	<b>\$193,134</b>
Share-based compensation	—	—	52	—	—	52
Comprehensive loss	—	—	—	—	(35,400)	(35,400)
<b>Balance at March 31, 2023</b>	<b>723,508,700</b>	<b>\$717,971</b>	<b>\$32,196</b>	<b>(\$3,578)</b>	<b>(\$588,803)</b>	<b>\$157,786</b>

	Share Capital		Other Equity Reserve	Accumulated Other Comprehensive Loss	Deficit	Total
	Number of Shares	Amount				
<b>Balance at December 31, 2023</b>	<b>1,429,567,214</b>	<b>\$830,954</b>	<b>\$35,550</b>	<b>(\$3,578)</b>	<b>(\$614,294)</b>	<b>\$248,632</b>
Warrants issued (Note 8(b))	—	—	773	—	—	773
Share-based compensation	—	—	191	—	—	191
Comprehensive loss	—	—	—	—	(15,995)	(15,995)
<b>Balance at March 31, 2024</b>	<b>1,429,567,214</b>	<b>\$830,954</b>	<b>\$36,514</b>	<b>(\$3,578)</b>	<b>(\$630,289)</b>	<b>\$233,601</b>

The accompanying Notes are an integral part of these condensed consolidated interim financial statements.

# NEVADA COPPER CORP.

Condensed Consolidated Interim Statements of Cash Flows  
(Unaudited and expressed in thousands of United States dollars)  
Three months ended March 31, 2024 and March 31, 2023

	March 31, 2024	March 31, 2023
<b>Cash flows used in operating activities</b>		
Loss and comprehensive loss	(\$15,995)	(\$35,400)
Adjustments and items not affecting cash:		
Derivative fair value (gain) loss (Note 12)	(1,016)	9,449
Depreciation	781	658
Debt modification loss (gain) (Note 7)	303	(487)
Interest and finance expenses	—	11,366
Share-based compensation	(149)	2,102
	(16,076)	(12,312)
Changes in non-cash working capital items:		
Amounts receivable	(44)	(90)
Inventories	(944)	—
Prepaid expenses	(112)	(157)
Accounts payable and accrued liabilities	3,812	1,184
<b>Cash used in operating activities</b>	<b>(13,364)</b>	<b>(11,375)</b>
<b>Cash flows used in investing activities</b>		
Mineral property development cost, plant and equipment	(4,877)	(13,973)
<b>Cash used in investing activities</b>	<b>(4,877)</b>	<b>(13,973)</b>
<b>Cash flows from financing activities</b>		
Costs incurred in relation to financing	(150)	—
Proceeds from the Unsecured Loan	24,650	—
Proceeds from KfW Tranche A-2 Loan (Note 8)	285	15,000
Proceeds from Working Capital Facility (Note 6)	3,032	—
Repayment of Working Capital Facility (Note 6)	(5,188)	—
Lease payments (Note 8)	(2,314)	(1,220)
Interest paid (Note 6)	(2,430)	—
Withholding tax on interest paid	(96)	—
<b>Cash provided by financing activities</b>	<b>17,789</b>	<b>13,780</b>
<b>Decrease in cash and cash equivalents</b>	<b>(452)</b>	<b>(11,568)</b>
<b>Cash and cash equivalents, beginning of period</b>	<b>739</b>	<b>18,506</b>
<b>Cash and cash equivalents, end of period</b>	<b>\$287</b>	<b>\$6,938</b>

Supplemental cash flow disclosures (Note 17)

The accompanying Notes are an integral part of these condensed consolidated interim financial statements.



# Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

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## 1. General Information, Nature of Operations and Going Concern

Nevada Copper Corp. is the parent company of its consolidated group (the "Company" or "Nevada Copper"). The Company was incorporated on June 16, 1999 under the Business Corporations Act (Yukon) and was continued into British Columbia under the Business Corporations Act (British Columbia) on November 16, 2006. Nevada Copper is incorporated and domiciled in Canada, and its registered office is at Suite 250-200 Burrard Street, Vancouver, British Columbia, V6C 3L5. The Company is a mining company engaged in the development, operation and exploration of its copper project (the "Project") at its Pumpkin Hollow Property (the "Property") in Western Nevada, USA, and in particular, the ramp up of its underground mine to its nameplate milling capacity of 5,000 tons per day ("tpd") at the Property (the "Underground Mine").

These condensed consolidated interim financial statements have been prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS") and International Accounting Standard 34 – Interim Financial Reporting applicable to a going concern entity.

At March 31, 2024, the Company had a working capital deficiency (current assets less current liabilities) of \$115,357 (December 31, 2023 - \$83,584) and cash and cash equivalents of \$287 (December 31, 2023 - \$739). For the three months ended March 31, 2024, the Company recorded a net loss of \$15,995 (March 31, 2023 - \$35,400), cash used in operating activities was \$13,364 (March 31, 2023 – \$11,375 ), and cash used in investing activities was \$4,877 (March 31, 2023 - \$13,973).

The Company currently has limited financial resources and the aggregate amount of capital and operating costs (net of cash inflows from the sale of concentrate) for the next twelve months combined with residual vendor payments, debt service costs, and corporate costs exceeds the amount of cash and funding currently available to the Company. Refer to note 18 for the contractual obligations of the Company. The Company requires further funding to complete the commissioning and ramp-up of the Underground Mine and continue carrying on business in the normal course.

The Company previously entered into an exclusivity agreement with a third party regarding a proposal for additional financing and a potential change of control transaction. While the exclusivity period relating thereto has lapsed, discussions are continuing. The Company is also in discussions with its key stakeholders and other parties in order to obtain funding and/or enter into a change of control transaction. There can be no assurance that any such discussions will progress or that any funding or transaction will be obtained or entered into.

During the quarter ended March 31, 2024 and subsequent to March 31, 2024, Pala Investments Limited ("Pala") and other existing stakeholders have been providing limited interim funding to the Company. Refer note 7(a) for the amounts funded during the quarter ended March 31, 2024 and refer to note 19 for the amounts funded subsequent to March 31, 2024. These stakeholders are under no obligation to provide additional funding. Also subsequent to March 31, 2024, as a result of the Company's liquidity situation, it has breached certain covenants in various agreements with lenders, contractors, and suppliers (Refer to Note 19). The Company is working with these parties and its potential funding sources to address these matters. However, there is no assurance as to if and when the Company will be able to resolve them and in the absence of resolution and subject to any applicable cure period, such breaches would give lenders rights to issue demand notices for repayment and/or other remedies in connection with the loans. In the absence of securing sufficient funding from existing stakeholders and/

# Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

or third parties in the near term, the Company will not be able to continue carrying on business and may need to take steps to seek creditor protection.

The ability of the Company to continue as a going concern, to realize the carrying value of its assets, and to discharge its liabilities when due, is dependent on, amongst other things, positive cash flow being generated from operations, the ability to complete the commissioning and ramp-up the Underground Mine to its nameplate milling capacity of 5,000 tpd in accordance with the Company's timing and cost expectations, an increase in copper concentrate production and sales, favorable copper market conditions, securing further funding, and remediation of covenants breached in its various agreements with lenders, contractors, and suppliers. There can be no assurance that these requirements will be achieved and in the absence of additional funding being arranged, the Company may not be able to continue to carry on business in the ordinary course. The combination of these factors gives rise to material uncertainties that may cast significant doubt on the Company's ability to continue as a going concern.

If the going concern basis was not appropriate for these condensed consolidated interim financial statements, then adjustments would be necessary to the carrying values of assets and liabilities and these adjustments could be material.

## 2. Material Accounting Policies

### a) Statement of compliance

These condensed consolidated interim financial statements have been prepared in accordance and in compliance with IFRS applicable to the preparation of interim financial statements, including International Accounting Standard 34, Interim Financial Reporting and do not include all the information required for full financial statements. Accordingly, these condensed interim consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements for the year ended December 31, 2023.

The accounting policies applied in these condensed consolidated interim financial statements are consistent with those applied in the consolidated financial statements for the year ended December 31, 2023.

These condensed consolidated interim financial statements were approved for issue by the board of directors of the Company on May 8, 2024.

### b) Basis of consolidation

These condensed consolidated interim financial statements include the accounts of the Company and its wholly owned subsidiaries, Nevada Copper, Inc. ("NCI") incorporated in Nevada, United States and NCI's wholly owned subsidiaries, NC Ditch Company LLC (inactive) and NC Farms LLC (inactive) incorporated in Nevada, United States, Lion Iron Corp. (inactive) and 607792 British Columbia Ltd. (inactive). Control is achieved when the Company is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee. All significant intercompany transactions and balances are eliminated on consolidation.

# Nevada Copper Corp.

## Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

### c) Use of judgments and estimates

The preparation of condensed consolidated interim financial statements in conformity with IFRS requires management to make estimates, assumptions, and judgments that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingencies at the date of the consolidated financial statements, along with reported amounts of revenues and expenses during the period. Actual results may differ from these estimates, and as such, estimates and underlying assumptions are reviewed on an ongoing basis. Changes in estimates are recognized in the period in which the estimates are revised and in any future periods affected.

The significant judgments made by management in applying the Company's accounting policies and the key sources of estimation uncertainty were the same as those applied to the consolidated audited financial statements for the year ended December 31, 2023.

### d) Adoption of new accounting standards

#### Amendments to IAS 1 - Presentation of Financial Statements

On January 1, 2024, the Company adopted amendments made to International Accounting Standard 1 - Presentation of Financial Statements ("IAS 1"). The amendment required the Company complying with covenants within the twelve months after the reporting period, to disclose information in the notes that enable users of the financial statements to understand the risk that the liabilities could become repayable within twelve months after the reporting period. Accordingly, appropriate disclosures are included in these condensed consolidated interim financial statements. Refer to note 8(a).

### 3. Prepaid expenses and advance royalty

	March 31, 2024	December 31, 2023
Advance royalty	\$5977	\$5961
Other prepayments and vendor deposits	2,313	2,218
<b>Total</b>	<b>\$8,290</b>	<b>\$8,179</b>

### 4. Inventory

	March 31, 2024	December 31, 2023
Ore stockpile	\$398	\$407
Copper concentrate	1,020	404
Materials and supplies	7,388	6,826
<b>Total</b>	<b>\$8,806</b>	<b>\$7,637</b>

During the three months ended March 31, 2024, the Company recognized a net realizable value adjustment of \$12,969 (March 31, 2023 - \$562) in relation to ore stockpile and copper concentrate. The net realizable value adjustment resulted from higher production costs in the pre-commercial production period.

## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

### 5. Mineral properties, plant and equipment

	Mineral Properties Development Costs	Plant & Equipment	Rights of Use Assets	Total
<b>Cost:</b>				
<b>Balances, December 31, 2023</b>	<b>\$973,039</b>	<b>\$4,408</b>	<b>\$36,688</b>	<b>\$1,014,135</b>
Additions	23,727	—	—	23,727
<b>As at March 31, 2024</b>	<b>\$996,766</b>	<b>\$4,408</b>	<b>\$36,688</b>	<b>\$1,037,862</b>
<b>Accumulated depreciation and impairment:</b>				
<b>As at December 31, 2023</b>	<b>\$298,865</b>	<b>\$1,632</b>	<b>\$27,445</b>	<b>\$327,942</b>
Depreciation	—	59	1,242	1,301
<b>As at March 31, 2024</b>	<b>\$298,865</b>	<b>\$1,691</b>	<b>\$28,687</b>	<b>\$329,243</b>
<b>Net Book Value</b>				
<b>As at December 31, 2023</b>	<b>\$674,174</b>	<b>\$2,776</b>	<b>\$9,243</b>	<b>\$686,193</b>
<b>As at March 31, 2024</b>	<b>\$697,901</b>	<b>\$2,717</b>	<b>\$8,001</b>	<b>\$708,619</b>

Additions to mineral properties development costs during the three months ended March 31, 2024, included borrowing costs of \$13,895 and depreciation of plant and equipment of \$520.

#### *Asset impairments*

When an impairment indicator of mineral properties, plant, and equipment exists, an impairment assessment is conducted at the level of the cash-generating unit (the "CGU" or a group of assets that generate independent cash inflows). An impairment loss is recognized if the carrying amount of a CGU exceeds its recoverable amount.

At March 31, 2024, based on management's impairment indicator assessment, it was determined that there were no new indicators of impairment or reversal of impairment that would require the Company to perform an impairment test.

### 6. Working Capital Facility

<b>Balance at December 31, 2023</b>	<b>\$8,624</b>
Advances	3,032
Interest accrual	239
Repayments	(7,768)
<b>Balance at March 31, 2024</b>	<b>\$4,127</b>

NCI entered into a revolving working capital facility (the "Working Capital Facility") with Concord Resources Limited ("Concord") for up to \$40,000 which provides for advances, subject to certain conditions, of up to 85% of the value of expected copper concentrate deliveries up to four months in advance of deliveries prior to commercial production at the Underground Mine, and three months thereafter, on a revolving basis. Interest on advance payments is payable at LIBOR (synthetic) plus 7.5% prior to commercial production at the Underground Mine and LIBOR (synthetic) plus 5% thereafter. The Working Capital Facility matures on September 1, 2026, unless terminated in accordance with the terms of offtake agreements with Concord.

## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

During the three months ended March 31, 2024, the Company made repayments of \$7,768, of which \$2,821 was in concentrate deliveries and \$4,947 was settled in cash. As at March 31, 2024, the Company was in compliance with the covenants under the Working Capital Facility. Also refer to note 19 for covenant compliance subsequent to March 31, 2024.

### 7. Short-term debt

	March 31, 2024	December 31, 2023
Unsecured Loans (a)	\$66,013	\$42,910
<b>Total short-term debt</b>	<b>\$66,013</b>	<b>\$42,910</b>

#### a) Unsecured Loans

	Pala	Mercuria
<b>Balance at December 31, 2023</b>	\$ 32,958	\$ 9,952
Additional Advance received, recognized at fair value	\$ 23,877	\$ —
Interest accrued	\$ 2,479	\$ 438
Conversion of Unsecured Loan to Pala Credit Facility	\$ (3,994)	\$ —
Loss on conversion	\$ 303	\$ —
<b>Balance at March 31, 2024</b>	<b>\$ 55,623</b>	<b>\$ 10,390</b>

On December 21, 2023, the Company entered into separate loan agreements with Pala and Mercuria (together referred as the "Unsecured Loans" and individually as the "Unsecured Loan") with respect to the outstanding amount of \$29,545 (including interest accrued of \$545) and \$10,268 (including interest accrued of \$268) payable to Pala and Mercuria, respectively, pursuant to prior funding commitments. The loans will mature on December 21, 2024 and carry interest at adjusted Term Secured Overnight Financing Rate ("Term SOFR") plus margin with interest payable on maturity. Adjusted Term SOFR equals Term SOFR plus 0.15%. Margin is 9% for the first \$15,000 and \$10,000 received from Pala and Mercuria, respectively and 10% for the additional advances received from Pala. Also, a 5% disbursement fee is payable on the additional advances from Pala, which is added to the principal amount, when amounts are drawn.

In connection with these loans, the Company issued 280,044,832 common share purchase warrants to Pala (the "Pala Unsecured Loan Warrants") and 95,122,130 common share purchase warrants to Mercuria (the "Mercuria Unsecured Loan Warrants"). Each warrant entitles the holder thereof to acquire one common share at an exercise price of Canadian dollar (C\$) 0.14 per warrant and the warrants expire on December 21, 2024, unless the amounts under these loans are repaid at an earlier time, in which case the warrants will expire on such applicable date. Upon exercise of these warrants, the exercise price is payable by way of deemed repayment and set-off of outstanding amounts under the loans. The exchange rate used to calculate the number of warrants will be used to calculate the amount of debt, in USD, to be extinguished. Accordingly, these warrants are classified as equity. Exercise of these warrants is subject to the Company obtaining shareholder approval, which it will seek to obtain at its next annual meeting of shareholders.

## Nevada Copper Corp.

### Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

During the period ended March 31, 2024, the Company received additional advances of \$24,650. The Company is in the process of issuing warrants, with the same terms as the Pala Unsecured Loan Warrants, to Pala in relation to the additional advances received during the period. These advances are recognized at fair value of \$23,877 and the residual value of \$773 was allocated to the warrants required to be issued by the Company and recognized in Other Equity Reserve. Also an amount of \$3,994 payable to Pala under the Unsecured Loan was reclassified to the Pala credit facility, which resulted in a debt modification loss of \$303.

The fair value of debt was determined using the risk free rate of 4.9%, credit spread of 9.06% and collateral spread of 4%.

As at March 31, 2024, the Company is in compliance with the financial and non-financial affirmative and restrictive covenants under the Unsecured Loans. Also refer to note 19 for covenant compliance subsequent to March 31, 2024.

#### 8. Long-term debt

	March 31, 2024	December 31, 2023
Current portion of long-term debt:		
KfW IPEX-Bank Facility (a)	\$16,991	\$5,991
Lease liabilities (c)	\$5,503	\$6,785
<b>Total current portion of long-term debt</b>	<b>\$22,494</b>	<b>\$12,776</b>
KfW IPEX-Bank Facility (a)	\$158,263	\$164,330
Pala Credit Facility (b)	\$10,073	\$5,796
Lease liabilities (c)	\$1,546	\$2,423
<b>Total long-term debt</b>	<b>\$169,882</b>	<b>\$172,549</b>

##### a) KfW IPEX Bank Facility

	KfW Tranche A Loan	KfW Tranche B Loan	KfW Tranche A-2 Loan	Total
<b>Balance at December 31, 2023</b>	<b>\$119,581</b>	<b>\$16,872</b>	<b>\$33,868</b>	<b>\$170,321</b>
Drawdown	—	—	285	285
Interest and accretion expense	3,012	691	945	4,648
<b>Balance at March 31, 2024</b>	<b>\$122,593</b>	<b>\$17,563</b>	<b>\$35,098</b>	<b>\$175,254</b>

The table below shows the current and long-term portion of KfW IPEX-Bank Facility:

	March 31, 2024	December 31, 2023
Current portion	\$16,991	\$5,991
Long-term debt	\$158,263	\$164,330

The Company, through its wholly-owned subsidiary NCI, entered into a credit agreement (as amended, the "KfW IPEX-Bank Facility") with KfW IPEX-Bank Limited ("KfW") for construction and operating costs in respect of the Underground Mine. Pursuant to the KfW IPEX-Bank Facility, KfW funded \$115,000 (the "KfW Tranche A Loan") in May 2019 and \$15,000 (the "KfW Tranche B Loan") in December 2020. During the year ended December 31, 2023, the KfW IPEX-Bank Facility by

## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

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For the three months ended March 31, 2024 and March 31, 2023

\$35,000 (the "KfW Tranche A-2 Loan") was expanded based on a commitment from Pala, Triple Flag and Mercuria on a pro-rata basis.

In December 2023, the KfW Tranche A-2 Loan principal amount of \$3,000 related to the KfW Tranche A-2 Loan was converted into equity of the Company. The refreshed draw room now available under the KfW Tranche A-2 Loan is committed by Triple Flag and is required to be used to finance certain metal deliveries that become due under the Company's stream agreement with Triple Flag in 2024. As at March 31, 2024, the Company drew down \$661 (\$285 during the quarter ended March 31, 2024) from the refreshed draw room available under the KfW Tranche A-2 Loan.

The KfW IPEX-Bank Facility contains certain financial and non-financial affirmative and restrictive covenants. As at March 31, 2024, the Company is in compliance with the covenants. Also, as a result of delays in the ramp-up of the Underground Mine, the Company has not yet achieved project completion as defined in the KfW IPEX-Bank Facility. The Company intends to discuss with KfW an extension of the project completion date which is currently June 30, 2024. There can be no assurance that the extension of the project completion date will be agreed upon by KfW. Also refer to note 19 for covenant compliance subsequent to March 31, 2024.

### b) Pala Credit Facility

<b>Balance at December 31, 2023</b>	<b>\$5,796</b>
Interest and accretion expense - Third A&R Pala Credit Facility	283
Conversion of Pala Unsecured Loan	3,994
<b>Balance at March 31, 2024</b>	<b>\$10,073</b>

The table below shows the current and long-term portion of Pala Credit Facility:

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Current portion	\$—	\$—
Long-term debt	\$10,073	\$5,796

The Company entered into a credit facility with Pala (as amended and restated on December 21, 2023 (the "Third A&R Pala Credit Facility"), which has a principal amount of \$10,000, including \$3,994 outstanding under the Pala Unsecured Loan added to the Third A&R Pala Credit Facility during the quarter, and unpaid accrued interest of \$326. The Third A&R Pala Credit Facility will mature on January 31, 2026 and carries interest at adjusted Term SOFR plus 9% per annum. Adjusted term SOFR equals SOFR plus 0.15%.

In connection with the Third A&R Pala Credit Facility, the Company issued 55,610,514 common share purchase warrants (the "Third A&R Pala Credit Facility Warrants") of the Company to Pala. Each warrant will entitle Pala to acquire one common share at an exercise price of C\$0.14 per warrant and the warrants will expire on January 31, 2026 unless the amounts under the Third A&R Pala Credit Facility are repaid at an earlier time, in which case the warrants would expire on such applicable date. On exercise of these warrants, the exercise price would be payable by way of deemed repayment and set-off of outstanding amounts under the loan. The exchange rate used to calculate the number of warrants will be used to calculate the amount of debt, in USD, to be extinguished. Accordingly, these warrants are classified as equity. Exercise of these warrants is subject to the Company obtaining shareholder approval, which it will seek to obtain at its next annual meeting of shareholders.

## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

As at March 31, 2024, the Company is in compliance with the financial and non-financial affirmative and restrictive covenants under the Third A&R Pala Credit Facility. Also refer to note 19 for covenant compliance subsequent to March 31, 2024.

### c) Lease liabilities

The following table shows the change to the Company's lease liabilities:

<b>Opening balance</b>	<b>\$9,208</b>
Accretion	155
Lease payments	(2,314)
<b>Closing balance</b>	<b>\$7,049</b>
Current portion	5,503
Long-term portion	1,546

The undiscounted minimum lease payments in respect of the above lease liabilities are expected to be \$5,805 for the next twelve months.

Further, the average remaining term of the Company's lease liabilities ranges from 12 months to 24 months. The undiscounted lease payments exclude leases that are classified as short-term and leases for low-value assets, which are not recognized as lease liabilities. The lease payment due after March 31, 2024, to Caterpillar Financial SARL ("CAT") remained unpaid and is past due. The Company is in discussions with CAT for the rescheduling of payments.

### 9. Stream and royalty deferral

	<b>Stream deferral</b>	<b>Royalty deferral</b>
<b>Balance at December 31, 2023</b>	<b>\$130,496</b>	<b>\$57,061</b>
Accretion	2,946	1,718
<b>Balance at March 31, 2024</b>	<b>\$133,442</b>	<b>\$58,779</b>

The table below shows the current and long-term portion of stream and royalty deferral liability.

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
<b>Stream deferral</b>		
Current portion	\$ 7,580	\$ 11,580
Long-term portion	125,862	118,916
<b>Royalty deferral</b>		
Current portion	\$ —	\$ —
Long-term portion	58,779	57,061

The Company and Triple Flag entered into the metals purchase and sale agreement (as amended from time to time, the "Stream Agreement") whereby Triple Flag provided \$85,000 (the "Stream Deposit") against the future delivery by Nevada Copper of 97.5% of the gold and silver production from the Underground Mine. The gold and silver production is to be calculated based on a fixed ratio of 162.5 ounces of gold and 3,131 ounces of silver for each 1 million pounds of copper in concentrate produced. The Company will receive an ongoing payment of 5% of the spot price for each ounce of gold and silver delivered to Triple Flag. The Company and its subsidiaries have provided subordinated security for the performance of the obligations under the Stream Agreement over all of their respective assets.



## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

Also, the Company entered into a series of agreements with Triple Flag (or its affiliates) which provided for (i) the issuance of a 2% net smelter return royalty in respect of the Open Pit Project (the "Open Pit Royalty"), including 1.3% royalty issued in October 2022 for a consideration of \$26,192 and (ii) the issuance of a 2% net smelter return royalty in respect of the Tedeboy area exploration property (the "Tedeboy Royalty") for an aggregate consideration of \$46,192. The Company has right to buyback 1.3% Open Pit Royalty for a consideration of \$38,100 till October 28, 2025.

As at March 31, 2024, the Company is in compliance with the covenants under the Stream Agreement. Also refer to note 19 for covenant compliance subsequent to March 31, 2024.

### 10. Related party payable and transactions

Pala is a related party to the Company because of its significant shareholding (61.7% as at March 31, 2024) in the Company. Additionally, as at March 31, 2024, two of the nine directors of the Company were Pala executives.

During the three months ended March 31, 2024, the Company entered into the following transactions with Pala:

- Refer to note 7(a) for transactions and outstanding balance related to the Unsecured Loan from Pala.
- Refer to note 8(b) for transactions and outstanding balance related to the Third A&R Pala Credit Facility.
- The Company recognized an expense of \$365 (2023 - \$324) for guarantee fees in relation to KfW Tranche B Loan.

As of March 31, 2024, the Company owed Pala \$1,959 (December 31, 2023 - \$1,595) for fees accrued in connection with the guarantee provided by Pala for the KfW IPEX- Bank Facility.

Mercuria is a related party to the Company because of its significant shareholding (17.24% as at March 31, 2024) in the Company. Also, a Mercuria executive is a director of the Company.

During the three months ended March 31, 2024, the following transactions were entered with Mercuria:

- Refer to note 7(a) for transactions and outstanding balance related to the Unsecured Loan from Mercuria.

As of March 31, 2024, the Company owed its Directors \$522 (2023 - nil) for accrued Directors fees.

The Company has a committee of independent directors to review and approve related party transactions.

# Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

## 11. Share-based Compensation

### a) Share Purchase Options

	Number of Options	Weighted average exercise price (CAD)
<b>Outstanding December 31, 2023</b>	<b>9,802,565</b>	<b>0.80</b>
Granted	85,881	0.20
Expired	(744,703)	4.40
<b>Outstanding March 31, 2024</b>	<b>9,143,743</b>	<b>0.50</b>
<b>Exercisable March 31, 2024</b>	<b>4,347,579</b>	<b>0.78</b>

As at March 31, 2024, there were 91,081,144 share purchase options available for issuance under the Company's Stock Option Plan.

During the three months ended March 31, 2024, \$102 (2022 - \$53) in share-based compensation was recorded related to share purchase options of which nil (2022 - \$25) was capitalized to development costs.

The following table summarizes the share purchase options outstanding and exercisable as at March 31, 2024:

Exercise price (in CAD)	Outstanding		Exercisable	
	Number outstanding	Weighted average remaining life (years)	Number outstanding	Weighted average remaining life (years)
\$0.20 - \$0.95	7,656,873	3.80	2,860,709	3.67
\$1.60-\$4.40	1,486,870	1.03	1,486,870	1.03
	9,143,743	3.35	4,347,579	2.77

### b) Deferred share units ("DSUs")

	Number of DSUs
<b>Outstanding December 31, 2023</b>	<b>12,505,160</b>
Granted	—
<b>Outstanding March 31, 2024</b>	<b>12,505,160</b>

At March 31, 2024, the DSU payable amount was \$922 compared to \$1,230 on December 31, 2023. During the three months ended March 31, 2024, share-based compensation gain of \$306 (March 31, 2023 - share-based compensation gain of \$510) as a result of the fair value adjustment of outstanding DSUs in the consolidated statement of operations and comprehensive loss.

## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

### c) Performance and Restricted Share Units

	Cash settled PSU's (Note i)	Omnibus Plan PSU's (Note ii)
<b>Outstanding December 31, 2023</b>	<b>980,218</b>	<b>2,865,184</b>
Forfeited	(531,635)	—
<b>Outstanding March 31, 2024</b>	<b>448,583</b>	<b>2,865,184</b>

	Cash settled RSU's (Note i)	Equity settled RSU's (Note iii)	Omnibus Plan RSU's (Note ii)
<b>Outstanding December 31, 2023</b>	<b>4,845,026</b>	<b>14,393,962</b>	<b>11,519,977</b>
Granted	—	—	182,182
Settled	(3,136,877)	—	—
Forfeited	—	(846,704)	(753,110)
<b>Outstanding March 31, 2024</b>	<b>1,708,149</b>	<b>13,547,258</b>	<b>10,949,049</b>

Note i - Cash settled PSUs and Cash settled RSUs were granted under the Performance Share Unit Plan and the Restricted Share Unit Plan.

Note ii - Omnibus Plan PSUs and RSUs were granted under the Omnibus Equity Incentive Plan.

Note iii - Equity settled RSUs were granted in October 2022 and are settled in common shares.

At March 31, 2024, the settlement amount related to cash settled RSUs and the Omnibus Plan RSUs was \$599 compared to \$768 on December 31, 2023.

During the three months ended March 31, 2024, the Company recognized a share-based compensation expense of \$55 (2023 - share-based compensation expense of \$1,539) in relation to RSUs, of which \$55 (2023 - \$1,392) was recognized in the statement of operations and comprehensive loss.

### 12. Warrant derivative

The table below shows the changes to the warrant derivative liability:

	Total
<b>Balance at December 31, 2023</b>	<b>\$1,921</b>
Fair value adjustment	(1,016)
<b>Balance at March 31, 2024</b>	<b>\$905</b>

The table below summarizes the activities related to warrants:

	Number of Warrants	Weighted average exercise price [CAD]
<b>Balance at December 31, 2023</b>	<b>647,167,911</b>	<b>0.21</b>
Issued	—	—
<b>Balance at March 31, 2024</b>	<b>647,167,911</b>	<b>0.21</b>

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(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

Summary of outstanding warrants as at March 31, 2024:

	March 31, 2024	
	Number of outstanding warrants	Exercise price [CAD]
Triple Flag 2020 Warrants	1,500,000	2.25
Pala 2021 Credit Facility Warrants	15,000,000	0.86
Mercuria 2022 Warrants	101,871,235	0.26
2023 Unit Offering Warrants	98,019,200	0.34
Pala 2023 Credit Facility Warrants	55,610,514	0.14
Pala 2023 Unsecured Loan Warrants	280,044,832	0.14
Mercuria 2023 Unsecured Loan Warrants	95,122,130	0.14
	<b>647,167,911</b>	<b>0.21</b>

The Company is in the process of issuing warrants, with the same terms as the Pala Unsecured Loan Warrants, to Pala in relation to the additional advances received during the period.

### 13. Revenue

	March 31, 2024	March 31, 2023
Metal contained in concentrate	\$3,710	\$—
Less: Treatment and refining cost	(226)	—
<b>Revenue from contract with customers</b>	<b>3,484</b>	<b>—</b>
Gain (loss) on trade receivables at fair value	70	—
<b>Total</b>	<b>\$3,554</b>	<b>\$—</b>

Revenue during the three March 31, 2024 and March 31, 2023 relates to sale of concentrate during the pre-commercial production period.

Loss on trade receivables at fair value includes the changes in the fair value of concentrate trade receivables due to changes in base metal prices.

### 14. Production cost

	March 31, 2024	March 31, 2023
Salaries and wages	\$7,104	\$274
Consumables	4,075	91
Contractor services and site costs	6,254	196
(Increase) in Inventory (Refer Note 4)	(13,575)	(561)
<b>Total production costs</b>	<b>\$3,858</b>	<b>\$—</b>

## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

### 15. Care and maintenance and restart expense

During the quarter ended March 31, 2023, mining and milling operations at the Underground Mine were suspended. Care and maintenance and restart expenditures incurred and expensed during the suspension period included:

	March 31, 2024	March 31, 2023
Salaries and wages	\$—	\$4,906
Contractor services	—	2,869
Consumables	—	1,202
Legal costs	—	155
Depreciation	—	657
<b>Total</b>	<b>\$—</b>	<b>\$9,789</b>

### 16. Interest and finance expense

Interest and finance expense during the year included:

	March 31, 2024	March 31, 2023
KFW IPEX Bank Facility	\$4,648	\$3,079
Working Capital Facility	239	900
Pala Credit Facility	283	2,905
Pala Unsecured Loan	2,479	—
Mercuria Unsecured Loan	438	—
Stream and royalty deferral accretion	4,664	4,181
Lease liabilities	155	248
Pala guarantee fee and other interests	989	940
<b>Total interest and finance expense</b>	<b>\$13,895</b>	<b>\$12,253</b>
Borrowing costs capitalized	<b>(\$13,895)</b>	<b>\$—</b>
<b>Total - net of borrowing costs capitalized</b>	<b>\$—</b>	<b>\$12,253</b>

### 17. Supplemental cash flow information

	March 31, 2024	March 31, 2023
<b>Non-cash investing and financing activities:</b>		
Depreciation capitalized in mineral properties development costs	\$520	\$657
Borrowing costs capitalized in mineral properties development costs	\$13,895	\$—
Mineral properties, plant, and equipment in accounts payable and accrued liabilities change	\$4,858	(\$3,984)
Mineral properties, plant, and equipment in prepaid expenses change	\$—	(\$3,055)
Asset retirement obligation change	(\$197)	\$—

# Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

## 18. Financial Instruments

### a) Fair value measurements

The carrying amounts for cash and cash equivalents, restricted cash, accounts payable and accrued liabilities, approximate fair values due to the immediate or short-term maturities of these financial instruments. The following is a classification of fair value measurements using a fair value hierarchy that reflects the significance of the inputs used in making the measurements.

Level-1 Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.

Level-2 Quoted prices in markets that are not active, or inputs that are observable, either directly or indirectly, for substantially the full term of the asset or liability.

Level-3 Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (supported by little or no market activity).

The fair value of the Company's debt was determined using Level 2 inputs:

	March 31, 2024		December 31, 2023	
	Carrying value	Fair value	Carrying value	Fair value
Working Capital Facility (Note 6)	\$4,127	\$4,127	\$8,624	\$8,624
KfW IPEX-Bank Facility (Note 8a)	175,254	187,487	170,321	182,809
Pala Credit Facility (Note 8b)	10,073	10,158	5,796	5,796
Unsecured Loans (Note 7a)	66,013	69,345	42,910	45,203

### b) Financial risk factors

The Company manages its exposure to financial risks, including foreign exchange risk and interest rate risk, based on a conservative framework to protect itself against adverse rate movements. All transactions undertaken are to support the Company's ongoing business and the Company does not acquire or issue derivative financial instruments for trading or speculative purposes. The Company's board of directors oversees management's risk management practices by setting trading parameters and reporting requirements.

The Company's activities are exposed to financial risks: market risk (including currency exchange risk and interest rate risk), commodity price risk, credit risk, and liquidity risk.

### c) Market risks

#### i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate due to changes in market interest rates. The KfW IPEX-Bank Facility (Note 8a), the Working Capital Facility (Note 6) and the Third A&R Pala Credit Facility (Note 8b) and the Unsecured Loans (Note 7a) currently provide for interest at a market rate plus a fixed margin. A 1% decrease or increase in market rates of interest would have an impact of \$68 on the Company's interest expense.

#### ii) Foreign currency risk

The Company is exposed to currency fluctuations on its foreign currency monetary assets and liabilities. A significant change in the currency exchange rate between the U.S. dollar relative to the Canadian dollar could have an effect on the Company's results of operations, financial position and/or cash flows. The Company has not hedged its exposure to currency fluctuations.

## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

At March 31, 2024, the Company held C\$4 (2023 - C\$35) in cash and cash equivalents in its parent entity with a functional currency of U.S. dollars. At March 31, 2024, the Company had C\$1,023 (2023 - C\$449) in accounts payable.

A +/- 10% change in the Canadian exchange rate would have had an immaterial impact for the three months ended March 31, 2024.

### iii) Commodity price risk

Fluctuations in the market price of copper and other metals may significantly adversely affect the value of the Company's securities and the ability of the Company to develop the Project.

Market prices can be affected by numerous factors beyond the Company's control, including levels of supply and demand for a broad range of industrial products, economic growth rates of various international economies, expectations with respect to the rate of inflation, the relative strength of various currencies, interest rates, speculative activities, global or regional political or economic circumstances and sales or purchases of copper or other metals by holders in response to such factors.

### iv) Credit risk

Credit risk is the risk that one party to a financial instrument will fail to discharge an obligation and cause the other party to incur a financial loss. Financial instruments that potentially subject the Company to credit risk consist of cash and cash equivalents, restricted cash, reclamation bond, and amounts receivable. The Company has reduced its credit risk by investing its cash and cash equivalents in high quality Canadian and US chartered banks. The Company's maximum exposure to credit risk is \$913 as at March 31, 2024 (2023 - \$1,304), being the carrying value of cash and cash equivalents, restricted cash, and amounts receivable.

### v) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet the obligations associated with its financial liabilities (refer to Note 1 for more details). The Underground Mine is in the ramp-up stage and undergoing a re-start of operations and as a result has not yet generated sufficient revenue to support the Company's obligations. The Company is reliant on its current cash balance, cash flow from pre-commercial production revenue and cash inflows from its financing transactions to fund the completion of the construction and commissioning of the Underground Mine.

## Nevada Copper Corp.

Notes to Condensed Consolidated Interim Financial Statements

(Unaudited and expressed in thousands of United States dollars, except per share amounts)

For the three months ended March 31, 2024 and March 31, 2023

As at March 31, 2024, the Company had the following consolidated contractual cash flow obligations:

Contractual obligations	Total	Payments due by period			
		1 year	2-3 years	4-5 years	5 years+
Accounts payable, accrued liabilities, and related party payables	\$30,571	\$30,571	\$—	\$—	\$—
Construction contractual obligations	5,702	5,702	—	—	—
Working Capital Facility	4,127	4,127	—	—	—
KfW IPEX-Bank Facility	247,318	23,741	80,499	143,078	—
Equipment leases	7,122	5,805	1,317	—	—
Third A&R Pala Credit Facility	13,021	—	13,021	—	—
Pala Unsecured Loan	65,002	65,002	—	—	—
Mercuria Unsecured Loan	11,779	11,779	—	—	—
Asset retirement obligation	5,331	—	—	—	5,331
<b>Total obligations</b>	<b>\$389,973</b>	<b>\$146,727</b>	<b>\$94,837</b>	<b>\$143,078</b>	<b>\$5,331</b>

The Company continuously assesses its cash requirements and its sources of funds in order to optimize its financing strategy.


### 19. Subsequent events

Subsequent to March 31, 2024, the Company received funding of \$4,355 and \$3,955 from Pala and Triple Flag, respectively, to allow the Company to continue to pursue the financing discussions.

Subsequent to March 31, 2024, as a result of the Company's liquidity situation, it has breached certain non-financial covenants in the KfW IPEX-Bank Facility, the Third A&R Pala Credit Facility, the Unsecured Loans, and in various agreements with contractors and suppliers. The Company is working with these parties and its potential funding sources to address these matters. However, there is no assurance as to if and when the Company will be able to resolve them and in the absence of resolution and subject to any applicable cure period, such breaches would give lenders rights to issue demand notices for repayment and/or other remedies in connection with the above referenced loans, and potentially, the Working Capital Facility and the Stream Agreement.



This is **Exhibit “K”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

ALLEN OVERY SHEARMAN STERLING US LLP  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
 Chapter 11

**Hearing Date: *OST REQUESTED***  
**Hearing Time: *OST REQUESTED***

**DEBTORS' MOTION TO AUTHORIZE NEVADA COPPER, INC.,  
 TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS**

Nevada Copper, Inc., and its affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”) in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”), respectfully represent in support of this motion (the “*Motion*”) as follows:

<sup>1</sup> The relief requested herein is sought for each of the following Debtors, and joint administration has been requested. The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

### **Relief Requested**

1. The Debtors request entry of an order, substantially in the form attached hereto as **Exhibit 1** (the “***Interim Order***”), (i) authorizing, but not directing, Debtor Nevada Copper, Inc. (“***NCP***”), to (a) act as the foreign representative of the Debtors, (b) seek recognition by the Canadian Court (as defined below) of the Chapter 11 Cases and of certain orders made by this Court in the Chapter 11 Cases from time to time, including with respect to DIP funding, (c) request that the Canadian Court lend assistance to this Court and grant comity to the foreign representative, and (d) seek any other appropriate relief from the Canadian Court that is just and proper, and (ii) granting related relief.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **Jurisdiction and Venue**

2. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 105(a) and 1505 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “***Bankruptcy Code***”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “***Bankruptcy Rules***”).

3. Pursuant to Rule 9014.2 of the *Local Rules of Bankruptcy Practice for the United States Bankruptcy Court of the District of Nevada* (the “***Local Rules***”), the Debtors consent to the Court’s entry of a final order in connection with this Motion to the extent that it is later determined that, absent consent of the parties, the Court cannot enter final orders or judgments consistent with Article III of the United States Constitution.

#### **Background**

4. On the date hereof (the “***Petition Date***”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court and contemporaneously herewith have requested joint administration of the Chapter 11 Cases for procedural purposes only, pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate their businesses and

1 manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the  
2 Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these  
3 Chapter 11 Cases, and no official committees have been appointed or designated.

4 5. The Debtors are in the business of mining copper, and other minerals, and operating  
5 a processing plant that refines copper ore into copper concentrate. The bulk of the Debtors'  
6 operations are focused on their Pumpkin Hollow project (the "**Project**"), which is located  
7 approximately eight miles southeast of Yerington, Nevada. The Project, which contains  
8 substantial mineral reserves and resources, including not only copper, but gold, silver, and iron  
9 magnetite, consists of an underground mine and processing facility, together with an open-pit  
10 project that is in the pre-feasibility stage of development. The Debtors, in the period leading up to  
11 the commencement of the Chapter 11 Cases, operated under significant liquidity constraints. In  
12 an effort to conserve liquidity, the Debtors have suspended mining operations and the operation of  
13 their processing plant, as they pursue a sale of substantially all of their assets.

14 6. Additional facts relating to the Debtors' business and capital structure, and the  
15 commencement of these Chapter 11 Cases, are set forth in the *Omnibus Declaration of Gregory J.*  
16 *Martin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**First Day**  
17 **Declaration**"), which was filed contemporaneously with this Motion and is incorporated herein by  
18 reference.<sup>2</sup>

### 19 **Basis for Relief**

20 7. Following the filing of these Chapter 11 Cases, the Debtors intend to commence an  
21 ancillary proceeding (the "**Ancillary Proceeding**") under Part IV of the *Companies' Creditors*  
22 *Arrangement Act* (Canada), R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), in the Ontario  
23 Superior Court of Justice (Commercial List) (the "**Canadian Court**").<sup>3</sup> NCI, as the proposed

24 <sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning set forth in the First Day Declaration.

25 <sup>3</sup> The Debtors intend to propose that Alvarez & Marsal Canada Inc. be appointed by the Canadian Court as  
26 information officer in the CCAA proceedings (the "**Information Officer**"). The Information Officer will serve as  
27 an officer of the Canadian Court and report to the Canadian Court from time to time (including at the hearing on  
28 the initial application) on the status of these Chapter 11 Cases, the Debtors' proposed restructuring, and any other  
information that may be material to the Canadian Court.

foreign representative for the Debtors in the Ancillary Proceeding, intends to seek recognition in Canada of these Chapter 11 Cases and certain orders entered by the Court.

8. Section 1505 of the Bankruptcy Code allows a debtor in possession to obtain a court order recognizing the debtor in possession as the foreign representative of the debtor's estate in order to submit a petition to a foreign court requesting recognition of the debtor's chapter 11 case. Specifically, section 1505 of the Bankruptcy Code provides:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505. Section 1505 only applies to cases filed under chapters other than chapter 15 of the Bankruptcy Code, because a chapter 15 case does not create an estate under section 541 of the Bankruptcy Code. For chapter 11 cases, authority to act as a foreign representative may be granted to the debtor in possession because a "trustee," as defined by section 1502(6) of the Bankruptcy Code, "includes . . . a debtor in possession in a case under any chapter of this title." *Id.* at § 1502(6).

9. The purpose of section 1505 is to allow a debtor to petition a foreign court for recognition of its chapter 11 case, and to request that the foreign court cooperate with and lend assistance to the debtor and the bankruptcy court in meeting the objectives of both chapter 15 of the Bankruptcy Code and the UNCITRAL Model Law on Cross-Border Insolvency (the "**Model Law**"),<sup>4</sup> on which chapter 15 is based. These objectives are stated in section 1501 of the Bankruptcy Code:

(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

(1) cooperation between—

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<sup>4</sup> The UNCITRAL Model Law on Cross Border Insolvency, together with the Guide to Enactment (as defined below), can be found at <https://www.uncitral.org/pdf/english/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-e.pdf>.

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor's assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

*Id.* at § 1501.<sup>5</sup> Thus, the authority sought by a debtor under section 1505 is specific to seeking recognition of the debtor's chapter 11 case and fostering cooperation between the United States courts and foreign courts.

10. An explicit grant of authority to act as the foreign representative is meant to facilitate the process of petitioning for recognition in a foreign court. For this reason, article 5 of the Model Law provides that the person or body administering a reorganization or liquidation in a country that has enacted the Model Law (an “*Enacting State*”) “is authorized to act in a foreign State on behalf of a proceeding under . . . the laws of the enacting State relating to insolvency.”

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<sup>5</sup> The preamble of the Model Law is virtually identical:

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

(a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;

(b) Greater legal certainty for trade and investment;

(c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) Protection and maximization of the value of the debtor's assets; and

(e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Model Law Art. 5. The Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency<sup>6</sup> explains that:

The lack of such authorization in some States has proved to be an obstacle to effective international cooperation in cross-border cases. An [E]nacting State in which administrators are already equipped to act as foreign representatives may decide to forgo inclusion of article 5, although even such a[n Enacting] State might want to keep article 5 in order to provide clear statutory evidence of that authority.

See Guide to Enactment ¶ 84. Clear evidence of a chapter 11 debtor's authority to act in a foreign country is particularly necessary because a chapter 11 case commences immediately upon the filing of a petition, with no order signed by the court that explicitly appoints the debtor in possession as the fiduciary or trustee of the debtor's estate. The fact that a chapter 11 debtor has this authority by virtue of being a debtor in possession may not be persuasive to a foreign court.

11. Absent a court order, a chapter 11 debtor may find it difficult to satisfy the requirements of a petition for recognition. These requirements are substantially similar in most countries that have adopted the Model Law, including Canada. Specifically, section 46 of the CCAA (which is similar to chapter 15) provides that an application for recognition of a foreign proceeding made by a foreign representative<sup>7</sup> shall be accompanied by:

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a

<sup>6</sup> UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL), UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY WITH GUIDE TO ENACTMENT, U.N. Gen. Assembly, UNCITRAL 30th Sess., U.N. Doc. A/CN.9/442 (1997), available at <http://www.uncitral.org/uncitral/en/commission/sessions/30th.html> (the "*Guide to Enactment*"). The Guide to Enactment prepared by the Secretariat pursuant to the request of UNICTRAL is based on the deliberations and Commissions at the thirtieth session, when the Model Law was adopted, as well as on considerations of the Working Group on Insolvency Law, which conducted the preparatory work. The Guide is intended to "provide useful insight to those charged with interpretation and application of the Model Law, such as judges." Guide to Enactment ¶ 17.

<sup>7</sup> Under the CCAA, a person or entity must be duly authorized as a "foreign representative" to commence such an ancillary proceeding. Specifically, under section 45(1) of the CCAA, a "foreign representative" is defined as "a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding [in] respect of a debtor company, to (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding." CCAA § 45(1).

1 certificate from the foreign court affirming the foreign  
2 representative's authority to act in that capacity; and

3 (c) a statement identifying all foreign proceedings in respect of the  
4 debtor company that are known to the foreign representative.

5 CCAA § 46. Because of the differences between chapter 11 of the Bankruptcy Code and most  
6 other national insolvency laws, a chapter 11 debtor generally does not have the type of evidence  
7 specified above. Congress therefore modified the text of Article 5 of the Model Law when  
8 incorporating it into section 1505 of the Bankruptcy Code. The legislative history to section 1505  
9 explains the reason for this variance in the text as codified by chapter 15:

10 While the Model Law automatically authorizes an administrator to  
11 act abroad, this section requires all trustees and debtors to obtain  
12 court approval before acting abroad. That requirement is a change  
13 from the language of the Model Law, but one that is purely internal  
14 to United States law. Its main purpose is to ensure that the court has  
15 knowledge and control of possibly expensive activities, but it will  
16 have the collateral benefit of providing further assurance to foreign  
17 courts that the United States debtor or representative is under  
18 judicial authority and supervision.

19 See H.R. Rep. No. 109-31, pt. 1, 108 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 88, 171.

20 12. If the relief sought by this Motion is granted, NCI expects to submit an application,  
21 as soon as practicable, to the Canadian Court that seeks recognition of the Chapter 11 Cases as  
22 foreign main proceedings, including as required by the terms of the proposed DIP facility. If the  
23 Canadian Court decides to recognize the Chapter 11 Cases as foreign main proceedings, the  
24 Debtors will benefit from the protection of an automatic stay against commencement or  
25 continuation of actions or proceedings concerning the Debtors' assets, rights, obligations, and  
26 liabilities in Canada, which stay would be in addition to the discretion of the Canadian Court to  
27 order an additional stay under Canadian law. In addition, the foreign representative can seek a  
28 wide range of relief from the Canadian Court when necessary to protect the assets of the Debtors  
or the interests of their estates in Canada, including with respect to DIP funding. Based on the  
foregoing, the Debtors submit that there is sufficient statutory basis and ample justification for this  
Court to grant the relief requested.



1           13. Authorizing NCI to act as the foreign representative of the Debtors' estates is  
2 appropriate. First, such relief permits the Debtors to seek recognition of their Chapter 11 Cases in  
3 Canada in order to protect and maximize the value of their global assets. Second, as a Debtor in  
4 these Chapter 11 Cases and as the primary operating company of the Debtors' business, NCI is  
5 well-positioned to represent the Debtors in foreign proceedings and to serve as a conscientious  
6 foreign representative, ensuring that the Ancillary Proceeding is well-coordinated with these  
7 Chapter 11 Cases. Third, authorizing NCI to serve as the foreign representative will avoid the  
8 added expense of retaining a third party to act as such.

9           14. This Court is the proper venue in these Chapter 11 Cases because the majority of  
10 the Debtors' assets and back-office operations are located in the United States. The Debtors'  
11 Project and corporate offices are located in Yerington, Nevada, and the majority of the Debtors'  
12 directors and officers reside in the United States.

13                           **Satisfaction of Bankruptcy Rule 6003(b)**

14           15. The Debtors respectfully request immediate consideration of this Motion pursuant  
15 to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the  
16 commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and  
17 irreparable harm." Here, the immediate relief is necessary because the appointment of NCI as  
18 foreign representative is a necessary precondition to the Debtors' commencement of the Ancillary  
19 Proceeding, pursuant to which NCI, on behalf of the Debtors, will seek, among other things, the  
20 Canadian Court's granting of a stay of proceedings to protect the Debtors' assets and operations  
21 in Canada. The Debtors believe that an immediate and orderly transition into chapter 11 (along  
22 with the commencement of the Ancillary Proceeding) is critical to the success of these Chapter 11  
23 Cases and that any delay in granting the relief requested could hinder the Debtors' operations and  
24 cause irreparable harm to the Debtors' estates. Furthermore, the failure to receive the requested  
25 relief during the first 21 days of these Chapter 11 Cases would jeopardize the Debtors' sale timeline  
26 and severely disrupt the Debtors' operations at this critical juncture.

1           16.     Accordingly, to the extent that Bankruptcy Rule 6003 is applicable to the relief  
2 requested, the Debtors submit that the relief requested in this Motion is necessary to avoid  
3 immediate and irreparable harm to their estates.

4                               **Reservation of Rights**

5           17.     Nothing contained herein is or should be construed as: (i) an admission as to the  
6 validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim  
7 on any grounds; (iii) a promise or requirement to pay any claim; (iv) an admission that any  
8 particular claim is of a type specified or defined hereunder; (v) a request to assume any executory  
9 contract or unexpired lease; or (vi) a waiver of the Debtors' rights under the Bankruptcy Code or  
10 any other applicable law. If the Court enters any order granting the relief sought herein, any  
11 payment made pursuant to such order is not intended and should not be construed to constitute an  
12 admission as to the validity of any particular claim or a waiver of the Debtors' rights to  
13 subsequently dispute such claim.

14                               **Notice**

15           18.     Notice of this Motion will be provided to: (i) the Office of the United States Trustee  
16 for Region 17; (ii) the 20 largest unsecured creditors of each of the Debtors; (iii) the Internal  
17 Revenue Service; (iv) the Office of the United States Attorney for the District of Nevada; (v)  
18 counsel to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New  
19 York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate  
20 Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134,  
21 Attn: James Patrick Shea and Bart Larsen; (vi) Milbank LLP, as counsel to KfW IPEX-Bank  
22 GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards,  
23 New York, NY 10001, Attn: Tyson Lomazow; (vii) Bennett Jones LLP, as counsel to Mercuria  
24 Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4,  
25 Canada, Attn: Simon Grant; (viii) White & Case LLP, as counsel to Concord Resources Limited  
26 as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York,  
27 NY 10020, Attn: Philip Abelson; (ix) Davis, Graham & Stubbs LLP, as counsel to Triple Flag  
28

Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (x) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (xi) Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xii) any party that is required to receive or has requested notice pursuant to Bankruptcy Rule 2002 or Local Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated this 10th day of June, 2024.

McDONALD CARANO LLP

/s/ Ryan J. Works

Ryan J. Works (NSBN 9224)  
Amanda M. Perach (NSBN 12399)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

ALLEN OVERY SHEARMAN STERLING US LLP  
Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)  
Sara Coelho (NYSBN 4530267) (*pro hac* pending)  
599 Lexington Avenue  
New York, New York 10022

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT 1**

**Proposed Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>8</sup>  
  
Debtor.

*Joint Administration Requested*

Case No. 24-50566  
Chapter 11

**Hearing Date:**  
**Hearing Time:**

**ORDER AUTHORIZING NEVADA COPPER, INC.,  
TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS**

Upon the motion (the “*Motion*”)<sup>9</sup> of the Debtors for entry of an order (this “*Order*”), pursuant to sections 105(a) and 1505 of the Bankruptcy Code and Bankruptcy Rule 6003, (i) authorizing, but not directing, Debtor Nevada Copper, Inc. (“*NCF*”), to (a) act as the foreign representative of the Debtors; (b) seek recognition by the Canadian Court (as defined below) of the Chapter 11 Cases and of certain orders made by this Court in the Chapter 11 Cases from time to time; (c) request that the Canadian Court lend assistance to this Court and grant comity to the foreign representative; and (d) seek any other appropriate relief from the Canadian Court that is just and proper, and (ii) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and, under the

<sup>8</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>9</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 circumstances, proper and adequate notice of the Motion and the hearing thereon having been  
2 given; and it appearing that no other or further notice is necessary; and this Court having reviewed  
3 the Motion and having heard the statements in support of the relief requested therein at a hearing  
4 before this Court; and it appearing that the legal and factual bases set forth in the Motion establish  
5 just cause for the relief granted herein; and this Court having determined that the relief sought in  
6 the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in  
7 interest; and after due deliberation and sufficient cause appearing therefor;

8 IT IS HEREBY ORDERED THAT:

9 1. The Motion is GRANTED as set forth herein.

10 2. Nevada Copper, Inc. ("**NCI**"), is authorized, but not directed, (i) to act as the foreign  
11 representative of the Debtors, (ii) to seek recognition by the Canadian Court of the Chapter 11  
12 Cases and of certain orders made by the Court in the Chapter 11 Cases from time to time, (iii) to  
13 request that the Canadian Court lend assistance to this Court and grant comity to the foreign  
14 representative, and (iv) to seek any other appropriate relief from the Canadian Court that the  
15 Debtors deem just and proper.

16 3. This Court requests the aid and assistance of the Canadian Court to recognize these  
17 Chapter 11 Cases as a "foreign main proceeding" and NCI as a "foreign representative" pursuant  
18 to the Companies' Creditors Arrangement Act and to recognize and give full force and effect to  
19 this Order in all provinces and territories of Canada.

20 4. This Court requests the assistance of the Canadian Court to act in aid of and be  
21 auxiliary to this Court in relation to the protection of the Debtors' assets in Canada, including by  
22 giving effect to the automatic stay under section 362(a) of the Bankruptcy Code in Canada.

23 5. Nothing in the Motion or this Order shall be deemed or construed as: (i) an  
24 admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights  
25 to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an  
26 admission that any particular claim is of a type specified or defined hereunder; (v) a request to  
27

1 assume any executory contract or unexpired lease; or (vi) a waiver of the Debtors' rights under the  
2 Bankruptcy Code or any other applicable law.

3 6. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of  
4 the Motion or otherwise deemed waived.

5 7. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
6 contrary, the Debtors are not subject to any stay in the implementation, enforcement, or realization  
7 of the relief granted in this Order, and the Debtors may, in their discretion and without further  
8 delay, take any action and perform any act necessary to implement the relief granted in this Order.

9 8. This Court shall retain jurisdiction over any and all matters arising from or related  
10 to the interpretation or implementation of this Order.

11 **IT IS SO ORDERED.**

1 In accordance with LR 9021, counsel submitting this **ORDER AUTHORIZING NEVADA**  
2 **COPPER, INC., TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS** certifies  
3 that the order accurately reflects the court's ruling and that (check one):

4 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

5 ☐ No party appeared at the hearing or filed an objection to the motion.

6 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the  
7 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
8 disapproved the order, or failed to respond, as indicated below [list each party and whether the  
9 party has approved, disapproved, or failed to respond to the document].

10 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
11 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
12 content of the order.

Prepared and submitted by:

11 McDONALD CARANO LLP

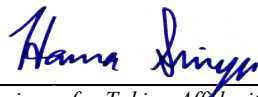
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13 \_\_\_\_\_  
14 Ryan J. Works (NSBN 9224)  
15 Amanda M. Perach (NSBN 12399)  
16 2300 West Sahara Avenue, Suite 1200  
17 Las Vegas, Nevada 89102

18 ALLEN OVERY SHEARMAN STERLING US LLP  
19 Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)  
20 Sara Coelho (NYSBN 4530267) (*pro hac* pending)  
21 599 Lexington Avenue  
22 New York, New York 10022

23 *Proposed Counsel to the Debtors and Debtors in Possession*  
24  
25  
26  
27  
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This is **Exhibit “L”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

ALLEN OVERY SHEARMAN STERLING US LLP  
 Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
 Chapter 11

Hearing Date: ***OST REQUESTED***  
 Hearing Time: ***OST REQUESTED***

**MOTION FOR ENTRY OF AN ORDER DIRECTING  
 JOINT ADMINISTRATION OF DEBTORS' RELATED  
 CHAPTER 11 CASES UNDER FEDERAL RULE OF BANKRUPTCY  
 PROCEDURE 1015(b) AND LOCAL RULE OF BANKRUPTCY PRACTICE 1015**

Nevada Copper, Inc. ("*NCF*") and its affiliates that are debtors and debtors in possession (collectively, the "*Debtors*") in the above-captioned chapter 11 cases (the "*Chapter 11 Cases*"), respectfully represent in support of this motion (the "*Motion*") as follows:

<sup>1</sup> The relief requested herein is sought for each of the following Debtors, and joint administration has been requested. The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

### **Relief Requested**

1. The Debtors request entry of an order in the Chapter 11 Cases, substantially in the form attached hereto as **Exhibit 1** (the “***Order***”) directing the joint administration of the Chapter 11 Cases for procedural purposes only, pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015. A substantially similar motion has been filed in each of the above-captioned Chapter 11 Cases.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **Jurisdiction and Venue**

2. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “***Bankruptcy Rules***”) and Rule 1015 of the *Local Rules of Bankruptcy Practice for the United States Bankruptcy Court of the District of Nevada* (the “***Local Rules***”).

3. Pursuant to Local Rule 9014.2, the Debtors consent to the Court’s entry of a final order in connection with this Motion to the extent that it is later determined that, absent consent of the parties, the Court cannot enter final orders or judgments consistent with Article III of the United States Constitution.

#### **Background**

4. On the date hereof (the “***Petition Date***”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court and contemporaneously herewith have requested joint administration of the Chapter 11 Cases for procedural purposes only, pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated.

5. The Debtors have been in the business of mining copper, and other minerals, and operating a processing plant that refines copper ore into copper concentrate, with the bulk of the

Debtors' operations focused on their Pumpkin Hollow project (the "**Project**"), which is located outside of Yerington, Nevada. The Project, which contains substantial mineral reserves and resources, including not only copper, but gold, silver, and iron magnetite, consists of an underground mine and processing facility, together with an open-pit project that is in the pre-feasibility stage of development. The Debtors, in the period leading up to the commencement of the Chapter 11 Cases operated under significant liquidity constraints. In an effort to conserve liquidity, the Debtors have suspended mining operations and the operation of their processing plant, as they pursue a sale of substantially all of their assets.

6. Additional facts relating to the Debtors' business and capital structure, and the commencement of these Chapter 11 Cases, are set forth in the *Omnibus Declaration of Gregory J. Martin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**"), which was filed contemporaneously with this Motion and is incorporated herein by reference.<sup>2</sup>

#### **Basis for Relief**

7. Bankruptcy Rule 1015(b) provides that if two or more petitions are pending in the same court by or against a debtor and its affiliates, the court may order joint administration of the estates of the debtor and such affiliates. The Debtors in these proceedings consist of NCI, Nevada Copper Corp. ("**NCU**"), NC Ditch Company LLC, NC Farms LLC, Lion Iron Corp., and 0607792 B.C. Ltd. NCU is the sole parent of NCI, Lion Iron Corp. and 0607792 B.C. Ltd. NCI is the sole managing partner of NC Ditch Company LLC and NC Farms LLC. The Debtors, therefore, are "affiliates" as that term is defined in section 101(2) of the Bankruptcy Code and as used in Bankruptcy Rule 1015(b). Accordingly, the Debtors are also deemed related under Local Rule 1015(b)(6). Consequently, joint administration of these Chapter 11 Cases is appropriate pursuant to Bankruptcy Rule 1015(b).

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning set forth in the First Day Declaration.

1           8.       The joint administration of these Chapter 11 Cases will permit the Clerk of the  
2 Court to use a single general docket for each of the Debtors' cases and to combine notices to  
3 creditors and other parties-in-interest of the Debtors' respective estates. Indeed, the Debtors  
4 anticipate that numerous notices, applications, motions, other pleadings, hearings and orders in  
5 these Chapter 11 Cases will affect all of the Debtors.

6           9.       Joint administration also will save time and money and avoid duplicative and  
7 potentially confusing filings by permitting counsel for all parties-in-interest to (i) use a single  
8 caption on the numerous documents that will be served and filed herein and (ii) file the papers in  
9 one case rather than in multiple cases. Finally, joint administration will protect parties-in-interest  
10 by ensuring that parties in each of the Debtors' respective Chapter 11 Cases will be apprised of the  
11 various matters before this Court in each of the related cases. Accordingly, the Debtors  
12 respectfully submit that joint administration of these Chapter 11 Cases is in the best interest of the  
13 Debtors, their creditors and other parties-in-interest.

14          10.      The rights of the respective creditors of each of the Debtors will not be affected  
15 adversely by joint administration of these Chapter 11 Cases. The relief sought herein purely is  
16 procedural and in no way is intended to affect substantive rights. Each of the creditors and other  
17 parties-in-interest will retain their claims against, and rights with respect to, each relevant Debtor's  
18 estate. Moreover, although conflict between the estates is not anticipated, if creditors are later  
19 adversely affected by joint administration, the Court can avoid any prejudice to creditors created  
20 by joint administration of Debtors' Chapter 11 Cases by limiting joint administration to the extent  
21 necessary pursuant to Bankruptcy Rule 1015(c). At this time, however, there is no reason why the  
22 Court should not authorize joint administration.

23          11.      Local Rule 1015 contains specific requirements that arise upon the entry of an order  
24 approving joint administration. In accordance with Local Rule 1015(h), the Debtors will utilize  
25 the case number for the NCI case, which has the lowest number among the Chapter 11 Cases. In  
26 addition, in accordance with Local Rule 1015(i), the Debtors will use the following consolidated  
27 caption for the jointly administered Chapter 11 Cases:  
28

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>3</sup>

Lead Case No.: 24-50566  
Chapter 11

Jointly Administered with:  
Case No. 24-50567  
Case No. 24-50568  
Case No. 24-50569  
Case No. 24-50570  
Case No. 24-50571

In connection with the foregoing, the Debtors also request that the following entry be made on the docket of each Debtor:

An Order has been entered in this case under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure directing the procedural consolidation and joint administration of the chapter 11 cases of Nevada Copper, Inc., Nevada Copper Corp., NC Ditch Company LLC, NC Farms LLC, Lion Iron Corp., and 0607792 B.C. Ltd. All further pleadings and other papers shall be filed in, and all further docket entries shall be made in the docket of Nevada Copper, Inc., Case No. 24-50566 and such docket should be consulted for all matters affecting these chapter 11 cases.

**Notice**

12. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for Region 17; (ii) the 20 largest unsecured creditors of each of the Debtors; (iii) the Internal Revenue Service; (iv) the Office of the United States Attorney for the District of Nevada; (v) counsel to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James Patrick Shea and Bart Larsen; (vi) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow; (vii) Bennett Jones LLP, as counsel to

<sup>3</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

Mercuria Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada, Attn: Simon Grant; (viii) White & Case LLP, as counsel to Concord Resources Limited as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York, NY 10020, Attn: Philip Abelson; (ix) Davis, Graham & Stubbs LLP, as counsel to Triple Flag Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (x) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (xi) Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xii) any party that is required to receive or has requested notice pursuant to Bankruptcy Rule 2002 or Local Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated this 10th day of June, 2024.

McDONALD CARANO LLP

/s/ Ryan J. Works

Ryan J. Works, Esq. (NSBN 9224)  
Amanda M. Perach, Esq. (NSBN 12399)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

ALLEN OVERY SHEARMAN STERLING US LLP  
Fredric Sosnick, Esq. (NYSBN 2472488) (*pro hac* pending)  
Sara Coelho, Esq. (NYSBN 4530267) (*pro hac* pending)  
599 Lexington Avenue  
New York, New York 10022

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT 1**

**Proposed Order**

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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re: NEVADA COPPER, INC. <sup>1</sup> Debtor.	Case No.: 24-50566 Chapter 11
In re: NEVADA COPPER CORP. Debtor.	Case No.: 24-50567 Chapter 11
In re: NC DITCH COMPANY LLC Debtor.	Case No.: 24-50568 Chapter 11
In re: NC FARMS LLC Debtor.	Case No.: 24-50569 Chapter 11
In re: LION IRON CORP. Debtor.	Case No.: 24-50570 Chapter 11
In re: 0607792 B.C. LTD. Debtor.	Case No.: 24-50571 Chapter 11
	<b>Hearing Date:</b> <b>Hearing Time:</b>

**ORDER AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order (this “*Order*”), pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015 authorizing the joint administration of the Debtors’ related chapter 11 cases; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. 1408 and 1409; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and, under the circumstances, proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015, the above-captioned chapter 11 related cases are consolidated for administrative purposes only and shall be jointly administered by this Court as Case No. 24-50566.
3. The consolidated caption of the jointly administered cases shall read as follows:

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>3</sup>

Lead Case No.: 24-50566  
Chapter 11

Jointly Administered with:  
Case No. 24-50567  
Case No. 24-50568  
Case No. 24-50569  
Case No. 24-50570  
Case No. 24-50571

<sup>3</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

1           4.     A docket entry shall be made in each Debtor's chapter 11 case substantially as  
2 follows:

3           An Order has been entered in this case under Rule 1015(b) of the Federal Rules of  
4 Bankruptcy Procedure directing the procedural consolidation and joint  
5 administration of the Chapter 11 cases of Nevada Copper, Inc., Nevada Copper  
6 Corp. (5323) (British Columbia); NC Ditch Company LLC, NC Farms LLC, Lion  
7 Iron Corp., and 0607792 B.C. Ltd. All further pleadings and other papers shall be  
8 filed in, and all further docket entries shall be made in the docket of Nevada Copper,  
9 Inc., Case No. [BK-24-\_\_\_\_\_-\_\_\_\_\_] and such docket should be consulted for all  
10 matters affecting these chapter 11 cases.

11           5.     One consolidated docket, one file and one consolidated service list shall be  
12 maintained by Nevada Copper, Inc., or its claims agent, and kept by the clerk of the Court in these  
13 Chapter 11 Cases.

14           6.     Nothing contained in the Motion or this Order shall be deemed or construed as  
15 directing or otherwise affecting a substantive consolidation of these Chapter 11 Cases, or creating  
16 any other implication regarding the separateness (or lack of separateness) of the Debtors' estates  
17 for any purpose.

18           7.     This Order shall apply to any future filing of any affiliate of the Debtors, *provided*,  
19 *however*, that the Debtors shall file a notice with the Court identifying the cases of such affiliates  
20 and stating that this Order shall apply to such cases.

21           8.     This Order shall constitute notice of related cases pursuant to Local Rule 1015(a),  
22 as it sets forth the title case number and filing date of each related case together with a brief  
23 statement of the relationship of the Debtors.

24           9.     The Debtors are authorized and empowered to take all actions necessary to  
25 implement the relief granted in this Order.

26           10.    This Order is immediately effective and enforceable, notwithstanding the possible  
27 applicability of Bankruptcy Rule 6004(h) or other Bankruptcy Rules.

28           11.    This Court retains jurisdiction with respect to all matters arising from or related to  
the enforcement of this Order.

**IT IS SO ORDERED.**

1 In accordance with LR 9021, counsel submitting this **ORDER AUTHORIZING JOINT**  
2 **ADMINISTRATION OF CHAPTER 11 CASES** certifies that the order accurately reflects the court's  
3 ruling and that (check one):

4 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

5 ☐ No party appeared at the hearing or filed an objection to the motion.

6 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing,  
7 and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order,  
or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or  
failed to respond to the document].

8 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with  
9 the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

10 Prepared and submitted by:

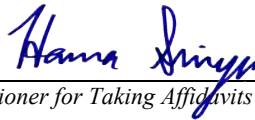
11 McDONALD CARANO LLP

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Las Vegas, Nevada 89102

15 ALLEN OVERY SHEARMAN STERLING US LLP  
16 Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)  
17 Sara Coelho (NYSBN 4530267) (*pro hac* pending)  
599 Lexington Avenue  
New York, New York 10022

18 *Proposed Counsel to the Debtors and Debtors in Possession*

This is **Exhibit “M”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

ALLEN OVERY SHEARMAN STERLING US LLP  
Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
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[sara.coelho@aoshearman.com](mailto:sara.coelho@aoshearman.com)

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[rworks@mcdonaldcarano.com](mailto:rworks@mcdonaldcarano.com)  
[aperach@mcdonaldcarano.com](mailto:aperach@mcdonaldcarano.com)

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
Chapter 11

**Hearing Date: *OST REQUESTED***  
**Hearing Time: *OST REQUESTED***

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING THE DEBTORS  
TO CONTINUE TO (I) USE THEIR EXISTING CASH MANAGEMENT  
SYSTEM, (II) USE AND MAINTAIN EXISTING BANK ACCOUNTS,  
(III) CONTINUE INTERCOMPANY TRANSACTIONS, (IV) USE THEIR  
EXISTING BUSINESS FORMS, AND (V) GRANTING RELATED RELIEF**

Nevada Copper, Inc. ("*NCF*") and its affiliates that are debtors and debtors in possession (collectively, the "*Debtors*") in the above-captioned chapter 11 cases (the "*Chapter 11 Cases*"), respectfully represent in support of this motion (the "*Motion*") as follows:

<sup>1</sup> The relief requested herein is sought for each of the following Debtors, and joint administration has been requested. The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

**Relief Requested**

1. The Debtors request entry of interim and final orders, substantially in the form attached hereto as **Exhibit 1** (the “*Interim Order*”) and **Exhibit 2** (the “*Final Order*” and together with the Interim Order, the “*Proposed Orders*”), authorizing, but not directing, the Debtors to (i) continue use of their existing Cash Management System, including honoring certain prepetition obligations related thereto, (ii) maintain their existing Bank Accounts (including by authorizing the Banks to continue to maintain, service and administer the Bank Accounts),<sup>2</sup> (iii) continue Intercompany Transactions in the ordinary course of business, (iv) grant administrative expense status to postpetition Intercompany Transactions and Superpriority administrative expense status to claims resulting from Intercompany Transactions transferring proceeds of debtor-in-possession financing to Nevada Copper Corp. (“*NCU*”), (v) continue use of their existing business forms, (vi) granting related relief. In connection with the authorization to maintain their Bank Accounts, the Debtors also hereby seek Court authorization for the Banks to be able to continue to debit the Bank Accounts in the ordinary course of business on account of: (a) all checks, wires or ACH transfers authorized by order of the Court irrespective of whether such payments relate to prepetition services; (b) all checks or other items deposited in one of the Bank Accounts with the Banks prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent that the Debtor was responsible for such items prior to the Petition Date; and (c) all undisputed Bank Fees outstanding as of the date hereof, if any, owed to the Banks as service charges for the maintenance of the Cash Management System.

2. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor and pay all checks presented for payment and to honor all electronic payment requests made by the Debtors related to the prepetition obligations approved for payment by order of this Court, whether such checks or electronic requests were dated prior to

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<sup>2</sup> Notwithstanding anything herein to the contrary, the Debtors reserve their right to close their prepetition Accounts and open new accounts as may be necessary in the Debtors’ business judgment. If the Debtors open or close an account, the Debtors will provide notice thereof to the United States Trustee and any official committee that may be appointed in the Chapter 11 Cases.

1 the Petition Date. The Debtors further request that all such banks and financial institutions be  
2 authorized to rely on the Debtors' designation of any particular check or electronic payment  
3 request as having been authorized by this Court.

#### 4 MEMORANDUM OF POINTS AND AUTHORITIES

##### 5 Jurisdiction and Venue

6 3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and  
7 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant  
8 to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 105(a), 345,  
9 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”)  
10 and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

11 4. Pursuant to Rule 9014.2 of the *Local Rules of Bankruptcy Practice for the United*  
12 *States Bankruptcy Court of the District of Nevada* (the “**Local Rules**”), the Debtors consent to the  
13 Court's entry of a final order in connection with this Motion to the extent that it is later determined  
14 that, absent consent of the parties, the Court cannot enter final orders or judgments consistent with  
15 Article III of the United States Constitution.

##### 16 Background

17 5. On the date hereof (the “**Petition Date**”), each of the Debtors filed voluntary  
18 petitions for relief under chapter 11 of the Bankruptcy Code with the Court and contemporaneously  
19 herewith have requested, pursuant to Bankruptcy Rule 1015(b), joint administration of the Chapter  
20 11 Cases for procedural purposes only. The Debtors continue to operate their businesses and  
21 manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the  
22 Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these  
23 Chapter 11 Cases, and no official committees have been appointed or designated.

24 6. The Debtors are in the business of mining copper, and other minerals, and operating  
25 a processing plant that refines copper ore into copper concentrate. The bulk of the Debtors'  
26 operations are focused on their Pumpkin Hollow project (the “**Project**”), which is located  
27 approximately eight miles southeast of Yerington, Nevada. The Project, which contains  
28



substantial mineral reserves and resources, including not only copper, but gold, silver, and iron magnetite, consists of an underground mine and processing facility, together with an open-pit project that is in the pre-feasibility stage of development. The Debtors, in the period leading up to the commencement of the Chapter 11 Cases, operated under significant liquidity constraints. In an effort to conserve liquidity, the Debtors have suspended mining operations and the operation of their processing plant, as they pursue a sale of substantially all of their assets.

7. Additional facts relating to the Debtors' business and capital structure, and the commencement of these Chapter 11 Cases, are set forth in the *Omnibus Declaration of Gregory J. Martin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**"), which was filed contemporaneously with this Motion and is incorporated herein by reference.<sup>3</sup>

#### **I. Description of Cash Management System and Bank Accounts**

8. The Debtors use and maintain a centralized cash management system, a schematic of which is annexed as **Exhibit 3** hereto (the "**Cash Management System**"), in the ordinary course of business, to collect and transfer funds, as well as to disburse funds to satisfy their financial obligations. The Cash Management System allows the Debtors to manage cash efficiently in a manner that allows the Debtors to maintain control over the administration of their accounts, while helping to facilitate the Debtors' cash monitoring, forecasting and reporting functions.

9. As of the Petition Date, the Debtors' Cash Management System includes a total of 11 accounts identified on **Exhibit 4** annexed hereto (collectively, the "**Bank Accounts**"), of which seven are Bank Accounts of NCI and four are Bank Accounts of NCU, the ultimate parent of all of the Debtors. All of NCI's Bank Accounts are at BMO Harris Bank, N.A. ("**BMO Harris**"). All of NCU's Bank Accounts are in Canada at Bank of Montreal ("**Bank of Montreal**" and, together with BMO Harris, the "**Banks**"). The Bank Accounts include:

- **Proceeds Account.** The "**Proceeds Account**" receives deposits of certain revenues, capital contributions, loan proceeds, and other amounts payable to or

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<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meaning set forth in the First Day Declaration.

received by NCI. Transfers from the Proceeds Account to the NCI Disbursement Account (Operating Account) (as defined below) are made in order for the Debtors, among other things, to be able to pay for operating and construction costs. Transfers from the Proceeds Account to the NCU Concentration Account and Disbursement Accounts (each as defined below) are made in order for the Debtors, among other things, to be able to pay for costs disbursed from NCU.

- **NCU Concentration Account.** The “*NCU Concentration Account*” holds funds for NCU, which NCU disburses directly to vendors from such account or through NCU’s Disbursement Accounts for operating costs.
- **Disbursement Accounts.** The Debtors maintain four accounts for making disbursements (the “*Disbursement Accounts*”), including accounts held by each of NCI and NCU for processing their (i) respective payments on account of U.S. and Canadian payroll and related flexible spending and health savings accounts (the “*Payroll Accounts*”), and (ii) operational costs (the “*Operating Accounts*”).
- **Inactive Accounts.** The Debtors maintain five other accounts that were opened to facilitate certain cash management practices required by their prepetition financing arrangements, but which currently hold no deposits (collectively, the “*Inactive Accounts*”). The Inactive Accounts and their respective purposes are as follows: (i) the “*Restricted Payment Account*” was established to allow NCI to pay dividends and make distributions when certain conditions are met; (ii) the “*Debt Service Account*” was established by NCI to provide for the payment of debt service and certain other obligations; (iii) the “*Approved Open Pit Account*,” was established by NCI to pay for certain surface mining exploration activities funded by capital contributions from NCU to NCI; (iv) the “*Loss Proceeds Account*” was established by NCI to hold deposits of proceeds of, among other things, asset sales and insurance; and (v) the “*Cost Overrun Account*” was established by NCU to hold funds in connection unexpected cost overruns at the Project up to a certain amount.

10. The Debtors incur periodic service charges and other fees in connection with the maintenance of the Cash Management System, including bank fees on three Bank Accounts for which the Banks charge monthly fees (collectively, the “*Bank Fees*”). Bank Fees generally are debited directly against the Bank Accounts that charge fees in the middle weeks of each month. As of the Petition Date, the Debtors estimate that approximately \$5,600 in accrued and unpaid Bank Fees are owed to the Banks.

## II. Intercompany Transactions

11. In the ordinary course of business, the Debtors enter into intercompany transactions with each other through the operation of their Cash Management System in order to manage their

resources in the most efficient manner (collectively, the “*Intercompany Transactions*”). If the Intercompany Transactions were to be discontinued, the Cash Management System would be disrupted to the Debtors’ detriment.

12. NCI relies on NCU for various services that are essential to maintain NCI’s business as a going concern, including general financial functions, contracting and coordinating with external audit and legal service providers. Historically, NCU raised funds through the issuance of equity capital in the Canadian capital markets or through private raises of capital and loans, including loans and equity raised from NCU’s largest shareholder Pala Investments Limited. These funds, less a small holdback that NCU used to fund its expenses such as payroll, taxes, miscellaneous fees, and other operating costs in Canada, typically are transferred in turn to NCI in the form of equity contributions. The Debtors track all Intercompany Transactions in their accounting system and can ascertain, trace, and account for them as needed. The Debtors do not have any non-Debtor affiliates and, therefore, will not have a need to make any Intercompany Transactions with non-Debtors.

### **Basis for Relief**

#### **I. Continuing the Cash Management System is in the Best Interests of the Debtor, its Creditors, and All Parties-in-Interest.**

13. By this Motion, the Debtors seek the Court’s authorization, but not direction, to continue to operate their Cash Management System, consistent with their prepetition practices. Section 363(c)(1) of the Bankruptcy Code authorizes debtors in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without unnecessary oversight by its creditors or the court. *See, e.g., In re Straightline Invs., Inc.*, 525 F.3d 870, 879 (9th Cir. 2008) (“the trustee may enter into transactions . . . in the ordinary course of business, without notice or a hearing”) (quoting from 11 U.S.C. § 363(c)(1)); *Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997) (“Section 363 is designed to strike [a] balance, allowing

1 a business to continue its daily operations without excessive court or creditor oversight and  
2 protecting secured creditors and others from dissipation of the estate's assets.") (quoting *In re H*  
3 *& S Transp. Co.*, 115 B.R. 592, 599 (M.D.Tenn.1990)); *In re Roth Am., Inc.*, 975 F.2d 949, 952  
4 (3d Cir. 1992) ("The framework of section 363 is designed to allow a trustee (or debtor-in-  
5 possession) the flexibility to engage in ordinary transactions without unnecessary creditor and  
6 bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard  
7 when transactions are not ordinary."). Included within the purview of section 363(c) is a debtor's  
8 ability to continue the "routine transactions" integral to a debtor's cash management system. *See*  
9 *Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir.  
10 1996).

11 14. The Cash Management System is an ordinary course and essential business practice  
12 that provides significant benefits to the Debtors, including, among other things, the ability to:  
13 (i) control corporate funds; (ii) ensure the maximum availability of funds when and where  
14 necessary; (iii) reduce administrative expenses by facilitating the movement of funds; and (iv)  
15 develop more timely and accurate account balance information. Maintenance of the existing Cash  
16 Management System, therefore, is in the best interest of the Debtors and their estate. Accordingly,  
17 the Debtors seek authority under section 363(c)(1) to continue the collection, concentration, and  
18 disbursement of cash pursuant to their Cash Management System.

19 **II. The Debtors Should be Permitted to Maintain Their Existing Bank Accounts and**  
20 **Cash Management Systems.**

21 15. Section 345(a) of the Bankruptcy Code governs the Debtors' cash deposits during  
22 a chapter 11 case and authorizes such deposits or investments of money "as will yield the  
23 maximum reasonable net return on such money, taking into account the safety of such deposit or  
24 investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed  
25 by the United States or by a department, agency, or instrumentality of the United States or backed  
26 by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code provides  
27 that the estate must require from the entity with which the money is deposited or invested a bond  
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1 in favor of the United States secured by the undertaking of an adequate corporate surety.<sup>4</sup> To  
2 facilitate compliance with section 345, the *United States Trustee Chapter 11 Operating and*  
3 *Reporting Guidelines for Debtors in Possession* applicable for this region (the “**UST Guidelines**”)  
4 requires a debtor to “immediately close all of its existing bank accounts and open new bank  
5 accounts” that are subject to various conditions including: (i) designation as “debtor in possession  
6 accounts”; (ii) separating accounts for different purposes including taxes, cash collateral and  
7 general funds; and (iii) maintaining such accounts with a financial institution that has entered into  
8 an authorized depository agreement with the Office of the United States Trustee for Region 17 (the  
9 “**United States Trustee**”). UST Guidelines § 3.

10 16. Congress recognized that, although the stringent requirements of section 345 are  
11 “wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be  
12 lost, [they] work to needlessly handcuff larger, more sophisticated debtors.” 140 Cong. Rec. H.  
13 10,767 (Oct. 4, 1994). Accordingly, in Bankruptcy Code amendments passed in 1994, Congress  
14 empowered bankruptcy courts to waive the requirements of section 345 “for cause.” See 11 U.S.C.  
15 § 345(b). In doing so, Congress sought to overrule court decisions that had gutted bankruptcy  
16 courts’ power to permit anything less than fastidious compliance with section 345. See 140 Cong.  
17 Rec. H. 10,767 (Oct. 4, 1994) (noting that Congress was amending section 345 “to allow the courts  
18 to approve investments other than those permitted by section 345(b) for just cause,” and thereby  
19 overruling cases such as *In re Columbia Gas Systems, Inc.*, 33 F.3d 294 (3d Cir. 1994) (holding  
20 that bankruptcy courts lacked the power to waive compliance with section 345 under the pre-1994  
21 version of the Bankruptcy Code)). Since 1994, courts have examined the “totality of the  
22 circumstances” to determine if “cause” exists to excuse compliance with section 345(b), including  
23 factors such as, (i) the sophistication of the debtor’s business; (ii) the size of the debtor’s business;

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24 <sup>4</sup> Alternatively, the debtor may require the entity to deposit governmental securities pursuant to 31 U.S.C. § 9303,  
25 which provides that if a person is required by law to give a surety bond, that person may give an eligible obligation  
26 as security instead of a surety bond. The obligations shall: (1) be given to the official having authority to approve  
27 the surety bond; (2) as determined by the Secretary of Treasury, have a market value that is equal to or greater  
28 than the amount of the required surety bond; and (3) authorize the official receiving the obligation to collect or  
sell the obligation if the person defaults on a required condition. See 31 U.S.C. § 9303.

(iii) the amount of investments involved; (iv) the bank ratings where debtor-in-possession funds are held; (v) the complexity of the case; (vi) the safeguards in place within the debtor's business for ensuring safety of the funds; (vii) the debtor's ability to reorganize in the face of a failure of one or more financial institutions; (viii) the benefit to the debtor; (ix) the harm, if any to the estate and (x) the reasonableness of the request in light of the overall circumstances. *In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). Courts have been clear that the foregoing "list is not exhaustive and any individual factor or combination of factors will not control." *In re King Mountain Tobacco Co., Inc.*, 623 B.R. 323, 332 (Bankr. E.D. Wash. 2020).

17. The United States Trustee has identified certain banks as authorized depository institutions for the District of Nevada (the "***Nevada Authorized Depositories List***").<sup>5</sup> The Bank with NCI's primary deposits, BMO Harris, is on the Nevada Authorized Depositories List as an authorized depository institution.<sup>6</sup> To the extent funds in the Bank Accounts at BMO Harris exceed the amounts insured by the Federal Deposit Insurance Corporation, the Debtors believe that such amounts will be secure, as the Bank is highly rated, secure, and subject to supervision by federal banking regulators. Given BMO Harris's inclusion on the list of authorized depositories for the District of Nevada, the Debtors assert that the Bank Accounts at BMO Harris should be considered compliant with section 345, and the Debtors should be authorized to continue using such Bank Accounts in the ordinary course of business.

18. NCU, as a Canadian entity, needs to make payments of certain expenses in Canada. To facilitate payments in Canada, NCU utilizes four Bank Accounts at Bank of Montreal, BMO Harris's parent, and one of the "Big Five" largest banking institutions in Canada. As a holding company that has minimal operations and operates exclusively in Canada, NCU is not expected to hold significant amounts of cash. Instead, it is anticipated that NCU's Bank Accounts will hold only amounts sufficient to meet its projected expenses at any given time. As a result, it is not

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<sup>5</sup> See United States Trustee – Region 17 Authorized Depositories: District of Nevada (rev. Mar. 28, 2024), <https://www.justice.gov/ust/media/1169941/dl>.

<sup>6</sup> Upon commencement of these cases the Debtors will liaise with their contacts at BMO Harris to request that it provide "Debtor in Possession" bank account treatment to the Bank Accounts at BMO Harris.



1 expected that amounts deposited by NCU will be in excess of the amounts insured by the Canada  
2 Deposit Insurance Corporation (“**CDIC**”). To the extent any amounts do exceed the CDIC cap,  
3 those amounts are expected to be funded into the relevant accounts only at time of payment. As a  
4 result, it is not expected that any amounts in excess of CDIC insurance would remain in NCU’s  
5 Bank Accounts for any extended period of time, but, to the extent that they do, the Debtors believe  
6 that such amounts will be secure, as the Bank is highly rated, secure, and subject to supervision by  
7 Canadian banking regulators. Given the need to maintain Bank Accounts in Canada, the small  
8 amount of funds that NCU is expected to maintain, the fact that Bank of Montreal is one of  
9 Canada’s largest banks, and the difficulty the Debtors would face and costs they would incur in  
10 opening new Bank Accounts in Canada that are more compliant with UST Guidelines and section  
11 345 of the Bankruptcy Code, if even available, the Debtors submit that cause exists to waive the  
12 requirements of section 345 with respect to Bank of Montreal.

13 19. Closing the Bank Accounts only would serve to undermine, not assist, the Debtors’  
14 ability to transition smoothly into chapter 11. The Debtors’ Cash Management System provides a  
15 suite of benefits above and beyond simple banking functions. Notable benefits include vendor  
16 payment processing that is efficient, scalable, and integrated with both enterprise resource  
17 planning (“**ERP**”) systems—enabling the Debtors to manage resources optimally—and vendor  
18 cash management systems, providing additional payment security features. Strict and immediate  
19 compliance would be highly burdensome and would expose the Debtors’ funds to unnecessary  
20 risks were they to have to abandon their current ERP controls and security procedures. Moreover,  
21 closing Bank Accounts at this critical point in the Chapter 11 Cases would disrupt the Debtors’  
22 business by dismantling their Cash Management System and diverting management attention to  
23 rebuilding it rather than stabilizing other elements of the Debtors’ business operations.

24 20. Given these important business and security objectives served by the Bank  
25 Accounts and the relatively modest level of cash deposits relative to other assets being  
26 administered in these cases, cause exists to waive compliance with section 345. As the foregoing  
27 makes clear, the risks of closing the Bank Accounts greatly outweigh the benefits of moving the  
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Bank Accounts to another institution (assuming such a move is even possible). Accordingly, even if certain of the Banks' exclusion from the Nevada Authorized Depositories List means the Bank Accounts do not comply universally with the requirements of section 345, cause exists to modify the requirements of section 345 to enable the Debtors to continue using the Bank Accounts.

**III. The Banks Should Be Authorized to Continue to Maintain, Service and Administer the Bank Accounts.**

21. The Debtors hereby respectfully request that Banks be authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors, as debtors in possession, without interruption and in the ordinary course. The Debtors further request that the Banks be authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires or ACH transfers shall be honored or dishonored consistent with any orders of the Court and governing law, whether such checks, drafts, wires or ACH transfers are dated prior, or subsequent, to the Petition Date.

22. Although the Debtors are seeking authority to have the Banks follow the Debtors' determination of which checks should be authorized and which should be dishonored, the Debtors recognize that it may not be possible for the Banks to verify or independently audit whether a particular item may be paid in accordance with the Court's orders or otherwise. Accordingly, in the Proposed Orders, the Debtors are asking that it be clear that if any Bank honors a prepetition check or other item drawn on any Bank Account based upon a good faith belief that the Court has authorized such prepetition check, the Bank should not be liable to the Debtors or to their estates on account of the honoring such a check or other item after the Petition Date.

23. In the ordinary course of business, the Banks charge Bank Fees, and the Debtors pay, honor or allow as a deduction from the appropriate account such fees. If the Debtors were to cease paying Bank Fees, it is possible that the Banks might assert rights of setoff against the funds in the Bank Accounts, freeze the Bank Accounts, or refuse to provide banking services to the Debtors. Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek authority to pay Bank Fees in the ordinary course of business, including any Bank Fees that



1 arose prior to the Petition Date. In connection therewith, the Debtors also respectfully request that  
2 the Banks be given the authority, in the ordinary course, to (i) continue to charge the Debtors the  
3 Bank Fees and (ii) charge back returned items, whether such items are dated prior to, on, or  
4 subsequent to the Petition Date.

5 **IV. The Debtors Should be Granted Authority to Continue Intercompany Transactions**  
6 **and Grant Superpriority or Administrative Expense Status to Resulting**  
7 **Intercompany Claims.**

8 24. The Debtors enter into Intercompany Transactions that function in connection with  
9 the operation of the Cash Management System and are essential components of their business  
10 practices. The Debtors believe that the Intercompany Transactions are entered into in the ordinary  
11 course of business within the meaning of section 363(c)(1) of the Bankruptcy Code and that Court  
12 approval arguably is not required for the Debtors to continue to enter into Intercompany  
13 Transactions following the Petition Date. It is critical that the Debtors be able to continue to enter  
14 into Intercompany Transactions in order to allow for disbursements pursuant to their existing Cash  
15 Management System to continue in an efficient and effective manner, which would help to  
16 minimize disruptions during these Chapter 11 Cases. Accordingly, out an abundance of caution,  
17 the Debtors request express permission from the Court to continue to engage in Intercompany  
18 Transactions during the pendency of the Chapter 11 Cases in consultation with the lenders (the  
19 “**DIP Lenders**”) under the Debtors’ debtor-in-possession financing facility (the “**DIP Facility**”),  
20 as set forth in the *Debtors’ Motion for Entry of Interim and Final Orders (i) Authorizing the*  
21 *Debtors to (a) Obtain Postpetition Financing, (b) Grant Liens, Including Senior Secured Priming*  
22 *Liens, and Superpriority Administrative Expense Claims, and (c) Utilize Cash Collateral; (ii)*  
23 *Granting Adequate Protection to Certain Prepetition Secured Parties; (iii) Modifying the*  
24 *Automatic Stay; (iv) Scheduling Final Hearing; and (v) Granting Related Relief* (the “**DIP**  
25 **Motion**”) filed contemporaneously herewith (and all orders of the Court approving such  
26 postpetition debtor in possession financing facility or the Debtors’ continued use of cash collateral  
27 a “**Financing Order**”).  
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25. The Debtors request that this Court order that all valid postpetition payments on account of a postpetition Intercompany Transaction shall, in each case, be accorded administrative expense status, subject and junior to the claims, including adequate protection claims, granted in connection with a Financing Order; *provided* that claims arising from or related to Intercompany Transactions in which proceeds from the DIP Facility or Cash Collateral (each as defined in the Financing Orders), as applicable, are transferred from any Debtor entity (or entities) to Debtor NCU shall be accorded superpriority administrative expenses priority and shall have priority over any and all administrative expenses and claims of any kind or nature whatsoever, including, without limitation, all Adequate Protection Claims (as defined in the Financing Orders) granted under the Financing Orders and any administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, subject only to the Carve-Out and the Administrative Charge (each as defined in the applicable Financing Orders).

**V. An Extension of the Time to Comply with UST Guidelines Regarding the Debtors' Check Stock and Business Forms is Warranted.**

26. The UST Guidelines mandate that the Debtors update their check stock so as to designate that the checks are issued by a debtor-in-possession, include the bankruptcy case number and the type of account. UST Guidelines ¶ 3(d). The delays that would result from complying with such a requirement which may include revising existing forms and cash management templates would be disruptive and divert attention from management of the Debtors' business. To minimize expenses and disruption, the Debtors request that they be authorized to continue using their existing forms, including any check stock, substantially in the form existing immediately before the Petition Date, without reference to their status as debtors in possession, and without adding the other related information required by the UST Guidelines, provided that the Debtors will adapt their electronic business forms to identify their status as debtors in possession within fifteen business days of the entry of the Interim Order.

**Reservation of Rights**

27. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an admission that any particular claim is of a type specified or defined hereunder; (v) a request to assume any executory contract or unexpired lease; or (vi) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law. The authorization to pay Bank Fees should not affect the Debtors' rights to contest the amount or validity of such obligations.

**Satisfaction of Bankruptcy Rule 6003(b)**

28. The relief requested herein is immediately necessary for the Debtors to continue to operate in a manner that maximizes estate value. Failure to provide such relief would severely restrict the Debtors' access to cash, disrupting operations and impairing the Debtors' reorganization. Accordingly, to the extent that Bankruptcy Rule 6003 is applicable to the relief requested, the Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm.<sup>7</sup>

**Request for Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

29. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described in detail above, any delay in granting the requested relief would lead to immediate harm to the Debtors' business by disrupting the Debtors' cash management operations, which would lead to operational interruptions and could prevent the Debtors from obtaining the goods and services necessary to preserve and operate their business. In addition, addressing such a disruption would distract the Debtors' management and professionals as they seek to rebuild the cash management system at a

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<sup>7</sup> Bankruptcy Rule 6003 provides that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate . . . ." Fed. R. Bankr. P. 6003.

critical juncture of these Chapter 11 Cases, further impairing the Debtors' ability to fund operations and pay expenses when they come due. The impacts of such disruptions, therefore, would be severe and could materially impact the Debtors' going concern value. In light of the foregoing, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders.

30. To implement the relief requested in this Motion immediately, the Debtors also respectfully request a waiver of the 21-day advance notice requirements of Bankruptcy Rule 2002(a)(2) as made applicable in Bankruptcy Rule 6004(a), for cause shown, to the extent applicable to the Interim Order.

#### **Notice**

31. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for Region 17; (ii) the 20 largest unsecured creditors of each of the Debtors; (iii) the Internal Revenue Service; (iv) the Office of the United States Attorney for the District of Nevada; (v) counsel to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James Patrick Shea and Bart Larsen; (vi) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow; (vii) Bennett Jones LLP, as counsel to Mercuria Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada, Attn: Simon Grant; (viii) White & Case LLP, as counsel to Concord Resources Limited as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York, NY 10020, Attn: Philip Abelson; (ix) Davis, Graham & Stubbs LLP, as counsel to Triple Flag Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (x) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty

1 Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (xi) Kelley Drye & Warren, LLP, as  
2 counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007,  
3 Attn: James S. Carr, Esq.; (xii) the Banks; and (xiii) any party that is required to receive or has  
4 requested notice pursuant to Bankruptcy Rule 2002 or Local Rule 2002. The Debtors respectfully  
5 submit that, in light of the nature of the relief requested, no other or further notice need be given.

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1 WHEREFORE, the Debtors respectfully request that the Court grant the relief requested  
2 herein and such other and further relief as is just and proper.

3 Dated this 10th day of June, 2024.

4 McDONALD CARANO LLP

5 /s/ Ryan J. Works

Ryan J. Works (NSBN 9224)

6 Amanda M. Perach (NSBN 12399)

2300 West Sahara Avenue, Suite 1200

7 Las Vegas, Nevada 89102

8 ALLEN OVERY SHEARMAN STERLING US LLP

Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)

9 Sara Coelho (NYSBN 4530267) (*pro hac* pending)

599 Lexington Avenue

10 New York, New York 10022

11 *Proposed Counsel to the Debtors and*  
12 *Debtors in Possession*

**EXHIBIT 1**

**Interim Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50567  
Chapter 11

**Hearing Date:**  
**Hearing Time:**

**INTERIM ORDER AUTHORIZING THE DEBTORS TO CONTINUE TO  
(I) USE THEIR EXISTING CASH MANAGEMENT SYSTEM, (II) USE AND  
MAINTAIN EXISTING BANK ACCOUNTS, (III) CONTINUE INTERCOMPANY  
TRANSACTIONS AND (IV) USE THEIR EXISTING BUSINESS FORMS**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”), pursuant to sections 105(a), 345(b), and 363 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004, authorizing the Debtors to (i) continue use of their existing Cash Management System, including honoring certain prepetition obligations related thereto, (ii) maintain their existing Bank Accounts (including by authorizing the Banks to continue to maintain, service and administer the Bank Accounts), (iii) continue Intercompany Transactions in the ordinary course of business, (iv) grant administrative expense status to postpetition Intercompany Transactions and Superpriority administrative expense status to claims resulting from Intercompany Transactions transferring proceeds of debtor-in-possession financing to NCU,

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.



(v) continue use of their existing business forms, (vi) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and, under the circumstances, proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Cash Management System. The Debtors are authorized, but not directed, to continue to use the Cash Management System, including any intercompany transfers among Bank Accounts, in accordance with the ordinary course and historical practices of the Cash Management System and subject to compliance with the Approved Budget (as defined in the DIP Motion); *provided*, that the Debtors shall maintain detailed records reflecting all transfers of funds, so that all such transactions, including prepetition and postpetition transactions, readily may be ascertained, traced and recorded properly on applicable accounts.
3. The Debtors are further authorized to honor and pay all obligations related to the Cash Management System, including all undisputed prepetition Bank Fees as described in the Motion.
4. Proceeds of the DIP Facility constitute postpetition assets of the Debtors, subject only to the Carve Out, Administrative Charge, DIP Lenders' first priority Liens, and adequate protection liens of the Prepetition Secured Parties (each as defined in the applicable Financing

1 Orders), with the priorities set forth in the Financing Orders, and shall, for the avoidance of doubt,  
2 not be subject to any liens arising from prepetition claims against any of the Debtors, whether  
3 perfected prior to the Petition Date, after the Petition Date pursuant to section 546(b) of the  
4 Bankruptcy Code, or otherwise, regardless of where or how held. The Debtors may deposit  
5 proceeds of the DIP Facility into their existing Bank Accounts, and such proceeds shall not be  
6 subject to any liens or claims arising pre-petition, including pursuant to chapter 108 of the Nevada  
7 Revised Statutes, whether or not eligible for perfection after the Petition Date, except for junior  
8 liens or claims of the Prepetition Secured Parties, as set forth in the Financing Orders. For the  
9 avoidance of doubt, to the extent of any proceeds of the DIP Facility deposited therein, no Bank  
10 Account of the Debtors may be a “construction disbursement account” for the purposes of chapter  
11 108 of the Nevada Revised Statutes.

12 5. Maintenance of Bank Accounts. Subject to the limitations of this Interim Order  
13 and pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized and empowered  
14 to: (i) designate, maintain and continue to use any and all of the bank accounts in existence as of  
15 the Petition Date, including, without limitation, the accounts identified in Exhibit 4 to the Motion  
16 (the “**Bank Accounts**”); *provided, however*, that the Debtors shall direct the financial institutions  
17 where the Bank Accounts are maintained (collectively, the “**Banks**”) to code the Bank Accounts  
18 internally as debtor-in-possession accounts; (ii) subject to the consent of the DIP Lenders, open  
19 new accounts wherever they are needed; *provided, however*, that the Debtors shall give the United  
20 States Trustee, and any statutory committee that may be appointed in these Chapter 11 Cases, five  
21 days’ advance notice (or such shorter notice as the United States Trustee and any committee may  
22 agree to) of each such newly opened account, and any new account shall be opened at one of the  
23 Banks or at a bank that has executed, or is willing to execute, a Uniform Depositary Agreement  
24 with the United States Trustee; (iii) treat the Bank Accounts for all purposes as accounts of the  
25 Debtors in their capacity as debtors in possession; and (iv) close any Bank Account, *provided*,  
26 *however*, that the Debtors shall give the United States Trustee, the applicable Bank, the DIP  
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1 Lenders, and any statutory committee that may be appointed in these Chapter 11 Cases five days'  
2 written notice following any such account closure.

3 6. For all purposes in this Order, any and all accounts opened by the Debtors on or  
4 after the Petition Date shall be deemed a Bank Account (as if it had been opened prior to the  
5 Petition Date and listed on **Exhibit 4** to the Motion) and any and all Banks at which such accounts  
6 are opened shall similarly be subject to the rights and obligations of this Order.

7 7. The Banks are authorized to continue to treat, service, and administer the Bank  
8 Accounts as accounts of the respective Debtor as a debtor-in-possession without interruption and  
9 in the usual and ordinary course, and to receive, process and honor and pay, to the extent of  
10 available funds, any and all postpetition checks, drafts, wires, or ACH transfers drawn on the Bank  
11 Accounts by the holders or makers thereof, as the case may be.

12 8. The Banks are authorized to debit the Debtors' accounts in the ordinary course of  
13 business without the need for further order of this Court for: (i) all checks drawn on the Debtors'  
14 accounts which are cashed at such Bank or exchanged for cashier's checks by the payees thereof  
15 prior to the Petition Date; (ii) all checks or other items deposited in one of the Debtors' accounts  
16 with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any  
17 reason, together with any fees and costs in connection therewith, to the same extent the Debtor  
18 was responsible for such items prior to the Petition Date; and (iii) all undisputed prepetition  
19 amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the  
20 maintenance of the Cash Management System.

21 9. A Bank may rely on the representations of the Debtors with respect to whether any  
22 check, item or other payment order drawn or issued by the Debtors prior to the Petition Date should  
23 be honored pursuant to this or any other order of this Court. The Banks have no duty to make an  
24 independent inquiry as to whether such payments are authorized by an order of this Court.

25 10. The Banks shall not be liable to any party on account of (i) following the Debtors'  
26 instructions or representations as to any order of this Court, or (ii) honoring any prepetition check  
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1 or item in a good faith belief that the Court has authorized such prepetition check or item to be  
2 honored.

3 11. Use of Business Forms. The Debtors are authorized, but not directed, to continue  
4 to use their Business Forms existing immediately prior to the Petition Date without alteration or  
5 change and without the designation “Debtor in Possession” or a Debtor in Possession case number  
6 imprinted upon them and are granted a waiver of the requirement that the legend “DIP” or “Debtor  
7 in Possession” be printed on their checks; *provided, however*, that the Debtors shall imprint the  
8 legend “DIP” or “Debtor in Possession” on their electronic Business Forms and shall note “DIP”  
9 or “Debtor in Possession” on electronically printed checks within 15 days of entry of this Interim  
10 Order.

11 12. Intercompany Transactions. Subject to the limitations of this Interim Order, the  
12 Debtors are authorized to continue performing intercompany transactions arising from or related  
13 to the operation of their business in the ordinary course (the “*Intercompany Transactions*”). In  
14 connection with the Intercompany Transactions, the Debtors shall continue to maintain current  
15 records with respect to all transfers such that all Intercompany Transactions readily may be  
16 ascertained, traced, and properly recorded.

17 13. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all valid  
18 postpetition payments on account of a postpetition Intercompany Transaction shall, in each case,  
19 be accorded administrative expense status, subject and junior to the claims, including adequate  
20 protection claims, granted in connection with a Financing Order; *provided* that claims arising from  
21 or related to Intercompany Transactions in which proceeds from the DIP Facility or Cash  
22 Collateral (each as defined in the Financing Orders), as applicable, are transferred from any Debtor  
23 entity (or entities) to Debtor NCU shall be accorded superpriority administrative expenses priority  
24 and shall have priority over any and all administrative expenses and claims of any kind or nature  
25 whatsoever, including, without limitation, all Adequate Protection Claims (as defined in the  
26 Financing Orders) granted under the Financing Orders and any administrative expenses of the  
27 kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364,  
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1 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113, and 1114 of the Bankruptcy Code, and any  
2 other provision of the Bankruptcy Code, subject only to the Carve-Out and the Administrative  
3 Charge (each as defined in the applicable Financing Orders).

4 14. All proceeds of the DIP Facility (as defined in the DIP Motion) and all cash  
5 collateral of the DIP Lenders (other than amounts on deposit in accounts owned by NCU prior to  
6 any funding of the DIP Facility) shall be held at NCI and shall not be transferred or lent to any  
7 other Debtor absent the prior written consent of the DIP Lenders, except for amounts disbursed to  
8 NCU pursuant to the Approved Budget or otherwise agreed to by the DIP Lenders.

9 15. Notwithstanding anything to the contrary in this Interim Order, any payment made  
10 or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any)  
11 imposed on the Debtors under any applicable Financing Order, including any documentation with  
12 respect to such financing and any budget in connection with such Financing Order. In the event  
13 of any conflict between the terms of this Interim Order and any Financing Order, the terms of the  
14 applicable Financing Order shall control (solely to the extent of such conflict). Nothing in this  
15 Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the  
16 date of the Final Hearing (as defined below).

17 16. The final hearing (the “***Final Hearing***”) on the Motion shall be held on \_\_\_\_\_,  
18 2024, at \_\_:\_\_\_.m. (Prevailing Pacific Time). Any party in interest objecting to the relief sought  
19 at the Final Hearing or in the Final Order shall file and serve a written objection, which objection  
20 shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy Shearman Sterling US  
21 LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick and Sara Coelho; (b)  
22 McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102, Attn:  
23 Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower  
24 Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel, Hanna Singer and  
25 Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C. Clifton Young  
26 Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel to the DIP  
27 Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036,  
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Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada, Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York, NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007, Attn: James S. Carr, Esq.; (x) the Banks; and (xi) counsel to any statutory committee appointed in these Chapter 11 Cases, in each case so as to be received no later than \_\_\_\_\_, 2024, at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

18. Notice of the Motion, as provided therein, is deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

19. Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Interim Order shall be immediately effective and enforceable upon its entry.

20. All time periods set forth in this Interim Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

1           21.     Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
2 contrary, the Debtors are not subject to any stay in the implementation, enforcement or realization  
3 of the relief granted in this Interim Order, and the Debtors may take, in their discretion and without  
4 further delay, any action and perform any act necessary to implement the relief granted in this  
5 Interim Order.

6           22.     This Court shall retain jurisdiction over any and all matters arising from or related  
7 to the interpretation or implementation of this Interim Order.

8           **IT IS SO ORDERED.**

1 In accordance with LR 9021, counsel submitting this **INTERIM ORDER**  
2 **AUTHORIZING THE DEBTORS TO CONTINUE TO (I) USE THEIR EXISTING CASH**  
3 **MANAGEMENT SYSTEM, (II) USE AND MAINTAIN EXISTING BANK ACCOUNTS,**  
4 **(III) CONTINUE INTERCOMPANY TRANSACTIONS AND (IV) USE THEIR EXISTING**  
5 **BUSINESS FORMS** certifies that the order accurately reflects the court's ruling and that (check  
6 one):

7 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

8 ☐ No party appeared at the hearing or filed an objection to the motion.

9 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the  
10 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
11 disapproved the order, or failed to respond, as indicated below [list each party and whether the  
party has approved, disapproved, or failed to respond to the document].

12 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
13 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
content of the order.

14 Prepared and submitted by:

15 McDONALD CARANO LLP

16 \_\_\_\_\_  
17 Ryan J. Works (NSBN 9224)  
18 Amanda M. Perach (NSBN 12399)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

19 ALLEN OVERY SHEARMAN STERLING US LLP  
20 Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)  
21 Sara Coelho (NYSBN 4530267) (*pro hac* pending)  
599 Lexington Avenue  
New York, New York 10022

22 *Proposed Counsel to the Debtors and Debtors in Possession*  
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**EXHIBIT 2**

**Final Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>  
Debtor.

*Joint Administration Requested*

Case No. 24-50566  
Chapter 11

**Hearing Date:**  
**Hearing Time:**

**FINAL ORDER AUTHORIZING THE DEBTORS TO CONTINUE TO  
(I) USE THEIR EXISTING CASH MANAGEMENT SYSTEM, (II) USE AND  
MAINTAIN EXISTING BANK ACCOUNTS, (III) CONTINUE INTERCOMPANY  
TRANSACTIONS AND (IV) USE THEIR EXISTING BUSINESS FORMS**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order (this “*Final Order*”), pursuant to sections 105(a), 345(b), and 363 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004 authorizing the Debtors to (i) continue use of their existing Cash Management System, including honoring certain prepetition obligations related thereto, (ii) maintain their existing Bank Accounts (including by authorizing the Banks to continue to maintain, service and administer the Bank Accounts), (iii) continue Intercompany Transactions in the ordinary course of business, (iv) grant administrative expense status to postpetition Intercompany Transactions and Superpriority administrative expense status to claims resulting from Intercompany Transactions transferring proceeds of debtor-in-possession financing to NCU, (v) continue use of their existing business forms, (vi) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a  
2 final order consistent with Article III of the United States Constitution; and proper and adequate  
3 notice of the Motion and the hearing thereon having been given; and it appearing that no other or  
4 further notice is necessary; and this Court having reviewed the Motion and having heard the  
5 statements in support of the relief requested therein at a hearing before this Court; and it appearing  
6 that the legal and factual bases set forth in the Motion establish just cause for the relief granted  
7 herein; and this Court having determined that the relief sought in the Motion is in the best interests  
8 of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation  
9 and sufficient cause appearing therefor;

10 IT IS HEREBY ORDERED THAT:

11 1. The Motion is GRANTED as set forth herein.

12 2. Cash Management System. The Debtors are authorized, but not directed, to  
13 continue to use the Cash Management System, including any intercompany transfers among Bank  
14 Accounts, in accordance with the ordinary course and historical practices of the Cash Management  
15 System and subject to compliance with the Approved Budget (as defined in the DIP Motion);  
16 *provided*, that the Debtors shall maintain detailed records reflecting all transfers of funds, so that  
17 all such transactions, including prepetition and postpetition transactions, readily may be  
18 ascertained, traced and recorded properly on applicable accounts.

19 3. The Debtors are further authorized to honor and pay all obligations related to the  
20 Cash Management System, including all undisputed prepetition Bank Fees as described in the  
21 Motion.

22 4. Proceeds of the DIP Facility constitute postpetition assets of the Debtors, subject  
23 only to the Carve Out, Administrative Charge, DIP Lenders' first priority Liens, and adequate  
24 protection liens of the Prepetition Secured Parties (each as defined in the applicable Financing  
25 Orders), with the priorities set forth in the Financing Orders, and shall, for the avoidance of doubt,  
26 not be subject to any liens arising from prepetition claims against any of the Debtors, whether  
27 perfected prior to the Petition Date, after the Petition Date pursuant to section 546(b) of the  
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1 Bankruptcy Code, or otherwise, regardless of where or how held. The Debtors may deposit  
2 proceeds of the DIP Facility into their existing Bank Accounts, and such proceeds shall not be  
3 subject to any liens or claims arising pre-petition, including pursuant to chapter 108 of the Nevada  
4 Revised Statutes, whether or not eligible for perfection after the Petition Date, except for junior  
5 liens or claims of the Prepetition Secured Parties, as set forth in the Financing Orders. For the  
6 avoidance of doubt, to the extent of any proceeds of the DIP Facility deposited therein, no Bank  
7 Account of the Debtors may be a “construction disbursement account” for the purposes of chapter  
8 108 of the Nevada Revised Statutes.

9       5.     Maintenance of Bank Accounts. Subject to the limitations of this Final Order and  
10 pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized and empowered to:  
11 (i) designate, maintain and continue to use any and all of the bank accounts in existence as of the  
12 Petition Date, including, without limitation, the accounts identified in **Exhibit 4** to the Motion (the  
13 “**Bank Accounts**”); *provided, however*, that the Debtors shall direct the financial institutions where  
14 the Bank Accounts are maintained (collectively, the “**Banks**”) to code the Bank Accounts  
15 internally as debtor-in-possession accounts; (ii) subject to the consent of the DIP Lenders, open  
16 new accounts wherever they are needed; *provided, however*, that the Debtors shall give the United  
17 States Trustee, and any statutory committee that may be appointed in these Chapter 11 Cases, five  
18 days’ advance notice (or such shorter notice as the United States Trustee and any committee may  
19 agree to) of each such newly opened account, and any new account shall be opened at one of the  
20 Banks or a bank that has executed, or is willing to execute, a Uniform Depositary Agreement with  
21 the United States Trustee; (iii) treat the Bank Accounts for all purposes as accounts of the Debtors  
22 in their capacity as debtors in possession; and (iv) close any Bank Account; *provided, however*,  
23 that the Debtors shall give the United States Trustee, the applicable Bank, the DIP Lenders, and  
24 any statutory committee that may be appointed in these Chapter 11 Cases five days’ written notice  
25 following any such account closure.

26       6.     For all purposes in this Order, any and all accounts opened by the Debtors on or  
27 after the Petition Date shall be deemed a Bank Account (as if it had been opened prior to the  
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Petition Date and listed on Exhibit 4 to the Motion) and any and all Banks at which such accounts are opened shall similarly be subject to the rights and obligations of this Order.

7. The Banks are authorized to continue to treat, service, and administer the Bank Accounts as accounts of the respective Debtor as a debtor-in-possession without interruption and in the usual and ordinary course, and to receive, process and honor and pay, to the extent of available funds, any and all postpetition checks, drafts, wires, or ACH transfers drawn on the Bank Accounts by the holders or makers thereof, as the case may be.

8. The Banks are authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for: (i) all checks drawn on the Debtors' accounts which are cashed at such Bank or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or other items deposited in one of the Debtors' accounts with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date; and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

9. A Bank may rely on the representations of the Debtors with respect to whether any check, item or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court. The Banks have no duty to make an independent inquiry as to whether such payments are authorized by an order of this Court.

10. The Banks shall not be liable to any party on account of (i) following the Debtors' instructions or representations as to any order of this Court, or (ii) honoring any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored.

11. Use of Business Forms. The Debtors are authorized, but not directed, to continue to use their Business Forms existing immediately prior to the Petition Date without alteration or change and without the designation "Debtor in Possession" or a Debtor in Possession

case number imprinted upon them and are granted a waiver of the requirement that the legend “DIP” or “Debtor in Possession” be printed on their checks; *provided, however*, that the Debtors shall imprint the legend “DIP” or “Debtor in Possession” on their electronic Business Forms and shall note “DIP” or “Debtor in Possession” on electronically printed checks within 15 days of entry of the Interim Order.

12. Intercompany Transactions. Subject to the limitations of this Final Order, the Debtors are authorized to continue performing intercompany transactions arising from or related to the operation of their business in the ordinary course (the “***Intercompany Transactions***”). In connection with the Intercompany Transactions, the Debtors shall continue to maintain current records with respect to all transfers such that all Intercompany Transactions readily may be ascertained, traced and properly recorded.

13. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all valid postpetition payments on account of a postpetition Intercompany Transaction shall, in each case, be accorded administrative expense status, subject and junior to the claims, including adequate protection claims, granted in connection with a Financing Order; *provided* that claims arising from or related to Intercompany Transactions in which proceeds from the DIP Facility or Cash Collateral (each as defined in the Financing Orders), as applicable, are transferred from any Debtor entity (or entities) to Debtor NCU shall be accorded superpriority administrative expenses priority and shall have priority over any and all administrative expenses and claims of any kind or nature whatsoever, including, without limitation, all Adequate Protection Claims (as defined in the Financing Orders) granted under the Financing Orders and any administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, subject only to the Carve-Out and the Administrative Charge (each as defined in the applicable Financing Orders).

14. All proceeds of the DIP Facility (as defined in the DIP Motion) and all cash collateral of the DIP Lenders (other than amounts on deposit in accounts owned by NCU prior to

1 any funding of the DIP Facility) shall be held at NCI and shall not be transferred or lent to any  
2 other Debtor absent the prior written consent of the DIP Lenders, except for amounts disbursed to  
3 NCU pursuant to the Approved Budget or otherwise agreed to by the DIP Lenders.

4 15. Notwithstanding anything to the contrary in this Final Order, any payment made or  
5 to be made hereunder, and any authorization herein, shall be subject to the requirements (if any)  
6 imposed on the Debtors under any applicable Financing Order, including any documentation with  
7 respect to such financing and any budget in connection with such Financing Order. In the event  
8 of any conflict between the terms of this Interim Order and any Financing Order, the terms of the  
9 applicable Financing Order shall control (solely to the extent of such conflict).

10 16. Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Final  
11 Order shall be immediately effective and enforceable upon its entry.

12 17. All time periods set forth in this Final Order shall be calculated in accordance with  
13 Bankruptcy Rule 9006(a).

14 18. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
15 contrary, the Debtors are not subject to any stay in the implementation, enforcement or realization  
16 of the relief granted in this Final Order, and the Debtors may take, in their discretion and without  
17 further delay, any action and perform any act necessary to implement the relief granted in this  
18 Final Order.

19 19. This Court shall retain jurisdiction over any and all matters arising from or related  
20 to the interpretation or implementation of this Final Order.

21 **IT IS SO ORDERED.**  
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1 In accordance with LR 9021, counsel submitting this **FINAL ORDER AUTHORIZING**  
2 **THE DEBTORS TO CONTINUE TO (I) USE THEIR EXISTING CASH MANAGEMENT**  
3 **SYSTEM, (II) USE AND MAINTAIN EXISTING BANK ACCOUNTS, (III) CONTINUE**  
4 **INTERCOMPANY TRANSACTIONS AND (IV) USE THEIR EXISTING BUSINESS**  
5 **FORMS** certifies that the order accurately reflects the court's ruling and that (check one):

6 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

7 ☐ No party appeared at the hearing or filed an objection to the motion.

8 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the  
9 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
disapproved the order, or failed to respond, as indicated below [list each party and whether the  
party has approved, disapproved, or failed to respond to the document].

10 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
11 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
content of the order.

12 Prepared and submitted by:

13 McDONALD CARANO LLP

14  
15 \_\_\_\_\_  
16 Ryan J. Works (NSBN 9224)  
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2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

17 ALLEN OVERY SHEARMAN STERLING US LLP  
18 Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)  
19 Sara Coelho (NYSBN 4530267) (*pro hac* pending)  
599 Lexington Avenue  
New York, New York 10022

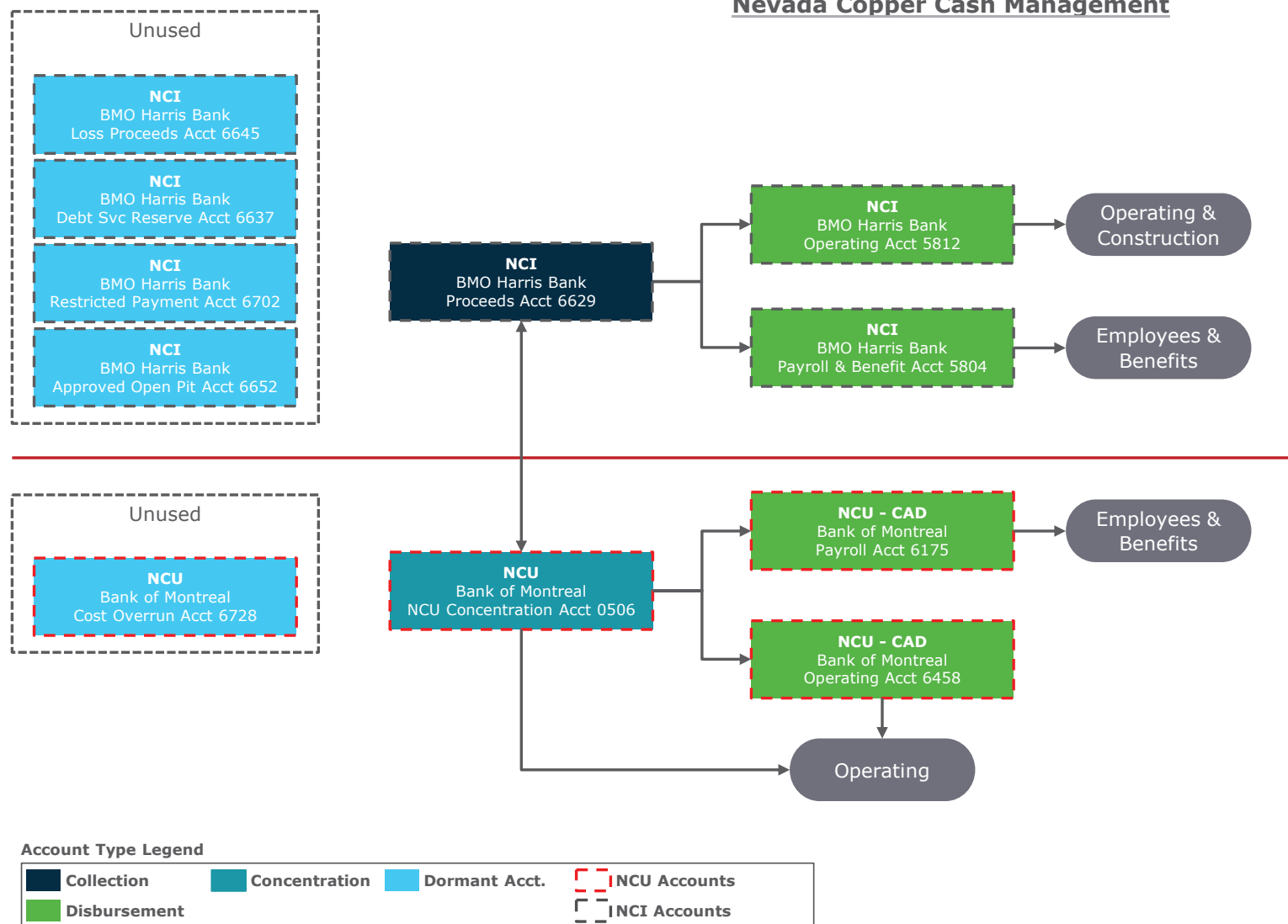
20 *Proposed Counsel to the Debtors and Debtors in Possession*  
21  
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**EXHIBIT 3**

**Cash Management System Schematic**

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**Nevada Copper Cash Management**

**EXHIBIT 4**

**List of Bank Accounts**

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**NCI Bank Accounts**

<b>Bank</b>	<b>Account Type</b>	<b>Last 4 Digits of Account Number</b>	<b>Description</b>	<b>Bank Address</b>
BMO Harris Bank, N.A.	DDA – payroll and FSA/HSA	5804	Disbursement Account (Payroll Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – operations; vendor payments	5812	Disbursement Account (Operating Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – proceeds; fundings/payments per customers	6629	Proceeds Account	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – debt service reserve account	6637	Inactive Account (Debt Service Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – loss proceeds account	6645	Inactive Account (Loss Proceeds Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – approved open pit account	6652	Inactive Account (Approved Open Pit Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – restricted payment account	6702	Inactive Account (Restricted Payment Account)	11 W. Monroe St., Chicago, IL 60603

**NCU Bank Accounts**

Bank	Bank Account Type	Last 4 Digits of Account Number	Description	Bank Address
Bank of Montreal	DDA – payroll	6175	Disbursement Account (Payroll Account)	595 Burrard Street, Concourse Level Vancouver, BC V7X 1L7
Bank of Montreal	DDA – Canada checking	6458	Disbursement Account (Operating Account)	595 Burrard Street, Concourse Level Vancouver, BC V7X 1L7
Bank of Montreal	DDA – US checking (loan proceeds account)	0506	NCU Concentration Account	595 Burrard Street, Concourse Level Vancouver, BC V7X 1L7
Bank of Montreal	DDA – payroll	6728	Inactive Account (Cost Overrun Reserve Account)	595 Burrard Street, Concourse Level Vancouver, BC V7X 1L7

This is **Exhibit “N”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**  
LSO #: 81994W

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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
 Chapter 11

**Hearing Date: *OST REQUESTED***  
**Hearing Time: *OST REQUESTED***

**DEBTORS' MOTION FOR ENTRY  
 OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO  
 (A) CONTINUE THEIR PREPETITION INSURANCE POLICIES, (B) CONTINUE  
 THEIR PREPETITION SURETY BOND PROGRAM, AND (C) ENTER INTO NEW  
 PREMIUM FINANCING AGREEMENTS AND (II) GRANTING RELATED RELIEF**

Nevada Copper, Inc., and its affiliates that are debtors and debtors in possession (collectively, the “*Debtors*”) in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”), respectfully represent in support of this motion (the “*Motion*”) as follows:

<sup>1</sup> The relief requested herein is sought for each of the following Debtors, and joint administration has been requested. The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

### **Relief Requested**

1. The Debtors request entry of an order in the form attached hereto as **Exhibit 1** (the “***Interim Order***”) and **Exhibit 2** (the “***Final Order***” and together with the Interim Order, the “***Proposed Orders***”), (i) authorizing, but not directing, the Debtors to (a) continue their existing insurance policies and satisfy payment obligations related thereto, (b) continue and renew their surety bond program on an uninterrupted basis and, (c) revise, extend, renew, supplement, replace or enter into new premium financing agreements as needed, and (ii) granting related relief.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **Jurisdiction and Venue**

2. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 105(a), 363, and 364(c) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “***Bankruptcy Code***”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “***Bankruptcy Rules***”).

3. Pursuant to Rule 9014.2 of the *Local Rules of Bankruptcy Practice for the United States Bankruptcy Court of the District of Nevada* (the “***Local Rules***”), the Debtors consent to the Court’s entry of a final order in connection with this Motion to the extent that it is later determined that, absent consent of the parties, the Court cannot enter final orders or judgments consistent with Article III of the United States Constitution.

#### **Background**

4. On the date hereof (the “***Petition Date***”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court and contemporaneously herewith have requested joint administration of the Chapter 11 Cases for procedural purposes only, pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the



1 Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these  
2 Chapter 11 Cases, and no official committees have been appointed or designated.

3 5. The Debtors have been in the business of mining copper, and other minerals, and  
4 operating a processing plant that refines copper ore into copper concentrate, with the bulk of the  
5 Debtors' operations focused on their Pumpkin Hollow project (the "**Project**"), which is located  
6 outside of Yerington, Nevada. The Project, which contains substantial mineral reserves and  
7 resources, including not only copper, but gold, silver, and iron magnetite, consists of an  
8 underground mine and processing facility, together with an open-pit project that is in the pre-  
9 feasibility stage of development. The Debtors, in the period leading up to the commencement of  
10 the Chapter 11 Cases operated under significant liquidity constraints. In an effort to conserve  
11 liquidity, the Debtors have suspended mining operations and the operation of their processing  
12 plant, as they pursue a sale of substantially all of their assets.

13 6. Additional facts relating to the Debtors' business and capital structure, and the  
14 commencement of these Chapter 11 Cases, are set forth in the *Omnibus Declaration of Gregory J.*  
15 *Martin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**First Day**  
16 **Declaration**"), which was filed contemporaneously with this Motion and is incorporated herein by  
17 reference.

#### 18 **The Debtors' Insurance Program & Surety Bonds**

19 7. In the ordinary course of their business, the Debtors maintain insurance policies  
20 (each, an "**Insurance Policy**") provided by various carriers (collectively, the "**Insurance**  
21 **Carriers**") to manage risk. From time to time, the Debtors finance the payment of insurance  
22 premiums pursuant to agreements ("**Premium Financing Agreements**") with an insurance finance  
23 provider. In addition, the Debtors use surety bonds, as described below, to secure the Debtors'  
24 payment or performance of certain obligations (such program, the "**Surety Program**"). The  
25 Insurance Policies, the Surety Bonds, and the Premium Financing Agreements, described in further  
26 detail below, are important tools for managing risk in the Debtors' business, both to protect the  
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Debtors' assets, and to provide counterparties with the assurance they need to do business with the Debtors.

### **I. Insurance Policies**

8. The Debtors maintain the Insurance Policies in amounts and with types of coverage necessary to meet their business needs and as necessary to comply with applicable law. The Insurance Policies provide coverage for, among other things, workers' compensation, property, general commercial liability, directors and officers liability, umbrella liability, and excess liability. A detailed list of Insurance Policies is attached as **Exhibit 3**.

9. The Debtors pay the Insurance Carriers premiums (the "***Insurance Premiums***") based upon rates established and billed by the Insurance Carriers, with the aggregate amount for the Insurance Premiums totaling approximately \$2.85 million annually. Insurance Premiums typically are required to be paid in a lump sum at the beginning of an applicable period, other than workers' compensation premiums<sup>2</sup>, which are paid on a monthly basis. In addition, depending upon the type of claim and insurance policy involved, the Debtors may also be required to pay various deductibles and retention amounts (collectively, the "***Insurance Deductibles***"). The Insurance Premiums also may include a payment to the Debtors' insurance broker, Marsh Canada Limited, as compensation for identifying and negotiating the appropriate Insurance Policy. As of the Petition Date, the Debtors estimate that approximately \$857,000 has accrued but remains unpaid on account of the Insurance Obligations.

10. All of the Insurance Policies are essential to managing the risks borne by the Debtors' estates and are an important component of sound management and the ongoing operation of the Debtors' business. Continuation of the Insurance Policies, payment of the Insurance

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<sup>2</sup> Payment of amounts owing to maintain the Debtors' workers' compensation insurance policies is addressed in the Debtors' Motion for Entry of an Order Authorizing the Debtors to (i) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (ii) Reimburse Prepetition Business Expenses, (iii) Continue Prepetition Employee Benefits Programs, (iv) Make Payments for which Prepetition Payroll Deductions have been Withheld and Pay Certain Employment-Related Taxes, (v) Pay Amounts that were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (vi) Pay all costs and Expenses Incident to the Foregoing, filed contemporaneously herewith.

Premiums, and the entry into new insurance policies (collectively, with all practices, policies, and Premium Financing Agreements, the “**Insurance Program**”) helps preserve the value of the Debtors’ business and operations for the benefit of all stakeholders by protecting against losses. Accordingly, the Debtors request authority, but not direction, to maintain their existing Insurance Policies by (i) paying the obligations owed thereunder (including any Insurance Deductibles) as they become due in the ordinary course of their business, including for claims that arose prior to the Petition Date, and (ii) entering into new insurance policies in the ordinary course of business, without further Court order.

## II. The Surety Bond Program

11. The Debtors’ Surety Bonds are provided by Trisura Insurance Company (the “**Surety**”) and have been issued in favor of: (i) Sierra Pacific Power Company d/b/a NV Energy in connection with the High Voltage Distribution Agreement, dated January 7, 2019, as amended on February 21, 2019 (the “**NV Energy Bond**”); and (ii) the Nevada Division of Environmental Protection to secure future mine reclamation requirements (the “**Reclamation Bond**” and, together with the NV Energy Bond, the “**Surety Bonds**”).<sup>3</sup> Additional information regarding the Surety Bonds is provided in the schedule attached as **Exhibit 4** to this Motion.

12. The NV Energy Bond and the Reclamation Bond expire on June 25, 2024. The Surety Bonds generally are renewed on an annual basis, and the Debtors pay an annual premium (the “**Surety Premiums**”) to the Surety in connection therewith, which historically has been approximately \$321,000 in the aggregate. Based on ongoing communication with their regulator, the Debtors anticipate that they may be required to increase the amount of the Reclamation Bond in the near term, during the pendency of these cases. The failure of the Debtors to maintain the Surety Bonds (or replace them) could result in the beneficiaries calling on the Surety Bonds, and

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<sup>3</sup> Although not a part of the relief requested herein, the Debtors note that Nevada Copper Inc. also has a cash “bond” of \$25,370.00 that has been deposited with the United States Department of the Interior Bureau of Land Management in connection with reclamation of exploration work in areas located on public land for which the Debtors hold mining claims.

1 also may allow the beneficiaries to terminate their agreements with the Debtors, or in the case of  
2 the Reclamation Bond, cause the Debtors to cease being in compliance with applicable law.

3 13. In the event that a Surety Bond were to be called, the Debtors' obligation to  
4 reimburse the surety is secured by a fourth lien on substantially all of the property of Nevada  
5 Copper Corporation, the ultimate parent of each of the Debtors. In addition, if a Surety Bond were  
6 called, it is expected that the Surety would seek, under applicable surety law, to exercise its  
7 subrogation rights against NCI, and those subrogation claims could be secured to the extent the  
8 underlying claims could give rise to mechanic's liens.

9 14. As of the Petition Date, the Debtors do not believe that they owe any amounts to  
10 the Surety on account of Surety Premiums. Out of an abundance of caution, however, the Debtors  
11 seek authority, but not direction, to pay the Surety Premiums and to renew or, with the reasonable  
12 consent of the Required DIP Lenders, acquire additional bonding capacity (as needed) in the  
13 ordinary course of their business, including by increasing the amount of the Reclamation Bond  
14 and entering into agreements necessary to maintain and extend their Surety Bonds and the Surety  
15 Program.

### 16 **III. The Debtors' Premium Financing Arrangements**

17 15. In order to spread the economic impact of lump-sum annual insurance premiums  
18 throughout the year, Nevada Copper Inc. and Nevada Copper Corp., respectively, enter into  
19 Premium Financing Agreements in the ordinary course of their business with First Insurance  
20 Funding (a division of Lake Forest Bank & Trust Company) ("**First Insurance**"). Pursuant to the  
21 Premium Financing Agreements with First Insurance, a portion of the Insurance Premiums for the  
22 Insurance Policies providing property, general commercial liability and umbrella liability is  
23 financed by Nevada Copper Inc. or Nevada Copper Corp., respectively. To finance its property  
24 insurance, Nevada Copper Inc. agreed to pay First Insurance eight monthly installments of  
25 \$129,382.00, reflecting the amount of financed Insurance Premiums plus total finance charges of  
26 \$39,704.50 (which imputes to a 10.53% annual interest rate). Nevada Copper Corp. agreed to  
27 finance policies for general commercial liability and umbrella liability by agreeing to pay First  
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Insurance eight monthly installments of \$52,338.77, reflecting the amount of financed Insurance Premiums plus total finance charges of \$16,061.64 (which imputes to a 10.53% annual interest rate). The foregoing First Insurance policy payment obligations are collectively referred to herein as the “**Premium Financing Agreements Obligations**,” and such obligations, together with the Insurance Premiums, Insurance Deductibles, and other costs of obtaining insurance, are referred to as the “**Insurance Obligations**.” The last of the monthly payments was made in early May 2024. As of the Petition Date, the Debtors estimate that approximately \$857,000 remains unpaid under the Premium Financing Agreements.

### **Basis for Relief**

**I. The Court Should Authorize, but Not Direct, the Debtors to Continue, in their Sole Discretion, their Insurance Program, Surety Program, and Premium Financing Agreements.**

**A. *A Continuation of the Insurance Policies Is Required by the Bankruptcy Code, Law and the UST Guidelines.***

16. Continuing to maintain adequate insurance coverage not only is a sound exercise of the Debtors’ business judgment, but it is required by the Bankruptcy Code, other applicable law, and the *United States Trustee Chapter 11 Operating and Reporting Guidelines for Debtors in Possession* applicable for this region (the “**UST Guidelines**”). Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case, and the section 6 of the UST Guidelines require that debtors provide “proof of appropriate insurance coverage.” Moreover, in certain cases the coverage provided by the Insurance Policies may be required by applicable law. *See, e.g., Nev. Rev. Stat. § 616D.200* (providing penalties for employers that fail to obtain workers compensation insurance).

17. To abide by the various bankruptcy and state law requirements, it is essential that the Debtors have the ability to maintain the Insurance Policies. Accordingly, just cause exists for the Court to authorize the Debtors to pay all prepetition and postpetition Insurance Obligations,

1 and supplement, amend, extend, renew, or replace their Insurance Policies as they deem necessary,  
2 without further order of the Court.

3 ***B. The Bankruptcy Code Provides Multiple Bases that Permit the Debtors to (i)***  
4 ***Continue their Insurance Policies and Surety Program and (ii) Pay All***  
5 ***Obligations in Respect Thereof.***

6 18. The relief requested herein is authorized under the Court's general equitable  
7 powers, which are codified in section 105(a) of the Bankruptcy Code. Under section 105(a), the  
8 Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the  
9 provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to  
10 assure the bankruptcy courts [sic] power to take whatever action is appropriate or necessary in aid  
11 of the exercise of their jurisdiction." 2 Collier on Bankruptcy ¶ 105.01, at 105-5 (16th ed. 2024).  
12 Section 105(a) of the Bankruptcy Code provides bankruptcy courts with broad equitable power  
13 under the "necessity of payment" doctrine to authorize payment of debtors' prepetition obligations  
14 where, as here, such payment is necessary to maximize the value of the debtors' estates. *See*  
15 *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 468 (2017) (noting that bankruptcy courts have  
16 authorized the payment of prepetition claims where "the distributions at issue would enable a  
17 successful reorganization and make even the disfavored creditors better off") (internal quotation  
18 omitted); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay*  
19 *Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the  
20 debtor to pay various pre-bankruptcy claims including workers' compensation claims and  
21 premiums); *In re Adams Apple, Inc.*, 829 F.2d 1484, 1490 (9th Cir. 1987) (noting in *dicta*, that  
22 courts have permitted the unequal treatment, including post-petition payment, of prepetition debts  
23 in such contexts as: "(i) prepetition wages to key employees; (ii) hospital malpractice premiums  
24 incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and  
25 (iv) peripheral benefits under labor contracts," because rehabilitation of debtors "may supersede  
26 the policy of equal treatment . . . ."); *see also In re Pettit Oil Co.*, Case No. 13-47285, 2015 WL  
27 6684225 at \*8 (Bankr. W.D. Wash. Oct. 22, 2015) (interpreting *Adams Apple* as an  
28 acknowledgement that it is "permissible to treat prepetition debts unequally when necessary for

1 rehabilitation”). *But see In re B&W Enters., Inc.*, 713 F.2d 534 (9th Cir. 1983) (discussing  
2 “Necessity of Payment Rule” as originating in railroad reorganization context and declining to  
3 apply it for purposes of retroactive approval of certain vendor payments by trucking company prior  
4 to conversion of its chapter 11 case to a chapter 7 case).

5 19. The Court also may authorize the relief requested herein under section 363(b) of  
6 the Bankruptcy Code. Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing,  
7 may use, sell, or lease, other than in the ordinary course of business, property of the estate.”  
8 Accordingly, under section 363, a court may authorize a debtor to pay certain prepetition claims.  
9 *See In re Murray Metallurgic Coal Holdings, LLC*, 613 B.R. 442, 450 (Bankr. S.D. Ohio 2020)  
10 (“there can be little doubt that [section 363(b)] also provides a mechanism for debtors to obtain  
11 court authority to pay prepetition claims before confirmation if a sound business purpose supports  
12 the payment.”) To obtain relief under section 363(b) of the Bankruptcy Code, “the debtor must  
13 articulate some business justification, other than the mere appeasement of major creditors.” *In re*  
14 *Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). The Debtors’ request to pay  
15 prepetition amounts related to the Insurance Program and Surety Premiums easily meets that  
16 standard, because the failure to do so could have a material adverse impact on the Debtors’  
17 businesses and efforts to maximize estate value.

18 20. With respect to postpetition obligations, maintenance of the Insurance Program and  
19 Surety Program is within the ordinary course of business and may be continued, without a notice  
20 or a hearing, under section 363(c)(1). Section 363(c)(1) allows a debtor in possession to “enter  
21 into transactions” and “use property of the estate” in the “ordinary course of business” without  
22 court order. The maintenance of the Insurance Program and Surety Program, and payment of  
23 related postpetition obligations, would be a continuation of the Debtors’ prepetition ordinary  
24 course practices. As such, the continuation, maintenance, and renewal of the Insurance Program  
25 and Surety Program may be carried out without further court approval.

26 21. Finally, authority for payments of prepetition obligations also may be found in  
27 sections 1107(a) and 1108 of the Bankruptcy Code, which vest debtors in possession with authority  
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1 to continue operating their business. At times, the need to continue operating their businesses and  
2 the concomitant fiduciary duty to maximize estate value, only may be met through the pre-plan  
3 payment of certain unsecured claims. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D.  
4 Tex. 2002) (“There are occasions when [the debtor’s fiduciary] duty can only be fulfilled by the  
5 preplan satisfaction of a prepetition claim.”).

6 22. The nature of the Debtors’ business and the extent of their operations make it  
7 essential for the Debtors to maintain their Insurance Program and Surety Program on an ongoing  
8 and uninterrupted basis. To the extent related payments fall outside of the ordinary course of  
9 business, they nonetheless should be authorized, as such payments are required for the Debtors to  
10 fulfill their fiduciary duties. *See In re CoServ, L.L.C.*, 273 B.R. at 497. The nonpayment of any  
11 premiums, deductibles, self-insured retention amounts, or related fees under the Insurance Policies  
12 or Surety Bonds could result in one or more of the Insurance Carriers or the Surety terminating,  
13 declining to renew, or refusing to enter into new insurance agreements or surety bonds with the  
14 Debtors in the future.

15 23. A termination or lapse of insurance or surety bond coverage could have a negative  
16 impact on the value of the Debtors’ estates. The failure of the Debtors to maintain adequate  
17 insurance coverage could expose the Debtors to losses or liabilities arising from various casualty  
18 events and could cause the Debtors to not be in compliance with the requirements of the  
19 Bankruptcy Code, the UST Guidelines and other applicable law. Moreover, the failure of the  
20 Debtors to provide, maintain, or timely replace Surety Bonds may give critical counterparties the  
21 right to terminate their contacts or take other action against the estate.

22 24. In sum, the Debtors submit that the Debtors must make all payments with respect  
23 to the Insurance Program and Surety Premiums as they become due to prevent serious harm to the  
24 Debtors’ estates. For the reasons described above, the use of estate funds for such purposes is  
25 permitted by the Bankruptcy Code and should be authorized by the Court.  
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**C. To the Extent the Surety Program and Premium Financing Agreements are Deemed an Extension of Secured Credit, the Court Should Authorize the Debtors to Continue the Programs Pursuant to Section 364 of the Bankruptcy Code, as in the Best Interests of the Estate.**

25. To the extent the Surety Program and the Premium Financing Agreements are deemed an extension of secured credit, the Debtors also request authority to continue those programs pursuant to section 364 of the Bankruptcy Code, including with respect to posting collateral, as determined in the Debtors' reasonable business judgment and with the reasonable consent of the Required DIP Lenders. Security interests created by premium financing agreements have been recognized as creating secured claims in bankruptcy to the extent of the amount of unearned premiums financed pursuant to such agreements and, by extension, entry into purchase finance agreements constitutes the incurrence of secured credit. *See TIFCO, Inc. v. U.S. Repeating Arms Co. (In re U.S. Repeating Arms Co.)*, 67 B.R. 990, 994–95 (Bankr. D. Conn. 1986); *Drabkin v. A.I. Credit Corp. (In re Auto-Train Corp.)*, 9 B.R. 159, 164–66 (Bankr. D.D.C. 1981).

26. Section 364(c) authorizes a debtor in possession (after notice and a hearing) to obtain debt secured by a lien on property of the estate, if the debtor has been unable to obtain unsecured credit and such credit is in the best interests of the estate. *See* 11. U.S.C. § 364(c). Pursuant to section 364 of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured or unsecured debt if the borrowing is in the best interests of the estate. *See In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Penn. 1991); *In re Ames Dept. Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (stating that with respect to postpetition credit, courts “permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties”); *In re Simasko Prod. Co.*, 47 B.R. 444, 448–49 (Bankr. D. Colo. 1985) (authorizing interim financing agreement where debtor's best business judgment indicated that financing was necessary and reasonable for benefit of estate).

27. The maintenance, replacement, and extension of the Premium Financing Agreements is only possible in compliance with market terms that require a grant of security. Under the Premium Financing Agreements, First Insurance maintains a security interest in the financed policies including any returned and unearned premiums, which is the prevailing practice

1 in the premium financing business. In light of the prevailing market practice and the Debtors'  
2 current financial circumstances, it is highly unlikely that the Debtors would obtain financing for  
3 their insurance premiums on more favorable terms. Continued financing under the Premium  
4 Financing Agreements is required for the Debtors to operate their businesses and it is authorized  
5 by section 364 of the Bankruptcy Code. *See, e.g., In re Budget Grp., Inc.*, Case No. 02-12152  
6 (MFW) (Jointly Administered), Ref. Docket No. 30 (Bankr. D. Del. Aug. 1, 2002) (authorizing  
7 funding of acquisition of property on a secured basis where acquired property was necessary to  
8 maintain operations and debtor could not obtain such funding on an unsecured basis).

9 28. It is also in the best interests of the estate to continue the Premium Financing  
10 Agreements in the ordinary course of business. As holders of secured claims, if the Debtors are  
11 not permitted to continue making payments under the Premium Financing Agreements, the lenders  
12 could seek relief from the automatic stay to cancel the respective Insurance Policies in accordance  
13 with the terms of the respective Premium Financing Agreement or to seek adequate protection of  
14 their respective investment. *See Universal Motor Express*, 72 B.R. 208, 211 (Bankr. W.D.N.C.  
15 1987) (recognizing that a default under the financing arrangement and the resulting decline in  
16 value of the unearned premiums justified relief from the automatic stay). The Debtors then would  
17 be required to obtain replacement insurance on an expedited basis and at significant cost to the  
18 estates. If the Debtors are required to obtain replacement insurance and to pay a lump-sum  
19 premium for such insurance in advance, this payment may be the same or greater than what the  
20 Debtors currently pay to the lenders under the Premium Financing Agreements. Even if the lenders  
21 are not permitted to terminate the Insurance Policies, any interruption of payments could severely  
22 and adversely affect the Debtors' ability to finance premiums for future policies, as needed. The  
23 practical solution is to continue making payments under the Premium Financing Agreements.

24 29. The Debtors would face similar challenges in replacing the Surety Bonds, which  
25 are critical to the continued operation of their businesses. Accordingly, it is also in the best  
26 interests of the estate to continue the Premium Financing Agreements in the ordinary course of  
27 business.

1           30. For the reasons described above, in the Debtors' business judgment, entering into  
2 and performing the Premium Financing Agreements and maintaining the Surety Program is in the  
3 Debtors' best interest because it is necessary to ensure the uninterrupted provision of insurance  
4 services and in the case of the Premium Financing Agreements provides a cost-effective source of  
5 financing for insurance, one of the Debtors' most essential business needs. The Debtors, therefore,  
6 seek authority, but not direction, to continue their Premium Financing Agreements and Surety  
7 Program in the ordinary course of business.

8       **II. The Court Should Authorize the Banks to Honor and Process the Debtors' Payments**  
9       **on Account of the Insurance Program and Surety Premiums.**

10           31. The Debtors hereby seek authority for financial institutions (the "*Account Banks*")  
11 to continue to honor and process the Debtors payments on account of the Insurance Program and  
12 Surety Premiums. As a result of the commencement of these Chapter 11 Cases, and absent an  
13 order of the Court providing otherwise, the Debtors' checks and electronic fund transfers on  
14 account of their Insurance Program and Surety Premiums may be dishonored or rejected by  
15 financial institutions. Under the Debtors' cash management system, the Debtors can readily  
16 identify checks or transfers as relating directly to payment of such expenses, and, therefore, believe  
17 that prepetition checks and transfers other than those for the Insurance Program and Surety  
18 Premiums will not be honored inadvertently if the authorization requested herein is not granted.  
19 The Debtors submit that any Account Bank should be authorized to rely on the representations of  
20 the Debtors with respect to any check drawn or transfer request.

21                       **Reservation of Rights**

22           32. Nothing contained herein is or should be construed as: (i) an admission as to the  
23 validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim  
24 on any grounds; (iii) a promise or requirement to pay any claim; (iv) an admission that any  
25 particular claim is of a type specified or defined hereunder; (v) a request to assume any executory  
26 contract or unexpired lease; or (vi) a waiver of the Debtors' rights under the Bankruptcy Code or  
27 any other applicable law. The authorization to pay amounts on account of the Insurance Program  
28

1 should not affect the Debtors' rights to contest the amount or validity of such obligations. If the  
2 Court authorizes the payments described herein, such payments should not be deemed to constitute  
3 a postpetition assumption or adoption of the programs, policies or agreements as executory  
4 contracts and the authorization to pay amounts on account of the Insurance Obligations and Surety  
5 Premiums should not affect the Debtors' right to contest the amount or validity of such obligations.

6 **Satisfaction of Bankruptcy Rule 6003(b)**

7 33. The relief requested herein is immediately necessary for the Debtors to continue to  
8 operate in a manner that maximizes estate value. Failure to provide such relief could compromise  
9 the Debtors' ability to comply with applicable law, put the Debtors' estates at risk, and hamper the  
10 Debtors' operations. Accordingly, to the extent that Bankruptcy Rule 6003 is applicable to the  
11 relief requested,<sup>4</sup> the Debtors submit that the relief requested in this Motion is necessary to avoid  
12 immediate and irreparable harm.

13 **Request for Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

14 34. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease  
15 of property other than cash collateral is stayed until the expiration of 14 days after entry of the  
16 order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth throughout this  
17 Motion, any delay in paying the Insurance Obligations or Surety Premiums would be detrimental  
18 to the Debtors, their estates and their creditors, as the Debtors' ability to manage and run their  
19 business requires that the Debtors remain current with such obligations. For this reason and those  
20 set forth above, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay  
21 imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders.

22 35. To implement the relief requested in this Motion immediately, the Debtors also  
23 respectfully request a waiver of the 21-day advance notice requirements of Bankruptcy Rule  
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4 Bankruptcy Rule 6003 provides that "[e]xcept to the extent that relief is necessary to avoid immediate and  
27 irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a  
28 motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate . . . ." Fed. R. Bankr.  
P. 6003.

2002(a)(2) as made applicable in Bankruptcy Rule 6004(a), for cause shown, to the extent applicable to the Interim Order.

**Notice**

36. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for Region 17; (ii) the 20 largest unsecured creditors of each of the Debtors; (iii) the Internal Revenue Service; (iv) the Office of the United States Attorney for District of Nevada; (v) counsel to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James Patrick Shea and Bart Larsen; (vi) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow; (vii) Bennett Jones LLP, as counsel to Mercuria Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada, Attn: Simon Grant; (viii) White & Case LLP, as counsel to Concord Resources Limited as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York, NY 10020, Attn: Philip Abelson; (ix) Davis, Graham & Stubbs LLP, as counsel to Triple Flag Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (x) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (xi) Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xii) any party that is required to receive or has requested notice pursuant to Bankruptcy Rule 2002 or Local Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank.]*

1 WHEREFORE, the Debtors respectfully request that the Court grant the relief requested  
2 herein and such other and further relief as is just and proper.

3 Dated this 10th day of June, 2024.

4 McDONALD CARANO LLP

5 /s/ Ryan J. Works

Ryan J. Works (NSBN 9224)

6 Amanda M. Perach (NSBN 12399)

2300 West Sahara Avenue, Suite 1200

7 Las Vegas, Nevada 89102

8 ALLEN OVERY SHEARMAN STERLING US LLP

Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)

9 Sara Coelho (NYSBN 4530267) (*pro hac* pending)

599 Lexington Avenue

10 New York, New York 10022

11 *Proposed Counsel to the Debtors and*  
12 *Debtors in Possession*

**EXHIBIT 1**

**Interim Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
Chapter 11

**Hearing Date:**  
**Hearing Time:**

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE  
THEIR PREPETITION INSURANCE POLICIES, (B) CONTINUE THEIR  
PREPETITION SURETY BOND PROGRAM AND (C) ENTER INTO NEW  
PREMIUM FINANCING AGREEMENTS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”), pursuant to sections 105(a), 363, and 364(c) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors to (a) continue their existing insurance policies and satisfy payment obligations related thereto, (b) pay Surety Premiums and continue and renew their surety bond program on an uninterrupted basis, (c) revise, extend, renew, supplement, replace or enter into new premium financing agreements as needed, and (ii) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and, under the circumstances, proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice being necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



1 relief granted herein; and this Court having determined that the relief sought in the Motion is in  
2 the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after  
3 due deliberation and sufficient cause appearing therefor;

4 IT IS HEREBY ORDERED THAT:

5 1. The Motion is GRANTED as set forth herein.

6 2. The Debtors are authorized, but not directed, to pay (i) all premiums, claims,  
7 deductibles, excess, retrospective adjustments, administrative fees, and all other obligations arising  
8 under or in relation to the Insurance Policies and Insurance Program, including any self-insured  
9 retention amounts (the “**Insurance Obligations**”) and (ii) all premiums, and any related  
10 miscellaneous fees or other costs associated therewith, for the Debtors’ surety bonds (the “**Surety**  
11 **Premiums**”), in each case, as they deem appropriate in the ordinary course of business without  
12 further application to this Court, including making all payments, and honoring and satisfying all  
13 obligations, whether relating to the period prior or subsequent to the Petition Date; *provided*,  
14 *however*, that the Debtors shall not be authorized to pay in excess of \$315,000.00 on account of  
15 such obligations that have accrued but that remain unpaid as of the Petition Date, absent further  
16 order of this Court.

17 3. The Debtors are authorized and empowered, but not directed, to continue their  
18 Insurance Program without interruption, on the same basis and in accordance with the same  
19 practices and procedures as were in effect prior to the Petition Date. The Debtors are authorized,  
20 but not directed, to renew, amend, supplement, extend, terminate, replace, increase, decrease, or  
21 enter into new insurance coverage and change insurance carriers in the ordinary course of business.

22 4. The Debtors are authorized, but not directed, to continue their Surety Program  
23 without interruption, including renewing Surety Bonds or, with the prior written consent of the  
24 Required DIP Lenders, obtaining new Surety Bonds, obtaining additional surety coverage, or  
25 changing carriers in connection with the Surety Program in the ordinary course of business.

26 5. The Debtors are authorized, but not directed, subject to the reasonable consent of  
27 the Required DIP Lenders, to renew, amend, supplement, extend, terminate, replace, increase,  
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1 decrease, or enter into new insurance premium financing agreements in the ordinary course of  
2 business.

3 6. The Debtors shall notify the Required DIP Lenders, the United States Trustee for  
4 Region 17, and any statutory committee appointed in these Chapter 11 Cases as soon as reasonably  
5 practicable, but not later than five (5) business days prior to the Debtors choosing to renew, amend,  
6 supplement, extend, terminate, replace, increase, decrease or enter into new insurance premium  
7 financing agreements or obtain additional surety or insurance coverage or change insurance or  
8 surety carriers.

9 7. The Debtors are not authorized by this Interim Order, absent the reasonable consent  
10 of the Required DIP Lenders, to take any action with respect to a Surety Bond that would have the  
11 effect of transforming a Surety Bond obligation into a postpetition or secured obligation in each  
12 case that is senior to any liens or claims granted in connection with any Financing Order(s) (as  
13 defined below). To the extent the Required DIP Lenders consent to any such action, such relief  
14 may be sought by a separate motion which may be heard on an expedited basis.

15 8. Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims  
16 pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity  
17 of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any  
18 grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular  
19 claim is an Insurance Obligation or Surety Obligation.

20 9. All banks and other financial institutions are authorized to receive, process, honor,  
21 and pay all checks presented for payment of, and to honor all fund transfer requests made by the  
22 Debtors related to the Insurance Program and Surety Bonds, regardless of whether the checks were  
23 presented or fund transfer requests were submitted before or after the Petition Date; *provided that*  
24 funds are available in the Debtors' accounts to cover the checks and fund transfers. Banks and  
25 other financial institutions may rely on the representations of the Debtors with respect to whether  
26 any check, item or other payment order drawn or issued by the Debtors prior to the Petition Date  
27 should be honored pursuant to this or any other order of this Court, and such bank or financial  
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1 institution shall not have any liability to any party for relying on such representations by the  
2 Debtors as provided for herein.

3 10. The Debtors are authorized to issue postpetition checks or to effect postpetition  
4 fund transfer requests in replacement of any checks or fund transfer requests in respect of the  
5 Insurance Program or Surety Bonds that are or have been dishonored or rejected as a consequence  
6 of the commencement of the Chapter 11 Cases, and take all other steps reasonably necessary to  
7 implement and effectuate the relief sought in the Motion.

8 11. Notwithstanding anything to the contrary in this Interim Order, any payment made  
9 or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any)  
10 imposed on the debtors under any order(s) of this Court approving a postpetition debtor in  
11 possession financing facility and/or the use of cash collateral (any such order, a “**Financing**  
12 **Order**”), including any documentation with respect to such financing and any budget in connection  
13 with such Financing Order. In the event of any conflict between the terms of this Interim Order  
14 and a Financing Order, the terms of the applicable Financing Order shall control (solely to the  
15 extent of such conflict). Nothing in this Interim Order authorizes the Debtors to accelerate any  
16 payments not otherwise due prior to the date of the Final Hearing.

17 12. The final hearing (the “**Final Hearing**”) on the Motion shall be held on \_\_\_\_\_,  
18 2024, at \_\_:\_\_\_.m. (Prevailing Pacific Time). Any party in interest objecting to the relief sought  
19 at the Final Hearing or in the Final Order shall file and serve a written objection, which objection  
20 shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy Shearman Sterling US  
21 LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick and Sara Coelho; (b)  
22 McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102, Attn:  
23 Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower  
24 Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel, Hanna Singer and  
25 Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C. Clifton Young  
26 Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel to the DIP  
27 Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036,  
28

Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada, Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York, NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (x) counsel to any statutory committee appointed in these Chapter 11 Cases, in each case so as to be received no later than \_\_\_\_\_, 2024, at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

13. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

15. Notice of the Motion, as provided therein, is deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Interim Order shall be immediately effective and enforceable upon its entry.

1           17. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
2 contrary, the Debtors are not subject to any stay in the implementation, enforcement, or realization  
3 of the relief granted in this Interim Order, and the Debtors may, in their discretion and without  
4 further delay, take any action and perform any act necessary to implement the relief granted in this  
5 Interim Order.

6           18. This Court shall retain jurisdiction over any and all matters arising from or related  
7 to the interpretation or implementation of this Interim Order.

8 **IT IS SO ORDERED.**

1 In accordance with LR 9021, counsel submitting this **INTERIM ORDER (I)**  
2 **AUTHORIZING THE DEBTORS TO (A) CONTINUE THEIR PREPETITION**  
3 **INSURANCE POLICIES, (B) CONTINUE THEIR PREPETITION SURETY BOND**  
4 **PROGRAM AND (C) ENTER INTO NEW PREMIUM FINANCING AGREEMENTS AND**  
5 **(II) GRANTING RELATED RELIEF** certifies that the order accurately reflects the court's  
6 ruling and that (check one):

7 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

8 ☐ No party appeared at the hearing or filed an objection to the motion.

9 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the  
10 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
disapproved the order, or failed to respond, as indicated below [list each party and whether the  
party has approved, disapproved, or failed to respond to the document].

11 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
12 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
content of the order.

13 Prepared and submitted by:

14 McDONALD CARANO LLP

15  
16 

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Ryan J. Works (NSBN 9224)  
Amanda M. Perach (NSBN 12399)  
2300 West Sahara Avenue, Suite 1200  
17 Las Vegas, Nevada 89102

18 ALLEN OVERY SHEARMAN STERLING US LLP  
19 Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)  
Sara Coelho (NYSBN 4530267) (*pro hac* pending)  
20 599 Lexington Avenue  
New York, New York 10022

21 *Proposed Counsel to the Debtors and Debtors in Possession*  
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**EXHIBIT 2**

**Final Order**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:

NEVADA COPPER, INC.,<sup>1</sup>  
Debtor.

*Joint Administration Requested*

Case No.: 24-50566  
Chapter 11

**Hearing Date:**  
**Hearing Time:**

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE  
THEIR PREPETITION INSURANCE POLICIES, (B) CONTINUE THEIR  
PREPETITION SURETY BOND PROGRAM AND (C) ENTER INTO NEW  
PREMIUM FINANCING AGREEMENTS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order (this “*Final Order*”), pursuant to sections 105(a), 363, and 364(c) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors to (a) continue their existing insurance policies and satisfy payment obligations related thereto, (b) pay Surety Premiums and continue and renew their surety bond program on an uninterrupted basis, (c) revise, extend, renew, supplement, replace or enter into new premium financing agreements as needed, and (ii) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



1 consistent with Article III of the United States Constitution; and proper and adequate notice of the  
2 Motion and the hearing thereon having been given; and it appearing that no other or further notice  
3 being necessary; and this Court having reviewed the Motion and having heard the statements in  
4 support of the relief requested therein at a hearing before this Court; and it appearing that the legal  
5 and factual bases set forth in the Motion establish just cause for the relief granted herein; and this  
6 Court having determined that the relief sought in the Motion is in the best interests of the Debtors,  
7 their estates, their creditors, and other parties in interest; and after due deliberation and sufficient  
8 cause appearing therefor;

9 IT IS HEREBY ORDERED THAT:

10 1. The Motion is GRANTED as set forth herein.  
11 2. The Debtors are authorized, but not directed, to pay (i) all premiums, claims,  
12 deductibles, excess, retrospective adjustments, administrative fees, and all other obligations arising  
13 under or in relation to the Insurance Policies and Insurance Program, including any self-insured  
14 retention amounts (the “**Insurance Obligations**”) and (ii) all premiums, and any related  
15 miscellaneous fees or other costs associated therewith, for the Debtors’ surety bonds (the “**Surety**  
16 **Premiums**”), in each case, as they deem appropriate in the ordinary course of business without  
17 further application to this Court, including making all payments, and honoring and satisfying all  
18 obligations, whether relating to the period prior or subsequent to the Petition Date; *provided*,  
19 *however*, that the Debtors shall not be authorized to pay in excess of \$315,000.00 on account of  
20 such obligations that have accrued but that remain unpaid as of the Petition Date, absent further  
21 order of this Court.

22 3. The Debtors are authorized and empowered, but not directed, to continue their  
23 Insurance Program without interruption, on the same basis and in accordance with the same  
24 practices and procedures as were in effect prior to the Petition Date. The Debtors are authorized,  
25 but not directed, to renew, amend, supplement, extend, terminate, replace, increase, decrease, or  
26 enter into new insurance coverage and change insurance carriers in the ordinary course of business.  
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1           4.     The Debtors are authorized, but not directed, to continue their Surety Program  
2 without interruption, including renewing Surety Bonds or, with the prior written consent of the  
3 Required DIP Lenders, obtaining new Surety Bonds, obtaining additional surety coverage, or  
4 changing carriers in connection with the Surety Program in the ordinary course of business.

5           5.     The Debtors are authorized, but not directed, subject to the reasonable consent of  
6 the Required DIP Lenders, to renew, amend, supplement, extend, terminate, replace, increase,  
7 decrease, or enter into new insurance premium financing agreements in the ordinary course of  
8 business.

9           6.     The Debtors shall notify the Required DIP Lenders, the United States Trustee for  
10 Region 17, and any statutory committee appointed in these Chapter 11 Cases as soon as reasonably  
11 practicable, but not later than five (5) business days prior to the Debtors choosing to renew, amend,  
12 supplement, extend, terminate, replace, increase, decrease or enter into new insurance premium  
13 financing agreements or obtain additional surety or insurance coverage or change insurance or  
14 surety carriers.

15          7.     The Debtors are not authorized by this Final Order, absent the reasonable consent  
16 of the Required DIP Lenders, to take any action with respect to a Surety Bond that would have the  
17 effect of transforming a Surety Bond obligation into a postpetition or secured obligation in each  
18 case that is senior to any liens or claims granted in connection with any Financing Order(s) (as  
19 defined below). To the extent the Required DIP Lenders consent to any such action, such relief  
20 may be sought by a separate motion which may be heard on an expedited basis.

21          8.     Nothing in the Motion or this Final Order, nor the Debtors' payment of claims  
22 pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity  
23 of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any  
24 grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular  
25 claim is an Insurance Obligation or Surety Obligation.

26          9.     All banks and other financial institutions are authorized to receive, process, honor,  
27 and pay all checks presented for payment of, and to honor all fund transfer requests made by the  
28

1 Debtors related to the Insurance Program and Surety Bonds, regardless of whether the checks were  
2 presented or fund transfer requests were submitted before or after the Petition Date; *provided* that  
3 funds are available in the Debtors' accounts to cover the checks and fund transfers. Banks and  
4 other financial institutions may rely on the representations of the Debtors with respect to whether  
5 any check, item or other payment order drawn or issued by the Debtors prior to the Petition Date  
6 should be honored pursuant to this or any other order of this Court, and such bank or financial  
7 institution shall not have any liability to any party for relying on such representations by the  
8 Debtors as provided for herein.

9 10. The Debtors are authorized, but not directed, to issue postpetition checks or to effect  
10 postpetition fund transfer requests in replacement of any checks or fund transfer requests in respect  
11 of the Insurance Program or Surety Bonds that are or have been dishonored or rejected as a  
12 consequence of the commencement of the Chapter 11 Cases, and take all other steps reasonably  
13 necessary to implement and effectuate the relief sought in the Motion.

14 11. Notwithstanding anything to the contrary in this Final Order, any payment made or  
15 to be made hereunder, and any authorization herein, shall be subject to the requirements (if any)  
16 imposed on the debtors under any order(s) of this Court approving a postpetition debtor in  
17 possession financing facility and/or the use of cash collateral (any such order, a "**Financing**  
18 **Order**"), including any documentation with respect to such financing and any budget in connection  
19 with such Financing Order. In the event of any conflict between the terms of this Final Order and  
20 a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent  
21 of such conflict).

22 12. All time periods set forth in this Order shall be calculated in accordance with  
23 Bankruptcy Rule 9006(a).

24 13. Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Final  
25 Order shall be immediately effective and enforceable upon its entry.

26 14. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
27 contrary, the Debtors are not subject to any stay in the implementation, enforcement, or realization  
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1 of the relief granted in this Final Order, and the Debtors may, in their discretion and without further  
2 delay, take any action and perform any act necessary to implement the relief granted in this Final  
3 Order.

4 15. This Court shall retain jurisdiction over any and all matters arising from or related  
5 to the interpretation or implementation of this Final Order.

6 **IT IS SO ORDERED.**

1 In accordance with LR 9021, counsel submitting this **INTERIM FINAL ORDER (I)**  
2 **AUTHORIZING THE DEBTORS TO (A) CONTINUE THEIR PREPETITION**  
3 **INSURANCE POLICIES, (B) CONTINUE THEIR PREPETITION SURETY BOND**  
4 **PROGRAM AND (C) ENTER INTO NEW PREMIUM FINANCING AGREEMENTS AND**  
5 **(II) GRANTING RELATED RELIEF** certifies that the order accurately reflects the court's  
6 ruling and that (check one):

7 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

8 ☐ No party appeared at the hearing or filed an objection to the motion.

9 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the  
10 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
disapproved the order, or failed to respond, as indicated below [list each party and whether the  
party has approved, disapproved, or failed to respond to the document].

11 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
12 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
content of the order.

13 Prepared and submitted by:

14 McDONALD CARANO LLP

15  
16 

---

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21 *Proposed Counsel to the Debtors and Debtors in Possession*  
22  
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**EXHIBIT 3**

**Insurance Policies**

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Coverage	Carrier	Policy Number	Effective Date	End Date	Annual Premium
Umbrella Liability	Chubb Insurance Company of Canada	(24)76444674	2/4/2024	2/4/2025	\$100,833
Excess Liability: 1st \$10mm	Berkshire Hathaway Specialty Insurance Company	43-XSF-309690-05	2/4/2024	2/4/2025	\$229,485.00
Excess Liability: 2nd \$5mm	Lloyds of London – Marsh Canada Limited – Apollo + QBE Fac.	B0509BOWCN2451226	2/4/2024	2/4/2025	\$115,000.00
Excess Liability: 3rd \$5mm	Chubb Insurance Company of Canada	76439974	2/4/2024	2/4/2025	\$65,000.00
Commercial General Liability	Chubb Insurance Company of Canada	36081598	2/4/2024	2/4/2025	\$193,100.00
Property Liability	Lloyds of London - Marsh Canada Limited - Hardy Consort	B0509BOWPI2450340 / B0509BOWPI2450080	2/4/2024	2/4/2025	\$278,066.00
Property Liability	Lloyds of London - Marsh Canada Limited - IMIU	B0509BOWPI2450342 / B0509BOWPI2450080	2/4/2024	2/4/2025	\$137,433.00
Property Liability	The Economical Insurance Group	40320035/ MP24-0003	2/4/2024	2/4/2025	\$158,194.00
Property Liability	Swiss Reinsurance America Corp	MNG 0000147-05	2/4/2024	2/4/2025	\$148,514.00
Property Liability	Starr Indemnity & Liability Co	G24SIRO1430MCA / G24SIRO1430UUS	2/4/2024	2/4/2025	\$103,500.00
Property Liability	AIG Specialty Insurance Co	086683360 / MP24-0003	2/4/2024	2/4/2025	\$230,946.00
Property Liability	Lloyds of London - Marsh Canada Limited - Inigo	B0509BOWPI2450386 / B0509BOWPI2450080	2/4/2024	2/4/2025	\$36,250.00
Property Liability	Lloyds of London - Marsh Canada Limited - Aspen	B0509BOWPI2450339 / B0509BOWPI2450080	2/4/2024	2/4/2025	\$71,250.00
Property Liability	Munich Reinsurance America- Marsh Canada Limited	B0509BOWPI2450336 / B0509BOWPI2450080	2/4/2024	2/4/2025	\$219,000.00
Property Liability	Lloyds of London - Marsh Canada Limited - Canopus Amlin	B0509BOWPI2450341 / B0509BOWPI2450080	2/4/2024	2/4/2025	\$148,157.00

Coverage	Carrier	Policy Number	Effective Date	End Date	Annual Premium
Business Auto Liability	Redwood Fire and Casualty Insurance Company	01 APM 043775 – 01	2/12/2024	2/12/2025	\$20,010.00
Commercial Auto	LP Insurance Service	00502203	3/8/2024	3/8/2025	\$2,737.00
Excess Automobile Liability	General Star Indemnity Company	IXG678559	2/12/2024	2/12/2025	\$20,000.00
Marine Cargo	Continental Casualty Company	MAR19/0057	2/4/2024	2/4/2025	\$25,000.00
Directors & Officers Liability	Chubb Insurance Company of Canada	82642578	4/11/2024	4/11/2025	\$65,000.00
Directors & Officers Liability	Zurich Insurance Company Ltd	8622626	4/11/2024	4/11/2025	\$65,000.00
Directors & Officers Liability	Great American Insurance Group (GAIG)	CDX2412735	4/11/2024	4/11/2025	\$91,000.00
Directors & Officers Liability	Banyan Risk Services Ltd.	201-XDO-1292-101	4/11/2024	4/11/2025	\$50,000.00
Directors & Officers Liability	Markel Canada Limited	PFR723081-03	4/11/2024	4/11/2025	\$35,000.00
Directors & Officers Liability	Allied World Specialty Insurance Company	0313-3554	4/11/2024	4/11/2025	\$27,500.00
Directors & Officers Liability	Allied World Specialty Insurance Company (AWAC)	0313-3554	4/11/2024	4/11/2025	\$12,000.00
Directors & Officers Liability	Intact Insurance Company	5D5500438	4/11/2024	4/11/2025	\$18,000.00
Directors & Officers Liability	Zurich Insurance Company Ltd	8617331-04	4/11/2024	4/11/2025	\$16,000.00
Directors & Officers Liability	CNA Canada	MEX665433758	4/11/2024	4/11/2025	\$14,625.00
Worker's Compensation	WorkSafe BC	952875	1/1/2024	1/1/2025	\$600.00
Worker's Compensation	Berkley Industrial Comp and Carolina Casualty Insurance Company	BIN646185619	1/1/2024	1/1/2025	\$170,000.00



**EXHIBIT 4**

**Surety Bonds**

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Bond Number	Obligee	Obligation Secured	Bond Amount	Premium
TMS1000236	Nevada Division of Environmental Protection (Reclamation)	Pumpkin Hollow Permit Number 0288 Reclamation NRS519A.010 to 519.280 and NAC 519.010 to 519	\$7,024,449.00	\$193,172.00
TMS1000237	Sierra Pacific Power Company d/b/a NV Energy	High Voltage Distribution Agreement, dated January 7, 2019, as amended on February 21, 2019	\$6,367,111.00	\$127,334.00

This is **Exhibit “O”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
 Chapter 11

**Hearing Date: *OST REQUESTED***  
**Hearing Time: *OST REQUESTED***

**DEBTORS' MOTION FOR ENTRY OF AN ORDER  
 AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION  
 EMPLOYEE WAGES, SALARIES, AND OTHER COMPENSATION,  
 (II) REIMBURSE PREPETITION BUSINESS EXPENSES, (III) CONTINUE  
 PREPETITION EMPLOYEE BENEFITS PROGRAMS, (IV) MAKE  
 PAYMENTS FOR WHICH PREPETITION PAYROLL DEDUCTIONS HAVE  
 BEEN WITHHELD AND PAY CERTAIN EMPLOYMENT-RELATED  
 TAXES, (V) PAY AMOUNTS THAT WERE AWARDED UNDER  
 THE DEBTORS' 2023 SHORT TERM INCENTIVE PROGRAM, AND  
 (VI) PAY ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING**

<sup>1</sup> The relief requested herein is sought for each of the following Debtors, and joint administration has been requested. The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

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1 Nevada Copper, Inc. (“**NCF**”), and its affiliates that are debtors and debtors in possession  
2 (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”),  
3 respectfully represent in support of this motion (the “**Motion**”) as follows:

4 **Relief Requested**

5 1. The Debtors request entry of an interim order in the form attached hereto as  
6 **Exhibit 1** (the “**Proposed Interim Order**”) and a final order in the form attached hereto as  
7 **Exhibit 2** (the “**Proposed Final Order**,” and, together with the Proposed Interim Order, the  
8 “**Proposed Orders**”) authorizing the Debtors to (i) pay prepetition employee wages, salaries, and  
9 other compensation, (ii) reimburse prepetition business expenses, (iii) continue prepetition  
10 employee benefits programs (including by making contributions in connection therewith, and  
11 continuing such programs on a post-petition basis), (iv) make payments for which prepetition  
12 payroll deductions have been withheld and pay certain employment-related taxes, (v) pay  
13 amounts that were awarded under the Debtors’ 2023 short term incentive program (the “**2023**  
14 **STIP**”) and (vi) pay all costs and expenses incident to the foregoing.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **Jurisdiction and Venue**

17 2. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157  
18 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper  
19 before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested  
20 herein are sections 105(a), 362(d), 363(b), 364(c), 507(a) and 541(b)(1) of title 11 of the United  
21 States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), and Rules 6003 and 6004 of the  
22 Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

23 3. Pursuant to Rule 9014.2 of the *Local Rules of Bankruptcy Practice for the United*  
24 *States Bankruptcy Court of the District of Nevada* (the “**Local Rules**”) the Debtors consent to  
25 the Court’s entry of a final order in connection with this Motion to the extent that it is later  
26 determined that, absent consent of the parties, the Court cannot enter final orders or judgments  
27 consistent with Article III of the United States Constitution.  
28

### Background

4. On the date hereof (the “*Petition Date*”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court and contemporaneously herewith have requested, pursuant to Bankruptcy Rule 1015(b), joint administration of the Chapter 11 Cases for procedural purposes only. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated.

5. The Debtors have been in the business of mining copper, and other minerals, and operating a processing plant that refines copper ore into copper concentrate, with the bulk of the Debtors’ operations focused on their Pumpkin Hollow project (the “*Project*”), which is located outside of Yerington, Nevada. The Project, which contains substantial mineral reserves and resources, including not only copper, but gold, silver, and iron magnetite, consists of an underground mine and processing facility, together with an open-pit project that is in the pre-feasibility stage of development. The Debtors, in the period leading up to the commencement of the Chapter 11 Cases operated under significant liquidity constraints. In an effort to conserve liquidity, the Debtors have suspended mining operations and the operation of their processing plant, as they pursue a sale of substantially all of their assets.

6. Additional facts relating to the Debtors’ business and capital structure, and the commencement of these Chapter 11 Cases, are set forth in the *Omnibus Declaration of Gregory J. Martin in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “*First Day Declaration*”), which was filed contemporaneously with this Motion and is incorporated herein by reference.

### The Debtors’ Workforce

7. As of the Petition Date, the Debtors have 197 full-time employees (the “*Employees*” or “*Workforce*”), of which, 136 are paid on an hourly basis (collectively, the “*Hourly Employees*”) and 61 are paid an annual salary (collectively, the “*Salaried Employees*”).

1 Of the Debtors' 197 full-time Employees, 194 are employed by NCI and are located in the  
2 United States, and three are employed by Debtor Nevada Copper Corp. ("*NCU*") and are located  
3 in Canada.

4 8. As discussed in the First Day Declaration, prior to the Petition Date, the Debtors  
5 were engaged in an effort to sell substantially all of their assets. *See* First Day Declaration at  
6 ¶ 17. After those efforts proved unsuccessful, and as they headed toward the commencement of  
7 these Chapter 11 Cases, the Debtors curtailed many of their ongoing operations and pursued a  
8 strategy that focused on maintaining preservation of their assets. *See* First Day Declaration at  
9 ¶ 46. In making that shift, the Debtors' determined a reduction in the number of Employees in  
10 its workforce is necessary to operate within the constraints of the amount of financing available  
11 until a new owner can recapitalize their business. To ensure compliance with laws that may be  
12 or become applicable to this process, and to facilitate the transition of affected Employees, the  
13 Debtors issued or may issue advance notice (the "*Advance Notices*") to 120 affected Employees  
14 at least 60-days before termination of employment (such noticed Employees, the "*Affected*  
15 *Employees*"). During this notice period, certain of the Affected Employees may be instructed  
16 to report to work onsite or remotely for a portion of the notice period, and the remainder will be  
17 instructed to stay home. The Affected Employees are eligible to be paid during the notice period,  
18 regardless of whether they report to work or are instructed to remain home.

19 9. Despite their announced reduction in force contemplated by the Advance  
20 Notices, the Debtors may ultimately conclude that they need the services of some or all Affected  
21 Employees depending on the outcome of their sale process. The Debtors depend upon their  
22 Workforce to perform services that are vital for the continued operation of their business,  
23 including mine maintenance, technical, management services, health & safety services,  
24 environmental services, administrative work, information technology services, and other tasks  
25 on behalf of the Debtors. The specific skills, knowledge and understanding of the Debtors'  
26 operations possessed by the Employees are essential to safely preserving, and ultimately  
27 maximizing the value of their estates. As a result, if the Debtors were unable to maintain the  
28 continued, uninterrupted services of their Employees, it would upend the Debtors' restructuring

1 and jeopardize their business as a going concern. Having initiated a process to reduce the size  
2 of their Workforce to just those essential to preserve the Debtors' assets and facilitate a sale, the  
3 Debtors more than ever rely on the remaining Workforce to preserve and protect the Debtors  
4 business and value.

5 10. Employee morale is of paramount concern in the mining and metals processing  
6 industries. As result, it is critical that the Debtors do their best to preserve Employee morale,  
7 and at times, may look to supplement their Workforce with outside contractors. The Debtors  
8 expect that if the current sale process is successful, they would seek to recall as many of the  
9 Affected Employees as soon as possible. There are no assurances, however, that such an  
10 outcome will be achieved, which was a significant driver in the decision to provide the Advance  
11 Notices to the Affected Employees.

12 11. Even if such Affected Employees ultimately are not continued with the business,  
13 it is imperative that the Debtors provide reassurance to the remaining Employees, many of whom  
14 play vital roles for the health, safety and vitality of the Debtors' assets. For example, the  
15 Underground Mine (as defined in the First Day Declaration), is a key asset of the Debtors and  
16 requires continuous water pumping or the Debtors run the risk of ruining the value of the  
17 Underground Mine. The Debtors rely on their Employees continued employment to prevent the  
18 Underground Mine from becoming defunct and devastating the overall value of the estates.

19 12. In addition to the critical role that the Employees play for the Debtors, it is  
20 manifest that the Employees depend upon the Debtors for their livelihood. The Employees rely  
21 on the Debtors for the compensation that they need to continue to pay their daily living expenses,  
22 but also for the continuation of the benefits and related programs the Debtors historically have  
23 provided to members of the Workforce, and their dependents, in the ordinary course and in line  
24 with mining industry standards (the "**Employee Benefits**"). As further described below, the  
25 Employee Benefits provided by the Debtors include: Leave Policies, Reimbursable Expenses,  
26 U.S. Medical Plans, Basic Life Insurance, AD&D Insurance, Short-Term Disability Insurance,  
27 Long-Term Disability Insurance, Workers' Compensation Insurance, U.S. Additional Benefits,  
28 Canadian Benefits, Canadian Workers' Compensation Insurance, Employee Savings Plans,

Employee Deductions, Payroll Taxes, Modified Business Tax, Provincial Medical Taxes, and Third-Party Administrative Costs (together with the Prepetition Compensation Obligations and the 2023 STIP, the “*Wages and Benefits*”).

**I. Workforce Compensation and Benefits**

**A. Prepetition Compensation Obligations**

13. By this Motion, the Debtors seek authorization to pay and honor, in each case, to the extent that they remain unpaid as of the Petition Date, (i) all prepetition wages, salaries and other accrued compensation to the Employees (the “*Prepetition Wage Claims*”) and (ii) amounts due in respect of the Debtors’ ordinary course bonus program for Hourly Employees that meet certain performance milestones, which are adjusted from time to time (the “*Hourly Employees Bonus Program*”, and, together with the Prepetition Wage Claims, the “*Prepetition Compensation Obligations*”).

14. Employees of NCU receive their compensation semi-monthly, on or around the first and 15<sup>th</sup> day of each month, while Employees of NCI receive their compensation on a bi-weekly basis (*i.e.*, every other Friday). All Employees are paid in arrears, with Employees of NCI being paid one week after the pay period concludes, and Employees of NCU being paid for the period through the date of payment.<sup>2</sup>

15. The Debtors’ payroll is administered by the following third-party service providers (the “*Payroll Vendors*”): (i) Paychex, Inc. (“*Paychex*”) for U.S. payrolls; and (ii) ADP, LLC (“*ADP*”), for Canadian payrolls. Prior to each payroll, the Debtors provide the Payroll Vendors with information regarding, among other things, the current employment status of the Employees and the amount of salary and benefits they earned. Generally, in advance of the date on which payroll payments are to be made, the Debtors wire funds from their payroll accounts to the Payroll Vendors. On the day that payroll is required to be paid, amounts then are disbursed by the Payroll Vendors to fund paychecks, direct deposits, and other wages and attachments, less a holdback to cover periodic payroll taxes.

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<sup>2</sup> For example: (i) the payroll to Employees of NCI made on Friday, May 24, 2024, covered the period of service from May 5 through May 18, and (ii) the payroll to Employees of NCU made on May 15, 2024, covered the period of service from May 1 through May 15.

1           16. The Prepetition Wage Claims include, as applicable, wages for Salaried and  
2 Hourly Employees. The Debtors average approximately \$1,210,000 in aggregate gross payroll,  
3 including wages and the Hourly Employees Bonus Program, to the Workforce per pay period.  
4 As of the Petition Date, the Debtors estimate that approximately \$660,000 of the Prepetition  
5 Wage Claims remain unpaid to the Employees (the “*Prepetition Employee Wage Claims*”).<sup>3</sup>

6           17. In addition to base wages, consistent with industry practice, the Debtors provide  
7 the Hourly Employees Bonus Program, which is a discretionary monthly cash bonus to eligible  
8 underground Hourly Employees and quarterly cash bonus to eligible surface Hourly Employees  
9 (none of whom participates in senior management and therefore, none of whom is an insider)  
10 that meet certain performance milestones, which are adjusted from time to time, including, but  
11 not limited to, absence of or number of safety incidents and/or environmental incidents (and the  
12 severity of any such safety or environmental incidents), equipment damage, and construction  
13 production. The amount paid per month on account of the Hourly Employees Bonus Program  
14 fluctuates and has been as high as approximately \$206,000 in the aggregate and as low as  
15 approximately \$56,000 in the aggregate for the four months leading up to the Petition Date. The  
16 Debtors estimate that, as of the Petition Date, approximately \$190,000 is due to the Employees  
17 under the Hourly Employees Bonus Program.

18           18. The Debtors expect to seek approval of the Court to implement a key employee  
19 retention program. If such a program were to be approved, the Debtors expect that they would  
20 rely on payments thereunder in lieu of the Hourly Employees Bonus Program. Pending such  
21 relief, however, the Debtors are seeking to continue making payments pursuant to their Hourly  
22 Employees Bonus Program following the Petition Date to eligible Hourly Employees other than  
23 to Affected Employees who are not called back to work.

24           19. The Debtors do not seek to pay any prepetition amounts in respect of Prepetition  
25 Compensation Obligations to the Workforce in excess of the priority wage cap imposed by  
26

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27 <sup>3</sup> Notwithstanding the estimate of Prepetition Employees Wage Claims set forth herein, the Debtors are seeking  
28 authority to pay all Prepetition Employee Wage Claims, including those that the Debtors discover to be due  
and owing, provided that no payment for any previously unidentified amount due would exceed the Statutory  
Cap.



1 section 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the “**Statutory Cap**”) under the  
2 Proposed Interim Order. As described below, the Debtors are seeking authorization to pay  
3 amounts due under the 2023 STIP. Although an important component of Employee  
4 compensation, which the Debtors believe should be paid, the Debtors are seeking to pay 2023  
5 STIP awards only upon entry of a final order approving the other relief requested herein.

6 **B. Paid Time Off, Vacation and Other Leave**

7 20. The Debtors seek authorization to honor and continue their existing PTO (as  
8 defined below), sick day, holiday pay, vacation, FMLA Leave (as defined below), and other  
9 leave policies (collectively, the “**Leave Policies**”). In connection therewith, the Debtors seek  
10 authorization to honor their Leave Policies and, following entry of a final order, to pay amounts  
11 owing under the Leave Policies to Employees upon separation from employment in the ordinary  
12 course of business and consistent with prepetition practices, regardless of when the benefits  
13 under the Leave Policies accrued.

14 21. All full-time Employees are eligible to paid time off (“**PTO**”). For full-time  
15 Employees based in the United States (the “**U.S. Employees**”), PTO can be used for absences  
16 for illness or personal reasons, while full-time Employees based in Canada (the “**Canadian**  
17 **Employees**”) are entitled to PTO in the form of five paid sick days each calendar year. Non-  
18 exempt U.S. Employees (*i.e.*, those who would be eligible for overtime) are permitted to cash  
19 out any PTO they do not use during the calendar year, while exempt U.S. Employees and  
20 Canadian Employees forfeit unused PTO at the end of each calendar year. Upon separation of  
21 employment, all U.S. Employees forfeit unused PTO. Full-time U.S. Employees are also  
22 eligible to receive holiday pay for observed holidays. For eligible Hourly Employees, when a  
23 holiday falls on their shift, the Employee receives one- and one-half times their regular rate for  
24 hours worked, plus pay for eight (8) hours of work at the regular hourly rate. Eligible Employees  
25 that do not work on the relevant holiday receive pay at their regular hourly rate. Hourly  
26 Employees also receive two (2) annual 8-hour floating holidays at the beginning of the year,  
27 which allows Hourly Employees to be paid for eight (8) hours of pay at their regular rates for  
28 the observance dates. Unused floating holidays are not paid out upon termination.



22. Full-time U.S. Employees are eligible for vacation time, in amounts based on length of service, and U.S. Employees may carry over their available vacation accrual balance, up to their maximum accrual amount, into the next calendar year. Vacation accruals cease once the Employee's balance reaches the maximum accrual amount, which varies between 80 hours and 200 hours, depending on length of service. Upon separation from employment, a U.S. Employee will be paid for unused vacation time accrued during the calendar year of separation, but not for any unused accrued vacation time from a prior period. Canadian Employees are eligible for a set number of vacation days per year, which are eligible for rollover with no cap. Upon separation from employment, a Canadian Employee will be paid for accrued but unused vacation time. As of the Petition Date, the accrued vacation potentially subject to payout is approximately \$650,000 for U.S. Employees and \$60,000 for Canadian Employees.

23. In accordance with the Family and Medical Leave Act, eligible U.S. Employees may take up to a total of 12 weeks of unpaid leave (the "*FMLA Leave*") for certain qualifying reasons, among other things, the birth or adoption of a child, a serious health condition of a family member, a serious health condition of the Employee or an exigency involving a U.S. Employee's spouse, parent or child who is on active duty in the United States armed forces. Additionally, on a case-by-case basis, Employees also may be able to take an unpaid personal leave of absence if they do not qualify for or have exhausted their FMLA Leave, or for other reasons, as authorized by the Debtors' human resources department. In addition to FMLA, the Debtors permit other leaves of absence, which may be paid or unpaid, depending on the reason for leave.

## **II. Reimbursable Business Expenses**

24. By this Motion, the Debtors seek authorization to satisfy all amounts owing for approved, reasonable expenses incurred by the Workforce in the performance of their employment or service (the "*Reimbursable Expenses*") prior to the Petition Date, in the ordinary course, regardless of when a request for payment is submitted (the "*Unpaid Reimbursable Expenses*"). In the ordinary course of business, the Debtors reimburse their Workforce for Reimbursable Expenses, including, among other things, business-related travel expenses. Under

1 the Debtors' policies, expense reports are required to be submitted for Reimbursable Expenses  
2 (together with applicable supporting documentation) for review by the Debtors' accounts  
3 payable team, who ensure that the reimbursements sought comply with the Debtors'  
4 Reimbursable Expenses policy.

5 25. Although the Debtors request that Reimbursable Expenses be submitted  
6 promptly, there is often a delay between the time that expenses are incurred and the time that  
7 reports are submitted. As a result, Debtors cannot provide a precise total of unpaid prepetition  
8 Reimbursable Expenses owed as of the Petition Date, as it is possible that prepetition  
9 Reimbursable Expenses could be submitted days, if not weeks, after the Petition Date.  
10 Nevertheless, based upon historical figures, the Debtors estimate that they may owe  
11 approximately \$35,000 of Unpaid Reimbursable Expenses as of the Petition Date.

### 12 **III. Employee Benefits**

13 26. By this Motion, the Debtors seek authorization to continue to pay, incur, and  
14 make contributions to a number of programs for Employee Benefits maintained by the Debtors  
15 (the "*Employee Benefits Programs*"). The Employee Benefits include obligations related to the  
16 comprehensive benefits that the Debtors provide to eligible Employees, and certain of their  
17 respective dependents and beneficiaries. The Employee Benefits Programs include medical,  
18 dental and vision benefits, life insurance, AD&D insurance, short-term and long-term disability  
19 insurance, workers' compensation insurance, retirement plans, various reimbursable expenses  
20 and other company benefits that the Debtors provided in the ordinary course. Set forth below is  
21 a summary description of the various Employee Benefits and Employee Benefits Programs,  
22 which is for descriptive purposes only and qualified entirely by the Debtors' official policies, or  
23 other practices, programs or agreements, whether written or unwritten, evidencing an  
24 arrangement among the Debtors and their Employees, including, in each case, the terms of the  
25 applicable official Employee Benefits Program.

1           **A.       Employee Benefits—United States**

2                   **1.       Employee Medical, Dental and Vision Plans**

3           27.     The Debtors currently offer U.S. Employees: (i) medical coverage through  
4     Cigna Health Insurance Co. (“**Cigna**”); (ii) dental and vision coverage through Cigna; and  
5     (iii) emergency air transportation services<sup>4</sup> (collectively, the “**U.S. Medical Plans**”). As of the  
6     Petition Date, the Debtors provide health, dental, and vision coverage to approximately 188 U.S.  
7     Employees and certain of their dependents. For Employees who choose to participate in high  
8     deductible health plans, the Debtors contribute amounts based upon the amount the individual  
9     Employee contributes to their Health Savings Account (“**HSA**”) as well other factors, including  
10    whether the Employee elects for single or family coverage. The Debtors estimate that, on a  
11    monthly basis, they pay approximately \$345,000 for premiums for the U.S. Medical Plans and  
12    approximately \$20,000 for employer contributions to the Employees’ HSAs. As of the Petition  
13    Date, the Debtors estimate that approximately \$410,000 of premiums for U.S. Medical Plans  
14    and \$6,000 in matching contributions for the Employee HSAs remain outstanding (such  
15    amounts, together with any other amounts that the Debtors discover to be due and owing under  
16    the U.S. Medical Plans, the “**Unpaid Medical Plan Expenses**”). The Debtors seek authority to  
17    pay the Unpaid Medical Plan Expenses in the ordinary course of business.

18                   **2.       Employee Life, Disability, and Other Insurance Benefits**

19           28.     The Debtors provide eligible U.S. Employees with basic life insurance (the  
20    “**Basic Life Insurance**”) and accidental death and dismemberment insurance (the “**AD&D**  
21    **Insurance**”) through a group policy with Prudential Financial, Inc. (“**Prudential**”). The Debtors  
22    estimate that the Basic Life Insurance and AD&D Insurance coverage for all Employees costs  
23    approximately \$15,000 per month. As of the Petition Date, the Debtors estimate that they have  
24    outstanding Basic Life Insurance and AD&D Insurance coverage expenses of approximately

25 \_\_\_\_\_  
26 <sup>4</sup> Due to the remote location of the Project, many of the Debtors’ Employees work or live in areas of Nevada  
27 that are more than an hour’s drive from acute medical care. Although medical insurance covers the cost of  
28 most medical emergencies, air ambulance services often are excluded from in-network coverage. In order to  
fill that gap, the Debtors provide Employees with access to air ambulance services from Care Flight, a program  
offered by the Regional Emergency Medical Services Authority (a private non-profit entity) for transport from  
the location of the patient to regional acute-care facilities.

1 \$20,000 (the “**Unpaid Insurance Expenses**”). The Debtors seek authority to pay the Unpaid  
2 Insurance Expenses and continue Basic Life Insurance and AD&D Insurance in the ordinary  
3 course of business.

4 29. The Debtors also provide eligible U.S. Employees with short-term disability  
5 insurance through a policy with Prudential (the “**Short-Term Disability Insurance**”). The  
6 premiums for the Short-Term Disability Insurance are paid by the Debtors. The Short-Term  
7 Disability Insurance replaces lost income, subject to a cap, for a limited time. The Debtors  
8 estimate that the Short-Term Disability Insurance coverage for all Employees costs  
9 approximately \$8,000 per month. As of the Petition Date, the Debtors estimate that they have  
10 approximately \$10,000 of prepetition amounts outstanding with respect to Short-Term  
11 Disability Insurance coverage (“**Unpaid Short-Term Disability Insurance Expenses**”). The  
12 Debtors seek authority to pay the Unpaid Short-Term Disability Insurance Expenses and  
13 continue the Short-Term Disability Insurance in the ordinary course of business.

14 30. Eligible U.S. Employees also receive long-term disability insurance through a  
15 policy with Prudential (the “**Long-Term Disability Insurance**”). The premiums for the Long-  
16 Term Disability Insurance are paid by the Debtors. The Debtors estimate that the Long-Term  
17 Disability Insurance coverage for all Employees costs approximately \$9,000 per month. As of  
18 the Petition Date, the Debtors estimate that they have approximately \$11,000 in prepetition  
19 amounts outstanding with respect to Long-Term Disability Insurance coverage expenses  
20 (“**Unpaid Long-Term Disability Insurance Expenses**”). The Debtors seek authority to pay the  
21 Unpaid Long-Term Disability Insurance Expenses and continue the Long-Term Disability  
22 Insurance in the ordinary course of business.

23 31. The Debtors are required to maintain workers’ compensation insurance in various  
24 jurisdictions in which they operate (“**Workers’ Compensation Insurance**”). *See, e.g., Nev. Rev.*  
25 *Stat. § 616D.200* (providing penalties for employers that fail to obtain workers’ compensation  
26 insurance). To abide by this requirement, the Debtors maintain Workers’ Compensation  
27 Insurance programs through Berkley Industrial Comp and Carolina Casualty Insurance  
28 Company. The Debtors pay premiums in respect of Workers’ Compensation Insurance on a

1 monthly basis and periodically pay for audits performed by the insurer to establish the correct  
2 premium. Such monthly premiums may vary based upon the number of employees and the  
3 functions such employees perform. Historically, the Debtors accrued premiums of  
4 approximately \$225,000 annually for Workers' Compensation Insurance and audit costs of  
5 approximately \$109,000. The Debtors estimate that, as of the Petition Date, approximately  
6 \$148,000 in unpaid premiums and audit costs have accrued, but remain unpaid, for Workers'  
7 Compensation Insurance (the "***Unpaid Workers' Compensation Insurance Expenses***"). The  
8 Debtors seek authority to pay the Unpaid Workers' Compensation Insurance Expenses and  
9 continue the Workers' Compensation Insurance in the ordinary course of business.

### 10 **3. Additional Benefits for U.S. Employees**

11 32. In the ordinary course of business, as part of the Employee Benefits, the Debtors  
12 provide optional benefits to their U.S. Employees, including but not limited to employee  
13 assistance plans for emotional wellbeing, pet insurance, voluntary additional coverage (*e.g.*, for  
14 accidents, individual disabilities, cancer), wellness incentive programs, travel assistance, a  
15 prescription safety eyeglasses program and safety steel-toed boots (the "***U.S. Additional***  
16 ***Benefits***"). The cost of the U.S. Additional Benefits is funded primarily by participating  
17 Employees and the health insurance providers, with *de minimis* funding by the Debtors. The  
18 Debtors seek authority to continue to offer the U.S. Additional Benefits on a postpetition basis.

### 19 **B. Employee Benefits—Canada**

20 33. The Debtors, through their third-party administrator, Victor Insurance Managers,  
21 Inc., provide a package of benefits to their Canadian Employees (collectively, the "***Canadian***  
22 ***Benefits***"). The Canadian Benefits include extended medical services to Canadian Employees  
23 (*e.g.*, dental, eyecare, certain prescription drugs, counseling), which, among other things, cover  
24 items not covered under the provincial government healthcare plans. Other Canadian Benefits  
25 include basic and dependent life insurance, weekly indemnity (for disability pay), long-term  
26 disability, and emergency travel assistance. The Debtors pay approximately \$2,200 in monthly  
27 premiums in respect of the Canadian Benefits. As of the Petition Date, the Debtors estimate that  
28 \$4,000 of premiums remain outstanding for the Canadian Benefits (the "***Unpaid Canadian***").

1 **Benefits**”). The Debtors seek authority to pay the Unpaid Canadian Benefits and continue the  
2 Canadian Benefits in the ordinary course of business.

3 34. In addition, the Debtors maintain a Canadian workers’ compensation insurance  
4 program through a statutory agency in British Columbia known as the Workers’ Compensation  
5 Board of British Columbia, operating as WorkSafe BC (the “**Canadian Workers’ Compensation**  
6 **Insurance**”). The Debtors pay annual premiums on account of the Canadian Workers’  
7 Compensation Insurance that vary based upon employee compensation and statutory rates set  
8 by the Canadian government. Historically, the Debtors accrued premiums of less than \$1,000  
9 annually on account of the Canadian Workers’ Compensation Insurance. The Debtors estimate  
10 that less than \$500 in unpaid premiums have accrued as of the Petition Date on account of  
11 Canadian Workers’ Compensation Insurance (the “**Unpaid Canadian Workers’ Compensation**  
12 **Insurance Expenses**”). The Debtors seek authority to pay the Unpaid Canadian Workers’  
13 Compensation Insurance Expenses and continue the Canadian Workers’ Compensation  
14 Insurance in the ordinary course of business.

15 **C. Employee Savings and Retirement Plans and Benefits**

16 35. The Debtors maintain employee savings plans for eligible Employees in United  
17 States and contribute to employee savings plans for eligible Employees in Canada (each, an  
18 “**Employee Savings Plan**”). The Employee Savings Plan for U.S. Employees is tax-qualified  
19 within the meaning of, and administered in accordance with, the requirements of section 401(k)  
20 and other applicable sections of the Internal Revenue Code. The Employee Savings Plan for  
21 Canadian Employees qualifies as a Registered Retirement Savings Plan, for purposes of  
22 Canadian law.

23 36. Approximately 80% of Employees currently participate in the Employee Savings  
24 Plans, with a total of approximately \$100,000 withheld each month from Employees’ paychecks  
25 for Employee contributions (the “**Employee Contributions**”). The Debtors match the first five  
26 percent of salary contributed by eligible Employees as Employee Contributions to the Employee  
27 Savings Plans (the “**Savings Plan Match**”). The Debtors estimate that, as of the Petition Date,  
28 they owe approximately \$24,000 outstanding under the Savings Plan Match (prepetition



1 amounts owing under the Employee Savings Plans, the “*Unpaid Contributions*” and,  
2 collectively with the Unpaid Medical Plan Expenses, Unpaid Insurance Expenses, Unpaid Short-  
3 Term Disability Insurance Expenses, Unpaid Long-Term Disability Insurance Expenses, Unpaid  
4 Workers’ Compensation Insurance Expenses, U.S. Additional Benefits, Unpaid Canadian  
5 Benefits, and Unpaid Canadian Workers’ Compensation Insurance Expenses, the “*Prepetition*  
6 *Unpaid Employee Benefits*”). The Employee Savings Plans are integral components of  
7 Employee compensation and are critical for employee morale and the smooth operation of the  
8 Debtors’ business during these Chapter 11 Cases. Accordingly, the Debtors seek authority to  
9 pay the Unpaid Contributions and continue to maintain the Employee Savings Plans in the  
10 ordinary course of business.

#### 11 **IV. Gross Pay Deductions, Governmental Withholdings and Taxes**

12 37. By this Motion, the Debtors hereby seek authority to make all payments for  
13 which prepetition payroll deductions, garnishments, and certain employment-related taxes have  
14 been withheld (collectively the “*Employee Deductions*”), but not transferred, prior to the  
15 Petition Date (the “*Unremitted Deductions*”), to the appropriate designees. The Debtors  
16 routinely deduct certain amounts from Employee paychecks for Employee Deductions,  
17 including without limitation: (i) garnishments and similar deductions; (ii) pre-tax contributions  
18 to health and dependent care flexible spending accounts; and (iii) other pre-tax and after-tax  
19 deductions payable pursuant to certain of the Employee Benefits Programs. An aggregate of  
20 approximately \$202,000 per month typically is withheld from Employees’ paychecks in the  
21 form of Employee Deductions.

22 38. Applicable law requires that the Debtors withhold amounts related to income,  
23 social security, and Medicare taxes (collectively, the “*Withholding Taxes*”) for remittance to  
24 the appropriate taxing authority, both in the United States and Canada. The Debtors also are  
25 required to make payments from their own funds on account of social security and Medicare  
26 taxes and to pay, based on a percentage of gross payroll (and subject to state-imposed limits),  
27 additional amounts to the taxing authorities for, among other things, state and federal  
28 unemployment insurance (collectively, the “*Employer Payroll Taxes*” and, together with the

1 Withholding Taxes, the “**Payroll Taxes**”). The Payroll Taxes, including portions paid by both  
2 Employees and the Debtors, total approximately \$586,000 per month for the U.S. Employees  
3 and \$11,700 per pay period for the Canadian Employees, which amounts are deducted from the  
4 Debtors’ payroll account and periodically remitted on the Debtors’ behalf. The Debtors estimate  
5 that approximately \$160,000 of Payroll Taxes (including portions paid by both Employees and  
6 the Debtors) have accrued prior to the Petition Date and remain unpaid on behalf of the U.S.  
7 Employees, and \$7,500 of Payroll Taxes have accrued prior to the Petition Date and remain  
8 unpaid on behalf of the Canadian Employees (together, the “**Unpaid Payroll Taxes**”). The  
9 failure to remit Unpaid Payroll Taxes could result in the violation of applicable law by the  
10 Debtors and, in some instances, their officers and directors.<sup>5</sup> The Debtors believe that the  
11 Unremitted Deductions and the Unpaid Payroll Taxes are held in trust by the Debtors for the  
12 relevant taxing authorities and governmental agencies and, therefore, do not constitute property  
13 of the Debtors’ estates. Nevertheless, out of an abundance of caution, the Debtors seek Court  
14 authorization to remit the Unremitted Deductions and pay or otherwise satisfy the Unpaid  
15 Payroll Taxes.

16 39. The Debtors pay certain additional employment-related taxes, including, in the  
17 case of NCI, Nevada’s modified business tax (“**Modified Business Tax**”) and, in the case of  
18 NCU, provincial medical taxes applicable to employers in Canada (“**Provincial Medical Taxes**,”  
19 and, together with Payroll Taxes and the Modified Business Tax, the “**Unpaid Employment**  
20 **Taxes**”). The Modified Business Tax is a tax on wages paid to employees, calculated based on  
21 a flat percentage for all wages paid to employees in excess of \$50,000 in a given quarter. The  
22 Debtors last payment of Modified Business Taxes was for approximately \$78,500 and was made  
23 on April 22, 2024, for the first quarter. Modified Business Taxes for the second quarter will be  
24 due on July 31, 2024. The Debtors estimate that the aggregate amount of prepetition Modified  
25 Business Taxes accrued, but not yet due and owing, is approximately \$67,000. Although NCU  
26 estimates that \$3,000 in Provincial Medical Taxes have accrued and remain unpaid for the

27 <sup>5</sup> See 26 U.S.C. § 6672, 5 I.R.M. Abr. & Ann. § 9.5.13.2.2.5 (imposing personal liability “on any person who is  
28 required to collect, truthfully account for and pay over any tax but who willfully evades, fails to collect, account  
for and/or pay over such tax, or willfully attempts in any manner to evade or defeat any such tax”).



1 prepetition period, the Debtors have a credit for unused overpayments with respect to previous  
2 tax years, which they expect will be offset against any prepetition cash liability for Provincial  
3 Medical Taxes. To the extent NCU or Canadian authorities need permission to offset such  
4 Provincial Medical Taxes, or NCU otherwise has additional liability for prepetition Provincial  
5 Medical Taxes, NCU requests authority to pay such taxes. Also, out of an abundance of caution,  
6 the Debtors seek authorization to continue to pay the Modified Business Taxes and Provincial  
7 Medical Taxes in the ordinary course.

8 **V. 2023 STIP**

9 40. On an annual basis, the Debtors also award short-term incentive plan (STIP) cash  
10 payments based upon overall company results and individual factors applicable to the Employee,  
11 the receipt of which are viewed by Employees as a key component of their annual compensation.  
12 For 2023, consistent with prior practice, the 2023 STIP determination was a combination of a  
13 percentage based on the corporate scorecard result and a percentage based on personal objective  
14 results. The percentages vary by level, with lower-level Employees weighted towards personal  
15 objective results and higher levels focused more on the overall corporate scorecard result.

16 41. The 2023 STIP awards were approved on March 27, 2024, and communicated to  
17 54 Employees on or around April 15, 2024. STIP awards were made to all eligible Employees  
18 as a basic component of the Debtors compensation structure and ranged from approximately  
19 \$1,200 to approximately \$200,000. However, due to limited cash resources at the time, the 2023  
20 STIP awards were not paid pending completion of a funding transaction that would enable  
21 payment. Given the 2023 STIP is standard employee compensation for many of the Debtors'  
22 Employees and consistent with industry practice in Nevada, the Debtors cannot afford to delay  
23 the disbursement of this compensation. The Debtors believe that failure to pay the 2023 STIP  
24 would alienate Employees, who have been expending significant efforts on behalf of all  
25 stakeholders while accommodating a payment delay and would put the Debtors at a risk of losing  
26 a significant number of Employees unpredictably, potentially damaging the ability of the  
27 Debtors to maintain their operations. The 2023 STIP recipients perform essential functions for  
28

1 the Debtors and will be critical in running the Debtors' business and supporting their sale and  
2 restructuring efforts.

3 42. Payment of the 2023 STIP (as further described below), would cause payments  
4 to certain Employees to exceed the Statutory Cap. However, the Debtors believe that ample  
5 cause exists for the payment of the 2023 STIP awards in light of the essential services performed  
6 by the Employees and the risks to the Debtors' assets posed by unplanned Employee attrition.

7 43. Accordingly, the Debtors seek authority to pay 2023 STIP awards to non-  
8 management Employees up to \$50,000 per Employee under this Motion, upon entry of the  
9 Proposed Final Order.<sup>6</sup> In addition, to the extent the Court does not approve payment of any  
10 portion of the 2023 STIP sought in this Motion, the Debtors may request authority to make such  
11 payments as part of the Debtors' key employee retention program for non-management  
12 Employees, as the Debtors believe that such payments are necessary to ensure sufficient  
13 Workforce stability to carry out their sale and recapitalization through these cases. However, to  
14 avoid any possibility of awarding the same relief twice, any payment by the Debtors to a non-  
15 management Employee under the Debtors' key employee retention program would be offset by  
16 any amounts paid to the Employee under the 2023 STIP.

## 17 **VI. Administrative Costs**

18 44. In the ordinary course of business, the Debtors use the services of third-party  
19 administrators (the "***Third-Party Administrators***") to whom they outsource tasks associated  
20 with the administration of Employee Benefits. In order to ensure that the services provided by  
21 Third-Party Administrators continue uninterrupted, the Debtors hereby request authority to pay  
22 all processing costs and administrative expenses ("***Third-Party Administrative Costs***"),  
23 including by making payments in the ordinary course to Third-Party Administrators or other  
24 service providers for the services of certain Third-Party Administrators.

25 45. Examples of the most significant Third-Party Administrators utilized by the  
26 Debtors include the following entities:

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27  
28 <sup>6</sup> Management that is excluded from this request includes all Employees that have Vice-President or equivalent titles.

- i. **Paychex:** As described in Section II above (“Workforce Compensation”), the Debtors rely on Paychex for several Employee-related services, including the administration of the Debtors’ United States payroll and Employee Savings Plans, and payment of all withholding and payroll taxes to applicable parties. The Debtors pay an aggregate of approximately \$117,000 per year for Paychex’s services. The Debtors estimate that, as of the Petition Date, they owe approximately \$9,000 in Third-Party Administrative Costs to Paychex.
- ii. **ADP:** As described in Section II above (“Workforce Compensation”), the Debtors rely on ADP for the administration of the Debtors’ Canadian payroll and payment of all withholding and payroll taxes to applicable parties. The Debtors pay an aggregate of approximately \$100 per pay period for ADP’s services. The Debtors estimate that, as of the Petition Date, they owe approximately \$100 in Third-Party Administrative Costs to ADP.
- iii. **MacLean Financial Group:** MacLean Financial Group (“**MacLean**”) serves as the broker/advisor for the Debtors’ Employee Savings Plans. The Debtors pay an aggregate of approximately \$15,000 per year for MacLean’s services. The Debtors estimate that, as of the Petition date, they owe approximately \$5,100 in Third-Party Administrative Costs to MacLean.

46. The services provided by the Third-Party Administrators allow the Employee Benefits to be administered in the most cost-efficient manner that complies with applicable laws. The Debtors pay approximately \$16,000 per month in Third-Party Administrative Costs. The Debtors estimate that, as of the Petition Date, the amount of unpaid Third-Party Administrative Costs was approximately \$16,000 (the “**Unpaid Third-Party Administrative Costs**”). The services provided by the Third-Party Administrators are provided in the ordinary course of business and are critical for ensuring that the Employees will continue to be paid and receive benefits without interruption. Accordingly, the Debtors seek authorization to pay the Unpaid Third-Party Administrative Costs.

#### **Basis for Relief**

47. The ability of the Debtors to maximize their value in these Chapter 11 Cases is dependent in part upon the retention and motivation of their Workforce, whose efforts will be critical to the success of these Chapter 11 Cases. Any disruption from further unplanned resignations or lack of morale among the Workforce prior to the period covered by the Advance Notices could have devastating effects on the Debtors’ efforts to stabilize and sell their business

1 and preserve value. For the Debtors to retain the services of their go-forward Workforce, it is  
2 essential that they be permitted to continue to pay and honor, in their discretion, Prepetition  
3 Compensation Obligations and amounts arising under, or in connection with, the Employee  
4 Benefits, the Leave Policies, the 2023 STIP and other obligations on account of their Workforce.

5 48. As of the Petition Date, and as described above, certain amounts owed on account  
6 of Workforce-related obligations that accrued prepetition remain unpaid as of the Petition Date.  
7 In order to minimize the personal hardship to the Workforce, as well as to maintain the stability  
8 of the Debtors' operations, for which the wellbeing and morale of their Workforce are  
9 imperative, the Debtors request authority to continue to honor these obligations, in their  
10 discretion, by paying amounts owed on account of such obligations that accrued prepetition and  
11 remain unpaid as of the Petition Date.

12 **I. Payment of Priority Claims Will Not Materially Prejudice Other Creditors**

13 49. The Debtors submit that the Prepetition Employee Wage Claims, Hourly  
14 Employee Bonus Program, Prepetition Unpaid Employee Benefits, and a portion of the 2023  
15 STIP that the Debtors seek authority to fund hereunder would be entitled to priority treatment  
16 under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. Pursuant to section 507(a)(4)  
17 of the Bankruptcy Code, each Employee may be granted a priority claim for:

18 allowed unsecured claims, but only to the extent of \$15,150 for  
19 each individual or corporation, as the case may be, earned within  
20 180 days before the date of the filing of the petition or the date of  
the cessation of the debtor's business, whichever occurs first, for  
–

21 (A) wages, salaries, or commissions, including vacation,  
22 severance, and sick leave pay earned by an individual . . . .

23 11 U.S.C. § 507(a)(4). Section 507(a)(5) accords priority of payment for:

24 allowed unsecured claims for contributions to an employee  
25 benefit plan –

26 (A) arising from services rendered within 180 days before the  
date of the filing of the petition or the date of the cessation  
27 of the debtor's business, whichever occurs first; but only

28 (B) for each such plan, to the extent of –

(i) the number of employees covered by each such plan multiplied by \$15,150; less

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan

....

11 U.S.C. § 507(a)(5)<sup>7</sup>. The Prepetition Compensation Obligations and the Prepetition Unpaid Employee Benefits are entitled to priority status under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, up to the Statutory Cap. Moreover, the costs of administering employee benefits programs also are entitled to priority under section 507(a)(5) of the Bankruptcy Code. *See Allegheny Int'l, Inc. v. Metro. Life Ins. Co.*, 145 B.R. 820 (Bankr. W.D. Pa. 1992).<sup>8</sup> The Debtors, therefore, would be required to pay these claims up to the applicable caps to confirm a Plan ahead of all other unsecured claims. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries and commissions, and certain allowed unsecured claims for contribution to an employee benefit plan). As a result, payments up to the Statutory Cap would not alter in any material respect the rights of the Debtors' other unsecured, non-priority creditors. As set out further below, payments in excess of the Statutory Cap, to accommodate the 2023 STIP and the other Workforce-related expenses described herein, should be permitted as necessary to preserve the Debtors' Workforce and an essential component of preserving and protecting the Debtors' assets for the benefit of all stakeholders.

## **II. Authority for the Requested Relief Herein Has Multiple Additional Statutory Bases**

50. The relief requested herein is authorized under the Court's general equitable powers, which are codified in section 105(a) of the Bankruptcy Code. Under section 105(a), the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The purpose of section 105(a)

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<sup>8</sup> In *Allegheny*, the court found that prepetition fees of a plan administrator were entitled to priority under section 507(a)(4) of the Bankruptcy Code on the basis that "[i]t would be useless to prioritize expenses for contributions to an employee benefit plan and not prioritize the expenses necessary to administer those plans." *Id.* at 822-23.

1 is “to assure the bankruptcy courts [sic] power to take whatever action is appropriate or  
2 necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01, at 105-  
3 5 (16<sup>th</sup> ed. Rev. 2011). Numerous courts have used their section 105(a) equitable powers under  
4 the “necessity of payment” doctrine to authorize payment of debtors’ prepetition obligations  
5 where, as here, such payment is necessary to maximize the value of the debtors’ estates. *See,*  
6 *e.g., Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.),*  
7 80 B.R. 279, 287 (S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the debtor to  
8 pay pre-bankruptcy wages, salaries, employee benefits and reimbursements, and workers’  
9 compensation claims and premiums); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr.  
10 S.D.N.Y. 1989) (authorizing the debtor to pay current Employees’ pre-bankruptcy wages,  
11 salaries, medical benefits and business expense claims). Courts, including within the Ninth  
12 Circuit and up to the Supreme Court acknowledge the authority of bankruptcy courts to enter  
13 orders approving the payment of prepetition claims in appropriate circumstances. *See Czyzewski*  
14 *v. Jevic Holding Corp.*, 580 U.S. 451, 468 (2017) (noting that bankruptcy courts have authorized  
15 the payment of prepetition claims where “the distributions at issue would enable a successful  
16 reorganization and make even the disfavored creditors better off” and that the purposes of the  
17 Bankruptcy Code include “permitting business debtors to reorganize and restructure their debts  
18 in order to revive the debtors’ businesses and maximizing the value of the bankruptcy estate...”)  
19 (internal quotation omitted); *In re Adams Apple, Inc.*, 829 F.2d 1484, 1490 (9<sup>th</sup> Cir. 1987) (noting  
20 in *dicta* that “rehabilitation of debtors . . . may supersede the policy of equal treatment . . . in  
21 such contexts as . . . pre-petition wages to key employees . . .”); *see also In re Pettit Oil Co.*,  
22 Case No. 13-47285, 2015 WL 6684225 at \*8 (Bankr. W.D. Wash. Oct. 22, 2015) (interpreting  
23 *Adams Apple* as an acknowledgement that it is “permissible to treat prepetition debts unequally  
24 when necessary for rehabilitation”). *Contra In re B &W Enter., Inc.*, 713 F.3d 534 (9<sup>th</sup> Cir.  
25 1983) (discussing “Necessity of Payment Rule” as originating in railroad reorganization context  
26 and declining to apply it for purposes of retroactive approval of certain vendor payments by  
27 trucking company prior to conversion of its chapter 11 case to a chapter 7 case). Without the  
28 payment of amounts necessary to preserve the Debtors’ Workforce, the Debtors would be



1 severely hindered in maintaining the basic operations necessary to protect their assets and  
2 prosecute this case.

3         51. The Court also may authorize the relief requested herein under section 363(b) of  
4 the Bankruptcy Code. Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing,  
5 may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11  
6 U.S.C. § 363(b)(1). Accordingly, under section 363, a court may authorize a debtor to pay  
7 certain prepetition claims. To obtain relief under section 363(b) of the Bankruptcy Code, “the  
8 debtor must articulate some business justification, other than the mere appeasement of major  
9 creditors.” *In re Ionosphere Clubs*, 98 B.R. at 175. Finally, authority for payments of  
10 prepetition obligations also may be found in sections 1107(a) and 1108 of the Bankruptcy Code,  
11 which vest debtors in possession with authority to continue operating their business. At times,  
12 the need to continue operating their business and the concomitant fiduciary duty to maximize  
13 estate value only may be fulfilled through the pre-plan payment of certain unsecured claims.  
14 *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). The Debtors’ request for  
15 authority to pay prepetition amounts related to Wages and Benefits easily meets these standards,  
16 because the failure to do so would have a devastating effect on the Debtors’ operations and  
17 efforts to maximize estate value.

18         52. Courts considering compensation under short term incentive plans have granted  
19 relief similar to that proposed here by the Debtors where the STIP is initially authorized to  
20 Employees below a given threshold for both amount and for level of management control, and  
21 further authorized in relation to higher awards subject to reporting requirements to key parties  
22 such as the United States Trustee and creditors’ committee. *See e.g. In re Smiledirectclub, Inc.*,  
23 Case No. 23-90786 (CML) (Bankr. S.D. Tex. Oct. 2, 2023) [Dkt. No. 60] (authorizing the  
24 payment of a STIP as part of a non-insider employee bonus program provided, however, that  
25 any payment in excess of (i) \$250,000 in the aggregate in any calendar month or (ii) \$50,000 to  
26 any individual, would be required to be reported to the United States Trustee and any statutory  
27 committee); *In re Envision Healthcare Corp.*, Case No. 23-90342 (CML) (Bankr. S.D. Tex. May  
28 15, 2023) [Dkt. No. 109] (authorizing the payment of non-insider incentive and bonus programs

provided that, before paying any amount in excess of \$50,000, the debtors must first provide notice to the United States Trustee and any statutory committee); *In re Big Village Holding LLC*, Case No. 23-10174 (CTG) (Bankr. Del. March 6, 2023) [Dkt. No. 96] (authorizing the debtors to honor and continue bonus programs provided that the debtors' payments would not exceed \$1.75 million in the aggregate and that the Debtors would provide 5 days' notice to the administrative agent of the debtors' credit agreement). Accordingly, the Debtors propose similar relief herein, which would enable them to pay up to \$50,000 per Employee in 2023 STIP awards upon entry of the Proposed Final Order. The Debtors submit that this formulation balances the competing needs to conserve resources, treat creditors fairly, and motivate Employees to remain committed to advancing the Debtors' business plan despite the considerable sacrifices of and challenging circumstances for these Employees.

53. Finally, the Debtors seek to ensure their compliance with applicable, or potentially applicable, state and federal labor laws, including laws requiring Employee compensation to continue, consistent with past practice, in the lead up to, and during, significant reductions in force and requiring employers to pay all amounts owing, including for accrued vacation, upon termination. The federal Worker Adjustment Retraining and Notification Act (the "***WARN Act***") requires that employers "shall not order a plant closing or mass-lay-off until the end of a 60-day period after the employer serves written notice of such an order." *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1158-59 (9th Cir. 2001). A mass-lay-off may be found to have occurred if a reduction in force "results in an employment loss at the single site of employment during any 30-day period for . . . at least 33 percent of the employees (excluding any part-time employees) [and] at least 50 employees (excluding any part-time employees). *See* 29 U.S.C. § 2101. The WARN Act provides certain exceptions to its applicability, and the Debtors reserve, and are not waiving, any and all rights to assert that the WARN Act does not apply to these circumstances.<sup>9</sup>

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<sup>9</sup> The WARN Act and its regulations specifically encourage voluntary compliance with WARN's notice provisions. *See, e.g.*, 29 U.S.C. § 2106 ("**Procedures encouraged where not required.** It is the sense of Congress that an employer who is not required to comply with the notice requirements of § 2102 of this title should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its work force."); *see also* 20 C.F.R. § 639.1(c) ("**Notice encouraged where not required**") (quoting



1 Nevertheless, if the Debtors were found to have violated the WARN Act in the course of  
2 transitioning to a smaller Workforce, the Debtors could potentially be found liable to each  
3 aggrieved employee for wages, benefits and other compensation for each day of violation, along  
4 with the potential for an award of attorney's fees and costs. *See Las Vegas Sands*, 244 F.3d at  
5 1160 (describing WARN Act damages for back pay); *see also* 29 U.S.C. § 2104(a)(6) (providing  
6 that, in a WARN Act case, "the court, in its discretion, may allow the prevailing party a  
7 reasonable attorneys' fee as part of the costs."). Similarly, under Nevada law, failure to pay  
8 amounts owing to terminated Employees will result in the Employees' wages or compensation  
9 to continue at the same rate from the day of the termination until paid or for 30 days, whichever  
10 is less. *See Nev. Rev. Stat. § 608.040*. Such liability under the WARN Act or Nevada law<sup>10</sup>  
11 would be subject to administrative priority under Section 503b(1)(A)(ii) of the Bankruptcy Code  
12 as wages and benefits awarded pursuant to a judicial proceeding as back pay as a result of a  
13 violation of federal or state law by the debtor, as the Debtors' notification of their reduction in  
14 force is occurring postpetition. *See* 11 U.S.C. § 503(b)(1)(A)(ii). Accordingly, the Debtors seek  
15 to pay amounts owing to Affected Employees upon separation at the end of the 60-day notice  
16 period to ensure compliance with law and to maintain good relations with their Workforce, a  
17 critical component of preserving the Debtors' assets and the possibility of a viable business that  
18 can attract employees to operate the Project in the future.

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23 Section 7 of the WARN Act); 20 C.F.R. § 639.1(e) ("**Notice in ambiguous situations.** It is civically desirable,  
24 and it would appear to be a good business practice for an employer to provide advance notice to its  
25 workers...when terminating a significant number of employees. In practical terms, there are some questions  
26 and ambiguities of interpretation inherent in the application of WARN to business practices in the market  
economy that cannot be addressed in these regulations. It is therefore prudent for employers to weigh the  
desirability of advance notice against the possibility of expensive and time-consuming litigation to resolve  
disputes where notice has not been given. The Department [of Labor] encourages employers to give notice in  
all circumstances.").

27 <sup>10</sup> Nevada law states that "whenever an employer discharges an employee, the wages and compensation earned  
28 and unpaid at the time of such discharge shall become due and payable immediately." Nev. Rev. Stat.  
§ 608.020. Wages is defined to mean "the amount which an employer agrees to pay an employee for the time  
the employee has worked, computed in proportion to time..." Nev. Rev. Stat. § 608.012.

1 **III. Applicable Bankruptcy and Non-Bankruptcy Law Requires Payment and**  
2 **Continuation of Certain Wages and Benefits**

3 54. The Employee Deductions and the Withholding Taxes principally represent  
4 Employee earnings that government entities (in the case of taxes), Employees (in the case of  
5 voluntarily withheld amounts), and judicial authorities (in the case of involuntarily withheld  
6 amounts) have designated for deduction from Employees' paychecks. The Employer Payroll  
7 Taxes represent amounts that the Debtors are required to pay to government entities in  
8 connection with the employment of their Workforce. If the Debtors are unable to remit each of  
9 these amounts, Employees may face legal action and the Debtors would be out of compliance  
10 with their own legal obligations and potentially burdened by inquiries and disputes concerning  
11 their failure to submit legally required payments. Most, if not all, of the Unremitted Deductions  
12 and Unpaid Payroll Taxes constitute monies held in trust and are not property of the Debtors'  
13 bankruptcy estates. With respect to any such amounts held in trust, the Debtors believe that they  
14 both are entitled and required to continue directing such funds to the appropriate parties. *See*  
15 *Begier v. IRS*, 496 U.S. 53, 59 (1990) (holding that taxes such as excise taxes, FICA taxes and  
16 withholding taxes are property held by the debtor in statutory trust for the federal government  
17 and, as such, do not constitute property of the estate); *Shank v. Wash. State Dept. of Revenue (In*  
18 *re Shank)*, 792 F.2d 829, 833 (9<sup>th</sup> Cir. 1986) (sales tax required by state law to be collected by  
19 sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge);  
20 *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same); *In re Jha*,  
21 461 B.R. 611, 619 (Bankr. N.D. Cal. 2011) (holding that taxes withheld by employers to pay  
22 income taxes are held in trust for the United States, and became property of the estate only in  
23 the form of a claim to a refund for any excess withholding of funds).

24 55. The Wages and Benefits are a reasonably limited and competitive set of policies  
25 that are reflective of market practice in the Debtors' business, and, therefore, are necessary to  
26 retain the skilled and motivated workforce required to operate the Debtors' business. The failure  
27 of the Debtors to make payments owing on account of the Wages and Benefits will harm the  
28 members of the Debtors' Workforce, may result in the unwanted departure of Employees in a

1 manner that would threaten the stability of the Debtors' operations and the go-forward value of  
2 the Debtors' business. The importance of a debtor's Workforce to its operations has been  
3 repeatedly recognized by courts granting relief similar to the relief requested herein.  
4 Accordingly, based on the foregoing facts and authorities, the Debtors respectfully submit that  
5 the relief requested herein should be granted.

6 **IV. The Court Should Authorize Banks to Honor and Process the Debtors' Payments**  
7 **as Set Forth Herein**

8 56. As a result of the commencement of these Chapter 11 Cases, and in the absence  
9 of an order of the Court providing otherwise, the Debtors' checks may be dishonored or rejected  
10 by banks or other financial institutions. The Debtors submit that any banks or other financial  
11 institutions should be authorized to debit the Debtors' accounts in the ordinary course of  
12 business for those items authorized by order of the Court. The Debtors submit that any bank or  
13 financial institution should be authorized to rely on the representations of the Debtors that any  
14 check, item, or other payment order drawn or issued by the Debtors prior to the Petition Date  
15 should be honored. Any and all payments arising under or in connection with or authorized to  
16 be made by the Motion or the Order shall be subject to the interim and final orders of the Court  
17 in these Chapter 11 Cases approving the Debtors' debtor-in-possession financing facilities and  
18 the related budgets as approved by the lenders under such facilities.

19 **Reservation of Rights**

20 57. Nothing contained herein is or should be construed as: (i) an admission as to the  
21 validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim  
22 on any grounds and raise any available defenses; (iii) a promise or requirement to pay any claim;  
23 (iv) an admission that any particular claim is of a type specified or defined hereunder; (v) a  
24 request to assume any executory contract or unexpired lease; or (vi) a waiver of the Debtors'  
25 rights under the Bankruptcy Code or any other applicable law. The authorization to pay amounts  
26 on account of the Wages and Benefits shall not affect the Debtors' rights to contest the amount  
27 or validity of such obligations and shall not be deemed to constitute the postpetition assumption  
28 or adoption of any programs, policies, or agreements described herein.

**Satisfaction of Bankruptcy Rule 6003(b)**

58. The relief requested herein is immediately necessary for the Debtors to continue to operate in a manner that maximizes estate value. Such relief is necessary to prevent immediate and irreparable damage to the Debtors' Employee relations, operations, going-concern value, and ability to implement an orderly restructuring for the benefit of all creditors. Accordingly, to the extent that Bankruptcy Rule 6003 is applicable to the relief requested,<sup>11</sup> the Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

**Request for Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

59. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion, any delay in paying the Wages and Benefits would be detrimental to the Debtors, their estates, and creditors, as the Debtors' ability to manage and run their businesses without any unexpected or inopportune interruptions requires, in part, that the Debtors remain current with such obligations. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders.

60. To implement the foregoing relief requested in this Motion immediately, the Debtors also respectfully request a waiver of the 21-day notice requirements of Bankruptcy Rule 2002(a)(2) as made applicable in Bankruptcy Rule 6004(a), for cause shown, to the extent applicable to the Interim Order.

**Notice**

Notice of this Motion will be provided to: (i) the Office of the United States Trustee for Region 17; (ii) the 20 largest unsecured creditors of each of the Debtors; (iii) the Internal

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<sup>11</sup> Bankruptcy Rule 6003 provides that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate . . . ." Fed. R. Bankr. P. 6003.

1 Revenue Service; (iv) the Office of the United States Attorney for the District of Nevada; (v)  
2 counsel to the DIP Lender, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New  
3 York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate  
4 Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134,  
5 Attn: James Patrick Shea and Bart Larsen; (vi) Milbank LLP, as counsel to KfW IPEX-Bank  
6 GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson  
7 Yards, New York, NY 10001, Attn: Tyson Lomazow; (vii) Bennett Jones LLP, as counsel to  
8 Mercuria Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto,  
9 Ontario M5X 1A4, Canada, Attn: Simon Grant; (viii) White & Case LLP, as counsel to  
10 Concord Resources Limited as buyer under the Debtors' prepetition advance payment  
11 agreement, 1221 6th Avenue, New York, NY 10020, Attn: Philip Abelson; (ix) Davis, Graham  
12 & Stubbs LLP, as counsel to Triple Flag Mining Finance Bermuda Ltd. as purchaser under the  
13 Debtors' prepetition purchase and sale agreement, 1550 17th Street, Suite 500, Denver,  
14 CO 80202, Attn: Kyler Burgi; (x) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala  
15 Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United  
16 Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M.  
17 Schweitzer; (xi) Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade  
18 Center, 175 Greenwich Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xii) any  
19 party that is required to receive or has requested notice pursuant to Bankruptcy Rule 2002 or  
20 Local Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief  
21 requested, no other or further notice need be given.

22 *[Remainder of page intentionally left blank.]*  
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1           WHEREFORE, the Debtors respectfully request that the Court grant the relief requested  
2 herein and such other and further relief as is just and proper.

3           Dated this 10th day of June, 2024.

4                           McDONALD CARANO LLP

5                           /s/ Ryan J. Works

6                           Ryan J. Works (NSBN 9224)

7                           Amanda M. Perach (NSBN 12399)

8                           2300 West Sahara Avenue, Suite 1200

9                           Las Vegas, Nevada 89102

10                          ALLEN OVERY SHEARMAN STERLING US LLP

11                          Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)

12                          Sara Coelho (NYSBN 4530267) (*pro hac* pending)

13                          599 Lexington Avenue

14                          New York, New York 10022

15                          *Proposed Counsel to the Debtors and*  
16                          *Debtors in Possession*

**EXHIBIT 1**

**Interim Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50567

Chapter 11

**Hearing Date:**

**Hearing Time:**

**INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) PAY  
PREPETITION EMPLOYEE WAGES, SALARIES, AND OTHER  
COMPENSATION, (II) REIMBURSE PREPETITION BUSINESS  
EXPENSES, (III) CONTINUE PREPETITION EMPLOYEE BENEFITS  
PROGRAMS, (IV) MAKE PAYMENTS FOR WHICH PREPETITION  
PAYROLL DEDUCTIONS HAVE BEEN WITHHELD AND PAY CERTAIN  
EMPLOYMENT-RELATED TAXES, (V) PAY AMOUNTS THAT WERE AWARDED  
UNDER THE DEBTORS' 2023 SHORT TERM INCENTIVE PROGRAM,  
AND (VI) PAY ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”) authorizing, but not directing, the Debtors, *inter alia*, to (i) pay all prepetition employee wages, salaries and other accrued compensation, (ii) reimburse prepetition business expenses, (iii) continue prepetition employee benefits programs (including by making contributions in connection therewith, and continuing such programs on a post-petition basis), (iv) make all payments for which prepetition payroll deductions have been withheld and pay certain employment-related taxes, (v) pay amounts that were awarded under the Debtors’ 2023

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



1 short term incentive program, (vi) pay all costs and expenses incident to the foregoing, and  
2 (vii) setting the date of a final hearing and granting related relief; and it appearing that this Court  
3 has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that  
4 this is a core proceeding pursuant to 28 U.S.C. § 157(b), and that this Court may enter a final  
5 order consistent with Article III of the United States Constitution; and venue being proper before  
6 this Court pursuant to 28 U.S.C. § § 1408 and 1409; and, under the circumstances, proper and  
7 adequate notice of the Motion and the hearing thereon having been given; and it appearing that  
8 no other or further notice being necessary; and this Court having reviewed the Motion and  
9 having heard the statements in support of the relief requested therein at a hearing before this  
10 Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause  
11 for the relief granted herein; and this Court having determined that the relief sought in the  
12 Motion is in the best interests of the Debtors, their estates, their creditors and other parties in  
13 interest; and after due deliberation and sufficient cause appearing therefor;

14 IT IS HEREBY ORDERED THAT:

15 1. The Motion is GRANTED as set forth herein.

16 2. The Debtors are authorized, but not directed, to honor and pay all prepetition  
17 claims and obligations related to the Prepetition Compensation Obligations, up to a maximum  
18 amount for any individual that equals, together with any unpaid Prepetition Unpaid Employee  
19 Benefits, \$15,150 per individual, and approximately \$1,483,500, in the aggregate for amounts  
20 paid to Employees.

21 3. The Debtors are authorized, but not directed, to honor and continue their Leave  
22 Policies, including paying amounts thereunder, in the ordinary course of business and consistent  
23 with prepetition practices, regardless of when the benefits under the Leave Policies accrued,  
24 *provided, however*, the Debtors shall not pay any Employee in cash on account of the Leave  
25 Policies prior to entry of a final order granting the relief requested in the Motion.

26 4. The Debtors are authorized, but not directed, to honor and to pay all prepetition  
27 claims and obligations related to and including the following: (i) Unpaid Medical Plan  
28 Expenses; (ii) Unpaid Insurance Expenses; (iii) Unpaid Short-Term Disability Insurance

1 Expenses; (iv) Unpaid Long-Term Disability Insurance Expenses; (v) Unpaid Workers'  
2 Compensation Insurance Expenses; (vi) Unpaid Contributions; (vii) U.S. Additional Benefits;  
3 (viii) Unpaid Canadian Benefits; and (ix) Unpaid Canadian Workers' Compensation Insurance  
4 Expenses (collectively, the "***Prepetition Unpaid Employee Benefits***"); *provided, however*, that  
5 absent further order of this Court, the aggregate amount of such payments for Prepetition Unpaid  
6 Employee Benefits paid directly (and not *via* effecting an offset) shall not exceed \$633,500.

7 5. The Debtors are authorized, but not directed, to honor and to pay all prepetition  
8 claims and obligations related to and including the following: (i) Unpaid Reimbursable  
9 Expenses; (ii) Unremitted Deductions; (iii) Unpaid Employment Taxes, including, in the case  
10 of Provincial Medical Taxes, though offsetting against tax overpayments owing to the Debtors;  
11 and (iv) Unpaid Third-Party Administrative Costs (collectively, the "***Prepetition Unpaid***  
12 ***Employee Costs***"); *provided, however*, that absent further order of this Court, the aggregate  
13 amount of such payments for Prepetition Unpaid Employee Costs paid directly (and not *via*  
14 effecting an offset) shall not exceed \$288,500.

15 6. All banks, and other financial institutions are authorized to receive, process,  
16 honor and pay all checks presented for payment and to honor all electronic payment requests or  
17 credit card payments made by the Debtors related to the prepetition obligations described in the  
18 Motion.

19 7. The Debtors are authorized, but not directed, to continue and/or modify, change,  
20 or discontinue the Wages and Benefits on a post-petition basis, in the ordinary course of  
21 business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors'  
22 discretion, to pay and honor amounts related thereto, irrespective of whether such obligations  
23 arose prepetition or post-petition.

24 8. Notwithstanding anything to the contrary in this Interim Order, any payment  
25 made or to be made hereunder, and any authorization herein, shall be subject to the requirements  
26 (if any) imposed on the debtors under any order(s) of this Court approving a postpetition debtor  
27 in possession financing facility and/or the use of cash collateral (any such order, a "***Financing***  
28 ***Order***"), including any documentation with respect to such financing and any budget in

1 connection with such Financing Order. In the event of any conflict between the terms of this  
2 Interim Order and a Financing Order, the terms of the applicable Financing Order shall control  
3 (solely to the extent of such conflict). Nothing in this Interim Order authorizes the Debtors to  
4 accelerate any payments not otherwise due prior to the date of the Final Hearing.

5 9. The final hearing (the “***Final Hearing***”) on the Motion shall be held on  
6 \_\_\_\_\_, 2024, at \_\_\_\_:\_\_\_\_.m. (prevailing Pacific Time). Any party in interest objecting to the  
7 relief sought at the Final Hearing or in the Final Order shall file and serve a written objection,  
8 which objection shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy  
9 Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric  
10 Sosnick and Sara Coelho; (b) McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200,  
11 Las Vegas, Nevada 89102, Attn: Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th  
12 Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis,  
13 Mike Noel, Hanna Singer and Jeremy Opolsky; (ii) the Office of the United States Trustee for  
14 Region 17, C. Clifton Young Federal Building, 300 Booth Street, Room 3009, Reno,  
15 Nevada 85909; (iii) counsel to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP,  
16 One Bryant Park, New York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington,  
17 D.C. 20006, Attn: Kate Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite  
18 150, Las Vegas, NV 89134, Attn: James Patrick Shea and Bart Larsen; (iv) Milbank LLP, as  
19 counsel to KfW IPEX-Bank GmbH as administrative agent under the Debtors’ prepetition credit  
20 agreement, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones  
21 LLP, as counsel to Mercuria Investments US, Inc., 3400 One First Canadian Place, P.O. Box  
22 130, Toronto, Ontario M5X 1A4, Canada, Attn: Simon Grant; (vi) White & Case LLP, as  
23 counsel to Concord Resources Limited as buyer under the Debtors’ prepetition advance payment  
24 agreement, 1221 6th Avenue, New York, NY 10020, Attn: Philip Abelson; (vii) Davis, Graham  
25 & Stubbs LLP, as counsel to Triple Flag Mining Finance Bermuda Ltd. as purchaser under the  
26 Debtors’ prepetition purchase and sale agreement; 1550 17th Street, Suite 500, Denver,  
27 CO 80202, Attn: Kyler Burgi; (viii) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala  
28 Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United

1 Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M.  
2 Schweitzer; (ix) Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade  
3 Center, 175 Greenwich Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (x)  
4 counsel to any statutory committee appointed in these Chapter 11 Cases, in each case so as to  
5 be received no later than \_\_\_\_\_, 2024, at 11:59 p.m. (Prevailing Pacific Time). If  
6 no objections to the entry of the Final Order are timely filed, this Court may enter the Final  
7 Order without further notice or a hearing.

8 10. Nothing in this Interim Order should be read to constitute a prohibition on the  
9 Debtors' right to seek authority to pay any employee compensation or employee benefits for  
10 which relief is not sought by the Motion or to pay any amounts in the ordinary course of business  
11 consistent with the requirements of the Bankruptcy Code.

12 11. All banks and other financial institutions are authorized to receive, process, honor  
13 and pay all checks presented for payment and to honor all electronic payment requests or credit  
14 card payments made by the Debtors related to the prepetition obligations described in the  
15 Motion.

16 12. The Debtors are authorized and empowered to take all actions necessary to  
17 implement the relief granted in this Interim Order.

18 13. Notwithstanding the relief granted herein and any actions taken pursuant hereto,  
19 nothing herein shall prohibit the Debtors from continuing or modifying, changing, or otherwise  
20 discontinuing the Employee Benefits Programs and Employee Benefits or implementing new  
21 programs, policies, and benefits, in the ordinary course of business during these Chapter 11  
22 Cases, subject to applicable law, and nothing herein shall be deemed: (i) an admission as to the  
23 validity of any claim against the Debtors; (ii) a waiver of the Debtors' right to dispute any claim  
24 on any grounds and raise any available defenses; (iii) a promise or requirement to pay any claim;  
25 (iv) an admission that any particular claim is of a type specified or defined hereunder; (v) a  
26 request to assume any executory contract or unexpired lease or a postpetition assumption or  
27 adoption of any programs, policies, or agreements described herein; or (vi) a waiver of the  
28 Debtors' rights under the Bankruptcy Code or any other applicable law.

1           14.     Notwithstanding the relief granted herein and any actions taken pursuant to this  
2 Order, nothing herein is intended to create any rights in favor of, or enhance the status of, any  
3 claim held by any person.

4           15.     The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the  
5 contents of the Motion.

6           16.     Notice of the Motion, as provided therein, is deemed good and sufficient and the  
7 requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

8           17.     Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this  
9 Interim Order shall be immediately effective and enforceable upon its entry.

10          18.     Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to  
11 the contrary, the Debtors are not subject to any stay in the implementation, enforcement or  
12 realization of the relief granted in this Interim Order, and the Debtors may take, in their  
13 discretion and without further delay, any action and perform any act necessary to implement  
14 the relief granted in this Interim Order.

15          19.     This Court shall retain jurisdiction over any and all matters arising from or related  
16 to the interpretation or implementation of this Interim Order.

17 **IT IS SO ORDERED.**

1 In accordance with LR 9021, counsel submitting this **INTERIM ORDER**  
2 **AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION EMPLOYEE WAGES,**  
3 **SALARIES, AND OTHER COMPENSATION, (II) REIMBURSE PREPETITION**  
4 **BUSINESS EXPENSES, (III) CONTINUE PREPETITION EMPLOYEE BENEFITS**  
5 **PROGRAMS, (IV) MAKE PAYMENTS FOR WHICH PREPETITION PAYROLL**  
6 **DEDUCTIONS HAVE BEEN WITHHELD AND PAY CERTAIN EMPLOYMENT-**  
7 **RELATED TAXES, (V) PAY AMOUNTS THAT WERE AWARDED UNDER THE**  
8 **DEBTORS' 2023 SHORT TERM INCENTIVE PROGRAM, AND (VI) PAY ALL COSTS**  
9 **AND EXPENSES INCIDENT TO THE FOREGOING** certifies that the order accurately  
10 reflects the court's ruling and that (check one):

- 11 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).  
12 ☐ No party appeared at the hearing or filed an objection to the motion.

13 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the  
14 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
disapproved the order, or failed to respond, as indicated below [list each party and whether the  
party has approved, disapproved, or failed to respond to the document].

15 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
16 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
content of the order.

17 Prepared and submitted by:

18 McDONALD CARANO LLP

19  
20 \_\_\_\_\_  
Ryan J. Works (NSBN 9224)  
Amanda M. Perach (NSBN 12399)  
21 2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

22 ALLEN OVERY SHEARMAN STERLING US LLP  
23 Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)  
Sara Coelho (NYSBN 4530267) (*pro hac* pending)  
24 599 Lexington Avenue  
New York, New York 10022

25 *Proposed Counsel to the Debtors and Debtors in Possession*  
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**EXHIBIT 2**

**Final Order**

1  
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5  
6 UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

7 In re:

8 NEVADA COPPER, INC.,<sup>1</sup>

9 Debtor.

*Joint Administration Requested*

Case No. 24-50567

Chapter 11

Hearing Date:

Hearing Time:

12  
13 **FINAL ORDER AUTHORIZING THE DEBTORS TO**  
14 **(I) PAY PREPETITION EMPLOYEE WAGES, SALARIES, AND**  
15 **OTHER COMPENSATION, (II) REIMBURSE PREPETITION BUSINESS**  
16 **EXPENSES, (III) CONTINUE PREPETITION EMPLOYEE BENEFITS**  
17 **PROGRAMS, (IV) MAKE PAYMENTS FOR WHICH PREPETITION**  
18 **PAYROLL DEDUCTIONS HAVE BEEN WITHHELD AND PAY CERTAIN**  
19 **EMPLOYMENT-RELATED TAXES, (V) PAY AMOUNTS THAT WERE AWARDED**  
20 **UNDER THE DEBTORS' 2023 SHORT TERM INCENTIVE PROGRAM,**  
21 **AND (VI) PAY ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING**

22 Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of a final order (this “*Final*  
23 *Order*”) authorizing, but not directing, the Debtors, *inter alia*, to (i) pay all prepetition employee  
24 wages, salaries and other accrued compensation, (ii) reimburse prepetition business expenses,  
25 (iii) continue prepetition employee benefits programs (including by making contributions in  
connection therewith, and continuing such programs on a post-petition basis), (iv) make all  
payments for which prepetition payroll deductions have been withheld and pay certain  
employment-related taxes, (v) pay amounts that were awarded under the Debtors’ 2023 short

26 <sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction  
27 in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British  
Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC  
(0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

28 <sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



1 term incentive program, and (vi) pay all costs and expenses incident to the foregoing; and it  
2 appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334;  
3 and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b) and that this Court  
4 may enter a final order consistent with Article III of the United States Constitution; and venue  
5 being proper before this Court pursuant to 28 U.S.C. § § 1408 and 1409; and proper and  
6 adequate notice of the Motion and the hearing thereon having been given; and it appearing that  
7 no other or further notice being necessary; and this Court having reviewed the Motion and  
8 having heard the statements in support of the relief requested therein at a hearing before this  
9 Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause  
10 for the relief granted herein; and this Court having determined that the relief sought in the  
11 Motion is in the best interests of the Debtors, their estates, their creditors and other parties in  
12 interest; and after due deliberation and sufficient cause appearing therefor;

13 IT IS HEREBY ORDERED THAT:

- 14 1. The Motion is GRANTED as set forth herein.
- 15 2. The Debtors are authorized, but not directed, to honor and pay all prepetition  
16 claims and obligations related to the Prepetition Compensation Obligations, up to a maximum  
17 amount for any individual that equals, together with any unpaid Prepetition Unpaid Employee  
18 Benefits, \$15,150 per individual, and approximately \$1,483,500, in the aggregate for amounts  
19 paid to Employees.
- 20 3. The Debtors are authorized, but not directed, to honor and continue their Leave  
21 Policies, including paying amounts thereunder, in the ordinary course of business and consistent  
22 with prepetition practices, regardless of when the benefits under the Leave Policies accrued.
- 23 4. The Debtors are authorized, but not directed, to honor and to pay all prepetition  
24 claims and obligations related to and including the following: (i) Unpaid Medical Plan  
25 Expenses; (ii) Unpaid Insurance Expenses; (iii) Unpaid Short-Term Disability Insurance  
26 Expenses; (iv) Unpaid Long-Term Disability Insurance Expenses; (v) Unpaid Workers'  
27 Compensation Insurance Expenses; (vi) Unpaid Contributions; (vii) U.S. Additional Benefits;  
28 (viii) Unpaid Canadian Benefits; and (ix) Unpaid Canadian Workers' Compensation Insurance

1 Expenses (collectively, the “***Prepetition Unpaid Employee Benefits***”); *provided, however*, that  
2 absent further order of this Court, the aggregate amount of such payments for Prepetition Unpaid  
3 Employee Benefits paid directly (and not *via* effecting an offset) shall not exceed \$633,500.

4 5. The Debtors are authorized, but not directed, to honor and to pay all prepetition  
5 claims and obligations related to and including the following: (i) Unpaid Reimbursable  
6 Expenses; (ii) Unremitted Deductions; (iii) Unpaid Employment Taxes, including, in the case  
7 of Provincial Medical Taxes, though offsetting against tax overpayments owing to the Debtors;  
8 and (iv) Unpaid Third-Party Administrative Costs (collectively, the “***Prepetition Unpaid***  
9 ***Employee Costs***”); *provided, however*, that absent further order of this Court, the aggregate  
10 amount of such payments for Prepetition Unpaid Employee Costs paid directly (and not *via*  
11 effecting an offset) shall not exceed \$288,500.

12 6. The Debtors are authorized, but not directed, to pay the prepetition amounts  
13 awarded under the 2023 STIP; *provided however*, that (i) the Debtors shall not make any  
14 payments on account of the 2023 STIP in excess of \$50,000 to any individual and (ii) absent  
15 further order of this Court, the amount of such payments for the 2023 STIP awards shall not  
16 exceed \$446,000 in the aggregate.

17 7. All banks, and other financial institutions are authorized to receive, process,  
18 honor and pay all checks presented for payment and to honor all electronic payment requests or  
19 credit card payments made by the Debtors related to the prepetition obligations described in the  
20 Motion.

21 8. The Debtors are authorized, but not directed, to continue and/or modify, change,  
22 or discontinue the Wages and Benefits on a post-petition basis, in the ordinary course of  
23 business, in accordance with the Debtors’ prepetition policies and practices, and, in the Debtors’  
24 discretion, to pay and honor amounts related thereto, irrespective of whether such obligations  
25 arose prepetition or post-petition.

26 9. Notwithstanding anything to the contrary in this Final Order, any payment made  
27 or to be made hereunder, and any authorization herein, shall be subject to the requirements (if  
28 any) imposed on the debtors under any order(s) of this Court approving a postpetition debtor in

possession financing facility and/or the use of cash collateral (any such order, a “**Financing Order**”), including any documentation with respect to such financing and any budget in connection with such Financing Order. In the event of any conflict between the terms of this Interim Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

10. Nothing in this Final Order should be read to constitute a prohibition on the Debtors’ right to seek authority to pay any employee compensation or employee benefits for which relief is not sought by the Motion or to pay any amounts in the ordinary course of business consistent with the requirements of the Bankruptcy Code.

11. All banks, and other financial institutions are authorized to receive, process, honor and pay all checks presented for payment and to honor all electronic payment requests or credit card payments made by the Debtors related to the prepetition obligations described in the Motion.

12. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

13. Notwithstanding the relief granted herein and any actions taken pursuant hereto, nothing herein shall prohibit the Debtors from continuing or modifying, changing, or otherwise discontinuing the Employee Benefits Programs and Employee Benefits or implementing new programs, policies, and benefits, in the ordinary course of business during these Chapter 11 Cases, subject to applicable law, and nothing herein shall be deemed: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors’ right to dispute any claim on any grounds and raise any available defenses; (iii) a promise or requirement to pay any claim; (iv) an admission that any particular claim is of a type specified or defined hereunder; (v) a request to assume any executory contract or unexpired lease or a postpetition assumption or adoption of any programs, policies, or agreements described herein; or (vi) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable law.

1           14.     Notwithstanding the relief granted herein and any actions taken pursuant to this  
2     Final Order, nothing herein is intended to create any rights in favor of, or enhance the status of,  
3     any claim held by any person.

4           15.     Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Final  
5     Order shall be immediately effective and enforceable upon its entry.

6           16.     Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to  
7     the contrary, the Debtors are not subject to any stay in the implementation, enforcement or  
8     realization of the relief granted in this Final Order, and the Debtors may take, in their discretion  
9     and without further delay, any action and perform any act necessary to implement the relief  
10    granted in this Final Order.

11          17.     This Court shall retain jurisdiction over any and all matters arising from or related  
12    to the interpretation or implementation of this Final Order.

13    **IT IS SO ORDERED.**

1 In accordance with LR 9021, counsel submitting this **FINAL ORDER**  
2 **AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION EMPLOYEE WAGES,**  
3 **SALARIES, AND OTHER COMPENSATION, (II) REIMBURSE PREPETITION**  
4 **BUSINESS EXPENSES, (III) CONTINUE PREPETITION EMPLOYEE BENEFITS**  
5 **PROGRAMS, (IV) MAKE PAYMENTS FOR WHICH PREPETITION PAYROLL**  
6 **DEDUCTIONS HAVE BEEN WITHHELD AND PAY CERTAIN EMPLOYMENT-**  
7 **RELATED TAXES, (V) PAY AMOUNTS THAT WERE AWARDED UNDER THE**  
8 **DEBTORS' 2023 SHORT TERM INCENTIVE PROGRAM, AND (VI) PAY ALL COSTS**  
9 **AND EXPENSES INCIDENT TO THE FOREGOING** certifies that the order accurately  
10 reflects the court's ruling and that (check one):

11 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

12 ☐ No party appeared at the hearing or filed an objection to the motion.

13 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the  
14 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
disapproved the order, or failed to respond, as indicated below [list each party and whether the  
party has approved, disapproved, or failed to respond to the document].

15 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
16 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
content of the order.

17 Prepared and submitted by:


18 McDONALD CARANO LLP

19  
20 \_\_\_\_\_  
Ryan J. Works (NSBN 9224)  
Amanda M. Perach (NSBN 12399)  
21 2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

22 ALLEN OVERY SHEARMAN STERLING US LLP  
23 Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)  
Sara Coelho (NYSBN 4530267) (*pro hac* pending)  
24 599 Lexington Avenue  
New York, New York 10022

25 *Proposed Counsel to the Debtors and Debtors in Possession*  
26  
27  
28

This is **Exhibit “P”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

ALLEN OVERY SHEARMAN STERLING US LLP  
Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)  
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[aperach@mcdonaldcarano.com](mailto:aperach@mcdonaldcarano.com)

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
Chapter 11

**Hearing Date: *OST REQUESTED***  
**Hearing Time: *OST REQUESTED***

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B)  
GRANT LIENS, INCLUDING SENIOR SECURED PRIMING LIENS, AND  
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH  
COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO CERTAIN  
PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY; (IV)  
SCHEDULING FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

<sup>1</sup> The relief requested herein is sought for each of the following Debtors, and joint administration has been requested. The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

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1 Nevada Copper, Inc., and its affiliates that are debtors and debtors in possession  
2 (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”),  
3 respectfully represent in support of this motion (the “**Motion**”) as follows:

4 **Preliminary Statement**

5 1. The Debtors commenced these cases amidst significant funding challenges in order  
6 to preserve their assets and finance their operations while pursuing the sale of their business on an  
7 expedited timetable. As described in the *Omnibus Declaration of Gregory J. Martin in Support of*  
8 *the Debtors’ Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”), the Debtors  
9 faced significant challenges prior to the commencement of Chapter 11 and received substantial  
10 interest from potential buyers of their business but ran out of time to consummate a sale due to their  
11 acute liquidity constraints. To fund the sale process and the administration of the Chapter 11 Cases,  
12 the Debtors negotiated to obtain a senior secured postpetition financing in the aggregate principal  
13 amount of \$60 million (the “**DIP Facility**”) pursuant to the terms and conditions set forth in the  
14 Senior Secured Superpriority Debtor-in-Possession Credit Agreement by and among the Nevada  
15 Copper, Inc., as borrower (the “**Borrower**”), each of the Debtors other than the Borrower  
16 (collectively, the “**Guarantors**,” and together with Borrower, the “**DIP Loan Parties**”), U.S. Bank  
17 Trust Company, National Association, as administrative and collateral agent (the “**DIP Agent**”), and  
18 one or more affiliates of Elliott Investment Management L.P. (“**Elliott**”), as lenders (collectively,  
19 the “**DIP Lenders**” and, together with the DIP Agent, the “**DIP Secured Parties**”) (as amended,  
20 restated, amended and restated, supplemented or otherwise modified from time to time, the “**DIP**  
21 **Credit Agreement**”).

22 2. The use of cash collateral and the DIP Facility contemplated by this Motion are key  
23 to the Debtors’ path forward. The Debtors urgently require the infusion of new money and access  
24 to access to cash collateral in order to make the payments for which authorization was requested in  
25 the other first-day motions, conduct a viable sale process, and fund their Chapter 11 Cases and their  
26 continued care and maintenance operations.

27 **Relief Requested**

28 3. The Debtors request entry of an interim order, substantially in the form attached

hereto as **Exhibit 1** (the “*Interim Order*”),<sup>2</sup> and a final order (the “*Final Order*” and, together with the Interim Order, the “*DIP Orders*”):

- a. authorizing the Borrower to obtain the DIP Facility in the aggregate principal amount of \$60 million the terms and conditions set forth in the DIP Credit Agreement attached to the Interim Order at Exhibit 1, and for the Guarantors to unconditionally guaranty, on a joint and several basis, the Borrower’s obligations in connection with such postpetition financing, consisting of: (i) a new money term loan in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$20 million (the “*Interim DIP Loan*”), which will be funded as a single disbursement on the date on which all of the conditions set forth in Sections 12.1 and 12.3 of the DIP Credit Agreement have been satisfied (the “*Interim Closing Date*”); (ii) subject to entry of the Final Order, a new money delayed-draw term loan to be made in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$40 million (the “*Final DIP Loan*” and, together with the Interim DIP Loan, the “*DIP Facility*”), which will be funded as a single disbursement on the date on which all of the conditions set forth in Sections 12.2 and 12.3 of the DIP Credit Agreement have been satisfied (the “*Final Closing Date*”);
- b. authorizing the DIP Loan Parties to enter into any agreements, documents and instruments in connection with the DIP Facility, including the DIP Credit Agreement and all notices, guarantees, security agreements, ancillary documents and agreements executed in connection therewith (collectively, the “*DIP Documents*”) on terms and conditions consistent with the DIP Credit Agreement and the DIP Orders, and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate or desirable in connection with the DIP Documents;
- c. authorizing the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, and authorizing the Debtors to incur, the DIP Liens (as defined in the DIP Orders) in all DIP Collateral (as defined below), to secure the DIP Obligations (as defined below), which liens and security interests shall be automatically perfected and be subject to the lien priorities set forth in the DIP Credit Agreement, on the terms and conditions set forth in the DIP Orders, in the DIP Credit Agreement and in the DIP Documents;
- d. authorizing the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, allowed superpriority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations, with priority over any and all administrative expenses of any kind or nature, subject and subordinate only to the Carve-Out (as defined in the DIP Orders), the Administration Charge (as defined in the DIP Orders), and the Petition Date Perfected Liens, and on the terms and conditions set forth in the Interim Order and in the DIP Documents;
- e. authorizing the Debtors to use the proceeds of the DIP Facility and the Prepetition

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<sup>2</sup> Capitalized terms that are undefined in this Motion shall have the respective meanings given to such terms in the Interim Order or DIP Credit Agreement, as applicable.

Collateral (as defined in the DIP Orders), including Cash Collateral (as defined in the DIP Orders), in accordance with the terms of the DIP Orders, including pursuant to the 13-week cash flow forecast of receipts, disbursements and intercompany transactions, as updated and supplemented from time to time and approved by the Required DIP Lenders, in each case, in accordance with the applicable DIP Orders and the DIP Credit Agreement (the “**Approved Budget**”), to: (i) pay fees and interest under the DIP Facility; (ii) provide working capital for, and for other general corporate purposes of, the Debtors; (iii) pay for bankruptcy-related costs and expenses, including costs and expenses incurred in connection with the Recognition Proceedings (as defined in the DIP Orders) and to fund the Carve-Out; and (iv) pay Adequate Protection Fees (as defined in the DIP Orders);

- f. authorizing the Debtors to pay, on a final and irrevocable basis, the principal, interest, expenses, fees, premiums and other amounts payable under the DIP Documents as such become earned, due and payable, including, without limitation, (i) the Upfront Fee, (ii) the Exit Fee, (iii) the Unused Commitment Fee, (iv) the Agency Fee (each as defined in the DIP Credit Agreement), and (v) the reasonable fees and disbursements of the DIP Secured Parties’ attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with the DIP Documents (collectively, the “**DIP Obligations**”);
- g. granting adequate protection to the Prepetition Secured Parties (as defined in the DIP Orders) on the terms set forth in the DIP Documents and the DIP Orders on account of any Diminution in Value (as defined in the DIP Orders) of the Prepetition Secured Parties’ interests in the Prepetition Collateral, including Cash Collateral;
- h. authorizing waivers upon entry of the Final Order (but retroactive to the Petition Date) of: (i) the Debtors’ and the estates’ rights to surcharge against the DIP Collateral or the Prepetition Collateral pursuant to the Bankruptcy Code section 506(c), (ii) the “equities of the case” exception under Bankruptcy Code section 552(b) and (iii) the equitable doctrine of marshalling with respect to the DIP Collateral, including all Prepetition Collateral;
- i. authorizing the DIP Secured Parties to exercise remedies under the DIP Documents on the terms described in the DIP Orders, upon the occurrence and during the continuance of a Termination Event (as defined in the DIP Orders);
- j. modifying the automatic stay imposed pursuant to Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of the DIP Orders;
- k. scheduling a final hearing (the “**Final Hearing**”); and
- l. granting related relief.

## MEMORANDUM OF POINTS AND AUTHORITIES

### Jurisdiction & Venue

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”); Rules 2002, 4001, 6003, 6004, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rules 2002, 4001, 6004, 9006 and 9014 of the *Local Rules of Bankruptcy Practice for the United States Bankruptcy Court of the District of Nevada* (the “**Local Rules**”).

5. Pursuant to Local Rule 9014.2, the Debtors consent to the Court’s entry of a final order in connection with this Motion to the extent that it is later determined that, absent consent of the parties, the Court cannot enter final orders or judgments consistent with Article III of the United States Constitution.

### Background

6. On the date hereof (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court and contemporaneously herewith have requested joint administration of the Chapter 11 Cases for procedural purposes only, pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated.

7. The Debtors have been in the business of mining copper, and other minerals, and operating a processing plant that refines copper ore into copper concentrate, with the bulk of the Debtors’ operations focused on their Pumpkin Hollow project (the “**Project**”), which is located outside of Yerington, Nevada. The Project, which contains substantial mineral reserves and resources, including not only copper, but gold, silver, and iron magnetite, consists of an underground



1 mine and processing facility, together with an open-pit project that is in the pre-feasibility stage of  
2 development. The Debtors, in the period leading up to the commencement of the Chapter 11 Cases  
3 operated under significant liquidity constraints. In an effort to conserve liquidity, the Debtors have  
4 suspended mining operations and the operation of their processing plant, as they pursue a sale of  
5 substantially all of their assets.

6 8. Additional facts relating to the Debtors' business and capital structure, and the  
7 commencement of these Chapter 11 Cases, are set forth in the First Day Declaration, which was  
8 filed contemporaneously with this Motion and is incorporated herein by reference. Additional  
9 information regarding the DIP Facility, including the process through which the Debtors solicited  
10 lender interest in providing financing, is set forth in the *Declaration of Zul Jamal in support of the*  
11 *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain*  
12 *Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority*  
13 *Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection*  
14 *to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final*  
15 *Hearing; and (V) Granting Related Relief* (the "**DIP Declaration**" and, together with the First Day  
16 Declaration, the "**Declarations**"), filed contemporaneously herewith and incorporated herein by  
17 reference.

### 18 Prepetition Capital Structure

19 9. Set forth below is a summary of the Debtors' prepetition funded indebtedness.<sup>3</sup> The  
20 chart below (which contains terms defined later in the body of this Motion), is designed to assist in  
21 that summary.<sup>4</sup>

25 <sup>3</sup> The summaries contained in this Motion are qualified in their entirety by the provisions of the documents  
26 referenced. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable  
documents shall control.

27 <sup>4</sup> In addition to the funded debt contained in the chart below, as explained below in more detail, there are obligations  
28 to Trisura Insurance Company ("**Trisura**") for the potential reimbursement obligations under surety bonds that are  
secured by liens on the assets of Nevada Copper Corp.

Secured Funded Debt		
Debt Agreement	Obligors	Amount Outstanding <sup>5</sup>
Prepetition Senior Secured Term Loan Credit Agreement	Debtors <sup>6</sup>	\$188 million
Prepetition Working Capital Agreement	NCI	\$3 million
Prepetition TF Stream Agreement	Debtors	\$78.2 million
Prepetition Junior Secured Term Loan Agreement	Debtors	\$10 million
Unsecured Debt		
Pala Unsecured Loans	NCU	\$56.7 million
Mercuria Unsecured Loans	NCU	\$10.3 million
Investor Promissory Notes	NCU	\$1.0 million
Additional Unsecured Loans	NCI	\$10.2 million
Intercompany Loans	NCI	\$148.3 million

**A. Prepetition Senior Secured Term Loan Credit Agreement**

10. Debtor, Nevada Copper, Inc. (“*NCI*”), as borrower, Nevada Copper Corp. (“*NCU*”), and NCU’s direct and indirect subsidiaries (other than NCI) each of which are Debtors herein, as guarantors (the “*Subsidiary Guarantors*”), KfW IPEX-Bank GmbH (“*KfW*”) as sole lead arranger, UFK Agent, collateral agent and administrative agent (the “*Prepetition Senior Secured Term Loan Agent*”), Pala Investments Limited (“*Pala*”), TF R&S Canada Ltd. (“*TF Canada*”), KfW, and Mercuria Investments US, Inc. (“*Mercuria*”), as lenders (collectively, the “*Prepetition Senior Secured Term Loan Lenders*” and, together with the Prepetition Senior Secured Term Loan Agent, the “*Prepetition Senior Secured Term Loan Parties*”), are each party to that certain second amended and restated credit agreement (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “*Prepetition Senior Secured Term Loan Credit Agreement*”), dated October 28, 2022 (and the facilities thereunder, the “*Prepetition First Lien Loans*”). The Prepetition First Lien Loans consist of three tranches of term loans: (i) a term loan funded by KfW in the aggregate principal amount of \$115 million (the “*Prepetition Senior Secured Term Loan A Obligations*”); (ii) a term loan funded by KfW in

<sup>5</sup> These amounts include capitalized interest as of the Petition Date.

<sup>6</sup> As discussed in greater detail below, Tranche B Prepetition of Senior Secured Term Loan Credit Agreement is guaranteed by a non-debtor, Pala (as defined below).

1 the aggregate principal amount of \$15 million (the “**Prepetition Senior Secured Term Loan B**  
2 **Obligations**”); and (iii) a series of term loans funded by Pala, TF Canada,<sup>7</sup> and Mercuria, in the  
3 aggregate principal amount of approximately \$30.55 million (the “**Prepetition Senior Secured Term**  
4 **Loan A-2 Obligations**”).

5 11. The obligations of NCI under the Prepetition First Lien Loans are guaranteed by  
6 NCU and the Subsidiary Guarantors and secured by a first-lien security interest in substantially all  
7 of the property and assets of the Debtors, other than marketable metal-bearing material that is  
8 extracted or otherwise recovered from the Project (the “**WCF Collateral**”) (substantially all of the  
9 Debtors assets other than the WCF Collateral are defined as the “**Project Collateral**”), and a second-  
10 lien security interest (together with the first lien security interest, the “**Prepetition Senior Secured**  
11 **Term Loan Liens**”) in the WCF Collateral. In connection therewith, the Debtors entered into that  
12 certain Amended and Restated Collateral Agency, Accounts and Security Agreement, dated October  
13 28, 2022, granting a first lien security interest and lien on all of their cash and bank accounts, which  
14 include accounts at NCI and NCU.

15 12. The Prepetition Senior Secured Term Loan A Obligations bear interest at a rate of  
16 SOFR plus 2.10% per annum, the Prepetition Senior Secured Term Loan B Obligations bear interest  
17 at a rate of SOFR plus 5.40% per annum, and the Prepetition Senior Secured Term Loan A-2  
18 Obligations bear interest at a rate of SOFR plus 5.00% per annum. Under the Prepetition Senior  
19 Secured Term Loan Agreement, several interest payments under each tranche were capitalized. The  
20 Prepetition Senior Secured Term Loan A Obligations and Prepetition Senior Secured Term Loan A-  
21 2 Obligations have a scheduled maturity date of July 31, 2029, and the Tranche B Loans have a  
22 scheduled maturity date of July 31, 2025. As of the Petition Date, the principal amount outstanding  
23 under the Prepetition First Lien Loans is approximately \$188 million.

24 **B. Prepetition Working Capital Facility**

25 13. NCI, as seller, entered into an advance payment facility (the “**Concord Working**  
26 **Capital Facility**”) with Concord Resources Limited (“**Concord**”), as purchaser, on May 6, 2019 (as

27 <sup>7</sup> The first Tranche A-2 Funding was provided by Triple Flag International Ltd., but subsequently assigned to its  
28 affiliate, TF Canada.

1 amended, restated, amended and restated, supplemented, or otherwise modified from time to time  
2 prior to the date hereof, the “**Prepetition Working Capital Agreement**”). Pursuant to the Prepetition  
3 Working Capital Agreement and offtake agreements entered into in connection therewith, Concord  
4 agreed to make advance payments for, and NCI agreed to sell and deliver to Concord, flotation  
5 copper concentrates produced at and originating from the Project. The Prepetition Working Capital  
6 Agreement has a scheduled maturity date of September 1, 2026.

7 14. The Concord Working Capital Facility, as an advance payment facility, is repaid  
8 through deliveries of flotation copper concentrates, and in cash, when such deliveries do not occur.  
9 As of the Petition Date, the outstanding principal amount under the Prepetition Working Capital  
10 Agreement is approximately \$3 million (the “**Prepetition Working Capital Obligations**”). The  
11 Prepetition Working Capital Obligations are secured by a first-lien security interest in the WCF  
12 Collateral and a third-lien security interest in the Project Collateral (the “**Prepetition Working**  
13 **Capital Facility Liens**”).

14 **C. Prepetition TF Stream Agreement**

15 15. The Debtors are party to a metal purchase and sale agreement, dated as of December  
16 21, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from  
17 time to time prior to the date hereof, the “**Prepetition TF Stream Agreement**”), with Triple Flag  
18 International Ltd. (“**Triple Flag**”) (as successor to Triple Flag Mining Finance Bermuda Ltd.), as  
19 purchaser, whereby NCI agreed to sell refined gold and refined silver mined from the Project’s  
20 underground mine (the “**Underground Mine**”) to Triple Flag. Pursuant to the terms of the  
21 Prepetition TF Stream Agreement, Triple Flag agreed to pay certain deposits to NCI, and NCI agreed  
22 to deliver to Triple Flag 97.5% of the gold and silver production from the Underground Mine,  
23 calculated based on a fixed ratio of 162.5 ounces of gold and 3,131.0 ounces of silver for each 1  
24 million pounds of copper in concentrate produced. Deliveries made to Triple Flag under the  
25 Prepetition TF Stream Agreement will be credited until the applicable deposit is depleted, at which  
26 point Triple Flag will be required to make additional payments for the refined gold and refined silver  
27 that are delivered under the Prepetition TF Stream Agreement. The Prepetition TF Stream  
28

1 Agreement has an initial term of 40 years, with automatic extension for 10-year periods thereafter.

2 16. As security for NCI's obligations under the Prepetition TF Stream Agreement, Triple  
3 Flag has a second-lien security interest in the Project Collateral and a third-lien security interest in  
4 the WCF Collateral. Since inception, the Debtors have made approximately \$2.68 million worth of  
5 deliveries under the Prepetition TF Stream Agreement, and approximately \$78.2 million of the  
6 deposits remains outstanding as of the Petition Date. NCI's obligations under the Prepetition TF  
7 Stream Agreement are guaranteed by NCU and the Subsidiary Guarantors.

8 **D. *Prepetition Junior Secured Term Loan Agreement***

9 17. The Debtors, as obligors, and Pala (together with Concord, Triple Flag, and the  
10 Prepetition Senior Secured Term Loan Parties, the "***Prepetition Secured Parties***") as lender, are  
11 party to that certain Third Amended and Restated Loan Agreement dated December 21, 2023  
12 (the "***Prepetition Junior Secured Term Loan Agreement***"). The obligations to Pala under the  
13 Prepetition Junior Secured Term Loan Agreement are secured by a fourth lien security interest on  
14 substantially all of the Debtors' assets. The loan facility under the Prepetition Junior Secured Term  
15 Loan Agreement (the "***Junior Secured Facility***") bears interest at SOFR plus 9% per annum and  
16 could be paid in NCU common stock or paid in kind at Pala's option. The Junior Secured Facility  
17 has a scheduled maturity date of January 31, 2026. As of the Petition Date, the aggregate principal  
18 amount outstanding under the Prepetition Junior Secured Term Loan Agreement is approximately  
19 \$10 million.

20 **E. *Trisura Surety Bonds***

21 18. Although not funded indebtedness, NCU has granted a fourth priority lien on  
22 substantially all of its property, including its shares in NCI, to secure potential reimbursement  
23 obligations that may arise in favor of Trisura in connection with surety bonds securing performance  
24 of certain obligations of NCI to third-party contractors and to the State of Nevada. The Debtors  
25 have two outstanding surety bonds (the "***Surety Bonds***") provided by Trisura. The Surety Bonds  
26 have been issued in favor of: (i) Sierra Pacific Power Company d/b/a NV Energy in connection with  
27 the High Voltage Distribution Agreement, dated January 7, 2019, as amended on February 21, 2019;  
28 and (ii) the Nevada Division of Environmental Protection to secure future mine reclamation

requirements.

**F. The Intercreditor Agreements**

19. *WCF Intercreditor Agreement.* KfW, Triple Flag, Concord and NCI are parties to that certain Working Capital Facility Intercreditor Agreement, dated as of May 22, 2019, (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “*WCF Intercreditor Agreement*”), which governs, among other things, the rights, interests, obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties, the Prepetition Working Capital Purchaser and the Prepetition TF Stream Purchaser.

20. *TF Intercreditor Agreement.* KfW, Triple Flag, NCI, NCU and the Subsidiary Guarantor are party to that certain Intercreditor Agreement, dated as of May 22, 2019, (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “*TF Intercreditor Agreement*”), which governs the rights, interests, obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties and the Prepetition TF Stream Purchaser.

21. *Fourth Lien Intercreditor Agreement.* KfW, Triple Flag, Concord, Pala, NCI, NCU and the Subsidiary Guarantors are party to that certain Intercreditor Agreement, dated as of October 28, 2022 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “*Fourth Lien Intercreditor Agreement*” and, together with the WCF Intercreditor Agreement and the TF Intercreditor Agreement, the “*Prepetition Intercreditor Agreements*”), which governs the rights, interests, obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties, the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition Junior Secured Term Loan Parties.

22. Pala and Triple Flag consented to the Debtors obtaining DIP Financing (as defined in the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement) from any Prepetition Senior Secured Term Loan Party or an affiliate of a Prepetition Senior Secured Term Loan Party pursuant to their respective Prepetition Intercreditor Agreements. *See, e.g.*, Fourth Lien Intercreditor Agreement § 5.2 (“Until the Discharge of the Senior Obligations . . . no Junior Secured Party will . . . contest . . . and the Junior Secured Parties . . . hereby consent in advance to, (x) any



1 use, sale, or lease of ‘cash collateral’ . . . and (y) any [Debtor] obtaining DIP Financing from, or  
2 with the consent of any Senior Secured Party or any affiliate of a Senior Secured Party.”); TF  
3 Intercreditor Agreement § 6.2 (“[u]ntil the Discharge of the Loan Obligations . . . the Purchaser will  
4 not . . . contest . . . and hereby consents in advance to, (x) any use, sale, or lease of ‘cash collateral’  
5 . . . and (y) any [Debtor] obtaining DIP Financing from, or with the consent of any Senior Secured  
6 Party or any affiliate of a Senior Secured Party.”). The DIP Lenders are affiliates of TF Canada and  
7 Triple Flag through Elliott who holds a controlling stake in the parent company of Triple Flag. DIP  
8 Declaration ¶ 15. Accordingly, Pala and Triple Flag consented to the DIP Facility pursuant to the  
9 Prepetition Intercreditor Agreements.

10 23. Similarly, Concord provided the same consent pursuant to the WCF Intercreditor  
11 Agreement so long as the Debtors’ DIP financing (as defined in the WCF Intercreditor Agreement)  
12 is not secured by WCF Collateral. *See, e.g.*, WCF Intercreditor Agreement § 5.2 (“[T]he Buyer . . .  
13 hereby consents in advance to, (x) any use, sale, or lease of ‘cash collateral’ . . . and (y) any [Debtor]  
14 obtaining DIP Financing from any Senior Secured Loan Party or any affiliate of a Senior Secured  
15 Loan Party; provided, that . . . the [WCF] Collateral shall not secure such DIP Financing. . . .”). The  
16 Debtors submit that the DIP Liens will not extend to the WCF Collateral until the Prepetition  
17 Working Capital Obligations are paid in full.

18 **G. The Unsecured Loan Agreements**

19 24. On December 21, 2023, NCU entered into two separate unsecured loan agreements  
20 with Pala (the “**Pala Unsecured Loan Agreement**”) and Mercuria (the “**Mercuria Unsecured Loan**  
21 **Agreement**”) and, together with the Pala Unsecured Loan Agreement, the “**Unsecured Loan**  
22 **Agreements**”). The Unsecured Loan Agreements are on substantially similar terms as the  
23 Prepetition Junior Secured Term Loan Agreement, except that the loans (each, an “**Unsecured**  
24 **Loan**”) pursuant to the Unsecured Loan Agreements are not secured, are not guaranteed by the  
25 Subsidiary Guarantors, and have a maturity date of December 21, 2024. As of the Petition Date,  
26 the outstanding principal amount is approximately \$56.7 million under the Pala Unsecured Loan  
27 Agreement and approximately \$10.3 million under the Mercuria Unsecured Loan Agreement.

1           **H.       Investor Promissory Notes**

2           25.     In relation to entering into exclusivity agreements with potential purchasers, NCU  
3 issued promissory notes to two potential purchasers (the “**Potential Purchasers**”) of the Debtors’  
4 business in principal amount of \$500,000 each (each, an “**Investor Promissory Note**”) in exchange  
5 for equivalent funding from such investor. Interest on each Investor Promissory Note was fixed at  
6 \$9,250 if the Investor Promissory Note was paid in full within 45 days (the “**Investor Note Maturity**  
7 **Date**”), or 15% per annum if not paid in full by the Investor Note Maturity Date. Pala guaranteed  
8 NCU’s obligations under each Investor Promissory Note solely to the extent of any cash payments  
9 it receives from NCI pursuant to the Prepetition Senior Secured Term Loan Credit Agreement. As  
10 of the Petition Date, the aggregate outstanding principal amount under both Investor Promissory  
11 Notes is approximately \$1.0 million.

12           **I.       Additional Unsecured Loans**

13           26.     In addition, in April and May of 2024, Pala provided NCI with a total of  
14 approximately \$5.3 million in unsecured funding through a series of advances and Triple Flag  
15 contributed an additional \$4.9 million in unsecured funding. Both of those were memorialized in  
16 separate unsecured promissory notes prior to the commencement of the Chapter 11 Cases.

17           **J.       Intercompany Loans**

18           27.     As of the Petition Date, there is approximately \$148.3 million (inclusive of  
19 capitalized interest and accrued but unpaid interest) due to NCU from NCI under documented  
20 intercompany loans from NCU to NCI (the “**Intercompany Loans**”). The Intercompany Loans  
21 comprise: (i) an intercompany loan from NCU to NCI in the aggregate principal amount of \$85  
22 million, pursuant to the intercompany loan agreement dated May 31, 2019 (as amended, “**NCU**  
23 **Loan I**”); (ii) an intercompany loan from NCU to NCI in the aggregate principal amount of \$30  
24 million, pursuant to an intercompany loan agreement dated December 31, 2010 (as amended, “**NCU**  
25 **Loan II**”); and (iii) in the first quarter of 2024, a loan from NCU to NCI in the aggregate principal  
26 amount of approximately \$33.3 million. Both NCU Loan I and II have a maturity date of December  
27 31, 2025, but NCU I accrues interest at a rate of LIBOR plus 7.25%, to be paid on the maturity date  
28 and NCU Loan II accrues interest at a rate of 10% per annum, paid-in-kind on a quarterly basis.



1 The Debtors enter chapter 11 with no cash at NCU, and they will need to use cash borrowed under  
2 the DIP Facility to fund NCU's cash needs.

3 **Immediate Need for DIP Financing and Cash Collateral**

4 28. Despite the stakeholders providing additional funding prepetition to restart mining  
5 operations after encountering geotechnical challenges in 2022 that restricted underground mine  
6 access, the costs of continued development and operations grew too high, and stakeholders became  
7 unwilling to finance continued operations or an out-of-court sale. The Debtors took various  
8 measures to conserve liquidity, including halting further mining and milling operations, and creating  
9 a protocol to retain only essential employees needed to maintain the value of their assets.  
10 Notwithstanding these efforts, as of the Petition Date, the Debtors have less than \$500,000 of cash  
11 on hand, which is simply not enough to administer these cases and pursue a sale process. The  
12 Debtors require additional funding to prosecute these Chapter 11 Cases, and without such funding  
13 the Debtors will likely be forced to cease operations, jeopardizing their entire reorganization.

14 **The DIP Facility**

15 29. The DIP Facility allows the Debtors to access up to a total of \$60 million, with \$20  
16 million available immediately upon the Interim Closing Date and up to \$40 million available upon  
17 the Final Closing Date. The funds advanced under the DIP Facility will be used in accordance with  
18 the Approved Budget.

19 30. The DIP Facility contains the following milestones, each of which may be extended  
20 with the consent of the majority DIP Lenders (the "***Required DIP Lenders***"):

- 21 (i) No later than one (1) calendar day following the Petition Date, the Debtors shall have  
22 filed a motion in the Bankruptcy Court seeking approval of the DIP Facility, in form  
23 and substance acceptable to the majority DIP Lenders (the "***Required DIP Lenders***");
- 24 (ii) No later than five (5) business days following the Petition Date, the Bankruptcy  
25 Court shall have entered the Interim Order
- 26 (iii) No later than ten (10) calendar days following the Petition Date, the Debtors shall  
27 have filed a motion (the "***Bidding Procedures Motion***"), in form and substance  
28 acceptable to the Required DIP Lenders, for entry of an order (the "***Bidding Procedures***") (a) approving the procedures to be used and bid protections to be provided (as may be amended from time to time in accordance with their terms) in

connection with the sale (or sales) of all or substantially all of the business and assets of the Debtors (the “**Sale Transaction**”), (b) setting the dates for the submission of bids, the auction (if any) and the hearing on the approval of the Sale Transaction and approving all notices related thereto and (c) authorizing certain procedures related to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale Transaction;

- (iv) No later than fourteen (14) calendar days following entry of the Interim Order by the Bankruptcy Court, the Canadian Court shall have granted the Initial Recognition Order and the Interim DIP Recognition Order (each as defined in the DIP Credit Agreement), in each case, in form and substance satisfactory to the DIP Agent and the Required DIP Lenders;
- (v) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order, which shall be in form and substance acceptable to the Required DIP Lenders;
- (vi) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered the Final Order;
- (vii) No later than fourteen (14) calendar days following the entry of the Bidding Procedures Order by the Bankruptcy Court, the Canadian Court shall have entered (A) the Final DIP Recognition Order (as defined in the DIP Credit Agreement) and (B) an order recognizing and enforcing the Bidding Procedures Order in Canada, in each case, in form and substance acceptable to the Required DIP Lenders;
- (viii) No later than one hundred and eight (108) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale Transaction, in form and substance acceptable to the Required DIP Lenders;
- (ix) No later than fourteen (14) calendar days following the entry of the Sale Approval Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance acceptable to the Required DIP Lenders, recognizing and enforcing the Sale Approval Order in Canada; and
- (x) No later than one hundred and twenty (120) days following the Petition Date, the Sale Transaction shall be consummated.

31. Subject to the Carve-Out and the Administration Charge, the DIP Facility will be secured (subject to customary permitted liens) by security interests and liens on substantially all of the Debtors’ property (such property, the “**DIP Collateral**”). The liens to be provided in respect of the DIP Facility include: (i) fully-perfected first priority liens on all of the DIP Collateral that, as of the Petition Date, is unencumbered and not subject to any liens (including Prepetition Prior Liens (defined below)); (ii) fully-perfected liens on all DIP Collateral, subject to an aggregate amount of

1 \$12 million of liens that are (a) valid, enforceable, perfected, non-avoidable and in existence  
2 immediately prior to the Petition Date or (b) valid, enforceable, non-avoidable and in existence  
3 immediately prior to the Petition Date, but perfected subsequent to the Petition Date as permitted  
4 by section 546(b) of the Bankruptcy Code, (the “**Petition Date Perfected Liens**”); (iii) a fully-  
5 perfected first priority priming lien upon all DIP Collateral that constitutes Non-WCF Collateral,  
6 subject to Petition Date Perfected Liens, and, prior to entry of the Final Order, any prepetition  
7 security interest in or lien on assets of NCU that are in favor of Trisura (“**Trisura Liens**”); (iv) a  
8 fully-perfected springing first priority lien on all assets constituting WCF Collateral upon the  
9 satisfaction of obligations owing to Concord under the Prepetition Working Capital Agreement; (v)  
10 a first priority lien on all claims in respect of intercompany transfers of proceeds from the DIP  
11 Facility or of Cash Collateral from any Debtor to NCU. It also is proposed that the DIP Facility  
12 would benefit from superpriority administrative expense claims.

13 32. The Prepetition Senior Secured Term Loan Agent, on behalf of the lenders  
14 thereunder, has consented to the execution of the DIP Facility and the priming of the liens securing  
15 such facility. Currently, that consent only is for a financing of up to \$51.4 million, which, while in  
16 excess of the amount of the Interim DIP Loan, is less than the full amount of the DIP Facility. The  
17 Debtors will be pursuing a consent for the full size of the DIP Facility prior to entry of the Final  
18 Order.

19 33. In addition, as described in detail above and in the First Day Declaration, the other  
20 Senior Secured Parties have consented to the Debtors’ DIP Financing pursuant to the Prepetition  
21 Intercreditor Agreements. The Debtors will seek consent to the priming of the Trisura Liens prior  
22 to the Final Hearing. Presently, the DIP Facility does not seek to prime the liens of any other  
23 prepetition secured indebtedness that might exist.

24 34. As adequate protection, the Prepetition Secured Parties will, to the extent of any  
25 diminution of value in their collateral during the pendency of these Chapter 11 Cases, receive:  
26 (i) additional and replacement liens on, except as otherwise set forth in the Interim Order, all  
27 property of the Debtors’ estates that constitutes DIP Collateral (the “**Adequate Protection Liens**”),  
28 subject to the lien priorities set forth on Exhibit C to the Interim Order; (ii) superpriority

administrative expense claims against each of the Debtors pursuant to section 507(b) of the Bankruptcy Code, subject to the same relative priorities as the Adequate Protection Liens; and (iii) financial reporting provided to the DIP Lenders. In addition, in consideration for its consent to the priming liens contemplated by the DIP Facility, KfW will receive adequate protection in the form of: (i) the indefeasible payment of interest in amounts equal to 100% of the accrued and unpaid interest under the Prepetition Senior Secured Term Loan Credit Agreement (at the non-default rate) whether such interest accrued prior to the Petition Date or following the Petition Date, with amounts (A) relating to the Prepetition Senior Secured Term Loan A and B Obligations paid in cash and (B) amounts relating to the Prepetition Senior Secured Term Loan A-2 Obligations paid in kind, and (ii) the reimbursement of reasonable and documented professional fees and expenses of the Prepetition Senior Secured Term Loan Agent as provided in the Interim Order. The Debtors will not pay any adequate protection for the priming of the Trisura Liens.

#### **Summary of the DIP Credit Agreement**

35. In accordance with Bankruptcy Rule 4001(c)(1)(B), the below chart summarizes the significant terms of the proposed Interim Order and the DIP Facility.

<b>Material Terms</b>	
<b>Borrower</b> Bankruptcy Rule 4001(c)(1)(B); DIP Credit Agreement Preamble	Nevada Copper, Inc., a Nevada corporation.
<b>Guarantors</b> Bankruptcy Rule 4001(c)(1)(B); DIP Credit Agreement Preamble	All of the Debtors other than the Borrower.
<b>DIP Lenders</b> Bankruptcy Rule 4001(c)(1)(B); DIP Credit Agreement Preamble	Manchester Securities Corp. and Ziwa Investments Limited.
<b>DIP Agent</b> Bankruptcy Rule 4001(c)(1)(B); DIP Credit Agreement Preamble	U.S. Bank Trust Company, National Association.

<b>Material Terms</b>	
<b>Interest Rate</b> Bankruptcy Rule 4001(c)(1)(B); DIP Credit Agreement § 5.2	<p>Interest will be payable on the unpaid principal amount of all DIP Loans and all accrued and unpaid interest thereon at a rate per annum equal to the aggregate of (a) Term SOFR (as defined in the DIP Credit Agreement) for an Interest Period (as defined in the DIP Credit Agreement) of one month, (b) the Credit Spread Adjustment (as defined in the DIP Credit Agreement) of 10 basis points per annum, and (c) 9.00%, payable monthly in cash on the first (1st) business day of each month in arrears.</p> <p>The Term SOFR applicable to each DIP Loan for the initial one-month period beginning on the date on which such DIP Loan is funded and each succeeding one-month thereafter shall be determined in accordance with the provisions of the DIP Credit Agreement for determining the Term SOFR for an Interest Period of one month thereunder, which provisions are incorporated by reference into the DIP Credit Agreement <i>mutatis mutandis</i>; provided, that in no event shall the Term SOFR be less than 0.00%.</p>
<b>Events of Default</b> Bankruptcy Rule 4001(c)(1)(B); DIP Credit Agreement § 13.1	<p>Each of following shall constitute an “Event of Default”:</p> <ul style="list-style-type: none"> <li>(i) If the Borrower fails to pay on or before the due date, (x) any principal amount due to the Senior Lenders or (y) any other amount payable by it to any Finance Party (unless the failure to pay is remedied within two (2) Business Days);</li> <li>(ii) Any Obligor shall default in the due performance or observance of any term, condition or provision of a Finance Document to which they are a party, not otherwise specified in Section 13.1 (Events of Default) of the DIP Credit Agreement and, other than in the case of any breach of Section 11.2 (DIP Budget and Variance Reporting), Section 11.12 (Negative Covenants), Section 11.13 (Milestones) and Section 11.3(a)(i) (Notifications to the Senior Lenders) (in each case for which no cure period shall apply), such breach remains unremedied for a period of ten (10) Business Days after the earlier of: (i) written notice by the Administrative Agent to the Borrower (acting at the direction of the Majority Lenders), and (ii) any Obligor becoming aware of such breach;</li> <li>(iii) the Borrower makes any representation or warranty under any Finance Document to which it is a party, or in any certificate, Financial Statement or other document furnished by it to any Secured Party, which is incorrect or incomplete when made or deemed to be made (except to the extent any such representation or warranty expressly relates to an earlier date, and in such case, shall be true and correct on and as of such earlier date) and, to the extent such representation or warranty is not already qualified by materiality, such representation or warranty is incorrect or incomplete in a material respect when made or deemed to be made and in each case the circumstances so misrepresented are (i) susceptible to cure and (ii) not corrected within ten (10) Business Days after the earlier of (A) written notice by the Administrative Agent to the Borrower (acting at the direction of the Majority Lenders), and (B) any Obligor becoming aware of such breach;</li> </ul>

1	<b>Material Terms</b>	
2		(iv) the Borrower (i) fails to make any payment when such payment is
3		due and payable to any Person in relation to any Debt (other than
4		Debt subject to the Automatic Stay) having a principal amount in
5		excess of \$1,000,000, and any applicable grace period in relation
6		thereto as provided for under the applicable instrument or agreement
7		evidencing such Debt has expired; (ii) defaults in the observance or
8		performance of any other agreement or condition in relation to any
9		such Debt or contained in any instrument or agreement evidencing,
10		securing or relating thereto, or any other event occurs or condition
11		exists, the effect of which is to cause the holder of such Debt to
12		declare such Debt to become due prior to its stated maturity date, in
13		each case to the extent not subject to the Automatic Stay; or (iii) fails
14		to pay any Adequate Protection Obligations when due and payable
15		in accordance with the DIP Order;
16		(v) an order is made or a resolution is passed for the winding up,
17		liquidation or dissolution of the Borrower;
18		(vi) any Finance Document is repudiated, contested or disaffirmed by any
19		Obligor in whole or in part, ceases to be in full force and effect, or is
20		invalidated, becomes unlawful, or rendered unenforceable by any
21		act, regulation or governmental action or is determined to be invalid
22		or unenforceable by a court or other judicial entity or if any Obligor
23		has ceased to perform its obligations under any Finance Document;
24		(vii) security interests intended to be granted by or pursuant to the DIP
25		Credit Agreement or any other Finance Document over the
26		Collateral, shall not be valid, perfected, first priority security
27		interests (subject, in the case of the Collateral, to the existence of any
28		Permitted Encumbrances) in favor of the Collateral Agent for the
		benefit of the Secured Parties and enforceable thereby;
		(viii) an adverse final judgment, order, writ of execution, garnishment,
		attachment, arbitral award or similar process that is not capable of
		further appeal, for an amount in excess of \$1,500,000, is issued or
		levied against the Borrower, the Collateral, in each case, to the extent
		not subject to the automatic stay under the Chapter 11 Cases;
		provided that, to the extent that any such action or process is
		appealable or contestable, such judgment, order, writ of execution,
		garnishment, attachment, arbitral award or similar process remains
		unpaid, unstayed on appeal, undischarged, unbonded or undismissed
		for a period of thirty (30) days after the right of appeal or contest
		arises;
		(ix) all or any material portion of the Collateral is attached, sold,
		transferred, Encumbered or assigned by a Person other than the
		Secured Parties or without the consent of the Senior Lenders (other
		than pursuant to a Permitted Asset Disposition or Permitted
		Encumbrance, as applicable) and in the case of such attachment shall
		remain unlifted, unstayed or undischarged for a period of thirty (30)
		days;



1	<b>Material Terms</b>	
2		(x) an Encumbrancer, or any other Person, other than the Secured
3		Parties, legally takes possession of (i) any Collateral Account (other
4		than by the collateral agent under the First Lien Facility), or (ii) any
5		portion of the Collateral with a value in excess of \$1,500,000 by
6		appointment of a receiver, receiver and manager, or otherwise but
7		excluding the legal possession of any cash collateral held as security
8		by third parties;
9		(xi) the Borrower abandons all or any material portion of the Collateral
10		other than in regard to its transition into care and maintenance
11		operations;
12		(xii) the Borrower fails to obtain, or loses the right to, or benefit of, a
13		Material Project Authorization, or any Material Project
14		Authorization in respect of the transactions contemplated by the
15		Transaction Documents is modified in a manner that has a Material
16		Adverse Effect; provided, that the foregoing shall not constitute the
17		occurrence of an Event of Default if such circumstance is capable of
18		being remedied and the Borrower is diligently pursuing and obtains
19		a replacement of such Material Project Authorization within forty-
20		five (45) days after failing to obtain or losing the right to, or benefit
21		of, a Material Project Authorization;
22		(xiii) a Change of Control occurs;
23		(xiv) any Material Project Document is terminated (other than at scheduled
24		maturity, with the prior written consent of the Majority Lenders) or
25		otherwise becomes invalid, illegal or otherwise ceases to be in full
26		force and effect; provided, that the foregoing shall not constitute the
27		occurrence of an Event of Default in the case of the NV Energy
28		Power Supply Contract, if the Majority Lenders have, acting
		reasonably, determined that the NV Energy Power Supply Contract
		is capable of replacement;
		(xv) (i) the Borrower or any director or officer thereof has violated, any
		AML Laws, Anti-Corruption Laws or Sanctions, or (ii) any
		employee or agent of the Borrower has violated any AML Laws,
		Anti-Corruption Laws or Sanctions, unless such Obligor takes action
		to remedy such violation as may be reasonably acceptable to the
		Administrative Agent within ten (10) days of acquiring actual
		knowledge of such violation and thereafter continues to take such
		action as may be reasonably acceptable to the Administrative Agent;
		(xvi) the occurrence of an Expropriation Event which is continuing for
		thirty (30) days or more; provided, that such cure period shall apply
		only if the Obligors are actively and diligently pursuing a resolution
		to regain ownership and control over the Project substantially as held
		prior to such event;
		(xvii) failure by any Obligor to be in compliance in all material respects
		with the applicable provisions of any Finance Document, the DIP
		Order or DIP Recognition Order, after giving effect to applicable
		cure periods set forth in the DIP Credit Agreement or the applicable
		document;

1	<b>Material Terms</b>	
2		(xviii) any request made by any Obligor for, or the reversal,
3		modification, amendment, stay, reconsideration or vacatur of any
4		DIP Order, as entered by the Bankruptcy Court, or any DIP
5		Recognition Order, as granted by the Canadian Court, in each case,
6		without the prior written consent of the Majority Lenders;
7		(xix) the filing of any application by any Obligor (other than the
8		application for financing provided by a third party which seeks
9		authority to pay all of the Obligations in full in cash upon the closing
10		of such financing) for the approval of (or an order is entered by the
11		Bankruptcy Court approving) any claim arising under section 507(b)
12		of the Bankruptcy Code or any other provision of the Bankruptcy
13		Code or any security, mortgage, collateral interest or other
14		Encumbrance in any of the Chapter 11 Cases which is pari passu with
15		or senior to the Encumbrances securing the Obligations, excluding
16		(i) the Carve-Out, (ii) the Administration Charge, (iii) solely with
17		respect to the WCF Collateral, the Encumbrances securing the
18		Working Capital Facility, (iv) prior to the entry of the Final Order,
19		any Prepetition Trisura Lien, (v) Encumbrances arising under the
20		DIP Order or pursuant to any other financing agreement made with
21		the prior written consent of the Majority Lenders or (vi) as provided
22		in the First Day Orders with the prior written consent of the Majority
23		Lenders;
24		(xx) any Obligor (or any direct or indirect non-Debtor affiliate or
25		Subsidiary of an Obligor) commences (or supports) any action (other
26		than an action permitted by the DIP Order and the DIP Recognition
27		Order) seeking or consenting to, or any order is entered granting, (i)
28		the invalidation, subordination or other challenge to the Prepetition
		Secured Obligations, the Prepetition Funded Debt Liens, the
		Adequate Protection Liens, the Adequate Protection Claims (as
		defined in the DIP Order), the Encumbrances securing the
		Obligations or the DIP Superpriority Claims (as defined in the DIP
		Order) or (ii) any relief under sections 506(c) or 552(b) of the
		Bankruptcy Code with respect to any Prepetition Collateral (as
		defined in the DIP Order) (including cash collateral), any Collateral
		or against any of the Prepetition Secured Parties (as defined in the
		DIP Order), the Agent or the Senior Lenders;
		(xxi) (i) any Obligor files a pleading in any court seeking or supporting an
		order to revoke, reverse, stay, vacate, amend, supplement or
		otherwise modify any Finance Document or any DIP Order or DIP
		Recognition Order, or to disallow any Obligations, in whole or in
		part, or (ii) any material provision of any Finance Document, the DIP
		Order, any DIP Recognition Order or any other order of the
		Bankruptcy Court or Canadian Court approving the Obligors' use of
		Cash Collateral (as defined in the DIP Order), shall for any reason
		cease to be valid and binding (without the prior written consent of
		the Majority Lenders);



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<b>Material Terms</b>	
	<p>(xxii) the entry of an order by the Bankruptcy Court in favor of the Creditors' Committee (if any), any ad hoc committee or any other party in interest, (i) granting such party standing to pursue any claims against the Senior Lenders or the Prepetition Secured Parties, (ii) sustaining an objection to claims of the Senior Lenders or the Prepetition Secured Parties or (iii) avoiding any liens held by the Senior Lenders or the Prepetition Secured Parties, provided, that the foregoing shall not be deemed to prohibit the investigation by any such committee of any such claims or liens in respect of the Prepetition Secured Obligations in accordance with the terms of the DIP Order;</p> <p>(xxiii) without the prior written consent of the Majority Lenders, the filing with the Bankruptcy Court of a motion seeking approval of a sale under section 363 of the Bankruptcy Code or a plan of reorganization or liquidation in any of the Chapter 11 Cases that, in either case, does not provide for indefeasible payment in full in cash of all Obligations upon closing of such sale or the effective date of such plan;</p> <p>(xxiv) the appointment in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code);</p> <p>(xxv) without the prior written consent of the Majority Lenders, the granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the Collateral with an aggregate value of at least \$1,500,000;</p> <p>(xxvi) the conversion of any Chapter 11 Case into a case pursuant to Chapter 7 of the Bankruptcy Code;</p> <p>(xxvii) the termination of any of the Debtors' exclusive right to propose a plan of reorganization under Chapter 11 of the Bankruptcy Code;</p> <p>(xxviii) a dismissal of any of the Chapter 11 Cases or Recognition Proceedings;</p> <p>(xxix) without the prior written consent of the Majority Lenders, a request by the Debtors to use cash collateral or to obtain financing under section 364 of the Bankruptcy Code (other than pursuant to the DIP Credit Agreement), unless such financing would repay in full in cash all Obligations upon consummation thereof;</p> <p>(xxx) without the consent of the Majority Lenders, the filing of any motion seeking approval of a sale of any Collateral;</p> <p>(xxxi) a Material Adverse Effect has arisen after the Petition Date and is continuing;</p> <p>(xxxii) the failure to meet any Milestone; or</p>

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<b>Liens and Priorities</b> Bankruptcy Rule 4001(c)(1)(B)(i); Interim Order ¶ 6(c); DIP Credit Agreement Recitals	<p>(xxxiii) the entry of an Interim Order or Final Order in form or substance that is not acceptable to the Majority Lenders in their sole discretion.</p> <p>The DIP Facility will be a superpriority multi-draw term loan credit facility.</p> <p>(1) <u>First Priority Lien on Unencumbered Property</u>. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable and fully-perfected first priority senior security interest in and lien upon all DIP Collateral that, as of the Petition Date, is unencumbered and not subject to any liens (including Petition Date Perfected Liens), which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, and (B) the Administration Charge.</p> <p>(2) <u>Priming Lien on WCF Collateral</u>. Upon the payment in full of the obligations under the Prepetition Working Capital Facility, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes WCF Collateral, which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.</p> <p>(3) <u>Priming Lien on Non-WCF Collateral</u>. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes Non-WCF Collateral, <i>provided that</i> such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge and (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.</p> <p>(4) <u>Lien on Intercompany Superpriority Claims</u>. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority priming security interest in and lien on all claims in respect of intercompany transfers of proceeds from the DIP Facility or of Cash Collateral from any Debtor to NCU, <i>provided that</i> such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, and (C) Petition Date Perfected Liens (excluding any Prepetition Trisura Lien).</p>
<b>Milestones</b> Bankruptcy Rule 4001(c)(1)(B)(vi); DIP Credit Agreement § 11.13	<p>The DIP Facility will be subject to the following milestones:</p> <ul style="list-style-type: none"> <li>a) No later than one (1) calendar day following the Petition Date, the Debtors shall have filed a motion in the Bankruptcy Court seeking approval of the DIP Facility, in form and substance acceptable to the Majority Lenders;</li> <li>b) No later than five (5) business days following the Petition Date, the Bankruptcy Court shall have entered the Interim Order;</li> <li>c) No later than ten (10) calendar days following the Petition Date, the Debtors shall have filed the Bidding Procedures Motion</li> <li>d) No later than fourteen (14) calendar days following the entry of the Interim Order by the Bankruptcy Court, the Canadian Court shall</li> </ul>

<b>Material Terms</b>	
	<p>have granted the Initial Recognition Order and Interim DIP Recognition Order.</p> <p>e) No later than fourteen (14) calendar days following entry of the Final DIP Order by the Bankruptcy Court, the Canadian Court shall have entered the Final DIP Recognition Order.</p> <p>f) No later than fourteen (14) calendar days following entry of the Sale Approval Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance satisfactory to the Administrative Agent and Senior Lenders in their sole discretion, recognizing and enforcing the Sale Approval Order in Canada.</p> <p>g) No later than fourteen (14) calendar days following the entry of the Bidding Procedures Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance satisfactory to the Administrative Agent and Senior Lenders in their sole discretion, recognizing and enforcing the Bidding Procedures Order in Canada.</p> <p>h) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered a Bidding Procedures Order approving the Bidding Procedures Motion, which shall be in form and substance acceptable to the Majority Lenders.</p> <p>i) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered the Final Order.</p> <p>j) No later than one hundred and eight (108) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale Transaction, in form and substance acceptable to the Majority Lenders; and</p> <p>k) No later than one hundred and twenty (120) days following the Petition Date, the Sale Transaction shall be consummated.</p>
<b>Conditions of Borrowing</b> Bankruptcy Rule 4001(c)(1)(B); DIP Credit Agreement § 12.1	The DIP Credit Agreement includes standard and customary conditions, including, without limitation: (i) receipt of DIP Documents by the DIP Lenders, including the Approved DIP Budget; (ii) payment by the Debtors of all required fees and expenses to the DIP Agents; (iii) the accuracy of representations and warranties in all material respects; (iv) the Final Order or the Interim Order, as applicable, shall be in full force and effect; (iv) delivery of a utilization request; and (v) no default or event of default.
<b>Use of DIP Facility and Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(ii) DIP Credit Agreement § 2.3	Subject to Bankruptcy Court approval, proceeds of the DIP Facility will be used strictly in accordance with the DIP Documents and the Approved DIP Budget (subject to the Permitted Variances), for (a) working capital and general corporate purposes of the Debtors, (b) for bankruptcy-related costs and expenses (including costs and expenses incurred in connection with the Recognition Proceedings) and (c) for costs and expenses related to the DIP Facility.

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<div style="display: flex;"> <div style="flex: 1; padding-right: 10px;"> <p><b>Adequate Protection</b> Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii); Interim Order ¶ 10-11</p> </div> <div style="flex: 2;"> <p>Adequate Protection for Prepetition Secured Parties:</p> <p>The Prepetition Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition diminution in value of their interests in the Prepetition Collateral resulting from, among other things, (i) subordination of the Prepetition Secured Parties' interests in the Prepetition Collateral, (ii) the use of Cash Collateral during the Chapter 11 Cases, (iii) the use, sale or lease of any of the Prepetition Collateral, (iv) the imposition of the automatic stay pursuant to Bankruptcy Code section 362(a), and/or (v) for any other reason for which adequate protection may be granted under the Bankruptcy Code ("<b><i>Diminution in Value</i></b>").</p> <p>(i) all Prepetition Secured Parties shall, to the extent of any Diminution in Value, during the pendency of the Chapter 11 Cases:</p> <ol style="list-style-type: none"> <li>a. be granted (a) additional and replacement liens on, except as set forth in the Interim Order, all property of the Debtors' estates that constitutes DIP Collateral (the "<b>Adequate Protection Liens</b>"), subject to the lien priorities set forth on <u>Exhibit C</u> to the Interim Order, and (b) superpriority administrative expense claims against each of the Debtors pursuant to section 507(b) of the Bankruptcy Code (the "<b>Adequate Protection Claims</b>"), which claims shall have the same relative priorities as the Adequate Protection Liens (as set forth on <u>Exhibit C</u> to the Interim Order), subject only to the Carve-Out, the Administration Charge and the DIP Superpriority Claims; and</li> <li>b. receive financial reporting provided to the DIP Lenders (and their advisors) in respect of the DIP Facility, and other information rights as specified in section 10 of the Interim Order (with specific information rights provided to KfW and the technical advisor).</li> </ol> <p>(ii) KfW shall, to the extent of any Diminution in Value, during the pendency of the Chapter 11 Cases:</p> <ol style="list-style-type: none"> <li>a. The Prepetition Senior Secured Term Loan Agent shall during the pendency of the Chapter 11 Cases, receive indefeasible payments in amounts equal to 100% of the accrued and unpaid interest, whether accruing prior to, on or after the Petition Date, due to the Prepetition Senior Secured Term Loan Agent under the Prepetition Senior Secured Term Loan Documents (calculated at the applicable non-default rates) (the "<b>Adequate Protection Monthly Payments</b>" and, together with the Adequate Protection Fees, the "<b>Adequate Protection Payments</b>"), which shall be payable (i) in respect of payments relating to the Prepetition Senior Secured KfW Term Loan Obligations, in cash and (ii) in respect of payments relating to the Prepetition Senior Secured Term Loan A-2 Obligations, in kind; provided that in the event of a final determination that the Prepetition Senior</li> </ol> </div> </div>

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<b>Entities with Interests in Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(i); Interim Order ¶ 6	<p>Secured Term Loan Lenders are undersecured as of the Petition Date, payments received by the applicable undersecured Prepetition Senior Secured Term Loan Lender pursuant to this paragraph 10(d) may be recharacterized and applied as payments of principal.</p> <p>b. as further adequate protection, the Debtors are authorized and directed to pay, without further Court order, reasonable and documented fees and expenses (the “<b>Adequate Protection Fees</b>”), whether incurred before or after the Petition Date, of the Prepetition Senior Secured Term Loan Agent, consisting of the following: (i) Milbank, as counsel to KfW; (ii) one Canadian counsel to KfW; (iii) one Nevada counsel to KfW; and (iv) one technical advisor to KfW; (collectively, the “<b>Prepetition Secured Parties’ Professionals</b>”) in accordance with the notice and review procedures set forth in paragraph 19 of the Interim Order.</p>
<b>Fees</b> Bankruptcy Rule 4001(c)(1)(B); Interim Order ¶ 3, 19; DIP Credit Agreement § 5.9	<p>The Debtors shall pay all fees, expenses (including legal and other reasonable and documented professional fees and expenses, subject to a review period of 10 business days (the “<b>Review Period</b>”), during which the Debtors, the Creditors’ Committee, or the U.S. Trustee may make an objection) and other charges payable under the terms of the DIP Documents as and when due thereunder. The Debtors will pay also professional fees, costs, and expenses of the Prepetition Secured Parties’ professionals, as provided in the Interim Order. The DIP Facility will also include the following fees:</p> <ul style="list-style-type: none"> <li>• <b>Unused Commitment Fee:</b> a fee on the average daily Unused Commitment of such Senior Lender for the period from and including the Entry Date to the Maturity Date, at a rate per annum of 1.0%;</li> <li>• <b>Upfront Fee:</b> 5.0% of the total DIP Commitments, earned upon entry of the Interim Order, with the portion of the Upfront Fee allocable to (x) the Interim DIP Loan becoming due and payable in cash upon the entry of the Interim Order and the funding of the Interim DIP Loan and (y) the Final DIP Loan becoming due and payable in cash upon the entry of the Final Order and the funding of the Final DIP Loan;</li> <li>• <b>Exit Fee:</b> 1.0% fee that is due and payable upon repayment of the DIP Facility in accordance with the DIP Credit Agreement; and</li> <li>• <b>Agency Fee:</b> an agency fee as set forth in the letter agreement between the DIP Agent and the Borrower payable in accordance with the terms of such letter agreement.</li> </ul>



<b>Material Terms</b>	
<p><b>Carve Out</b> Bankruptcy Rule 4001(c)(1)(B); Interim Order ¶ 13</p>	<p>Carve out (the “<u>Carve Out</u>”) that covers United States Trustee and Court fees, up to \$50,000 in fees for a chapter 7 trustee and allowed unpaid fees and expenses of estate/committee professionals, and a capped amount of professional fees for the period after delivery of a “<u>Carve Out Trigger Notice</u>”. The Carve Out reserve will be funded upon delivery of a Carve Out Trigger Notice.</p>
<p><b>DIP Budget; Reporting Requirement</b> Bankruptcy Rule 4001(c)(1)(B); Interim Order ¶ 8</p>	<p><i>Initial Budget.</i> The Debtors have prepared and delivered to the DIP Lenders and the DIP Professionals an itemized thirteen-week cash flow forecast attached to the Interim Order as <b>Exhibit B</b> (the “<i>Initial Budget</i>,” as amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms of the Interim Order and the DIP Documents, the “<i>Approved Budget</i>”). Except as otherwise provided in the Interim Order or in the DIP Documents, the Debtors may only use Cash Collateral and the proceeds of the DIP Facility to fund payments benefitted by the Carve-Out and otherwise in accordance with the Approved Budget (subject to the Permitted Variances).</p> <p><i>Proposed Budget; Budget Transition.</i> By no later than 12:00 p.m. (Pacific Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the Debtors shall deliver to the DIP Lenders, DIP Professionals, and KfW an updated and supplemented forecast (a “<i>Proposed Budget</i>”) for the thirteen-week period commencing with the calendar week in which such Proposed Budget is delivered (the “<i>Budgeted Period</i>”); <i>provided, however</i>, that in no event shall the Budgeted Period extend past four weeks after the Maturity Date (as defined in the DIP Credit Agreement) of the DIP Facility. For the avoidance of doubt, if the Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts, disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for all weeks following the Maturity Date shall assume that the Debtors continue to operate in the ordinary course consistent with prior postpetition practices and that no sale of the Debtors’ business will occur during such portion of the Budgeted Period. The Proposed Budget (including any subsequent revisions to any such Proposed Budget) shall become the Approved Budget effective five (5) business days after such submission (such date, the “<i>Budget Transition Date</i>”) unless the Debtors receive a written objection from the Required DIP Lenders (with e-mail from professionals acting on behalf of the Required DIP Lenders to the Debtors’ counsel being sufficient) prior to 5:00 p.m. (Pacific Time) on the Budget Transition Date. If the Required DIP Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or modification to the Approved Budget or Approved Variance Report (defined below) within five (5) business days after the Required DIP Lenders’ receipt thereof, then such Proposed Budget, amendment, supplement or modification shall be deemed acceptable to and approved by the DIP Lenders. In the event the Required DIP Lenders timely object to a Proposed Budget, the prior Approved Budget shall remain in full force and</p>

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effect until any such Proposed Budget is approved by the Required DIP Lenders (with e-mail from the advisors acting on behalf of the Required DIP Lenders to the Debtors' counsel being sufficient). The consent of the Required DIP Lenders to any Proposed Budget or any Approved Budget shall not be construed as consent to the use of any Cash Collateral or proceeds of the DIP Facility after the occurrence of a Termination Event regardless of whether the aggregate funds shown on the Approved Budget have been expended. Until any Proposed Budget, amendment, supplement or modification has been approved (or is deemed approved in accordance with this paragraph) by the Required DIP Lenders, the Debtors shall be subject to and be governed by the terms of the Approved DIP Budget then in effect.

*Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second Thursday following the Petition Date (the “**First Reporting Date**”, which, for the avoidance of doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday thereafter (together with the First Reporting Date, each a “**Weekly Reporting Date**”), the Debtors shall provide to the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form and substance reasonably acceptable to the DIP Lenders (the “**Weekly Variance Report**”), setting forth in reasonable detail: (i) the intercompany transfers from Debtor entities to NCU on a Debtor-by-Debtor and an aggregate basis; (ii) the actual receipts of the Debtors on a line-by-line and aggregate basis (the “**Actual Receipts**”) and the actual disbursements of the Debtors on a line-by-line and aggregate basis (such aggregate actual disbursements, the “**Actual Disbursements**”), in each case, during the applicable week ending on the Sunday preceding each such Weekly Reporting Date (each such week, the “**Reporting Week**”); (iii) a comparison (whether positive or negative, expressed as a percentage) for the Reporting Week between (A) the Actual Receipts (and each line item thereof) for such Reporting Week to the amount of the Debtors' projected receipts (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the Actual Disbursements (and each line item thereof) for such Reporting Week to the amount of the Debtors' projected disbursements (and each line item thereof) set forth in the Approved Budget for such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to NCU to the amount of each such Debtor's projected intercompany transfers to NCU set forth in the Approved Budget for such Reporting Week. In addition, by no later than 12:00 p.m. (Pacific Time) on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First Reporting Date, (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling Four-Week Testing Date shall be July 11, 2024) and each subsequent four-week period commencing from the beginning of the week in which the Petition Date occurs and ending on the Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing Period**”) the Debtors shall provide the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form and

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	<p>substance reasonably acceptable to the DIP Lenders (a “<b><i>Rolling Four-Week Variance Report</i></b>” and, together with the Weekly Variance Report, the “<b><i>Approved Variance Reports</i></b>”), setting forth in reasonable detail: (x) the aggregate Actual Receipts of the Debtors, aggregate Actual Disbursements of the Debtors, and aggregate intercompany transfers from each Debtor entity to NCU, in each case, during the applicable Rolling Four-Week Testing Period; and (y) a comparison (whether positive or negative, expressed as a percentage) detailing (1) the aggregate Actual Receipts (and each line item thereof) for such Rolling Four-Week Testing Period compared to the projected receipts (and each line item thereof) for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period; (2) the aggregate Actual Disbursements (and each line item thereof) for such Rolling Four-Week Testing Period compared to the projected disbursements (and each line item thereof) for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period; and (3) the aggregate intercompany transfers from each Debtor entity to NCU made by each such Debtor during such Rolling Four-Week Testing Period compared to the aggregate projected intercompany transfers from each such Debtor entity to NCU for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period.</p>
<b>Variance Covenant</b> Bankruptcy Rule 4001(c)(1)(B); Interim Order ¶ 8	<p><i>Budget Testing; Permitted Variances.</i> During any Rolling Four-Week Testing Period, the Debtors shall not permit (1) total disbursements, minus (2) disbursements in respect of (i) interest, fees, and expenses in relation to the DIP Facility; (ii) Adequate Protection Obligations; (iii) DIP Professional Fees; and (iv) professional fees paid by the Debtors on behalf of themselves or any other party (the disbursements remaining after such subtractions, the “<b><i>Total Tested Disbursements</i></b>”) to be more than 120% of such Total Tested Disbursements set forth in the Approved Budget for such Rolling Four-Week Testing Period (collectively, the “<b><i>Permitted Variances</i></b>”). Additional disbursement variances, if any, from an Approved Budget, and any proposed amendments, supplements or modifications to an Approved Budget, shall be subject to the prior written approval of the Required DIP Lenders. For the avoidance of doubt, any reference to “written consent” or “written approval” hereunder shall include consent or approval granted by e-mail, including email from counsel to the DIP Lenders on behalf of the DIP Lenders.</p>
<b>Challenge Period</b> Bankruptcy Rule 4001(c)(1)(B); Interim Order ¶ 21	<p>The DIP Orders provide for an investigation period of not less than forty-five (45) calendar days following (i) with respect to the Creditors’ Committee (if any), the later of (x) its appointment in the Chapter 11 Cases and (y) entry of the Final Order; and (ii) with respect to all other parties, forty-five (45) days following entry of the Interim Order.</p>
<b>Waiver/Modification of the Automatic Stay</b> Bankruptcy Rule 4001(c)(1)(B)(iv);	<p>Pursuant to the Interim Order, the automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement and effectuate the terms of the Interim Order and the DIP Documents.</p>



<b>Material Terms</b>	
Interim Order ¶ 12	
<b>Indemnification</b> Bankruptcy Rule 4001(c)(1)(B)(ix); DIP Credit Agreement § 7.5; Interim Order ¶ 3(e)	The DIP Credit Agreement and Interim Order include customary expense and release and indemnification provisions.
<b>Term</b> Bankruptcy Rule 4001(c)(1)(B); DIP Credit Agreement § 1.1	Maturity at earliest of (i) the date that is four (4) months following the Petition Date, (ii) forty-five (45) calendar days after the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or before such date, (iii) fourteen (14) calendar days after the Petition Date if the Interim DIP Recognition Order has not been entered by the Canadian Court on or before such date, (iv) the date of consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, (v) the date of “substantial consummation” (as defined in section 1101 of the Bankruptcy Code, and which for purposes hereof shall be no later than the “effective date” thereof) of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court, (vi) the date of entry of an order by the Bankruptcy Court approving (a) a motion seeking conversion or dismissal of any or all of the Chapter 11 Cases or (b) a motion seeking appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtors’ business, (vii) the date the Bankruptcy Court orders the conversion of the bankruptcy case of any of the Debtors to a liquidation pursuant to chapter 7 of the Bankruptcy Code, and (viii) the date of acceleration of all or any portion of the Loans and the termination of the Commitments upon the occurrence of an Event of Default.
<b>Stipulation as to Validity of Prepetition Claims, Obligations, and Liens</b> Bankruptcy Rule 4001(c)(1)(B)(iii); Interim Order ¶ F(1)	The Debtors stipulate as to the validity of the Prepetition Secured Parties’ claims, obligations, and liens under the Prepetition Senior Secured Term Loan Credit Agreement.
<b>Liens on Avoidance Actions</b> Bankruptcy Rule 4001(c)(1)(B)(xi); Interim Order ¶ 6	Subject to entry of the Final Order, the DIP Collateral will include the proceeds of avoidance actions, and the DIP Liens and the Adequate Protection Liens will attach to any such proceeds, subject to the Carve-Out and the Administration Charge.
<b>Remedies</b> Bankruptcy Rule 4001(c)(1)(B)(iv); Interim Order ¶ 23	The DIP Secured Parties will have the right to exercise any and all rights and remedies under the DIP Loan Documents and applicable law, including, the right to credit bid in a Sale Transaction, provided that the rights of the DIP Agent and each DIP Lender to credit bid on any DIP Collateral that constitutes WCF Collateral shall be subject to the right of the Prepetition

<b>Material Terms</b>	
	Working Capital Purchaser to credit bid for all or any portion of the WCF Collateral.
<b>Waiver of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens</b> Bankruptcy Rule 4001(c)(1)(B)(vii); Interim Order ¶ F	Subject to the Challenge Period, any challenge to the validity of the liens securing the Prepetition Secured Obligations under the Bankruptcy Code or non-bankruptcy law is waived.
<b>Waiver of Sections 552(b) and 506(c)</b> Bankruptcy Rule 4001(c)(1)(B); Interim Order ¶ 16	Each of the DIP Secured Parties and the Prepetition Secured Parties is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code. Subject to the Final Order, the right of the Debtors to surcharge the DIP Collateral or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and the “equities of the case” exception of section 552(b) of the Bankruptcy Code with respect to the DIP Secured Parties and the Prepetition Secured Parties are waived. The DIP Secured Parties and, subject to entry of the Final Order, the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine.

### **Basis for Relief**

#### **I. The Debtors Should Be Authorized to Obtain Postpetition Financing through the DIP Documents.**

36. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the DIP Facility, and use the proceeds of the DIP Facility and Cash Collateral in accordance with the DIP Orders and the Budget. As discussed in greater detail below, such authorization is amply supported by applicable law.

##### **A. *Entry Into the DIP Documents Is an Exercise of the Debtors’ Sound Business Judgment.***

37. If an agreement to obtain postpetition secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts give debtors considerable deference in acting in accordance with their sound business judgment in obtaining such credit. *See, e.g., In re Def. Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992) (noting that a bankruptcy court may approve favorable terms to DIP lenders as a result of the debtor’s business judgment,

1 though the court cannot go so far as approving financing arrangements that evade confirmation  
2 requirements; *In re Capitol Station 65, LLC*, No. 17-23627-B-11, 2018 WL 333863, at \*13 (Bankr.  
3 E.D. Cal. Jan. 8, 2018) (holding that the debtors' selection of DIP lender reflected the debtors' valid  
4 and legitimate exercise of prudent business judgment consistent with their fiduciary duties); *In re*  
5 *Gardens R'eg'l Hosp.*, No. 2:16-BK-17463-ER, 2017 WL 7101146, at \*4 (Bankr. C.D. Cal. July 28,  
6 2017) (same); *In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at \*14 (Bankr.  
7 S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a  
8 request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the  
9 reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr.  
10 S.D.N.Y. 1990) (stating that "cases consistently reflect that the court's discretion under section 364  
11 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business  
12 judgment to be exercised so long as the financing agreement does not contain terms that leverage  
13 the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to  
14 benefit a party-in-interest."). Specifically, to determine whether a debtor has met this business  
15 judgment standard, a court need only "examine whether a reasonable businessperson would make a  
16 similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D.  
17 Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting  
18 that courts should not second guess a debtor's business decision when that decision involves "a  
19 business judgment made in good faith, upon a reasonable basis, and within the scope of [the  
20 debtor's] authority under the [Bankruptcy] Code").

21 38. In considering whether the terms of postpetition financing are fair and reasonable,  
22 courts consider the terms in light of the relative circumstances of both the debtor and the potential  
23 lender. *In re Farmland Indus., Inc.* 294 B.R. at 885, 886 (Bankr. W.D. Mo. 2003); *see also*  
24 *Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Tr. Co. (In re Elingsen McLean*  
25 *Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into  
26 "hard bargains" to acquire funds for its reorganization). The court also can take into consideration  
27 non-economic benefits to the Debtors offered by a proposed postpetition facility. *See, e.g., In re*  
28 *ION Media Networks, Inc.*, Case No. 09-13125, 2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6,

2009) (“Relevant features of [postpetition] financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.”).

39. The Debtors’ determination to move forward with the DIP Facility is an exercise of their sound business judgment following an arm’s-length process and careful evaluation of available alternatives. Specifically, the Debtors and their advisors determined that the Debtors would require significant postpetition financing to support the administration of this case and the Debtors’ ongoing operations. DIP Declaration ¶ 7-10. The terms of the DIP Facility are necessary to secure postpetition financing and to accomplish the Debtors’ comprehensive restructuring. The Debtors negotiated the DIP Documents with the DIP Lenders in good faith, at arm’s-length, and with the assistance of their advisors, and the Debtors believe that they have obtained the best financing available under the circumstances. DIP Declaration ¶ 2, 16-18. Accordingly, the Court should authorize the Debtors’ entry into the DIP Documents, as doing so is a reasonable exercise of the Debtors’ business judgment.

**B. *The Debtors Should Be Authorized to Grant Liens and Superpriority Claims and Hold DIP Proceeds Free From Prepetition Liens or Claims.***

40. The Debtors propose obtaining financing under the DIP Facility, in part, by providing superpriority claims and liens pursuant to section 364 of the Bankruptcy Code in favor of the DIP Lenders. Specifically, the Debtors propose to provide the DIP Secured Parties with (i) superpriority claims and (ii) perfected and non-avoidable liens, including first-priority claims and fully consensual “priming liens” and security interests in the DIP Collateral, subject to the Carve Out, the Administration Charge, and, as applicable, for DIP Collateral other than proceeds of the DIP Facility and which was in existence prior to the Petition Date, Petition Date Perfected Liens. The Debtors also propose to provide the Prepetition Secured Parties with adequate protection for the priming of their prepetition liens and the use of Cash Collateral in the form of replacement liens over the DIP Collateral (in the relative priority described above and subject to the Carve Out, the Administration Charge, and any Prepetition Prior Liens that are senior in relation to such Prepetition Secured Party’s liens and the DIP Liens) and, with respect to the Prepetition Secured Parties, superpriority

1 administrative expense claims (junior to the Carve Out and the DIP Superpriority Claims). In  
2 addition, the Debtors propose to make additional adequation payments to KfW as described above  
3 in paragraph 34.

4 41. In addition, the DIP Order provides that no liens arising prepetition may attach to the  
5 proceeds of the DIP Facility, other than those provided for in the DIP Order. *See* Interim Order ¶  
6 7(c). The DIP Lenders are providing fresh capital on a postpetition basis to facilitate the  
7 preservation and sale of the Debtors' assets, thereby benefiting every stakeholder. Accordingly,  
8 DIP Facility proceeds are postpetition assets of the estate, and are not available for attachment of  
9 liens arising from prepetition claims. *See* 11 U.S.C. § 541; *see also* 11 U.S.C. § 552(a). Given  
10 certain provisions in the Nevada Revised Statutes providing for the possibility of mechanics' and  
11 materialmen's liens attaching to bank accounts, however, the Debtors, out of an abundance of  
12 caution, seek a ruling in the DIP Order ensuring prepetition liens cannot attach to proceeds of the  
13 DIP Facility, except as provided for in the DIP Order with respect to the adequate protection package  
14 negotiated with the Prepetition Secured Parties. *See, e.g.*, N.R.S. 108.222.

15 42. The statutory requirement for obtaining postpetition credit under section 364(c) of  
16 the Bankruptcy Code is a finding, made after notice and hearing, that a debtor is "unable to obtain  
17 unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c).  
18 *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (stating that secured credit  
19 under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing  
20 that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine  
21 whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically,  
22 courts look to whether: (i) the debtor is unable to obtain unsecured credit under section 364(b) of  
23 the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim; (ii) the credit  
24 transaction is necessary to preserve the assets of the estate; and (iii) the terms of the transaction are  
25 fair, reasonable and adequate, given the circumstances of the debtor-borrower and proposed lenders.  
26 *In re Ames Dep't Stores*, 115 B.R. at 37–40; *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr.  
27 E.D. Pa. 1988); *In re Crouse Grp.*, 71 B.R. at 549.

28 43. As described above and as set forth in the Declarations, the Debtors need an

1 immediate capital infusion, yet substantially all of the Debtors' assets are encumbered under their  
2 existing capital structure. Moreover, neither the Prepetition Secured Parties nor any entities that  
3 Moelis & Company contacted as part of their market test were interested in providing DIP financing  
4 to the Debtors on a junior basis. DIP Declaration ¶ 10. In light of the foregoing, the Debtors, in  
5 consultation with their advisors, concluded that the success of these cases hinges on whether any  
6 DIP financing had the support of, or could be provided by, the Debtors' Prepetition Senior Secured  
7 Term Loan Lenders.

8 44. Without DIP financing, the Debtors lack sufficient funds to preserve and maintain  
9 their assets and continue paying their debts as they come due, while pursuing a sale and restructuring  
10 through chapter 11. Absent the DIP Facility, which will provide the Debtors with sufficient liquidity  
11 to administer the case through the sale or reorganization process, the value of the Debtors' estates  
12 would be impaired significantly, to the detriment of all stakeholders. In light of the current  
13 circumstances, the Debtors believe that the terms of the DIP Facility, as set forth in the DIP  
14 Documents, are fair, reasonable, and adequate. For all these reasons, the Debtors submit that they  
15 have met the standard for obtaining postpetition financing.

16 45. With regards to the priority of the postpetition financing, section 364(d) of the  
17 Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on  
18 property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable  
19 to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the  
20 lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11  
21 U.S.C. § 364(d)(1). Consent by the secured creditors to priming obviates the need to show adequate  
22 protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989)  
23 (holding that "by tacitly consenting to the superpriority lien, those [undersecured] creditors relieved  
24 the debtor of having to demonstrate that they were adequately protected."). Accordingly, the  
25 Debtors may incur "priming" liens under the DIP Facility if either (i) the affected parties have  
26 consented, or (ii) the affected parties' interests in collateral are adequately protected.

27 46. As described above, the Prepetition Senior Secured Term Loan Agent, on behalf of  
28 the Prepetition Senior Secured Term Loan Lenders, has consented to the use of Cash Collateral and



the DIP Facility up to \$51.4 million, which is in excess of the amount of the Interim DIP Loan. Further, pursuant to the Prepetition Intercreditor Agreements, Pala, as lender under the Prepetition Junior Secured Term Loan Facility, and Triple Flag, as purchaser under the Prepetition Stream Agreement, have consented or are deemed to have consented through the Prepetition Intercreditor Agreements, to the use of Cash Collateral and the DIP Financing requested by the Debtors in this Motion. Concord, as buyer under the Prepetition Working Capital Facility Agreement, consents to priming liens other than in respect of WCF Collateral, and because only its interest in the Project Collateral is proposed to be primed, no further consent or adequate protection is required.<sup>8</sup> In addition, the Prepetition Secured Parties will receive adequate protection of their interests in the Project Collateral and WCF Collateral, as set forth in the DIP Orders.

47. The Interim Order does not impact the Trisura Liens, which, as provided in the Interim Order, will only be primed by the DIP Facility pursuant to a Final Order. Nevertheless, the Debtors anticipate obtaining Trisura's consent to the DIP Facility prior to entry of the Final Order. Indeed, the DIP Facility will benefit Trisura by providing the Debtors with critical funding needed to pay their obligations in the ordinary course of business, which, in turn, will significantly reduce the likelihood that any of the Debtors' surety bonds will be drawn.<sup>9</sup> Accordingly, the Debtors submit that the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is both warranted and appropriate under the circumstances.

**C. No Comparable Alternative to the DIP Facility Is Reasonably Available.**

48. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by section 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Capitol Station 65, LLC*, No. 17-23627-B-11, 2018 WL 333863, at \*12 (Bankr. E.D. Cal. Jan. 8, 2018) (noting that the

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<sup>8</sup> The Debtors expect to continue to make some deliveries of copper concentrate to Concord after the Petition Date, which effectively will serve as adequate protection for Concord to the extent of such deliveries.

<sup>9</sup> In addition, as part of the Debtors' first day relief, the Debtors are seeking to pay Trisura the surety premiums in the ordinary course of business on a postpetition basis. *See Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter Into New Premium Financing Agreements and (II) Granting Related Relief*, filed contemporaneously herewith.

1 debtors made diligent and good faith efforts to obtain postpetition financing on the best terms  
2 possible). Moreover, in circumstances where only a few lenders likely can or will extend the  
3 necessary credit to a debtor, as here, “it would be unrealistic and unnecessary to require [the debtor]  
4 to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113  
5 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120  
6 n.4 (N.D. Ga. 1989); *see also In re Ames Dep’t Stores*, 115 B.R. at 37–39 (debtor must show that it  
7 made reasonable efforts to seek other sources of financing under section 364(a) and (b)) (citing  
8 *Snowshoe Co.*, 789 F.2d at 1085, 1088 (4<sup>th</sup> Cir. 1986) (demonstrating that credit was unavailable  
9 absent the senior lien by establishment of unsuccessful contact with other financial institutions in  
10 the geographic area)); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (holding that  
11 bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient  
12 to support conclusion that section 364 requirement was met).

13 49. The proposed DIP Facility provides desperately needed liquidity to the Debtors  
14 without a value-destructive, and ultimately uncertain, priming fight, and the Debtors have  
15 determined that the DIP Facility provides the best opportunity available under the circumstances to  
16 fund these Chapter 11 Cases. The Debtors, therefore, submit that the requirement of section 364 of  
17 the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors  
18 is satisfied.

19 **II. The Debtors Should Be Authorized to Pay the Interest and Fees Required by the DIP**  
20 **Secured Parties under the DIP Documents.**

21 50. Under the DIP Documents, the Debtors have agreed, subject to court approval, to  
22 pay certain interest and fees to the DIP Secured Parties, and certain of the Prepetition Senior Secured  
23 Term Loan Lenders, as described above. Additionally, pursuant to the proposed Interim Order, the  
24 Debtors have agreed to pay the prepetition and postpetition professional fees and expenses of the  
25 DIP Secured Parties and the Prepetition Senior Secured Term Loan Agent.

26 51. The Debtors, in consultation with their advisors, believe that the payment of the fees  
27 and expenses required under the DIP Facility, including those of the advisors to the DIP Lenders, is  
28 an integral component of the overall terms of the DIP Facility, was required by the DIP Lenders as



1 consideration for the extension of postpetition financing, and is reasonable and customary for similar  
2 transactions. Accordingly, the Court should authorize the Debtors to pay the fees and expenses  
3 provided under the DIP Documents and the Interim Order.

4 **III. The Debtors Should Be Authorized to Continue to Use the Cash Collateral.**

5 52. Section 363 of the Bankruptcy Code generally governs the use of estate property.  
6 Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor-in-possession to use cash collateral  
7 with the consent of the secured party. Here, each of the Prepetition Secured Parties have consented  
8 (including by way of deemed consents under the Intercreditor Agreements) to the Debtors' use of  
9 any Cash Collateral, subject to the terms and limitations set forth in the Interim Order.

10 53. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests  
11 in property when a debtor uses cash collateral. Section 361 of the Bankruptcy Code provides  
12 examples of forms of adequate protection, such as granting replacement liens and administrative  
13 claims; however, courts decide what constitutes sufficient adequate protection on a case-by-case  
14 basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that  
15 the "determination of whether there is adequate protection is made on a case-by-case basis"); *In re*  
16 *Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a  
17 fact-specific inquiry . . . left to the vagaries of each case").

18 54. The Prepetition Secured Parties will inherently benefit from the Debtors' proposed  
19 use of the Cash Collateral by enhancing the likelihood of preserving the Debtors' overall going-  
20 concern value as the Debtors move toward confirmation of a plan. Preservation of the Debtors'  
21 business as a going concern in and of itself serves to provide such parties "adequate protection" for  
22 Bankruptcy Code purposes. *See In re Las Vegas Monorail Co.*, 429 B.R. 317, 341 (Bankr. D. Nev.  
23 2010) (noting that adequate protection came in the form of increase or maintenance of collateral's  
24 value); *In re BBT*, 11 B.R. 224, 230 (Bankr. D. Nev. 1981) (same); *495 Cent. Park Ave. Corp.*, 136  
25 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (noting that, in determining whether protection is "adequate,"  
26 courts consider "whether the value of the debtor's property will increase as a result of" use of  
27 collateral or provision of financing); *In re Sky Valley, Inc.*, 100 B.R. at 114 ("an increase in the value  
28

1 of the collateral . . . resulting from superpriority financing could result in adequate protection.”  
2 (citation omitted)), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117 (N.D. Ga.  
3 1989).

4 55. The Debtors submit that the proposed adequate protection measures protect the  
5 Prepetition Secured Parties from any diminution in value to the Cash Collateral. In light of the  
6 foregoing, the Debtors further submit, and the Prepetition Secured Parties agree, that the proposed  
7 adequate protection to be provided for the benefit of the Prepetition Secured Parties is appropriate  
8 and sufficient. Not only is the proposed adequate protection necessary to protect the Prepetition  
9 Secured Parties against any diminution in value, but it is fair and appropriate under the  
10 circumstances of this case and ensures that the Debtors have consent to use Cash Collateral, subject  
11 to the terms and limitations set forth in the Interim Order.

12 **IV. The DIP Lenders Should Be Afforded Good-Faith Protection Under Section 364(e).**

13 56. Section 364(e) of the Bankruptcy Code protects a good-faith lender’s right to collect  
14 on loans extended to a debtor, and its right in any liens securing those loans, even if the authority of  
15 the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section  
16 364(e) of the Bankruptcy Code provides that:

17 The reversal or modification on appeal of an authorization under this  
18 section [364 of the Bankruptcy Code] to obtain credit or incur debt,  
19 or of a grant under this section of a priority or a lien, does not affect  
20 the validity of any debt so incurred, or any priority or lien so granted,  
21 to an entity that extended such credit in good faith, whether or not  
such entity knew of the pendency of the appeal, unless such  
authorization and the incurring of such debt, or the granting of such  
priority or lien, were stayed pending appeal.

22 11 U.S.C § 364(e).

23 57. As provided in the DIP Declaration, the DIP Documents are the result of (i) the  
24 Debtors’ reasonable and informed determination that the DIP Lenders offered the most favorable  
25 terms on which to obtain vital postpetition financing, and (ii) vigorous, arm’s-length and good-faith  
26 negotiations between the Debtors and the DIP Lenders. DIP Declaration ¶ 2, 18. The Debtors  
27 submit that the terms and conditions of the DIP Documents are reasonable and appropriate under  
28 the circumstances. The proceeds of the DIP Facility will be used only for purposes that are

1 permissible under the Bankruptcy Code, and no consideration is being provided to any party to the  
2 DIP Documents other than as described herein. Accordingly, the court should find that the  
3 obligations arising under the DIP Facility and other financial accommodations made to the Debtors  
4 have been extended by the DIP Secured Parties in “good faith” within the meaning of section 364(e)  
5 of the Bankruptcy Code and therefore the DIP Secured Parties are entitled to all of the protections  
6 afforded thereby.

7 **V. The Automatic Stay Should Be Modified on a Limited Basis.**

8 58. The proposed Interim Order provides that the automatic stay provisions of section  
9 362 of the Bankruptcy Code will be modified to permit the Debtors to: (i) grant the DIP Liens and  
10 the DIP Superpriority Claims, and to perform such acts as the DIP Lenders may request to assure  
11 the perfection and priority of the DIP Liens; (ii) take all appropriate action to grant the replacement  
12 liens and to take all appropriate action to ensure that such replacement liens are perfected and  
13 maintain the priority set forth in the Interim Order; and (iii) implement the terms of the Interim  
14 Order. In addition, as set forth in paragraph 18 of the proposed Interim Order, if a Termination  
15 Event occurs, unless the Debtors or any party in interest files a motion disputing the occurrence of  
16 such Termination Event within four business days of receiving notice of such Termination Event,  
17 the automatic stay, as to the DIP Secured Parties, shall terminate. The Debtors submit that the stay  
18 modifications requested herein, in addition to being conditions required by the DIP Secured Parties  
19 as part of their agreement to fund the DIP Facility, are ordinary and standard features of debtor-in-  
20 possession financing arrangements, and, in the Debtors’ business judgment, are reasonable and fair  
21 under the circumstances of these Chapter 11 Cases.

22 **VI. Failure to Obtain Immediate Interim Access to the DIP Facility Would Cause**  
23 **Immediate and Irreparable Harm.**

24 59. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to  
25 obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to  
26 section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service  
27 of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on  
28

1 the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to  
2 avoid immediate and irreparable harm to a debtor's estate.

3 60. Pursuant to Local Rule 9006, the Debtors request that the Court conduct an expedited  
4 interim hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry  
5 of the Interim Order until the Final Hearing, to receive initial funding under the DIP Facility. The  
6 Debtors require the initial funding in the amount of \$20 million prior to the Final Hearing and entry  
7 of the Final Order to continue operating, pay its administrative expenses and implement the relief  
8 requested in the Debtors' other "first day" motions. Absent receipt of the initial funding amount and  
9 access to the Cash Collateral, the Debtors will be unable to continue operating during these Chapter  
10 11 Cases or consummate their value-maximizing restructuring. *See* DIP Declaration ¶ 6-12.  
11 Accordingly, this relief will enable the Debtors to preserve and maximize value and avoid immediate  
12 and irreparable harm and prejudice to its estate and all parties in interest, pending the Final Hearing.  
13 For the same reasons, to the extent that Bankruptcy Rule 6003 is applicable to the relief requested,  
14 the Debtors submit that the relief requested in this Motion is necessary to avoid immediate and  
15 irreparable harm.<sup>10</sup>

#### 16 **Request for a Final Hearing**

17 61. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that  
18 the Court set a date for the Final Hearing that is no later than 21 days after the entry of the Interim  
19 Order and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

#### 20 **Reservation of Rights**

21 62. Nothing contained herein is or should be construed as: (i) an admission as to the  
22 validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim  
23 on any grounds; (iii) a promise or requirement to pay any claim; (iv) an admission that any particular  
24 claim is of a type specified or defined hereunder; (v) a request to assume any executory contract or  
25 unexpired lease; or (vi) a waiver of the Debtors' rights under the Bankruptcy Code or any other

26  
27 <sup>10</sup> Bankruptcy Rule 6003 provides that "[e]xcept to the extent that relief is necessary to avoid immediate and  
28 irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a  
motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate . . . ." Fed. R. Bankr. P.  
6003.

1 applicable law.

2 **Request for Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

3 63. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease  
4 of property other than cash collateral is stayed until the expiration of 14 days after entry of the order,  
5 unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described in detail above, any  
6 delay in obtaining the funding provided by the DIP Facility would be detrimental to the Debtors,  
7 their estates, and their creditors, as the Debtors’ ability to manage and run their business and  
8 maintain and preserve their assets requires such funding. In light of the foregoing, the Debtors  
9 submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule  
10 6004(h), to the extent applicable to the Proposed Orders.

11 64. To implement the relief requested in this Motion immediately, the Debtors also  
12 respectfully request a waiver of the 21-day advance notice requirements of Bankruptcy Rule  
13 2002(a)(2) as made applicable in Bankruptcy Rule 6004(a), for cause shown, to the extent applicable  
14 to the Interim Order.

15 **Notice**

16 65. Notice of this Motion will be provided to: (i) the Office of the United States Trustee  
17 for the District of Nevada; (ii) the 20 largest unsecured creditors of each of the Debtors; (iii) the  
18 Internal Revenue Service; (iv) the Office of the United States Attorney for the District of Nevada;  
19 (v) counsel to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New  
20 York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate  
21 Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134,  
22 Attn: James Patrick Shea and Bart Larsen; (vi) Milbank LLP, as counsel to KfW IPEX-Bank GmbH  
23 as administrative agent under the Debtors’ prepetition credit agreement, 55 Hudson Yards, New  
24 York, NY 10001, Attn: Tyson Lomazow; (vii) Bennett Jones LLP, as counsel to Mercuria  
25 Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4,  
26 Canada, Attn: Simon Grant; (viii) White & Case LLP, as counsel to Concord Resources Limited as  
27 buyer under the Debtors’ prepetition advance payment agreement, 1221 6th Avenue, New York,  
28 NY 10020, Attn: Philip Abelson; (ix) Davis, Graham & Stubbs LLP, as counsel to Triple Flag

1 Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale  
2 agreement, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (x) Cleary Gottlieb  
3 Steen & Hamilton LLP, as counsel to Pala Investments Limited as lender under the Debtors'  
4 prepetition unsecured loan agreement, 2 London Wall Place, London EC2Y 5AU, United Kingdom,  
5 Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer (xi)  
6 Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich  
7 Street, New York, NY 10007, Attn: James S. Carr, Esq.; (xii) Trisura, as surety under the Debtors'  
8 surety bonds, Bay Adelaide Centre, 333 Bay Street, Suite 1610, Box 22, Toronto, Ontario, Canada  
9 M5H 2R2, Attn: Richard A. Grant and Andrew Neilans; and (xiii) any party that is required to  
10 receive or has requested notice pursuant to Bankruptcy Rule 2002 or Local Rule 2002. The Debtors  
11 respectfully submit that, in light of the nature of the relief requested, no other or further notice need  
12 be given.

13 *[Remainder of page intentionally left blank.]*  
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1 WHEREFORE, the Debtors respectfully request that the Court enter the Orders granting the  
2 relief requested herein and such other relief as the Court deems appropriate under the circumstances.

3 Dated this 10th day of June, 2024.

4 McDONALD CARANO LLP

5 /s/ Ryan J. Works

6 Ryan J. Works (NSBN 9224)

7 Amanda M. Perach (NSBN 12399)

8 2300 West Sahara Avenue, Suite 1200

9 Las Vegas, Nevada 89102

10 ALLEN OVERY SHEARMAN STERLING US LLP

11 Fredric Sosnick (NYSBN 2472488) (*pro hac* pending)

12 Sara Coelho (NYSBN 4530267) (*pro hac* pending)

13 599 Lexington Avenue

14 New York, New York 10022

15 *Proposed Counsel to the Debtors and*  
16 *Debtors in Possession*

**EXHIBIT 1**

**Proposed Interim Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. BK-24-[\_\_\_\_\_- \_\_\_\_]

Chapter 11

Hearing Date:

Hearing Time:

**INTERIM ORDER (I) AUTHORIZING THE  
DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B) GRANT LIENS,  
INCLUDING SENIOR SECURED PRIMING LIENS AND SUPERPRIORITY  
ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH COLLATERAL;  
(II) GRANTING ADEQUATE PROTECTION TO CERTAIN  
PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY;  
(IV) SCHEDULING FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”),<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”) and Final Order (defined below) pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 of, and Local Rules 4001 and 9006 seeking, among other things:

- (a) authorization for Nevada Copper, Inc. (the “*Borrower*”) to obtain a senior secured postpetition financing on terms and conditions consistent with the terms and conditions set forth in the Senior Secured Superpriority Term Loan Debtor in Possession Credit Agreement by and among the Borrower, each of the Debtors

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized term used but not defined herein have the meanings ascribed to such terms in the Motion.

1 other than the Borrower, (collectively, the “**Guarantors**,” and together with  
2 Borrower, the “**DIP Loan Parties**”), U.S Bank Trust Company, National  
3 Association, as administrative agent and collateral agent (the “**DIP Agent**”), one or  
4 more affiliates of Elliott Investment Management L.P., as lenders (collectively, the  
5 “**DIP Lenders**” and, together with the DIP Agent, the “**DIP Secured Parties**”) (as  
6 amended, restated, amended and restated, supplemented or otherwise modified  
7 from time to time, the “**DIP Credit Agreement**”) attached to this Interim Order at  
8 **Exhibit A**, and for the Guarantors to unconditionally guaranty, on a joint and  
9 several basis, the Borrower’s obligations in connection with such postpetition  
10 financing, consisting of: (i) a new money term loan in an aggregate principal  
11 amount not to exceed at any time outstanding aggregate principal commitments of  
12 \$20,000,000 (the “**Interim DIP Loan**”), which will be funded as a single  
13 disbursement on the date upon which all conditions set forth in Sections 12.1 and  
14 12.3 of the DIP Credit Agreement have been satisfied (the “**Interim Closing Date**”);  
15 (ii) subject to entry of the Final Order, a new money delayed-draw term loan to be  
16 made in an aggregate principal amount not to exceed at any time outstanding  
17 aggregate principal commitments of \$40,000,000 (the “**Final DIP Loan**” and,  
18 together with the Interim DIP Loan, the “**DIP Facility**”), which will be funded as a  
19 single disbursement on the date upon which all conditions set forth in Sections 12.2  
20 and 12.3 of the DIP Credit Agreement have been satisfied;

- 21 (b) authorization for the DIP Loan Parties to enter into any agreements, documents and  
22 instruments in connection with the DIP Facility, including the DIP Credit  
23 Agreement and all notices, guarantees, security agreements, ancillary documents  
24 and agreements executed in connection therewith, (collectively, the “**DIP**  
25 **Documents**”) on terms and conditions consistent with the DIP Credit Agreement  
26 and this Interim Order, and to perform their respective obligations thereunder and  
27 all such other and further acts as may be necessary, appropriate or desirable in  
28 connection with the DIP Documents;
- (c) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and  
the DIP Lenders, and authorizing the Debtors to incur, the DIP Liens (as defined  
below) in all DIP Collateral (as defined below), to secure the DIP Obligations (as  
defined below), which liens and security interests shall be automatically perfected  
and be subject to the lien priorities set forth in the DIP Credit Agreement, on the  
terms and conditions set forth herein, in the DIP Credit Agreement and in the DIP  
Documents;
- (d) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and  
the DIP Lenders, allowed superpriority administrative expense claims against each  
of the Debtors, on a joint and several basis, in respect of all DIP Obligations (as  
defined below), with priority over any and all administrative expenses of any kind  
or nature, subject and subordinate only to the Carve-Out and the Administration  
Charge (as defined below), on the terms and conditions set forth herein and in the  
DIP Documents;
- (e) authorization for the Debtors to use the proceeds of the DIP Facility and the  
Prepetition Collateral (as defined below), including Cash Collateral (as defined  
below), in accordance with the terms hereof, including pursuant to the Approved  
Budget (as defined below) as further described herein, to: (i) pay fees and interest  
under the DIP Facility; (ii) provide working capital for, and for other general  
corporate purposes of, the Debtors, including for funding the Carve-Out (as defined  
below); (iii) pay for bankruptcy-related costs and expenses, including costs and

expenses incurred in connection with the Recognition Proceedings (as defined below); and (iv) pay Adequate Protection Payments (as defined below);

- (f) authorization for the Debtors to pay, on a final and irrevocable basis, the principal, interest, expenses, fees, premiums and other amounts payable under the DIP Documents as such become earned, due and payable, including, without limitation, (i) the Upfront Fee, (ii) the Unused Commitment Fee, (iii) the Exit Fee, (iv) the Agency Fee (each as defined in the DIP Credit Agreement), and (iv) the reasonable fees and disbursements of the DIP Secured Parties' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with the DIP Documents (collectively, the "**DIP Obligations**");
- (g) authorization to grant adequate protection to the Prepetition Secured Parties (as defined below) on the terms set forth in the DIP Documents and this Interim Order on account of any Diminution in Value (as defined below) of the Prepetition Secured Parties' interests in the Prepetition Collateral, including Cash Collateral;
- (h) waivers of (i) the Debtors' and the estates' rights to surcharge against the DIP Collateral or the Prepetition Collateral pursuant to the Bankruptcy Code section 506(c), (ii) the "equities of the case" exception under Bankruptcy Code section 552(b) and (iii) the equitable doctrine of marshalling with respect to the DIP Collateral, including all Prepetition Collateral, in each case, subject to entry of the Final Order (but retroactive to the Petition Date);
- (i) subject to the terms of this Interim Order, authorization for the DIP Secured Parties to exercise remedies under the DIP Documents on the terms described herein upon the occurrence and during the continuance of a Termination Event (as defined below);
- (j) the modification of the automatic stay imposed pursuant to Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of this Interim Order; and
- (k) that this Court schedule a final hearing (the "**Final Hearing**") to consider entry of a final order (the "**Final Order**") authorizing and approving, on a final basis, among other things, the Debtors' entry into the DIP Facility, the borrowings under the DIP Facility, the continued use of Cash Collateral and the granting of adequate protection, in each case, as described in the Motion and as set forth in the DIP Documents.

The Court having held a hearing to consider entry of this Interim Order (the "**Interim Hearing**"); and the Court having considered the Motion and the exhibits thereto, the *Declaration of Zul Jamal in support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* (the "**DIP Declaration**"),

1 the evidence submitted or proffered and the arguments of counsel made at the Interim Hearing;  
2 and proper and sufficient notice of the Motion and the Interim Hearing having been given in  
3 accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and all objections, if any,  
4 to the relief requested in the Motion and to the entry of this Interim Order having been withdrawn,  
5 resolved or overruled by the Court; and it appearing to the Court that granting the relief requested  
6 in necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the  
7 Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their  
8 estates, creditors and parties in interest; and after due deliberation and consideration, and for good  
9 and sufficient cause appearing therefor; IT IS FOUND AND DETERMINED THAT:<sup>3</sup>

10 A. **Petition Date.** On June 9, 2024 (the “*Petition Date*”), each of the Debtors filed a  
11 voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

12 B. **Debtors in Possession.** The Debtors have continued in the management and  
13 operation of their business and properties as debtors in possession pursuant to sections 1107 and  
14 1108 of the Bankruptcy Code.

15 C. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases  
16 commenced on the Petition Date, the Motion and the parties and property affected hereby pursuant  
17 to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408  
18 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

19 D. **Committee Formation.** As of the date hereof, the United States Trustee for Region  
20 17 (the “*U.S. Trustee*”) has not yet appointed an official committee of unsecured creditors in these  
21 Chapter 11 Cases (a “*Creditors’ Committee*”) pursuant to section 1102 of the Bankruptcy Code.

22 E. **Notice.** Under the circumstances, the notice given by the Debtors of, and described  
23 in the Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient  
24 notice thereof and complies with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules,

25  
26 <sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law  
27 pursuant to Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent that any  
28 of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the  
following conclusions of law constitute findings of fact, they are adopted as such.

1 and no further notice of the relief sought at the Interim Hearing and the relief granted herein is  
2 necessary or required.

3 F. **Debtors' Stipulations.** Without prejudice to the rights of any other party, but  
4 subject to the limitations thereon contained in paragraphs 21 and 22 of this Interim Order, the  
5 Debtors represent, admit, stipulate and agree as follows:

6 1. **Prepetition Senior Secured Term Loan Facility.**

7 (a) Under that certain Second Amended and Restated Credit  
8 Agreement, dated as of October 28, 2022 (as amended, restated, amended and restated,  
9 supplemented, or otherwise modified from time to time prior to the date hereof, the "***Prepetition***  
10 ***Senior Secured Term Loan Credit Agreement***" and together with all related security agreements,  
11 collateral agreements, pledge agreements, control agreements, guarantees and other documents  
12 delivered or executed in connection therewith, the "***Prepetition Senior Secured Term Loan***  
13 ***Documents***") by and among Borrower, as borrower, the financial institutions party thereto from  
14 time to time, as lenders (the "***Prepetition Senior Secured Term Loan Lenders***"), KfW IPEX-Bank  
15 GmbH ("***KfW***"), as sole lead arranger, UFK agent, as administrative agent and collateral agent (in  
16 such capacities, the "***Prepetition Senior Secured Term Loan Agent***" and together with the  
17 Prepetition Senior Secured Term Loan Lenders, the "***Prepetition Senior Secured Term Loan***  
18 ***Parties***") the Borrower was provided with a first-lien secured term loan facility (the loans  
19 borrowed thereunder, the "***Prepetition First Lien Loans***") consisting of:

- 20 (a) Tranche A Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
21 Agreement) provided by KfW, which, as of the Petition Date, amount to an  
22 aggregate principal amount of approximately \$129,191,475.89 million (together  
23 with all accrued interest, premiums (if any), costs, fees, expenses and other  
24 obligations in respect thereof, the "***Prepetition Senior Secured Term Loan A***  
25 ***Obligations***");
- 26 (b) Tranche A-2 Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
27 Agreement) provided by Pala Investments Limited ("***Pala***"), Mercuria Investments  
28 US, Inc. ("***Mercuria***") and TF R&S Canada Ltd. ("***TF Canada***," and collectively  
with Pala and Mercuria, the "***Prepetition Senior Secured Term Loan A-2 Parties***"),  
which, as of the Petition Date, amount to an aggregate principal amount of  
approximately \$40,919,608.57 million (together with all accrued interest,  
premiums (if any), costs, fees, expenses and other obligations in respect thereof,  
the "***Prepetition Senior Secured Term Loan A-2 Obligations***"); and

1 (c) Tranche B Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
2 Agreement) provided by KfW, which, as of the Petition Date, amount to an  
3 aggregate principal amount of approximately \$17,973,301.40 million (together  
4 with all accrued interest, premiums (if any), costs, fees, expenses and other  
5 obligations in respect thereof, the “**Prepetition Senior Secured Term Loan B  
6 Obligations**” and, together with the Prepetition Senior Secured Term Loan A  
7 Obligations, the “**Prepetition Senior Secured KfW Term Loan Obligations**”).

8 (b) *Prepetition Senior Secured Term Loan Obligations.* As of the  
9 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
10 severally indebted and liable to the Prepetition Senior Secured Term Loan Parties under the  
11 Prepetition Senior Secured Term Loan Documents in the principal aggregate amount of not less  
12 than \$188,084,385.86 million, *plus* accrued and unpaid interest thereon as of the Petition Date,  
13 plus all other fees, costs, expenses, indemnification obligations, reimbursement obligations,  
14 charges, premiums, if any, additional interest, any other “Obligations” (as defined in the  
15 Prepetition Senior Secured Term Loan Documents) and all other obligations of whatever nature  
16 owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable  
17 under the Prepetition Senior Secured Term Loan Documents (collectively, the “**Prepetition Senior  
18 Secured Term Loan Obligations**”). The Prepetition Senior Secured Term Loan Obligations  
19 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
20 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
21 subordination, other claims, cause of action or other challenge of any kind under the Bankruptcy  
22 Code, under applicable non-bankruptcy law or otherwise. No payments or transfer made to or for  
23 the benefit of (or obligations incurred to or for the benefit of) the Prepetition Senior Secured Term  
24 Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection  
25 with any of the Prepetition Senior Secured Term Loan Documents are subject to avoidance,  
26 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
27 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
28 bankruptcy law or otherwise.

(c) *Prepetition Senior Secured Term Loan Liens.* Pursuant to the  
Prepetition Senior Secured Term Loan Documents, the Prepetition Senior Secured Term Loan



Obligations are secured by valid, binding, perfected and enforceable liens on and security interests in (the “**Prepetition Senior Secured Term Loan Liens**”) the “Collateral” (as defined in the Prepetition Senior Secured Term Loan Documents) (the “**Prepetition Collateral**”), subject to certain permitted liens as permitted under the Prepetition Senior Secured Term Loan Documents. The Prepetition Senior Secured Term Loan Liens are (i) senior to all other Prepetition Funded Debt Liens (as defined below) with respect to Prepetition Collateral constituting “Project Collateral” (as defined in the WCF Intercreditor Agreement (as defined below)) (the “**Non-WCF Collateral**”), and (ii) subject to the Prepetition Working Capital Lien (as defined below) with respect to Prepetition Collateral constituting “APA Collateral” (as defined in the WCF Intercreditor Agreement) (the “**WCF Collateral**”), in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Senior Secured Term Loan Liens: (i) are valid, binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with the priority set forth in the Prepetition Senior Secured Term Loan Documents and the Prepetition Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are subject and/or subordinate only to Prepetition Prior Liens (defined below), and solely with respect to the WCF Collateral, the Prepetition Working Capital Lien. In this Interim Order the term “**Prepetition Prior Liens**” shall mean, in relation to any Prepetition Funded Debt Facility (defined below), liens that are senior in relation to the liens securing such facility and are (1) valid, enforceable, perfected, non-avoidable and in existence immediately prior to the Petition Date or (2) valid, enforceable, non-avoidable and in existence immediately prior to the Petition Date, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the liens described in items (1) and (2), the “**Petition Date Perfected Liens**”), and in relation

1 to the DIP Facility, shall mean, the Petition Date Perfected Liens not to exceed a total aggregate  
2 amount of \$12 million.

3 2. **Prepetition Working Capital Facility.**

4 (a) Under that certain Advance Payment Agreement, dated as of May 6,  
5 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time  
6 to time prior to the date hereof, the “***Prepetition Working Capital Agreement***” and, together with  
7 all related security agreements, collateral agreements, pledge agreements, control agreements,  
8 guarantees and other documents, the “***Prepetition Working Capital Documents***”) by and among  
9 the Borrower, as seller, and Concord Resources Limited (“***Concord***”), as purchaser (the  
10 “***Prepetition Working Capital Purchaser***”) the Borrower received certain Advance Payments (as  
11 defined in the Prepetition Working Capital Agreement) from the Prepetition Working Capital  
12 Purchaser in exchange for the sale and delivery of certain Material (as defined in the Prepetition  
13 Working Capital Documents).

14 (b) *Prepetition Working Capital Obligations.* As of the Petition Date,  
15 the Borrower, without defense, counterclaim or offset of any kind, was indebted and liable to the  
16 Prepetition Working Capital Purchaser under the Prepetition Working Capital Documents in the  
17 aggregate principal amount of not less than \$3.0 million under the Prepetition Working Capital  
18 Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
19 costs, expenses, charges, additional interest, any other “Advance Payment Obligations” as defined  
20 in the WCF Intercreditor Agreement and all other obligations of whatever nature owing, whether  
21 or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the  
22 Prepetition Working Capital Documents (collectively, the “***Prepetition Working Capital***  
23 ***Obligations***”). The Prepetition Working Capital Obligations constitute legal, valid, binding and  
24 non-avoidable obligations against the Borrower and are not subject to any avoidance,  
25 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
26 or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law  
27 or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or  
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1 for the benefit of) the Prepetition Working Capital Purchaser by or on behalf of any of the Debtors  
2 prior to the Petition Date under or in connection with any of the Prepetition Working Capital  
3 Documents are subject to avoidance, recharacterization, effect, counterclaim, defense, offset,  
4 subordination, other claim, cause of action or other challenge of any kind or nature under the  
5 Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

6 (c) *Prepetition Working Capital Lien.* Pursuant to the Prepetition  
7 Working Capital Documents, the Prepetition Working Capital Obligations are secured by a valid,  
8 binding, perfected and enforceable lien on and security interest in (the “***Prepetition Working***  
9 ***Capital Lien***”) the Prepetition Collateral, subject to certain permitted liens as permitted under the  
10 Prepetition Working Capital Agreement. The Prepetition Working Capital Lien is (i) subject to the  
11 Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien (as defined  
12 below) with respect to all Prepetition Collateral constituting Non-WCF Collateral and (ii) senior  
13 to all other Prepetition Funded Debt Liens with respect to Prepetition Collateral constituting WCF  
14 Collateral, in each case, in accordance with the terms and conditions of the WCF Intercreditor  
15 Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement. Each of  
16 the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition  
17 Working Capital Lien: (i) is a valid, binding, perfected and enforceable lien and security interest  
18 in the Prepetition Collateral, with the priorities set forth in the Prepetition Working Capital  
19 Documents; (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to  
20 avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or  
21 “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date, is subject  
22 and/or subordinate only to (1) the Prepetition Prior Liens, in relation to the Working Capital  
23 Facility, and, (2) solely with respect to the Non-WCF Collateral, the Prepetition Senior Secured  
24 Term Loan Liens and the Prepetition TF Stream Lien.

25 3. **Prepetition TF Stream Obligations.**

26 (a) Under that certain Metals Purchase and Sale Agreement, dated as of  
27 December 21, 2017 (as amended, restated, amended and restated, supplemented, or otherwise  
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1 modified from time to time prior to the date hereof, the “**Prepetition TF Stream Agreement**” and,  
2 together with all related security agreements, collateral agreements, pledge agreements, control  
3 agreements, guarantees and other documents, the “**Prepetition TF Stream Documents**”) by and  
4 among Borrower, as seller, NCU and its subsidiaries, as guarantor and Triple Flag International  
5 Ltd. (“**Triple Flag**”) (as successor by name change to Triple Flag Mining Finance Bermuda Ltd.),  
6 as purchaser (the “**Prepetition TF Stream Purchaser**”), the Prepetition TF Stream Purchaser paid  
7 certain deposits to the Borrower and Borrower committed to make specified deliveries of Refined  
8 Gold and Refined Silver (each as defined in the Prepetition TF Stream Agreement) to the  
9 Prepetition TF Stream Purchaser.

10 (b) *Prepetition TF Stream Obligations.* As of the Petition Date, the  
11 Debtors, without defense, counterclaim or offset of any kind, were jointly and severally indebted  
12 and liable to the Prepetition TF Stream Purchaser under the Prepetition TF Stream Documents in  
13 the aggregate principal amount of not less than \$78,269,229.75 under the Prepetition TF Stream  
14 Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
15 costs, expenses, charges, additional interest, any other “Obligations” (as defined in the Prepetition  
16 TF Stream Agreement) and all other obligations of whatever nature owing, whether or not  
17 contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition  
18 TF Stream Documents (collectively, the “**Prepetition TF Stream Obligations**”). The Prepetition  
19 TF Stream Obligations constitute legal, valid, binding and non-avoidable obligations against each  
20 of the Debtors and are not subject to any avoidance, recharacterization, effect, counterclaim,  
21 defense, offset, subordination, other claim, cause of action or other challenge of any kind under  
22 the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or  
23 transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the  
24 Prepetition TF Stream Purchaser by or on behalf of any of the Debtors prior to the Petition Date  
25 under or in connection with any of the Prepetition TF Stream Documents are subject to avoidance,  
26 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
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1 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
2 bankruptcy law or otherwise.

3 (c) *Prepetition TF Stream Lien*. Pursuant to the Prepetition TF Stream  
4 Documents, the Prepetition TF Stream Obligations is secured by a valid, binding, perfected and  
5 enforceable lien on and security interest in (the “***Prepetition TF Stream Lien***”) the Prepetition  
6 Collateral, subject to certain permitted liens as permitted under the Prepetition TF Stream  
7 Agreement. The Prepetition TF Stream Lien is (i) subject to the Prepetition Senior Secured Term  
8 Loan Liens with respect to all Prepetition Collateral constituting Non-WCF Collateral, (ii) subject  
9 to the Prepetition Working Capital Lien and Prepetition Senior Secured Term Loan Liens with  
10 respect to Prepetition Collateral constituting WCF Collateral, and (iii) senior to the Prepetition  
11 Junior Secured Term Loan Liens, in each case, in accordance with the terms and conditions of the  
12 WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor  
13 Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition  
14 Date, the Prepetition TF Stream Lien: (i) is a valid, binding, perfected and enforceable lien and  
15 security interest in the Prepetition Collateral, with the priority set forth in the Prepetition TF Stream  
16 Documents and the Prepetition Intercreditor Agreements; (ii) is not subject, pursuant to the  
17 Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery,  
18 subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code)  
19 of any kind; and (iii) as of the Petition Date is subject and/or subordinate only to (1) the Prepetition  
20 Prior Liens, in relation to the Prepetition TF Stream Obligations, (2) with respect to the Non-WCF  
21 Collateral, the Prepetition Senior Secured Term Loan Liens and (3) with respect to the WCF  
22 Collateral, the Prepetition Working Capital Lien and the Prepetition Senior Secured Term Loan  
23 Liens.

24 4. **Prepetition Junior Secured Term Loan Obligations.**

25 (a) Under that certain Third Amended and Restated Loan Agreement,  
26 dated as of December 21, 2023 (as amended, restated, amended and restated, supplemented, or  
27 otherwise modified from time to time prior to the date hereof, the “***Prepetition Junior Secured***  
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1 ***Term Loan Agreement***,” together with all related security agreements, collateral agreements,  
2 pledge agreements, control agreements, guarantees and other documents, the “***Prepetition Junior***  
3 ***Secured Term Loan Documents***,” and, together with the Prepetition Senior Secured Term Loan  
4 Documents, the Prepetition Working Capital Documents and the Prepetition TF Stream  
5 Documents, the “***Prepetition Debt Documents***”), by and among NCU, as borrower, Borrower,  
6 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC, as guarantors,  
7 the lenders party thereto from time to time (the “***Prepetition Junior Secured Term Loan***  
8 ***Lenders***”), and Pala, as lead arranger and collateral agent (the “***Prepetition Junior Secured Term***  
9 ***Loan Agent***,” together with the Prepetition Junior Secured Term Loan Lenders, the “***Prepetition***  
10 ***Junior Secured Term Loan Parties***” and, together with the Prepetition Senior Secured Term Loan  
11 Parties, the Prepetition Working Capital Purchaser and the Prepetition TF Stream Purchaser the  
12 “***Prepetition Secured Parties***”), NCU was provided with a junior secured term loan facility.

13 (b) ***Prepetition Junior Secured Term Loan Obligations***. As of the  
14 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
15 severally indebted and liable to the Prepetition Junior Secured Term Loan Parties under the  
16 Prepetition Junior Secured Term Loan Documents in the aggregate principal amount of not less  
17 than \$10 million under the Prepetition Junior Secured Term Loan Agreement, *plus* accrued and  
18 unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, charges,  
19 additional interest, any other “Obligations” (as defined in the Prepetition Junior Secured Term  
20 Loan Agreement) and all other obligations of whatever nature owing, whether or not contingent,  
21 whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Junior  
22 Secured Term Loan Documents (collectively, the “***Prepetition Junior Secured Term Loan***  
23 ***Obligations***” and, together with the Prepetition Senior Secured Term Loan Obligations, the  
24 Prepetition Working Capital Obligations and the Prepetition TF Stream Obligations, the  
25 “***Prepetition Secured Obligations***”). The Prepetition Junior Secured Term Loan Obligations  
26 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
27 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
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1 subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy  
2 Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or  
3 for the benefit of (or obligations incurred to or for the benefit of) the Prepetition Junior Secured  
4 Term Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in  
5 connection with any of the Prepetition Junior Secured Term Loan Documents are subject to  
6 avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim,  
7 cause of action or other challenge of any kind or nature under the Bankruptcy Code, under  
8 applicable non-bankruptcy law or otherwise.

9 (c) *Prepetition Junior Secured Term Loan Liens.* Pursuant to the  
10 Prepetition Junior Secured Term Loan Documents, the Prepetition Junior Secured Term Loan  
11 Obligations are secured by valid, binding, perfected and enforceable liens on and security interests  
12 in (the “***Prepetition Junior Secured Term Loan Liens***” and, together with the Prepetition Senior  
13 Secured Term Loan Liens, the Prepetition Working Capital Lien and the Prepetition TF Stream  
14 Lien, the “***Prepetition Funded Debt Liens***”) the Prepetition Collateral, subject to certain permitted  
15 liens as permitted under the Prepetition Junior Secured Term Loan Agreement. The Prepetition  
16 Junior Secured Term Loan Liens are subject to the Prepetition Senior Secured Term Loan Liens,  
17 the Prepetition Working Capital Lien and the Prepetition TF Stream Lien with respect to all  
18 Prepetition Collateral, in each case, in accordance with the terms and conditions of the Fourth Lien  
19 Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that,  
20 in each case as of the Petition Date, the Prepetition Junior Secured Term Loan Liens: (i) are valid,  
21 binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with  
22 the priority set forth in the Prepetition Junior Secured Term Loan Documents and the Prepetition  
23 Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable  
24 law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense  
25 or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are  
26 subject and/or subordinate only to the (1) Prepetition Prior Liens, in relation to the Prepetition  
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1 Junior Secured Term Loan Obligations, (2) the Prepetition Senior Secured Term Loan Liens, (3)  
2 the Prepetition Working Capital Lien, and (4) the Prepetition TF Stream Lien.

3 5. **Prepetition Intercreditor Agreements.**

4 (a) *WCF Intercreditor Agreement.* KfW, Triple Flag, Concord and the  
5 Borrower are parties to that certain Working Capital Facility Intercreditor Agreement, dated as of  
6 May 22, 2019, (as amended, restated, amended and restated, supplemented, or otherwise modified  
7 from time to time prior to the date hereof, the “*WCF Intercreditor Agreement*”), which governs,  
8 among other things, the rights, interests, obligations, priority and positions of the Prepetition  
9 Senior Secured Term Loan Parties, the Prepetition Working Capital Purchaser and the Prepetition  
10 TF Stream Purchaser.

11 (b) *TF Intercreditor Agreement.* KfW, Triple Flag, the Borrower, NCU  
12 and NCU’s subsidiaries are party to that certain Intercreditor Agreement, dated as of May 22, 2019,  
13 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to  
14 time prior to the date hereof, the “*TF Intercreditor Agreement*”), which governs the rights,  
15 interests, obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties  
16 and the Prepetition TF Stream Purchaser.

17 (c) *Fourth Lien Intercreditor Agreement.* KfW, Triple Flag, Concord,  
18 Pala, the Borrower, NCU and NCU’s subsidiaries are party to that certain Intercreditor Agreement,  
19 dated as of October 28, 2022 (as amended, restated, amended and restated, supplemented, or  
20 otherwise modified from time to time prior to the date hereof, the “*Fourth Lien Intercreditor*  
21 *Agreement*” and, together with the WCF Intercreditor Agreement and the TF Intercreditor  
22 Agreement, the “*Prepetition Intercreditor Agreements*”), which governs the rights, interests,  
23 obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties, the  
24 Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
25 Junior Secured Term Loan Parties.

26 (d) Each of the Debtors either is party to or otherwise acknowledged  
27 and agreed to, and are bound by, the Prepetition Intercreditor Agreements. Pursuant to Bankruptcy  
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Code section 510, the Prepetition Intercreditor Agreements, and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Debt Documents shall (i) remain in full force and effect, (ii) continue to govern the relative obligations, priorities, rights, and remedies of the applicable Prepetition Secured Parties, and (iii) not be deemed to be amended, altered or modified by the terms of this Interim Order unless expressly set forth herein or therein.

6. **Cash Collateral.** Any and all of the Debtors' cash, including any amounts generated by the collection of accounts receivable, all cash proceeds of the Prepetition Collateral, and the cash in the Debtors' banking, checking or other deposit accounts with financial institutions as of the Petition Date (excluding cash deposits that secure any outstanding letters of credit) or deposited into the Debtors' banking, checking or other deposit accounts with financial institutions after the Petition Date constitutes cash collateral of the Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "***Cash Collateral***").

7. **Adequate Protection.** Pursuant to Bankruptcy Code sections 105, 361, 362 and 363(e), the Prepetition Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition diminution in value of their interests in the Prepetition Collateral resulting from, among other things, and without limitation, (i) subordination of the Prepetition Secured Parties' interests in the Prepetition Collateral, (ii) the use of Cash Collateral during the Chapter 11 Cases, (iii) the use, sale or lease of any of the Prepetition Collateral, (iv) the imposition of the automatic stay pursuant to Bankruptcy Code section 362(a), and/or (v) for any other reason for which adequate protection may be granted under the Bankruptcy Code ("***Diminution in Value***"). Based on the Motion, the DIP Declaration, and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral, including the Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

G. **Findings Regarding the DIP Facility and Use of Cash Collateral.** Based on the record established and evidence presented at the Interim Hearing, including the DIP Declaration, and the representations of the parties, the Court makes the following findings:



1                   1.       **Need for Postpetition Financing and Use of Cash Collateral.** The  
2 Debtors have a need to use Cash Collateral on an interim basis and obtain credit in the form of the  
3 Interim DIP Loans pursuant to the DIP Facility in order to, among other things, (a) permit the  
4 orderly continuation of their business, (b) maintain business relationships with their vendors,  
5 suppliers, customers and other parties, (c) make payroll, (d) pay Adequate Protection Payments  
6 and (e) pay the costs of administering the Chapter 11 Cases, in each case, in compliance with, and  
7 subject in all respects to, the Approved Budget, the terms hereof and the DIP Documents. The  
8 ability of the Debtors to maintain business relationships with their vendors, suppliers, and  
9 customers, to pay their employees, and otherwise finance their operations requires the availability  
10 of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of  
11 which, on an interim basis as contemplated hereunder, would immediately and irreparably harm  
12 the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available  
13 sources of working capital and financing to operate their business, maintain their properties in the  
14 ordinary course of business, and fund the Chapter 11 Cases without the authorization to use Cash  
15 Collateral and to borrow the Interim Amount. Without the ability to access the DIP Facility and  
16 the authority to use Cash Collateral, the Debtors' chances for a successful chapter 11 restructuring  
17 would be jeopardized.

18                   2.       **Priming of Prepetition Liens.** The priming of the Prepetition Funded Debt  
19 Liens on the Prepetition Collateral, to the extent set forth herein, under Bankruptcy Code section  
20 364(d)(1), as contemplated by this Interim Order and the DIP Facility, and as further described  
21 below, will enable the Debtors to obtain the DIP Facility and, among other benefits, to continue to  
22 operate their businesses for the benefit of their estates and stakeholders.

23                   3.       **No Credit Available on More Favorable Terms.** As set forth in the DIP  
24 Declaration, the Debtors have been unable to obtain financing from sources other than the DIP  
25 Lenders on terms more favorable than those provided under the DIP Facility, as set forth in the  
26 DIP Documents. The Debtors have been unable to obtain adequate unsecured credit allowable  
27 under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also have  
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1 been unable to obtain sufficient credit (i) on an unsecured basis having priority over all other  
2 administrative expenses, (ii) secured solely by a lien on property of the Debtors and their estates  
3 that is not otherwise subject to a lien or (iii) secured solely by a junior lien on property of the  
4 Debtors and their estates that is subject to a lien. Postpetition financing is not otherwise available  
5 without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (x) the DIP Liens (as  
6 defined below) on all DIP Collateral (as defined below), as set forth herein, (y) the DIP  
7 Superpriority Claims (as defined below) and (z) the other protections set forth in this Interim Order.  
8 The terms of the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the  
9 Debtors' exercise of sound and prudent business judgment consistent with their fiduciary duties,  
10 constitute reasonably equivalent value and fair consideration and are in the best interest of the  
11 Debtors' estates and stakeholders.

12 4. **Good Faith.** The DIP Facility and the Adequate Protection Obligations  
13 have been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the DIP  
14 Lenders, and the Prepetition Secured Parties and all of the Debtors' obligations and indebtedness  
15 arising under, in respect of or in connection with the DIP Documents including, without limitation,  
16 all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents, and all  
17 other DIP Obligations shall be deemed to have been extended by the DIP Agent and the DIP  
18 Lenders in good faith as that term is used in Bankruptcy Code section 364(e) and in express  
19 reliance upon the protections offered by Bankruptcy Code section 364(e). The DIP Obligations  
20 and the DIP Liens shall be entitled to the full protection of Bankruptcy Code section 364(e) in the  
21 event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or  
22 otherwise, and any liens or claims granted to the DIP Agent or the DIP Lenders hereunder arising  
23 prior to the effective date of any such vacatur, reversal or modification of this Interim Order shall  
24 be governed in all respects by the original provisions of this Interim Order, including entitlement  
25 to all rights, remedies, privileges and benefits granted herein.

26 H. **Consent of the Prepetition Secured Parties.** The Prepetition Secured Parties have  
27 consented to or are deemed to consent under the applicable Prepetition Intercreditor Agreements  
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1 to the priming of the Prepetition Funded Debt Liens, as applicable, to the extent set forth herein,  
2 and the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions  
3 provided for in this Interim Order; *provided* that nothing in this Interim Order shall constitute the  
4 consent of the Prepetition Senior Secured Term Loan Agent to priming of the Prepetition Senior  
5 Secured Term Loan Liens by DIP Liens securing DIP Obligations in an amount greater than \$51.4  
6 million, and KfW reserves its rights with respect to the Final Order in all respects.

7 I. **Sections 506(c) and 552(b).** As a material inducement to the DIP Lenders to agree  
8 to provide the DIP Facility and the Prepetition Secured Parties to agree to the use of Cash  
9 Collateral, and in exchange for (i) the DIP Agent's and DIP Lenders' agreement to subordinate  
10 their liens and superpriority claims to the Carve-Out to the extent set forth herein and (ii) the  
11 Prepetition Secured Parties' agreement to (a) subordinate their Prepetition Funded Debt Liens and  
12 the Adequate Protection Liens to the Carve-Out and the DIP Liens, each to the extent provided  
13 herein, and (b) consent to the use of Cash Collateral in accordance with and subject to the  
14 Approved Budget (subject to the Permitted Variances (as defined below)), the DIP Documents and  
15 the terms of this Interim Order, each of the DIP Agent, the DIP Lenders and the Prepetition Secured  
16 Parties is entitled to receive (1) a waiver of any "equities of the case" exceptions or claims under  
17 Bankruptcy Code section 552(b), (2) a waiver of the provisions of Bankruptcy Code section  
18 506(c), and (3) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with  
19 respect to the DIP Collateral or the Prepetition Collateral (as applicable).

20 J. **Immediate Entry.** The Debtors have requested entry of this Interim Order  
21 pursuant to Bankruptcy Rule 4001(b)(2), (c) and (d) and Local Rules 4001(c)(2) and 9006. Absent  
22 granting the interim relief sought by this Interim Order, the Debtors' estates could be immediately  
23 and irreparably harmed. Thus, sufficient cause exists for immediate entry of this Interim Order  
24 pursuant to Bankruptcy Rule 4001(b)(2), (c), and (d) and Local Rules 4001(c)(2) and 9006.

25 Based upon the foregoing findings and conclusions, the Motion, the DIP Declaration, and  
26 the record before the Court with respect to the Motion, and after due consideration and good and  
27 sufficient cause appearing therefor,  
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3 IT IS HEREBY ORDERED THAT:

4 1. **Motion Granted.** The relief sought by the Motion is granted, and the DIP Facility  
5 and the use of Cash Collateral are hereby authorized and approved, in each case, upon the terms  
6 and conditions of this Interim Order and the DIP Documents.

7 2. **Objections Overruled.** Any objections to the Motion that have not been  
8 withdrawn, waived or settled, and all reservations of rights or other statements inconsistent with  
9 this Interim Order, are hereby denied and overruled. This Interim Order shall become effective  
10 and enforceable immediately upon its entry.

11 3. **Approval and Authorization of DIP Facility.**

12 (a) *Authorization of DIP Facility and DIP Documents.* The DIP Facility is  
13 hereby approved on an interim basis on the terms and conditions set forth herein. The DIP Loan  
14 Parties are expressly and immediately authorized and empowered to: (i) (A) enter into and perform  
15 all of their obligations, (B) as required by the DIP Lenders, execute, deliver and perform under the  
16 DIP Documents and (C) pay all fees, costs, expenses, indemnities and other amounts contemplated  
17 under this Interim Order and the applicable DIP Documents; and (ii) perform all acts, to make,  
18 execute, deliver, enter into and perform under any and all other agreements, instruments,  
19 certificates and other documents (including, without limitation, the execution and/or recordation  
20 of any collateral, pledge and security documents, mortgages, deeds of trust, control agreements,  
21 financing statements or other documents), and to perform all such other and further acts, that may  
22 be necessary, required or desirable for the DIP Agent or the DIP Lenders to perform their  
23 obligations under the DIP Facility, this Interim Order and any applicable DIP Document and to  
24 implement the transactions contemplated thereunder and hereunder.

25 (b) **Authorization to Borrow.** The Debtors are hereby authorized to borrow  
26 under the DIP Facility, from the period between the date of entry of this Interim Order and the  
27 Final Hearing (the “*Interim Period*”), a principal amount of up to \$20,000,000, subject to the terms  
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1 and conditions (including any conditions precedent to such borrowing) set forth in this Interim  
2 Order and the DIP Documents. The DIP Lenders shall have no obligation to make any loan or  
3 advance under the DIP Documents, unless all of the conditions precedent to the making of such  
4 extension of credit under the DIP Documents and this Interim Order have been satisfied in full or  
5 waived in accordance with the DIP Documents and this Interim Order.

6 (c) *Use of DIP Proceeds and Cash Collateral.* The Debtors are hereby  
7 authorized to use the proceeds of the DIP Facility and all Cash Collateral solely in the manner and  
8 for the purposes expressly permitted in the Approved Budget (subject to the Permitted Variances),  
9 this Interim Order and the DIP Documents.

10 (d) *DIP Interest, Fees and Expenses.* The Debtors are authorized and directed  
11 to pay any and all (i) interest, fees, premiums or other amounts payable under the DIP Documents,  
12 including, without limitation, the Upfront Fee, the Unused Commitment Fee, the Exit Fee, the  
13 Agency Fee, (ii) amounts due (or that may become due) to any Indemnified Person (as defined  
14 below) in respect of the indemnification obligations under this Interim Order and the DIP  
15 Documents and (iii) any other amounts payable in connection with the DIP Facility, including all  
16 reasonable and documented pre- and postpetition fees, expenses and disbursements in connection  
17 with the DIP Facility and these Chapter 11 Cases of (A) Akin Gump Strauss Hauer & Feld LLP  
18 (“*Akin*”), as counsel to the DIP Lenders, (B) Blake, Cassels & Graydon LLP, as Canadian counsel  
19 to the DIP Lenders, (C) Shea Larson PC, as Nevada local counsel to the DIP Lenders, (D) Kelley  
20 Drye & Warren, LLP, as counsel to the DIP Agent (“*DIP Agent Counsel*”), and (E) any other  
21 attorneys, financial advisors, consultants or other professionals retained by the DIP Secured Parties  
22 (the professionals set forth in clauses (A) through (E), collectively, the “*DIP Professionals*”), in  
23 each case whether or not such payments, premiums, fees, costs, expenses and disbursements arose  
24 before or after the Interim Closing Date. The payment of the fees, costs, expenses and  
25 disbursements of the DIP Professionals other than DIP Agent Counsel (the “*DIP Professional*  
26 *Fees*”) shall be subject to the notice and review procedures set forth in paragraph 19 of this Interim  
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1 Order. For the avoidance of doubt, the Debtors shall be jointly and severally liable for the  
2 obligations to pay the DIP Professional Fees in accordance with this Interim Order.

3 (e) *Indemnification.* As set forth in the DIP Documents, the Debtors will jointly  
4 and severally indemnify the DIP Agent, the DIP Lenders, the DIP Professionals and their respective  
5 affiliates, successors and assigns and the officers, directors, employees, agents, advisors,  
6 controlling persons and members of each of the foregoing (each an “**Indemnified Person**”), and  
7 hold them harmless from and against any and all losses, claims, damages, costs, expenses  
8 (including, but not limited to reasonable and documented legal fees and expenses) and liabilities  
9 arising out of or relating to the execution or delivery of the DIP Documents, transactions  
10 contemplated hereby and thereby and any actual or proposed use of the proceeds of any loans made  
11 under the DIP Facility in accordance with the terms of the DIP Credit Agreement and the other  
12 DIP Documents; *provided* that no such Indemnified Person will be indemnified for costs, expenses  
13 or liabilities to the extent determined by a final, non-appealable judgment of a court of competent  
14 jurisdiction to have been incurred solely by reason of the actual gross negligence or willful  
15 misconduct of such person (or their related persons). No Indemnified Person shall have any  
16 liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any  
17 shareholders or creditors of the Debtors for or in connection with the transactions contemplated  
18 hereby, except to the extent such liability is found in a final non-appealable judgment by a court  
19 of competent jurisdiction to have resulted solely from such Indemnified Person’s gross negligence  
20 or willful misconduct, and in no event shall any Indemnified Person be liable on any theory for  
21 any special indirect, consequential or punitive damages.

22 (f) *Modification of DIP Documents.* The DIP Agent (acting at the direction of  
23 the Required DIP Lenders)<sup>4</sup> and the Required DIP Lenders are hereby authorized to execute,  
24 deliver and perform under one or more amendments, waivers, consents or other modifications to  
25 and under the DIP Documents, in each case, in accordance with the provisions of any applicable

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26 <sup>4</sup> The term “**Required DIP Lenders**” as used in this Interim Order, shall have the same meaning ascribed to the  
27 term “Majority Lenders” in the DIP Credit Agreement.  
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DIP Documents governing amendments thereto, each without further application to or order of the Court; *provided, however*, that any amendments, waivers, consents or other modifications to and under the DIP Documents that (i) modify the original stated maturity of the DIP Facility, (ii) increase the aggregate commitments thereunder or (iii) increase the rate of interest or fees payable with respect thereto shall require further Court approval; *provided further*, that any amendment that may affect the rights, obligations, protections, immunities or indemnities of the DIP Agent shall require the consent of the DIP Agent.

4. **DIP Obligations**

(a) Upon entry of this Interim Order, the obligations under any applicable DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each Debtor, and shall be fully enforceable against each of the Debtors, their estates and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of these Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the foregoing, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the “***Successor Cases***”), in each case, in accordance with the terms of the DIP Documents and this Interim Order.

(b) Upon entry of this Interim Order, the Debtors shall be jointly and severally liable for all DIP Obligations, including, without limitation, all loans, advances, indebtedness, obligations, extensions of credit, financial accommodations, principal, interest, payments or similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other amounts, whether or not such obligations arose before or after the Petition Date, whenever the same shall become due and payable, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the DIP Lenders under the DIP Documents or this Interim Order.

(c) All obligations incurred, payments made and transfers or grants of liens and security interests set forth in this Interim Order and/or the DIP Documents by the Debtors are

1 granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably  
2 equivalent value and are granted contemporaneously with the making of the loans and  
3 commitments and other financial accommodations secured thereby. No obligation, payment,  
4 transfer or grant of liens or security interests under this Interim Order or the DIP Documents to the  
5 DIP Secured Parties shall be limited, stayed, restrained, voidable, avoidable or recoverable under  
6 the Bankruptcy Code or under any applicable law, or subject to any challenge, objection, defense  
7 or claim, including, without limitation, avoidance (whether under chapter 5 of the Bankruptcy  
8 Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer  
9 Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff,  
10 offset, recoupment, recharacterization, subordination (whether equitable, contractual or  
11 otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge,  
12 recovery or other cause of action of any kind or nature whatsoever, whether arising under the  
13 Bankruptcy Code, applicable non-bankruptcy law or otherwise (subject, solely in the case of the  
14 DIP Professional Fees, only to the procedures set forth in paragraph 19 of this Interim Order).

15       5.       **DIP Superpriority Claims**. Pursuant to Bankruptcy Code section 364(c)(1), all of  
16 the DIP Obligations shall constitute allowed senior administrative expense claims of the DIP  
17 Secured Parties, against each of the Debtors' estates (the "***DIP Superpriority Claims***"), without  
18 the need to file any proof of claim or request for payment of administrative expenses, with priority  
19 over any and all administrative expenses, adequate protection claims, diminution claims and all  
20 other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever,  
21 including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code  
22 sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising  
23 under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a  
24 Final Order), 507(a), 507(b), 726, 1113 or 1114 or otherwise, whether or not such expenses or  
25 claims may become secured by a judgment lien or other non-consensual lien, levy or attachment,  
26 which allowed claims shall for the purposes of Bankruptcy Code section 1129(a)(9)(A) be  
27 considered administrative expenses allowed under Bankruptcy Code section 503(b) and 507(b),  
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and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including actions to recover property transferred pursuant to Bankruptcy Code section 549, and subject to the entry of the Final Order, the proceeds of, and property that is recovered from or becomes unencumbered as a result of (whether by judgment, settlement or otherwise), all claims and causes of action arising under chapter 5 of the Bankruptcy Code or under any applicable state law of a similar nature (such claims and causes of action, “**Avoidance Actions**” and the proceeds thereof, “**Avoidance Action Proceeds**”), subordinate only to the Carve-Out and the administrative charge granted by the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) in the proceedings (the “**Recognition Proceedings**”) under Part IV of the Companies’ Creditors Arrangement Act (Canada) (the “**CCAA**”) commenced by the Debtors in Canada in respect of certain Canadian-related professional fees, in an aggregate amount not to exceed CAD\$500,000 (the “**Administration Charge**”). Except as set forth in, or permitted by, this Interim Order, or otherwise permitted pursuant to an order of this Court, no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

6. **DIP Liens.**

(a) As security for the DIP Obligations, effective and automatically perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted by the DIP Loan Parties continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the “**DIP Liens**”) upon all DIP Collateral as security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of all of the DIP Obligations.

(b) The term “**DIP Collateral**” means all assets and properties of each of the Debtors and their estates, of any kind or nature whatsoever, wherever located, whether tangible or



1 intangible, real, personal or mixed, whether now owned or consigned by or to, or leased from or  
2 to, or hereafter acquired by, or arising in favor of, each of the Debtors (including under any trade  
3 names, styles or derivations thereof), whether prior to or after the Petition Date, including, without  
4 limitation: (i) all Prepetition Collateral (including Cash Collateral); (ii) all intercompany claims,  
5 including, but not limited to, all Intercompany Superpriority Claims (as defined below); (iii) all  
6 money, cash and cash equivalents; (iii) all funds in any deposit accounts (excluding cash deposits  
7 that secure any outstanding letters of credit), securities accounts, commodities accounts, or other  
8 accounts (together with and all money, cash and cash equivalents, instruments and other property  
9 deposited therein or credited thereto from time to time); (iv) all accounts and other receivables  
10 (including those generated by intercompany transactions); (v) all contracts and contract rights; (vi)  
11 all instruments, documents and chattel paper; (vii) all securities (whether or not marketable); (viii)  
12 all goods, as-extracted collateral, furniture, machinery, equipment, inventory and fixtures; (ix) all  
13 real property interests; (x) all interests in leaseholds; (xi) all franchise rights; (xii) all patents,  
14 tradenames, trademarks, copyrights, licenses and all other intellectual property; (xiii) all general  
15 intangibles, tax or other refunds or insurance proceeds; (xiv) all equity interests, capital stock,  
16 limited liability company interests, partnership interests and financial assets; (xv) all investment  
17 property; (xvi) all supporting obligations; (xvii) all letters of credit and letter of credit rights; (xviii)  
18 all commercial tort claims; (xix) subject to the entry of the Final Order, all Avoidance Action  
19 Proceeds (but not avoidance actions themselves), (xx) all books and records (including, without  
20 limitation, customers lists, credit files, computer programs, printouts and other computer materials,  
21 and records); (xxi) to the extent not covered by the foregoing, all other goods, assets or properties  
22 of the Debtors, whether tangible, intangible, real, personal or mixed; and (xxii) all products,  
23 offspring, profits and proceeds of each of the foregoing and all accessions to, substitutions and  
24 replacements for, and rents, profits and products of, each of the foregoing, including any and all  
25 proceeds of any insurance (including any business interruption and property insurance), indemnity,  
26 warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing.  
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(c) Subject in all cases to the terms of this Interim Order and the DIP Documents, the DIP Secured Parties shall be granted the following DIP Liens in respect of the DIP Facility:

- (1) First Priority Lien on Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable and fully-perfected first priority senior security interest in and lien upon all DIP Collateral that, as of the Petition Date, is unencumbered and not subject to any liens (including Petition Date Perfected Liens), which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, and (B) the Administration Charge.
- (2) Priming Lien on WCF Collateral. Upon the payment in full of the obligations under the Prepetition Working Capital Facility, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes WCF Collateral, which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (3) Priming Lien on Non-WCF Collateral. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes Non-WCF Collateral, *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge and (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (4) Lien on Intercompany Superpriority Claims. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority priming security interest in and lien on all claims in respect of intercompany transfers of proceeds from the DIP Facility or of Cash Collateral from any Debtor to NCU (the "***Intercompany Superpriority Claims***"), *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, and (C) Petition Date Perfected Liens (excluding any Prepetition Trisura Lien).

(d) To the fullest extent permitted by the Bankruptcy Code or applicable law, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other instrument or agreement that requires the consent or the payment of any fees or obligations to any governmental entity or non-governmental entity for the Debtors to pledge, grant, mortgage, sell, assign or otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral, shall have no force or effect with respect to the DIP Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of

any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Documents and this Interim Order.

7. **Use of DIP Collateral and Cash Collateral**

(a) The Debtors are hereby authorized to use the proceeds of DIP Facility and all Cash Collateral solely to the extent expressly permitted under the Approved Budget (subject to the Permitted Variances) and subject to the terms and conditions set forth in this Interim Order and any applicable DIP Documents. Except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral absent further order of the Court.

(b) Without the prior written consent of the Required DIP Lenders, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral (or enter into any binding agreement to do so), except as may be expressly permitted by this Interim Order and any applicable DIP Documents. All proceeds of DIP Collateral, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnation or otherwise, will be deposited and applied as required by this Interim Order and any applicable DIP Documents. The Debtors shall not transfer any cash, assets, properties or other DIP Collateral to any affiliate of the Debtors that is not a Debtor in these Chapter 11 Cases without the prior written consent of the Required DIP Lenders, in their sole discretion.

(c) Proceeds of the DIP Facility constitute postpetition assets of the Debtors, subject only to the Carve Out, Administrative Charge, DIP Liens, and adequate protection liens of the Prepetition Secured Parties, with the priorities set forth herein, and shall, for the avoidance of doubt, not be subject to any liens arising from prepetition claims against any of the Debtors, whether perfected prior to the Petition Date, after the Petition Date pursuant to section 546(b) of the Bankruptcy Code, or otherwise, regardless of where or how held. The Debtors may deposit proceeds of the DIP Facility into their existing bank accounts, and such proceeds shall not be subject to any liens or claims arising prepetition, including pursuant to chapter 108 of the Nevada Revised Statutes, whether or not eligible for perfection after the Petition Date, except for junior

liens or claims of the Prepetition Secured Parties, as set forth herein. For the avoidance of doubt, to the extent of any proceeds of the DIP Facility deposited therein, no bank account of the Debtors may be a “construction disbursement account” for purposes of chapter 108 of the Nevada Revised Statutes.

8. **Budget**

(a) *Initial Budget.* The Debtors have prepared and delivered to the DIP Lenders and the DIP Professionals an itemized thirteen-week cash flow forecast attached hereto as **Exhibit B** (the “*Initial Budget*,” as amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms of this Interim Order and the DIP Documents, the “*Approved Budget*”). Except as otherwise provided herein or in the DIP Documents, the Debtors may only use Cash Collateral and the proceeds of the DIP Facility to fund payments benefitted by the Carve-Out and otherwise in accordance with the Approved Budget (subject to the Permitted Variances).

(b) *Proposed Budget; Budget Transition.* By no later than 12:00 p.m. (Pacific Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the Debtors shall deliver to the DIP Lenders, DIP Professionals, and KfW an updated and supplemented forecast (a “*Proposed Budget*”) for the thirteen-week period commencing with the calendar week in which such Proposed Budget is delivered (the “*Budgeted Period*”); *provided, however,* that in no event shall the Budgeted Period extend past four weeks after the Maturity Date (as defined in the DIP Credit Agreement) of the DIP Facility. For the avoidance of doubt, if the Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts, disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for all weeks following the Maturity Date shall assume that the Debtors continue to operate in the ordinary course consistent with prior postpetition practices and that no sale of the Debtors’ business will occur during such portion of the Budgeted Period. The Proposed Budget (including any subsequent revisions to any such Proposed Budget) shall become the Approved Budget effective five (5) business days after such submission (such date, the “*Budget Transition Date*”)

1 unless the Debtors receive a written objection from the Required DIP Lenders (with e-mail from  
2 professionals acting on behalf of the Required DIP Lenders to the Debtors' counsel being  
3 sufficient) prior to 5:00 p.m. (Pacific Time) on the Budget Transition Date. If the Required DIP  
4 Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or  
5 modification to the Approved Budget or Approved Variance Report (defined below) within five  
6 (5) business days after the Required DIP Lenders' receipt thereof, then such Proposed Budget,  
7 amendment, supplement or modification shall be deemed acceptable to and approved by the DIP  
8 Lenders. In the event the Required DIP Lenders timely object to a Proposed Budget, the prior  
9 Approved Budget shall remain in full force and effect until any such Proposed Budget is approved  
10 by the Required DIP Lenders (with e-mail from the advisors acting on behalf of the Required DIP  
11 Lenders to the Debtors' counsel being sufficient). The consent of the Required DIP Lenders to  
12 any Proposed Budget or any Approved Budget shall not be construed as consent to the use of any  
13 Cash Collateral or proceeds of the DIP Facility after the occurrence of a Termination Event  
14 regardless of whether the aggregate funds shown on the Approved Budget have been  
15 expended. Until any Proposed Budget, amendment, supplement or modification has been  
16 approved (or is deemed approved in accordance with this paragraph) by the Required DIP Lenders,  
17 the Debtors shall be subject to and be governed by the terms of the Approved DIP Budget then in  
18 effect.

19 (c) *Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second  
20 Thursday following the Petition Date (the "**First Reporting Date**", which, for the avoidance of  
21 doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday  
22 thereafter (together with the First Reporting Date, each a "**Weekly Reporting Date**"), the Debtors  
23 shall provide to the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form  
24 and substance reasonably acceptable to the DIP Lenders (the "**Weekly Variance Report**"), setting  
25 forth in reasonable detail: (i) the intercompany transfers from Debtor entities to NCU on a Debtor-  
26 by-Debtor and an aggregate basis; (ii) the actual receipts of the Debtors on a line-by-line and  
27 aggregate basis (the "**Actual Receipts**") and the actual disbursements of the Debtors on a line-by-  
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line and aggregate basis (such aggregate actual disbursements, the “**Actual Disbursements**”), in each case, during the applicable week ending on the Sunday preceding each such Weekly Reporting Date (each such week, the “**Reporting Week**”); (iii) a comparison (whether positive or negative, expressed as a percentage) for the Reporting Week between (A) the Actual Receipts (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected receipts (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the Actual Disbursements (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected disbursements (and each line item thereof) set forth in the Approved Budget for such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to NCU to the amount of each such Debtor’s projected intercompany transfers to NCU set forth in the Approved Budget for such Reporting Week. In addition, by no later than 12:00 p.m. (Pacific Time) on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First Reporting Date, (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling Four-Week Testing Date shall be July 11, 2024) and each subsequent four-week period commencing from the beginning of the week in which the Petition Date occurs and ending on the Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing Period**”) the Debtors shall provide the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form and substance reasonably acceptable to the DIP Lenders (a “**Rolling Four-Week Variance Report**” and, together with the Weekly Variance Report, the “**Approved Variance Reports**”), setting forth in reasonable detail: (x) the aggregate Actual Receipts of the Debtors, aggregate Actual Disbursements of the Debtors, and aggregate intercompany transfers from each Debtor entity to NCU, in each case, during the applicable Rolling Four-Week Testing Period; and (y) a comparison (whether positive or negative, expressed as a percentage) detailing (1) the aggregate Actual Receipts (and each line item thereof) for such Rolling Four-Week Testing Period compared to the projected receipts (and each line item thereof) for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period; (2) the aggregate Actual Disbursements (and each line item thereof) for such Rolling Four-Week Testing



Period compared to the projected disbursements (and each line item thereof) for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period; and (3) the aggregate intercompany transfers from each Debtor entity to NCU made by each such Debtor during such Rolling Four-Week Testing Period compared to the aggregate projected intercompany transfers from each such Debtor entity to NCU for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period.

(d) *Budget Testing; Permitted Variances.* During any Rolling Four-Week Testing Period, the Debtors shall not permit (1) total disbursements, minus (2) disbursements in respect of (i) interest, fees, and expenses in relation to the DIP Facility; (ii) Adequate Protection Obligations; (iii) DIP Professional Fees; and (iv) professional fees paid by the Debtors on behalf of themselves or any other party (the disbursements remaining after such subtractions, the “**Total Tested Disbursements**”) to be more than 120% of such Total Tested Disbursements set forth in the Approved Budget for such Rolling Four-Week Testing Period (collectively, the “**Permitted Variances**”). Additional disbursement variances, if any, from an Approved Budget, and any proposed amendments, supplements or modifications to an Approved Budget, shall be subject to the prior written approval of the Required DIP Lenders. For the avoidance of doubt, any reference to “written consent” or “written approval” hereunder shall include consent or approval granted by e-mail, including email from counsel to the DIP Lenders on behalf of the DIP Lenders.

9. **Reporting Requirements; Access to Records.** The Debtors shall provide (i) Akin, as counsel to the DIP Lenders, (ii) Milbank LLP (“**Milbank**”), as counsel to KfW, (iii) White & Case LLP, as counsel to Concord, (iv) Davis, Graham & Stubbs LLP, as counsel to Triple Flag (v) Cleary, Gottlieb, Steen & Hamilton LLP, as counsel to Pala, (vi) Bennett Jones LLP, as counsel to Mercuria, and (vii) Alvarez & Marsal Canada Inc., in its capacity as the Information Officer in the Recognition Proceedings, with all reporting and other information required to be provided to the DIP Agent under the DIP Documents. In addition to, and without limitation, whatever rights to access the DIP Secured Parties or KfW have under the DIP Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents

and employees of the DIP Secured Parties and KfW to (x) have access to and inspect the Debtors' assets, (y) examine the Debtors' books and records and (z) discuss the Debtors' affairs, finances and condition with the Debtors' officers and financial advisors.

10. **Adequate Protection for the Prepetition Secured Parties.** Pursuant to Bankruptcy Code sections 361, 363, and 364, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition Diminution in Value of such interests, the Prepetition Secured Parties are hereby granted the following (collectively, the "***Adequate Protection Obligations***"):

(a) *Adequate Protection Liens.* As security for and solely to the extent of any Diminution in Value, the Prepetition Secured Parties are hereby granted additional and replacement valid, binding, enforceable, non-avoidable and effective and automatically perfected postpetition security interests in, and liens on, as of the date of this Interim Order (the "***Adequate Protection Liens***"), subject in all cases to the priorities set forth on **Exhibit C** hereto, without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, all DIP Collateral.

(b) *Adequate Protection Superpriority Claims.* As further adequate protection, and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), the Prepetition Secured Parties are hereby granted allowed administrative expense claims in the Chapter 11 Cases against each of the Debtors to the extent of any Diminution in Value (the "***Adequate Protection Superpriority Claims***"). The Adequate Protection Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Action Proceeds). Subject to the terms of this Interim Order, the Adequate Protection Superpriority Claims shall have the same relative priorities as the Adequate Protection Liens (as set forth on **Exhibit C** hereto) and be subject to (i) the Carve-Out, (ii) the Administration Charge and (iii) the



1 DIP Superpriority Claims. Except as set forth in this Interim Order, the Adequate Protection  
2 Superpriority Claims shall not be junior to any other claims and shall have priority over all  
3 administrative expense claims against each of the Debtors, now existing or hereafter arising, of  
4 any kind or nature whatsoever, including, without limitation, administrative expense claims of the  
5 kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365,  
6 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and  
7 1114.

8 (c) *Fees and Expenses of the Prepetition Secured Parties.* As further adequate  
9 protection, the Debtors are authorized and directed to pay, without further Court order, reasonable  
10 and documented fees and expenses (the “**Adequate Protection Fees**”), whether incurred before or  
11 after the Petition Date, of the Prepetition Senior Secured Term Loan Agent, consisting of the  
12 following: (i) Milbank, as counsel to KfW; (ii) one Canadian counsel to KfW; (iii) one Nevada  
13 counsel to KfW; and (iv) one technical advisor to KfW; (collectively, the “**Prepetition Secured**  
14 **Parties’ Professionals**”) in accordance with the notice and review procedures set forth in  
15 paragraph 19 of this Interim Order.

16 (d) *Monthly Payments.* The Prepetition Senior Secured Term Loan Agent shall  
17 during the pendency of the Chapter 11 Cases, receive indefeasible payments in amounts equal to  
18 100% of the accrued and unpaid interest, whether accruing prior to, on or after the Petition Date,  
19 due to the Prepetition Senior Secured Term Loan Agent under the Prepetition Senior Secured Term  
20 Loan Documents (calculated at the applicable non-default rates) (the “**Adequate Protection**  
21 **Monthly Payments**” and, together with the Adequate Protection Fees, the “**Adequate Protection**  
22 **Payments**”), which shall be payable (i) in respect of payments relating to the Prepetition Senior  
23 Secured KfW Term Loan Obligations, in cash and (ii) in respect of payments relating to the  
24 Prepetition Senior Secured Term Loan A-2 Obligations, in kind; *provided* that in the event of a  
25 final determination that the Prepetition Senior Secured Term Loan Lenders are undersecured as of  
26 the Petition Date, payments received by the applicable undersecured Prepetition Senior Secured  
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1 Term Loan Lender pursuant to this paragraph 10(d) may be recharacterized and applied as  
2 payments of principal.

3 (e) *Information Rights.* The Debtors shall contemporaneously provide the  
4 Prepetition Secured Parties with all reporting and information that is required to be provided to the  
5 DIP Lenders under the DIP Documents (as currently in effect, or pursuant to any additional  
6 requirements that may be added after the date hereof). The Debtors shall (a) provide the Prepetition  
7 Senior Secured Term Loan Agent and its advisors with copies of any material proposal, offer,  
8 indication of interest, or bid within two (2) business days of receipt, and (b) at the Prepetition  
9 Senior Secured Term Loan Agent's request, host a weekly call with the Prepetition Senior Secured  
10 Term Loan Agent and its advisors regarding the status of the Debtors' sale process. The Debtors  
11 shall provide the Prepetition Senior Secured Term Loan Agent and its advisors with any  
12 information reasonably requested by the Prepetition Senior Secured Term Loan Agent or its  
13 advisors in connection with any Proposed Budget, Approved Budget, or Weekly Variance Report  
14 within three (3) business days of such request. The Debtors shall conduct weekly status calls with  
15 KfW (and their technical advisor) on the status of the Underground Mine and shall respond timely  
16 to any reasonable request of KfW's technical advisor to provide information with respect to the  
17 status of the Underground Mine.

18 11. **Perfection of DIP Liens and Adequate Protection Liens.**

19 (a) This Interim Order shall be sufficient and conclusive evidence of the  
20 attachment, validity, perfection and priority of all liens and security interests granted under this  
21 Interim Order and the DIP Documents, including, without limitation, the DIP Liens and the  
22 Adequate Protection Liens, without the necessity of the execution, recordation or filing of any  
23 pledge, collateral or security agreements, mortgages, deeds of trust, lockbox or control agreements,  
24 financing statements, notations of certificates of title for titled goods, or any other document or  
25 instrument, or the taking of any other action (including, without limitation, entering into any  
26 deposit account control agreement or other act to take possession or control of any DIP Collateral,  
27 including Cash Collateral), to attach, validate, perfect or prioritize such liens and security interests,  
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1 or to entitle the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition  
2 Secured Parties to the priorities provided hereby and set forth on **Exhibit C** hereto (a “***Perfection***  
3 ***Act***”).

4 (b) Without in any way limiting the automatically effective perfection of the  
5 liens granted under this Interim Order and the DIP Documents (including, without limitation, the  
6 DIP Liens and the Adequate Protection Liens), each of the Required DIP Lenders, the Prepetition  
7 Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the Prepetition TF  
8 Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, without any further  
9 consent of any party, is hereby authorized on a final basis, to execute, file or record, and such  
10 parties, as applicable, may require the execution, filing or recording, as each, in its sole discretion  
11 deems necessary, of such financing statements, mortgages, notices of lien and other similar  
12 documents to enable the Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
13 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
14 Junior Secured Term Loan Agent, as applicable, to further validate, perfect, preserve and enforce  
15 the DIP Liens or Adequate Protection Liens granted hereunder, as applicable, perfect in accordance  
16 with applicable law or to otherwise evidence the DIP Liens and/or the Adequate Protection Liens,  
17 as applicable, and all such financing statements, mortgages, notices and other documents shall be  
18 deemed to have been executed, filed or recorded as of the Petition Date; *provided, however*, that,  
19 notwithstanding any otherwise applicable law or regulation to the contrary, whether or not the  
20 Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent, the Prepetition Working  
21 Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition Junior Secured Term  
22 Loan Agent, as applicable, determine, in their sole discretion, to execute, file, record or otherwise  
23 effectuate any Perfection Act with respect to any liens or security interests granted under this  
24 Interim Order and the DIP Documents, such liens and security interests shall be deemed valid,  
25 perfected, allowed, enforceable, non-avoidable and not subject to objection, challenge, dispute,  
26 avoidance, recharacterization or subordination. The Debtors are hereby authorized and directed  
27 on a final basis to execute and deliver promptly upon demand to the Required DIP Lenders, the  
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1 Prepetition Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the  
2 Prepetition TF Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, as  
3 applicable, all such financing statements, notices and other documents as such parties may  
4 reasonably request. The Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
5 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition  
6 Junior Secured Term Loan Agent, as applicable, each in its discretion, may file a copy of this  
7 Interim Order as a financing statement with any filing or recording office or with any registry of  
8 deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or  
9 similar instruments, and in such event, the filing or recording office shall be authorized to file or  
10 record such copy of this Interim Order.

11 12. **Modification of Automatic Stay**. The automatic stay imposed by Bankruptcy  
12 Code section 362(a) is hereby modified, without application to or further order of this Court, to  
13 permit: (i) the Debtors to grant the DIP Liens and the DIP Superpriority Claims, and to perform  
14 such acts as the DIP Agent (acting at the direction of the Required DIP Lenders) and/or the  
15 Required DIP Lenders may request to assure the perfection and priority of the DIP Liens; (ii) the  
16 Debtors to incur all liabilities and obligations to the DIP Secured Parties as contemplated under  
17 this Interim Order and the DIP Documents; (iii) the Debtors to grant the Adequate Protection Liens  
18 and Adequate Protection Superpriority Claims and to perform such acts as the Prepetition Secured  
19 Parties may request to assure the perfection and priority of the Adequate Protection Liens; (iv) the  
20 Debtors to incur all liabilities and obligations to the Prepetition Secured Parties, including all  
21 Adequate Protection Superpriority Claims and other Adequate Protection Obligations, as  
22 contemplated under this Interim Order and the DIP Documents; (v) the Debtors to pay all amounts  
23 required under this Interim Order and the DIP Documents; (vi) the DIP Secured Parties and the  
24 Prepetition Secured Parties to retain and apply payments made in accordance with the terms of this  
25 Interim Order and the DIP Documents; (vii) subject in all respects to paragraph 18 of this Interim  
26 Order, the DIP Agent (acting at the direction of the Required DIP Lenders) and the applicable  
27 Prepetition Secured Parties to exercise, upon the occurrence of any Termination Event (as defined  
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below), all rights and remedies provided for in this Interim Order, the DIP Documents or applicable law; (viii) the Debtors to perform under this Interim Order and the DIP Documents and to take any and all other actions that may be necessary, required or desirable for the performance by the Debtors under this Interim Order and the DIP Documents and the implementation of the transactions contemplated hereunder and thereunder; and (ix) the implementation of all of the terms, rights, benefits, privileges, remedies and provisions of this Interim Order and the DIP Documents.

13. **Carve-Out.**

(a) *Carve-Out.* As used in this Interim Order, the “***Carve-Out***” means the sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, together with interest, if any, under section 3717 of title 31 of the United States Code (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under Bankruptcy Code section 726(b) (without regard to the notice set forth in (iii) below); (iii) to the extent allowed, whether by interim order, procedural order or otherwise, all unpaid fees and expenses (the “***Allowed Professional Fees***”) incurred by persons or firms retained by the Debtors pursuant to Bankruptcy Code sections 327, 328 or 363 (the “***Debtor Professionals***”) and the Creditors’ Committee pursuant to Bankruptcy Code sections 328 or 1103 (the “***Committee Professionals***” and, together with the Debtor Professionals, the “***Estate-Retained Professionals***”) at any time before or on the first calendar day following delivery of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Estate-Retained Professionals, in an aggregate amount not to exceed \$750,000 incurred after the first calendar day following delivery of the Carve-Out Trigger Notice, to the extent allowed, whether by interim order, procedural order or otherwise (the amounts set forth in this clause (iv) being the “***Post-Carve-Out Trigger Notice Cap***”). For purposes of the foregoing, the “***Carve-Out Trigger Notice***” shall mean a written notice delivered by e-mail by the DIP Agent (acting at the direction of the Required DIP Lenders and in accordance with the terms of this

Interim Order), to the Debtors' proposed bankruptcy counsel Allen Overy Shearman & Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick and Sara Coelho), the U.S. Trustee, the Creditors' Committee, if any, and the Prepetition Secured Parties, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement) and acceleration of the obligations under the DIP Facility or the occurrence of a Maturity Date (as defined in the DIP Credit Agreement), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) *Carve-Out Reserves*. On the day on which a Carve-Out Trigger Notice is delivered (the "***Carve-Out Trigger Date***"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date to fund a reserve in an amount equal to the then unpaid amounts of (i) the Allowed Professional Fees of Estate-Retained Professionals and (ii) the obligations accrued as of the Carve-Out Trigger Date with respect to clauses (i) and (ii) of the definition of Carve-Out set forth in paragraph 13(a) (the "***Additional Carve-Out Obligations***"). The Debtors shall deposit and hold such amounts in a segregated account in a manner reasonably acceptable to the DIP Agent (acting at the direction of the Required DIP Lenders) or the Required DIP Lenders, and, following the Discharge of DIP Obligations, the Prepetition Senior Secured Term Loan Agent, in trust to pay such unpaid Allowed Professional Fees of Estate-Retained Professionals and Additional Carve-Out Obligations (the "***Pre-Carve-Out Trigger Notice Reserve***") prior to the use of such reserve to pay any other claims. On the Carve-Out Trigger Date, after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap (the "***Post-Carve-Out Trigger Notice Reserve***" and, together with the Pre-Carve-Out Trigger Notice Reserve, the "***Carve-Out Reserves***") prior to the use of such reserve to pay any other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth in paragraph 13(a) (the "***Pre-Carve-Out Amounts***"), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice

1 Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay any other  
2 amounts (if owing) benefitted by the Carve-Out and then to the DIP Agent for the benefit of itself  
3 and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents,  
4 unless the DIP Obligations (other than contingent indemnification obligations as to which no claim  
5 has been asserted) have been indefeasibly paid in full, in cash, and all commitments under the DIP  
6 Facility have been terminated (the “**Discharge of DIP Obligations**”), in which case any such  
7 excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt  
8 Documents and this Interim Order. All funds in the Post-Carve-Out Trigger Notice Reserve shall  
9 be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth  
10 above (the “**Post-Carve-Out Amounts**”), and then, to the extent the Post-Carve-Out Trigger Notice  
11 Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay the DIP  
12 Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim  
13 Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in  
14 which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the  
15 Prepetition Debt Documents and this Interim Order. Notwithstanding anything to the contrary in  
16 the DIP Documents or this Interim Order, if either of the Carve-Out Reserves are not funded in  
17 full in the amounts set forth in this paragraph 13(b), then, any excess funds in one of the Carve-  
18 Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts,  
19 respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set  
20 forth in this paragraph 13(b), prior to making any payments to the DIP Agent or the Prepetition  
21 Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or  
22 this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent (in accordance  
23 with the terms of this Interim Order and the DIP Documents) shall not sweep or foreclose on cash  
24 (including cash received as a result of the sale or other disposition of any assets) of the Debtors  
25 until the Carve-Out Reserves have been fully funded, but shall have a valid and perfected security  
26 interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent  
27 for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and  
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1 the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case  
2 any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition  
3 Debt Documents. Further, notwithstanding anything to the contrary in this Interim Order, (x)  
4 disbursements by the Debtors from the Carve-Out Reserves shall not increase or reduce the DIP  
5 Obligations or constitute additional loans under the DIP Facility and (y) the failure of the Carve-  
6 Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the  
7 Carve-Out in respect of DIP Collateral or any recoveries thereon. For the avoidance of doubt and  
8 notwithstanding anything to the contrary in this Interim Order, the DIP Documents or in any  
9 Prepetition Debt Documents, the Carve-Out shall be senior to all liens and claims securing the DIP  
10 Facility, the Adequate Protection Obligations and the Prepetition Secured Obligations, and any and  
11 all other forms of adequate protection, liens or claims securing the DIP Obligations or the  
12 Prepetition Secured Obligations.

13 (c) *Payment of Allowed Professional Fees Prior to the Carve-Out Trigger Date.*  
14 Any payment or reimbursement made prior to the occurrence of the Carve-Out Trigger Date in  
15 respect of any Allowed Professional Fees shall not reduce the Carve-Out.

16 (d) *No Direct Obligation to Pay Allowed Professional Fees.* None of the DIP  
17 Secured Parties or Prepetition Secured Parties shall be responsible for the payment or  
18 reimbursement of any fees or disbursements of any Estate-Retained Professional incurred in  
19 connection with the Chapter 11 Cases or any Successor Cases. Nothing in this Interim Order or  
20 otherwise shall be construed to obligate the DIP Secured Parties or the Prepetition Secured Parties,  
21 in any way, to pay compensation to, or to reimburse expenses of, any Estate-Retained Professional  
22 or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

23 (e) *Payment of Carve-Out on or After the Carve-Out Trigger Date.* Any  
24 payment or reimbursement made on or after the occurrence of the Carve-Out Trigger Date in  
25 respect of any Allowed Professional Fees incurred after the first business day following delivery  
26 by the DIP Agent (acting at the direction of the Required DIP Lenders) of the Carve-Out Trigger  
27 Notice shall permanently reduce the Post-Carve-Out Trigger Notice Cap on a dollar-for-dollar  
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1 basis. Any funding of the Carve-Out under the DIP Facility shall be added to, and made a part of,  
2 the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections  
3 granted under this Interim Order, the DIP Documents, the Bankruptcy Code and applicable law.

4 14. **Limitation on Charging Expenses Against Collateral.** Subject to entry of the  
5 Final Order (but retroactive to the Petition Date), and subject to the Carve-Out and the  
6 Administration Charge, no costs or expenses of administration of the Chapter 11 Cases, the  
7 Recognition Proceedings or any future proceeding that may result therefrom, including liquidation  
8 in bankruptcy or other proceedings under the Bankruptcy Code or the CCAA, shall be charged  
9 against or recovered from the DIP Collateral or the Prepetition Collateral, the DIP Secured Parties  
10 or the Prepetition Secured Parties pursuant to Bankruptcy Code sections 506(c) and 105(a), or any  
11 similar principle of law or equity, without the prior written consent of the DIP Secured Parties and  
12 the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other  
13 action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties.

14 15. **No Marshaling/Application of Proceeds.** Subject to entry of the Final Order, the  
15 DIP Agent and the Prepetition Secured Parties shall be entitled to apply the payments or proceeds  
16 of the DIP Collateral and the Prepetition Collateral, as applicable, in accordance with the  
17 provisions of the Interim Order or the Final Order, as applicable, the DIP Documents and the  
18 Prepetition Debt Documents, as applicable, and in no event shall the DIP Secured Parties or any  
19 of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other  
20 similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral.

21 16. **Equities of the Case.** Subject to entry of the Final Order (but retroactive to the  
22 Petition Date), (i) the Prepetition Secured Parties shall be entitled to all of the rights and benefits  
23 of Bankruptcy Code section 552(b) and (ii) the Debtors shall not invoke the “equities of the case”  
24 exception under Bankruptcy Code section 552(b) with respect to the proceeds, products, offspring  
25 or profits of any of the Prepetition Collateral.

26 17. **Termination Events.** The occurrence of any of the following shall constitute a  
27 “***Termination Event***”: (i) the occurrence of an Event of Default (as defined in the DIP Documents)  
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1 to the extent not waived by the Required DIP Lenders or subject to a forbearance or similar  
2 agreement with the Required DIP Lenders; (ii) the Debtors' failure to comply in any material  
3 respect with any provision of this Interim Order unless waived by the applicable lenders; or (iii)  
4 the occurrence of the Maturity Date (as defined in the DIP Documents).

5 18. **Remedies Upon a Termination Event.**

6 (a) Upon the occurrence of the Termination Event, the DIP Agent (acting at the  
7 direction of the Required DIP Lenders) shall be entitled to declare (A) all DIP Obligations due and  
8 payable without presentment, demand or protest or other notice of any kind, all of which are  
9 expressly waived by the Debtors, (B) the termination, reduction or restriction of all future  
10 commitments to the Borrower under the DIP Facility to the extent any such commitment remains  
11 (including, for the avoidance of doubt, any commitment to fund the DIP Facility) but without  
12 affecting the DIP Liens and DIP Obligations, (C) the termination of the DIP Facility and any DIP  
13 Documents as to any future obligation of the DIP Secured Parties, but without affecting any of the  
14 DIP Liens or any DIP Obligation, (D) the termination, reduction or restriction on the ability of the  
15 Debtors to use any Cash Collateral and the proceeds of the DIP Facility (any such declaration made  
16 by the DIP Agent to counsel to the Debtors, counsel to the applicable Prepetition Secured Parties,  
17 the U.S. Trustee and counsel to the Creditors' Committee, if any, (which may be made by e-mail),  
18 a "***Termination Declaration***," and the date which is the earliest to occur of any such Termination  
19 Declaration and the Maturity Date being herein referred to as the "***Termination Declaration***  
20 ***Date***"). The DIP Agent shall provide any Termination Declaration to the Debtors' lead  
21 restructuring counsel, the Creditors' Committee, if any, the U.S. Trustee, and Milbank, as counsel  
22 to KfW.

23 (b) The Debtors, the Committee (if appointed), and/or any party in interest shall  
24 be entitled to seek an emergency hearing before the Court within four (4) business days after the  
25 delivery of a Termination Declaration (such period being the "***Remedies Notice Period***"), for the  
26 sole purpose of contesting whether a Termination Event (other than with respect to the Maturity  
27 Date) has occurred or is continuing or for the contested use of Cash Collateral (a "***Stay***  
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1 ***Enforcement Motion***”).<sup>5</sup> The Debtors shall be entitled to continue to use Cash Collateral in  
2 accordance with the terms of this Interim Order and the DIP Documents during any Remedies  
3 Notice Period only to make payroll and fund critical expenses necessary to preserve the Prepetition  
4 Collateral, in each case, in accordance with the terms of the Approved Budget and this Interim  
5 Order, but shall not be permitted to use Cash Collateral following any Remedies Notice Period  
6 absent further order of the Court approving such use (and only to the extent so approved). Unless  
7 the Court has determined that a Termination Event has not occurred and/or is not continuing, or  
8 the Court orders otherwise, the automatic stay, as to the DIP Secured Parties shall automatically  
9 be terminated at the end of the Remedies Notice Period without further notice, order, or any further  
10 action in the Chapter 11 Cases or the Recognition Proceedings and the DIP Agent (acting at the  
11 direction of the Required DIP Lenders) shall be permitted to exercise any rights and remedies  
12 against the DIP Collateral available to the DIP Secured Parties under this Interim Order, the DIP  
13 Documents and applicable non-bankruptcy law without any further order of or application or  
14 motion to the Court, including, but not limited to, any rights to setoff against deposits and financial  
15 assets of the Debtors and to foreclose on all or any portion of the DIP Collateral, in each case,  
16 subject to the Carve-Out, the Administration Charge and any Prepetition Permitted Liens;  
17 *provided, however*, that the Required DIP Lenders shall consult with the Prepetition Secured Term  
18 Loan Agent in advance of exercising any remedies or taking action in connection with any of the  
19 DIP Collateral and shall provide the Prepetition Senior Secured Term Loan Agent with five (5)  
20 Business Days’ notice in advance of taking such actions; which period may be waived by the  
21 Prepetition Senior Secured Term Loan Agent, in its reasonable discretion.

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26 <sup>5</sup> If a hearing to consider a Stay Enforcement Motion is requested to be heard before the end of the Remedies Notice  
27 Period but is scheduled for a later date by the Court, the Remedies Notice Period shall automatically be extended  
28 to the date of such hearing, but in no event later than ten (10) business days after delivery of the Termination  
Declaration or at such other date that may be agreed to by the parties after good faith negotiations.

1           19.     **Fees and Expenses of DIP Professionals and Prepetition Secured Parties'**  
2     **Professionals.**

3           (a)     The payment of all DIP Professional Fees and Adequate Protection Fees  
4 hereunder shall not be subject to (i) further application to or approval of the Court, (ii) allowance  
5 or review by the Court or (iii) the U.S. Trustee's fee guidelines, and no attorney or advisor to the  
6 DIP Secured Parties or the Prepetition Secured Parties shall be required to file an application  
7 seeking compensation for services or reimbursement of expenses with the Court; *provided*,  
8 *however*, that any time the DIP Professionals (other than DIP Agent Counsel) seek payment of  
9 fees and expenses from the Debtors from and after the Petition Date but prior to the effective date  
10 of any chapter 11 plan,<sup>6</sup> each such party or professional shall provide summary copies of its  
11 invoices (which shall not be required to contain time entries, and which may be redacted or  
12 modified to the extent necessary to delete any information subject to the attorney-client privilege,  
13 any information constituting attorney work product or any other confidential information, and the  
14 provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any  
15 benefits of the attorney work product doctrine) to the Debtors' counsel, the U.S. Trustee, and lead  
16 counsel to the Creditors' Committee, if any (collectively, the "***Invoice Review Parties***"). Any  
17 objections raised by any Invoice Review Party with respect to such invoices must (x) be in writing  
18 (email from such party or their counsel being sufficient) (y) state with particularity the grounds for  
19 such objection and (z) be submitted to the affected professional(s) within ten (10) calendar days  
20 after delivery of such invoices to the Invoice Review Parties (such ten (10) calendar day period,  
21 the "***Invoice Review Period***"). If no written objection is received prior to the expiration of the  
22 Invoice Review Period from the Invoice Review Parties, the Debtors shall pay such invoices within  
23 two (2) calendar days following the expiration of the Invoice Review Period. If an objection is  
24 received within the Invoice Review Period from the Invoice Review Parties, the Debtors shall

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26           <sup>6</sup> For the avoidance of doubt, nothing contained in this paragraph 19 shall prevent the DIP Secured Parties or KfW  
27 from seeking payment from the Debtors of professional fees and expenses incurred prior to the Petition Date in  
28 accordance with the terms of this Interim Order and the DIP Documents.

1 promptly pay the undisputed amount of the invoice, and the disputed portion of such invoice shall  
2 not be paid until such dispute is resolved by agreement between the affected party or  
3 professional(s) and the objecting party or by order of this Court. Any hearing to consider such an  
4 objection to the payment of any fees, costs or expenses set forth in a professional fee invoice  
5 hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject  
6 of such objection.

7 (b) Notwithstanding anything contained in this Interim Order to the contrary,  
8 any and all payments, fees, costs, expenses and other amounts paid at any time by any of the  
9 Debtors to the DIP Secured Parties or the Prepetition Secured Parties (including such parties'  
10 respective professionals), as applicable, pursuant to the requirements of this Interim Order or the  
11 DIP Documents, whether prior to, on or after the Petition Date, shall be non-refundable and  
12 irrevocable, are hereby approved (and to the extent paid prior to entry of the Interim Order, ratified  
13 in full), and shall not be subject to any challenge, objection, defense, claim or cause of action of  
14 any kind or nature whatsoever, including, without limitation, avoidance (whether under Chapter 5  
15 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform  
16 Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)),  
17 reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable,  
18 contractual, or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling,  
19 surcharge or recovery or any other cause of action, whether arising under the Bankruptcy Code,  
20 applicable non-bankruptcy law or otherwise, by any person or entity.

21 20. **Limitation on Use of DIP Facility Proceeds, DIP Collateral and Cash**  
22 **Collateral.**

23 (a) Notwithstanding anything to the contrary set forth in this Interim Order,  
24 none of the DIP Facility, the DIP Collateral, the Prepetition Collateral or the proceeds thereof,  
25 including Cash Collateral, or the Carve-Out may be used: (i) to investigate (except as expressly  
26 provided herein), initiate, prosecute, join or finance the initiation or prosecution of any claim,  
27 counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense or other  
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litigation of any type (A) against any of the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their capacities as such) and each of their respective affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called “lender liability” claims and causes of action, or seeking relief that would impair the rights and remedies of the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their capacities as such) under this Interim Order, the DIP Documents or the Prepetition Debt Documents, as applicable, to the extent permitted or provided hereunder, including, without limitation, for the payment of any services rendered by any Estate-Retained Professional in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties to recover on the DIP Collateral or the Prepetition Collateral (as applicable), as provided for herein, or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition Secured Parties related to the DIP Obligations or the Prepetition Secured Obligations, as applicable, (B) seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the DIP Liens, DIP Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations or (C) for monetary, injunctive or other affirmative relief against the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their capacities as such) that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties to assert or enforce any lien, claim, right or security interest or to realize or recover on the DIP Obligations or the Prepetition Secured Obligations to the extent permitted or provided hereunder; (ii) for objecting to or challenging in any way the legality, validity, priority, perfection or enforceability of the claims, liens or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Secured Obligations, or by or

on behalf of the DIP Secured Parties related to the DIP Obligations; (iii) for asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Liens, the DIP Superpriority Claims, the DIP Obligations, the Prepetition Liens or the Prepetition Secured Obligations; or (iv) for prosecuting an objection to, contesting in any manner or raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of (A) any of the DIP Liens, the DIP Superpriority Claims, or any other rights or interests of the DIP Secured Parties related to the DIP Obligations or the DIP Liens or (B) any of the Prepetition Liens, Prepetition Secured Obligations or any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Secured Obligations; *provided* that no more than \$50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by the Creditors' Committee (if any) solely to investigate (but not seek formal discovery or commence any challenge, objection or prosecute any claim or cause of action relating to) the foregoing matters with respect to the Prepetition Liens or the Prepetition Secured Obligations within the Challenge Period (as defined below) (the "***Investigation Budget***").

(b) Any fees and expenses of the Committee Professionals in connection with the investigation of the matters described in paragraph 20(a) of this Interim Order in excess of the Investigation Budget shall not be entitled to administrative expense priority pursuant to section 503(b) of the Bankruptcy Code or otherwise.

21. **Effect of Stipulations on Third Parties.**

(a) The Debtors' acknowledgments, stipulations, admissions, agreements, waivers and releases set forth in this Interim Order shall be binding on the Debtors, their respective estates, representatives, successors and assigns upon entry of this Interim Order and the Debtors shall be deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date.

(b) The acknowledgments, stipulations, admissions, agreements, waivers and releases contained in this Interim Order shall also be binding upon all other parties in interest,



1 including the Creditors' Committee or non-statutory committees appointed or formed in these  
2 Chapter 11 Cases (if any) and any other person or entity seeking to act on behalf of the Debtors'  
3 estates, including any chapter 7, chapter 11 trustee or examiner appointed or elected for any of the  
4 Debtors in these Chapter 11 Cases or any Successor Cases, and each of their respective successors  
5 and assigns, in all circumstances and for all purposes, unless: (i) any such party, having obtained  
6 requisite standing, timely and properly commences and serves an adversary proceeding or  
7 contested matter (subject to the limitations contained herein) (A) objecting to or challenging the  
8 validity, perfection, priority, scope, extent or enforceability of the Prepetition Funded Debt Liens  
9 or the Prepetition Secured Obligations, (B) objecting to or alleging any basis to impair, restrict,  
10 deny or otherwise challenge the right of any of the Prepetition Secured Parties to credit bid, in  
11 whole or in part, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations under  
12 Bankruptcy Code section 363(k) or otherwise or (C) otherwise asserting or prosecuting any  
13 Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or  
14 defenses (collectively, the "**Challenges**") against the Prepetition Secured Parties in connection  
15 with any matter related to the Prepetition Collateral, the Prepetition Funded Debt Liens or the  
16 Prepetition Secured Obligations by no later than (1) with respect to any Creditors' Committee, the  
17 date that is 45 days after the later of (a) its appointment in the Chapter 11 Cases and (b) entry of  
18 the Final Order and (2) with respect to all other parties in interest, no later than the date that is 45  
19 days after the entry of this Interim Order (the time period established by the foregoing clauses (1)  
20 and (2) the "**Challenge Period**"); *provided* that in the event that, prior to the expiration of the  
21 Challenge Period, (x) these Chapter 11 Cases are converted to chapter 7 or (y) a chapter 11 trustee  
22 is appointed in these Chapter 11 Cases, then, in each such case, the Challenge Period shall be  
23 extended for a period of 10 days solely with respect to any Trustee, commencing on the occurrence  
24 of either of the events described in the foregoing clauses (x) and (y); and (ii) an order is entered  
25 by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff  
26 sustaining any such challenge in any such duly filed adversary proceeding or contested matter.  
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1 (c) If no such adversary proceeding or contested matter is timely filed prior to  
2 the expiration of the Challenge Period, without further order of this Court: (i) the Prepetition  
3 Secured Obligations shall constitute allowed claims, not subject to any Claims and Defenses  
4 (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense,  
5 avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance,  
6 recovery, disgorgement, attachment, “claim” (as defined by Bankruptcy Code section 101(5)),  
7 impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any  
8 kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these  
9 Chapter 11 Cases and any Successor Cases, if any; (ii) the Prepetition Funded Debt Liens shall be  
10 deemed to have been, as of the Petition Date, legal, valid, binding, perfected and of the priority  
11 specified in paragraphs F.1(c), F.2(c), F.3(c), and F.4(c), not subject to setoff, subordination,  
12 defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment or  
13 recovery; and (iii) the Prepetition Secured Obligations, the Prepetition Funded Debt Liens on the  
14 Prepetition Collateral and the Prepetition Secured Parties (solely in their capacities as such) shall  
15 not be subject to any other or further challenge and all parties in interest shall be forever enjoined  
16 and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action,  
17 including any successor thereto (including any estate representative or a Trustee, whether such  
18 Trustee is appointed or elected prior to or following the expiration of the Challenge Period).

19 (d) If any such adversary proceeding or contested matter is timely filed prior to  
20 the expiration of the Challenge Period, (i) the stipulations, admissions, agreements, waivers and  
21 releases contained in this Interim Order shall nonetheless remain binding and preclusive on the  
22 Creditors’ Committee (if any) and any other party in these Chapter 11 Cases, including any Trustee,  
23 except as to the party (or parties) that timely initiated such adversary proceeding or contested  
24 matter and, with respect to such party (or parties), solely as to any stipulations, admissions,  
25 agreements, waivers and releases that are specifically and expressly challenged in such adversary  
26 proceeding or contested matter and (ii) any Claims and Defenses not brought in such adversary  
27 proceeding or contested matter shall be forever barred; *provided* that, if and to the extent any  
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1 challenges to a particular stipulation, admission, agreement, waiver or release are withdrawn,  
2 denied or overruled by a final non-appealable order, such stipulation, admission, agreement,  
3 waiver and/or release also shall be binding on the Debtors' estates and all parties in interest.

4 (e) Nothing in this Interim Order vests or confers on any person (as defined in  
5 the Bankruptcy Code), including any Creditors' Committee (if any), standing or authority to pursue  
6 any cause of action belonging to the Debtors or their estates, including, without limitation, any  
7 challenge with respect to the Prepetition Debt Documents, the Prepetition Funded Debt Liens or  
8 the Prepetition Secured Obligations.

9 22. **Release.** Subject to the rights and limitations set forth in paragraphs 20 and 21 of  
10 this Interim Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf  
11 of each of their predecessors, their successors and assigns shall, to the maximum extent permitted  
12 by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish,  
13 irrevocably waive and discharge each of the DIP Secured Parties, and subject to the entry of the  
14 Final Order, the Prepetition Secured Parties (in each case, in their capacities as such) and each of  
15 their respective former, current or future officers, employees, directors, agents, representatives,  
16 owners, members, partners, affiliated investment funds or investment vehicles, managed, advised  
17 or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers,  
18 financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys,  
19 affiliates and predecessors in interest, each in their capacity as such, of and from any and all claims,  
20 demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and  
21 obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses,  
22 damages, injuries, attorneys' fees, costs, expenses or judgments of every type, whether known,  
23 unknown, asserted, unasserted, suspected unsuspected, accrued, unaccrued, fixed, contingent,  
24 pending or threatened including, without limitation, all legal and equitable theories of recovery,  
25 arising under common law, statute or regulation or by contract, of every nature and description  
26 that exist on the date hereof solely with respect to or relating to the DIP Liens, the DIP  
27 Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens and the Prepetition  
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Secured Obligations, as applicable, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties.

23. **Credit Bidding.**

(a) Consistent with Bankruptcy Code section 363(k) and applicable law, the DIP Agent (acting at the direction of the Required DIP Lenders) and each DIP Lender (in any case, either directly or through one or more acquisition vehicles), shall have the right to credit bid for all or any portion of the DIP Collateral, as applicable, up to the full amount of any DIP Superpriority Claims, as part of any sale of Debtors’ assets (in whole or in part), including without limitation, sales occurring pursuant to (i) Bankruptcy Code section 363, (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129 or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725 (each, a “***Sale Transaction***”), *provided*, that, until payment in full of the obligations under the Prepetition Working Capital Facility, the rights of the DIP Agent and each DIP Lender to credit bid on any DIP Collateral that constitutes WCF Collateral shall be subject to the right of the Prepetition Working Capital Purchaser to credit bid for all or any portion of the WCF Collateral, as applicable, up to the full amount of any Prepetition Working Capital Obligations as part of any Sale Transaction. The DIP Agent shall have the absolute right to assign, sell or otherwise dispose of its right to credit bid in connection with any credit bid by or on behalf of the DIP Lenders to any acquisition entity or joint venture formed in connection with such bid.

(b) The Prepetition Secured Parties’ rights to credit bid for all or a portion of the Prepetition Collateral as part of any Sale Transaction are fully preserved, subject in all respects to (i) payment in full in cash of all DIP Obligations and (ii) the terms and conditions of this Interim Order and the applicable Prepetition Debt Documents, including the lien and claim priorities set forth herein and therein.

1           24.     **Interim Order Governs.** In the event of any inconsistency between the provisions  
2 of this Interim Order and any DIP Documents, the provisions of this Interim Order shall govern.

3           25.     **Binding Effect; Successors and Assigns.** The DIP Documents and the provisions  
4 of this Interim Order, including all findings herein, shall be binding upon all parties in interest in  
5 these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition  
6 Secured Parties, the Creditors' Committee (if any), the Debtors and their respective successors and  
7 assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate  
8 of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104 or any  
9 other fiduciary appointed as a legal representative of any of the Debtors or with respect to the  
10 property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured  
11 Parties and the Prepetition Secured Parties; *provided*, that, except to the extent expressly set forth  
12 in this Interim Order, the Prepetition Secured Parties shall have no obligation to permit the use of  
13 Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person  
14 appointed for the estates of the Debtors.

15           26.     **Limitation of Liability.** In determining to make any loan under the DIP  
16 Documents, permitting the use of Cash Collateral or exercising any rights or remedies as and when  
17 permitted pursuant to this Interim Order, the DIP Documents or the Prepetition Debt Documents,  
18 the DIP Secured Parties and the Prepetition Secured Parties (in each case, solely in their capacities  
19 as such) shall not be deemed to be in control of the operations of the Debtors or to be acting as a  
20 "responsible person" or "owner or operator" with respect to the operation or management of the  
21 Debtors or their respective business (as such terms, or any similar terms, are used in the United  
22 States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§  
23 9601 *et seq.* as amended, or any similar federal or state statute), nor shall they owe any fiduciary  
24 duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint  
25 venture or partnership with any of the Debtors. Furthermore, nothing in this Interim Order, the  
26 DIP Documents or the Prepetition Debt Documents shall in any way be construed or interpreted  
27 to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties  
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1 of any liability for any claims arising from the prepetition or postpetition activities of any of the  
2 Debtors and their direct or indirect subsidiaries.

3 27. **Proofs of Claim.** Notwithstanding anything to the contrary contained in any prior  
4 or subsequent order of the Court, including, without limitation, any order establishing a deadline  
5 for the filing of proofs of claim or requests for payment of administrative expenses under  
6 Bankruptcy Code section 503(b), (i) the Prepetition Secured Parties shall not be required to file  
7 any proof of claim or request for payment of administrative expenses with respect to any of the  
8 Prepetition Secured Obligations or the Adequate Protection Obligations and (ii) the DIP Secured  
9 Parties shall not be required to file any proof of claim or request for payment of administrative  
10 expenses with respect to any DIP Obligations. The failure to file any such proof of claim or request  
11 for payment of administrative expenses shall not affect the validity, priority or enforceability of  
12 any of the Prepetition Debt Documents, the DIP Documents or of any other indebtedness, liabilities  
13 or obligations arising at any time thereunder or under this Interim Order, or prejudice or otherwise  
14 adversely affect the Prepetition Secured Parties' or the DIP Secured Parties' rights, remedies,  
15 powers or privileges under any of the Prepetition Debt Documents, the DIP Documents, this  
16 Interim Order or applicable law. The applicable Prepetition Secured Parties and DIP Secured  
17 Parties may (but are not required to) in their discretion file (and amend and/or supplement)  
18 applicable proofs of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or any  
19 successor cases for any claim allowed herein, and any such proof of claim may (but is not required  
20 to) be filed in the Debtors' lead Chapter 11 Case *In re* [ ], Case No. [ ] ([ ]) as one  
21 consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim  
22 against each Debtor. The provisions set forth in this paragraph 27 are intended solely for the  
23 purpose of administrative convenience and shall not affect the substantive rights of any party-in-  
24 interest or their respective successors-in-interest.

25 28. **Insurance.** The Debtors shall continue to maintain all property, operational and  
26 other insurance as required and as specified in the DIP Documents (which shall be deemed satisfied  
27 if such insurance as required under the Prepetition Secured Term Loan Credit Agreement remains  
28

1 in place). The Debtors shall provide the DIP Agent (for distribution to the DIP Lenders) with  
2 commercially reasonable evidence of such insurance upon a request to counsel for the Debtors  
3 from the DIP Agent (acting at the direction of the Required DIP Lenders). Upon entry of this  
4 Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of  
5 itself and the DIP Lenders) is, and is deemed to be, without any further action or notice, named as  
6 additional insured and loss payee on each insurance policy maintained by the Debtors that in any  
7 way relates to the DIP Collateral (including all property damage and business interruption  
8 insurance policies of the Debtors, whether expired, currently in place or to be put in place in the  
9 future), and shall act in that capacity and distribute any proceeds recovered or received in respect  
10 of any such insurance policies.

11 29. **Protection of Lenders' Rights.**

12 (a) Except as expressly permitted in this Interim Order or the DIP Documents,  
13 in the event any person or entity that holds a lien on or security interest in DIP Collateral that is  
14 junior or otherwise subordinate to the DIP Liens receives any DIP Collateral or proceeds of DIP  
15 Collateral, in each case, that is subject to such junior lien, or receives any payment on account of  
16 such junior lien or security interest in the DIP Collateral on account of such junior lien (whether  
17 in connection with the exercise of any right or remedy (including setoff), any payment or  
18 distribution from the Debtors, mistake or otherwise) prior to the Payment in Full<sup>7</sup> of all DIP  
19 Obligations, such person or entity shall be deemed to have received, and shall hold, any such  
20 payment or proceeds of DIP Collateral in trust for the benefit of the DIP Secured Parties, and shall  
21 immediately turn over all such proceeds to the DIP Agent, for the benefit of itself and the DIP  
22 Lenders, in the same form as received, with any necessary endorsements, for application in  
23 accordance with this Interim Order and the DIP Documents; *provided, however*, that until the  
24

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25 7 For purposes hereof, the term "Paid in Full" or "Payment in Full" means, with respect to the DIP Obligations or  
26 any Prepetition Secured Obligations (as the case may be), the irrevocable and indefeasible payment in full in cash  
27 of all DIP Obligations or such Prepetition Secured Obligations (as the case may be), other than contingent  
28 indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all  
commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated,  
cancelled and discharged.

1 Payment in Full of the Prepetition Working Capital Obligations, upon receipt by the DIP Agent or  
2 any DIP Lender of any such payment or proceeds from DIP Collateral that constitutes WCF  
3 Collateral, the DIP Agent or the applicable DIP Lender shall segregate and hold in trust such  
4 payment or proceeds for the benefit of, and turn over all such payments and proceeds to, the  
5 Prepetition Working Capital Purchaser in the same form as received, with any necessary  
6 endorsements, for application in accordance with this Interim Order, the DIP Documents and the  
7 Prepetition Debt Documents.

8 (b) Other than with respect to the Carve Out, the Administration Charge and  
9 Petition Date Perfected Liens, and as otherwise expressly provided in this Interim Order and/or  
10 the DIP Documents (including Exhibit C hereto), no claim or lien having a priority senior to or  
11 *pari passu* with those granted to any of the DIP Secured Parties or the Prepetition Secured Parties  
12 by this Interim Order shall be granted or permitted while any of the DIP Obligations or the  
13 Prepetition Secured Obligations, respectively, remains outstanding. Except as expressly provided  
14 in this Interim Order and the DIP Documents (including Exhibit C hereto), each of the DIP Liens,  
15 the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection  
16 Superpriority Claims, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations:  
17 (i) shall not be made junior or subordinated to or *pari passu* with (A) any lien, security interest or  
18 claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases,  
19 whether under Bankruptcy Code section 364(d) or otherwise, (B) any lien that is avoided and  
20 preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 or  
21 otherwise, (C) any lien arising after the Petition Date including, without limitation, any lien or  
22 security interests granted in favor of any federal, state, municipal or other domestic or foreign  
23 governmental unit (including any regulatory body), commission, board or court for any liability of  
24 the Debtors or (D) any intercompany or affiliate lien or claim; and (ii) shall not be subject to  
25 Bankruptcy Code sections 510, 549, 550 or 551 and, subject to entry of the Final Order,  
26 Bankruptcy Code section 506(c).



1 (c) In the event this Interim Order or any provision hereof is vacated, reversed  
2 or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or  
3 Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur,  
4 reversal or modification of this Interim Order shall be governed in all respects by the original  
5 provisions of this Interim Order, including entitlement to all rights, remedies, privileges and  
6 benefits granted herein, and the DIP Secured Parties and the Prepetition Secured Parties shall be  
7 entitled to the protections afforded in Bankruptcy Code sections 363(m) and 364(e), as applicable,  
8 with respect to all uses of the DIP Collateral (including all Cash Collateral and all Prepetition  
9 Collateral), all DIP Obligations and all Adequate Protection Obligations.

10 (d) Subject to the Carve-Out, the Administration Charge and Petition Date  
11 Perfected Liens, unless and until all DIP Obligations and Prepetition Secured Obligations are Paid  
12 in Full and all commitments to extend credit under the DIP Facility are terminated, the Debtors  
13 irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (i) except  
14 as permitted under the DIP Documents, and with the prior written consent of the Required DIP  
15 Lenders and the Prepetition Senior Secured Term Loan Agent, (A) any modification, stay, vacatur  
16 or amendment of this Interim Order, (B) a priority claim for any administrative expense, secured  
17 claim or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind  
18 or nature whatsoever, without limitation, any administrative expense of the kind specified in  
19 Bankruptcy Code sections 503(b), 507(a) or 507(b)) in any of the Chapter 11 Cases, equal or  
20 superior to the DIP Superpriority Claims and the Adequate Protection Superpriority Claims or (C)  
21 any other order allowing the use of DIP Collateral; (ii) except as permitted under the DIP  
22 Documents, any lien on any of the DIP Collateral (including all Prepetition Collateral) with priority  
23 equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Funded Debt  
24 Liens; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents  
25 and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant  
26 to Bankruptcy Code section 546(h) (or other return of goods on account of any prepetition  
27 indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the  
28



Chapter 11 Cases without the consent of the Required DIP Lenders; (vi) an order appointing a chapter 11 trustee in any of the Chapter 11 Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Chapter 11 Cases.

(e) Notwithstanding any order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise entered at any time, (i) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and any other administrative claims granted pursuant to this Interim Order, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order and the DIP Documents until such time as all DIP Obligations and Adequate Protection Obligations are Paid in Full; and (ii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (i) above.

(f) Except as expressly provided in this Interim Order and the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, shall maintain their priority as provided in this Interim Order, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission, or (ii) the entry of an order approving the sale of any DIP Collateral (including any Prepetition Collateral) pursuant to Bankruptcy Code section 363(b), except to the extent that such order provides for the attachment of DIP Liens or prepetition liens to the proceeds of such sale) or (iii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases and any Successor Cases.

1           30.     **Reservation of Rights of the DIP Secured Parties and Prepetition Secured**  
2 **Parties.** Except as otherwise expressly set forth in this Interim Order, the entry of this Interim  
3 Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or  
4 otherwise impair, as applicable: (i) any of the rights of any of the Prepetition Secured Parties to  
5 seek any other or supplemental relief in respect of the Debtors including the right to seek additional  
6 adequate protection; (ii) any of the rights of the DIP Secured Parties or the Prepetition Secured  
7 Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the  
8 right of any of the DIP Secured Parties or the Prepetition Secured Parties to (A) request  
9 modification of the automatic stay of Bankruptcy Code section 362, (B) request dismissal of any  
10 of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7 or  
11 appointment of a chapter 11 trustee or examiner with expanded powers in any of the Chapter 11  
12 Cases or (C) seek to propose, subject to the provisions of Bankruptcy Code section 1121, a chapter  
13 11 plan or plans; or (iii) any other rights, claims or privileges (whether legal, equitable or  
14 otherwise) of any of the DIP Secured Parties or the Prepetition Secured Parties. The delay in or  
15 failure of the DIP Secured Parties and/or the Prepetition Secured Parties to seek relief or otherwise  
16 exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties'  
17 or the Prepetition Secured Parties' rights and remedies under this Interim Order, the DIP  
18 Documents, the Prepetition Debt Documents or applicable law, as applicable.

19           31.     **Effectiveness.** Subject to the terms hereof, this Interim Order shall constitute  
20 findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc*  
21 to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules  
22 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rules 62(a) of the  
23 Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable  
24 upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

25           32.     **Final Hearing.** The final hearing (the "***Final Hearing***") on the Motion shall be  
26 held on \_\_\_\_\_, 2024, at \_\_:\_\_.m. (Prevailing Pacific Time). Any party in interest objecting  
27 to the relief sought at the Final Hearing or in the Final Order shall file and serve a written objection,  
28

1 which objection shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy  
2 Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick  
3 and Sara Coelho; (b) McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas,  
4 Nevada 89102, Attn: Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box  
5 270, TD South Tower Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel,  
6 Hanna Singer and Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C.  
7 Clifton Young Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel  
8 to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY  
9 10036, Attn: Brad Kahn,; 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley and (b)  
10 Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, Nevada 89134, Attn: James  
11 Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as  
12 administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York,  
13 NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments  
14 US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada,  
15 Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer  
16 under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York,  
17 NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag  
18 Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale  
19 agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary  
20 Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2  
21 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty  
22 Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Alvarez & Marsal Canada Inc., in its  
23 capacity as the Information Officer in the Recognition Proceedings, Royal Bank Plaza,  
24 South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, Attn: Al Hutchens; (x)  
25 Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich  
26 Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xi) counsel to any statutory committee  
27 appointed in these Chapter 11 Cases, in each case so as to be received no later than  
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\_\_\_\_\_, 2024, at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

33. **Headings.** Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

34. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Interim Order.

Dated: \_\_, 2024

\_\_\_\_\_  
THE HONORABLE [\_\_\_\_]  
UNITED STATES BANKRUPTCY JUDGE

Prepared and submitted by:

/s/ Ryan Works

**McDONALD CARANO LLP**

Ryan J. Works (Nevada Bar No. 9224)

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599 Lexington Avenue

New York, New York 10022

*Proposed Counsel to the Debtors and  
Debtors in Possession*

APPROVED/DISAPPROVED

**EXHIBIT A**

**DIP Credit Agreement**

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**EXECUTION VERSION**

**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

June 9, 2024

among

**NEVADA COPPER, INC.**  
as Borrower

**the Guarantors party hereto from time to time**

**U.S. Bank Trust Company, National Association**  
as Administrative Agent and Collateral Agent

– and –

**the Senior Lenders party hereto from time to time**

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Exhibit A-3	U.S. Tax Compliance Certificate
Exhibit A-4	U.S. Tax Compliance Certificate

**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (this “**Agreement**”), dated as of June 9, 2024 (the “**Entry Date**”), among **NEVADA COPPER, INC.**, a corporation that is duly incorporated and validly existing under the laws of Nevada (the “**Borrower**”); the **GUARANTORS** from time to time party hereto, **U.S. Bank Trust Company, National Association**, as Administrative Agent (in such capacity together with its successors and permitted assigns, the “**Administrative Agent**”) and as Collateral Agent (in such capacity together with its successors and permitted assigns, the “**Collateral Agent**”), and **THE FINANCIAL INSTITUTIONS** listed on Schedule A (*Commitments*) as lenders; and other parties party hereto from time to time.

**WHEREAS**, on June 9, 2024 (the “**Petition Date**”), the Borrower and certain of its affiliates and subsidiaries (collectively, the “**Debtors**” and, each individually, a “**Debtor**”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”);

**WHEREAS**, from and after the Petition Date, each of the Debtors continues to operate its business and manage its property as a debtor and a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code;

**WHEREAS**, shortly after the Petition Date, the Debtors will commence a recognition proceeding under Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) to recognize in Canada the Chapter 11 Cases (as defined herein) as “foreign main proceedings” (the “**Recognition Proceedings**”);

**WHEREAS**, the Borrower has requested, and the Senior Lenders have agreed, subject to the conditions and terms set forth herein, to commit and provide a senior secured superpriority multi-draw credit facility to the Borrower, in an aggregate principal amount not to exceed \$60,000,000;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **Article 1** **INTERPRETATION**

### **1.1 Definitions.**

For the purposes of this Agreement, the following capitalized terms shall have the following meanings:

“**Acceptable Insurer**” means:

- (a) any insurance company or international reinsurance company (i) authorized to do business in Nevada if required by law or regulation and (ii) with a minimum of “A-” or higher from A.M. Best or Standard & Poor’s Rating Services; or
- (b) any other insurance company reasonably acceptable to the Majority Lenders.

“**Accretive Investment**” means an Investment or Acquisition.

“**Account and Investment Property**” has the meaning ascribed to such term in Section 9.1(e) (*Grant of Security Interest*).

**“Acquisition”** means, with respect to any Person, any purchase or other acquisition by such Person, regardless of how accomplished or effected (including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization or by way of purchase, lease or other acquisition arrangements), of (a) any other Person (including any purchase or acquisition of such number of the issued and outstanding securities of, or such portion of an equity interest in, such other Person so that such other Person becomes a Subsidiary of the purchaser or of any of its Affiliates) or of all or substantially all of the property of any other Person, or (b) any division, business, project, operation or undertaking of any other Person or of all or substantially all of the property of any division, business, project, operation or undertaking of any other Person.

**“Additional Material Project Documents”** means each agreement (a) involving the potential expenditure by or revenue to any Obligor of more than \$1,000,000 individually and, the breach, loss or termination of which would reasonably be expected to be materially adverse to the care and maintenance of the Project or otherwise result in a Material Adverse Effect relating to the Project; or (b) involving the potential expenditure by or revenue to any Obligor of more than \$2,500,000 individually.

**“Adequate Protection Superpriority Claims”** has the meaning assigned to such term in the DIP Order.

**“Adequate Protection Liens”** has the meaning assigned to such term in the DIP Order.

**“Adequate Protection Obligations”** has the meaning assigned to such term in the DIP Order.

**“Administration Charge”** has the meaning assigned to such term in the DIP Order.

**“Administrative Agent”** has the meaning ascribed to such term in the preamble hereto.

**“Affiliate”** means, with respect to any Person, any other Person which directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

**“Agency Fee Letter”** means the fee letter of the Agent, accepted by the Borrower on June 3, 2024.

**“Agent”** means the Collateral Agent and/or the Administrative Agent.

**“Agreement”** has the meaning ascribed to such term in the preamble hereto.

**“AML Laws”** means any laws, rules or regulations relating to money laundering or terrorism financing, including, but not limited to, the Bank Secrecy Act, as amended by the USA PATRIOT ACT, and Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

**“Anti-Corruption Laws”** means any laws, rules or regulations relating to corruption or bribery, including, but not limited to, the U.S. Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1 et seq.), as amended, and the Corruption of Foreign Public Officials Act (Canada).

**“Applicable Law”** means any law (including common law and equity), any international or other treaty, any domestic or foreign constitution or any multinational, federal, provincial, territorial, state, municipal, county or local statute, law, ordinance, code, rule, regulation, Order (including any consent, decree or administrative Order), or Authorization of a Governmental Body in any case applicable to any specified Person, property, transaction or event, or any such Person’s property or assets (and, in the case of Section 7.3 (*Change in Circumstances*), whether or not having the force of law).

**“Applicable Margin”** means 9.00% per annum.

“**Applicable Percentage**” means, with respect to any Senior Lender at any time, the percentage of the total principal amount of the Loans held by such Senior Lender or, if at such time, no Loans have yet been advanced, the percentage of the Total Commitments of all Senior Lenders held by such Senior Lender at such time.

“**Approved Bidding Procedures**” means the Bidding Procedures set forth in the Bidding Procedures Motion that are approved by the Bankruptcy Court pursuant to an order of the Bankruptcy Court.

“**Approved Budget**” means the Initial Approved Budget as amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms of the Interim Order and Section 11.2 of this Agreement.

“**Approved Sale**” means a sale of all or substantially all of the Debtor’s assets pursuant to section 363 of the Bankruptcy Code consummated in accordance with the Approved Bidding Procedures and the Sale Approval Order.

“**Approved Variance Reports**” has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

“**Assigned Agreements**” has the meaning assigned to such term in Section 9.1(f) (*Grant of Security Interest*).

“**Assigned Insurance Policies**” has the meaning assigned to such term in Section 9.1(i) (*Grant of Security Interest*).

“**Aurubis Offtake Agreement**” means that certain offtake agreement, dated May 6, 2019, entered into by and among the Borrower, Concord as Borrower’s agent, and Aurubis AG, Hamburg, Germany and Aurubis Bulgarias AD, Pirdop, Bulgaria.

“**Authorization**” means any authorization, approval, consent, concession, exemption, license, lease, grant, permit, franchise, right, privilege or no-action letter from any Governmental Body having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person’s property or business and affairs (including any zoning approval, mining permit, development permit or building permit) or from any Person in connection with any easements, contractual rights or other matters.

“**Automatic Stay**” shall mean the automatic stay imposed pursuant to section 362 of the Bankruptcy Code.

“**Avoidance Actions**” has the meaning assigned to such term in the DIP Order.

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time.

“**Bankruptcy Code**” has the meaning ascribed to such term in the recitals.

“**Bankruptcy Court**” has the meaning ascribed to such term in the recitals.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Bidding Procedures**” has the meaning given to it in Section 11.13(g)(i) (*Milestones*).

“**Bidding Procedures Motion**” has the meaning given to it in Section 11.13(g) (*Milestones*).

“**Bidding Procedures Order**” has the meaning given to it in Section 11.13(g) (*Milestones*).

“**Borrower**” has the meaning ascribed to such term in the preamble hereto.

“**Break Costs**” means the amount (if any) by which:

- (a) the interest which a Senior Lender should have received for the period from the date of funding (or proposed funding) of all or any part of its participation in the Loans to the last day of the current Interest Period in respect of the Loans, had the Loans been made and the principal amount been paid on the last day of such Interest Period;

exceeds:

- (b) the sum of the amount it did receive as interest plus the amount which such Senior Lender would be able to obtain by placing an amount equal to the principal amount received by it on deposit with a leading bank in the interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Budget Period**” means the thirteen-week period set forth in the Approved Budget in effect at such time.

“**Business**” means the maintenance and care of, and sale of Minerals (to the extent extracted prior to the Entry Date) from, the Underground Project.

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in any one of New York City, New York; Reno, Nevada; or Vancouver, British Columbia Canada or a day on which banks are generally closed in any one of those cities.

“**Canadian Collateral**” means the Collateral of the Debtors located in Canada.

“**Canadian Court**” has the meaning ascribed to such term in the recitals.

“**Canadian Priority Charges**” means the Administration Charge and the DIP Charge.

“**Capital Expenditures**” means expenditures (including in respect of any Capitalized Lease Obligations) made by (or on behalf of) the Borrower to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding repairs) during such period computed in accordance with the IFRS applicable to the Borrower (other than (a) such expenditures paid out of Net Insurance Proceeds, (b) replacement property acquired with asset sale proceeds in accordance with the terms of the Finance Documents and (c) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent of any credit granted by the seller of such equipment for the equipment being traded in at such time).



“**Capital Stock**” shall mean, with respect to any Person, any and all shares (whether common or preferred), interests, participations, certificates and other instruments, partnership interests or other equity or ownership interests in such person (however designated and whether or not voting) and any warrants, rights or options to purchase any of such equity or ownership interests.

“**Capitalized Lease Obligation**” means, for any Person, any payment obligation of such Person under an agreement for the lease, license or rental of, or providing such Person with the right to use, property that, in accordance with IFRS, is required to be classified and accounted for as capital leases on a balance sheet of such Person and the amount of such obligation shall be the capitalized amount thereof determined in accordance with IFRS.

“**Carve-Out**” has the meaning assigned to such term in the DIP Order.

“**Cash Management Order**” an order of the Bankruptcy Court, in form and substance satisfactory to the Administrative Agent and the Majority Lenders, authorizing the Debtors to continue their cash management system and/or continue performing intercompany transfers.

“**CAT Equipment Lease**” means that certain Master Equity Lease Agreement, dated February 8, 2019, by and between the Borrower and Caterpillar Financial Services Corporation.

“**CCAA**” has the meaning ascribed to such term in the recitals.

“**Change of Control**” means:

- (a) the Parent ceases to have control or direction (directly or indirectly) over 100% of the outstanding voting shares and economic interests of the Borrower or its Subsidiaries, or otherwise ceases to have the ability (directly or indirectly) to elect a majority of the board of directors of any such Obligor;
- (b) Pala ceases to have control or direction (directly or indirectly) over 19.9% of the outstanding voting shares and economic interests of the Parent;
- (c) the occupation of a majority of the seats (other than vacant seats) on the board of directors of an Obligor by an entity which is neither (i) nominated by such board of directors nor (ii) appointed by directors so nominated as of the date hereof; or
- (d) Pala or any Obligor, as applicable, takes any actions to effect any of the foregoing.

“**Chapter 11 Cases**” means the chapter 11 cases of the Obligors which are being jointly administered under the Bankruptcy Code and are pending in the Bankruptcy Court.

“**Claim**” means any claim, loss or liability of any nature whatsoever, including but not limited to administrative, regulatory enforcement or judicial or equitable action, claim, suit, or judgment by any other Person or any written notice by any Governmental Body.

“**Collateral**” has the meaning given to it in Section 9.1 (*Grant of Security Interest*) and the term “DIP Collateral” in the DIP Order.

“**Collateral Accounts**” means, collectively, the accounts set forth on Schedule R.

“**Collateral Agent**” has the meaning ascribed to such term in the preamble hereto.



“**Commercial Tort Claims Collateral**” has the meaning assigned to such term in Section 9.1(h) (*Grant of Security Interest*).

“**Commitment**” means, an Interim Commitment and/or Final Commitment.

“**Compounded SOFR Calculated Daily Rate**” means the percentage rate per annum calculated by the Administrative Agent (rounded if necessary to five decimal places with 0.000005 being rounded upwards) which results from the formula set out below:

$$\left[ \prod_{i=1}^{d_b} \left( 1 + \frac{r_i * n_i}{360} \right) - 1 \right] * \frac{360}{d_c}$$

where:

$d_b$  is, for any Observation Period, the number of US SOFR Banking Days in that Observation Period.

$d_c$  is the number of calendar days in that Observation Period.

$i$  is a series of whole numbers from 1 (one) to  $d_b$ , each representing the relevant US SOFR Banking Day in chronological order from, and including, the first US SOFR Banking Day in the relevant Observation Period.

$r_i$  is the SOFR Daily Rate applicable on US SOFR Banking Day  $i$  in the relevant Observation Period, as published on the US SOFR Banking Day immediately after US SOFR Banking Day  $i$ .

$n_i$  is, for any US SOFR Banking Day “ $i$ ” in the relevant Observation Period, the number of calendar days for which rate  $r_i$  applies, being the number of calendar days from (and including) such US SOFR Banking Day “ $i$ ” to (but excluding) the following US SOFR Banking Day, irrespective of whether that following US SOFR Banking Day is included in the Observation Period. (Therefore, on most days,  $n_i$  will be 1, but on a Friday it will generally be 3, and it will also be greater than 1 on the US SOFR Banking Day before a holiday).

“**Compounded SOFR Calculated Index Rate**” means the percentage rate per annum calculated by the Administrative Agent (rounded if necessary to five decimal places with 0.000005 being rounded upwards) which results from applying the formula set out below:

$$\left( \frac{SOFR\ Index_{End}}{SOFR\ Index_{Start}} - 1 \right) * \left( \frac{360}{d_c} \right)$$

where:

$SOFR\ Index_{Start}$  is the value of the SOFR Index that is applicable to the first day of the Observation Period relating to the relevant Interest Period;

$SOFR\ Index_{End}$  is the value of the SOFR Index that is applicable to the last day of the Observation Period relating to the relevant Interest Period; and

$d_c$  is the number of calendar days in the relevant Observation Period.

“**Compounded SOFR Primary Screen Rate**” means the publicly available percentage rate per annum (before any correction, recalculation or republication by its administrator) which:

- (a) is constituted primarily by the daily compounding of the SOFR reference rate over a period similar to the Observation Period and uses a compounding methodology which is the same as that specified in this Agreement for the calculation of the Compounded SOFR Calculated Daily Rate;
- (b) is produced by an administrator;
- (c) is made available no later than the following US SOFR Banking Day on which the Observation Period to which it relates ends; and
- (d) is specified as the “Compounded SOFR Primary Screen Rate” by the Administrative Agent in a Technical Adjustment Notification.

“**Compounded SOFR Reference Rate**” means each of the Compounded SOFR Primary Screen Rate, the Compounded SOFR Calculated Index Rate and the Compounded SOFR Calculated Daily Rate.

“**Computer Software**” has the meaning assigned to such term in Section 9.1(g)(iv) (*Grant of Security Interest*).

“**Concord**” means Concord Resources Limited.

“**Confidential Information**” has the meaning given to it in Section 23.1 (*Confidential Information*).

“**Contested**” or “**Contest**” means, with respect to any matter or claim involving any Person, that such Person is contesting such matter or claim in good faith and by appropriate proceedings timely instituted; provided, that the following conditions are satisfied:

- (a) such Person has posted a bond or other security acceptable to the Administrative Agent or has established adequate reserves with respect to the contested items in accordance with IFRS;
- (b) during the period of such contest, the enforcement of any contested item is effectively stayed; and
- (c) such contest and any resultant failure to pay or discharge the claimed or assessed amount does not, and could not reasonably be expected to, result in a Material Adverse Effect or the sale, forfeiture or loss of any material part of the Collateral.

“**Contract**” means any agreement, contract, lease, license, concession, option, indenture, or other instrument or similar arrangement.

“**Contract Rights**” means all of the applicable Obligor’s right, title and interest in and to each and all of the Project Documents, including but not limited to: (a)(i) all of the applicable Obligor’s rights to payment, accounts and payment intangibles under any such Project Document and (ii) all payments, accounts and payment intangibles due and to become due to such Obligor under each such Project Document, whether as contractual obligations, damages or otherwise; (b) all of such Obligor’s claims, rights, powers or privileges and remedies under any such Project Document, including all general intangibles, whether as

contractual obligations, damages or otherwise; (c) all rights of the Obligor to receive any proceeds of any payment or performance bond, insurance, indemnity, warranty or guaranty with respect to any such Project Document; and (d) all of the Obligor's rights under any such Project Document to take any action, to make determinations, to exercise any election (including, but not limited to, election of remedies) or option to give or receive any notice, consent, waiver or approval with respect to any such Project Document, together with full power and authority to demand, receive, enforce, collect or receive any of the foregoing rights or any Project Property which is the subject of any such Project Document, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which may be necessary or advisable in connection with any of the foregoing.

**“Contractual Obligation”** means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Control”** means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power including the ownership of voting securities, by contract or otherwise in respect of both ordinary and extraordinary matters (including reorganization, restructuring and the amendment of any applicable constitutional document). **“Controlled”** shall have the meaning correlative thereto.

**“Corrective Action Plan”** means a written plan from the Borrower approved by the Administrative Agent to correct and remedy any E&S Event, which plan shall include:

- (a) the proposed actions to specifically correct, and to remedy damage caused by, such E&S Event;
- (b) the proposed assignment of primary responsibility for implementing such proposed actions;
- (c) a time schedule for implementing such proposed actions to remedy the E&S Event, including the start date, the estimated end date and key milestones; and
- (d) an estimated cost for implementing such actions or any other costs arising from the E&S Event.

**“Creditors’ Committee”** has the meaning assigned to such term in Section 2.3 (*Purpose and Use of Proceeds*).

**“Credit Spread Adjustment”** means 10 basis points per annum.

**“Debt”** means, at any time, with respect to any Person, without duplication:

- (a) all obligations, that would be considered to be indebtedness for borrowed money, and all obligations, whether or not with respect to the borrowing of money, that are evidenced by bonds, debentures, notes or other similar instruments;
- (b) the face amount of all bankers’ acceptances and similar instruments;
- (c) any capital stock of that Person, or of any Subsidiary of that Person, which capital stock, by its terms or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder, or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part;

- (d) all Capitalized Lease Obligations, synthetic lease obligations, obligations under Sale-Leasebacks and Purchase Money Obligations;
- (e) the amount of all contingent liabilities in respect of letters of credit and similar instruments;
- (f) (i) all obligations in respect of the deferred purchase price of property and (ii) accounts payable and accruals, in each case that are over one hundred twenty (120) days past due (except to the extent being Contested or subject to stay of collection pursuant to the Automatic Stay);
- (g) any hedging, swap, forward, option, future or other derivative transaction (it being understood that when calculating the value of any such Debt, only the marked-to-market value shall be considered);
- (h) contingent liabilities in respect of performance bonds and surety bonds, in each case only to the extent that the contingent liability is required by IFRS to be treated as a liability on a balance sheet of the Person contingently liable; and
- (i) the amount of the contingent liability under any Guarantee of all or any part of an obligation of another Person of the type included in paragraphs (a) through (h) above.

**“Debtor”** has the meaning ascribed to such term in the recitals.

**“Default”** means any event or condition which, upon notice, lapse of time, or both, would constitute an Event of Default.

**“DIP Charge”** means the superpriority charge on the Canadian Collateral granted by the Canadian Court in favor of the Senior Lenders pursuant to the Interim DIP Recognition Order, which DIP Charge shall be subordinate to the Administration Charge.

**“DIP Order”** means the Interim Order, unless the Final Order shall have been entered, in which case it means the Final Order.

**“DIP Recognition Order”** means the Interim DIP Recognition Order and the Final DIP Recognition Order, as applicable under the circumstances.

**“Disposition”** means any sale, assignment, transfer, conveyance, lease, license, granting of an option or other disposition (or agreement to dispose) of any nature or kind whatsoever of any property or of any right, title or interest in or to any property, but does not include the payment of a dividend, and the verb **“Dispose”** has a correlative meaning.

**“E&S Event” means:**

- (a) (i) any event, incident, accident or condition, including any Environmental or Social Matter, that has had, or would reasonably be expected to have, a Material Adverse Environmental and Social Effect or (ii) non-compliance by the Borrower or its Subsidiaries with any Environmental and Social Requirement that has either resulted in material damage to the Environment; or
- (b) any event, incident, accident or condition, including any Environmental or Social Matter, that requires a material corrective action by, or imposes material liability upon, Borrower or any of its Subsidiaries pursuant to any Environmental and Social Requirement.

“**EEA Member Country**” means any member state of the European Union, Iceland, Liechtenstein and Norway, as well as any other country which becomes an EEA Member country in the future.

“**Encumbrance**” means any mortgage, debenture, pledge, hypothec, lien, charge, deed of trust, trust arrangement, assignment by way of security, contractual right of set-off, consignment, lease, hypothecation, security interest, including a purchase money security interest, or other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and “**Encumbered**”, “**Encumbrancer**” and “**Encumbrances**” shall have corresponding meanings.

“**Entitled Person**” has the meaning assigned to that term in Section 25.8 (*Judgment Currency*).

“**Entry Date**” has the meaning ascribed to such term in the preamble hereto.

“**Environment**” means all or any of the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers);
- (c) soil and land (including, without limitation, land under water); and
- (d) any ecological systems, animals, plants and all other living organisms supported by these media.

“**Environmental and Social Requirements**” means all Environmental Laws, the Performance Standards, Equator Principles and any Corrective Action Plan.

“**Environmental Bond**” means each environmental bond to be provided and maintained in accordance with the Environmental Licenses and Environmental Law.

“**Environmental Claim**” means any Claim alleging or asserting that, in relation to the Project, the Borrower or any of its Subsidiaries is liable under any Environmental and Social Requirements for investigatory costs, cleanup costs, remediation, corrective action, governmental response costs, damage to natural resources (including without limitation wetlands, wildlife, aquatic and terrestrial flora and fauna), damage to the Environment, damage to property, personal injuries, or fines or penalties, in each case arising out of, based on or resulting from:

- (a) any Release;
- (b) any violation of any Environmental Law; or
- (c) any other Environmental or Social Matter.

“**Environmental Law**” means all Applicable Laws of any Governmental Body relating to the protection of the Environment, natural resources, Hazardous Substances including human health and safety, as such relates to exposure to Hazardous Substances, and the rehabilitation, reclamation and closure of lands used in connection with, the Project.

“**Environmental License**” means each Project Authorization required or issued pursuant to Environmental Law or with respect to any Environmental or Social Matter.

**“Environmental or Social Matter”** means:

- (i) any Release of Hazardous Substances into the Environment;
- (ii) any nuisance, noise, health and safety at work, industrial illness, or industrial injury due to environmental factors;
- (iii) any conservation, preservation or protection of the Environment;
- (iv) any conservation of archaeological and historical sites;
- (v) any resettlement of or adverse impact to indigenous peoples;
- (vi) labor, worker rights or human rights;
- (vii) any community impact or development activities; and
- (viii) any other matter whatsoever relating to human, environmental or social issues or health and safety that has or could reasonably be expected to have a significant adverse impact or risk relating to the Project.

**“Epiroc Equipment Lease”** means that certain Master Lease Agreement, dated July 10, 2018, by and between the Borrower and Epiroc Financial Solutions USA LLC.

**“Equator Principles”** means those principles set out in the paper entitled “A financial industry benchmark for determining, assessing and managing environmental and social risk in projects” dated June 2013 and available at: [https://equator-principles.com/wp-content/uploads/2017/03/equator\\_principles\\_III.pdf](https://equator-principles.com/wp-content/uploads/2017/03/equator_principles_III.pdf).

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

**“Event of Default”** has the meaning ascribed to it in Section 13.1 (*Events of Default*).

**“Event of Loss”** means an event which causes all or a substantial portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever including through a failure of title.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Senior Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Senior Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Senior Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Senior Lender acquires such interest in the Loan or Commitment or (ii) such Senior Lender changes its lending office, except in each case to the extent that, pursuant to Section 6.1 (*Taxes*), amounts with respect to such Taxes were payable either to such Senior Lender’s assignor immediately before such Senior Lender became a party hereto or to such Senior Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 6.1(g) (*Taxes*) and (d) any withholding Taxes imposed under FATCA.



“**Existing Lender**” has the meaning ascribed to it in Section 14.1(b) (*Assignment to by Senior Lenders*).

“**Exit Fee**” has the meaning ascribed to it in Section 5.9(c) (*Exit Fee*).

“**Exit Fee Event**” has the meaning ascribed to it in Section 5.9(c) (*Exit Fee*).

“**Expropriation Event**” means, with respect to any Project Property (including any rights to use the Project Property) or equity interests of the Borrower or Subordinated Intercompany Debt issued by the Borrower, any action or series of actions, omission or series of omissions, that has the effect of:

- (a) a *de jure* or *de facto* taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation, rescission or similar action or proceeding, by a Governmental Body of:
  - (i) all or a material portion of the Project;
  - (ii) all or a material portion of the assets of the Borrower (including the RGGS Lease); or
  - (iii) the equity interests of or Subordinated Intercompany Debt issued by the Borrower;

provided, that (A) insofar as such action relates to a material portion of the Project or the assets of the Borrower, such action shall cause or reasonably be likely to cause a material adverse impact on deliveries of copper on the terms set forth in the Finance Documents or the ability of such Person to operate the Project or perform its obligations under the Finance Documents or (B) such action shall (1) result in a material loss (in each case), irreparable damage to, destruction of any, or diminution in value of the Collateral or otherwise materially and adversely affect (x) the ability of the Secured Parties to access or utilize Collateral or (y) the liens granted in the Collateral pursuant to the Finance Documents or (2) impair to any material extent the validity or priority of any security interest purported to be granted to the Secured Parties under the Finance Documents, except for negotiated expropriations by the government, planned for and agreed upon as part of, and that would not reasonably be expected to result in a material impact on, the expected normal operations of the Project, subject to the approval of the Majority Lenders, such approval not to be unreasonably withheld; or

- (b) any taking or any action by a Governmental Body for the dissolution or disestablishment of the Borrower;
- (c) actually depriving the Borrower whether *de jure* or *de facto* by the implementation of Applicable Law or actions by Governmental Bodies of its rights necessary to construct or operate the Underground Project; or
- (d) a decision of a judicial or arbitral tribunal with respect to any of the events described in paragraphs (a) through (c) above;

provided, that no action described in paragraph (a), (b), (c) or (if the decision of a judicial tribunal or arbitral tribunal is with respect to the events described in paragraph (a), (b) or (c)) (d) above shall constitute a Expropriation Event if it is a *bona fide* non-discriminatory measure of general application of a kind that governments normally take for such purposes as ensuring public safety, protecting the Environment or regulating economic activities, and, where applicable, adequate compensation has been paid to the affected party and does not have a confiscatory effect.

“**Extraordinary Receipts**” means any cash received by or paid to or for the account of any Obligor or any of its Subsidiaries not in the ordinary course of business after the Petition Date consisting of (i) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action that was pending as of the Petition Date, (ii) foreign, United States, state, or local Tax refunds, in each case, net of reasonable and documented costs and expenses associated therewith; provided that, Extraordinary Receipts shall not include sales tax receipts contemplated to be received by any of the Obligors as set forth in the Approved Budget).

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Bodies and implementing such Sections of the IRC.

“**Final Commitment**” means, in respect of each Senior Lender at any time, the amount specified with respect to such Senior Lender on Schedule A (*Commitments*) (as amended in accordance with Section 14.1 (*Assignment by Senior Lenders*) from time to time), as such amount may be reduced from time to time by such Senior Lender’s Applicable Percentage of any cancellation of any unused portion of the Final Commitment.

“**Final DIP Recognition Order**” means an order of the Canadian Court in the Recognition Proceedings recognizing the Final Order in the Recognition Proceedings and giving it full force and effect in Canada, in a form acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower on the other hand.

“**Final Loans**” means the loans extended pursuant to Section 2.1(b) (*Loan*).

“**Final Order**” means an order of the Bankruptcy Court in the Chapter 11 Cases, substantially in the form of the Interim Order or with such changes (other than conforming changes necessary to transform the Interim Order into the Final Order) acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower, on the other hand, authorizing and approving on a final basis, among other things, the borrowings by the Borrower under this Agreement.

“**Finance Documents**” means:

- (a) this Agreement;
- (b) the DIP Order;
- (c) each Note;
- (d) the Agency Fee Letter; and
- (e) any Transfer Certificate;

and all other agreements, instruments and documents from time to time (both before and after the date of this Agreement) designated as such by the Administrative Agent and the Borrower.

“**Finance Party**” means each Senior Lender and the Agents.



**“Financial Statements”** means the financial statements required to be delivered pursuant to Sections 11.7(b) (*Quarterly Financial Reporting*).

**“First Day Orders”** has the meaning given to it in Section 12.1(g) (*Conditions Precedent to the Interim Loan*).

**“First Lien Facility”** means that certain Second Amended and Restated Credit Agreement, entered into on or about the October 28, 2022, among the Borrower, the Guarantors, the lenders party thereto and KfW IPEX-Bank as administrative agent (as amended, amended and restated, supplemented or otherwise modified from time to time).

**“First Reporting Date”** has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

**“Fiscal Quarter”** means each calendar quarter ending on March 31, June 30, September 30 and December 31 of each year.

**“Fiscal Year”** means the period of January 1 to December 31 of each year.

**“Foreign Senior Lender”** means a Senior Lender that is not a U.S. Person.

**“Fourth Lien Facility”** means that certain Third Amended and Restated Loan Agreement, dated as of December 21, 2023, by and among Parent, as borrower, Borrower, as guarantor, the other guarantors party thereto, the lenders party thereto and Pala, as agent and lead arranger (as amended, amended and restated, supplemented or otherwise modified from time to time).

**“Funding Rate”** means in relation to a Loan and Interest Period, the rate which expresses as a percentage rate per annum the average cost (determined either on an actual or a notional basis) which a Senior Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the relevant Loan for a period equal in length to that Interest Period.

**“Good Industry Practice”** means, in relation to any decision, undertaking, practice, method or act, the exercise of that degree of diligence, skill, care, prudence, oversight, economy and stewardship which is commonly observed by skilled and experienced professionals in the United States of America engaged in the mining industry in the same type of decision, undertaking, practice, method or act, as the case may be, under, and with the same or similar circumstances and/or degree of complexity to accomplish the desired result in a manner consistent with applicable standards, equipment manufacturing recommendations, good business practice, reliability, safety, dependability, efficiency, environmental protection and Applicable Law.

**“Governmental Body”** means the government of the United States of America or Canada or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, arbitrator or arbitrators, tribunal, central bank or enterprise that is owned, sponsored, or controlled by any government, or any other entity exercising executive, legislative, judicial or arbitral, taxing, regulatory or administrative powers or functions or pertaining to government (including any supra- national bodies such as the European Union or the European Central Bank) and in each case having jurisdiction over an Obligor, the Project, the Project Property or the Finance Documents, as the context may require.

**“Guarantee”** means, with respect to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Debt of another, including any such Debt directly or indirectly guaranteed,

endorsed (otherwise than for collection or deposit in the ordinary course of business) or discounted or sold with recourse by such Person, or in respect of which such Person is otherwise directly or indirectly liable, including any such Debt in effect guaranteed by such Person through any agreement (contingent or otherwise) to purchase, repurchase or otherwise acquire such Debt or any security therefor, or to provide funds for the payment or discharge of such Debt (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain the solvency or any balance sheet or other financial condition of the obligor of such Debt (including keep-well covenants), or to make payment for any products, materials or supplies or for any transportation or services regardless of the non-delivery or non-furnishing thereof, in any such case if the purpose or intent of such agreement is to provide assurance that such Debt will be paid or discharged, or that any agreements relating thereto will be complied with, or that the lender of such Debt will be protected against loss in respect thereof. The amount of any guarantee shall be equal to the outstanding principal amount of the Debt guaranteed or such lesser amount to which the maximum exposure of the guarantor shall have been specifically limited.

**“Guaranteed Obligations”** has the meaning ascribed to it in Section 10.1(a) (*Guaranty; Limitation of Liability*).

**“Guarantors”** means Parent and each Subsidiary thereof that Guarantees the Obligations pursuant to Article 10 (*Guaranty*).

**“Guaranty”** has the meaning ascribed to it in Section 10.1(a) (*Guaranty; Limitation of Liability*).

**“Hazardous Substances”** means any pollutant, contaminant or deleterious, hazardous or toxic substances, materials or wastes defined, listed, regulated or prohibited in or by any applicable Environmental Law, including toxic mine tailings; radioactive materials; flammable substances; explosives; petroleum and petroleum products; polychlorinated biphenyls; chlorinated solvents; and asbestos or asbestos-containing materials.

**“Hedge Agreements”** means any agreement or instrument relating to hedging, swap, forward, option, future or other derivative transactions in respect of interest rate or copper price exposure (including a swap, option, cap, collar or floor).

**“Hedge Termination Value”** means, in respect of any Hedge Agreement, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreement:

- (a) for any date on or after the date such Hedge Agreement has been closed out and termination value determined in accordance therewith, such termination value; and
- (b) for any date prior to the date referenced in paragraph (a) above, the amount determined as the mark-to-market value for such Hedge Agreement, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreement.

**“IFC Environmental, Health and Safety Guidelines”** means the following guidelines:

- (a) IFC General Environmental, Health and Safety Guidelines (2007); and
- (b) IFC Environmental, Health and Safety Guidelines for Mining (2007).

**“IFRS”** means the International Financial Reporting Standards adopted by the International Accounting Standards Board from time to time.

“**Indemnified Party**” has the meaning ascribed to such term in Section 7.5(a).

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Finance Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“**Information Officer**” means the information officer appointed by the Canadian Court in the Recognition Proceedings.

“**Initial Approved Budget**” means the first thirteen-week cash flow forecast that has been approved by the Senior Lenders on the Petition Date.

“**Initial Pledged Interests**” has the meaning ascribed to such term in Section 9.1(e)(ii) (*Grant of Security Interest*).

“**Initial Recognition Order**” means an order of the Canadian Court recognizing the Chapter 11 Cases in form and substance satisfactory to the Administrative Agent and the Senior Lenders in their sole discretion.

“**Interest Payment Date**” means, subject to Article 5 (*Interest, Interest Periods and Fees*), the first Business Day of each month.

“**Interest Period**” means each period determined in accordance with Article 5 (*Interest, Interest Periods and Fees*) of this Agreement and, in relation to overdue amounts, each period determined in accordance with Section 5.2 (*Default Interest*).

“**Interest Rate**” means any interest rate determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*).

“**Interim Commitment**” means, in respect of each Senior Lender at any time, the amount specified with respect to such Senior Lender on Schedule A (*Commitments*) (as amended in accordance with Section 14.1 (*Assignment by Senior Lenders*) from time to time), as such amount may be reduced from time to time by such Senior Lender’s Applicable Percentage of any cancellation of any unused portion of the Interim Commitment.

“**Interim DIP Recognition Order**” means an order of the Canadian Court in the Recognition Proceedings in such form acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, recognizing the Interim Order in the Recognition Proceedings and giving it full force and effect in Canada and granting the DIP Charge, which order for greater certainty may be the supplemental recognition order granted by the Canadian Court concurrently with the Initial Recognition Order.

“**Interim Loans**” means the loans extended pursuant to Section 2.1(a) (*Loan*).

“**Interim Order**” means an order issued by the Bankruptcy Court in the Chapter 11 Cases substantially in the form of Schedule E (*Interim Order*) or with such changes acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower, on the other hand, authorizing and approving on an interim basis, among other things, the borrowings by the Borrower under this Agreement.

“**Investment**” means, with respect to any Person, the making by such Person of:

- (a) any direct or indirect investment in or purchase or other acquisition of the securities of or an equity interest in any other Person;
- (b) any loan or advance to, or arrangement for the purpose of providing funds or credit to (excluding extensions of trade credit in the ordinary course of business in accordance with customary commercial terms and excluding advances of cash from the Borrower to Parent in accordance with the terms of the Cash Management Order), any other Person; or
- (c) Investments consisting of money deposits required in connection with surety bonds;
- (d) any capital contribution to (whether by means of a transfer of cash or other property or any payment for property or services for the account or use of) any other Person; provided, that, for greater certainty, an Acquisition shall not be treated as an Investment.

“**IRC**” means the US Internal Revenue Code of 1986, as amended.

“**IRS**” means the United States Internal Revenue Service.

“**Issuer**” means, individually or collectively as the context may require, each of (i) the Borrower, (ii) 0607792 B.C. Ltd., a limited company incorporated under the laws of British Columbia, Canada, and (iii) Lion Iron Corp., a corporation incorporated under the laws of the State of Nevada.

“**Judgment Currency**” has the meaning assigned to that term in Section 25.8 (*Judgment Currency*).

“**KfW IPEX-Bank**” means KfW IPEX-Bank GmbH.

“**Lag Time**” means the time period as stipulated under Section 5.2(d) (*Interest Rate*).

“**Loans**” means, collectively or individually as context requires, the Interim Loans and the Final Loans.

“**Majority Lenders**” means, at any time, one or more Senior Lenders holding in the aggregate more than fifty percent (50%) of the Commitments or, if Loans have been made, of outstanding principal amount of the Loans.

“**Majuba/Renegade Royalty Deed**” means that certain Royalty Deed, dated August 21, 2006, by and between the Borrower, Majuba Mining Ltd. and Renegade Resources Corporation.

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the business, assets, results of operations or financial condition of the Borrower and the Guarantors taken as a whole, excluding the effect of filing the Chapter 11 Cases, the events and conditions customarily resulting from the commencement and continuation of the Chapter 11 Cases, the effects thereof and any action required to be taken under the Finance Documents or the DIP Order, and the Chapter 11 Cases themselves;
- (b) [reserved];
- (c) the ability of the Borrower or any other Obligor, to consummate the transactions contemplated by the Finance Documents or to perform its obligations under the Finance Documents in accordance with their respective terms;
- (d) the validity, legality or enforceability of any Finance Document;

- (e) the rights and remedies of the Administrative Agent or Senior Lenders under the Finance Documents; or
- (f) the validity or priority of any security interest in the Collateral purported to be granted to any Secured Party under the DIP Order.

**“Material Adverse Environmental and Social Effect”** means:

- (a) any fatality;
- (b) any material adverse community or worker-related impact, including any protestation or challenge to the Project; or
- (c) any Environmental or Social Matter that is materially adverse to the Environment or the community or requires material measures or corrective action to remediate or restore the Environment or causes material damage to critical habitats or endangered, threatened or other protected species.

**“Material Project Authorizations”** means any Project Authorization, the breach, loss, modification or termination of which, or failure to obtain, could reasonably be expected to have a material adverse effect on the development, construction, procurement, engineering or operation of commercial production (including commercial production transactions) of the Underground Project.

**“Material Project Documents”** means (a) the RGGS Lease, (b) the NV Energy Power Supply Contract, (c) that certain water service agreement, dated August 10, 2009, by and between the Borrower and the City of Yerington, as amended, and (d) the Additional Material Project Documents, if any.

**“Maturity Date”** means the earliest to occur of (i) the date that is four (4) months following the Petition Date, (ii) forty-five (45) calendar days after the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or before such date, (iii) fourteen (14) calendar days after the Petition Date if the Interim DIP Recognition Order has not been entered by the Canadian Court on or before such date, (iv) the date of consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, (v) the date of “substantial consummation” (as defined in section 1101 of the Bankruptcy Code, and which for purposes hereof shall be no later than the “effective date” thereof) of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court, (vi) the date of entry of an order by the Bankruptcy Court approving (a) a motion seeking conversion or dismissal of any or all of the Chapter 11 Cases or (b) a motion seeking appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtors’ business, (vii) the date the Bankruptcy Court orders the conversion of the bankruptcy case of any of the Debtors to a liquidation pursuant to chapter 7 of the Bankruptcy Code, and (viii) the date of acceleration of all or any portion of the Loans and the termination of the Commitments upon the occurrence of an Event of Default.

**“Minerals”** means any and all marketable metal bearing material in whatever form or state that is mined, produced, extracted, severed or otherwise recovered from the Project Real Property, and including any such material derived from any processing or reprocessing of any tailings, waste rock or other waste products originally derived from the Project Real Property, and including ore, concentrates, doré, specimens, minerals in solution and any other products resulting from the further milling, processing or other beneficiation of Minerals whether stored or stockpiled on the Project Real Property or elsewhere.

**“Monthly Operations Report”** means a written report prepared by or on behalf of the Borrower in relation to the immediately preceding calendar month (consistent with generally accepted operational reporting

standards common in the mining industry), which report shall include all material information pertaining to the development, production or operations of the Project, including the following information for such quarter:

- (a) a review of the operating activities for the quarter and a report on any material issues arising in connection with the operation and maintenance of the Project;
- (b) details of any new material environmental, social, health or safety activities or events, including any material E&S Events, Environmental Claims, or any material non-compliance with the Environmental and Social Requirements;
- (c) such other information regarding the performance of the Borrower's obligations under the Finance Documents as the Majority Lenders may reasonably request; and
- (d) details of planned or actual material maintenance.

The Monthly Operations Report shall also contain a report on any Encumbrances placed on the Collateral after the Petition Date securing amounts greater than \$1,000,000 in the aggregate, other than the Security.

**"Net Cash Proceeds"** means, with respect to any sale of, or any dividend, distribution, return of capital or other return on investment in respect of equity interests, the cash proceeds thereof, net of all Taxes and customary fees, discounts, commissions, costs and other expenses incurred in connection therewith.

**"Net Disposition Proceeds"** means, with respect to any disposition of assets or Expropriation Event, the aggregate amount of cash payments net of (a) the amount of any costs, expenses, commissions and fees paid or payable by or on behalf of the Borrower in connection with such disposition (as evidenced by supporting documentation provided to the Senior Lenders upon request), and (b) any Taxes imposed on and payable or reasonably estimated to be payable by the Borrower as a result of such disposition.

**"Net Insurance Proceeds"** means the aggregate cash proceeds of (a) business interruption insurance (only to the extent the Project is being abandoned) and (b) insurance received by the Borrower in respect of any loss, damage to or destruction of any of the Collateral, in each case, after deducting therefrom all reasonable fees, costs and expenses (including legal and accounting fees) incurred in connection with the collection of such proceeds (as evidenced by supporting documentation provided to the Senior Lenders upon request), without deduction for any insurance premiums or similar payments; provided, however, that insurance proceeds arising from third- party liability insurance shall not constitute Net Insurance Proceeds.

**"Normet Equipment Lease"** means that certain equipment lease agreement, dated January 17, 2019, by and between the Borrower and Normet Americas, Inc.

**"Note"** has the meaning ascribed to such term in Section 2.5(b) (*Evidence of Debt*).

**"NV Energy Power Supply Contract"** means that certain power supply agreement dated November 30, 2018, by and between the Borrower and Sierra Pacific Power Company d/b/a NV Energy as amended by the First Amendment to the Rule 9, Section B.2 High Voltage Distribution Agreement, dated February 21, 2019.

**"NY Fed OBFR"** means the overnight bank funding rate as provided by the Federal Reserve Bank of New York (or a successor administrator) on the New York Fed's Website (currently published on: <https://apps.newyorkfed.org/markets/autorates/obfr>).



**“NY Fed OBFR Adjustment Spread”** means the arithmetic mean (calculated by the Administrative Agent) of the daily difference between SOFR and the NY Fed OBFR over an observation period of the thirty (30) most immediately preceding US SOFR Banking Days for which SOFR was Available.

**“NY Fed Target Rate”** means the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York on the Federal Reserve’s Website from time to time or, if the Federal Open Market Committee does not target a single rate, the mid-point of the short-term interest rate target range set by the Federal Open Market Committee as published on the Federal Reserve’s Website (calculated as the arithmetic average of the upper bound of the target range and the lower bound of the target range, rounded, if necessary, upwards to five (5) decimal places).

**“NY Fed Target Rate Adjustment Spread”** means in relation to the NY Fed Target Rate prevailing at the close of business on a US SOFR Banking Day, the twenty (20) percent trimmed arithmetic mean (calculated by the Administrative Agent) of the daily difference between SOFR and the NY Fed Target Rate over an observation period of the five (5) most immediately preceding US SOFR Banking Days for which SOFR was Available.

**“Obligations”** means all indebtedness, liabilities, indemnities and other obligations owed by any Obligor to any Secured Party hereunder or under any other Finance Document, whether actual or contingent, direct or indirect, matured or not, now existing or hereafter arising (including any fees or premium payable hereunder, including the Exit Fee).

**“Obligor”** means each of the Borrower and the Guarantors.

**“Observation Period”** means, in relation to an Interest Period, the time period the beginning of which and the end of which is in each case the Lag Time before the beginning and the end of the relevant Interest Period to which such Observation Period belongs (including the first day but excluding the last day of such time period).

**“OFAC”** means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**“Officer’s Certificate”** means a certificate signed on behalf of any Obligor by the chief executive officer, the chief financial officer or any other officer or representative who has been given sufficient powers and authority under Applicable Law and such Obligor’s constitutional documents (or powers of attorney or written resolutions executed in accordance with such Obligor’s constitutional documents) and, in each case, whose name appears on a certificate of incumbency delivered to the Administrative Agent concurrently with the execution of this Agreement, as such certificate of incumbency may be amended from time to time (and delivered to the Administrative Agent) to identify names of the individuals then holding such offices or the names of such representatives and the capacity in which they are acting.

**“Offtake Agreement”** means:

- (a) the Aurubis Offtake Agreement; and
- (b) any other offtake arrangements entered into by the Borrower for the sale of copper or other Minerals from the Project.

**“Order”** means any order, directive, decree, judgment, ruling, award, injunction, direction or request of any Governmental Body or other decision-making authority.

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Finance Document, or sold or assigned an interest in any Loan or Finance Document).

**“Other Rights”** means all licenses, approvals, authorizations, consents, rights (including surface rights, access rights and rights of way), privileges, concessions or franchises held by the Borrower or required to be obtained from any Person (other than a Governmental Body) for the development, construction, procurement, engineering and operation of the Project.

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Finance Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

**“Pala”** means Pala Investments Limited.

**“Parent”** means Nevada Copper Corp., a corporation organized under the laws of British Columbia, Canada.

**“Participant”** has the meaning ascribed to such term in Section 14.1(h) (*Assignment by Senior Lenders*).

**“Participant Register”** has the meaning ascribed to such term in Section 14.1(i) (*Assignment by Senior Lenders*).

**“Performance Standards”** means, to the extent applicable to the Borrower or the Underground Project, (i) each of the eight (8) IFC Performance Standards on Environmental and Social Sustainability (January 2012) and (ii) the IFC Environmental, Health and Safety Guidelines.

**“Permitted Asset Disposition”** means, as at any particular time, a sale, transfer or other Disposition of:

- (a) inventory on arm’s length terms and in the ordinary course of business;
- (b) tangible personal property that is obsolete, or worn-out property no longer required in the conduct of the Business;
- (c) Transmission Line and associated Project Real Property and access rights to NV Energy pursuant to the terms of the NV Energy Power Supply Contract;
- (d) minerals pursuant to this Agreement, the Streaming Agreement, the Royalty Agreements, the Offtake Agreements or otherwise in the ordinary course of business in compliance with the terms of this Agreement; and
- (e) assets to the extent approved by the Bankruptcy Court and either approved by the Majority Lenders or sold in accordance with the Approved Bidding Procedures;

in each case excluding any such sale, transfer or other disposition of minerals to another Debtor.



**“Permitted Capital Expenditures”** means, with respect to the Borrower, Capital Expenditures that are in accordance with the Approved Budget (subject to Permitted Variances).

**“Permitted Debt”** means:

- (a) the Obligations;
- (b) Debt of the Borrower representing Purchase Money Obligations and Capitalized Lease Obligations not to exceed at any time outstanding the amount permitted by paragraph (i) of the definition of “Permitted Encumbrances”;
- (c) in respect of the Borrower, Subordinated Intercompany Debt or intercompany debt permitted by and incurred in accordance with the Cash Management Order;
- (d) [reserved];
- (e) in respect of the Borrower, Debt in respect of performance, surety or completion bonds, standby letters of credit or letters of guarantee securing mine closure, asset retirement, environmental reclamation and labor related obligations of the Borrower to the extent required by Applicable Laws or a Governmental Body; provided, that the aggregate principal amount of all such Debt pursuant to this paragraph (e) incurred by the Borrower and that remains outstanding at any time shall not at any time exceed \$15,000,000;
- (f) CAT Equipment Lease, Epiroc Equipment Lease and Normet Equipment Lease;
- (g) [reserved];
- (h) [reserved]; and
- (i) Debt incurred in respect of the Prepetition Funded Debt Liens.

**“Permitted Encumbrances”** means any of the following:

- (a) any Encumbrances created in favor of the Secured Parties or pursuant to the terms of the Finance Documents;
- (b) the Encumbrances securing: (i) the Obligations; (ii) the Adequate Protection Liens; (iii) the Carve-Out; and (iv) the Canadian Priority Charges;
- (c) any Encumbrances arising from any tax, assessment or other governmental charge or other Encumbrances arising by operation of law, in each case if the obligation underlying any such Encumbrances is timely paid, paid under a First Day Order, not yet due or, if due, is being Contested.
- (d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like Encumbrances arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are subject to Contest and, where Contested, individually or together with all other Permitted Encumbrances outstanding on any date of determination do not materially adversely affect the use of the property to which they relate;
- (e) pledges or deposits in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation, other than any Encumbrances

imposed by ERISA (*The Employee Retirement Income Security Act of 1974* of the United States of America and the rules and regulations promulgated thereunder, together with any successors) or which interferes with the ordinary conduct of business of the Project;

- (f) deposits not to exceed \$2,000,000 to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (g) easements, rights of way and other similar non-monetary encumbrances affecting real property which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower;
- (h) Encumbrances securing judgments for the payment of money not constituting an Event of Default hereunder or securing appeal or other surety bonds related to such judgments;
- (i) Encumbrances securing (i) Permitted Debt or (ii) Purchase Money Obligations and Capitalized Lease Obligations, in the case of (i) and (ii) incurred on and after the Petition Date and relating solely to the acquisition of mobile equipment necessary for the development, construction or operation of the Project; provided, that the aggregate amount of the Debt outstanding at any time in respect of the Permitted Debt and the Purchase Money Obligations and Capitalized Lease Obligations referred to in this paragraph (i) of the Borrower shall not exceed \$2,000,000;
- (j) the Prepetition Trisura Lien;
- (k) the Prepetition Funded Debt Liens;
- (l) Tax Encumbrances;
- (m) the Prepetition Encumbrances set forth on Schedule B hereto, as may be amended with the consent of the Majority Lenders from time to time; and
- (n) Prepetition Encumbrances that are (i) valid, enforceable, perfected, non-avoidable and in existence immediately prior to the Petition Date or (ii) valid, enforceable, non-avoidable and in existence immediately prior to the Petition Date, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, up to an aggregate total amount under this paragraph (m) not to exceed \$12,000,000.

**“Permitted Transferee”** means (a) any Senior Lender or any Affiliate of any Senior Lender, and (b) any other lending, bank or financial institution which is regularly engaged in or established for the purposes of making or investing in loans.

**“Permitted Variances”** has the meaning ascribed to such term in Section 11.12(z)(2)(iv) (*Negative Covenants*).

**“Person”** means and includes individuals, corporations, bodies corporate, limited or general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, funds, Governmental Bodies or any other type of organization or entity, whether or not a legal entity.

**“Petition Date”** has the meaning ascribed to such term in the recitals.

“**Pledged Interests**” has the meaning assigned to such term in Section 9.1(e)(iii) (*Grant of Security Interest*).

“**PPSA**” means the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia) or any other applicable Canadian federal, provincial or territorial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens, and hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections.

“**Prepetition Debt Documents**” has the meaning assigned to such term in the DIP Order.

“**Prepetition Encumbrances**” means Encumbrances arising from obligations or payments that arise or would have been due prior to the Petition Date, including, without limitation, the Prepetition Funded Debt Liens, Prepetition Trisura Lien.

“**Prepetition Funded Debt Liens**” has the meaning assigned to such term in the DIP Order.

“**Prepetition Indebtedness**” means the Debt of the Borrower and its Subsidiaries outstanding immediately prior to the Petition Date.

“**Prepetition Secured Obligations**” has the meaning assigned to such term in the DIP Order.

“**Prepetition Secured Parties**” has the meaning assigned to such term in the DIP Order.

“**Prepetition Trisura Lien**” means the Encumbrance on the assets of the Parent in favor of Trisura Guarantee Insurance Company with respect to surety bonds in an amount not to exceed \$14,600,000.

“**Project**” means the Pumpkin Hollow copper project located in Lyon County, Nevada, including all owned or leased fee lands, patented mining claims, unpatented mining claims or mill sites or other interests in real property that contain the Project’s ore deposits, which includes the Project Property, whether open-pit, underground or otherwise.

“**Project Authorization**” means an Authorization or other right (including an environmental Authorization) necessary for the development, construction, procurement, engineering and operation of the Underground Project.

“**Project Documents**” means, individually or collectively, as the context may require, the following:

- (a) each Material Project Document;
- (b) any performance bond, advanced payment bond, guarantee or other credit support provided to the Borrower pursuant to any agreement referred to in this definition of “Project Documents”; and
- (c) any other Contract to which the Borrower or its Subsidiaries are a party from time to time in relation to the Project (including any replacement of an existing Project Document) other than a Finance Document or the Working Capital Facility, the First Lien Facility or the Fourth Lien Facility.

“**Project Property**” means all of the property, assets, undertaking, approvals, licenses, permits and rights of the Obligors in and relating to the Project, whether now owned or existing or hereafter acquired or arising, including real property, personal property and mineral interests, and specifically including, but not limited to:

- (a) the Project Real Property and appurtenances thereto, water rights and Minerals;
- (b) all accounts, instruments, chattel paper, deposit accounts, documents, intangibles, goods (including inventory, equipment and fixtures), money, letter of credit rights, supporting obligations, contracts, bonds, claims, causes of action and other legal rights and investment property in each case relating to the Project;
- (c) all products, proceeds (including proceeds of proceeds), rents and profits of the foregoing; and
- (d) all books and records of the Obligors related to any of the foregoing.

**“Project Real Property”** means all real property interests, rights of ways, easements, leases and licenses, whether severed estate or otherwise, all patented mining claims, unpatented mining claims, mineral claims, mineral leases and other mineral rights, water rights, ditch rights, interests in any ditch company or cooperative, weirs, pipes, concessions and interests, and all surface access rights held by any Obligor relating to the Project (which as of the date hereof, are as set forth on Schedule J (*Project Real Property*)), and all buildings, structures, improvements, appurtenances and fixtures thereon or attached thereto, whether created privately or by the action of any Governmental Body. **“Project Real Property”** shall also include any term extension, renewal, replacement, conversion or substitution of any such real property interests, mineral claims, mineral leases, mineral rights, waste dump, heap leach pad and any material placed thereon, whether currently in process or abandoned, concessions or interests, and surface access rights, owned or in respect of which an interest is held, directly or indirectly, by any Obligor at any time during the term of this Agreement, whether or not such ownership or interest is held continuously.

**“Proposed Budget”** means the rolling thirteen-week cash flow forecast delivered by the Obligors to the Administrative Agent and Senior Lenders in accordance with Section 11.2(a) of this Agreement (*DIP Budget and Variance Reporting*).

**“Purchase Money Obligations”** means the outstanding balance of the purchase price of real and/or personal property, title to which has been acquired or will be acquired upon payment of such purchase price, or indebtedness to non-vendor third parties incurred to finance the acquisition of such new and not replacement real and/or personal property, or any refinancing of such indebtedness or outstanding balance.

**“Receivables”** has the meaning ascribed to such term in Section 9.1(d) (*Grant of Security Interest*).

**“Recipient”** means (a) the Administrative Agent or (b) any Senior Lender.

**“Recognition Proceedings”** has the meaning ascribed to such term in the recitals.

**“Recovered Amount”** has the meaning ascribed to such term in Section 18.1 (*Payments to Finance Parties*).

**“Recovering Finance Party”** has the meaning ascribed to such term in Section 18.1 (*Payments to Finance Parties*).

**“Redistributed Amount”** has the meaning ascribed to such term in Section 18.4(a) (*Reversal of Redistribution*).

**“Reference Rate”** means Term SOFR, each Compounded SOFR Reference Rate and any other reference interest rate selected by the Majority Lenders in consultation with the Borrower.

**“Reference Rate Determination Date”** means, in relation to an Interest Period for which a variable interest rate is to be determined:

- (a) [reserved];
- (b) if the Reference Rate is Term SOFR, the second US SOFR Banking Day before the first day of that Interest Period;
- (c) if the Reference Rate is any Compounded SOFR Reference Rate, the US SOFR Banking Day immediately following the last day of the Observation Period relating to the relevant Interest Period; and
- (d) in relation to any other Reference Rate, the date as determined by the Majority Lenders in accordance with market practice for such Reference Rate;

provided that, if market practice differs or changes in the relevant market with respect to any of the Reference Rates, the Reference Rate Determination Date for such Reference Rate will be determined by the Majority Lenders in accordance with the market practice applicable in the relevant market and notified to the Borrower by way of a Technical Adjustment Notification.

**“Reference Rate Non-Utilisation Event”** means any of the following events in relation to a Reference Rate:

- (a) *Unavailability*. The Reference Rate is Unavailable; or
- (b) *Non-representativeness*. The later of (x) one (1) month and (y) the future date specified in the relevant official statement has passed since the supervisor of the administrator of a Reference Rate has published an official statement that the relevant Reference Rate is no longer or, as of a specified future date will no longer be, representative of the underlying market or the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor) and such official statements is made with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication;

and such Reference Rate Non-Utilisation Event is continuing on a Reference Rate Determination Date if on such date:

- (i) in relation to clause (a) above, the Reference Rate remains Unavailable; and
- (ii) in relation to clause (b) above, the supervisor has not revoked or rescinded its official statement or has in any other way re-confirmed the representativeness of the relevant Reference Rate.

**“Register”** has the meaning ascribed to such term in Section 14.1(f) (*Assignment by Senior Lenders*).

**“Related Contracts”** has the meaning ascribed to such term in Section 9.1(d) (*Grant of Security Interest*).

**“Related Party”** means, with respect to any Person (the “first named Person”), any Person that does not deal at arm’s length with the first named Person or is an associate of the first named Person and, in the case of any Obligor, includes:

- (a) any director, officer, employee or associate of Pala or any of its Affiliates;
- (b) any Person that does not deal at arm's length with Pala or any of its Affiliates; and
- (c) any Person that does not deal at arm's length with, or is an associate of, a director, officer, employee or associate of Pala or any of its Affiliates.

**"Release"** means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Substances into the indoor or outdoor Environment, including the movement of such Hazardous Substances through ambient air, soil, surface water, groundwater, wetlands, land or subsurface strata.

**"Reporting Week"** has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Testing Date"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Testing Period"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Variance Report"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Remedies Notice Period"** has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

**"Resolution Authority"** means anybody which has authority to exercise any Write-Down and Conversion Powers.

**"Restricted Payment"** means any payment by a Person to:

- (a) any other Person, of dividends or other distribution (whether in cash, securities or other property or assets) and any return of capital including any payment in respect, or on the redemption, of any share capital whether at a premium or otherwise;
- (b) any other Person on account of any payment of interest, principal or any other amount in respect of any loans or loan notes or in respect of any financial indebtedness owed by the Borrower (other than (i) any adequate protection payments for the benefit of the Prepetition Secured Parties as set forth in the DIP Order or (ii) any repayment of the Working Capital Facility, solely to the extent paid from the proceeds of the WCF Collateral, in each case, as expressly provided for in the Interim Order or in the Approved Budget);
- (c) [reserved];
- (d) any other Person of any payment of any management, administration, advisory, consultancy or other similar type of fees or expenses made by the Borrower to any of its Affiliates (but excluding any amount paid by the Borrower to its Affiliates in reimbursement of costs and expenses incurred (i) by such Affiliate and (ii) any amounts paid to cure contracts assumed in connection with an Approved Sale on behalf of the Borrower, in each case to the extent approved by the Administrative Agent); and



- (e) redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire equity interest of such Person now or hereafter outstanding;

provided that Restricted Payment shall not include any payment to any Debtor (other than Parent), any advances of cash from the Borrower to Parent in accordance with the terms of the Cash Management Order, or any payments made with the consent of the Majority Lenders.

**“RGGS Lease”** means that certain Mining Lease, dated May 4, 2006 by and between the Borrower and RGGS Land & Mineral Ltd., L.P., as amended.

**“RGGS Royalty Deed”** means that certain Royalty Deed, dated January 10, 2017 by and between the Borrower and RGGS Land & Mineral Ltd., L.P.

**“Royalties”** means those royalties for which the Borrower is liable under the Royalty Agreements.

**“Royalty Agreements”** means each of: (a) RGGS Royalty Deed and royalty payable under the RGGS Lease and (b) Majuba/Renegade Royalty Deed.

**“Sale-Leaseback”** means an arrangement under which title to any property or an interest therein is transferred by or on the direction of a Person (“X”) to another Person which leases or otherwise grants the right to use such property, asset or interest (or other property, which X intends to use for the same or a similar purpose) to X (or nominee of X), whether or not in connection therewith X also acquires a right or is subject to an obligation to acquire the property, asset or interest, and regardless of the accounting treatment of such arrangement.

**“Sale Approval Order”** has the meaning given to it in Section 11.13(j) (*Milestones*).

**“Sale Transaction”** has the meaning given to it in Section 11.13(j) (*Milestones*).

**“Sanctioned Jurisdiction”** means, at any time, a country, territory or geographical region which is itself the subject or target of any comprehensive territorial-based Sanctions.

**“Sanctions”** means any laws, rules, regulations and requirements relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any U.S. Governmental Body (including, but not limited to, OFAC and the U.S. Department of State), the United Nations Security Council, the European Union and each of its member states, His Majesty’s Treasury of the United Kingdom, any Governmental Body of Canada (including but not limited to, Global Affairs Canada and Public Safety Canada), or any other relevant Governmental Body with jurisdiction over the Obligors or any of their Subsidiaries.

**“Sanctions List”** means any list of designated Persons that are the subject or target of Sanctions, including, without limitation: (a) the Specially Designated Nationals and Blocked Persons List maintained by OFAC; (b) the Consolidated United Nation Security Council Sanctions List; (c) the consolidated list of persons, groups and entities subject to EU financial sanctions maintained by the European Union; (d) the Consolidated List of Financial Sanctions Targets in the UK maintained by Her Majesty’s Treasury of the United Kingdom; and (e) the Consolidated Canadian Autonomous Sanctions List maintained by Global Affairs Canada.

**“Sanctions Target”** means any Person:

- (a) identified on any Sanctions List;

- (b) located, organized or resident in, or the government or any agency or instrumentality of the government of, any Sanctioned Jurisdiction;
- (c) owned or controlled by, or acting for or on behalf of, one or more Persons described in the foregoing paragraph (a) or (b);
- (d) otherwise the subject or target of any Sanctions.

“**Secured Parties**” means, collectively, the Agents and the Senior Lenders.

“**Security**” means the Encumbrances granted in favor of the Collateral Agent pursuant to the Finance Documents.

“**Senior Lender**” means each Person that is a party on the date hereof to this Agreement as an “initial Senior Lender” and each other lender party hereto from time to time pursuant to Section 14.1 (Assignment by Senior Lenders), and their respective permitted successors and assigns.

“**Sharing Finance Parties**” has the meaning ascribed to such term in Section 18.2 (*Redistribution of Payments*).

“**Sharing Payment**” has the meaning ascribed to such term in Section 18.1(c) (*Payments to Finance Parties*).

“**SOFR**” means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate) on the relevant date at approximately 8:00 a.m. New York time.

“**SOFR Daily Rate**” means, in relation to any US SOFR Banking Day:

- (a) the SOFR rate for that US SOFR Banking Day; or
- (b) if SOFR is Unavailable for that US SOFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the NY Fed Target Rate for that US SOFR Banking Day; and
  - (ii) the applicable NY Fed Target Rate Adjustment Spread; or
- (c) if both rates stipulated under clauses (a) and (b) above are Unavailable, the percentage rate per annum which is the aggregate of:
  - (i) the NY Fed OBFR for that US SOFR Banking Day; and
  - (ii) the applicable NY Fed OBFR Adjustment Spread.

“**SOFR Index**” means, either:

- (a) the publicly available index produced by the Federal Reserve Bank of New York (before any correction, recalculation or republication by its administrator) which measures the cumulative



impact of compounding SOFR on a unit of investment over time, with the initial value set to 1.00000000 on 2 April 2018; or

- (b) any other publicly available index which is produced by an administrator (before any correction, recalculation or republication by its administrator) which measures the cumulative impact of compounding SOFR on a unit of investment over time using a compounding methodology which is the same as that specified in this Agreement for the calculation of the Compounded SOFR Calculated Daily Rate,

as published by such administrator or on a page or screen of an information service and, with respect to clause (b) above, specified as the “SOFR Index” by the Administrative Agent in a Technical Adjustment Notification.

“**Streaming Agreement**” means the purchase and sale agreement dated December 21, 2017 (as amended, amended and restated, modified or supplemented from time to time), by and among the Borrower, the Parent and Triple Flag.

“**Streaming Documents**” mean the Streaming Agreement and each “Security Document” under and as defined in the Streaming Agreement.

“**Subordinated Intercompany Debt**” means any debts, liabilities or obligations owing by an Obligor to any other Obligor, on any account and in any capacity, subordinated in accordance with the provisions of the Subordination Agreement.

“**Subordination Agreement**” means a Subordination Agreement in favor of the Collateral Agent in respect of Subordinated Intercompany Debt substantially in the form of Schedule L (*Terms of Subordination*) to this Agreement.

“**Subsidiary**” means with respect to any Person, any other Person which is Controlled directly or indirectly by that Person, and “**Subsidiaries**” means all of such other Persons.

“**Tax Returns**” means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes, including any schedule or attachment thereto or amendment thereof.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Body, including any interest, additions to tax or penalties applicable thereto.

“**Tax Encumbrance**” means the liens placed on the Project for delinquent tax payments as set forth on that certain Notice of Seizure from the Assessor of Lyon County, Nevada dated April 23, 2024.

“**Technical Adjustment Notification**” has the meaning ascribed to such term in Section 5.2(g) (*Interest Rate*).

“**Term SOFR**” means, for the relevant Interest Period, the publicly available percentage rate per annum (before any correction, recalculation or republication by its administrator) which:

- (a) is a forward-looking term rate based on SOFR;
- (b) is produced by an administrator;

- (c) is constituted as a term adjusted SOFR reference rate for a period equal in length to the Interest Period and uses a term adjustment methodology approved by the relevant supervisory authority of the administrator;
- (d) is made available on the relevant Reference Rate Determination Date; and
- (e) is specified as the “Term SOFR” for this Agreement by the Administrative Agent in a Technical Adjustment Notification;

as such rate is quoted in the USD wholesale market on the relevant Reference Rate Determination Date for the same period as the relevant Interest Period or, if none of the periods available are the same as that Interest Period, interpolating, where appropriate, between the yield quotations for the next shorter and next longer maturities; provided that if no such Term SOFR rates are published or provided on the relevant Reference Rate Determination Date and it is therefore not possible for the Administrative Agent to determine the relevant Term SOFR on the basis of this paragraph, but any such rates were published or were otherwise available for any US SOFR Banking Day within the last five (5) US SOFR Banking Days before the relevant Reference Rate Determination Date, the Administrative Agent will use the relevant most recent rate(s) available for determining and/or calculating (e.g. by way of interpolation) the relevant Term SOFR for the relevant Interest Period and Term SOFR shall be deemed to be Available.

“**Termination Amounts**” means the Hedge Termination Value described in paragraph (a) of the definition thereof payable by the Borrower in connection with an early termination (whether as a result of the occurrence of an event of default thereunder or other termination event) of any Hedge Agreement in accordance with the terms thereof; provided, that, for the avoidance of doubt, “Termination Amounts” shall not include any regularly scheduled payments due under any Hedge Agreement from time to time, calculated in accordance with the terms of such Hedge Agreement, including all cash settlement payments due in connection with interest rate swaps and forward- starting interest rate swaps due under any such Hedge Agreement.

“**Termination Declaration**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Termination Declaration Date**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Termination Declaration Notice**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Total Commitments**” means \$60,000,000.

“**Total Tested Disbursements**” has the meaning given such term in Section 11.12(z)(2)(iv) (*Negative Covenants*).

“**Transfer Certificate**” means a certificate substantially in the form set out on Schedule M (*Transfer Certificate*) with any amendments which the Administrative Agent may approve or reasonably require or any other form agreed between the Administrative Agent and the Borrower.

“**Transfer Date**” means the Transfer Date as indicated on the Transfer Certificate delivered pursuant to Section 14.1(c) (*Assignment by Senior Lenders*).

“**Transmission Line**” means the 120 kV transmission line from the Wassuk substation to the Project, owned and operated by Sierra Pacific Power Company d/b/a NV Energy.

“**Triple Flag**” means Triple Flag International Ltd.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that, if by reason of mandatory provisions of law, perfection or the effect of perfection or non-perfection or the priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority and for purposes of definitions related to such provisions.

“**Unavailability of a Reference Rate**” means Reference Rates whereby:

- (a) *Factual.* no screen rate(s) of the relevant Reference Rate is or are published or are in any other way provided by the administrator of such Reference Rate on the relevant Reference Rate Determination Date or for the relevant Observation Period and no other means exist or calculations are possible for the Administrative Agent (including by way of interpolation) to determine the relevant Reference Rate on its Reference Rate Determination Date;
- (b) *Legal.* it is prohibited or in any other way unlawful for the Administrative Agent, a Senior Lender or the Borrower the use such Reference Rate under this Agreement, in particular for calculating or paying interest;
- (c) *Identity change.* the methodology, economic characteristics or formulas for calculating the Reference Rate have materially changed; provided that as long as the underlying interest or market or economic reality that the Reference Rate is intended to measure remains unchanged, any change in formulas, economic characteristics or other methodology is not considered material; or
- (d) *Other.* the relevant Reference Rate may, for any other reason in the reasonable opinion of the Majority Lenders no longer be used for the purposes of this Agreement;

and, correspondingly, such Reference Rate is “**Available**” if it is not Unavailable.

“**Underground Minerals**” means any and all marketable metal bearing material in whatever form or state that is mined, produced, extracted or otherwise recovered from underground operations of the Project including any such material derived from any processing or reprocessing of any tailings, waste rock or other waste products originally derived from those underground operations, and including ore and any other products resulting from the further milling, processing or other beneficiation of such material, including concentrates, derived from those underground operations.

“**Underground Project**” means that portion of the Project that is or was used or is or will be reasonably expected to be used, for or in connection with the exploration, development, extraction, beneficiation, processing, treatment, refining, transportation, sale or commercialization of Underground Minerals.

“**Unpaid Sum**” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“**Unused Commitment**” means, in respect of each Senior Lender at any time, such Senior Lender’s Commitment (including, for the avoidance of doubt, the Interim Commitment and Final Commitment) *minus* the aggregate of (i) the principal amount of Loans then held by such Senior Lender, (ii) the principal

that was held by such Senior Lender and prepaid by the Borrower and (iii) the principal that was held by such Senior Lender and assigned to another Senior Lender.

“**Unused Commitment Fee**” has the meaning ascribed to it in Section 5.9(a) (*Unused Commitment Fee*).

“**Upfront Fee**” means the upfront fee payable to the Senior Lenders in accordance with Section 5.9(b)(*Fees*).

“**USA PATRIOT ACT**” means the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the IRC.

“**US SOFR Banking Day**” means any day other than (i) a Saturday or Sunday or (ii) a day on which the Securities Industry and Financial Markets Association (or any successor organization) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

“**U.S. Tax Compliance Certificate**” has the meaning specified in Section 6.1(g)(ii)(B)(3) (Taxes).

“**Utilization**” means the borrowing of a Loan.

“**Utilization Date**” means the date of a Utilization, being the date on which the relevant Loan is made or is to be made.

“**Utilization Request**” means a written notice (substantially in the form set out on Schedule N (*Utilization Request*)) requesting a Utilization in accordance with Section 3.1 (*Delivery of a Utilization Request*).

“**WCF Collateral**” means the as extracted copper concentrates from the Underground Project, together with any such copper concentrates in process and finished goods inventory derived therefrom located at such Underground Project, and all proceeds thereof.

“**WCF Intercreditor Agreement**” means the intercreditor agreement, dated on or about the May 22, 2019, entered into by and among KfW IPEX-Bank (on behalf of the secured parties under the First Lien Facility), the secured parties under the Streaming Documents and the secured parties under the Working Capital Facility (as amended, amended and restated, supplemented or otherwise modified from time to time).

“**Weekly Reporting Date**” has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

“**Weekly Variance Report**” has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*). “**Withholding Agent**” means the Borrower and the Administrative Agent.

“**Working Capital Facility**” means the Advance Payment Agreement, entered into on or about the May 6, 2019 among the Borrower and Concord (as amended, amended and restated, supplemented or otherwise modified from time to time).

“**Working Capital Facility Documents**” means (i) the WCF Intercreditor Agreement; (ii) the Working Capital Facility; (iii) the Third Lien Security Agreement entered into on or about May 6, 2019, by and

among the Borrower, Concord, as collateral agent, and Concord, as secured party (as amended, amended and restated, supplemented or otherwise modified from time to time); (iv) the Third Lien Pledge Agreement entered into on or about May 6, 2019, by and among the Borrower, Concord, as collateral agent, and Concord, as secured party (as amended, amended and restated, supplemented or otherwise modified from time to time); and (v) the Third Lien Deed of Trust entered into on or about May 6, 2019, by the Borrower, as trustor, in favor of the trustee named therein for the benefit of Concord, as beneficiary (as amended, amended and restated, supplemented or otherwise modified from time to time).

**“Write-down and Conversion Powers”** means, in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule.

## **1.2 Certain Rules of Interpretation.**

In this Agreement, unless otherwise specifically provided or unless the context otherwise requires:

- (a) the terms “Agreement,” “this Agreement,” “the Agreement,” “hereto,” “hereof,” “herein,” “hereby,” “hereunder” and similar expressions refer to this Agreement in its entirety and not to any particular Article, Section, Schedule, or other portion hereof or thereof;
- (b) references to a “paragraph,” “Section” or “Article” followed by a number or letter refer to the specified paragraph, Section or Article of this Agreement;
- (c) the division of this Agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular shall include the plural and vice versa, and words importing gender shall include all genders;
- (e) the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”;
- (f) the terms “party” and “the parties” refer to a party or the parties to this Agreement, and references to a Person in this Agreement means such Person or its successors or permitted assigns;
- (g) the term “continuing,” when used in relation to a Default or Event of Default, means that such Default or Event of Default is continuing unremedied or unwaived in accordance with the terms of the Finance Documents;
- (h) the term “repay” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “prepay” (or, as the case may be, the corresponding derivative form thereof);
- (i) the words “will” and “shall” are to be treated as synonymous;
- (j) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement;

- (k) references to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, supplementing, interpreting or replacing the statute or regulation referred to;
- (l) except as otherwise specifically provided herein, where any payment is required to be made or any other action is required to be taken on a particular day and such day is not a Business Day and, as a result, such payment cannot be made or action cannot be taken on such day, then this Agreement shall be deemed to provide that such payment shall be made or such action shall be taken on the next Business Day in the same calendar month (if there is one) or the immediately preceding Business Day (if there is not);
- (m) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;
- (n) a period equal in length to an Interest Period shall disregard any inconsistency arising from the first or last day of that Interest Period being adjusted or determined pursuant to the Business Day rules or other terms of this Agreement;
- (o) a page or screen of an information service displaying a rate shall include:
  - (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
 and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by Majority Lenders; and
- (p) a law or provision of law is a reference to that law or provision as amended and includes any subordinate legislation.

### 1.3 Currency.

Any reference in this Agreement to currency, “**Dollar**”, “**U.S. Dollar**” or to “**\$**”, unless otherwise expressly indicated, shall be to the lawful currency of the United States of America, being referred to herein as United States dollars. Any amounts to be advanced, paid, prepaid, or repaid shall be made in United States dollars.

### 1.4 Time of Essence.

Time shall be of the essence of this Agreement.

### 1.5 Knowledge.

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the “knowledge” of a Person, it shall be deemed to refer to the actual knowledge of any Chief Executive Officer, Chief Financial Officer, General Counsel, Chief Operations Officer, any Vice President or any other officer or director (or Person performing any role of substantially the same scope and responsibility of any of the foregoing) of such Person and all information which ought to have been known by any of them after conducting a reasonable inquiry into the matters in question, whether or not any such inquiry was actually made; provided, that each such Person shall be deemed to have knowledge of all events,



conditions and circumstances described in any notice delivered to the Borrower pursuant to the terms of this Agreement or any other Finance Document.

#### **1.6 No Subordination.**

The use of the term “Permitted Encumbrances” to describe any interests and Encumbrances permitted hereunder shall mean that they are permitted to exist (whether in priority to, *pari passu* with or subordinated to the Security, as determined by Applicable Law or set forth in the DIP Order) and shall not be interpreted as meaning that such interests and Encumbrances are entitled to priority over the Security.

#### **1.7 Conflict.**

In the case of any conflict or inconsistency between this Agreement (or any Finance Document) and any DIP Order, the applicable DIP Order shall govern.

### **Article 2 LOANS**

#### **2.1 Loan.**

Subject to the terms of this Agreement, each of the Senior Lenders severally agrees to make available to the Borrower:

- (a) Upon entry of the Interim Order, a term loan in an aggregate amount equal to the Interim Commitments of such Senior Lender; and
- (b) Upon entry of the Final Order, a term loan in an aggregate amount equal to the Final Commitments of such Senior Lender.

#### **2.2 Finance Parties’ Rights and Obligations.**

- (a) The obligations of each Finance Party under the Finance Documents are several. Each Senior Lender is severally liable for its Commitment and the Senior Lenders are not jointly liable or jointly and severally liable. No Senior Lender shall be responsible for the failure of any other Senior Lender to so make its Loans.
- (b) Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Finance Party under the Finance Documents.
- (c) No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (d) The rights of each Finance Party under, or in connection with, the Finance Documents are separate and independent rights.
- (e) Any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with this paragraph (e). The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party’s participation in a

Loan or its role under a Finance Document (including any such amount payable to an Agent on its behalf) is a debt owing to that Finance Party by the Borrower.

### 2.3 Purpose and Use of Proceeds.

The Borrower shall use the proceeds of the Loans in accordance with this Agreement and the Approved Budget for (a) working capital costs and general corporate purposes, (b) costs and expenses in connection with the Chapter 11 Cases (including costs and expenses incurred in connection with the Recognition Proceedings), (c) amounts owing under or in connection with the Finance Documents and (d) other purposes permitted by the Approved Budget. The proceeds of the Loans shall not be applied to (i) any amounts owing under any other Debt, except to the extent permitted by the Approved Budget or (ii) investigating, challenging, objecting to or contesting the validity, security, perfection, priority, extent or enforceability of any amount due under, or the liens or claims granted under or in connection with, this Agreement or any of the Prepetition Debt Documents; provided that, the official committee of unsecured creditors (the “**Creditors’ Committee**”) appointed in the Chapter 11 Cases, if any, may use up to \$50,000 to investigate (but not seek formal discovery in connection with or commence any challenge or objection to or prosecution of) any such claims or causes of action; provided further that the foregoing shall not affect the ability of the Information Officer to conduct an ordinary course security review, as appropriate. The proceeds of the Loans shall not be distributed to, or used for the benefit of, any non-Debtor affiliates or subsidiaries of the Debtors, or applied toward (directly or indirectly) their administration without the prior written approval of the Majority Lenders.

### 2.4 Monitoring.

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to any Finance Document.

### 2.5 Evidence of Debt.

- (a) Each Senior Lender may maintain in accordance with its usual practice an account or accounts evidencing the Debt of the Borrower to such Senior Lender resulting from each Loan made by such Senior Lender, including the amounts of principal and interest payable and paid to such Senior Lender from time to time hereunder. In the case of a Senior Lender that does not request, pursuant to clause (b) below, execution and delivery of a Note evidencing the Loans made by such Senior Lender to the Borrower, such account or accounts shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be prima facie evidence of such Debt of the Borrower absent manifest error; provided, that the failure of any Senior Lender to maintain such account or accounts or any error in any such account shall not limit or otherwise affect any repayment obligations of the Borrower hereunder.
- (b) The Borrower agrees that, upon the request by any Senior Lender, the Borrower will execute and deliver to such Senior Lender a promissory note substantially in the form of Schedule O (*Form of Note*) (each, a “**Note**”) payable to such Senior Lender in an amount equal to such Senior Lender’s Loans evidencing the Loans made by such Senior Lender. The Borrower hereby irrevocably authorizes each Senior Lender to make (or cause to be made) appropriate notations on the grid attached to such Senior Lender’s Notes (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal amount of, and the interest rate and Interest Period applicable to the Loans evidenced thereby. Such notations shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be prima facie evidence of the applicable Debt of the Borrower absent manifest error; provided, that the failure of any Senior Lender to make any such notations or any error in any such notations shall



not limit or otherwise affect any obligations of the Borrower. A Note and the obligation evidenced thereby may be assigned or otherwise transferred in whole or in part only in accordance with Section 14.1(b) (*Assignment by Senior Lenders*). Any Note issued under this Agreement need not be presented or surrendered for any payment made by the Agents.

### **Article 3** **UTILIZATION OF LOANS**

#### **3.1 Delivery of a Utilization Request.**

- (a) Subject to the conditions referred to in Article 12 (*Conditions Precedent*) having been satisfied in accordance with the provisions of this Agreement, the Borrower may utilize the Loans by delivering to the Administrative Agent a duly completed Utilization Request not later than 12:00 noon New York time (x) one (1) Business Day prior to the proposed Utilization Date for the Interim Loan and (y) two (2) Business Days prior to the proposed Utilization Date for the Final Loans (in each case, or such later time approved by the Majority Lenders in their reasonable discretion).
- (b) Each Utilization Request shall be substantially in the form of Schedule N (*Utilization Request*) and shall include all certifications and documentation required therein.

#### **3.2 Completion of a Utilization Request.**

Each Utilization Request is irrevocable and shall not be regarded as having been duly completed unless:

- (a) the Utilization Request includes a certification by the Borrower that the Utilization will be used for the purposes set out in Section 2.3 (*Purpose and Use of Proceeds*);
- (b) the proposed Utilization Date is a Business Day;
- (c) the currency and amount of the Utilization shall be Dollars;
- (d) the Utilization Request specifies the wire instructions for transfer of the proceeds of the Loan;
- (e) the proposed Interest Period specified therein complies with Article 5 (*Interest, Interest Periods and Fees*); and
- (f) the Utilization Request is executed by a Person duly authorized to do so on behalf of the Borrower.

#### **3.3 [Reserved].**

#### **3.4 Notification of Utilization of the Loan.**

Following the delivery of a duly completed Utilization Request by the Borrower, the Administrative Agent shall promptly notify each Senior Lender of the proposed Utilization Date, Interest Period and the amount of such Senior Lender's share of the proposed Loan.

#### **3.5 Senior Lenders' Participation.**

- (a) If the conditions set out in this Agreement have been met, and subject to Article 4 (*Repayment, Prepayment and Cancellation*), each Senior Lender shall make its participation in each Loan available on or prior to 10:00 a.m. New York time on the applicable Utilization Date through its lending office.

- (b) The amount of each Senior Lender's participation in each Loan shall be pro rata to its Unused Commitment immediately prior to making the Loan.

### 3.6 Partial Payments.

- (a) Subject to Section 13.4, if the Administrative Agent receives a payment for application against amounts due in respect of this Agreement that is insufficient to discharge all the amounts then due and payable by the Borrower under this Agreement, the Administrative Agent, subject to the terms of the DIP Order, shall apply such payment towards the obligations of the Borrower under this Agreement in the following order:
  - (i) **first**, in or towards payment of any unpaid fees, expenses, indemnities, losses or other amounts owing to the Agents under the Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee (including, without limitation, the Unused Commitment Fee and the Exit Fee) or commission of the Loans due but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal of the Loans due but unpaid under this Agreement; and
  - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under this Agreement.

## Article 4 REPAYMENT, PREPAYMENT AND CANCELLATION

### 4.1 Repayments.

- (a) The Borrower shall repay the Utilizations made to it in accordance with the terms of this Agreement and the DIP Order.
- (b) [Reserved].
- (c) The Borrower shall not reborrow any part of the Loans which are repaid or prepaid.
- (d) The Borrower shall repay the aggregate Loans (whether principal, interest, fees or otherwise) in full to the extent they are outstanding under or in respect of the Loans on the Maturity Date.

### 4.2 Mandatory Prepayments.

The Borrower shall apply each of the following to a mandatory prepayment in accordance with Section 4.9 (*Application*) and the terms of the DIP Order:

- (a) **Net Insurance Proceeds.** Net Insurance Proceeds received (other than any insurance proceeds in respect of third-party liability insurance where such proceeds are to be paid to third parties or for losses with respect to WCF Collateral prior to the repayment in full of all obligations under the Working Capital Facility Documents) by any Obligor shall be applied to prepay the Loans within five (5) Business Days after receipt thereof, other than any Net Insurance Proceeds received by any Obligor of up to \$10,000,000 in any Fiscal Year that are used by the Obligors to repair and/or replace the property that is the subject of such Net Insurance Proceeds.

- (b) **Liquidated Damages.** If the Borrower receives or is entitled to offset any liquidated or delay damages for any reason under any Material Project Document, 100% of such proceeds in excess of such amounts certified by an authorized officer of the Borrower as necessary to perform such construction or repair that is reasonably related to cure the events or circumstances that gave rise to the payment of such liquidated damages, shall be applied to prepay the Loans within five (5) Business Days of the receipt of such liquidated damages.
- (c) **Expropriation Net Disposition Proceeds.** If any Obligor receives any Net Disposition Proceeds from one or more Expropriation Events, 100% of such proceeds shall be applied to prepay the Loans within five (5) Business Days after receipt thereof.
- (d) **Other Net Disposition Proceeds.** If any Obligor receives any Net Disposition Proceeds from any disposition of Collateral other than the sale of inventory in the ordinary course of business, 100% of such Net Disposition Proceeds shall be applied within five (5) Business Days of receipt by any Obligor and/or any of its Subsidiaries to prepay the Loans; provided that for purposes of this clause (d), Net Disposition Proceeds shall not include, solely to the extent such disposition includes WCF Collateral, any amounts received in respect of the disposition of such WCF Collateral not to exceed the amount necessary to repay in full the obligations due under the Working Capital Facility Documents.
- (e) **Extraordinary Receipts.** If any Obligor receives any Extraordinary Receipts, 100% of such Extraordinary Receipts shall be applied within five (5) Business Days of receipt by any Obligor and/or any of its Subsidiaries to prepay the Loans.
- (f) **Equity Issuances.** If any Obligor receives any Net Cash Proceeds from any sale of, or any dividend, distribution, return of capital or other return on investment in respect of, the equity interests of any non-Debtor Subsidiary of any Obligor, 100% of such Net Cash Proceeds shall be applied within five (5) Business Days of receipt by such Obligor to prepay the Loans.

#### 4.3 [Reserved].

#### 4.4 [Reserved].

#### 4.5 Voluntary Cancellation.

Subject to the other terms of this Agreement, the Borrower may at any time cancel all or any part of the Commitments; provided, that:

- (a) it has given not less than ten (10) Business Days' prior written notice to the Administrative Agent; and
- (b) if such cancellation is for part only of total outstanding Commitments:
  - (i) such cancellation shall be in a minimum amount of \$2,000,000 and an integral multiple of \$1,000,000; and
  - (ii) such cancellation will reduce the Commitment of each Senior Lender pro rata.

#### 4.6 Voluntary Prepayment.

Subject to the other terms of this Agreement, the Borrower may prepay all or any part of the Loans; provided, that:

- (a) the Borrower has given not less than three (3) Business Days' notice to the Administrative Agent (or such later time as the Majority Lenders may agree to);
- (b) subject to Section 4.10(b) (*Miscellaneous*), the Borrower simultaneously pays all accrued interest on the amount prepaid, together with all costs and expenses, fees and all other amounts then due and payable under the Finance Documents, including Break Costs (if any) and the Exit Fee;
- (c) if such a prepayment is of all of the Loans then outstanding, they are all repaid or prepaid simultaneously in full;
- (d) if such a prepayment is a partial prepayment of the Loans then outstanding:
  - (i) such prepayment shall be in a minimum amount of \$5,000,000 (or, if less, the remaining outstanding amount) and an integral multiple of \$1,000,000;
  - (ii) such prepayment will be applied as provided in Section 4.9 (*Application*), and the Borrower shall ensure that such amounts are repaid or prepaid simultaneously; and
- (e) such a prepayment shall not cause or result in a Default or Event of Default immediately prior to and immediately following such a prepayment.

#### 4.7 Automatic Cancellation.

Each Senior Lender's Unused Commitment will be automatically cancelled on the Maturity Date unless previously cancelled.

#### 4.8 Right of Cancellation and Repayment in Relation to a Single Senior Lender.

- (a) The Borrower may at any time, cancel any available Commitments of any Senior Lender or repay the Loans held by an individual Senior Lender (together with any other accrued and unpaid amounts owing to such Senior Lender under the Finance Documents) if such Senior Lender claims indemnification from the Borrower under Section 7.5 (*Indemnities*) or any amount under Section 7.3 (*Change in Circumstances*). The Borrower may, while the circumstances giving rise to the requirement for that increase or indemnification continue, give notice to the Administrative Agent, as applicable of cancellation of the Commitment(s) of such Senior Lender and its intention to procure the repayment of the Loans held by such Senior Lender.
- (b) On receipt of a notice referred to in Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*) in relation to a Senior Lender, the Commitments of such Senior Lender will immediately be reduced to zero.
- (c) On the last day of the Interest Period in which the Borrower has given notice under Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*) in relation to a Senior Lender (or, if earlier, the date specified by the Borrower in the notice under Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*)), the Borrower will repay

such Senior Lender's participation in the Utilizations, together with all interest and other amounts accrued under the Finance Documents (if any).

**4.9 Application.**

- (a) Except in the case of a prepayment or repayment under Section 7.2 (*Illegality*) or Section 4.8 (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*):
  - (i) any cancellation pursuant to this Article 4 (*Repayment, Prepayment and Cancellation*) shall:
    - (A) be applied *pro rata* between each Senior Lender; and
    - (B) if in part, reduce the Commitment of each Senior Lender *pro rata*;
  - (ii) any prepayment pursuant to this Article 4 (*Repayment, Prepayment and Cancellation*) shall be applied *pro rata* among each Loan.

**4.10 Miscellaneous.**

- (a) Any notice of cancellation or prepayment under this Article 4 (*Repayment, Prepayment and Cancellation*):
  - (i) is irrevocable; and
  - (ii) unless a contrary indication appears in this Agreement, shall specify:
    - (A) the date upon which the relevant cancellation or prepayment is to be made; and
    - (B) the amount of that cancellation or prepayment.
- (b) Subject to the requirements of the other provisions of this Article 4 (*Repayment, Prepayment and Cancellation*), any prepayment under this Agreement is without premium or penalty other than:
  - (i) the Exit Fee payable in respect of, and on, any amounts applied in prepayment in accordance with Sections 4.2 (*Mandatory Prepayments*) and 4.6 (*Voluntary Prepayment*);
  - (ii) Break Costs to the extent that the prepayment is made on a date other than an Interest Payment Date.
- (c) Any prepayment under this Agreement shall be made together with accrued and unpaid interest as of such date.
- (d) [Reserved].
- (e) No prepayment, repayment or cancellation is allowed except at the times and in the manner expressly provided for in this Agreement.
- (f) No amount of the Commitments cancelled under this Agreement may be subsequently reinstated.
- (g) If the Administrative Agent receives a notice under this Article 4 (*Repayment, Prepayment and Cancellation*), it shall promptly forward a copy of that notice to each Senior Lender.

**Article 5**  
**INTEREST, INTEREST PERIODS AND FEES**

**5.1 Payment of Interest and Interest Payment Dates.**

Interest shall accrue on each Loan at a *per annum* rate during each Interest Period equal to the Interest Rate as determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*). The Borrower shall pay accrued interest on the Loans on each Interest Payment Date. Accrued interest shall be calculated on the basis of (i) the Interest Rate determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*) which shall be applicable for each day of an Interest Period for which interest accrues and (ii) a 360-day year and shall be payable in arrears at the end of each Interest Period. Accrued interest shall be paid on the basis of actual days elapsed and shall include the first day of the Interest Period but exclude the last day of such Interest Period.

**5.2 Interest Rate**

The Interest Rate applicable to a Loan for a certain Interest Period shall be determined as a variable interest rate in accordance with the following provisions:

- (a) *[Reserved]*.
- (b) *Term SOFR*. The Interest Rate for the relevant Interest Period shall be determined as the aggregate of:
  - (i) the Term SOFR for such Interest Period; and
  - (ii) the Credit Spread Adjustment; and
  - (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR on the applicable Reference Rate Determination Date.

The Administrative Agent shall promptly, after the relevant Reference Rate Determination Date, notify the Borrower of the relevant Term SOFR and the aggregate Interest Rate determined on this basis under this paragraph (b) (*Term SOFR*).

- (c) *Compounded SOFR Primary Screen Rate*. If a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:
  - (i) the Compounded SOFR Primary Screen Rate for such Interest Period; and
  - (ii) the Credit Spread Adjustment; and
  - (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate on the applicable Reference Rate Determination Date.

*Lag Time.* When determining the Interest Rate under this paragraph (c), a Lag Time of five (5) US SOFR Banking Days shall apply.

- (d) *Compounded SOFR Calculated Index Rate.* If both a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR and a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:

- (i) the Compounded SOFR Calculated Index Rate for such Interest Period; and
- (ii) the Credit Spread Adjustment; and
- (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Calculated Index Rate on the applicable Reference Rate Determination Date.

When determining the Interest Rate under this paragraph (d) (*Compounded SOFR Calculated Index Rate*), the provisions with respect to the Lag Time as stipulated under paragraph (c) (*Compounded SOFR Primary Screen Rate*) above shall apply equally.

- (e) *Compounded SOFR Calculated Daily Rate.* If a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR, a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate and a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Calculated Index Rate on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:

- (i) the Compounded SOFR Calculated Daily Rate for such Interest Period; and
- (ii) the Credit Spread Adjustment; and
- (iii) the Applicable Margin.

When determining the Interest Rate under this paragraph (e) (*Compounded SOFR Calculated Daily Rate*), the provisions with respect to the Lag Time as stipulated under paragraph (c) (*Compounded SOFR Primary Screen Rate*) above shall apply equally.

- (f) *Floor.* If the Reference Rate would be less than 0.00% per annum, such Reference Rate shall be deemed to be 0.00% per annum for purposes of this Agreement.
- (g) *Conforming Adjustments.* Further to the provisions of this Section 5.2, the Majority Lenders may make such further technical, administrative, operational and other conforming changes and adjustments to these provisions as are required to permit the administration, calculation or determination of the relevant Reference Rate in a manner substantially consistent with market practice or as are required to make the interest provisions, in particular the timing and frequency of determining rates, the calculation rules, the notification periods and similar technical, administrative or operational measures, administratively feasible. To this effect, the Administrative Agent (acting at the direction of the Majority Lenders) may send the Borrower a notification (a



“**Technical Adjustment Notification**”) which shall supplement and adjust this Agreement and which shall, upon receipt by the Borrower, form an integral part of this Agreement.

- (h) *Administrative Agent.* Notwithstanding anything to the contrary herein or in any other Finance Document, (A) the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability in respect of, (a) the monitoring, determination or verification of the unavailability or cessation of any Interest Rate, including the giving of any notices related thereto, (b) the continuation of, administration of, submission of, calculation of or any other matter related to any Interest Rate, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable, replacement or successor rate or adjustment thereto, including whether the composition or characteristics of any such alternative, comparable, replacement or successor rate or adjustment will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Interest Rate or any other rate, or (c) the effect, implementation or composition of any changes in any Technical Adjustment Notification; and (B) no amendments or other changes (including in any Technical Adjustment Notification) shall, unless agreed by the Administrative Agent, affect the rights, indemnities or obligations of the Administrative Agent. The Administrative Agent may select information sources or services to ascertain any Interest Rate, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Senior Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

### 5.3 Default Interest.

- (a) If any Event of Default has occurred and is continuing, the principal amount of the Loans (whether or not accelerated) and all other Obligations that are due and unpaid shall automatically bear interest at a rate per annum that is the rate that would otherwise be applicable thereto plus two percent (2%) per annum, in each case, from the date of written demand from the Administrative Agent (acting at the direction of the Majority Lenders) following the occurrence of such Event of Default to the date on which such Event of Default ceases to exist or is otherwise cured. Any interest accruing under this Section 5.3 (*Default Interest*) shall be immediately payable by the Borrower on demand by the relevant Agent or Senior Lender;
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan;
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two (2) percent per annum higher than the rate which would have applied if the overdue amount had not become due; and
- (c) default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (d) No accrued interest shall become due and payable other than in accordance with the provisions of Section 5.1 (*Payment of Interest and Interest Payment Dates*) or this Section 5.3 (*Default Interest*).



#### 5.4 Limitation on Interest.

If at any time the interest rate applicable to any Loan, together with all other amounts that are treated as interest on such Loan under Applicable Law, exceeds the maximum lawful rate under the laws of New York, the interest payable in respect of such Loan, together with all other amounts treated as interest on such Loan, shall be limited to interest calculated at the maximum lawful rate under the laws of New York.

#### 5.5 Determination of Interest Periods.

- (a) Subject to paragraph (b) below, each Interest Period for any Loan shall be of a duration of one (1) month.
- (b) Each Interest Period for a Loan shall start on an Interest Payment Date (except in the case of the first Interest Period applicable to the Loan, which shall start on its Utilization Date) and end on the day immediately before the Interest Payment Date that corresponds to the last day of the Interest Period or, if earlier, the Maturity Date.

#### 5.6 Non-Business Days.

If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall instead end on the next Business Day in that calendar month (if there is one) or the immediately preceding Business Day (if there is not).

#### 5.7 Market Disruption.

If the Administrative Agent notifies the Borrower prior to the end of an Interest Period (the “**Affected Interest Period**”) that:

- (a) the Administrative Agent determines that the interest rate for such Loan in relation to the Affected Interest Period cannot be determined by the Administrative Agent in accordance with Section 5.2 (*Interest Rate*); or
- (b) the Administrative Agent has received notifications from a Senior Lender or Senior Lenders (whose participations in such Loan exceed thirty percent (30%) of that Loan) that the difference between
  - (i) the interest rate determined in accordance with Section 5.2 (*Interest Rate*); minus
  - (ii) the Funding Rate of such Senior Lender or Senior Lenders in relation to such Affected Interest Period
 is below the Applicable Margin,

(each of (a) and (b) above, a “**Market Disruption Event**”),

then the Borrower shall pay interest on the respective Loan for the Affected Interest Period with respect to each participation of an affected Lender at a rate equal to the aggregate of:

- (i) the Funding Rate of such Lender in relation to the Affected Interest Period, as determined by such Lender and notified by such Lender to the Administrative Agent (provided that if any such rate is less than zero, the Funding Rate shall be deemed to be zero); and
- (ii) the Applicable Margin.

In the notification to the Borrower that a Market Disruption Event has occurred, the Administrative Agent will also notify the Borrower about the Interest Rate determined in accordance with this Section 5.7 (*Market Disruption*) and the interest amount payable by the Borrower in respect of the Affected Interest Period.

If this Section 5.7 (*Market Disruption*) applies and the Majority Lenders or the Borrower so requires, the Majority Lenders and the Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest. Any alternative basis thus agreed shall, with the prior consent of all the Senior Lenders and the Borrower, be binding on all parties hereto.

If within such period of thirty (30) days the parties to this Agreement do not reach any agreement, the Interest Rate notified to the Borrower in accordance with this Section 5.7 (*Market Disruption*) will continue to apply for the Affected Interest Period.

## **5.8 Break Costs.**

The Borrower shall indemnify, compensate and reimburse each Senior Lender for all Break Costs which such Senior Lender may sustain:

- (a) if the Borrower withdraws or reduces the amount specified for a utilization in a Utilization Request or fails to satisfy any of the conditions precedent specified in Article 12 (*Conditions Precedent*) after delivering a Utilization Request and as a result a Utilization of a Loan does not occur on the Utilization Date; provided, that if the Borrower withdraws or reduces the amount specified for any Utilization Request, then the Applicable Margin shall be included in the calculation of Break Costs but in all other cases (including clauses (b) and (c) of this Section 5.8 (*Break Costs*), the Applicable Margin should not be included in the calculation of Break Costs).
- (b) if the Borrower fails to pay any amount of principal of the Loans due and payable under a Finance Document on its due date; or
- (c) if any repayment or prepayment (whether mandatory or voluntary) of its Loan occurs on a date that is not an Interest Payment Date for the Loan, in accordance with Article 4 (*Repayment, Prepayment and Cancellation*) of this Agreement.

Each Senior Lender shall furnish to the Borrower a certificate setting forth the basis and amount of each request by such Senior Lender for compensation under this Section 5.8 (*Break Costs*) which certificate shall be conclusive and binding on the Borrower in the absence of manifest error. The Borrower shall pay such Senior Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

## **5.9 Fees.**

- (a) **Unused Commitment Fee.** The Borrower shall pay to the Administrative Agent (for the account of each Senior Lender) an unused commitment fee (the “**Unused Commitment Fee**”) on the average daily Unused Commitment of such Senior Lender for the period from and including the Entry Date to the Maturity Date, in each case at a rate per annum equal to 1.00%. Accrued Unused Commitment Fees shall be payable monthly, in arrears and in cash, on each Interest Payment Date or, in the case of the last installment of the Unused Commitment Fee payable hereunder, on the date of termination or cancellation of the Unused Commitment.

- (b) **Upfront Fee.** The Borrower shall pay an upfront fee (the “**Upfront Fee**”) to each Senior Lender (for its own account) in an amount equal to 5.00% multiplied by the aggregate principal amount of each Senior Lender’s Commitment under this Agreement, which shall be payable in cash (x) on the Utilization Date of the Interim Loan with respect to the portion of the Upfront Fee allocable to the Interim Loan that, at the option of the Borrower, may be net funded in whole or in part from the proceeds of the Interim Loan borrowing on the Utilization Date of the Interim Loan and (y) on the Utilization Date of the Final Loan with respect to the portion of the Upfront Fee allocable to the Final Loan that, at the option of the Borrower, may be net funded in whole or in part from the proceeds of the Final Loan on the Utilization Date of the Final Loan.
- (c) **Exit Fee.** Upon any prepayment or repayment of any portion or all of the Loans, whether at maturity, as a prepayment, repayment, acceleration or termination of the Loans (including, but not limited to, any prepayment or repayment after the occurrence of an Event of Default or after acceleration of the Loans) or upon the occurrence of the Maturity Date or upon the acceleration of the Loans (the occurrence of any such events, an “**Exit Fee Event**”), the Borrower shall pay to the Administrative Agent (for the account of each Senior Lender) an exit fee (the “**Exit Fee**”) in cash equal to (a) the principal amount of the Loans being prepaid, repaid or accelerated multiplied by (b) 1.00%. The Exit Fee shall be fully earned, due and payable on the date such Exit Fee Event occurs and non-refundable when made. The parties acknowledge and agree that (i) the Senior Lenders forwent receiving additional compensation, fees and pricing on the Entry Date in return for the parties agreeing to the Exit Fee, (ii) the Agents and the Senior Lenders would not have entered into this Agreement and the Senior Lenders would not have provided the Loans without the Obligor agreeing to pay the Exit Fee in the aforementioned instances and (iii) the Exit Fee set forth in this Section 5.9(c) (*Fees*) is not intended to act as a penalty or to punish the Borrower or any other Obligor for any such payment, repayment, redemption, prepayment or termination.
- (d) **Agent’s Fee.** The Borrower shall pay to the Agent (for its own account) agency fees in the amounts and manner agreed in the Agency Fee Letter.

## Article 6 TAXES

### 6.1 Taxes.

- (a) **Defined Terms.** For purposes of this section, the term “Applicable Law” includes FATCA.
- (b) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower under any Finance Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Body in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 6.1. (Taxes)), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made. The Administrative Agent shall act as a Withholding Agent under this Agreement with respect to U.S. withholding only.

- (c) **Payment of Other Taxes by Borrower.** The Borrower shall timely pay to the relevant Governmental Body in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.
- (d) **Indemnification by Borrower.** The Borrower shall indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 6.1 (*Taxes*)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, other than any penalties and interest resulting from the willful misconduct or gross negligence (as determined in the final and non-appealable judgment of a court of competent jurisdiction) of the Administrative Agent or such Senior Lender, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to the Borrower by a Senior Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Senior Lender, shall be conclusive absent manifest error.
- (e) **Indemnification by the Senior Lenders.** Each Senior Lender shall severally indemnify the Administrative Agent within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Senior Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Senior Lender's failure to comply with the provisions of Section 14.1(i) (*Assignment by Senior Lenders*) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Senior Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Finance Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to any Senior Lender by the Administrative Agent shall be conclusive absent manifest error. Each Senior Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Senior Lender under any Finance Document or otherwise payable by the Administrative Agent to the Senior Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).
- (f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by the Borrower to a Governmental Body pursuant to this section, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.
- (g) **Status of Senior Lenders.** (i) Any Senior Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Finance Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Senior Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Senior Lender is subject to backup withholding or information reporting

requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (g)(ii)(A), (ii)(B) and (ii)(D) of this section) shall not be required if in the Senior Lender's reasonable judgment such completion, execution or submission would subject such Senior Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Senior Lender.

(ii) Without limiting the generality of the foregoing,

- (A) any Senior Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or about the date on which such Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Senior Lender is exempt from U.S. federal backup withholding tax;
- (B) any Foreign Senior Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:
  - (1) in the case of a Foreign Senior Lender claiming the benefits of an income tax treaty to which the United States of America is a party (x) with respect to payments of interest under any Finance Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Finance Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
  - (2) executed copies of IRS Form W-8ECI;
  - (3) in the case of a Foreign Senior Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) a certificate substantially in the form of Exhibit A-1 to the effect that such Foreign Senior Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the IRC, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the IRC (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or
  - (4) to the extent a Foreign Senior Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit A-2 or Exhibit A-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as



applicable; provided, that if the Foreign Senior Lender is a partnership and one or more direct or indirect partners of such Foreign Senior Lender are claiming the portfolio interest exemption, such Foreign Senior Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit A-4 on behalf of each such direct and indirect partner;

- (C) any Foreign Senior Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and
- (D) each Senior Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Senior Lender has complied with such Senior Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Senior Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

- (h) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes (including any tax credit in lieu of a refund) as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section 6.1 (*Taxes*)) and which is immediately allocable to the Taxes, it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Body) in the event that such indemnified party is required to repay such refund to such Governmental Body. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (h) shall not be construed to require any

indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

- (i) **Survival.** Each party's obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Senior Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Finance Document.

## **Article 7**

### **OTHER PROVISIONS RELATING TO THE LOANS**

#### **7.1 Payments Generally.**

- (a) The Borrower shall make each payment required to be made by it under this Agreement on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim not later than a time determined by the Administrative Agent in its sole discretion and communicated to the Borrower.
- (b) Any amounts received after such time on any date may, in the discretion of the Majority Lenders, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon.
- (c) All such payments shall be made to the account designated by the Administrative Agent from time to time, except that payments pursuant to Sections 7.3 (*Change in Circumstances*), 7.4 (Payment of Costs and Expenses) and 7.5 (*Indemnities*) shall be made directly to the Persons entitled thereto.
- (d) The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof.
- (e) All payments under this Agreement shall be made in Dollars.

#### **7.2 Illegality.**

If any Applicable Law comes into force after the Entry Date, or if any change in any existing Applicable Law or in the interpretation or application thereof by any court or Governmental Body now or hereafter makes it unlawful for a Senior Lender to have advanced or acquired an interest in any of the Loans or to fund or otherwise maintain any of the Loans or to give effect to its obligations in respect thereof, such Senior Lender may, by written notice thereof to the Borrower, declare its obligations under this Agreement to be terminated, and the Borrower shall immediately cancel any available Commitments of such Senior Lender and prepay, within the time required by such law, the Loans and any other amounts owing under this Agreement (including accrued and unpaid interest) as may be applicable to the date of such payment. If any such event shall, in the opinion of such Senior Lender, only affect part of its obligations under this Agreement, the remainder of this Agreement shall be unaffected and the obligations of the Borrower and the other Obligor under the Finance Documents shall continue. Each Senior Lender agrees to use commercially reasonable efforts to designate a different lending office if such designation will avoid the need for such notice and will not, in the judgment of such Senior Lender, acting reasonably, otherwise be materially disadvantageous to such Senior Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Senior Lender in connection with any such designation or assignment.

**7.3 Change in Circumstances.**

- (a) If the introduction of or any change in any Applicable Law relating to a Senior Lender or any change in the interpretation or application thereof by any Governmental Body or compliance by a Senior Lender with any request or direction of any Governmental Body:
- (i) subjects such Senior Lender to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;
  - (ii) imposes, modifies or deems applicable any reserve, liquidity, cash margin, capital, special deposit, deposit insurance or assessment, or any other regulatory or similar requirement against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds for loans by, such Senior Lender or any direct or indirect holding company of such Senior Lender;
  - (iii) imposes on such Senior Lender or any direct or indirect holding company of such Senior Lender or requires there to be maintained by such Senior Lender any capital adequacy, liquidity or additional liquidity capital requirement (including, without limitation, a requirement which affects such Senior Lender's or such holding company's allocation of capital resources to its obligations) in respect of such Senior Lender's obligations hereunder; or
  - (iv) imposes on such Senior Lender any other condition or requirement with respect to this Agreement (other than Excluded Taxes);
- (b) and subject to paragraph (c) below, such occurrence has the effect of:
- (i) increasing the cost to such Senior Lender of agreeing to make or making, maintaining or funding the Loan or any portion thereof;
  - (ii) reducing the amount of the Obligations owing to such Senior Lender;
  - (iii) directly or indirectly reducing the effective return to such Senior Lender under this Agreement or on its overall capital as a result of entering into this Agreement or as a result of any of the transactions or obligations contemplated by this Agreement; or
  - (iv) causing such Senior Lender to make any payment or to forgo any interest, fees or other return on or calculated by reference to any sum received or receivable by such Senior Lender under this Agreement;

then, upon written request of such Senior Lender, the Borrower will pay to such Senior Lender such additional amount or amounts as will compensate such Senior Lender for such additional costs incurred or reduction suffered. A certificate of a Senior Lender setting forth the amount or amounts necessary to compensate such Senior Lender and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Senior Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

For purposes of the foregoing, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, regulations,



guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed a “change in Applicable Law” regardless of the date enacted, adopted, applied or issued.

#### **7.4 Payment of Costs and Expenses.**

The Borrower shall pay to the Agents and the Senior Lenders on demand all reasonable costs and expenses (other than in the case of Section 7.4(f) (*Payment of Costs and Expenses*) below, in which case, subject to the terms of the DIP Order and DIP Recognition Order, the Borrower shall pay the Agents and the Senior Lenders on demand all costs and expenses) of the Agents and the Senior Lenders and their agents, counsel, advisors (including a technical advisor) and any receiver or receiver-manager appointed by them or by a court (including, without limitation, all reasonable fees, properly invoiced and documented expenses and disbursements of legal counsel) in connection with this Agreement and the other Finance Documents, the Chapter 11 Cases and the Recognition Proceedings, including, without limitation:

- (a) the preparation, negotiation, and completion of the Finance Documents, or any actual or proposed amendment or modification thereof or any waiver thereunder and all instruments supplemental or ancillary thereto, and, in the case of the Agents, the administration of the Finance Documents;
- (b) [reserved];
- (c) the reasonable and properly invoiced and documented fees and expenses of the Senior Lenders incurred as part of the Senior Lenders’ due diligence or, subject to Section 11.1(d) (*Affirmative Covenants*), for the ongoing monitoring, investigation or information gathering in respect of the Borrower and the Project;
- (d) the registration, maintenance and/or discharge of any of the Security in any public record office;
- (e) obtaining advice as any Agent’s or the Senior Lenders’ rights and responsibilities under this Agreement or the other Finance Documents; and
- (f) the defense, establishment, protection or enforcement of any of the rights or remedies of the Agents or the Senior Lenders under this Agreement or any of the other Finance Documents, including all costs and expenses of establishing the validity and enforceability of, or of collection of amounts owing under, any of the Finance Documents or any enforcement of the Security, or otherwise due from the Borrower or any Guarantor under this Agreement.

#### **7.5 Indemnities.**

- (a) The Borrower shall indemnify and hold harmless each Agent, each Senior Lender and their Affiliates, officers, directors and employees (each, an “**Indemnified Party**”) from all Claims (including the reasonable and properly invoiced and documented fees, expenses and disbursements of outside legal counsel to the Senior Lenders and outside legal counsel to the Agents in each applicable jurisdiction), which may be incurred by any Indemnified Party as a consequence of or in respect of:
  - (i) default by the Borrower in the payment when due of any Obligation or any other Default or Event of Default hereunder which is continuing;

- (ii) the entering into by the relevant Agents and the Senior Lenders of the Finance Documents and any amendment, waiver or consent relating thereto, and the performance by such Agents and the Senior Lenders of their obligations under this Agreement and the other Finance Documents;
  - (iii) failure of the Borrower to comply with any Applicable Law, including, without limitation, any Environmental Law or applicable Anti-Corruption Laws, AML Laws or Sanctions, with respect to the Project;
  - (iv) any E&S Event, Environmental or Social Matter and Environmental Claim with respect to the Project;
  - (v) the application by the Borrower of the proceeds of the Loan; or
  - (vi) any material Claim arising in connection with the development, construction, procurement, engineering and operation of the Project, except for any such Claim that a court of competent jurisdiction determined in a final and non-appealable order arose primarily on account of the relevant Indemnified Party's gross negligence or willful misconduct.
- (b) In connection with any Claim described in Section 7.5(a) (*Indemnities*) above, the applicable Indemnified Party shall deliver a certificate of an officer of the Administrative Agent or the applicable Senior Lender as to:
- (i) any such Claim; and
  - (ii) reasonable details of the calculation of the amount of such Claim (which calculation shall be, absent manifest error, *prima facie* evidence of the calculation of the amount of such Claim).

## Article 8 REPRESENTATIONS AND WARRANTIES

### 8.1 Representations and Warranties of the Borrower.

To induce each Senior Lender to enter into this Agreement and the other Finance Documents to which each such Senior Lender is a party, and to induce each Senior Lender to make available the Loans under this Agreement and the other Finance Documents to which it is a party, the Borrower makes the representations and warranties set forth below to each Senior Lender as of the Entry Date and each Utilization Date.

- (a) **Organization and Powers.** Subject to any restriction arising on account of the Borrower's and its Subsidiaries' status as a "debtor" under the Bankruptcy Code and entry of the DIP Order or any restriction on the Borrower and its Subsidiaries as a result of the Recognition Proceedings and any required approvals of the Bankruptcy Court, the Borrower and each of its Subsidiaries:
- (i) has been duly incorporated or formed and is validly existing under the laws of its incorporation or formation, as applicable;
  - (ii) has all requisite corporate power and authority to own and lease its property and assets and to carry on its business;

- (iii) has all requisite corporate power and authority to enter into and deliver each of the Finance Documents, and the transactions contemplated thereby, to which it is or will become a party, and to take all necessary action to perform its obligations thereunder (including the power and authority to grant the Security pursuant to the Finance Documents and to perform the obligations set forth therein); and
  - (iv) is duly qualified, licensed or registered to do business in each jurisdiction in which the nature of its business or the property or assets owned or leased by it make such qualification, licensing or registration necessary. No proceeding has been instituted or, to the knowledge of the Borrower, threatened in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, limit or curtail, such power and authority or qualification, licensing or registration. The Borrower is up-to-date in all of its corporate filings in all material respects and is (if applicable) in good standing under Applicable Laws.
- (b) **Authorization; No Conflict.** Subject to the entry of the DIP Order and the DIP Recognition Order, the execution and delivery by the Borrower and each of its Subsidiaries of the Finance Documents to which each is a party, and the performance by it of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate or other action on its part and do not and will not:
  - (i) contravene any provision of its constitutional documents (or the constitutional documents of any of its Subsidiaries), including, without limitation, any shareholder agreements or declarations, as applicable, or any resolution of its shareholders, partners or directors (or any committee thereof);
  - (ii) conflict with, result in a breach of, or constitute a default or an event creating rights of acceleration, termination, modification or cancellation or a loss of rights under (with or without the giving of notice or lapse of time or both), the Streaming Agreement or any material contract to which any of its Subsidiaries is a party, in each case, to the extent not subject to the automatic stay under the Chapter 11 Cases or executed after the Petition Date;
  - (iii) violate any Applicable Law; or
  - (iv) other than as contemplated by the Finance Documents, result in, or require, the creation or imposition of any Encumbrance on any property or assets of the Borrower.
- (c) **Execution; Binding Obligation.** Subject to entry of the DIP Order and the DIP Recognition Order, each Finance Document to which the Borrower is or will become a party:
  - (i) has been, or when delivered under or in connection with this Agreement will be, duly executed and delivered by the Borrower; and
  - (ii) constitutes, or when delivered under or in connection with this Agreement will constitute, a legal, valid and binding agreement of the Borrower, in full force and effect and enforceable against the Borrower in accordance with its terms and admissible into evidence in the courts of New York, except to the extent enforcement may be affected by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity.

- (d) **Consents.** The Borrower and its Subsidiaries are not required to give any notice to, make any filing with or obtain any Authorization, Order or other consent or approval of any Person in connection with the execution or delivery of or performance of its obligations under any Finance Document to which they are a party, or the consummation of the transactions contemplated herein and therein, other than:
- (i) the entry of the DIP Order and the DIP Recognition Order;
  - (ii) consents and approvals required under contracts or other agreements stayed by the Automatic Stay;
  - (iii) with respect to the grant of the priming lien, Trisura Guarantee Insurance Company; and
  - (iv) those that have already been obtained and copies of which have been provided to the Senior Lenders or those consents that are reflected in the DIP Order.
- (e) **Corporate Structure; Subsidiaries.**
- (i) Part A of Schedule Q (*Corporate Organization Chart*) sets forth the true and complete list of all Subsidiaries of the Borrower, including the type and number of issued and outstanding shares or other equity interests of each such Subsidiary and the Person in whose name such shares or equity interests are registered.
  - (ii) Except as set out in Part A of Schedule Q (*Corporate Organization Chart*) no Person has any option, warrant, right (pre-emptive, contractual or otherwise) or other security or conversion privilege of any kind that is exercisable or convertible into, or exchangeable for, or otherwise carries the right of the holder to purchase or otherwise acquire (whether or not subject to conditions) common shares or other equity interests of the Borrower or its Subsidiaries.
  - (iii) The Borrower is not engaged in any joint purchasing arrangement, joint venture, partnership and other joint enterprise with any other Person.
  - (iv) No Person has a direct or indirect ownership interest in the Borrower, except as set out in Part A of Schedule Q (*Corporate Organization Chart*), or the Project Property or is otherwise involved in any manner in the operation of the Project.
  - (v) To the Borrower's knowledge and belief, no funds invested in the shares of the Borrower are of illicit origin.
- (f) **Principal Place of Business and Other Locations.** The jurisdiction of incorporation, principal place of business, location of corporate records, and location of tangible assets (except for inventory which is in transit) of the Borrower as of the date hereof is Nevada.
- (g) **Residence for Tax Purposes.** For tax purposes, the Borrower is resident of Nevada and the United States of America (and no other state or non-U.S. jurisdiction).
- (h) **[Reserved].**
- (i) **No Expropriation.** No Expropriation Event has occurred nor has any notice been given or proceeding commenced by a Governmental Body or Person in respect thereof nor, to the knowledge

of the Borrower, is there any intent or proposal to give any such notice or commence with respect to an Expropriation Event.

(j) **[Reserved]**.

(k) **Title to Project Real Property.** Schedule J (*Project Real Property*) (or if such Schedule is replaced in accordance with this Agreement, such replacement Schedule) sets out a complete and accurate list of the Project Real Property in which the Borrower and its Subsidiaries have a right, title or interest. The Borrower, subject to Permitted Encumbrances:

- (i) has valid and subsisting leasehold title to all leases of real property and mineral interests included within the Project Real Property;
- (ii) has valid possessory and record title to all mineral interests included within the Project Real Property, except such mineral interests that are leased to the Borrower and are covered under paragraph (k)(i) above; and
- (iii) has good and marketable title to such other real property interests included within the Project Real Property and not otherwise included under paragraphs (k)(i) and (k)(ii).

Such Project Real Property is free and clear of all Encumbrances other than Permitted Encumbrances. The Borrower and its Subsidiaries do not hold any other freehold, leasehold or other real property interests or rights (including licenses from landholders permitting the use of land, leases, rights of way, occupancy rights, surface rights and easements).

(l) **Other Collateral.** The Borrower has good and valid title to, or leasehold interest in, all other Collateral that is not Project Real Property, free and clear of all Encumbrances other than Permitted Encumbrances.

(m) **Project Property.** Without limiting the generality of Section 8.1(j) (*Representations and Warranties of the Borrower*) and Section 8.1(k) (*Representations and Warranties of the Borrower*):

- (i) the Borrower owns or otherwise has valid rights to use all of, and does not own any material properties or assets other than, the Project Property, and no Person other than the Borrower has any rights to participate in the Project Real Property or operate the Project;
- (ii) the Borrower's Subsidiaries do not own or otherwise have valid rights to use any of the Project Property;
- (iii) the Project Real Property constitutes all real property, unpatented mining claims, mineral, surface interests and ancillary rights (including rights of access) necessary for the development and mining operations of the Project;
- (iv) other than the Royalties, the Offtake Agreements, the Working Capital Facility, the Streaming Agreement, the First Lien Facility and this Agreement, none of the Project Real Property or any Minerals produced therefrom are subject to an option, right of first refusal or right, title, interest, reservation, claim, rent, royalty, or payment in the nature of rent or royalty, or right capable of becoming an agreement, option, right of first refusal or right, title, interest, reservation, claim, rent, royalty, or payment in the nature of rent or royalty; and

- (v) other than pursuant to Applicable Laws, there are no restrictions on the ability of the Borrower to exploit the Project Real Property.
- (n) **Maintenance of Project Property.** All mining concession, maintenance fees, recording fees, preservation patents and Taxes (other than the Tax Encumbrances) and all other amounts have been paid when due and payable and all other actions and all other obligations as are required to maintain the Project Property in good standing, have been taken and complied with in all material respects. All water permits and certificates have been perfected and maintained in good standing and all proofs of beneficial use have been duly and properly filed in compliance with all applicable regulations of the State of Nevada, Division of Water Resources.
- (o) **Insurance.** The Collateral and the businesses and operations of the Borrower are insured in accordance with Section 11.1(e) (*Affirmative Covenants*). The Borrower has not breached the terms and conditions of any insurance policies it is required to obtain and maintain in accordance with Section 11.1(e) (*Affirmative Covenants*) in any material respect nor failed to promptly give any notice or present any material claim thereunder. There are no material claims under any such policy as to which any insurer is denying liability or defending under a reservation of rights clause.
- (p) **Status of Authorizations.** The Borrower has the Authorizations needed for the care and maintenance of the Project. Except the non-validity of which would not reasonably be expected to have a Material Adverse Effect, each Material Project Authorization necessary for the current stage of the Project is valid and in full force and effect.
- (q) **Project Documents.** Other than to the extent affected by the filing of the Chapter 11 Cases, the Recognition Proceedings, the entry of the DIP Order or the Automatic Stay or as would not reasonably be expected to have a Material Adverse Effect, each Material Project Document and each other Project Document necessary for the current stage of the Project is valid and in full force and effect.
- (r) **Applicable Laws; Conduct of Operations.** Each of the Borrower and its Subsidiaries, including in the conduct of operations at the Project, is in compliance in all material respects with all Applicable Laws and, without limiting the generality of the foregoing, all exploration, development and mining operations in respect of the Project Real Property have been conducted in accordance with Good Industry Practice and all material workers' compensation and health and safety regulations have been complied with. There is no pending or, to the knowledge of the Borrower, proposed changes to Applicable Laws that would render illegal or materially restrict the development of the Project or the conduct of operations at the Project, or that could otherwise reasonably be expected to result in a Material Adverse Effect.
- (s) **Sanctions.**
  - (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) is a Sanctions Target; (B) has engaged in the past five (5) years, or intends to engage in the future in any dealings, with, involving or for the benefit of a Sanctions Target; or (C) is or has been, in the past five (5) years, subject to any action, litigation, claim, investigation or proceeding with regard to any actual or alleged violation of Sanctions;
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable Sanctions; and



- (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans (A) to fund or facilitate any activities or business of, with or involving any Sanctions Target or (B) in any manner that would constitute or give rise to a violation of Sanctions by any Person, including any Senior Lender.
- (t) **Anti-Corruption Laws.**
  - (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) have, in the past five (5) years, taken any action, directly or indirectly, that would constitute or give rise to a violation of applicable Anti-Corruption Laws; or (B) is or has been, in the past five (5) years, subject to any action, litigation, claim, investigation or proceeding with regard to any actual or alleged violation of Anti-Corruption Laws.
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable Anti-Corruption Laws; and
  - (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value to any Person in a manner that would constitute or give to a violation of applicable Anti-Corruption Laws.
- (u) **AML Laws; FinCen Regulations.**
  - (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) has, in the past five (5) years, taken any action, directly or indirectly, that would constitute or give rise to a violation of applicable AML Laws;
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable AML Laws;
  - (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans for any activity that would constitute or give rise to violation of applicable AML Laws; and
  - (iv) The information included in the Beneficial Ownership Certification is true and correct in all respects.
- (v) **Environmental Compliance.** Without limiting the generality of Sections 8.1(p) (*Representations and Warranties of the Borrower*) and 8.1(r) (*Representations and Warranties of the Borrower*):
  - (i) the Borrower and its Subsidiaries, and, to the knowledge of the Borrower and its Subsidiaries, the conduct of the care and maintenance of the Project, is in compliance with all Environmental and Social Requirements in each case and, as applicable, in accordance with the actions and time schedules established in any Corrective Action Plan;
  - (ii) the Borrower and its Subsidiaries have obtained, and maintained in full force and effect, all material Environmental Licenses any of them are currently required to hold and that are necessary to maintain and operate the Project;

- (iii) no Hazardous Substances have been generated, used, treated, recycled, stored on or transported to or from, or Released on, or to the knowledge of the Borrower, are migrating from or are present on all or any portion of the Project Real Property or the Project, except to the extent any such Hazardous Substance would not reasonably be expected to result in a material Environmental Claim (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)) against the Borrower, any of its Subsidiaries or with respect to the Project; and
- (iv) none of the Borrower, its Subsidiaries nor the Project is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)), (and, to the knowledge of the Borrower or its Subsidiaries, there is no basis for any such Environmental Claim), (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)).
- (w) **Community Matters.** Neither the Borrower nor its Subsidiaries have received notice that the Project Real Property or the Project is subject to any material actions, suits and proceedings (including arbitral and administrative proceedings) by indigenous peoples that are individually, or in the aggregate, material, and, to the knowledge of the Borrower or its Subsidiaries, there are no such current, pending or threatened (in writing) actions, suits or proceedings materially affecting the Project Real Property or the Project. Neither the Borrower nor its Subsidiaries have received notice of any claim or assertion, written or oral, whether proven or unproven, from any other such affected persons or groups, or Persons acting on their behalf, with respect to any title (including collective title), rights or other interests which could reasonably be expected to conflict with the Project if such claim or assertion were valid.
- (x) **Employee and Labor Matters.** The Borrower, and each of its Subsidiaries, is in material compliance with all Applicable Laws and Performance Standards in respect of employment and employment practices, terms and conditions of employment, pay equity and wages; there is not currently any labor disruption or conflict involving the Borrower, its Subsidiaries or directly affecting the Project. Neither the Borrower nor its Subsidiaries are a party to a collective bargaining agreement. None of the Borrower's Subsidiaries have any employees.
- (y) **Security.** The Borrower has implemented security practices and procedures at the Project in accordance with Applicable Laws and consistent with the Good Industry Practice.
- (z) **Employee Benefit Plans.** Each Employee Benefit Plan mandated by a Governmental Body that is intended to qualify for special tax treatment meets all of the requirements for such treatment and has obtained all necessary approvals of all relevant Governmental Bodies. No Employee Benefit Plan has any unfunded liabilities, determined in accordance with IFRS, that have not been fully accrued on the Financial Statements or that will not be fully offset by insurance. All Employee Benefit Plans are registered where required by, and are in good standing under, all Applicable Laws. For purposes of this Section 8.1(z) (*Representations and Warranties of the Borrower*), "**Employee Benefit Plan**" means any employee benefit plan, pension plan, program, policy or arrangement sponsored, maintained or contributed to by the Borrower or with respect to which the Borrower has any liability or obligation. No event has occurred and no condition exists that could subject Borrower or its Subsidiaries, either directly or by reason of its affiliation with any member of their Controlled Group, to any liability imposed by Title IV of ERISA, or to any lien imposed



by Section 430 of the IRC or Section 303 or Title IV of ERISA. “Controlled Group” means any trade or business (whether or not incorporated) (i) which is or has at any relevant time been under common control within the meaning of Section 4001(b)(1) of ERISA with Borrower or its Subsidiaries or (ii) which together with Borrower or its Subsidiaries is or was at any relevant time treated as a single employer under Section 414(b), (c), (m) or (o) of the IRC.

- (aa) **Taxes.** The Borrower and its Subsidiaries have filed all material federal, state and other tax returns and reports required to be filed, have paid all material federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (i) to the extent prohibited by the automatic stay of the Bankruptcy Code (or the applicable provision of the CCAA), (ii) for the Tax Encumbrances, and (iii) for Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with IFRS.
- (bb) **Intellectual Property.** The Borrower owns, licenses or otherwise has the right to use all material licenses, Authorizations, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, franchises, authorizations and other intellectual property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto (other than any intellectual property the absence of which or any such infringement upon or conflict with respect to which would not have a material impact on the Borrower’s ability to maintain or operate the Project and carry on the Business).
- (cc) **Books and Records.** The minute books and corporate records of the Borrower and each of its Subsidiaries are true and correct in all material respects and contain all minutes of all meetings and all resolutions of the shareholders or directors (or any committee thereof), as applicable, of the Borrower.
- (dd) **Financial Statements.**
  - (i) The Borrower’s Financial Statements have been prepared in accordance with IFRS applied on a consistent basis throughout and complied, as of their date of filing, and such Financial Statements present fairly, in all material respects, the financial condition of the Borrower and its Subsidiaries (on a consolidated basis), as at the date specified therein and for the period then ended. The Borrower does not intend to correct or restate, nor, to the knowledge of the Borrower, is there any basis for any correction or restatement of, any aspect of its Financial Statements.
  - (ii) There are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of the Borrower or any of its Subsidiaries with unconsolidated entities or other Persons.
  - (iii) PricewaterhouseCoopers (PwC) has been the auditor of the Borrower since April 10, 2018.
- (ee) **Absence of Change.** Except for the Chapter 11 Cases and the Recognition Proceedings and the facts disclosed in the filings made in connection therewith (including any filing with the SEC prior to the Petition Date) and for the transition of the operations of the Project to care and maintenance, since the Petition Date, there has been no event, change or effect which, individually or in the aggregate, has had a Material Adverse Effect.

- (ff) **Related-Party Transactions.** Except as disclosed on Schedule T (*Related-Party Transactions*) or as permitted by this Agreement after the date hereof, neither Borrower nor any of its Subsidiaries have: (i) made any payment or loan to, or borrowed any moneys from or otherwise been indebted to, any Related Party thereof; or (ii) been a party to any contract with any Related Party thereof, other than independent contractor or indemnification agreements entered into with officers or directors of the Borrower which, in the case of clause (i) or (ii) hereof, remains in effect on the date hereof.
- (gg) **Other Contracts.** No Obligor has entered in any material contracts relating to the Project (other than the Project Documents, Finance Documents, the First Lien Facility, the WCF Capital Facility and the Fourth Lien Facility) that have not been disclosed in writing to the Finance Parties.
- (hh) **No Liabilities.** Neither the Borrower nor any of its Subsidiaries has any material liabilities, contingent or otherwise, that would be required to be reflected in the Borrower's Financial Statements in accordance with IFRS, other than those (i) reflected in the most recently delivered Financial Statements and the Finance Documents or (ii) arising in the ordinary course of business since the date of the most recently delivered Financial Statements.
- (ii) **Litigation.** Subject to any restrictions arising on account of the Borrower's status as a "debtor" under the Bankruptcy Code and other than the Chapter 11 Cases, the right of the relevant parties to investigate and challenge this Agreement and the facilities provided hereunder during the applicable Challenge Periods (as provided and defined in the DIP Order), and as disclosed in Schedule W (*Litigation Disclosure*), there are no Orders which remain unsatisfied against the Borrower or its Subsidiaries or consent decrees or injunctions to which the Borrower or its Subsidiaries are subject which would have a Material Adverse Effect on the Borrower and its Subsidiaries taken as a whole. There are no material investigations, actions, suits or proceedings at law or in equity or by any Person by or before any Governmental Body pending or, to the knowledge of the Borrower, threatened against or directly affecting the Borrower (or any of its properties or assets) or otherwise having a material impact on the ability of the Borrower to develop or operate the Project and, to the knowledge of the Borrower, there is no ground on which any such action, suit or proceeding might be commenced.
- (jj) **Debt Instruments.** The Borrower and its Subsidiaries do not have any Debt other than Permitted Debt.
- (kk) **No Subordination.** There is no contract to which the Borrower is a party or by which it or any of its properties or assets may be bound that requires the subordination in right of payment of any of the Obligations under the Finance Documents to any other obligation of it.
- (ll) **[Reserved].**
- (mm) **No Default.** No Default or Event of Default has occurred and is continuing.
- (nn) **Disclosure.** All information which has been prepared by or on behalf of the Borrower relating to the Obligors and their Subsidiaries and/or in connection with the Project or its financing (including in connection with the Streaming Agreement) and disclosed in writing to the Finance Parties or any one of them, is, as of the date of such information, true, complete and accurate in all material respects.
- (oo) **[Reserved].**

(pp) **[Reserved]**.

(qq) **Senior Obligations.** After the entry of the DIP Order, and pursuant to and to the extent permitted in the DIP Order, as provided in Section 364(c)(1) of the Bankruptcy Code, the Obligations of the Obligors constitute allowed senior administrative expenses against each of the Obligors in the Chapter 11 Cases (without the need to file any proof of claim or request for payment of administrative expense), with priority, subject only to the Carve-Out, the Administration Charge and as otherwise set forth in the DIP Order or the DIP Recognition Order, over any and all other administrative expenses, adequate protection claims, diminution claims and all other claims against the Obligors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expense claims arising under Sections 105, 326, 328, 330, 331, 361, 362, 363, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other nonconsensual Lien, levy or attachment, which allowed claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which shall be payable from and have recourse to all pre- and post-petition property of the Obligors and their estates and all proceeds thereof, including, without limitation, and subject to entry of the Final Order, any proceeds of Avoidance Actions.

(rr) **Valid Security Interests.** This Agreement and the other Finance Documents, upon execution and delivery thereof by the parties thereto and entry of the DIP Order and the DIP Recognition Order (and subject to the terms therein), will create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described herein and therein and the proceeds thereof, which security interest shall be deemed valid and perfected upon entry of the DIP Order and the DIP Recognition Order with respect to each Obligor and which shall constitute continuing Encumbrances on the Collateral having priority on the Collateral as set forth in the DIP Order, securing all the Obligations. The Senior Lenders shall not be required to file or record (but shall have the option and authority to file or record) any financing statements, mortgages, notices of Lien or similar instruments, in any jurisdiction or filing office or to take any other action in order to validate, perfect or establish the priority of the Encumbrances and security interest granted by or pursuant to this Agreement, any other Finance Document, the DIP Order and the DIP Recognition Order.

(ss) **Investment Company Act of 1940.** The Borrower is not, and after giving effect to the transactions contemplated hereby, will not be, subject to registration as an “investment company” or “controlled” by a company subject to registration as an “investment company,” within the meaning of the United States Investment Company Act of 1940, as amended.

(tt) **Margin Regulations.** The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for such purpose and no part of the proceeds of any Loan will be used for the purpose whether immediate, incidental or ultimate, of buying or carrying any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for such purpose. No part of the proceeds of any Loan will be used, whether directly or indirectly and whether immediately, incidentally or ultimately, for any purpose which entails a violation of or which is inconsistent with Regulation G, T, U or X promulgated by the Board of Governors of the

Federal Reserve System of the United States (12 C.F.R. Sections 207, 220, 221 and 224, respectively).

- (uu) **Use of Proceeds.** The proceeds of all Utilizations have been and will be used in accordance with the terms and conditions of this Agreement and all applicable Finance Documents.
- (vv) **Streaming Agreement.** Except as a result of the Chapter 11 Cases or the Recognition Proceedings or to the extent arising prior to the Petition Date, no event has occurred or circumstance exists that (with or without the giving of notice or lapse of time or both) has contravened, conflicted with or resulted in or given any Person the right to declare a default and exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, the Streaming Documents and, to the knowledge of the Borrower, each other Person that is party thereto is in compliance in all material respects with the terms and requirements thereof. Without limiting the generality of the foregoing, except as a result of the Chapter 11 Cases or the Recognition Proceedings or arising prior to the Petition Date:
  - (i) neither the Borrower, nor, to the knowledge of the Borrower, any other Person, is in default or breach in the observance or performance of any material term, covenant or obligation to be performed by the Borrower or such Person under the Streaming Documents and the Streaming Documents are in good standing, constitutes a valid and binding agreement of each of the parties thereto, is in full force and effect and is enforceable in accordance with its terms, except to the extent enforcement may be affected by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity; and
  - (ii) the Borrower has no knowledge of the invalidity of or grounds for rescission, avoidance or repudiation of any such Streaming Document and the Borrower has not received notice of any sanctioning procedure by a Governmental Body or notice of any intention to terminate any such Streaming Document or repudiate or disclaim any transaction contemplated thereby.

## **8.2 Survival of Representations and Warranties.**

- (a) The representations and warranties made in this Agreement are made by the Borrower as of the date hereof.
- (b) The representations and warranties made in this Agreement are deemed to be made to each Finance Party by reference to the fact and circumstances then existing on each applicable date on which the representations and warranties are made notwithstanding any investigation made at any time by or on behalf of the Administrative Agent or the Senior Lenders.

## **Article 9 SECURITY**

### **9.1 Grant of Security Interest.**

Each of the Obligors, to secure the timely payment (whether at stated maturity, by acceleration or otherwise) of the Obligations, hereby assigns, grants and pledges to the Collateral Agent for the equal and ratable benefit of the Secured Parties a first priority perfected lien (subject to the Carve-Out and Administration Charge and as otherwise set forth in the DIP Order or DIP Recognition Order) on and continuing security interest in and to the following (in each case, as to each type of property described

below, whether now owned or hereafter acquired by the Obligors, and whether now or hereafter existing or arising) (collectively, the “**Collateral**”):

(a) all mine inventory including any coarse ore in stockpile, crushed ore in stockpile, ore in process, or copper in inventory from time to time (other than any WCF Collateral);

(b) all right, title and interest of the Borrower and the Subsidiaries to any proceeds arising from, in connection with or under any Expropriation Event, together with, if an Event of Default has occurred and is continuing, full power and authority, in its name or otherwise, to institute proceedings (whether before a court or judge or by way of arbitration or otherwise) to enforce such claims, execute judgments or awards made pursuant thereto and collect and receive all proceeds arising from, in connection with or under any Expropriation Event;

(c) all equipment in all of its forms, including all machinery, tools, motor vehicles, vessels, aircraft, furniture and fixtures, and all parts thereof and all accessions thereto, including computer programs and supporting information that constitute equipment within the meaning of the UCC;

(d) all accounts, chattel paper (including, without limitation, tangible chattel paper and electronic chattel paper), instruments (including, without limitation, promissory notes), letter-of-credit rights, general intangibles and other obligations of any kind, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services and whether or not earned by performance, and all rights now or hereafter existing in and to all supporting obligations and in and to all security agreements, mortgages, liens, leases, letters of credit and other contracts securing or otherwise relating to the foregoing property (any and all of such accounts, chattel paper, instruments, letter-of-credit rights, general intangibles and other obligations, to the extent not referred to in clause (e) or (f) below, being the “**Receivables**”, and any and all such supporting obligations, security agreements, mortgages, liens, leases, letters of credit and other contracts being the “**Related Contracts**”);

(e) the following (the “**Account and Investment Property**”):

(i) all indebtedness from time to time owed to the Obligors, including Subordinated Intercompany Debt and other intercompany debt permitted by the Cash Management Order and all promissory notes, checks or other instruments, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness;

(ii) the Capital Stock held by the Obligors and identified on Schedule C (*Pledged Interests*) hereto, including the Obligor’s Capital Stock in each of the Issuers, and (A) the Obligor’s status as an equity holder of each Issuer and the Obligor’s right to vote, nominate members of the board or otherwise participate in the management of the business and affairs of such Issuer and any other right of the Obligor as an equity holder of such Issuer (the “**Initial Pledged Interests**”) and the certificates, if any, representing the Initial Pledged Interests, and all equity dividends, cash dividends, cash, instruments, chattel paper and other rights, property or proceeds and products (including all other payments due or to become due to the Obligor as an equity holder in respect of the Initial Pledged Interests, including all rights of the Obligor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Initial Pledged Interests), from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Initial Pledged Interests and (B) all claims of the Obligor for damages arising out of or for breach of or default under any right of the Obligor as an equity holder;



(iii) all additional Capital Stock of each Issuer at any time acquired by the Obligor in any manner, and (A) the certificates representing such additional Capital Stock (and any such additional Capital Stock, along with the Initial Pledged Interests shall constitute “**Pledged Interests**”), and all equity dividends, cash dividends, distributions, cash, instruments, chattel paper and other rights, property or proceeds and products from time to time received, receivable or otherwise distributed in respect of or in exchange for any additional Pledged Interests, (B) all other payments due or to become due to the Obligor as an equity holder in respect of the additional Pledged Interests, including all rights of the Obligor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to additional Pledged Interests, (C) all claims of the Obligor for damages arising out of or for breach of or default under any right of the Obligor as an equity holder of additional Pledged Interests and (D) all the Obligor’s ownership interests as an equity holder in respect of the additional Pledged Interests in the property of each Issuer;

(iv) all deposit accounts and all funds from time to time credited thereto and all certificates and instruments, if any, from time to time, representing or evidencing such deposit accounts;

(v) all other investment property (including, without limitation, all (A) securities, whether certificated or uncertificated; (B) security entitlements; (C) securities accounts; (D) commodity contracts; (E) financial assets; and (F) commodity accounts) from time to time in which the Obligors have now, or acquire from time to time hereafter, any right, title or interest in any manner, and the certificates or instruments, if any, representing or evidencing such investment property; and

(vi) all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the types of property referred to in clauses (i) through (v) above and all warrants, rights or options issued thereon or with respect thereto;

(f) all of the Obligors’ rights, title and interest in and to the Contract Rights and all other Contractual Obligations to which any of the Obligors are now or may hereafter become a party, in each case as such Contractual Obligations may be amended, amended and restated, supplemented or otherwise modified from time to time (collectively, the “**Assigned Agreements**”), including (i) all rights of the Obligors to receive monies due and to become due under or pursuant to the Assigned Agreements, (ii) all rights of the Obligors to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements or any other instrument, agreement or other document delivered pursuant thereto, (iii) claims of the Obligors for damages arising out of or for breach of or default under the Assigned Agreements, and (iv) the right of the Obligors to terminate the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder (all such Collateral referred to in this clause (f) being the “**Agreement Collateral**”);

(g) the following:

(i) all patents, patent applications, utility models and statutory invention registrations, all inventions claimed or disclosed therein and all improvements thereto;

(ii) all trademarks, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, whether registered or unregistered (provided, that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark

applications under applicable federal law), together, in each case, with the goodwill symbolized thereby;

(iii) all copyrights, including copyrights in Computer Software (as hereinafter defined), internet web sites and the content thereof, whether registered or unregistered;

(iv) all computer software, programs and databases (including source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights, hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing (“**Computer Software**”);

(v) all confidential and proprietary information, including, without limitation, know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and all other intellectual, industrial and intangible property of any type, including, without limitation, industrial designs and mask works, and all tangible embodiments of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of the Obligors accruing thereunder or pertaining thereto;

(vi) all registrations and applications for registration for any of the foregoing;

(vii) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

(h) any tort, indemnity, warranty or guarantee claims under commercial contracts (the “**Commercial Tort Claims Collateral**”);

(i) any and all of the Obligors’ interest under any and all policies of insurance (including any substitutions therefor or conversions thereof, and any supplementary contracts issued in connection therewith on certain property of the Obligors’, collectively the “**Assigned Insurance Policies**”), including, without limitation, (i) all rights of the Obligors to receive monies due and to become due under or pursuant to the Assigned Insurance Policies, including, without limitation, all insurance proceeds paid or payable upon the occurrence of an Event of Loss together with all dividends, benefits and advantages at any time appertaining thereto or derived therefrom, (ii) all claims of the Obligors for damages arising out of or for breach of or default under the Assigned Insurance Policies and (iii) all other rights, remedies, options, benefits and privileges of the Obligors under the Assigned Insurance Policies, including, without limitation, all title and interest in and to the Assigned Insurance Policies and all rights to terminate, amend, supplement, modify or waive performance under the Assigned Insurance Policies and to compel performance and otherwise to exercise all rights and remedies thereunder;

(j) all claims in respect of intercompany transfers of proceeds of the Loans or of cash and cash equivalents from any Debtor to Parent;

(k) all books and records (including, without limitation, customer lists, credit files, printouts and other computer output materials and records) of the Obligors pertaining to any of the Collateral;

(l) all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the Collateral (including, without limitation, proceeds, collateral and supporting obligations that constitute property of the types described in clauses (a) through (h) of this Section 9.1 (*Grant of Security Interest*)) and, to the extent not otherwise included, all (i) payments under insurance (whether or not the Collateral Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral, and (ii) cash; and

(m) all other tangible and intangible personal property whatsoever.

Upon the repayment in full and discharge of all obligations under the Working Capital Facility, each of the Obligors, to secure the timely payment (whether at stated maturity, by acceleration or otherwise) of the Obligations, shall automatically, without further action from any party, assign, grant and pledge to the Collateral Agent for the equal and ratable benefit of the Secured Parties in accordance with the DIP Order and DIP Recognition Order, a first priority perfected lien (subject to the Carve-Out and Administration Charge and as otherwise set forth in the DIP Order or DIP Recognition Order) on and continuing security interest in and to the WCF Collateral.

## **9.2 Security for Obligations.**

The grant of security interests under Section 9.1 (*Grant of Security Interest*) secures the payment of all Obligations now or hereafter existing under the Finance Documents, and with respect to the WCF Collateral in accordance with the DIP Order and DIP Recognition Order, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, fees, premiums, penalties, indemnifications, contract causes of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, the grant of security interests under Section 9.1 (*Grant of Security Interest*) secures the payment of all amounts that constitute part of the Obligations and would be owed by the Obligors to any Secured Party under the Finance Documents, and with respect to the WCF Collateral in accordance with the DIP Order and DIP Recognition Order, but for the fact that they are unenforceable or not allowable due to the existence of any bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity involving the Obligors.

## **9.3 Obligors Remain Liable.**

Anything herein to the contrary notwithstanding, (a) the applicable Obligor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by any Secured Party of any of its respective rights hereunder shall not release the applicable Obligor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) no Secured Party shall have any obligation or liability under the contracts and agreements included in the Security solely by reason of this Agreement or any other Finance Document, except as set forth in section 9-207 of the UCC or the receipt by the Collateral Agent of any payment relating to any Collateral, nor shall any Secured Party be obligated to perform any of the obligations or duties of the applicable Obligor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

## **9.4 Delivery and Control of Account and Investment Property.**

(a) Upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), the Obligors shall ensure that all certificates or instruments representing



or evidencing Account and Investment Property shall be delivered to and held by or on behalf of the Collateral Agent pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Collateral Agent. The Collateral Agent (acting at the direction of the Majority Lenders) shall have the right at any time after an Event of Default has occurred and is continuing to (i) exchange certificates or instruments representing or evidencing Account and Investment Property for certificates or instruments of smaller or larger denominations and (ii) to exercise the voting rights attributable to the Account and Investment Property. The Obligor hereby make, constitute, and appoint the Collateral Agent and its officers as the proxies and attorneys-in-fact of and for the Obligor, with full power to exercise or to refrain from exercising any and all voting rights attributable to the Account and Investment Property upon the occurrence and during the continuance of any Event of Default. Upon the occurrence and during the continuance of an Event of Default, all rights of the Obligor to receive and retain cash dividends and other distributions upon the Account and Investment Property shall cease and shall thereupon be vested in the Collateral Agent, and the Obligor shall promptly deliver, or shall cause to be promptly delivered, all such cash dividends and other distributions with respect to the Account and Investment Property to the Collateral Agent (together with all necessary endorsements and negotiable documents or instruments so distributed) to be held as additional collateral or applied to the Obligations.

- (b) With respect to any Account and Investment Property that constitutes an uncertificated security, upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), the Obligor will cause the issuer thereof either (i) to register the Collateral Agent as the registered owner of such security or (ii) to agree with the Borrower and the Collateral Agent that such issuer will comply with instructions with respect to such security originated by the Collateral Agent without further consent of the Obligor, such agreement to be in form and substance reasonably satisfactory to the Collateral Agent (acting at the direction of the Majority Lenders).
- (c) With respect to any Account and Investment Property that is located in the United States and constitutes a security entitlement, upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order), the Obligor will cause such financial institution with respect to such security entitlement either to (i) identify in its records the Collateral Agent as the entitlement holder thereof or (ii) agree with the Borrower and the Collateral Agent that such financial institution will comply with entitlement orders originated by the Collateral Agent without further consent of the Borrower, such agreement to be in form and substance reasonably satisfactory to the Collateral Agent (acting at the direction of the Majority Lenders).
- (d) Upon the request of the Collateral Agent (acting at the direction of the Majority Lenders), and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), at any time after the occurrence of and during the continuance of an Event of Default, the Obligor will notify each issuer of Account and Investment Property granted by them hereunder that such Account and Investment Property is subject to the security interest granted hereunder.

## **9.5 Further Assurances – Security.**

At any time and from time to time, the Obligor shall give, execute, file and/or record any notice, financing statement, continuation statement, public deed, instrument, document or agreement and shall take, or cause

to be taken, such action, in each case as is necessary or as any Senior Lender may consider necessary or reasonably desirable to create, preserve, continue, perfect or validate any security interest granted hereunder or pursuant hereto or to enable the Collateral Agent to exercise or enforce its rights hereunder with respect to such security interest. Without limiting the generality of the foregoing, the Majority Lenders, on behalf of the Collateral Agent, shall be authorized (a) to file or cause the filing under the laws of the State of New York or other applicable law financing statements, continuation statements or other documents in connection with such security interest, and (b) to execute and file or cause the execution and filing of public deeds or other instruments or documents under the laws of Canada necessary to preserve such security interest, in each case without the signature of the Obligor (to the extent permitted by law).

## **9.6 Remedies.**

- (a) Each Obligor recognizes that the Collateral Agent may be unable to effect a public sale of any or all of the Collateral that constitutes securities to be sold by reason of certain prohibitions contained in the laws of any jurisdiction outside the United States or in applicable federal, provincial, territorial or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Obligor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by law, be deemed to have been made in a commercially reasonable manner. Unless required by applicable law, the Collateral Agent shall not be under any obligation to delay a sale of any of such Collateral to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable federal, provincial, territorial or state securities laws, even if such issuer would agree to do so. Each Obligor further agrees to do or cause to be done, to the extent that such Obligor may do so under applicable law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of such Collateral or other property to be sold valid and binding and in compliance with any and all applicable laws at the Obligors' expense. Each Obligor further agrees that a breach of any of the covenants contained in this Section 9.6(a) (*Remedies*) will cause irreparable injury to the Secured Parties for which there is no adequate remedy at law and, as a consequence, agrees that each covenant contained in this Section 9.6(a) (*Remedies*) shall be specifically enforceable against such Obligor, and each Obligor hereby waives and agrees, to the fullest extent permitted by law, not to assert as a defense against an action for specific performance of such covenants that (i) such Obligor's failure to perform such covenants will not cause irreparable injury to the Secured Parties or (ii) the Secured Parties have an adequate remedy at law in respect of such breach. Each Obligor further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by the Secured Parties by reason of a breach of any of the covenants contained in this Section 9.6(a) (*Remedies*) and, consequently, agrees that, if such Obligor shall breach any of such covenants and the Secured Parties shall sue for damages for such breach, such Obligor shall pay to the Collateral Agent, for the benefit of the Secured Parties, as liquidated damages and not as a penalty, an aggregate amount equal to the value of the Collateral or other property to be sold on the date the Collateral Agent shall demand compliance with this Section 9.6(a) (*Remedies*).
- (b) Subject to the terms of the DIP Order and the DIP Recognition Order and the passing of the Remedies Notice Period, if an Event of Default has occurred and is continuing, the Collateral Agent shall have for the benefit of the Secured Parties, in addition to all other rights of the Secured Parties, the rights and remedies of a secured party under the UCC and the PPSA, and without limiting the generality of the foregoing, the Collateral Agent (acting at the direction of the Majority Lenders)

shall be empowered and entitled to: (i) take possession of, foreclose on and/or request a receiver of the Collateral and keep it on any Obligor's premises at any time, at no cost to the Secured Parties, or remove any part of it to such other place or places as the Collateral Agent may determine, or the Obligors shall, upon the Majority Lender's demand, at the Obligors' cost, assemble the Collateral and make it available to the Collateral Agent at a place reasonably convenient to the Collateral Agent; (ii) exercise of set-off rights on cash collateral or deposits; (iii) sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Majority Lenders deem advisable, in their sole discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale; (iv) hold, lease, develop, manage, operate, control and otherwise use the Collateral upon such terms and conditions as may be reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as may be reasonably necessary or desirable), exercise all such rights and powers of each Obligor with respect to the Collateral, whether in the name of such Obligor or otherwise, including without limitation the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents, in each case, in accordance with the standards applicable to the Collateral Agent under the Finance Documents, and (v) take any other reasonable actions, as may be reasonably necessary or desirable, in connection with the Collateral (including preparing for the disposition thereof), and all actual, reasonable, out-of-pocket fees and expenses incurred in connection therewith shall be borne by the Obligors. Promptly following written demand from the Collateral Agent (acting at the direction of the Majority Lenders), the applicable Obligor shall direct the grantor or licensor of, or the contracting party to, any property agreement with respect to any property to recognize and accept the Collateral Agent, for the benefit of and on behalf of the Secured Parties, as the party to such agreement for any and all purposes as fully as it would recognize and accept such Obligor and the performance of such Obligor thereunder and, in such event, without further notice or demand and at such Obligor's sole cost and expense, the Collateral Agent, for the benefit of and on behalf of the Secured Parties, may exercise all rights of such Obligor arising under such agreements. Without in any way requiring notice to be given in the following manner, each Obligor agrees that any notice by the Collateral Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC and the PPSA or otherwise, shall constitute reasonable notice to such Obligor if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least five (5) Business Days prior to such action to the Obligors' address specified in or pursuant to Article 24 (*Notices*). If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent or the Senior Lenders receive payment, and if the buyer defaults in payment, the Collateral Agent may resell the Collateral. In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Obligor irrevocably waives (to the extent permitted by applicable law): (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Collateral Agent retain possession and not dispose of any Collateral until after trial or final judgment. Each Obligor agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Collateral Agent is hereby granted a license or other right to use, without charge, each Obligor's labels, patents, copyrights, name, trade secrets, trade names, trademarks and advertising matter, or any similar property, in completing production of, advertising or selling any Collateral, and each such Obligor's rights under all licenses and all franchise agreements shall inure to the Collateral Agent's benefit for such purpose. The Collateral Agent will return any excess to the applicable Obligor and the Obligors shall remain liable for any deficiency. The proceeds of sale shall be applied as required pursuant to Section 13.4 (*Application of Proceeds*) hereof.

### 9.7 Security Effective Notwithstanding Date of the Loans.

The Security shall be effective and the undertakings in this Agreement and the other Finance Documents with respect thereto shall be continuing, whether the monies hereby or thereby secured or any part thereof shall be advanced before or after or at the same time as the creation of any such Security or before or after or upon the date of execution of this Agreement. The Security shall not be affected by any payments under this Agreement or any of the other Finance Documents but shall constitute continuing security interests to and in favor of the Collateral Agent for the benefit of the Secured Parties for the Obligations from time to time.

### 9.8 No Merger.

The Security shall not merge in any other security interests. No judgment obtained by or on behalf of the Senior Lenders shall in any way affect any of the provisions of this Agreement, the other Finance Documents or the Security. For greater certainty, no judgment obtained by or on behalf of the Senior Lenders shall in any way affect the obligation of the Borrower to pay interest or to pay other amounts at the rates, times and in the manner provided in this Agreement.

### 9.9 Stockpiling.

If the Borrower intends to stockpile, store, warehouse or otherwise place Minerals or other minerals forming part of the Collateral with a value in excess of \$10,000,000 of the Project Real Property, before doing so, the Borrower shall obtain from the property owner, operator or both, as applicable, where such stockpiling, storage, warehousing or other placement occurs, to provide in favor of the Collateral Agent a written acknowledgment in form and substance satisfactory to the Majority Lenders, acting reasonably, which provides that the Borrower's and/or its Affiliates', as applicable, rights to the Minerals or other minerals forming part of the Collateral shall be preserved and which acknowledges the Senior Lenders' Encumbrances thereon and provides the Collateral Agent with a right of access in the event of enforcement by the Collateral Agent of the Security.

## Article 10 GUARANTY

### 10.1 Guaranty; Limitation of Liability.

- (a) Each Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the performance and punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Obligor now or hereafter existing under or in respect of the Finance Documents, whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise (such Obligations being the "**Guaranteed Obligations**"), and agrees to pay any and all reasonable out-of-pocket expenses (including reasonable out-of-pocket fees and expenses of counsel to the extent reimbursable pursuant to Sections 7.4 (*Payment of Costs and Expenses*) and 7.5 (*Indemnities*) but excluding allocated costs of in-house counsel) incurred by the Agents in enforcing any rights under the guarantee provided under this Article 10 (*Guaranty*) (the "**Guaranty**") or any other Finance Document. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Obligor to any Agent or any Senior Lender under or in respect of the Finance Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization, winding-up or similar proceeding involving such other Obligor.

- (b) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to any Agent or any Senior Lender under this Guaranty, such Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Agents and the Senior Lenders under or in respect of the Finance Documents.
- 10.2 Guaranty Absolute.** Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Finance Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Collateral Agent or any Senior Lender with respect thereto. The Obligations of each Guarantor under or in respect of this Guaranty are independent of the Guaranteed Obligations or any other Obligations of any other Obligor under or in respect of the Finance Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against the Borrower or any other Obligor or whether the Borrower or any other Obligor is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:
- (a) any lack of validity or enforceability of any provision under this Agreement, any Finance Document or any agreement or instrument relating thereto;
  - (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any other Obligor under or in respect of the Finance Documents, or any other amendment or waiver of or any consent to departure from any Finance Document, including any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Obligor or otherwise;
  - (c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the Guaranteed Obligations;
  - (d) any manner of application of Collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Guaranteed Obligations or any other Obligations of any Obligor under the Finance Documents or any other assets of any Obligor;
  - (e) any change, restructuring or termination of the corporate structure or existence of any Obligor;
  - (f) any failure of the Agents or any Senior Lender to disclose to any Obligor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Obligor now or hereafter known to the Agents or such Senior Lender, as the case may be (each Guarantor waiving any duty on the part of the Agents and the Senior Lenders to disclose such information);
  - (g) the failure of any other Person to execute or deliver this Guaranty or the release or reduction of liability of any Guarantor or surety with respect to the Guaranteed Obligations; or
  - (h) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation by the Agents or any Senior Lender that might otherwise constitute a defense



available to, or a discharge of, any Obligor or any other guarantor or surety, in its capacity as a guarantor or surety (other than payment or performance).

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Collateral Agent or any Senior Lender or any other Person, for whatever reason, all as though such payment had not been made.

### **10.3 Waivers and Acknowledgments**

- (a) Each Guarantor hereby unconditionally and irrevocably waives (to the extent permitted by applicable law) any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.
- (b) Each Guarantor hereby unconditionally and irrevocably waives (to the extent permitted by applicable law) (i) any defense arising by reason of any claim or defense based upon an election of remedies by any Agent or any Senior Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Obligors, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the Obligations of such Guarantor hereunder.
- (c) Each Guarantor acknowledges that the Collateral Agent may, to the extent permitted by applicable law and the DIP Order and the DIP Recognition Order, without notice to or demand upon such Guarantor and without affecting the liability of such Guarantor under this Guaranty, foreclose under any Finance Document by non-judicial sale, and each Guarantor hereby waives (to the extent permitted by applicable law) any defense to the recovery by the Collateral Agent and the Senior Lenders against such Guarantor of any deficiency after such non-judicial sale and any defense or benefits that may be afforded by applicable law.
- (d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of any Agent or any Senior Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Obligor or any of its Subsidiaries now or hereafter known by such Agent or such Senior Lender, as the case may be.
- (e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Finance Documents and that the waivers set forth in Section 10.2 (*Guaranty Absolute*) and this Section 10.3 (*Waivers and Acknowledgments*) are knowingly made in contemplation of such benefits.

### **10.4 Subrogation**

Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Borrower or any other Obligor that arise from the existence, payment, performance or enforcement of such Guarantor's Obligations under or in respect of this Guaranty or any other Finance Document, including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Collateral Agent or any Senior Lender against the Borrower or any other Obligor, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from the Borrower or any other Obligor, directly or indirectly, in cash or other property or by set-off or in any other manner,

payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) shall have been paid in full in cash and the Commitments shall have expired or been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of (a) the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and (b) the Maturity Date, such amount shall be received and held in trust for the benefit of the Collateral Agent and the Senior Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Finance Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) any Guarantor shall make payment to the Administrative Agent of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) shall have been paid in full in cash and (iii) the Maturity Date shall have occurred, the Collateral Agent and the Senior Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

#### **10.5 Continuing Guaranty; Assignments**

This Guaranty is a continuing guaranty and shall (a) remain in full force and effect until the payment in full in cash of the Guaranteed Obligations (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and the termination or expiration of all Commitments, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Administrative Agent and the Senior Lenders and their respective successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Permitted Transferee that has been assigned or transferred all or any portion of a Senior Lender's Loans, Commitments or rights and obligations under this Agreement in accordance with Section 14.1 (*Assignment by Senior Lenders*), shall thereupon become vested with all the benefits granted to such transferring Senior Lender under this Guaranty. No Guarantor shall have the right to assign its rights hereunder or any interest herein or delegate any of its duties, liabilities or obligations hereunder or under any other Finance Document without the prior written consent of the Majority Lenders, except as otherwise permitted hereby.

#### **10.6 Release**

- (a) An Obligor shall automatically be released from its obligations hereunder and the security interest in the Collateral of such Obligor shall be automatically released as it relates to the Obligations, upon the consummation of any transaction permitted under this Agreement as a result of which such Obligor ceases to be an Obligor.
- (b) The security interest granted hereby in any Collateral shall automatically and without further action be released upon the effectiveness of any written consent to the release of the security interest granted hereby in such Collateral pursuant to this Agreement. Any such release in connection with

any sale, transfer or other disposition of such Collateral shall result in such Collateral being sold, transferred or disposed of, as applicable, free and clear of the Lien and security interest created hereby.

- (c) In connection with any termination or release pursuant to paragraph (a) or (b) above, so long as the Borrower shall have provided the Agents and Senior Lenders such certifications or documents as the Majority Lenders shall reasonably request, the Administrative Agent or the Collateral Agent (in each case, acting at the direction of the Majority Lenders) shall execute and deliver to any Obligor, at such Obligor's expense, all documents that such Obligor shall reasonably request to evidence such termination or release.

## Article 11 COVENANTS

### 11.1 Affirmative Covenants.

The Borrower shall:

- (a) duly and punctually pay the Obligations at the times and places and in the manner required by the terms of the Finance Documents;
- (b) except to the extent excused by the Automatic Stay, applicable provision of the Bankruptcy Code or order of the Bankruptcy Court, maintain its corporate existence; keep proper books of account and records; maintain its good standing status (if applicable) at all times in all jurisdictions where it carries on business; and operate its business and maintain and operate the Project in accordance with Good Industry Practice, Applicable Law, Project Authorizations, Other Rights, Material Project Documents and solely with respect to Applicable Law, comply with Applicable Law in all material respects unless the Borrower has Contested the applicability of any Applicable Law or the Borrower's necessity to comply with it;
- (c) except as otherwise permitted by this Agreement or otherwise stayed by the Automatic Stay, maintain the Project Real Property in good standing, performing or causing to be performed all required assessment work thereon, paying or causing to be paid all concession, permit and license maintenances fees in respect thereof, paying or causing to be paid all rents and other payments in respect of leased properties forming a part thereof, paying all fees in connection with the unpatented mining claims (including fees payable to the United States Bureau of Land Management) and otherwise maintaining the Project Real Property in compliance, in all material respects, with Applicable Law and Good Industry Practice, except where the failure to make such payment (or cause such payment to be made) or to so own or maintain such Project Real Property would not reasonably be expected to materially and adversely affect the ownership, operation or safety of the Project;
- (d) subject to applicable health and safety procedures maintained by the Borrower in accordance with Applicable Law, Good Industry Practice and the Environmental and Social Requirements:
  - (i) the Borrower shall permit a monthly visit by two persons designated by the Senior Lenders at the cost and expense of the Borrower; and
  - (ii) at all times if an Event of Default shall have occurred and be continuing,



permit representatives from among the Administrative Agent, the Collateral Agent and, the Senior Lenders (including their consultants and/or the assignees) to enter into or onto its property to conduct inspections and testing, to inspect any of the Collateral and to examine its financial books, accounts and records and to discuss its financial condition with its senior officers and its auditors at the cost and expense of the Borrower (x) in the case of paragraph (d)(i), at a time agreed with the Borrower and (y) in the case of paragraph (d)(ii), at any time and upon reasonable advance notice in writing; provided, that in all cases (x) visits should be during normal business hours, in a manner that does not unreasonably disrupt the operation of the Project, and (y) the Administrative Agent, the Collateral Agent and the Senior Lenders, shall coordinate their visits to the Project site to the extent reasonably practicable to do so;

- (e) keep insured with Acceptable Insurers all of its Collateral (including the Project Property) in amounts and against losses or damages on a basis consistent with Good Industry Practice and Applicable Law;
- (f) provide the Administrative Agent as soon as reasonably practicable with such evidence of insurance as the Administrative Agent (acting at the direction of the Majority Lenders) may from time to time reasonably require;
- (g) subject to Section 11.1(s) (*Affirmative Covenants*), obtain, as and when required, and preserve, maintain, and comply with, all Material Project Authorizations which are required to permit the Borrower to maintain and care for the Project as contemplated by the Approved Budget and the DIP Order, it being understood that the Borrower will maintain minimal operations for the purpose of preserving its assets and nothing herein shall obligate the Borrower to maintain or operate its Business or assets or perform any obligations under any agreement (other than this Agreement) in a manner that requires funding that is not provided for in the Approved Budget;
- (h) except to the extent such payment is excused by, or is otherwise prohibited by, the provisions of the Bankruptcy Code or order of the Bankruptcy Court, timely file, or cause to be timely filed, all Tax Returns required to be filed by it and pay, or cause to be paid (other than the Tax Encumbrances), all Taxes due and payable by it, whether shown to be due and payable on such Tax Returns or on any assessment received by it or otherwise, except to the extent any such Taxes are being Contested;
- (i) conduct any environmental remedial activities required of it pursuant to any Environmental and Social Requirement, any Governmental Body and Good Industry Practice;
- (j) promptly conduct any action required pursuant to, and comply with any Corrective Action Plan required in accordance with Section 11.9(d) (*Corporate Policies*);
- (k) maintain in effect environmental and social monitoring arrangements, including arrangements to provide reasonable access to any material documents related to the development and operation of the Project that are in the Borrower's custody or control;
- (l) (i) ensure that the only mining activities taking place on the Project Real Property are those under the control and direction of the Borrower and (ii) maintain and operate the Project in material compliance with the requirements of any Environmental License, Order or other Authorization in respect of the Project;
- (m) warrant and defend the right, title and interest of the Borrower in and to any of the Collateral, and every part thereof, against the claims of any Person, subject only to Permitted Encumbrances;

- (n) cause the care and maintenance of the Project (including any work not currently contemplated by the Approved Budget but approved in accordance with this Agreement) to be carried out and completed with diligence and continuity and in all material respects in accordance with Applicable Law, the Environmental and Social Requirements and Good Industry Practice;
- (o) maintain at all times the necessary power supply required for the Project;
- (p) perform all such acts and execute all such documents as are reasonably required by the Senior Lenders to perfect and maintain the Security in the Collateral created pursuant to the Finance Documents;
- (q) maintain all of its and its Subsidiaries' ownership, lease, use, license and other interests in the Project assets as are necessary for it to be able to operate the Project in accordance with Good Industry Practice;
- (r) comply with all applicable Sanctions, Anti-Corruption Laws, and AML Laws, and maintain and enforce policies and procedures designed to promote and achieve compliance with applicable Sanctions, Anti-Corruption Laws and AML Laws;
- (s) use the proceeds of the Loans solely in accordance with Section 2.3 (*Purpose and Use of Proceeds*);
- (t) [reserved];
- (u) refrain from amending, suspending, waiving or repudiating any portion of, an Environmental License or a Material Project Authorization that would result in a Material Adverse Effect, without prior written consent of the Majority Lenders;
- (v) (i) cooperate, consult with, and provide to the Administrative Agent and the Senior Lenders all such information as required or as reasonably requested by the Administrative Agent and the Senior Lenders and (ii) participate in meetings (which shall be telephonic or virtual unless otherwise agreed and for which two (2) days' prior notice will be provided) with the Senior Lenders and their respective management teams and advisors, on not less than a weekly basis, at which the Borrower shall provide to the Senior Lenders access to all information reasonably requested upon prior reasonable notice;
- (w) maintain the Environmental Bonds in full force and effect other than to the extent unable to do so as a result of the Chapter 11 Cases;
- (x) comply with the Approved Budget (subject to the Permitted Variances) and with the provisions of the DIP Order;
- (y) take or cause to be taken all reasonably appropriate action to do or cause to be done all things necessary proper or advisable under applicable law, and to execute and deliver such documents as may be required or reasonably requested by the Senior Lenders to carry out the provisions of this Agreement and the DIP Order;
- (z) [reserved];
- (aa) take or cause to be taken all appropriate action to remain the sole owner of the Collateral, free of Encumbrances other than Permitted Encumbrances;

- (bb) except to the extent excused by the Automatic Stay, applicable provision of the Bankruptcy Code or order of the Bankruptcy Court, take or cause to be taken all appropriate action to comply with all material applicable laws applicable to the Obligors or the Collateral unless failure to comply could not reasonably be expected to result in a Material Adverse Effect;
- (cc) subject to the Approved Budget and the Tax Encumbrances, pay when due all taxes prior to the date on which penalties attach, except where such tax is being contested in good faith and adequate reserves have been established in accordance with GAAP or to the extent payment and/or enforcement thereof is stayed as a result of the Chapter 11 Cases;
- (dd) provide copies of all pleadings, motions applications, judicial information, financial information and other documents intended to be filed by or on behalf of any Obligor with the Bankruptcy Court in the Chapter 11 Cases or the Canadian Court in the Recognition Proceedings to the Administrative Agent and the Senior Lenders (and their advisors) at least two (2) calendar days in advance of such filing or as promptly as reasonably practicable;
- (ee) promptly provide such additional information concerning the Obligors or the Collateral as the Administrative Agent or any Senior Lender may reasonably request;
- (ff) maintain its cash management system in a manner acceptable to the Majority Lenders (which shall be deemed satisfied if the cash management system is substantially the same as the cash management system in existence on the Petition Date, with such modifications as permitted under the Cash Management Order, as entered);
- (gg) deposit all distributions, dividends and other payments (other than payments of intercompany trade payables in the ordinary course of business) made by or on account of non-Debtor subsidiaries of the Obligors in a segregated account established by the Obligors (or in another account after receiving the prior written consent of the Administrative Agent (acting at the direction of the Majority Lenders, in their sole discretion)) at or prior to the time of receipt thereof, and maintain all such funds in such account unless otherwise approved in writing by the Administrative Agent (acting at the direction of the Majority Lenders, in their sole discretion) unless such distributions, dividends and other payments are remitted directly to the Administrative Agent for application to the Loans;
- (hh) within fourteen (14) calendar days of the entry Interim Order by the Bankruptcy Court, obtain the Initial Recognition Order and Interim DIP Recognition Order;
- (ii) within fourteen (14) calendar days of the entry of the Final Order by the Bankruptcy Court, obtain the Final DIP Recognition Order;
- (jj) to the extent practicable under the circumstances, provide each Senior Lender (and their respective advisors) with advance notice (verbal notice or notice by email is sufficient) prior to any transfer of \$100,000 or more on account of a prepetition critical vendor claim in accordance with the prepetition critical vendor order(s) in form and substance acceptable to the Senior Lenders and approved by the Bankruptcy Court;
- (kk) on each Weekly Reporting Date, provide each Senior Lender (and their respective advisors) with a report scheduling the payments made by the Obligors to their critical vendors during the previous calendar week; and

- (II) deliver or cause to be delivered to the Senior Lenders, copies of all monthly reports or projections in respect of each of the Obligors' business or financial condition as well as all pleadings, motions, applications and judicial information filed by or on behalf of the Borrower with the Bankruptcy Court or the Canadian Court or any Creditors' Committee or the Information Officer in the Recognition Proceedings, in each case, at the time such document is filed with the Bankruptcy Court, the Canadian Court or provided by or to the Information Officer, as applicable. The parties hereto agree that filing such papers through PACER shall satisfy the foregoing requirement to deliver such as filed in the Bankruptcy Court.

Notwithstanding anything to the contrary in this Section 11.1 (*Affirmative Covenants*), the Borrower shall not be required to comply with any provision of this Section 11.1 (*Affirmative Covenants*) to the extent it would conflict with or cause a breach of Section 11.12(u) (*Negative Covenants*).

## 11.2 Approved Budget and Variance Reporting .

The Borrower shall:

- (a) *Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a Proposed Budget for the next thirteen weeks, commencing with the calendar week in which such Proposed Budget is delivered (such period, the "**Budgeted Period**"); provided that, (i) in no event shall the Budgeted Period extend past four weeks after the Maturity Date and (ii) if the Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts, disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for all weeks following the Maturity Date shall assume that the Debtors continue to operate in the ordinary course consistent with prior postpetition practices and that no sale of the Debtors' business will occur during such portion of the Budgeted Period. The Proposed Budget shall become the Approved Budget for the Budget Period covered thereby unless the Obligors receive a written objection from the Majority Lenders (with e-mail from professionals acting on behalf of the Majority Lenders to the Obligors' counsel being sufficient) prior to 5:00 p.m. (Pacific Time) on the fifth Business Day following delivery of the Proposed Budget to the Administrative Agent and the Senior Lenders. If the Majority Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or modification to the Approved Budget or Approved Variance Report by 5:00 p.m. (Pacific Time) on the fifth Business Day following delivery of the Proposed Budget to the Administrative Agent and Senior Lenders, then such Proposed Budget, amendment, supplement or modification shall be deemed acceptable to and approved by the Majority Lenders and shall become the Approved Budget. In the event the Majority Lenders timely object to a Proposed Budget, the prior Approved Budget shall remain in full force and effect until any such Proposed Budget is approved by the Majority Lenders (with e-mail from the advisors acting on behalf of the Majority Lenders to the Debtors' counsel being sufficient). Until any Proposed Budget, or any amendment, supplement or modification to the Approved Budget has been approved (or is deemed approved in accordance with this paragraph (a)) by the Majority Lenders, the Debtors shall be subject to and be governed by the terms of the Approved Budget then in effect.
- (b) *Weekly Variance Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second Thursday after the Petition Date (the "**First Reporting Date**", which, for the avoidance of doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday thereafter (together with the First Reporting Date, each a "**Weekly Reporting Date**"), the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a variance report (each, a "**Weekly Variance**

**Report**”) setting forth, in reasonable detail, (i) the actual receipts of the Obligors on a line-by-line and aggregate basis; (ii) the actual disbursements of the Obligors on a line-by-line and aggregate basis; and (iii) the aggregate actual intercompany transfers from Debtor entities to Parent on a Debtor-by-Debtor basis, in each case, during the applicable week ending on the Sunday preceding each such Weekly Reporting Date (each such week, a “**Reporting Week**”) and (iv) a comparison (whether positive or negative, expressed as a percentage) for the Reporting Week between (A) the actual receipts in clause (i) above (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected receipts (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the actual disbursements in clause (ii) above (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected disbursements (and each line item thereof) set forth in the Approved Budget for such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to Parent to the amount of each such Debtor’s aggregate projected intercompany transfers to Parent set forth in the Approved Budget for such Reporting Week.

- (c) *Monthly Variance Reporting.* By no later than 12:00 p.m. (Pacific Time) on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First Reporting Date (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling Four-Week Testing Date shall be July 11, 2024) and each such subsequent four-week period ending on the Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing Period**”), the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a report reasonably detailing (i) the aggregate actual receipts and aggregate actual disbursements of the Obligors and aggregate intercompany transfers from Debtor entities to Parent, in each case, during the applicable Rolling Four-Week Testing Period; and (ii) any variance (whether positive or negative, expressed as a percentage) between (A) the aggregate actual receipts received by the Obligors during such Rolling Four-Week Testing Period against the projected receipts for such Rolling Four-Week Testing Period as set forth in the Approved Budget, (B) the aggregate actual disbursements made by the Obligors during such Rolling Four-Week Testing Period against the aggregate projected disbursements for such Rolling Four-Week Testing Period as set forth in the applicable Approved Budget and (C) the aggregate actual intercompany transfers from Debtor entities to Parent made by such Debtors during such Rolling Four-Week Testing Period against the aggregate projected intercompany transfers from Debtor entities to Parent for such Rolling Four-Week Testing Period as set forth in the applicable Approved Budget (a “**Rolling Four-Week Variance Report**,” together with the Weekly Variance Report, the “**Approved Variance Reports**”), in each case, broken down by each line item.

### 11.3 Notifications to the Senior Lenders.

The Borrower shall:

- (a) Promptly notify the Administrative Agent of any of the following (but in any event no later than (x) solely with respect to clause (a)(i), two (2) Business Days from the Borrower’s discovery thereof and (y) otherwise, five (5) days from the Borrower’s discovery thereof), and only to the extent:
- (i) any Default or Event of Default upon becoming aware of its occurrence;
  - (ii) any Change of Control upon becoming aware of its occurrence;
  - (iii) any material damage to the Project, and whether the Borrower has made, or plans to make, any insurance claims with respect thereto with respect to such damage;



- (iv) any material disputes or disturbances pertaining to the Project involving local communities, including, without limitation and any indigenous peoples;
- (v) other than to the extent subject to the Automatic Stay or otherwise stayed by an applicable provision of the Bankruptcy Code, or order of the Bankruptcy Court:
  - (A) any material default by any party under or termination or threatened termination or termination right arising under any Material Project Document, of which it becomes aware;
  - (B) the loss of or material non-compliance with the terms of, or any threat (whether or not in writing) by a Governmental Body to revoke or suspend or modify, any Material Project Authorization, including, without limitation, any enforcement action brought by the Nevada Division of Environmental Protection, any code enforcement action by the county in which the Project Real Property is located affecting construction or alteration of any work of construction, and any notice of deficiency in the payment of Nevada Net Proceeds of Minerals Tax;
  - (C) all material actions, suits and proceedings (including arbitral and administrative proceedings) for damages in excess of in aggregate \$2,000,000, or which, if adversely determined, would be likely to have a Material Adverse Effect, before any Governmental Body or arbitrator pending, or to the knowledge of the Borrower, threatened, against or directly affecting the Borrower, the Project or any Material Project Documents, including any actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower or in any material respect, in relation to the ownership, development, construction, use, maintenance and operation of the Project;
  - (D) any violation of any Applicable Law by the Borrower or any of its Subsidiaries in any material respect;
- (vi) [Reserved];
- (vii) [Reserved];
- (viii) any material labor disruption involving the workforce at the Project;
- (ix) other than any “Default” or “Event of Default” under and as defined in the Streaming Agreement or a default under the First Lien Facility, the Working Capital Facility or any Offtake Agreements arising solely arising from the entry of the DIP Order, the commencement of the Chapter 11 Case and the application of the Automatic Stay (A) any event, circumstance or fact that could reasonably be expected to give rise to a “Default” or an “Event of Default” under and as defined in, the Streaming Agreement or a default under the Working Capital Facility or any Offtake Agreement, or (B) any event or condition which, upon notice, lapse of time, or both, would constitute a “Default” or an “Event of Default” as defined under the Streaming Agreement or a default under the Working Capital Facility or any Offtake Agreement, or (C) a “Default” or an “Event of Default” as defined in any other agreement in respect of Debt of the Borrower in a principal amount of \$5,000,000 or more without giving effect to any amendments or waivers from the creditor party thereunder;

- (x) any material change in operational planning that requires additional Authorizations (and all relevant information related thereto) pursuant to any Applicable Law or Good Industry Practice; and
- (xi) any rejection or request for additional information from any public registry or Governmental Body in respect of the actions being taken to perfect the security interest in the Collateral pursuant to Article 9 (*Security*),

in each case, accompanied by an Officer's Certificate of the Borrower setting forth details of the occurrence referred to therein.

- (b) Promptly notify the Administrative Agent, including in the notification the intended action to be taken by them, upon:
  - (i) any written threat of any action or public announcement of any intended action or series of actions that would reasonably be construed or expected to result in an Expropriation Event or a Material Adverse Effect;
  - (ii) any notice of cancellation of any of the Borrower's water rights and any diminution of the rights available for lease from the City of Yerington;
  - (iii) any material claim, complaint, notice or order under, or any violations of, any Environmental Laws, Sanctions, Anti-Corruption Laws, labor organizing activity, or AML Laws, affecting any of the Borrower, its Subsidiaries or the Project;
  - (iv) becoming aware of the presence of any Hazardous Substances located on, above or below the surface of any land which the Borrower occupies or controls, except those being stored, used or otherwise handled in compliance with Environmental Laws, in each case which could reasonably be expected to have a material cost or material impact on the Borrower's ability to carry on the Business and to develop or operate the Project;
  - (v) the occurrence of any Release of Hazardous Substances that has occurred on or from such land or otherwise with respect to the Project which could reasonably be expected to have a material cost or material impact on the Borrower's ability to carry on the Business and to develop or operate the Project or which could reasonably be expected to have a Material Adverse Environmental and Social Effect;
  - (vi) any E&S Event;
  - (vii) any proposed change in the use or occupation of the Project Real Property which may have a material cost or material impact on the Borrower's ability to carry on the Business or develop and operate the Project; and
  - (viii) any other notice given or received by the Borrower with respect to the occurrence of any force majeure or delay event (howsoever described) under any Project Document;

provided, that, in the event any action set forth in Section 11.3(b)(i) (*Notifications to the Senior Lenders*) is notified to the Senior Lenders, the Borrower shall promptly consult with the Senior Lenders to determine appropriate steps to mitigate against or otherwise negotiate the resolution of the action or series of actions that may otherwise result in an Expropriation Event.

- (c) Promptly (but in any event no less than thirty (30) days prior to such change) notify the Senior Lenders upon becoming aware of any proposed change or change in name or jurisdiction of incorporation or principal place of business of the Borrower or any of its Subsidiaries.
- (d) The Borrower shall promptly notify the Senior Lenders of (and shall provide a true and complete copy, where applicable):
  - (i) the acquisition by the Borrower or its Subsidiaries of any Project Real Property (including mineral rights) with a value, individually or in the aggregate, of more than \$5,000,000 or which is material to the Project, whether owned or leased;
  - (ii) any new locations of tangible assets of the Borrower or its Subsidiaries (other than inventory in transit);
  - (iii) any new Material Project Document or any amendment or revision to any existing Material Project Document (provided, that any amendment or revision to any existing Material Project Document and any new Material Project Document shall be subject to Section 11.12(j) (*Negative Covenants*));
  - (iv) any amendment or revision to the Working Capital Facility or Streaming Documents (provided, that any amendment or revision the Working Capital Facility shall be subject to Section 11.12(j) (*Negative Covenants*)); and
  - (v) any new Material Project Authorization or any amendment, revision, reissuance or replacement of any existing Material Project Authorization.
- (e) [Reserved].
- (f) On the first Business Day of each calendar quarter, the Borrower shall notify the Administrative Agent of:
  - (i) the acquisition by the Borrower and its Subsidiaries of all real property (including mineral rights) during the immediately prior calendar quarter (or a certification that no such acquisition was made);
  - (ii) evidence, satisfactory to the Administrative Agent (acting at the direction of the Majority Lenders), that a valid and fully perfected Encumbrance granting a security interest over such after-acquired real property has been created in accordance with Section 9.1(b) (*Grant of Security Interest*); and
  - (iii) the proposed amended and restated Schedule J (*Project Real Property*) to reflect the acquisition of such real property which, upon to the approval of the Administrative Agent (acting at the direction of the Majority Lenders), shall be and shall be deemed to constitute Schedule J (*Project Real Property*) hereunder.
- (g) [Reserved].
- (h) The Borrower shall provide details of any other information reasonably requested with reasonable notice by the Majority Lenders in respect of the financial condition, business and/or operations of the Borrower or the Project.



**11.4 Other Reports.**

The Borrower shall promptly deliver or furnish, or cause to be delivered or furnished, to the Senior Lenders a copy of any material reports, certificates and notices relating to the Project which are delivered by or to the Borrower under the Material Project Documents, the First Lien Facility, the Working Capital Facility and the Streaming Agreement to the extent not already delivered to the Senior Lenders under the Finance Documents.

**11.5 Project Reporting.**

The Borrower shall promptly deliver or furnish, or cause to be delivered or furnished, to the Administrative Agent, for prompt delivery to each Senior Lender, a copy or copies of:

- (a) **[Reserved].**
- (b) **[Reserved].**
- (c) **Monthly Operations Reports.** Monthly Operations Reports on or before 5th calendar day after each calendar month (including material variations from the prior month) in a form reasonably satisfactory to the Majority Lenders.
- (d) **Emissions Report.** If disclosure is required under Annex A of the Equator Principles due to the amount of emissions from the Project, the Borrower will publish and maintain on its website at [www.nevadacopper.com](http://www.nevadacopper.com) all times information with respect to greenhouse gas emissions in the substance and form required by Annex A of the Equator Principles. The Senior Lenders will have the right to publish information required under Annex B of the Equator Principles and Borrower hereby consents to the publishing thereof.

**11.6 [Reserved].****11.7 Quarterly Financial Reporting.**

- (a) The Borrower shall provide to the Administrative Agent, for prompt delivery to each Senior Lender, for each bank account of the Borrower copies of the relevant bank statements.
- (b) As soon as available and in any event within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the Borrower shall deliver to the Administrative Agent, for prompt delivery to each Senior Lender, a copy of each Obligors' quarterly unaudited financial statements for such Fiscal Quarter.

**11.8 [Reserved].****11.9 Corporate Policies.**

The Borrower shall:

- (a) **[Reserved];**
- (b) ensure that all operations in respect of the Project comply in all material respects with Environmental Law;

- (c) keep, or cause its Subsidiaries to keep, all relevant documentation in order for the Senior Lenders to verify such compliance;
- (d) If an E&S Event occurs or is identified by the Borrower:
  - (i) the Borrower shall promptly notify the Senior Lenders in accordance with Section 11.3(a) (*Notifications to the Senior Lenders*); and
  - (ii) the Borrower shall, and shall cause its Subsidiaries to, (A) prepare, and provide the Administrative Agent with a copy of, a Corrective Action Plan to set forth the proposed actions to correct or to remedy any damage and adverse consequences that has been or would reasonably be expected to be caused by such E&S Event, including timeframes for the implementation of such actions, (B) conduct all such actions within such timeframes and (C) where relevant, upon the request of the Administrative Agent (acting at the direction of the Majority Lenders, acting reasonably), provide the Administrative Agent with any information relating to measures or monitoring undertaken by or on behalf of its Subsidiary consistent with the Environmental and Social Requirements or under any Corrective Action Plan; and
- (e) If an E&S Event occurs that has had or could potentially have a Material Adverse Environmental and Social Effect, the Borrower and its Subsidiaries shall take such immediate action as is necessary to rectify such E&S Event prior to the development and implementation of any Corrective Action Plan.

#### **11.10 Changes to Accounting Policies.**

If there is any material change in a period to the accounting policies, practices and calculation methods used by the Borrower in preparing its Financial Statements or components thereof as compared to any previous period, the Borrower shall provide the Senior Lenders reasonable advance notice of the proposed material change including with it, all information which the Senior Lenders may reasonably require relating to the impact of any such material change on the comparability of the reports provided to the Senior Lenders after any such material change to previous reports. Until the Administrative Agent has approved such material change in writing, the Borrower shall continue to prepare and provide any reports to the Senior Lenders hereunder in accordance with the accounting policies, practices and calculation methods in effect prior to such material change.

#### **11.11 Know Your Customer Documentation; Beneficial Ownership Certification.**

- (a) The Borrower shall promptly, upon the request of any Senior Lender, supply to such Senior Lender any documentation or evidence that is reasonably required by such Senior Lender (whether for itself or on behalf of any person to whom such Senior Lender may, or may intend to, transfer any of its rights or obligations under this Agreement) to enable such Senior Lender to carry out and be satisfied that it has complied with all necessary “know your customer” requirements that such Senior Lender is obliged to carry out under applicable AML Laws.
- (b) The Borrower shall promptly notify the Administrative Agent and each Senior Lender of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification.
- (c) The Borrower shall promptly notify the relevant Senior Lenders of any changes in any information supplied by it relating to any matter referred to in paragraph (a) above of such as:

- (i) a change in the Borrower's board of directors;
- (ii) a change in the legal or beneficial ownership of 25% or more of the Borrower's issued share capital, as well as information about a Person acquiring a legal or beneficial interest in 25% or more of the Borrower's issued share capital; and
- (iii) a change in the nature of the Borrower's business from the Entry Date, as well as information about the Borrower starting or ceasing business operations in a state of the United States other than Nevada or a country other than the United States.

#### **11.12 Negative Covenants.**

- (a) Neither the Borrower nor its Subsidiaries shall:
  - (i) use, directly or indirectly, any part of the proceeds of the Loans (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value to any Person in a manner that would constitute or give rise to a violation of applicable Anti-Corruption Laws (B) to fund or facilitate any activities or business of, with or involving any Sanctions Target or in any manner that would constitute or give rise to a violation of Sanctions by any Person, including any Senior Lender; or (C) in any manner that would constitute or give rise to a violation of applicable AML Laws;
  - (ii) other than in connection with the Sale Transaction, sell, transfer or otherwise dispose of all or any part of the (A) Borrower or its Subsidiaries', as applicable, present or future assets except on arm's-length terms in the ordinary course of trade or the Project Property including any portion of any mining concessions (or other mineral interest) or the Collateral, except pursuant to a Permitted Asset Disposition or (B) Borrower's present or future assets to its Subsidiaries;
  - (iii) make any payment of royalties in respect of Minerals from the Project Real Property other than the amounts required by the Royalties, or enter into any royalty, stream financing or similar agreement with any other Person in relation to the Project Real Property other than the Royalties, the Streaming Agreement, any Offtake Agreement and the RGGGS Lease and the Royalty Agreements;
  - (iv) create, incur, assume or suffer to exist any Encumbrance upon all or any part of the Collateral, whether now owned or hereafter acquired, other than Permitted Encumbrances;
  - (v) permit to occur any event or condition that could subject Borrower or its Subsidiaries, either directly or by reason of its affiliation with any member of their Controlled Group, to any liability imposed by Title IV of ERISA, or to any lien imposed by Section 430 of the IRC or Section 303 or Title IV of ERISA;
- (b) The Borrower shall not be entitled to incur or make any expenditure, Restricted Payment, Investment, loan or other payment without the prior written consent of the Majority Lenders other than in accordance with the Approved Budget, subject to the Permitted Variances; provided that any distributions made by the Obligors' foreign non-Debtor affiliates to the Obligors shall be placed in a segregated account to be established by the Obligors, and no funds shall be withdrawn from such account without the prior written consent of the Majority Lenders, unless such distributions are remitted directly to the Administrative Agent for application to the Loans;

- (c) Neither the Borrower nor its Subsidiaries, other than as resulting from the commencement of the Chapter 11 Cases or as provided in the DIP Order, shall (i) except for the Finance Documents, the First Lien Facility, Working Capital Facility, the Fourth Lien Facility and the Streaming Agreement, enter into any agreement or arrangement or take any action which restricts or purports to restrict the ability of the Borrower, its Subsidiaries, the Borrower's shareholders or any of their Affiliates to pay dividends, or make any other distributions to, or repay Debt, in each case, owing to the Borrower, its Subsidiaries, the Borrower's shareholders or any of their Affiliates, or (ii) enter into any agreement or arrangement or take any action which restricts or purports to restrict the ability of the Borrower or any of its Affiliates to deliver Minerals or perform its other obligations under the Finance Documents, Working Capital Facility, the First Lien Facility, the Fourth Lien Facility, the Aurubis Offtake Agreements or the Streaming Agreement;
- (d) Neither the Borrower nor its Subsidiaries shall create, incur, assume, or otherwise become directly or indirectly liable upon or in respect of, or suffer to exist, any Debt other than Permitted Debt;
- (e) Neither the Borrower nor its Subsidiaries shall enter into any hedge instrument or incur any hedge obligations;
- (f) Neither the Borrower nor its Subsidiaries shall change its jurisdiction of incorporation or any material respect of the nature of its business or operations from the Business, or engage directly or indirectly in any material business activity, or purchase or otherwise acquire any material property, in either case, not related to or in furtherance of the conduct of the Business, or as reasonably required to perform its obligations under the Finance Documents;
- (g) Neither the Borrower nor its Subsidiaries shall have any material liabilities, contingent or otherwise, that would be required to be reflected in the Borrower's Financial Statements in accordance with IFRS, other than those (i) reflected in the most recently delivered Financial Statements and the Finance Documents or (ii) arising in the ordinary course of business since the date of the most recently delivered Financial Statements.
- (h) Neither the Borrower nor its Subsidiaries shall issue any guarantees or indemnities, other than to the extent permitted in the Finance Documents, including by the endorsement of negotiable instruments for deposit or collection (or similar) in the ordinary course of business, guarantees of obligations of employees, guarantees of obligations of suppliers in the ordinary course of business and guarantees provided in connection with the granting of performance bonds in favor of contractors/Governmental Bodies in the ordinary course of business.
- (i) Neither the Borrower nor its Subsidiaries shall make any Accretive Investment, except, in respect of the Borrower:
  - (i) Short-term Investments in money market instruments with remaining maturities of twelve (12) months or less at the date of purchase including securities issued by government agencies, and term deposits and bank accounts with financial institutions; provided, that such short-term Investments are readily convertible to cash; and
  - (ii) Accretive Investment with a value up to \$5,000,000 in the aggregate.
- (j) The Borrower shall not:
  - (i) enter into any Additional Material Project Documents without the approval of the Majority Lenders; or

- (ii) amend in any material respect or waive any material provision of or suspend, terminate or assign or transfer or give notice of suspension, termination or assignment or transfer of:
  - (A) any Material Project Document or the Working Capital Facility without Majority Lender consent;
  - (B) [Reserved];
  - (C) the Aurubis Offtake Agreement without Majority Lender consent; or
  - (D) any other Offtake Agreement that constitutes a Material Project Document without Majority Lender consent;
- (iii) settle any dispute or claim under a Material Project Document or compromise or settle any liability, in either case that results in payments in excess of \$10,000,000 becoming due from the Borrower;
- (iv) [reserved]; or
- (v) permit its Subsidiaries to enter into any material contract.
- (k) Neither the Borrower nor its Subsidiaries shall make any Capital Expenditures other than Permitted Capital Expenditures;
- (l) The Borrower shall not, subject to Section 11.12(j) (*Negative Covenants*), directly or indirectly, enter into, or amend, any transaction or agreement with or for the benefit of any Affiliate of the Borrower (other than as listed on Schedule T (*Related-Party Transactions*) or to the extent constituting a Permitted Asset Disposition) except in the ordinary course of business and upon terms and conditions at least as favorable to the Borrower as would be obtainable by the Borrower at the time in a comparable arm's-length transaction with a Person that is not an Affiliate of the Borrower;
- (m) The Borrower shall not transfer or assign any Debt owed to it or consent to the assignment of any Debt owed by it to any Obligor;
- (n) [Reserved];
- (o) Neither the Borrower nor its Subsidiaries shall, other than as permitted under the Finance Documents, directly or indirectly purchase, acquire or lease any property from, or sell, transfer or otherwise Dispose of any property to, or otherwise deal or enter into any agreement with, any Related Party, unless such transaction is undertaken on fair and commercially reasonable terms and conditions no less favorable to the Borrower than would have been obtained in a comparable fair market transaction with a person who is not an Affiliate of the Borrower;
- (p) Except as otherwise contemplated by the DIP Order and the Chapter 11 Cases, neither the Borrower nor its Subsidiaries shall enter into any transaction to change or reorganize its capital structure or amend its articles, by laws or any other corporate documents;
- (q) Except in connection with the Sale Transaction or as otherwise contemplated by the DIP Order, neither the Borrower nor its Subsidiaries shall undertake or permit any merger, spin-off, consolidation, reorganization or other fundamental corporate transaction;

- (r) Neither the Borrower nor its Subsidiaries shall establish or acquire any subsidiary, other than the Borrower's Subsidiaries disclosed to the Senior Lenders prior to the Petition Date, without the prior consent of the Senior Lenders (such consent not to be unreasonably withheld or delayed);
- (s) Except as required by order of the Bankruptcy Court, neither the Borrower nor any of its Subsidiaries shall maintain any deposit or security accounts other than the accounts listed on Schedule R (*Bank Accounts*);
- (t) [Reserved];
- (u) Neither the Borrower nor its Subsidiaries shall conduct activities, or incur any costs, in relation to the Project other than activities (and incurred costs) related to (i) health and safety measures for persons and property at or affected by the Project, (ii) security measures for persons and property at the Project, (iii) actions necessary or advisable to protect persons and property in the event of emergency conditions at the Project, (iv) actions and activities necessary or advisable to comply with all applicable laws and permitting requirements and any inspections of the Project, (v) actions and activities necessary or advisable to (x) preserve the value of the Project and its assets and (y) transition the Project to a state appropriate for care and maintenance (including maintaining appropriate ventilation systems, pumping systems, access to the Project and any inventory mined prior to the Petition Date), (vi) maintaining and caring for the Project in accordance with Good Industry Practice and (vii) actions, activities or other measures permitted by the Approved Budget. Other than as may be incidental to their transition to care and maintenance mode, in no circumstances shall the Borrower or its Subsidiaries conduct, or incur costs, in connection with development and mining and processing activities designed to produce additional inventory after the Petition Date; it being understood that the Debtors may process and sell inventory mined prior to the Petition Date or in the transition to care and maintenance of the Project;
- (v) Neither the Borrower nor its Subsidiaries shall create or permit to exist any other superpriority claim which is *pari passu* with or senior to the Obligations, except for claims in respect of the Carve-Out or the Administration Charge;
- (w) Unless authorized by the Administrative Agent in writing, no materials, fixtures, or articles of personal property incorporated into the Project may be installed under any security agreement or other agreement whereby the seller reserves or purports to reserve (i) title or the right of removal or repossession, (ii) the right to consider such items as personal property after their incorporation into the Project, or (iii) a security interest, in each case after such material, fixture or article of personal property is incorporated into the Project;
- (x) The Obligors shall not transfer any cash or cash equivalents that constitute Collateral to a Subsidiary of Parent that is not an Obligor without the prior written approval of the Majority Lenders;
- (y) The Borrower and its Subsidiaries shall not make any payment or prepayment or redemption or acquisition for value or any cancellation or other retirement of any Prepetition Indebtedness or other obligations arising prior to the Petition Date, except the obligations in respect of the Working Capital Facility, solely to the extent paid from proceeds of WCF Collateral and obligations paid pursuant to authority granted under a First Day Order; provided that the Obligors shall be permitted to make adequate protection payments in respect of certain interest, professional fees and expenses incurred by the Prepetition Secured Parties, as set forth in the DIP Order; and



- (z) During any Rolling Four-Week Testing Period, the Obligors shall not allow the (1) total aggregate disbursements, minus (2) disbursements in respect of (i) interest, fees and expenses in relation to this Agreement and any of the Obligors' other funded debt obligations; (ii) Adequate Protection Obligations; (iii) DIP Professional Fees (as defined in the Interim Order); and (iv) professional fees paid by the Obligors on behalf of themselves or any other parties (the "**Total Tested Disbursements**") to exceed 120% of such Total Tested Disbursements set forth in the Approved Budget for such Rolling Four-Week Testing Period. Additional disbursement variances, if any, from an Approved Budget, and any proposed amendments, supplements or modifications to an Approved Budget, shall be subject to the prior written approval of the Majority Lenders (the foregoing, collectively, the "**Permitted Variances**").

### 11.13 Milestones.

The Borrower shall, and shall cause each of its Subsidiaries and any other Obligor to comply with the following milestones (each of which may be extended or waived with the prior written consent of the Majority Lenders in their sole discretion, without further order of the Bankruptcy Court or the Canadian Court):

- (a) No later than one (1) calendar day following the Petition Date, the Debtors shall have filed a motion in the Bankruptcy Court seeking approval of this Agreement and the Loans, in form and substance acceptable to the Majority Lenders.
- (b) No later than five (5) Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim Order.
- (c) No later than fourteen (14) calendar days following the entry of the Interim Order by the Bankruptcy Court, the Canadian Court shall have granted the Initial Recognition Order and Interim DIP Recognition Order.
- (d) No later than fourteen (14) calendar days following entry of the Final DIP Order by the Bankruptcy Court, the Canadian Court shall have entered the Final DIP Recognition Order.
- (e) No later than fourteen (14) calendar days following entry of the Sale Approval Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance satisfactory to the Administrative Agent and Senior Lenders in their sole discretion, recognizing and enforcing the Sale Approval Order in Canada.
- (f) No later than fourteen (14) calendar days following the entry of the Bidding Procedures Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance satisfactory to the Administrative Agent and Senior Lenders in their sole discretion, recognizing and enforcing the Bidding Procedures Order in Canada.
- (g) No later than ten (10) calendar days following the Petition Date, the Debtors shall have filed a motion (the "**Bidding Procedures Motion**") in form and substance acceptable to the Majority Lenders, for entry of an order (the "**Bidding Procedures Order**") (i) approving the procedures to be used and bid protections to be provided in connection with the Sale Transaction (as may be amended from time to time in accordance with their terms, the "**Bidding Procedures**"), (ii) setting the dates for the submission of bids, the auction (if any) and the hearing on the approval of the Sale Transaction and approving all notices related thereto and (iii) authorizing certain procedures related to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale Transaction.

- (h) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered a Bidding Procedures Order approving the Bidding Procedures Motion, which shall be in form and substance acceptable to the Majority Lenders.
- (i) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered the Final Order.
- (j) No later than one hundred eight (108) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order (the “**Sale Approval Order**”) approving a sale (or sales) of all or substantially all of the business of the Debtors (the “**Sale Transaction**”), in form and substance acceptable to the Majority Lenders.
- (k) No later than one hundred twenty (120) calendar days following the Petition Date, the Sale Transaction shall be consummated.

## Article 12 CONDITIONS PRECEDENT

Notwithstanding the following requirements in Sections 12.1, 12.2 and 12.3 of this Agreement, each Senior Lender’s commitment to lend (subject to the terms and conditions of this Agreement, including, without limitation, Article 12 of this Agreement) shall be effective upon the Senior Lenders’ receipt of the Obligors’ duly executed signatures pages to this Agreement and the Senior Lenders’ deliver of duly executed signature pages to the Obligors.

### 12.1 Conditions Precedent to the Interim Loan.

No Senior Lender will be obligated to make available the Interim Loan (or any part thereof) or make the first Utilization under the Interim Loan unless each of the following conditions has been fulfilled, in each case in form and substance satisfactory to each Senior Lender (unless waived in accordance with Section 25.4 (*Amendment and Waiver*)).

- (a) **[Reserved].**
- (b) **Corporate Documentation.**

The Administrative Agent and the Senior Lenders shall have received all of the following (in each case in form and substance satisfactory to each Senior Lender):

- (i) Certified copies of the constitutional documents (including, without limitation, any shareholder agreements or declarations, as applicable) of each Obligor, attached in each case to an Officer’s Certificate of each Obligor, as applicable;
- (ii) A copy of the resolutions of the board of directors and shareholders meeting (as applicable) of each Obligor approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party and authorizing a specified person or persons to execute the Finance Documents to which it is a party on its behalf, attached in each case to the Officer’s Certificate of such Obligor;
- (iii) Specimen signatures of each person from each Obligor authorized by the resolutions to sign the Finance Documents to which it is a party, a copy of the duly registered powers of



attorney and any other notices or documents under or in connection with the Finance Documents to which it is a party, attached in each case to the Officer's Certificate of such Obligor;

- (iv) A certificate of each of the Obligors (signed by an authorized representative) confirming that (i) borrowing or guaranteeing or securing, as appropriate, the total commitments would not cause any borrowing, guarantee, security or similar limit binding on such Obligor to be exceeded; (ii) each copy document relating to it specified in this section is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement; and (iii) all representations and warranties contained in Article 8 (*Representations and Warranties*) are true, accurate and complete; and (iv) other than the Chapter 11 Cases, no event has occurred and is continuing or would result from the Finance Documents as at the date of this Agreement which constitutes an Event of Default; and
- (v) A certificate of status, compliance, good standing or like certificate with respect to each Obligor issued by the appropriate government official in the jurisdiction of its incorporation.

**(c) Finance Documents.**

The Administrative Agent and the Senior Lenders shall have received a copy of each Finance Document (other than any Note and any Transfer Certificate).

**(d) Fees.**

All invoiced and documented fees, premiums, expenses (including reasonable fees and expenses of counsel to the Agents and the Senior Lenders) and other out-of-pocket transaction costs incurred in connection with the transactions contemplated hereby and fees and expenses required to be paid under the Agency Fee Letter on the Entry Date to the Agents shall have been paid in full in accordance with the terms of the Interim Order.

**(e) Know Your Customer Information.**

Each of the Obligors shall have provided all information necessary to comply with any AML Laws, know your customer checks and other out-of-pocket identification procedures as may be requested by the Administrative Agent. If the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, each Senior Lender shall have received, or had access to, at least one (1) Business Days prior to the date hereof, a Beneficial Ownership Certification in relation to the Borrower.

**(f) Interim Order.**

The Administrative Agent and the Senior Lenders shall have received a copy of the Interim Order which Interim Order (x) shall have been entered on the docket of the Bankruptcy Court no later than five (5) Business Days after the Petition Date and (y) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Senior Lenders.

(g) **First Day Orders.**

The “first day” orders (including, without limitation, any motions related to the Finance Documents, cash management and any critical vendor or supplier motions), in form, scope and substance satisfactory to the Senior Lenders and their counsel shall have been entered in the Chapter 11 Cases (the “**First Day Orders**”).

(h) **Security.**

(i) All Obligations shall be secured by a perfected lien and security interest on the Collateral of the Obligors, and such Lien and security interests shall have the priorities set forth in the Interim Order, subject only to the Permitted Encumbrances and the Carve-Out and all filings and recordings as reasonably required by the Senior Lenders in respect thereof shall have been made and filing and recording fees and taxes with respect to such Encumbrances and security interests that are due and payable as of the Entry Date shall have been duly paid.

(ii) [Reserved].

(iii) The Senior Lenders shall have received evidence that no liens or encumbrances are recorded or registered against the Obligors (other than Permitted Encumbrances).

(i) [Reserved].

(j) **Approved Budget.**

The Senior Lenders shall have received a copy of the Initial Approved Budget.

(k) **Officer’s Certificate.**

The Administrative Agent and the Senior Lenders shall have received an Officer’s Certificate substantially in the form of Schedule F hereto.

## **12.2 Conditions Precedent to the Final Loans.**

No Senior Lender will be obligated to make available the Final Loan (or any part thereof) or make the first Utilization under the Final Loan unless each of the following conditions has been fulfilled, in each case in form and substance satisfactory to each Senior Lender (unless waived in accordance with Section 25.4 (*Amendment and Waiver*)):

(a) [Reserved].

(b) **Officer’s Certificate.**

The Administrative Agent and the Senior Lenders shall have received an Officer’s Certificate substantially in the form of Schedule G hereto.

(c) **Approved Budget.**

The Senior Lenders shall have received a copy of the Approved Budget.

(d) **Security.**

The Encumbrances in favor of the Collateral Agent for the benefit of the Secured Parties have been perfected by the Final Order, and without the necessity of the execution of mortgages, security agreements, pledge agreement, financing statements or other agreements, and shall constitute first priority Encumbrances (subject only to the Carve-Out, the Administration Charge, the Lien securing the Working Capital Facility (solely with respect to WCF Collateral) and Encumbrances senior by operation of law, and otherwise as set forth in the Final Order).

**(e) Fees.**

All fees, premiums, expenses (including reasonable fees and expenses of counsel to the Agents and the Senior Lenders) and other out-of-pocket transaction costs incurred in connection with the transactions contemplated hereby shall have been paid in full in accordance with the terms of the Final Order.

**(f) Final Order.**

The Final Order (x) shall have been entered on the docket of the Bankruptcy Court no later than forty-five (45) days after the Petition Date and (y) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Senior Lenders.

**12.3 Conditions Precedent to All Utilizations.**

No Senior Lender will be obligated to make available any Loan, including the Interim Loans and the Final Loans, (or any part thereof) unless each of the conditions applicable to the proposed Utilization under the Loan and each of the following conditions has been fulfilled, in each case in form and substance satisfactory to the Majority Lenders (or have been waived in accordance with Section 25.4 (*Amendment and Waiver*)):

**(a) No Default.**

An Officer's Certificate of the Borrower confirming that no Default or Event of Default shall have occurred and be continuing or would result from the making of the proposed Loan.

**(b) Representations.**

An Officer's Certificate of the Borrower shall have been delivered to the Administrative Agent and the Senior Lenders confirming that the representations and warranties in the Finance Documents to be made by each Obligor are true, accurate and complete in all material respects.

**(c) No Change of Control.**

No Change of Control shall have occurred.

**(d) Purpose.**

The Administrative Agent and the Senior Lenders shall have received an Officer's Certificate of the Borrower confirming that the proposed loan will be used for the purpose specified in Section 2.3 (*Use of Proceeds*).

**(e) No MAE.**

The Administrative Agent and the Senior Lenders shall have received an Officer's Certificate of the Borrower confirming that since the Petition Date, no Material Adverse Effect has occurred and is continuing.

(f) **Payment of Fees.**

To the extent invoiced and documented at least two (2) days prior to the requested Utilizations, all fees payable in accordance with the Finance Documents, and all costs and expenses due at such time have been paid, or irrevocable instructions, satisfactory to the Senior Lenders, shall be in place to pay such amounts and fees simultaneously with such requested Utilization.

(g) **Utilization Request.**

The Borrower shall have delivered a Utilization Request to the Administrative Agent no later than 12:00 noon New York time (x) one (1) Business Day prior to the proposed Utilization Date for the Interim Loans and (y) two (2) Business Days prior to the proposed Utilization Date for the Final Loans (in each case, or such later date approved by the Majority Lenders at their reasonable discretion).

**Article 13**  
**EVENTS OF DEFAULT AND REMEDIES**

**13.1 Events of Default.**

Subject to the provisions of Section 362 of the Bankruptcy Code to the extent provided in the DIP Order, with respect to the Debtor and without notice, application or motion, hearing before, or order of the Bankruptcy Court or any notice to any Debtor, the occurrence of any of the following events, following the lapse of the applicable cure period (if any) set forth below, or the issuance of notice (if any) in respect thereof, shall constitute an “**Event of Default**”:

- (a) If the Borrower fails to pay on or before the due date, (x) any principal amount due to the Senior Lenders or (y) any other amount payable by it to any Finance Party (unless the failure to pay is remedied within two (2) Business Days);
- (b) [reserved];
- (c) Any Obligor shall default in the due performance or observance of any term, condition or provision of a Finance Document to which they are a party, not otherwise specified in this Section 13.1 (*Events of Default*) and, other than in the case of any breach of Section 11.2 (*DIP Budget and Variance Reporting*), Section 11.12 (*Negative Covenants*), Section 11.13 (*Milestones*) and Section 11.3(a)(i) (*Notifications to the Senior Lenders*) (in each case for which no cure period shall apply), such breach remains unremedied for a period of ten (10) Business Days after the earlier of: (i) written notice by the Administrative Agent to the Borrower (acting at the direction of the Majority Lenders), and (ii) any Obligor becoming aware of such breach;
- (d) the Borrower makes any representation or warranty under any Finance Document to which it is a party, or in any certificate, Financial Statement or other document furnished by it to any Secured Party, which is incorrect or incomplete when made or deemed to be made (except to the extent any such representation or warranty expressly relates to an earlier date, and in such case, shall be true and correct on and as of such earlier date) and, to the extent such representation or warranty is not already qualified by materiality, such representation or warranty is incorrect or incomplete in a material respect when made or deemed to be made and in each case the circumstances so misrepresented are (i) susceptible to cure and (ii) not corrected within ten (10) Business Days after

the earlier of (A) written notice by the Administrative Agent to the Borrower (acting at the direction of the Majority Lenders), and (B) any Obligor becoming aware of such breach;

- (e) [reserved];
- (f) the Borrower (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt (other than Debt subject to the Automatic Stay) having a principal amount in excess of \$1,000,000, and any applicable grace period in relation thereto as provided for under the applicable instrument or agreement evidencing such Debt has expired; (ii) defaults in the observance or performance of any other agreement or condition in relation to any such Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs or condition exists, the effect of which is to cause, or to permit the holder of such Debt to declare such Debt to become due prior to its stated maturity date, in each case to the extent not subject to the Automatic Stay; or (iii) fails to pay any Adequate Protection Obligations when due and payable in accordance with the DIP Order;
- (g) [reserved];
- (h) [reserved];
- (i) an order is made or a resolution is passed for the winding up, liquidation or dissolution of the Borrower;
- (j) [reserved];
- (k) any Finance Document is repudiated, contested or disaffirmed by any Obligor in whole or in part, ceases to be in full force and effect, or is invalidated, becomes unlawful, or rendered unenforceable by any act, regulation or governmental action or is determined to be invalid or unenforceable by a court or other judicial entity or if any Obligor has ceased to perform its obligations under any Finance Document;
- (l) security interests intended to be granted by or pursuant to this Agreement or any other Finance Document over the Collateral, shall not be valid, perfected, first priority security interests (subject, in the case of the Collateral, to the existence of any Permitted Encumbrances) in favor of the Collateral Agent for the benefit of the Secured Parties and enforceable thereby;
- (m) an adverse final judgment, order, writ of execution, garnishment, attachment, arbitral award or similar process that is not capable of further appeal, for an amount in excess of \$1,500,000, is issued or levied against the Borrower, the Collateral, in each case, to the extent not subject to the automatic stay under the Chapter 11 Cases; provided that, to the extent that any such action or process is appealable or contestable, such judgment, order, writ of execution, garnishment, attachment, arbitral award or similar process remains unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of thirty (30) days after the right of appeal or contest arises;
- (n) all or any material portion of the Collateral is attached, sold, transferred, Encumbered or assigned by a Person other than the Secured Parties or without the consent of the Senior Lenders (other than pursuant to a Permitted Asset Disposition or Permitted Encumbrance, as applicable) and in the case of such attachment shall remain unlifted, unstayed or undischarged for a period of thirty (30) days;
- (o) an Encumbrancer, or any other Person, other than the Secured Parties, legally takes possession of (i) any Collateral Account (other than by the collateral agent under the First Lien Facility), or (ii)

any portion of the Collateral with a value in excess of \$1,500,000 by appointment of a receiver, receiver and manager, or otherwise but excluding the legal possession of any cash collateral held as security by third parties;

- (p) the Borrower abandons all or any material portion of the Collateral other than in regard to its transition into care and maintenance operations;
- (q) [Reserved];
- (r) the Borrower fails to obtain, or loses the right to, or benefit of, a Material Project Authorization, or any Material Project Authorization in respect of the transactions contemplated by the Finance Documents is modified in a manner that has a Material Adverse Effect; provided, that the foregoing shall not constitute the occurrence of an Event of Default if such circumstance is capable of being remedied and the Borrower is diligently pursuing and obtains a replacement of such Material Project Authorization within forty-five (45) days after failing to obtain or losing the right to, or benefit of, a Material Project Authorization;
- (s) a Change of Control occurs;
- (t) any Material Project Document is terminated (other than at scheduled maturity, with the prior written consent of the Majority Lenders) or otherwise becomes invalid, illegal or otherwise ceases to be in full force and effect; provided, that the foregoing shall not constitute the occurrence of an Event of Default in the case of the NV Energy Power Supply Contract, if the Majority Lenders have, acting reasonably, determined that the NV Energy Power Supply Contract is capable of replacement;
- (u) (i) the Borrower or any director or officer thereof has violated, any AML Laws, Anti-Corruption Laws or Sanctions, or (ii) any employee or agent of the Borrower has violated any AML Laws, Anti-Corruption Laws or Sanctions, unless such Obligor takes action to remedy such violation as may be reasonably acceptable to the Administrative Agent within ten (10) days of acquiring actual knowledge of such violation and thereafter continues to take such action as may be reasonably acceptable to the Administrative Agent;
- (v) the occurrence of an Expropriation Event which is continuing for thirty (30) days or more; provided, that such cure period shall apply only if the Obligors are actively and diligently pursuing a resolution to regain ownership and control over the Project substantially as held prior to such event;
- (w) failure by any Obligor to be in compliance in all material respects with the applicable provisions of any Finance Document, the DIP Order or DIP Recognition Order, after giving effect to applicable cure periods set forth herein or therein;
- (x) any request made by any Obligor for, or the reversal, modification, amendment, stay, reconsideration or vacatur of any DIP Order, as entered by the Bankruptcy Court, or any DIP Recognition Order, as granted by the Canadian Court, in each case, without the prior written consent of the Majority Lenders;
- (y) the filing of any application by any Obligor (other than the application for financing provided by a third party which seeks authority to pay all of the Obligations in full in cash upon the closing of such financing) for the approval of (or an order is entered by the Bankruptcy Court approving) any claim arising under section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy



Code or any security, mortgage, collateral interest or other Encumbrance in any of the Chapter 11 Cases which is *pari passu* with or senior to the Encumbrances securing the Obligations, excluding (i) the Carve-Out, (ii) the Administration Charge, (iii) solely with respect to the WCF Collateral, the Encumbrances securing the Working Capital Facility, (iv) prior to the entry of the Final Order, any Prepetition Trisura Lien, (v) Encumbrances arising under the DIP Order or pursuant to any other financing agreement made with the prior written consent of the Majority Lenders or (vi) as provided in the First Day Orders with the prior written consent of the Majority Lenders;

- (z) any Obligor (or any direct or indirect non-Debtor affiliate or Subsidiary of an Obligor) commences (or supports) any action (other than an action permitted by the DIP Order and the DIP Recognition Order) seeking or consenting to, or any order is entered granting, (i) the invalidation, subordination or other challenge to the Prepetition Secured Obligations, the Prepetition Funded Debt Liens, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, the Encumbrances securing the Obligations or the DIP Superpriority Claims (as defined in the DIP Order) or (ii) any relief under sections 506(c) or 552(b) of the Bankruptcy Code with respect to any Prepetition Collateral (as defined in the DIP Order) (including cash collateral), any Collateral or against any of the Prepetition Secured Parties, the Agent or the Senior Lenders;
- (aa) (i) any Obligor files a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify any Finance Document or any DIP Order or DIP Recognition Order, or to disallow any Obligations, in whole or in part, or (ii) any material provision of any Finance Document, the DIP Order, any DIP Recognition Order or any other order of the Bankruptcy Court or Canadian Court approving the Obligors' use of Cash Collateral (as defined in the DIP Order), shall for any reason cease to be valid and binding (without the prior written consent of the Majority Lenders);
- (bb) the entry of an order by the Bankruptcy Court in favor of the Creditors' Committee (if any), any ad hoc committee or any other party in interest, (i) granting such party standing to pursue any claims against the Senior Lenders or the Prepetition Secured Parties, (ii) sustaining an objection to claims of the Senior Lenders or the Prepetition Secured Parties or (iii) avoiding any liens held by the Senior Lenders or the Prepetition Secured Parties, *provided*, that the foregoing shall not be deemed to prohibit the investigation by any such committee of any such claims or liens in respect of the Prepetition Secured Obligations in accordance with the terms of the DIP Order;
- (cc) without the prior written consent of the Majority Lenders, the filing with the Bankruptcy Court of a motion seeking approval of a sale under section 363 of the Bankruptcy Code or a plan of reorganization or liquidation in any of the Chapter 11 Cases that, in either case, does not provide for indefeasible payment in full in cash of all Obligations upon closing of such sale or the effective date of such plan;
- (dd) the appointment in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code);
- (ee) without the prior written consent of the Majority Lenders, the granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the Collateral with an aggregate value of at least \$1,500,000;
- (ff) the conversion of any Chapter 11 Case into a case pursuant to Chapter 7 of the Bankruptcy Code;

- (gg) the termination of any of the Debtors' exclusive right to propose a plan of reorganization under Chapter 11 of the Bankruptcy Code;
- (hh) a dismissal of any of the Chapter 11 Cases or Recognition Proceedings;
- (ii) without the prior written consent of the Majority Lenders, a request by the Debtors to use cash collateral or to obtain financing under section 364 of the Bankruptcy Code (other than pursuant to this Agreement), unless such financing would repay in full in cash all Obligations upon consummation thereof;
- (jj) without the consent of the Majority Lenders, the filing of any motion seeking approval of a sale of any Collateral;
- (kk) a Material Adverse Effect has arisen after the Petition Date and is continuing;
- (ll) the failure to meet any Milestone; or
- (mm) the entry of an Interim Order or Final Order in form or substance that is not acceptable to the Majority Lenders in their sole discretion.

### 13.2 Remedies Upon Default.

- (a) Upon the occurrence, and during the continuance, of any Event of Default, subject to the terms of the DIP Order and the Remedies Notice Period, the Majority Lenders or the Administrative Agent as directed by the Majority Lenders may, by notice given to the Borrower, take any of the following actions:
  - (i) declare all Obligations to be immediately due and payable; and/or
  - (ii) terminate this Agreement and any other Finance Documents as to any future liability or obligation of the Agent and the Senior Lenders, but without affecting any of the Encumbrances securing the Obligations, the Loans or any other Obligation;
  - (iii) terminate, reduce or restrict the ability of the Obligors to use any cash collateral and the proceeds of the Loans (other than during the Remedies Notice Period referenced below, cash collateral for payroll and other expenses critical to keep operating the business of the Obligors, subject to the Approved Budget) (any such declaration made by the Administrative Agent (acting at the direction of the Majority Lenders) to the Obligors, a "**Termination Declaration**" and the date which is the earliest to occur of any such Termination Declaration and the Maturity Date being herein referred to as the "**Termination Declaration Date**"); provided that, (i) the Termination Declaration shall not be effective until notice has been provided by electronic mail to counsel to the Debtors, counsel to the Creditors' Committee (if any), and the U.S. Trustee (the "**Termination Declaration Notice**") and (ii) four (4) Business Days following the receipt of the Termination Declaration Notice by the parties listed in clause (i) of this proviso (the "**Remedies Notice Period**"), the Agent shall have relief from the automatic stay without any further action in the Chapter 11 Cases or the Recognition Proceedings and may set off against deposits and financial assets of the Obligors and foreclose on all or any portion of the Collateral other than the WCF Collateral, and during the Remedies Notice Period, the Obligors and the Creditors' Committee (if any) shall be entitled to seek an emergency hearing before the Bankruptcy Court for the sole purpose of contesting whether an Event



of Default has occurred; and, unless during such period the Bankruptcy Court determines that an Event of Default has not occurred and/or is not continuing or the Bankruptcy Court orders otherwise, the automatic stay, as to all of the Senior Lenders and the Agents, shall automatically be terminated at the end of the Remedies Notice Period and without further notice or order;

- (iv) to the extent permitted by Applicable Law and by the DIP Order:
  - (A) direct the Collateral Agent to realize upon all or any part of the Security;
  - (B) take such actions and commence such proceedings (or direct the Collateral Agent to take such actions or commence such proceedings) as may be permitted at law or in equity (whether or not provided for herein or in the Finance Documents) including, but not limited to, delaying, postponing or waiving any such proceedings, as the Majority Lenders may determine is admissible, in their sole and absolute discretion at such times and in such manner as the Majority Lenders, in their sole discretion, may consider expedient;
  - (C) take possession of the Project; and
  - (D) cancel any or all Unused Commitments,

and all of the foregoing without any additional notice, presentment, demand, protest, notice of protest, dishonor or any other action except as required by law. The rights and remedies of the Administrative Agent, the Senior Lenders and the Collateral Agent hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Applicable Law or by any of the other Finance Documents.

- (b) It is understood and agreed that if the Loans are accelerated or otherwise become due prior to the Maturity Date (including the acceleration of claims by operation of law), the Exit Fee will also automatically be due and payable and shall constitute part of the Obligations with respect to the Loans, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Senior Lender's lost profits as a result thereof. Any such Exit Fee payable shall be presumed to be the liquidated damages sustained by each Senior Lender as the result of the early prepayment and each of the Obligors agrees that it is reasonable under the circumstances currently existing. Each of the Obligors expressly waives (to the fullest extent it may lawfully do so) the provisions of any present or future statute or law that prohibits or may prohibit the collection of the foregoing amounts in connection with any such acceleration, any rescission of such acceleration. Each of the Obligors expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Exit Fee is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Exit Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Senior Lenders and the Obligors giving specific consideration in this transaction for such agreement to pay the Exit Fee; and (D) the Obligors shall be estopped hereafter from claiming differently than as agreed to in this paragraph.
- (c) The Administrative Agent (acting at the direction of the Majority Lenders) shall promptly notify the Borrower, the Collateral Agent and each Senior Lender upon the cessation of an Event of Default.

### 13.3 Set-Off upon Event of Default.

Upon the occurrence and during the continuance of an Event of Default, the Senior Lenders may, without notice to the Borrower or to any other Person, and subject to the terms of the DIP Order, combine, consolidate and merge all or any of the Borrower's accounts with, and liabilities to, the Senior Lenders and set off, any indebtedness and liability of the Senior Lenders to the Borrower, matured or unmatured, against and on account of the Obligations when due.

### 13.4 Application of Proceeds.

The proceeds received by any Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Agents of their remedies, and any other funds realized by any Agent during the continuance of an Event of Default, shall be applied, subject in all respects to the terms of the DIP Order and to Applicable Law, in full or in part, together with any other sums then held by the Agents pursuant to this Agreement, promptly by the Administrative Agent as follows:

- (a) *first*, (x) to the payment of all fees, expenses, losses, indemnities and other amounts payable to the Agents under the Finance Documents and then (y) to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Agents (acting on behalf of the Senior Lenders) and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Agents in connection therewith and all amounts for which the relevant Agent is entitled to indemnification pursuant to the provisions of any Finance Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;
- (b) *second*, to the payment in full in cash of all amounts owing in respect of interest and fees (including, but not limited to, the Exit Fee) under this Agreement;
- (c) *third*, to the payment in full in cash, *pro rata*, of the principal and other remaining obligations hereunder and all other Obligations, in each case equally and ratably in accordance with the respective amounts thereof then due and owing; and
- (d) *fourth*, the balance, if any, to the Person lawfully entitled thereto (including the Obligors) or as a final and non-appealable judgment of a court may direct.

## Article 14 CHANGES TO PARTIES

### 14.1 Assignment by Senior Lenders.

- (a) This Agreement and the other Finance Documents shall enure to the benefit of and be binding upon the parties hereto and thereto, their respective successors and any permitted assignee of some or all of the parties' rights or obligations under this Agreement and the other Finance Documents as permitted under this Section 14.1 (*Assignment by Senior Lenders*).
- (b) A Senior Lender (the "**Existing Lender**") may assign or transfer all or any part of its rights in respect of the Obligations, this Agreement and the other Finance Documents to or in favor of any Permitted Transferee without the consent of the Borrower and have its corresponding obligations hereunder and thereunder assumed by such Person; provided, that:

- (i) except with respect to an assignment or transfer to any Senior Lender or Affiliate of any Senior Lender, no Senior Lender shall be permitted to make a partial assignment or transfer of Loans in a principal amount of less than \$5,000,000;
  - (ii) the Borrower's consent to assignment shall be required (which consent shall not be unreasonably withheld, delayed or conditioned) for any assignment to a Person other than an existing Senior Lender or an Affiliate thereof, unless an Event of Default has occurred and is continuing and in such case a Senior Lender may make an assignment or transfer to any Person and such transfer or assignment shall not require the consent of the Borrower and shall not be subject to any restriction (including those set forth in this Section 14.1 (*Assignment by Senior Lenders*)); and
  - (iii) a Note, if applicable, and all or any part of the Senior Lenders' rights in respect of the Obligations, this Agreement and any of the other Finance Documents shall be assigned or transferred together.
- (c) Any assignment made hereunder shall become effective when the Borrower has been notified thereof by the Administrative Agent and the Administrative Agent receives:
- (i) a duly completed and executed Transfer Certificate which is delivered by the Existing Lender and the Permitted Transferee; and
  - (ii) any documents required by local counsel and requested by the Majority Lender to ensure the assignee Senior Lender receives the benefit of the Security, and
- any such assignee shall be treated as a party to this Agreement for all purposes of this Agreement and the other Finance Documents and shall be entitled to the full benefit hereof and thereof and shall be subject to the obligations of the Senior Lenders to the same extent as if it were an initial party in respect of the rights assigned to it and obligations assumed by it and the Senior Lender making such assignment shall be released and discharged accordingly.
- (d) If the consent of the Borrower is required for any assignment, the Administrative Agent shall not be obligated to accept a Transfer Certificate if the Borrower withholds its consent.
- (e) The Senior Lenders may provide to any permitted assignee or transferee such information, including Confidential Information, concerning this Agreement, the other Finance Documents, and the financial position and the operations of the Obligors as, in the reasonable opinion of the Senior Lenders, may be relevant or useful in connection with this Agreement, the other Finance Documents or any portion thereof proposed to be acquired by such assignee or transferee; provided, that each recipient of such information agrees not to disclose such information to any other Person except as permitted pursuant to Section 23.1(d) (*Confidential Information*).
- (f) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a copy of each assignment delivered to it and a register for the recordation of the names and addresses of the Senior Lenders, and the Commitments of, and principal amounts of (and stated interest on) the Loans owing to, each Senior Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Senior Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Senior Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Senior Lender, at any reasonable time and from time to time upon reasonable prior notice.

- (g) [Reserved].
- (h) Any Senior Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Obligors or any of the Obligors' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Senior Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided, that (i) such Senior Lender's obligations under this Agreement shall remain unchanged, (ii) such Senior Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrower, the Administrative Agent and Senior Lenders shall continue to deal solely and directly with such Senior Lender in connection with such Senior Lender's rights and obligations under this Agreement.
- (i) Any agreement or instrument pursuant to which a Senior Lender sells such a participation shall provide that such Senior Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Senior Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver of Section 25.4 (*Amendment and Waiver*) that affects such Participant and that requires the consent of each Senior Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.3 (*Set-Off upon Event of Default*) as though it were a Senior Lender; provided, that such Participant agrees to be subject to Section 15.25 (*Payments*) as though it were a Senior Lender. Each Senior Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Finance Documents (the "**Participant Register**"); provided, that no Senior Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Finance Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the proposed United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Senior Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.
- (j) Any Senior Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Senior Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; provided, that no such pledge or assignment shall release such Senior Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Senior Lender as a party hereto.
- (k) The Borrower agrees that each Participant shall be entitled to the benefits of Sections 6.1 and 7.3 (subject to the requirements and limitations therein, including the requirements under Section 6.1(g) (it being understood that the documentation required under Section 6.1(g) shall be delivered to the participating Senior Lender)) to the same extent as if it were a Senior Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant shall not be entitled to receive any greater payment under Section 6.1 or 7.3, with respect to any

participation, than its participating Senior Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Applicable Law that occurs after the Participant acquired the applicable participation.

- (l) In connection with any assignment, participation or pledge made pursuant to this Section 14.1 (*Assignment by Senior Lenders*), the Borrower agrees to enter into such documents as may reasonably be required by a Senior Lender to evidence such assignment, participation or pledge.

#### **14.2 Assignment by Borrower.**

The Borrower shall not assign all or any part of its rights, benefits or obligations under this Agreement or any of the other Finance Documents to which it is a party without the prior written consent of the Senior Lenders.

### **Article 15 ADMINISTRATIVE PARTIES**

#### **15.1 Appointment of the Administrative Agent and the Collateral Agent.**

- (a) Each Senior Lender hereby irrevocably appoints and authorizes each of the Administrative Agent and the Collateral Agent to act on its behalf as its agent under and in connection with the Finance Documents. By its signature below, each of the Administrative Agent and the Collateral Agent (or any successor thereto pursuant to this Article 15) accepts such appointment.
- (b) Each Senior Lender irrevocably authorizes each of the Administrative Agent and the Collateral Agent in such respective capacity to:
  - (i) take such actions, perform the duties and to exercise the rights, powers and authorities that are specifically delegated to the Administrative Agent or the Collateral Agent, as applicable, under the Finance Documents, together with any other incidental rights, powers and authorities as are reasonably incidental thereto; and
  - (ii) enter into, deliver and perform each Finance Document expressed to be entered into by the Administrative Agent or the Collateral Agent, as applicable.
- (c) The provisions of this Article 15 (*Administrative Parties*) are solely for the benefit of the Finance Parties and the Borrower shall not have rights as a third-party beneficiary of any such provision. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under pursuant to, the Finance Documents, each Agent shall have all of the rights, immunities, indemnities and other protections granted to it under this Agreement (in addition to those that may be granted to it under the terms of such other agreement or agreements).

#### **15.2 Instructions to the Agents.**

- (a) Notwithstanding any provision of this Agreement or the other Finance Documents to the contrary, before taking or omitting any action to be taken or omitted by any Agent under the terms of this Agreement and the other Finance Documents, such Agent may seek the written direction of the Majority Lenders (which written direction may be in the form of an email), and such Agent is entitled to rely (and is fully protected in so relying) upon such direction. No Agent shall be liable with respect to any action taken or omitted to be taken by it in accordance with such direction. If any Agent requests such direction with respect to any action, such Agent is entitled to refrain from



such action unless and until such Agent has received such direction, and such Agent does not incur liability to any Person by reason of so refraining. In the absence of an express statement in the Finance Documents regarding which Senior Lenders shall direct in any circumstance, the direction of the Majority Lenders shall apply and be sufficient for all purposes. The instructions of the Majority Lenders shall be binding on all Senior Lenders.

- (b) Notwithstanding anything else to the contrary herein or in the other Finance Documents, whenever reference is made in this Agreement or any other Finance Document to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by any Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by any Agent, it is understood that such Agent shall be acting at the direction of the Majority Lenders and shall be fully protected in acting pursuant to such directions.

### **15.3 Duties of the Agents.**

- (a) The Agents' duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Administrative Agent shall forward promptly to the Senior Lenders any document which it receives under this Agreement and the other Finance Documents, including notices, certificates, reports, opinions and agreements, which are delivered to the Administrative Agent for the Senior Lenders.
- (c) No Agent shall have any responsibility for the accuracy or completeness of any information supplied by any Person in connection with the Project or the Finance Documents or for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other document referred to herein or therein or provided for herein or therein or for any recitals, statements, representations or warranties made by the Borrower or any other Person contained in this Agreement or any other Finance Document or in any certificate or other document referred to or provided for in or received by such Agent, hereunder or thereunder. No Agent shall be liable as a result of any failure by the Borrower or its Affiliates or any Person party hereto or to any other Finance Document to perform their respective obligations hereunder or under any other Finance Document or any document referred to or provided for herein or therein or as a result of taking or omitting to take any action hereunder or thereunder or in relation to any Finance Document, except to the extent set forth in this Agreement. No Agent shall be liable for the satisfaction of any condition set forth in this Agreement, other than to confirm receipt of items expressly required to be delivered to such Agent.
- (d) No Agent shall be obligated to monitor or enquire whether a Default or Event of Default has occurred. No Agent shall be deemed to have knowledge of or notice of the occurrence of a Default or Event of Default unless such Agent has received a written notice from a Senior Lender or the Borrower, referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "Notice of Default." If any Agent has received such a "Notice of Default," such Agent shall deliver a copy thereof to each Senior Lender. Each Agent shall take such action with respect to such Default or Event of Default as is provided in Article 13 (*Events of Default and Remedies*).
- (e) No Agent shall be bound to inquire as to (A) whether or not any representation made by any other Person in connection with any Finance Document is true, (B) the occurrence or otherwise of any

Default or Event of Default, (C) the performance by any other Person of its obligations under any of the Finance Documents or (D) any breach or default by any other Person of its obligations under any of the Finance Documents.

- (f) Each Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is a party (and no others shall be implied).
- (g) It is understood and agreed by each Senior Lender (for itself and any Person claiming through it) that it has itself been and will continue to be, solely responsible for making its own independent appraisal of and investigations into, the financial condition, creditworthiness, condition, affairs, status and nature of each Person and, accordingly, each such Senior Lender warrants to the Agents that such Senior Lender has not relied on and will not hereafter rely on any Agent:
  - (i) in making its decision to enter into this Agreement, any other Finance Document or any amendment, waiver or other modification hereto or thereto;
  - (ii) to check or inquire on its behalf into the adequacy, accuracy or completeness or any information provided by any Person in connection with any of the Finance Documents or the transactions therein contemplated (whether or not such information has been or is hereafter circulated to such Person by any Agent);
  - (iii) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of any Person.
- (h) No Agent shall be responsible for or have any obligation whatsoever to assure (i) that the Collateral exists or is owned (whether in fee or by leasehold) by the Person purporting to own it, or is cared for, protected, or insured or has been encumbered, (ii) the genuineness or value of any Collateral or the validity or sufficiency of any agreement contained therein or the validity of the title of any Obligor to the Collateral, or (iii) that the liens granted to the Collateral Agent have been properly or sufficiently or lawfully created, perfected, protected, or enforced, or are entitled to any particular priority. Notwithstanding anything contained in the Finance Documents or otherwise to the contrary, no Agent shall have any duty to (i) file or prepare any financing or continuation statements or record any documents or instruments in any public office for purposes of creating, perfecting or maintaining any lien or security interest created under the Finance Documents or otherwise; (ii) take any steps to preserve rights against any Person with respect to any Collateral; (iii) insure, monitor or maintain the Collateral; (iv) pay any taxes, charges, assessments or liens upon the Collateral; or (v) take any action to protect against any diminution in value of the Collateral.

#### **15.4 Rights of the Agents.**

- (a) Notwithstanding any other provision of the Finance Documents, no Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request, instruction or direction of the Majority Lenders (or such other number or percentage of the Senior Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment.
- (b) No Agent shall have any duty to take any discretionary actions or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Finance Documents to which it is a party that such Agent is required to exercise at the direction of the Majority Lenders (or such other number or percentage of Senior Lenders as shall be expressly provided for herein or

in the other Finance Document); provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Finance Document, the DIP Order or Applicable Law. No direction given to any Agent (whether given by the Senior Lenders or the Borrower, as the case may be, or otherwise by any other Person) which imposes, or purports to impose, upon such Agent any obligation not set forth in or arising under any Finance Document shall be binding upon such Agent unless such Agent elects, at its sole option, to accept such direction.

- (c) Notwithstanding anything to the contrary in any Finance Document, no Agent shall be required to exercise any rights or remedies under any Finance Document or give any consent under any Finance Document or enter into any agreement amending, modifying, supplementing or waiving any provision of any Finance Document, including this Agreement.
- (d) No provision of this Agreement or any Finance Document shall require any Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or under any Finance Document or in the exercise of any of its rights or powers.

#### **15.5 No Fiduciary Duties.**

- (a) Nothing in the Finance Documents makes an Agent a trustee or fiduciary of any other Person;
- (b) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing; and
- (c) no Agent shall be bound to account to any Senior Lender for any sum or the profit element of any sum received by it for its own account.

#### **15.6 Business with the Borrower.**

- (a) Each Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower.
- (b) If it is also a Senior Lender, each Agent has the same rights and powers under the Finance Documents, as applicable, as any other Senior Lender and may exercise those rights and powers as though it were not an Agent.
- (c) Each Agent may carry on any business with the Borrower or its related entities (including acting as an agent or a trustee in connection with any other financing).

#### **15.7 Responsibility for Documentation.**

No Agent is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any statement or information (whether oral or written) made, given or supplied by any Person in or in connection with any Finance Document, as applicable;
- (b) the legality, validity, effectiveness, adequacy, completeness or enforceability of any Finance Document or the Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Security; or



- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

No Agent shall, except as expressly set forth herein and in the other Finance Documents to which such Agent is a party, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

### **15.8 Exclusion of Liability.**

- (a) Nothing in this Agreement shall obligate any Agent to carry out:
  - (i) any “know your customer” or other checks in relation to any Person; or
  - (ii) any check on the extent to which any transaction contemplated by the Finance Documents might be unlawful for any Senior Lender,

on behalf of any Senior Lender and each Senior Lender confirms to each Agent that such Senior Lender is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by any Agent.

- (b) Without prejudice to any provision of any Finance Document excluding or limiting an Agent’s liability, any liability of an Agent arising under or in connection with any Finance Document or the Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered but without reference to any special conditions or circumstances known to such Agent at any time which increase the amount of such loss. In no event shall any Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not foreseeable, whether or not such Agent has been advised of the possibility of such loss or damages and regardless of whether the claim for loss or damage is made in negligence, breach of contract, duty or otherwise.
- (c) No Agent shall be responsible for delays or failures to perform any act or fulfill any duty, obligation or responsibility as a result of any occurrence beyond its control. Such acts shall include, but not be limited to, any act of God, riots, wars, fires, earthquakes or other natural disasters, terrorism, provision of any present or future law or regulation or act of any governmental authority, civil unrest, labor dispute, disease, epidemic or pandemic, quarantine, national emergency, utility failure, computer hardware or software failure, malware or ransomware attack, communications system failure, unavailability of the Federal Reserve Bank wire or telex system or other applicable wire or funds transfer system, or unavailability of any securities clearing system.

### **15.9 Senior Lender’s Indemnity.**

- (a) Without limiting the liability of the Borrower under the Finance Documents, each Senior Lender shall indemnify (in proportion to such Senior Lender’s share of total outstanding Loans or, if no Loans are then outstanding, its share of the Total Commitments), each Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by such Agent, except to the extent that the cost, loss or liability is caused by such Agent’s gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Each Senior Lender’s obligations under this Section 15.9 shall survive the termination of this Agreement, payment of the

obligations hereunder, the resignation or removal of any Agent or any assignment of rights by, or the replacement of, a Senior Lender.

- (b) The Borrower shall immediately on demand reimburse any Senior Lender for any payment such Senior Lender makes to an Agent under this Section 15.9 (*Senior Lender's Indemnity*).

#### **15.10 Reliance by Agents.**

The Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agents also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Senior Lender, the Agents may presume that such condition is satisfactory to such Senior Lender unless such Agent shall have received notice to the contrary from such Senior Lender prior to the making of such Loan. The Agents may consult with legal counsel (who may be counsel for the Borrower or any Senior Lender), independent accountants and other experts selected by any such Agent, and shall not be liable for any action taken or not taken by the Agents in accordance with the advice of any such counsel, accountants or experts.

#### **15.11 Delegation of Duties.**

Each Agent may perform any and all of its respective duties and exercise its rights and powers hereunder or under any other Finance Document by or through any one or more sub agents appointed by such Agent. The exculpatory provisions of this Article shall apply to any such sub agent of any Agent. The Agents shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agents acted with gross negligence or willful misconduct in the selection of such sub agents.

#### **15.12 Resignation and Replacement of the Agents.**

- (a) Any Agent may resign by giving thirty (30) days' written notice to the Senior Lenders and the Borrower, in which case the Majority Lenders (with the consent of the Borrower so long as no Event of Default has occurred and is continuing) may appoint a successor Agent.
- (b) The Majority Lenders may remove any Agent from its appointment hereunder with or without cause by giving thirty (30) days' prior written notice to that effect to such Agent and the Borrower.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation or removal was given, the retiring e Agent (with the consent of the Borrower so long as no Event of Default has occurred and is continuing) may (but shall not be obligated to) appoint a successor Agent. If no successor Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the notice of resignation or removal was given (or such earlier day as shall be agreed by the Majority Lenders) (the "Resignation Effective Date"), then whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

- (d) Any successor Agent that has accepted such appointment shall succeed to the position of the applicable Agent and the term “**Administrative Agent**” or “Collateral Agent”, as applicable, shall mean the successor Agent.
- (e) Upon its resignation or removal becoming effective, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Article 15 and Section 7.5 of this Agreement. The provisions of this Agreement shall inure to the retiring Agent’s benefit as to any actions taken or omitted to be taken by it under this Agreement and the other Finance Documents while it was such Agent. Any successor and each of the other Finance Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an initial Finance Party.

**15.13 [Reserved].**

**15.14 [Reserved].**

**15.15 General Provisions Relating to the Collateral Agent.**

- (a) Except for the safe custody of any Collateral in its possession and the accounting for monies actually received by it hereunder, the Collateral Agent shall not have any duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not any Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. The Collateral Agent will be deemed to have exercised reasonable care in the custody of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords similar property of other customers in similar transactions, and the Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Agent in good faith.
- (b) In the event that the Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto which in the Collateral Agent’s sole discretion may cause the Collateral Agent to be considered an “owner or operator” under any Environmental Laws or otherwise cause the Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Collateral Agent reserves the right, instead of taking such action, either to resign as Collateral Agent or to arrange for the transfer of the title or control of the asset to the Senior Lenders or, if the Majority Lenders so direct, to a court appointed receiver. The Collateral Agent shall not be liable to any Person for any environmental liability or any environmental claims or contribution actions under any Federal, state or local law, rule or regulation by reason of the Collateral Agent’s actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.
- (c) In the event of any conflict between any terms and provisions set forth in this Agreement and those set forth in any other Finance Document with respect to the matters addressed in this Agreement, the terms and provisions of this Agreement shall supersede and control the terms and provisions of such other Finance Document. In the event there is any bona fide, good faith disagreement between the other parties to this Agreement or any of the other Finance Documents resulting in adverse claims being made in connection with Collateral held by the Collateral Agent and the terms of this Agreement or any of the other Finance Documents do not unambiguously mandate the action the Collateral Agent is to take or not to take in connection therewith under the circumstances then

existing, or the Collateral Agent is in doubt as to what action it is required to take or not to take hereunder or under the other Finance Documents, the Collateral Agent will be entitled to refrain from taking any action (and will incur no liability for doing so) until directed otherwise in writing by order of a court of competent jurisdiction.

#### **15.16 Agents Appointed Attorneys-in-Fact.**

Each Obligor hereby irrevocably appoints each of the Agents as such Obligor's attorney in fact, with full authority in the place and stead of such Obligor and in the name of such Obligor or otherwise, from time to time after the occurrence and during the continuance of an Event of Default, in each Agent's determination (in each case acting at the direction of the Majority Lenders), to take any action and to execute any instrument that the Majority Lenders may deem necessary under Applicable Law to accomplish the purposes of this Agreement, including, without limitation:

- (a) to obtain and adjust insurance required to be paid to the Agents pursuant to the terms of the Finance Documents;
- (b) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for monies due and to become due under or in respect of any of the Collateral;
- (c) to receive, indorse and collect any drafts or other instruments, documents and chattel paper;
- (d) to file any claims or take any action or institute any proceedings that the Majority Lenders may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any Assigned Agreement or the rights of the Agents with respect to any of the Collateral;
- (e) to sell, transfer, assign or otherwise deal in or with the Collateral or any part thereof pursuant to the terms and conditions hereunder and under the other Finance Documents;
- (f) to defend, settle, compromise or adjust any suit, action or proceeding relating to the Collateral and, in connection therewith, to give such discharges or releases as the Majority Lenders may reasonably deem appropriate;
- (g) to pay or discharge adverse claims levied or placed on or threatened against the Collateral;
- (h) to direct any parties liable for any payment under the Collateral to make payment of any and all monies due and to become due thereunder directly to the Agents or as the Agents shall direct;
- (i) to sign and indorse any drafts, assignments, proxies, verifications, notices and other documents relating to the Collateral;
- (j) to execute and deliver all assignments, conveyances, statements, affidavits, notices and other agreements, instruments and documents that the Majority Lenders may determine necessary in order to perfect and maintain the security interests and liens granted in this Agreement and in order to fully consummate all of the transactions contemplated herein; and
- (k) to sign any instrument sanctioning the transfer of any or all of the Collateral into the name of any transferee to whom the Agents or any part thereof may be sold pursuant to this Agreement.

#### **15.17 [Reserved].**

**15.18 [Reserved].**

**15.19 [Reserved].**

**15.20 [Reserved].**

**15.21 Agent's Confidentiality.**

- (a) In acting as an agent for the Senior Lenders, each Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions and departments.
- (b) If information is received by another division or department of any Agent, it may be treated as confidential to such division or department and such Agent shall not be deemed to have notice of it.

**15.22 [Reserved].**

**15.23 Credit Appraisal by the Senior Lenders.**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Senior Lender confirms to each Agent that it has been, and shall continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document, including but not limited to:

- (a) the financial condition, creditworthiness, status and nature of the Borrower;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security;
- (c) whether such Senior Lender has recourse, and the nature and extent of such recourse, against any Finance Party or any of its respective assets under or in connection with any Finance Document, the Security, the transactions contemplated by the Finance Documents, or any other agreement, arrangement or document entered into made or executed in anticipation of, under or in connection with any Finance Document or the Security;
- (d) the adequacy, accuracy and/or completeness of any reports and any other information provided by any Agent, by any Finance Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of, the Security, the priority of any of the Security or the existence of any security interest affecting the Collateral.

**15.24 Deduction from Amounts Payable by Agents.**

If any Senior Lender owes an amount to any Agent under the Finance Documents, such Agent may, after giving notice to such Senior Lender, deduct an amount not exceeding such amount from any payment to such Senior Lender which such Agent would otherwise be obligated to make under the Finance Documents,

and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents, such Senior Lender shall be regarded as having received the amount so deducted.

#### **15.25 Notice Period.**

Where a Finance Document specifies a minimum period of notice to be given to any Agent, such Agent may, at its discretion, accept a shorter notice period.

#### **15.26 [Reserved].**

#### **15.27 Payments.**

- (a) While no Event of Default is continuing, the Borrower shall make all payments in accordance with Article 19 (*Payment Mechanics*).
- (b) Following an Event of Default that is continuing, provided the Administrative Agent has declared all Obligations immediately due and payable, all payments shall be made to the Administrative Agent for distribution to the Senior Lenders in accordance with Section 13.4 of this Agreement, such that the benefit of all such payments shall be shared by the Senior Lenders ratably in accordance with the Applicable Percentage owing to them; provided, that the provisions of this Section 15.27 (*Payments*) shall not be construed to apply to:
  - (i) any payment made in respect of an obligation that is secured by a Permitted Encumbrance or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Finance Documents;
  - (ii) any payment to which such Senior Lender is entitled as a result of any form of credit protection obtained by such Senior Lender; or
  - (iii) any payment to which such Senior Lender is entitled in its capacity as a party to any Finance Document separate than in its capacity as a Senior Lender.

#### **15.28 Agents as Senior Lender.**

With respect to its Commitment and the Loans made by it, any Person serving as an Agent hereunder shall have the same rights and powers under the Finance Documents as any other Senior Lender and may exercise the same as though it were not such Agent. The term "Senior Lender", "Finance Party" or "Secured Party", when used with respect to each Agent, shall unless otherwise expressly indicated, include such Agent in its individual capacity (if applicable). Each Agent and its Affiliates may accept deposits from, lend money to, act as trustee under, act as financial advisor or in any other advisory capacity for and generally engage in any kind of business with, any Person as if such Agent were not the applicable Agent hereunder, without any duty to account therefor to any other Person.

#### **15.29 Erroneous Payments.**

- (a) If an Agent notifies a Senior Lender or any Person who has received funds on behalf of a Senior Lender (any such Senior Lender (and each of their respective successors and assigns) a "**Payment Recipient**") that the such Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from such Agent) received by such Payment Recipient from such Agent of any of its Affiliates were erroneously or mistakenly transmitted, to, or otherwise erroneously or mistakenly received



by, such Payment Recipient (whether or not known to such Senior Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**” and (y) demands in writing the return of such Erroneous Payment (or a portion thereof) (provided that, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within fifteen (15) calendar days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of such Agent pending its return or repayment as contemplated below in this Section 15.29 (*Erroneous Payments*) and held in trust for the benefit of such Agent, and such Senior Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as such Agent may, in its sole discretion, specify in writing), return to such Agent the amount of any such Erroneous Payment (or portion thereof) as to which such demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the such Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to such Agent in same day funds at the rate determined by such Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of such Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

- (b) Without limiting immediately preceding clause (a), each Senior Lender or any Person who has received funds on behalf of a Senior Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the such Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by such Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment sent by such Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by such Agent (or any of its Affiliates), or (z) that such Senior Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case.
  - (i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from such Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and
  - (ii) such Senior Lender shall cause promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify such Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that is so notifying such Agent pursuant to this Section 15.29(b) (*Erroneous Payments*).

For the avoidance of doubt, the failure to deliver a notice to such Agent pursuant to this Section 15.29(b) (*Erroneous Payments*) shall not have any effect on a Payment Recipient’s obligations pursuant to Section 15.29(a) (*Erroneous Payments*) or on whether or not an Erroneous Payment has been made.

- (c) Each Senior Lender hereby authorizes such Agent to set off, net and apply any and all amounts at any time owing to such Senior Lender under any Finance Document, or otherwise payable or distributable by such Agent to such Senior Lender under any Finance Document with respect to any payment of principal, interest, fees or other amounts, against any amount that such Agent has demanded to be returned under immediately preceding clause (a).
- (d) The parties hereto agree that (x) irrespective of whether such Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not received from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason such Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Senior Lender, to the rights and interests of such Senior Lender, as the case may be) under the Finance Documents with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower; provided that this Section 15.29 (*Erroneous Payments*) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by such Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by such Agent from, or on behalf of (including through the exercise of remedies under any Finance Document), the Borrower for the purpose of a payment on the Obligations.
- (e) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by such Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

Each party’s obligations, agreements and waivers under this Section 15.29 (*Erroneous Payments*) shall survive the resignation or replacement of any Agent, any transfer of rights or obligations by, or the replacement of a Senior Lender, the termination of the applicable Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Finance Document.

## Article 16 [RESERVED]

## Article 17 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

### 17.1 Conduct of Business by the Finance Parties.

No provision of any Finance Document will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it deems appropriate;
- (b) obligate any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or



- (c) obligate any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## **Article 18**

### **SHARING AMONG THE FINANCE PARTIES**

#### **18.1 Payments to Senior Lenders.**

If a Senior Lender (a “**Recovering Finance Party**”) receives or recovers any amount from the Borrower other than in accordance with Article 19 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under a Finance Document then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Administrative Agent;
- (b) the Administrative Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Administrative Agent and distributed in accordance with Article 19 (*Payment Mechanics*) without taking account of any Tax which would be imposed on the Administrative Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Administrative Agent, pay to the Administrative Agent an amount (the “**Sharing Payment**”) equal to that receipt or recovery less any amount which the Administrative Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made under this Agreement.

#### **18.2 Redistribution of Payments.**

The Administrative Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it to the Senior Lenders (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with this Agreement towards the obligations of the Borrower to the Sharing Finance Parties.

#### **18.3 Recovering Finance Party’s Rights.**

On a distribution by the Administrative Agent under Section 18.2 (*Redistribution of Payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

#### **18.4 Reversal of Redistribution.**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, on request of the Administrative Agent, pay to the Administrative Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (the “**Redistributed Amount**”); and

- (b) as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

**18.5 Exceptions.**

- (a) This Article 18 will not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Article 18, have a valid and enforceable claim against the Borrower.
- (b) A Recovering Finance Party is not obligated to share with any other Senior Lender any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that Senior Lender of the legal or arbitration proceedings; and
  - (ii) that Senior Lender had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

**Article 19**  
**PAYMENT MECHANICS**

**19.1 Payments to the Agents.**

- (a) On each date on which the Borrower or a Senior Lender is required to make a payment under a Finance Document, the Borrower or such Senior Lender shall make the same available to the Administrative Agent in Dollars.
- (b) Payment shall be made to such account as the Administrative Agent specifies.

**19.2 Distributions by the Agents.**

Each payment received by an Agent under the Finance Documents for the Borrower or a Senior Lender shall, subject to Section 19.3 (*Distributions to the Borrower*) and Section 19.4 (*Clawback*), be made available by that Agent as soon as practicable after receipt to the Person entitled to receive payment in accordance with the Finance Documents, and:

- (a) in the case of payment for the Borrower, to an account of the Borrower designated by the Borrower; and
- (b) in the case of payment for a Senior Lender, for the account of its lending office as designated by such Senior Lender.

**19.3 Distributions to the Borrower.**

Each Agent may (with the consent of the Borrower or in accordance with Section 20.1 (*Set-Off*)) apply any amount received by it for the Borrower in or towards payment (as soon as practicable after receipt) of any amount due from the Borrower under the Finance Documents.

**19.4 Clawback.**

- (a) Where a sum is to be paid to an Agent under the Finance Documents for another party, such Agent is not obligated to pay that sum to that other party until such Agent has been able to establish to its satisfaction that it has actually received that sum.
- (b) If an Agent pays an amount to another party and it proves to be the case that such Agent has not actually received such amount, then the party to whom such amount was paid by such Agent shall on demand refund such amount to such Agent.

**19.5 [Reserved].****19.6 [Reserved].****19.7 No Set-Off by the Borrower.**

- (a) All payments to be made by the Borrower under the Finance Documents will be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (b) Paragraph (a) above does not apply to any payment netting provision contained in a Hedge Agreement entered into in accordance with this Agreement.

**19.8 Business Days.**

- (a) Any payment which is due to be made on a day that is not a Business Day will be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum approved by the Finance Parties under a Finance Document, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

**19.9 Currency of Account.**

- (a) Subject to paragraph (b) below, Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

**19.10 Change of Currency.**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country will be translated into, or paid in, the currency or currency unit of that country designated by the Administrative Agent (after consultation with the Borrower); and

- (ii) any translation from one currency or currency unit to another will be at the official rate of exchange recognized by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Administrative Agent (acting reasonably).
- (b) If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognized at the same time as the lawful currency of a country), the Finance Documents will, to the extent the Administrative Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant interbank market and otherwise reflect the change in currency.

## **Article 20**

### **SET-OFF**

#### **20.1 Set-Off.**

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **Article 21**

### **BAIL-IN PROVISIONS**

#### **21.1 Contractual Recognition of Bail-In.**

Notwithstanding anything to the contrary in any Finance Document or in any other agreement, arrangement or understanding among any such Finance Parties, each Finance Party hereto acknowledges and accepts that any liability of any Finance Party to any other Finance Party under or in connection with the Finance Documents, to the extent such liability is unsecured, may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) The application of any Bail-In Action to any such liabilities arising hereunder which may be payable to it by any Finance Party hereto; and
- (b) The effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction, in full or in part, or cancellation in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability; and
  - (ii) a conversion of all, or a portion of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
- (c) The variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

**Article 22**  
**CALCULATIONS AND CERTIFICATES**

**22.1 Day Count Conventions.**

Except as otherwise expressly provided in a Finance Document, any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred sixty (360) days or, in any case where the practice in the relevant interbank market differs, in accordance with that market practice.

**22.2 Financial Calculations.**

All financial calculations to be made under, or for the purposes of, this Agreement and any other Finance Document shall be made in accordance with IFRS and, except as otherwise required to conform to any provision of this Agreement, shall be calculated from the then-most-recently issued quarterly financial statements which the Borrower is obligated to furnish to the Finance Parties under Section 11.7 (*Quarterly Financial Reporting*).

**Article 23**  
**CONFIDENTIAL INFORMATION**

**23.1 Confidential Information.**

The Borrower and the Finance Parties each agree that it shall maintain as confidential and, without the prior written consent of the relevant party(ies), shall not disclose the terms of this Agreement and any non-public information concerning the other party or its business and operations (the “**Confidential Information**”); provided, that a party may disclose such information:

- (a) where such information becomes publicly available or widely known by the public other than by a breach of this Agreement, or is known by the receiving party prior to the entry of this Agreement or obtained independently of this Agreement, and the disclosure of such information would not breach any other confidentiality obligations;
- (b) if required by Applicable Law, or the Bankruptcy Court as part of the Chapter 11 Cases or requested by any Governmental Body having jurisdiction over such party;
- (c) to its Affiliates and those of its and its Affiliates’ directors, officers, employees, advisors, insurers, insurance brokers and representatives who need to have knowledge of such information;
- (d) to any Person to whom such party, in good faith, anticipates assigning an interest in this Agreement as contemplated by Section 14.1 (*Assignment by Senior Lenders*) and such Person’s Affiliates and the representatives, consultants and advisors of such Person or its Affiliates who have a legitimate need to know such information; and
- (e) in connection with the exercise of any duties or remedies hereunder or any suit, action or proceeding relating to this Agreement.

In the case of disclosure pursuant to paragraph (c), (d) or (e) above, the disclosing party shall be responsible to ensure that the recipient of such Confidential Information does not disclose such information to the same extent as if it were bound by the same non-disclosure obligations of the disclosing party under this

Agreement, and shall be liable to the disclosing party for any improper use or disclosure of such information by such recipient.

### **23.2 Entire Agreement Regarding Confidentiality.**

- (a) This Article 23 (*Confidential Information*) constitutes the entire agreement between the Borrower and the Finance Parties in relation to the obligations under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) No Finance Party will be liable for any loss, cost, liability or other claim in connection with the Confidential Information beyond reasonably foreseeable losses and will not be liable for lost profits or consequential or punitive damages.

### **23.3 Inside Information.**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

### **23.4 [Reserved].**

### **23.5 Continuing Obligations.**

The obligations in this Section 23.5 (*Continuing Obligations*) are continuing and, in particular, will survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

### **23.6 Equator Principles.**

Each of the Finance Parties and the Borrower consent to the reporting of the Project name pursuant to Annex B of the Equator Principles on any publicly available Internet website maintained by any Finance Party. The Borrower shall publish and maintain a non-technical summary of the Underground Project on its website at <https://nevadacopper.com> in the substance and form required by Principle 10 of the Equator Principles.

## **Article 24 NOTICES**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the day of sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below. Notices of change of address shall

also be governed by this Article 24 (*Notices*). Notices and other communications shall be addressed as follows:

- (a) if to the Borrower:

Nevada Copper, Inc.  
61 E. Pursel Lane  
P.O. Box 1640  
Yerington, Nevada, USA  
89447  
Attention: Greg Martin  
Email: gmartin@nevadacopper.com

Copy to:  
Attention: Matthew Anderson  
Email: manderson@nevadacopper.com

or at such other address, facsimile number or email address as the Borrower from time to time directs in writing to the other parties hereto.

- (b) if to the Administrative Agent:

U.S. Bank Trust Company, National Association, as Administrative Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com  
Telephone number: 302-545-9778

or at such other address, facsimile number or email address as the Administrative Agent from time to time directs in writing to the other parties hereto.

- (c) if to the Collateral Agent:

U.S. Bank Trust Company, National Association, as Collateral Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com  
Telephone number: 302-545-9778

or at such other address, facsimile number or email address as the Collateral Agent from time to time directs in writing to the other parties hereto.

- (d) if to the Senior Lenders, at the addresses noted on Schedule A (*Commitments*) or at such other address, facsimile number or email address as a Senior Lender from time to time directs in writing to the other parties hereto or as set forth in connection with any Transfer Certificate; and

- (e) in accordance with Section 25.5 (*English Language*), any notices and communications given in respect of this Agreement shall be given in the English language, or if given in any other language,



that notice or communication shall be accompanied by an English translation of it, which shall be certified as being a true and correct translation of the notice or communication.

#### **24.2 Notification of Address and Fax Number.**

Each party shall promptly notify the other parties of a change of address pursuant to this Article 24 (*Notices*).

#### **24.3 Electronic Communication.**

- (a) Any communication to be made between any of the parties under or in connection with the Finance Documents, may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the relevant parties:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their electronic mail address or any other such information supplied by them by not less than five (5) Business Days' notice.

Each Senior Lender hereby agrees that any communication to be made to the Senior Lenders under or in connection with the Finance Documents may be made by electronic mail or other electronic means.

- (b) Any such electronic communication as specified in paragraph (a) above made between any two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by party to any Agent only if it is addressed in such a manner as such Agent may specify for this purpose.
- (c) Any electronic communication which would otherwise become effective on a non-working day or after business hours in the place of receipt will be deemed only to become effective on the next working day in that place.
- (d) Any reference in a Finance Document to a communication being sent or received will be construed to include that communication being made available in accordance with this Section 24.3 (*Electronic Communication*).

#### **24.4 Communications to the Agents.**

If pursuant to this Article 24 (*Notices*) any Agent is to act on instructions or directions delivered by fax, electronic mail, other electronic means or any other unsecured method of communication, such Agent shall have:

- (a) no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of any Person, and
- (b) no liability for any losses, liabilities, costs or expenses incurred or sustained by any Person as a result of such reliance upon or compliance with such instructions or directions.



## **Article 25 GENERAL**

### **25.1 Partial Invalidity.**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Finance Documents; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other provision of the Finance Documents.

### **25.2 Reliance and Non-Merger.**

All covenants, agreements, representations and warranties of the Borrower made herein or in any other Finance Document or in any certificate or other document signed by any of its directors or officers and delivered by or on behalf of the Borrower pursuant hereto or thereto are material, shall be deemed to have been relied upon by the Administrative Agent and each Senior Lender notwithstanding any investigation heretofore or hereafter made by the Administrative Agent, the Senior Lenders or Senior Lenders' counsel or any employee or other representative of any of them and shall survive the execution and delivery of this Agreement and the other Finance Documents until all Obligations owed to the Administrative Agent or the Senior Lenders under this Agreement and the other Finance Documents shall have been satisfied and performed and the Senior Lenders shall have no further obligation to make the Loan hereunder.

### **25.3 Remedies and Waivers.**

- (a) No investigation by or on behalf of any Finance Party, into the affairs of the Borrower will prejudice any rights or remedies held by or on behalf of a Finance Party under the Finance Documents.
- (b) No failure to exercise, nor any delay in exercising, on the part of or on behalf of any Finance Party, any right or remedy under a Finance Document will operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of or on behalf of any Finance Party will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

### **25.4 Amendment and Waiver.**

- (a) Required Consents.
  - (i) Except as otherwise expressly provided in this Agreement and subject to paragraph (a)(ii) and paragraph (b) below, any term of the Finance Documents may be amended, modified, waived or supplemented only with the consent of the Majority Lenders, the Borrower, to the extent they are a party, the Obligors and the Administrative Agent (acting at the direction of the Majority Lenders), and any such amendment, waiver, modification or supplement shall be binding on all parties.

- (ii) Except as otherwise expressly provided in the relevant agreement or document, no waiver, consent, annulment, modification or supplement of any term or condition of any Finance Document may be given or granted by the Borrower or the Senior Lenders except in accordance with the DIP Order.
- (b) Notwithstanding paragraph (a) above, an amendment, modification, supplement or waiver which relates to the rights, duties, protections or obligations of the Agents (each in their capacity as such) may not be effected without the consent of the Agents (as the case may be).
- (c) Notwithstanding paragraph (a) above, each Senior Lender shall be required to consent to any amendment, modification, supplement or waiver of:
  - (i) the definitions of “Majority Lenders” or any other provision in the Finance Documents specifying the number or percentage of Senior Lenders required to waive, amend or modify any rights thereunder or make any determination or grant thereunder;
  - (ii) the definition of “Permitted Transferee”;
  - (iii) Sections 12.1 (*Conditions Precedent to the Interim Loan*) and 12.2 (*Conditions Precedent to the Final Loans*);
  - (iv) a reduction in the Applicable Margin, or a reduction in the amount of any payment of principal, interest, fees or other amounts payable to a Senior Lender under the Finance Documents;
  - (v) an increase in, or an extension of, a Commitment or the Total Commitments;
  - (vi) a release of the Borrower, any other Obligor or any other party (other than a Secured Party) from a Finance Document (other than pursuant to the terms of such Finance Document), or the release of all or a material part of the Collateral from the Encumbrance of the Finance Documents;
  - (vii) a change to the order of application of any reduction in the Commitments or any prepayment of Loans from the application thereof set forth in the applicable provisions of Section 4.2 (*Mandatory Prepayments*), Section 4.5 (*Voluntary Cancellation*), and Section 4.6 (*Voluntary Prepayment*);
  - (viii) a term or provision of a Finance Document that expressly requires the consent, approval or instructions of each Senior Lender;
  - (ix) the right of a Senior Lender to assign or transfer its rights or obligations under the Finance Documents in accordance with Section 14.1 (*Assignment by Senior Lenders*);
    - (A) this Section 25.4 (*Amendment and Waiver*);
    - (B) Section 25.9 (*Remedies Cumulative*);
  - (x) the DIP Order; or

- (xi) change the order of priority of payments set forth in Section 13.4 (Application of Proceeds) or any provision in the Finance Documents relating to the pro rata nature of the Utilizations or any amount.

provided, however, that notwithstanding anything in this paragraph (c) or in any other Section or paragraph of this Agreement or any other Finance Document to the contrary, any amendment, waiver or other modification required to permit the Borrower or any other Obligor to enter into any Hedge Agreement secured by any or all of the Collateral (including to modify the application of payments or proceeds of Collateral and the granting of a Lien on the Collateral) shall require only Majority Lenders approval.

#### **25.5 English Language.**

- (a) Any communication made under or in connection with any Finance Document shall be in English.
- (b) All other documents provided under or in connection with any Finance Document shall be:
  - (i) in English; or
  - (ii) if not in English, accompanied by an English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

#### **25.6 Further Assurances.**

Whether before or after the happening of an Event of Default, the Borrower shall at its own expense do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, things, agreements, documents and instruments in connection with this Agreement, the other Finance Documents as the Administrative Agent (acting at the direction of the Majority Lenders) may reasonably request from time to time for the purpose of giving effect to the terms of this Agreement, the other Finance Documents including, for the purpose of facilitating the enforcement of the Security, all promptly upon the request of the Administrative Agent.

#### **25.7 [Reserved].**

#### **25.8 Judgment Currency.**

If for the purpose of obtaining or enforcing judgment in any court it is necessary to convert a sum due hereunder or under any other Finance Document in Dollars into another currency (the “**Judgment Currency**”), the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures a Secured Party, as applicable, could purchase such Dollars in the United States of America with the Judgment Currency on the Business Day next preceding the day on which such judgment is rendered. The obligation of the Borrower in respect of any such sum due from it to such Secured Party hereunder or under any other Finance Document (an “**Entitled Person**”) shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following the receipt by such Entitled Person of any sum adjudged to be due hereunder or under any other Finance Document in the Judgment Currency, such Entitled Person may in accordance with normal banking procedures purchase and transfer Dollars to the United States of America with the amount of the Judgment Currency so adjudged to be due; and the Borrower hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify such Entitled Person on demand, in Dollars, for

the amount (if any) by which the sum originally due to such Entitled Person in Dollars hereunder or under any other Finance Document exceeds the amount of the Dollars so purchased and transferred.

#### **25.9 Remedies Cumulative.**

Subject to Applicable Law, no failure or delay on the part of any Secured Party in exercising any right, power or privilege hereunder or under any other Finance Document and no course of dealing between the Borrower or any its Affiliates, on the one hand and any Secured Party, on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Finance Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Finance Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which any party thereto would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Secured Party to any other or further action in any circumstances without notice or demand.

#### **25.10 Entire Agreement.**

This Agreement and the other Finance Documents constitute the entire agreement between the parties pertaining to the subject matter described herein and therein. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with such subject matter except as specifically set forth or referred to in this Agreement and the other Finance Documents. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made either prior to, contemporaneously with, or after the entering into of this Agreement, the other Finance Documents, or any amendment or supplement thereto, by any party to this Agreement or any of the other Finance Documents or its directors, officers, partners, employees or agents, where applicable, to any other party to this Agreement or any of the other Finance Documents or its directors, officers, partners, employees or agents, where applicable, except to the extent that the same has been reduced to writing and included as a term of this Agreement or any of the other Finance Documents.

#### **25.11 Governing Law; Jurisdiction.**

- (a) THIS AGREEMENT AND EACH OF THE OTHER FINANCE DOCUMENTS (UNLESS SUCH DOCUMENT EXPRESSLY STATES OTHERWISE THEREIN), THE RELATIONSHIP BETWEEN THE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS AGREEMENT OR SUCH OTHER FINANCE DOCUMENT OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (EXCEPT AS GOVERNED BY THE BANKRUPTCY CODE).
- (b) Any legal action or proceeding with respect to this Agreement or any other Finance Document shall, except as provided below, be brought in the Bankruptcy Court and/or, solely with respect to the Parent's assets in Canada, the Canadian Court and if the Bankruptcy Court and/or Canadian Court does not have (or abstain from) jurisdiction, courts of the State of New York in the County of New York or of the United States for the Southern District of New York and any appellate court from any thereof and, by execution and delivery of this Agreement, each party hereto hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each party hereto agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it, and

may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

- (c) Each party hereto hereby irrevocably waives any objection that it may now have or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Finance Document brought in the Bankruptcy Court and/or, solely with respect to the Parent's assets in Canada, the Canadian Court, and if the Bankruptcy Court and/or Canadian Court does not have (or abstain from) jurisdiction, the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (d) Nothing in this Section 25.11 (*Governing Law; Jurisdiction*) shall limit the right of the Secured Parties to refer any claim against the Borrower to any court of competent jurisdiction outside of the State of New York, nor shall the taking of proceedings by any Secured Party before the courts in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

#### **25.12 Service of Process.**

- (a) The Borrower irrevocably acknowledges and agree that service of process in any such action or proceeding may be effected by mailing a copy thereof by first class mail, postage prepaid, together with two copies of a statement of service by mail and acknowledgment of receipt, with a postage-prepaid return envelope addressed to the sender, to the Borrower at their address set forth in Article 24 (*Notices*) or at such other address of which the Administrative Agent shall have been notified pursuant to Article 24 (*Notices*).
- (b) This Section 25.12 (*Service of Process*) does not affect any other method of service allowed by Applicable Law.
- (c) To the extent that the Borrower may, in any action or proceeding arising out of or relating to any of the Finance Documents, be entitled under any Applicable Law to require or claim that any Secured Party post security for costs or take similar action, the Borrower hereby irrevocably waives and agrees not to claim the benefit of such entitlement.

#### **25.13 Waiver of Jury Trial.**

EACH OF THE PARTIES HERETO HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER FINANCE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

#### **25.14 USA PATRIOT Act.**

To the extent that it is subject to the requirements of the USA PATRIOT ACT or any other anti- money laundering rules and regulations applicable to such Secured Party, each Secured Party hereby notifies the Borrower that, pursuant to the requirements of the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party and the customer due diligence requirements for

financial institutions of the Financial Crimes Enforcement Network (as published at 81 FR 29397, 31 CFR 1010, 1020, 1023, 1024, and 1026), it is required to obtain, verify and record information that identifies the Borrower and its direct and indirect beneficial owners, which information includes the name and address of such Persons and other information that will allow such Secured Party, as the case may be, to identify the Borrower and its direct and indirect beneficial owners in accordance with the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party and the customer due diligence requirements for financial institutions of the Financial Crimes Enforcement Network. The Borrower agrees that it will promptly provide each Secured Party with such information as it may request in order for such Secured Party, respectively, to satisfy the requirements of the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party.

#### **25.15 Counterparts.**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts (including facsimile), with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

#### **25.16 No Third-Party Beneficiaries.**

The agreement of the Senior Lenders to make the Loans to the Borrower, on the terms and conditions set forth in this Agreement, is solely for the benefit of the Borrower and the Secured Parties, and no other Person (including any contractor, subcontractor, supplier, workman, carrier, warehouseman or materialman furnishing labor, supplies, goods or services to or for the benefit of the Project) shall have any rights under this Agreement or under any other Finance Document or with respect to any extension of credit contemplated by this Agreement.

#### **25.17 Severability.**

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated in this Agreement are fulfilled to the extent possible.

#### **25.18 Survival.**

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans. The provisions of Sections 7.3 (*Change in Circumstances*), 7.4 (*Payment of Costs and Expenses*) and 7.5 (*Indemnities*) and Article 15 (*Administrative Parties*) and Article 23 (*Confidential Information*) shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the resignation or removal of any Agent, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.



**25.19 Reinstatement.**

The obligations of the Borrower under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Obligations is rescinded or shall be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower agrees that it will indemnify each Secured Party on demand for all reasonable and documented costs and expenses (including fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such reasonable and documented costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.


**25.20 Incorporation of DIP Order by Reference.**

Each of the Obligors, the Administrative Agent, the Collateral Agent and the Senior Lenders agrees that any reference contained herein to (i) the Interim Order and the Interim DIP Recognition Order shall include all terms, conditions and provisions of such Interim Order and Interim DIP Recognition Order and that the Interim Order and Interim DIP Recognition Order are incorporated herein for all purposes and (ii) the Final Order and the Final DIP Recognition Order shall include all terms, conditions and provisions of such Final Order and the Final DIP Recognition Order and that the Final Order and the Final DIP Recognition Order are incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement and the terms of either the Interim Order, the Final Order, the Interim DIP Recognition Order or the Final DIP Recognition Order, the terms of the Interim Order, the Final Order, the Interim DIP Recognition Order or the Final DIP Recognition Order, as applicable, shall govern.

*[signature pages to follow]*

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first written above.

**NEVADA COPPER, INC.,**  
as Borrower

By:   
Name: Gregory J. Martin  
Title: Chief Financial Officer



**NEVADA COPPER CORP.,**

as Guarantor

A handwritten signature in black ink, appearing to read "Greg J. Martin", is written over a horizontal line.

By: \_\_\_\_\_

Name: Gregory J. Martin

Title: Chief Financial Officer

**0607792 B.C. LTD.,**


as Guarantor

By: 

Name: Gregory J. Martin

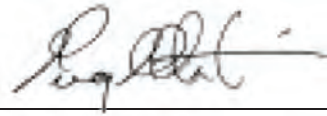
Title: Chief Financial Officer

**NC DITCH COMPANY LLC,**  
as Guarantor

By:   
Name: Gregory J. Martin  
Title: Chief Financial Officer

**NC FARMS LLC,**  
as Guarantor

By: \_\_\_\_\_

A handwritten signature in dark ink, appearing to read "Greg J. Martin", is written over a horizontal line.

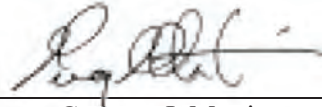
Name: Gregory J. Martin

Title: Chief Financial Officer

**LION IRON CORP.,**

as Guarantor

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Greg J. Martin", is written over a horizontal line.

Name: Gregory J. Martin

Title: Chief Financial Officer

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,**  
as Administrative Agent and Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

**MANCHESTER SECURITIES CORP.,**  
as Senior Lender

By: 

Name: **Elliot Greenberg**  
Title: **Vice President**

**ZIWA INVESTMENTS LIMITED,**  
as Senior Lender

By: 

Name: **Elliot Greenberg**  
Title: **Vice President**

**SCHEDULE A**  
**COMMITMENTS**

<b>Lender</b>	<b>Interim Commitment</b>	<b>Final Commitment</b>	<b>Total</b>	<b>Address for Notices</b>
Manchester Securities Corp.	\$6,400,000	\$12,800,000	\$19,200,000	Elliott Investment Management L.P. 360 S. Rosemary Ave, 18th Floor West Palm Beach FL 33401
Ziwa Investments Limited	\$13,600,000	\$27,200,000	\$40,800,000	Elliott Investment Management L.P. 360 S. Rosemary Ave, 18th Floor West Palm Beach FL 33401



**SCHEDULE B****PREPETITION ENCUMBRANCES**

<b><u>Name</u></b>	<b><u>Category</u></b>	<b><u>Potential Lienholder</u></b>	<b><u>A/P 6.7.34 ('000s)</u></b>	<b><u>Total ('000s)</u></b>
Catepillar Financial SARL	Equipment Leases	Potential exposure to repossess equipment	\$1,132.9	\$1,132.9
Epiroc Financial Solutions USA LLC	Equipment Leases	Potential exposure to repossess equipment	\$816.5	\$816.5

**SCHEDULE C**  
**PLEDGED INTERESTS**

Name, Jurisdiction of Formation and Type of Entity	Class or Type of Pledged Interest	Total Amount of Class or Type of Collateral Authorized	Total Amount of Class or Type Outstanding	Total Amount Pledged	Number of Securities	Certificated (Y/N)	Certificate Number
Nevada Copper, Inc., a Nevada corporation	Common Stock	100%	100%	100%	100	Y	2
0607792 B.C. Ltd, A British Columbia limited company	Common Stock	100%	100%	100%	21,980,000	Y	38
Lion Iron Corp., a Nevada corporation	Common Stock	100%	100%	100%	100	Y	1
NC Farms LLC, a Nevada limited liability company	Membership Interests	100%	100%	100%	0	N	N/A
NC Ditch Company LLC, a Nevada limited liability company	Membership Interests	100%	100%	100%	0	N	N/A

**SCHEDULE D**

**[RESERVED]**

**SCHEDULE E**  
**INTERIM ORDER**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: [BK-24-\_\_\_\_-\_\_\_\_]  
Chapter 11

Jointly Administered with:

Case No. [BK-24-\_\_\_\_-\_\_\_\_]  
Case No. [BK-24-\_\_\_\_-\_\_\_\_]  
Case No. [BK-24-\_\_\_\_-\_\_\_\_]  
Case No. [BK-24-\_\_\_\_-\_\_\_\_]  
Case No. [BK-24-\_\_\_\_-\_\_\_\_]

**INTERIM ORDER (I) AUTHORIZING THE  
DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B) GRANT LIENS,  
INCLUDING SENIOR SECURED PRIMING LIENS AND SUPERPRIORITY  
ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH COLLATERAL;  
(II) GRANTING ADEQUATE PROTECTION TO CERTAIN  
PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY;  
(IV) SCHEDULING FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”),<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”) and Final Order (defined below) pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 of, and Local Rules 4001 and 9006 seeking, among other things:

- (a) authorization for Nevada Copper, Inc. (the “*Borrower*”) to obtain a senior secured postpetition financing on terms and conditions consistent with the terms and conditions set forth in the Senior Secured Superpriority Term Loan Debtor in Possession Credit Agreement by and among the Borrower, each of the Debtors other than the Borrower, (collectively, the “*Guarantors*,” and together with

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized term used but not defined herein have the meanings ascribed to such terms in the Motion.

Borrower, the "**DIP Loan Parties**"), U.S Bank Trust Company, National Association, as administrative agent and collateral agent (the "**DIP Agent**"), one or more affiliates of Elliott Investment Management L.P., as lenders (collectively, the "**DIP Lenders**") and, together with the DIP Agent, the "**DIP Secured Parties**") (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**DIP Credit Agreement**") attached to this Interim Order at **Exhibit A**, and for the Guarantors to unconditionally guaranty, on a joint and several basis, the Borrower's obligations in connection with such postpetition financing, consisting of: (i) a new money term loan in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$20,000,000 (the "**Interim DIP Loan**"), which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.1 and 12.3 of the DIP Credit Agreement have been satisfied (the "**Interim Closing Date**"); (ii) subject to entry of the Final Order, a new money delayed-draw term loan to be made in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$40,000,000 (the "**Final DIP Loan**" and, together with the Interim DIP Loan, the "**DIP Facility**"), which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.2 and 12.3 of the DIP Credit Agreement have been satisfied;

- (b) authorization for the DIP Loan Parties to enter into any agreements, documents and instruments in connection with the DIP Facility, including the DIP Credit Agreement and all notices, guarantees, security agreements, ancillary documents and agreements executed in connection therewith, (collectively, the "**DIP Documents**") on terms and conditions consistent with the DIP Credit Agreement and this Interim Order, and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate or desirable in connection with the DIP Documents;
- (c) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, and authorizing the Debtors to incur, the DIP Liens (as defined below) in all DIP Collateral (as defined below), to secure the DIP Obligations (as defined below), which liens and security interests shall be automatically perfected and be subject to the lien priorities set forth in the DIP Credit Agreement, on the terms and conditions set forth herein, in the DIP Credit Agreement and in the DIP Documents;
- (d) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, allowed superpriority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations (as defined below), with priority over any and all administrative expenses of any kind or nature, subject and subordinate only to the Carve-Out and the Administration Charge (as defined below), on the terms and conditions set forth herein and in the DIP Documents;
- (e) authorization for the Debtors to use the proceeds of the DIP Facility and the Prepetition Collateral (as defined below), including Cash Collateral (as defined below), in accordance with the terms hereof, including pursuant to the Approved Budget (as defined below) as further described herein, to: (i) pay fees and interest under the DIP Facility; (ii) provide working capital for, and for other general corporate purposes of, the Debtors, including for funding the Carve-Out (as defined below); (iii) pay for bankruptcy-related costs and expenses, including costs and expenses incurred in connection with the Recognition Proceedings (as defined below); and (iv) pay Adequate Protection Payments (as defined below);

- (f) authorization for the Debtors to pay, on a final and irrevocable basis, the principal, interest, expenses, fees, premiums and other amounts payable under the DIP Documents as such become earned, due and payable, including, without limitation, (i) the Upfront Fee, (ii) the Unused Commitment Fee, (iii) the Exit Fee, (iv) the Agency Fee (each as defined in the DIP Credit Agreement), and (iv) the reasonable fees and disbursements of the DIP Secured Parties' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with the DIP Documents (collectively, the "**DIP Obligations**");
- (g) authorization to grant adequate protection to the Prepetition Secured Parties (as defined below) on the terms set forth in the DIP Documents and this Interim Order on account of any Diminution in Value (as defined below) of the Prepetition Secured Parties' interests in the Prepetition Collateral, including Cash Collateral;
- (h) waivers of (i) the Debtors' and the estates' rights to surcharge against the DIP Collateral or the Prepetition Collateral pursuant to the Bankruptcy Code section 506(c), (ii) the "equities of the case" exception under Bankruptcy Code section 552(b) and (iii) the equitable doctrine of marshalling with respect to the DIP Collateral, including all Prepetition Collateral, in each case, subject to entry of the Final Order (but retroactive to the Petition Date);
- (i) subject to the terms of this Interim Order, authorization for the DIP Secured Parties to exercise remedies under the DIP Documents on the terms described herein upon the occurrence and during the continuance of a Termination Event (as defined below);
- (j) the modification of the automatic stay imposed pursuant to Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of this Interim Order; and
- (k) that this Court schedule a final hearing (the "**Final Hearing**") to consider entry of a final order (the "**Final Order**") authorizing and approving, on a final basis, among other things, the Debtors' entry into the DIP Facility, the borrowings under the DIP Facility, the continued use of Cash Collateral and the granting of adequate protection, in each case, as described in the Motion and as set forth in the DIP Documents.

The Court having held a hearing to consider entry of this Interim Order (the "**Interim Hearing**"); and the Court having considered the Motion and the exhibits thereto, the *Declaration of Zul Jamal in support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* (the "**DIP Declaration**"), the evidence submitted or proffered and the arguments of counsel made at the Interim Hearing; and proper and sufficient notice of the Motion and the Interim Hearing having been given in

1 accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and all objections, if any,  
2 to the relief requested in the Motion and to the entry of this Interim Order having been withdrawn,  
3 resolved or overruled by the Court; and it appearing to the Court that granting the relief requested  
4 in necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the  
5 Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their  
6 estates, creditors and parties in interest; and after due deliberation and consideration, and for good  
7 and sufficient cause appearing therefor; IT IS FOUND AND DETERMINED THAT:<sup>3</sup>

8 A. **Petition Date.** On June 9, 2024 (the “*Petition Date*”), each of the Debtors filed a  
9 voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

10 B. **Debtors in Possession.** The Debtors have continued in the management and  
11 operation of their business and properties as debtors in possession pursuant to sections 1107 and  
12 1108 of the Bankruptcy Code.

13 C. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases  
14 commenced on the Petition Date, the Motion and the parties and property affected hereby pursuant  
15 to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408  
16 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

17 D. **Committee Formation.** As of the date hereof, the United States Trustee for Region  
18 17 (the “*U.S. Trustee*”) has not yet appointed an official committee of unsecured creditors in these  
19 Chapter 11 Cases (a “*Creditors’ Committee*”) pursuant to section 1102 of the Bankruptcy Code.

20 E. **Notice.** Under the circumstances, the notice given by the Debtors of, and described  
21 in the Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient  
22 notice thereof and complies with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules,  
23 and no further notice of the relief sought at the Interim Hearing and the relief granted herein is  
24 necessary or required.

25  
26 <sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law  
27 pursuant to Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent that any  
28 of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the  
following conclusions of law constitute findings of fact, they are adopted as such.



1 F. **Debtors' Stipulations.** Without prejudice to the rights of any other party, but  
2 subject to the limitations thereon contained in paragraphs 21 and 22 of this Interim Order, the  
3 Debtors represent, admit, stipulate and agree as follows:

4 1. **Prepetition Senior Secured Term Loan Facility.**

5 (a) Under that certain Second Amended and Restated Credit  
6 Agreement, dated as of October 28, 2022 (as amended, restated, amended and restated,  
7 supplemented, or otherwise modified from time to time prior to the date hereof, the "***Prepetition***  
8 ***Senior Secured Term Loan Credit Agreement***" and together with all related security agreements,  
9 collateral agreements, pledge agreements, control agreements, guarantees and other documents  
10 delivered or executed in connection therewith, the "***Prepetition Senior Secured Term Loan***  
11 ***Documents***") by and among Borrower, as borrower, the financial institutions party thereto from  
12 time to time, as lenders (the "***Prepetition Senior Secured Term Loan Lenders***"), KfW IPEX-Bank  
13 GmbH ("***KfW***"), as sole lead arranger, UFK agent, as administrative agent and collateral agent (in  
14 such capacities, the "***Prepetition Senior Secured Term Loan Agent***" and together with the  
15 Prepetition Senior Secured Term Loan Lenders, the "***Prepetition Senior Secured Term Loan***  
16 ***Parties***") the Borrower was provided with a first-lien secured term loan facility (the loans  
17 borrowed thereunder, the "***Prepetition First Lien Loans***") consisting of:

- 18 (a) Tranche A Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
19 Agreement) provided by KfW, which, as of the Petition Date, amount to an  
20 aggregate principal amount of approximately \$129,191,475.89 million (together  
21 with all accrued interest, premiums (if any), costs, fees, expenses and other  
22 obligations in respect thereof, the "***Prepetition Senior Secured Term Loan A***  
23 ***Obligations***");
- 24 (b) Tranche A-2 Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
25 Agreement) provided by Pala Investments Limited ("***Pala***"), Mercuria Investments  
26 US, Inc. ("***Mercuria***") and TF R&S Canada Ltd. ("***TF Canada***," and collectively  
27 with Pala and Mercuria, the "***Prepetition Senior Secured Term Loan A-2 Parties***"),  
28 which, as of the Petition Date, amount to an aggregate principal amount of  
approximately \$40,919,608.57 million (together with all accrued interest,  
premiums (if any), costs, fees, expenses and other obligations in respect thereof,  
the "***Prepetition Senior Secured Term Loan A-2 Obligations***"); and
- (c) Tranche B Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
Agreement) provided by KfW, which, as of the Petition Date, amount to an  
aggregate principal amount of approximately \$17,973,301.40 million (together

1 with all accrued interest, premiums (if any), costs, fees, expenses and other  
2 obligations in respect thereof, the “**Prepetition Senior Secured Term Loan B  
Obligations**” and, together with the Prepetition Senior Secured Term Loan A  
3 Obligations, the “**Prepetition Senior Secured KfW Term Loan Obligations**”).

4 (b) *Prepetition Senior Secured Term Loan Obligations.* As of the  
5 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
6 severally indebted and liable to the Prepetition Senior Secured Term Loan Parties under the  
7 Prepetition Senior Secured Term Loan Documents in the principal aggregate amount of not less  
8 than \$188,084,385.86 million, *plus* accrued and unpaid interest thereon as of the Petition Date,  
9 plus all other fees, costs, expenses, indemnification obligations, reimbursement obligations,  
10 charges, premiums, if any, additional interest, any other “Obligations” (as defined in the  
11 Prepetition Senior Secured Term Loan Documents) and all other obligations of whatever nature  
12 owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable  
13 under the Prepetition Senior Secured Term Loan Documents (collectively, the “**Prepetition Senior  
Secured Term Loan Obligations**”). The Prepetition Senior Secured Term Loan Obligations  
14 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
15 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
16 subordination, other claims, cause of action or other challenge of any kind under the Bankruptcy  
17 Code, under applicable non-bankruptcy law or otherwise. No payments or transfer made to or for  
18 the benefit of (or obligations incurred to or for the benefit of) the Prepetition Senior Secured Term  
19 Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection  
20 with any of the Prepetition Senior Secured Term Loan Documents are subject to avoidance,  
21 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
22 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
23 bankruptcy law or otherwise.

24 (c) *Prepetition Senior Secured Term Loan Liens.* Pursuant to the  
25 Prepetition Senior Secured Term Loan Documents, the Prepetition Senior Secured Term Loan  
26 Obligations are secured by valid, binding, perfected and enforceable liens on and security interests  
27 in (the “**Prepetition Senior Secured Term Loan Liens**”) the “Collateral” (as defined in the  
28

Prepetition Senior Secured Term Loan Documents) (the “**Prepetition Collateral**”), subject to certain permitted liens as permitted under the Prepetition Senior Secured Term Loan Documents. The Prepetition Senior Secured Term Loan Liens are (i) senior to all other Prepetition Funded Debt Liens (as defined below) with respect to Prepetition Collateral constituting “Project Collateral” (as defined in the WCF Intercreditor Agreement (as defined below)) (the “**Non-WCF Collateral**”), and (ii) subject to the Prepetition Working Capital Lien (as defined below) with respect to Prepetition Collateral constituting “APA Collateral” (as defined in the WCF Intercreditor Agreement) (the “**WCF Collateral**”), in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Senior Secured Term Loan Liens: (i) are valid, binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with the priority set forth in the Prepetition Senior Secured Term Loan Documents and the Prepetition Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are subject and/or subordinate only to Prepetition Prior Liens (defined below), and solely with respect to the WCF Collateral, the Prepetition Working Capital Lien. In this Interim Order the term “**Prepetition Prior Liens**” shall mean, in relation to any Prepetition Funded Debt Facility (defined below), liens that are senior in relation to the liens securing such facility and are (1) valid, enforceable, perfected, non-avoidable and in existence immediately prior to the Petition Date or (2) valid, enforceable, non-avoidable and in existence immediately prior to the Petition Date, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the liens described in items (1) and (2), the “**Petition Date Perfected Liens**”), and in relation to the DIP Facility, shall mean, the Petition Date Perfected Liens not to exceed a total aggregate amount of \$12 million.

1                   2.       **Prepetition Working Capital Facility.**

2                   (a)       Under that certain Advance Payment Agreement, dated as of May 6,  
3       2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time  
4       to time prior to the date hereof, the “***Prepetition Working Capital Agreement***” and, together with  
5       all related security agreements, collateral agreements, pledge agreements, control agreements,  
6       guarantees and other documents, the “***Prepetition Working Capital Documents***”) by and among  
7       the Borrower, as seller, and Concord Resources Limited (“***Concord***”), as purchaser (the  
8       “***Prepetition Working Capital Purchaser***”) the Borrower received certain Advance Payments (as  
9       defined in the Prepetition Working Capital Agreement) from the Prepetition Working Capital  
10      Purchaser in exchange for the sale and delivery of certain Material (as defined in the Prepetition  
11      Working Capital Documents).

12                  (b)       *Prepetition Working Capital Obligations.* As of the Petition Date,  
13      the Borrower, without defense, counterclaim or offset of any kind, was indebted and liable to the  
14      Prepetition Working Capital Purchaser under the Prepetition Working Capital Documents in the  
15      aggregate principal amount of not less than \$3.0 million under the Prepetition Working Capital  
16      Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
17      costs, expenses, charges, additional interest, any other “Advance Payment Obligations” as defined  
18      in the WCF Intercreditor Agreement and all other obligations of whatever nature owing, whether  
19      or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the  
20      Prepetition Working Capital Documents (collectively, the “***Prepetition Working Capital***  
21      ***Obligations***”). The Prepetition Working Capital Obligations constitute legal, valid, binding and  
22      non-avoidable obligations against the Borrower and are not subject to any avoidance,  
23      recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
24      or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law  
25      or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or  
26      for the benefit of) the Prepetition Working Capital Purchaser by or on behalf of any of the Debtors  
27      prior to the Petition Date under or in connection with any of the Prepetition Working Capital  
28

Documents are subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(c) *Prepetition Working Capital Lien*. Pursuant to the Prepetition Working Capital Documents, the Prepetition Working Capital Obligations are secured by a valid, binding, perfected and enforceable lien on and security interest in (the “***Prepetition Working Capital Lien***”) the Prepetition Collateral, subject to certain permitted liens as permitted under the Prepetition Working Capital Agreement. The Prepetition Working Capital Lien is (i) subject to the Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien (as defined below) with respect to all Prepetition Collateral constituting Non-WCF Collateral and (ii) senior to all other Prepetition Funded Debt Liens with respect to Prepetition Collateral constituting WCF Collateral, in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Working Capital Lien: (i) is a valid, binding, perfected and enforceable lien and security interest in the Prepetition Collateral, with the priorities set forth in the Prepetition Working Capital Documents; (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date, is subject and/or subordinate only to (1) the Prepetition Prior Liens, in relation to the Working Capital Facility, and, (2) solely with respect to the Non-WCF Collateral, the Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien.

3. **Prepetition TF Stream Obligations.**

(a) Under that certain Metals Purchase and Sale Agreement, dated as of December 21, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “***Prepetition TF Stream Agreement***” and, together with all related security agreements, collateral agreements, pledge agreements, control

1 agreements, guarantees and other documents, the “**Prepetition TF Stream Documents**”) by and  
2 among Borrower, as seller, NCU and its subsidiaries, as guarantor and Triple Flag International  
3 Ltd. (“**Triple Flag**”) (as successor by name change to Triple Flag Mining Finance Bermuda Ltd.),  
4 as purchaser (the “**Prepetition TF Stream Purchaser**”), the Prepetition TF Stream Purchaser paid  
5 certain deposits to the Borrower and Borrower committed to make specified deliveries of Refined  
6 Gold and Refined Silver (each as defined in the Prepetition TF Stream Agreement) to the  
7 Prepetition TF Stream Purchaser.

8 (b) *Prepetition TF Stream Obligations.* As of the Petition Date, the  
9 Debtors, without defense, counterclaim or offset of any kind, were jointly and severally indebted  
10 and liable to the Prepetition TF Stream Purchaser under the Prepetition TF Stream Documents in  
11 the aggregate principal amount of not less than \$78,269,229.75 under the Prepetition TF Stream  
12 Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
13 costs, expenses, charges, additional interest, any other “Obligations” (as defined in the Prepetition  
14 TF Stream Agreement) and all other obligations of whatever nature owing, whether or not  
15 contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition  
16 TF Stream Documents (collectively, the “**Prepetition TF Stream Obligations**”). The Prepetition  
17 TF Stream Obligations constitute legal, valid, binding and non-avoidable obligations against each  
18 of the Debtors and are not subject to any avoidance, recharacterization, effect, counterclaim,  
19 defense, offset, subordination, other claim, cause of action or other challenge of any kind under  
20 the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or  
21 transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the  
22 Prepetition TF Stream Purchaser by or on behalf of any of the Debtors prior to the Petition Date  
23 under or in connection with any of the Prepetition TF Stream Documents are subject to avoidance,  
24 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
25 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
26 bankruptcy law or otherwise.



(c) *Prepetition TF Stream Lien*. Pursuant to the Prepetition TF Stream Documents, the Prepetition TF Stream Obligations is secured by a valid, binding, perfected and enforceable lien on and security interest in (the “***Prepetition TF Stream Lien***”) the Prepetition Collateral, subject to certain permitted liens as permitted under the Prepetition TF Stream Agreement. The Prepetition TF Stream Lien is (i) subject to the Prepetition Senior Secured Term Loan Liens with respect to all Prepetition Collateral constituting Non-WCF Collateral, (ii) subject to the Prepetition Working Capital Lien and Prepetition Senior Secured Term Loan Liens with respect to Prepetition Collateral constituting WCF Collateral, and (iii) senior to the Prepetition Junior Secured Term Loan Liens, in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition TF Stream Lien: (i) is a valid, binding, perfected and enforceable lien and security interest in the Prepetition Collateral, with the priority set forth in the Prepetition TF Stream Documents and the Prepetition Intercreditor Agreements; (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date is subject and/or subordinate only to (1) the Prepetition Prior Liens, in relation to the Prepetition TF Stream Obligations, (2) with respect to the Non-WCF Collateral, the Prepetition Senior Secured Term Loan Liens and (3) with respect to the WCF Collateral, the Prepetition Working Capital Lien and the Prepetition Senior Secured Term Loan Liens.

4. **Prepetition Junior Secured Term Loan Obligations.**

(a) Under that certain Third Amended and Restated Loan Agreement, dated as of December 21, 2023 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “***Prepetition Junior Secured Term Loan Agreement***,” together with all related security agreements, collateral agreements, pledge agreements, control agreements, guarantees and other documents, the “***Prepetition Junior***

1 *Secured Term Loan Documents*,” and, together with the Prepetition Senior Secured Term Loan  
2 Documents, the Prepetition Working Capital Documents and the Prepetition TF Stream  
3 Documents, the “*Prepetition Debt Documents*”), by and among NCU, as borrower, Borrower,  
4 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC, as guarantors,  
5 the lenders party thereto from time to time (the “*Prepetition Junior Secured Term Loan*  
6 *Lenders*”), and Pala, as lead arranger and collateral agent (the “*Prepetition Junior Secured Term*  
7 *Loan Agent*,” together with the Prepetition Junior Secured Term Loan Lenders, the “*Prepetition*  
8 *Junior Secured Term Loan Parties*” and, together with the Prepetition Senior Secured Term Loan  
9 Parties, the Prepetition Working Capital Purchaser and the Prepetition TF Stream Purchaser the  
10 “*Prepetition Secured Parties*”), NCU was provided with a junior secured term loan facility.

11 (b) *Prepetition Junior Secured Term Loan Obligations.* As of the  
12 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
13 severally indebted and liable to the Prepetition Junior Secured Term Loan Parties under the  
14 Prepetition Junior Secured Term Loan Documents in the aggregate principal amount of not less  
15 than \$10 million under the Prepetition Junior Secured Term Loan Agreement, *plus* accrued and  
16 unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, charges,  
17 additional interest, any other “Obligations” (as defined in the Prepetition Junior Secured Term  
18 Loan Agreement) and all other obligations of whatever nature owing, whether or not contingent,  
19 whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Junior  
20 Secured Term Loan Documents (collectively, the “*Prepetition Junior Secured Term Loan*  
21 *Obligations*” and, together with the Prepetition Senior Secured Term Loan Obligations, the  
22 Prepetition Working Capital Obligations and the Prepetition TF Stream Obligations, the  
23 “*Prepetition Secured Obligations*”). The Prepetition Junior Secured Term Loan Obligations  
24 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
25 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
26 subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy  
27 Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or  
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1 for the benefit of (or obligations incurred to or for the benefit of) the Prepetition Junior Secured  
2 Term Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in  
3 connection with any of the Prepetition Junior Secured Term Loan Documents are subject to  
4 avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim,  
5 cause of action or other challenge of any kind or nature under the Bankruptcy Code, under  
6 applicable non-bankruptcy law or otherwise.

7 (c) *Prepetition Junior Secured Term Loan Liens.* Pursuant to the  
8 Prepetition Junior Secured Term Loan Documents, the Prepetition Junior Secured Term Loan  
9 Obligations are secured by valid, binding, perfected and enforceable liens on and security interests  
10 in (the “***Prepetition Junior Secured Term Loan Liens***” and, together with the Prepetition Senior  
11 Secured Term Loan Liens, the Prepetition Working Capital Lien and the Prepetition TF Stream  
12 Lien, the “***Prepetition Funded Debt Liens***”) the Prepetition Collateral, subject to certain permitted  
13 liens as permitted under the Prepetition Junior Secured Term Loan Agreement. The Prepetition  
14 Junior Secured Term Loan Liens are subject to the Prepetition Senior Secured Term Loan Liens,  
15 the Prepetition Working Capital Lien and the Prepetition TF Stream Lien with respect to all  
16 Prepetition Collateral, in each case, in accordance with the terms and conditions of the Fourth Lien  
17 Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that,  
18 in each case as of the Petition Date, the Prepetition Junior Secured Term Loan Liens: (i) are valid,  
19 binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with  
20 the priority set forth in the Prepetition Junior Secured Term Loan Documents and the Prepetition  
21 Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable  
22 law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense  
23 or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are  
24 subject and/or subordinate only to the (1) Prepetition Prior Liens, in relation to the Prepetition  
25 Junior Secured Term Loan Obligations, (2) the Prepetition Senior Secured Term Loan Liens, (3)  
26 the Prepetition Working Capital Lien, and (4) the Prepetition TF Stream Lien.

1                   5.       **Prepetition Intercreditor Agreements.**

2                   (a)       *WCF Intercreditor Agreement.* KfW, Triple Flag, Concord and the  
3 Borrower are parties to that certain Working Capital Facility Intercreditor Agreement, dated as of  
4 May 22, 2019, (as amended, restated, amended and restated, supplemented, or otherwise modified  
5 from time to time prior to the date hereof, the “*WCF Intercreditor Agreement*”), which governs,  
6 among other things, the rights, interests, obligations, priority and positions of the Prepetition  
7 Senior Secured Term Loan Parties, the Prepetition Working Capital Purchaser and the Prepetition  
8 TF Stream Purchaser.

9                   (b)       *TF Intercreditor Agreement.* KfW, Triple Flag, the Borrower, NCU  
10 and NCU’s subsidiaries are party to that certain Intercreditor Agreement, dated as of May 22, 2019,  
11 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to  
12 time prior to the date hereof, the “*TF Intercreditor Agreement*”), which governs the rights,  
13 interests, obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties  
14 and the Prepetition TF Stream Purchaser.

15                   (c)       *Fourth Lien Intercreditor Agreement.* KfW, Triple Flag, Concord,  
16 Pala, the Borrower, NCU and NCU’s subsidiaries are party to that certain Intercreditor Agreement,  
17 dated as of October 28, 2022 (as amended, restated, amended and restated, supplemented, or  
18 otherwise modified from time to time prior to the date hereof, the “*Fourth Lien Intercreditor*  
19 *Agreement*” and, together with the WCF Intercreditor Agreement and the TF Intercreditor  
20 Agreement, the “*Prepetition Intercreditor Agreements*”), which governs the rights, interests,  
21 obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties, the  
22 Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
23 Junior Secured Term Loan Parties.

24                   (d)       Each of the Debtors either is party to or otherwise acknowledged  
25 and agreed to, and are bound by, the Prepetition Intercreditor Agreements. Pursuant to Bankruptcy  
26 Code section 510, the Prepetition Intercreditor Agreements, and any other applicable intercreditor  
27 or subordination provisions contained in any of the Prepetition Debt Documents shall (i) remain  
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1 in full force and effect, (ii) continue to govern the relative obligations, priorities, rights, and  
2 remedies of the applicable Prepetition Secured Parties, and (iii) not be deemed to be amended,  
3 altered or modified by the terms of this Interim Order unless expressly set forth herein or therein.

4 6. **Cash Collateral.** Any and all of the Debtors' cash, including any amounts  
5 generated by the collection of accounts receivable, all cash proceeds of the Prepetition Collateral,  
6 and the cash in the Debtors' banking, checking or other deposit accounts with financial institutions  
7 as of the Petition Date (excluding cash deposits that secure any outstanding letters of credit) or  
8 deposited into the Debtors' banking, checking or other deposit accounts with financial institutions  
9 after the Petition Date constitutes cash collateral of the Prepetition Secured Parties within the  
10 meaning of Bankruptcy Code section 363(a) (the "***Cash Collateral***").

11 7. **Adequate Protection.** Pursuant to Bankruptcy Code sections 105, 361, 362  
12 and 363(e), the Prepetition Secured Parties are entitled to adequate protection of their interests in  
13 the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition  
14 diminution in value of their interests in the Prepetition Collateral resulting from, among other  
15 things, and without limitation, (i) subordination of the Prepetition Secured Parties' interests in the  
16 Prepetition Collateral, (ii) the use of Cash Collateral during the Chapter 11 Cases, (iii) the use, sale  
17 or lease of any of the Prepetition Collateral, (iv) the imposition of the automatic stay pursuant to  
18 Bankruptcy Code section 362(a), and/or (v) for any other reason for which adequate protection  
19 may be granted under the Bankruptcy Code ("***Diminution in Value***"). Based on the Motion, the  
20 DIP Declaration, and the record presented to the Court at the Interim Hearing, the terms of the  
21 proposed adequate protection arrangements and of the use of the Prepetition Collateral, including  
22 the Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

23 G. **Findings Regarding the DIP Facility and Use of Cash Collateral.** Based on the  
24 record established and evidence presented at the Interim Hearing, including the DIP Declaration,  
25 and the representations of the parties, the Court makes the following findings:

26 1. **Need for Postpetition Financing and Use of Cash Collateral.** The  
27 Debtors have a need to use Cash Collateral on an interim basis and obtain credit in the form of the  
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Interim DIP Loans pursuant to the DIP Facility in order to, among other things, (a) permit the orderly continuation of their business, (b) maintain business relationships with their vendors, suppliers, customers and other parties, (c) make payroll, (d) pay Adequate Protection Payments and (e) pay the costs of administering the Chapter 11 Cases, in each case, in compliance with, and subject in all respects to, the Approved Budget, the terms hereof and the DIP Documents. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which, on an interim basis as contemplated hereunder, would immediately and irreparably harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their business, maintain their properties in the ordinary course of business, and fund the Chapter 11 Cases without the authorization to use Cash Collateral and to borrow the Interim Amount. Without the ability to access the DIP Facility and the authority to use Cash Collateral, the Debtors' chances for a successful chapter 11 restructuring would be jeopardized.

2. **Priming of Prepetition Liens.** The priming of the Prepetition Funded Debt Liens on the Prepetition Collateral, to the extent set forth herein, under Bankruptcy Code section 364(d)(1), as contemplated by this Interim Order and the DIP Facility, and as further described below, will enable the Debtors to obtain the DIP Facility and, among other benefits, to continue to operate their businesses for the benefit of their estates and stakeholders.

3. **No Credit Available on More Favorable Terms.** As set forth in the DIP Declaration, the Debtors have been unable to obtain financing from sources other than the DIP Lenders on terms more favorable than those provided under the DIP Facility, as set forth in the DIP Documents. The Debtors have been unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also have been unable to obtain sufficient credit (i) on an unsecured basis having priority over all other administrative expenses, (ii) secured solely by a lien on property of the Debtors and their estates

1 that is not otherwise subject to a lien or (iii) secured solely by a junior lien on property of the  
2 Debtors and their estates that is subject to a lien. Postpetition financing is not otherwise available  
3 without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (x) the DIP Liens (as  
4 defined below) on all DIP Collateral (as defined below), as set forth herein, (y) the DIP  
5 Superpriority Claims (as defined below) and (z) the other protections set forth in this Interim Order.  
6 The terms of the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the  
7 Debtors' exercise of sound and prudent business judgment consistent with their fiduciary duties,  
8 constitute reasonably equivalent value and fair consideration and are in the best interest of the  
9 Debtors' estates and stakeholders.

10 4. **Good Faith.** The DIP Facility and the Adequate Protection Obligations  
11 have been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the DIP  
12 Lenders, and the Prepetition Secured Parties and all of the Debtors' obligations and indebtedness  
13 arising under, in respect of or in connection with the DIP Documents including, without limitation,  
14 all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents, and all  
15 other DIP Obligations shall be deemed to have been extended by the DIP Agent and the DIP  
16 Lenders in good faith as that term is used in Bankruptcy Code section 364(e) and in express  
17 reliance upon the protections offered by Bankruptcy Code section 364(e). The DIP Obligations  
18 and the DIP Liens shall be entitled to the full protection of Bankruptcy Code section 364(e) in the  
19 event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or  
20 otherwise, and any liens or claims granted to the DIP Agent or the DIP Lenders hereunder arising  
21 prior to the effective date of any such vacatur, reversal or modification of this Interim Order shall  
22 be governed in all respects by the original provisions of this Interim Order, including entitlement  
23 to all rights, remedies, privileges and benefits granted herein.

24 H. **Consent of the Prepetition Secured Parties.** The Prepetition Secured Parties have  
25 consented to or are deemed to consent under the applicable Prepetition Intercreditor Agreements  
26 to the priming of the Prepetition Funded Debt Liens, as applicable, to the extent set forth herein,  
27 and the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions  
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provided for in this Interim Order; *provided* that nothing in this Interim Order shall constitute the consent of the Prepetition Senior Secured Term Loan Agent to priming of the Prepetition Senior Secured Term Loan Liens by DIP Liens securing DIP Obligations in an amount greater than \$51.4 million, and KfW reserves its rights with respect to the Final Order in all respects.

I. **Sections 506(c) and 552(b)**. As a material inducement to the DIP Lenders to agree to provide the DIP Facility and the Prepetition Secured Parties to agree to the use of Cash Collateral, and in exchange for (i) the DIP Agent's and DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve-Out to the extent set forth herein and (ii) the Prepetition Secured Parties' agreement to (a) subordinate their Prepetition Funded Debt Liens and the Adequate Protection Liens to the Carve-Out and the DIP Liens, each to the extent provided herein, and (b) consent to the use of Cash Collateral in accordance with and subject to the Approved Budget (subject to the Permitted Variances (as defined below)), the DIP Documents and the terms of this Interim Order, each of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties is entitled to receive (1) a waiver of any "equities of the case" exceptions or claims under Bankruptcy Code section 552(b), (2) a waiver of the provisions of Bankruptcy Code section 506(c), and (3) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable).

J. **Immediate Entry**. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2), (c) and (d) and Local Rules 4001(c)(2) and 9006. Absent granting the interim relief sought by this Interim Order, the Debtors' estates could be immediately and irreparably harmed. Thus, sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2), (c), and (d) and Local Rules 4001(c)(2) and 9006.

Based upon the foregoing findings and conclusions, the Motion, the DIP Declaration, and the record before the Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor,

1 IT IS HEREBY ORDERED THAT:

2 1. **Motion Granted.** The relief sought by the Motion is granted, and the DIP Facility  
3 and the use of Cash Collateral are hereby authorized and approved, in each case, upon the terms  
4 and conditions of this Interim Order and the DIP Documents.

5 2. **Objections Overruled.** Any objections to the Motion that have not been  
6 withdrawn, waived or settled, and all reservations of rights or other statements inconsistent with  
7 this Interim Order, are hereby denied and overruled. This Interim Order shall become effective  
8 and enforceable immediately upon its entry.

9 3. **Approval and Authorization of DIP Facility.**

10 (a) *Authorization of DIP Facility and DIP Documents.* The DIP Facility is  
11 hereby approved on an interim basis on the terms and conditions set forth herein. The DIP Loan  
12 Parties are expressly and immediately authorized and empowered to: (i) (A) enter into and perform  
13 all of their obligations, (B) as required by the DIP Lenders, execute, deliver and perform under the  
14 DIP Documents and (C) pay all fees, costs, expenses, indemnities and other amounts contemplated  
15 under this Interim Order and the applicable DIP Documents; and (ii) perform all acts, to make,  
16 execute, deliver, enter into and perform under any and all other agreements, instruments,  
17 certificates and other documents (including, without limitation, the execution and/or recordation  
18 of any collateral, pledge and security documents, mortgages, deeds of trust, control agreements,  
19 financing statements or other documents), and to perform all such other and further acts, that may  
20 be necessary, required or desirable for the DIP Agent or the DIP Lenders to perform their  
21 obligations under the DIP Facility, this Interim Order and any applicable DIP Document and to  
22 implement the transactions contemplated thereunder and hereunder.

23 (b) **Authorization to Borrow.** The Debtors are hereby authorized to borrow  
24 under the DIP Facility, from the period between the date of entry of this Interim Order and the  
25 Final Hearing (the “*Interim Period*”), a principal amount of up to \$20,000,000, subject to the terms  
26 and conditions (including any conditions precedent to such borrowing) set forth in this Interim  
27 Order and the DIP Documents. The DIP Lenders shall have no obligation to make any loan or  
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1 advance under the DIP Documents, unless all of the conditions precedent to the making of such  
2 extension of credit under the DIP Documents and this Interim Order have been satisfied in full or  
3 waived in accordance with the DIP Documents and this Interim Order.

4 (c) *Use of DIP Proceeds and Cash Collateral.* The Debtors are hereby  
5 authorized to use the proceeds of the DIP Facility and all Cash Collateral solely in the manner and  
6 for the purposes expressly permitted in the Approved Budget (subject to the Permitted Variances),  
7 this Interim Order and the DIP Documents.

8 (d) *DIP Interest, Fees and Expenses.* The Debtors are authorized and directed  
9 to pay any and all (i) interest, fees, premiums or other amounts payable under the DIP Documents,  
10 including, without limitation, the Upfront Fee, the Unused Commitment Fee, the Exit Fee, the  
11 Agency Fee, (ii) amounts due (or that may become due) to any Indemnified Person (as defined  
12 below) in respect of the indemnification obligations under this Interim Order and the DIP  
13 Documents and (iii) any other amounts payable in connection with the DIP Facility, including all  
14 reasonable and documented pre- and postpetition fees, expenses and disbursements in connection  
15 with the DIP Facility and these Chapter 11 Cases of (A) Akin Gump Strauss Hauer & Feld LLP  
16 (“*Akin*”), as counsel to the DIP Lenders, (B) Blake, Cassels & Graydon LLP, as Canadian counsel  
17 to the DIP Lenders, (C) Shea Larson PC, as Nevada local counsel to the DIP Lenders, (D) Kelley  
18 Drye & Warren, LLP, as counsel to the DIP Agent (“*DIP Agent Counsel*”), and (E) any other  
19 attorneys, financial advisors, consultants or other professionals retained by the DIP Secured Parties  
20 (the professionals set forth in clauses (A) through (E), collectively, the “*DIP Professionals*”), in  
21 each case whether or not such payments, premiums, fees, costs, expenses and disbursements arose  
22 before or after the Interim Closing Date. The payment of the fees, costs, expenses and  
23 disbursements of the DIP Professionals other than DIP Agent Counsel (the “*DIP Professional*  
24 *Fees*”) shall be subject to the notice and review procedures set forth in paragraph 19 of this Interim  
25 Order. For the avoidance of doubt, the Debtors shall be jointly and severally liable for the  
26 obligations to pay the DIP Professional Fees in accordance with this Interim Order.



(e) *Indemnification.* As set forth in the DIP Documents, the Debtors will jointly and severally indemnify the DIP Agent, the DIP Lenders, the DIP Professionals and their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each an “**Indemnified Person**”), and hold them harmless from and against any and all losses, claims, damages, costs, expenses (including, but not limited to reasonable and documented legal fees and expenses) and liabilities arising out of or relating to the execution or delivery of the DIP Documents, transactions contemplated hereby and thereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility in accordance with the terms of the DIP Credit Agreement and the other DIP Documents; *provided* that no such Indemnified Person will be indemnified for costs, expenses or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the actual gross negligence or willful misconduct of such person (or their related persons). No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person’s gross negligence or willful misconduct, and in no event shall any Indemnified Person be liable on any theory for any special indirect, consequential or punitive damages.

(f) *Modification of DIP Documents.* The DIP Agent (acting at the direction of the Required DIP Lenders)<sup>4</sup> and the Required DIP Lenders are hereby authorized to execute, deliver and perform under one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in accordance with the provisions of any applicable DIP Documents governing amendments thereto, each without further application to or order of the Court; *provided, however*, that any amendments, waivers, consents or other modifications to and

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<sup>4</sup> The term “**Required DIP Lenders**” as used in this Interim Order, shall have the same meaning ascribed to the term “Majority Lenders” in the DIP Credit Agreement.

under the DIP Documents that (i) modify the original stated maturity of the DIP Facility, (ii) increase the aggregate commitments thereunder or (iii) increase the rate of interest or fees payable with respect thereto shall require further Court approval; *provided further*, that any amendment that may affect the rights, obligations, protections, immunities or indemnities of the DIP Agent shall require the consent of the DIP Agent.

4. **DIP Obligations**

(a) Upon entry of this Interim Order, the obligations under any applicable DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each Debtor, and shall be fully enforceable against each of the Debtors, their estates and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of these Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the foregoing, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the “*Successor Cases*”), in each case, in accordance with the terms of the DIP Documents and this Interim Order.

(b) Upon entry of this Interim Order, the Debtors shall be jointly and severally liable for all DIP Obligations, including, without limitation, all loans, advances, indebtedness, obligations, extensions of credit, financial accommodations, principal, interest, payments or similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other amounts, whether or not such obligations arose before or after the Petition Date, whenever the same shall become due and payable, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the DIP Lenders under the DIP Documents or this Interim Order.

(c) All obligations incurred, payments made and transfers or grants of liens and security interests set forth in this Interim Order and/or the DIP Documents by the Debtors are granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and

1 commitments and other financial accommodations secured thereby. No obligation, payment,  
2 transfer or grant of liens or security interests under this Interim Order or the DIP Documents to the  
3 DIP Secured Parties shall be limited, stayed, restrained, voidable, avoidable or recoverable under  
4 the Bankruptcy Code or under any applicable law, or subject to any challenge, objection, defense  
5 or claim, including, without limitation, avoidance (whether under chapter 5 of the Bankruptcy  
6 Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer  
7 Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff,  
8 offset, recoupment, recharacterization, subordination (whether equitable, contractual or  
9 otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge,  
10 recovery or other cause of action of any kind or nature whatsoever, whether arising under the  
11 Bankruptcy Code, applicable non-bankruptcy law or otherwise (subject, solely in the case of the  
12 DIP Professional Fees, only to the procedures set forth in paragraph 19 of this Interim Order).

13       5.     **DIP Superpriority Claims.** Pursuant to Bankruptcy Code section 364(c)(1), all of  
14 the DIP Obligations shall constitute allowed senior administrative expense claims of the DIP  
15 Secured Parties, against each of the Debtors' estates (the "***DIP Superpriority Claims***"), without  
16 the need to file any proof of claim or request for payment of administrative expenses, with priority  
17 over any and all administrative expenses, adequate protection claims, diminution claims and all  
18 other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever,  
19 including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code  
20 sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising  
21 under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a  
22 Final Order), 507(a), 507(b), 726, 1113 or 1114 or otherwise, whether or not such expenses or  
23 claims may become secured by a judgment lien or other non-consensual lien, levy or attachment,  
24 which allowed claims shall for the purposes of Bankruptcy Code section 1129(a)(9)(A) be  
25 considered administrative expenses allowed under Bankruptcy Code section 503(b) and 507(b),  
26 and which shall be payable from and have recourse to all prepetition and postpetition property of  
27 the Debtors and all proceeds thereof, including actions to recover property transferred pursuant to  
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1 Bankruptcy Code section 549, and subject to the entry of the Final Order, the proceeds of, and  
2 property that is recovered from or becomes unencumbered as a result of (whether by judgment,  
3 settlement or otherwise), all claims and causes of action arising under chapter 5 of the Bankruptcy  
4 Code or under any applicable state law of a similar nature (such claims and causes of action,  
5 “**Avoidance Actions**” and the proceeds thereof, “**Avoidance Action Proceeds**”), subordinate only  
6 to the Carve-Out and the administrative charge granted by the Ontario Superior Court of Justice  
7 (Commercial List) (the “**Canadian Court**”) in the proceedings (the “**Recognition Proceedings**”)   
8 under Part IV of the Companies’ Creditors Arrangement Act (Canada) (the “**CCAA**”) commenced  
9 by the Debtors in Canada in respect of certain Canadian-related professional fees, in an aggregate  
10 amount not to exceed CAD\$500,000 (the “**Administration Charge**”). Except as set forth in, or  
11 permitted by, this Interim Order, or otherwise permitted pursuant to an order of this Court, no other  
12 superpriority claims shall be granted or allowed in these Chapter 11 Cases.

13 6. **DIP Liens.**

14 (a) As security for the DIP Obligations, effective and automatically perfected  
15 upon the date of this Interim Order, and without the necessity of the execution, recordation of  
16 filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements,  
17 financing statements or other similar documents, or the possession or control by the DIP Agent or  
18 any DIP Lender of, or over, any DIP Collateral (as defined below), the DIP Agent, for the benefit  
19 of itself and the DIP Lenders, is hereby granted by the DIP Loan Parties continuing, valid, binding,  
20 enforceable, non-avoidable, and automatically and properly perfected security interests in and liens  
21 (collectively, the “**DIP Liens**”) upon all DIP Collateral as security for the prompt and complete  
22 performance and payment when due (whether at the stated maturity, by acceleration or otherwise)  
23 of all of the DIP Obligations.

24 (b) The term “**DIP Collateral**” means all assets and properties of each of the  
25 Debtors and their estates, of any kind or nature whatsoever, wherever located, whether tangible or  
26 intangible, real, personal or mixed, whether now owned or consigned by or to, or leased from or  
27 to, or hereafter acquired by, or arising in favor of, each of the Debtors (including under any trade  
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names, styles or derivations thereof), whether prior to or after the Petition Date, including, without limitation: (i) all Prepetition Collateral (including Cash Collateral); (ii) all intercompany claims, including, but not limited to, all Intercompany Superpriority Claims (as defined below); (iii) all money, cash and cash equivalents; (iii) all funds in any deposit accounts (excluding cash deposits that secure any outstanding letters of credit), securities accounts, commodities accounts, or other accounts (together with and all money, cash and cash equivalents, instruments and other property deposited therein or credited thereto from time to time); (iv) all accounts and other receivables (including those generated by intercompany transactions); (v) all contracts and contract rights; (vi) all instruments, documents and chattel paper; (vii) all securities (whether or not marketable); (viii) all goods, as-extracted collateral, furniture, machinery, equipment, inventory and fixtures; (ix) all real property interests; (x) all interests in leaseholds; (xi) all franchise rights; (xii) all patents, tradenames, trademarks, copyrights, licenses and all other intellectual property; (xiii) all general intangibles, tax or other refunds or insurance proceeds; (xiv) all equity interests, capital stock, limited liability company interests, partnership interests and financial assets; (xv) all investment property; (xvi) all supporting obligations; (xvii) all letters of credit and letter of credit rights; (xviii) all commercial tort claims; (xix) subject to the entry of the Final Order, all Avoidance Action Proceeds (but not avoidance actions themselves), (xx) all books and records (including, without limitation, customers lists, credit files, computer programs, printouts and other computer materials, and records); (xxi) to the extent not covered by the foregoing, all other goods, assets or properties of the Debtors, whether tangible, intangible, real, personal or mixed; and (xxii) all products, offspring, profits and proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, including any and all proceeds of any insurance (including any business interruption and property insurance), indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing.

(c) Subject in all cases to the terms of this Interim Order and the DIP Documents, the DIP Secured Parties shall be granted the following DIP Liens in respect of the DIP Facility:

- (1) First Priority Lien on Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable and fully-perfected first priority senior security interest in and lien upon all DIP Collateral that, as of the Petition Date, is unencumbered and not subject to any liens (including Petition Date Perfected Liens), which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, and (B) the Administration Charge.
- (2) Priming Lien on WCF Collateral. Upon the payment in full of the obligations under the Prepetition Working Capital Facility, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes WCF Collateral, which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (3) Priming Lien on Non-WCF Collateral. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes Non-WCF Collateral, *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge and (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (4) Lien on Intercompany Superpriority Claims. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority priming security interest in and lien on all claims in respect of intercompany transfers of proceeds from the DIP Facility or of Cash Collateral from any Debtor to NCU (the “*Intercompany Superpriority Claims*”), *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, and (C) Petition Date Perfected Liens (excluding any Prepetition Trisura Lien).

(d) To the fullest extent permitted by the Bankruptcy Code or applicable law, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other instrument or agreement that requires the consent or the payment of any fees or obligations to any governmental entity or non-governmental entity for the Debtors to pledge, grant, mortgage, sell, assign or otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral, shall have no force or effect with respect to the DIP Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Documents and this Interim Order.

7. **Use of DIP Collateral and Cash Collateral**

1 (a) The Debtors are hereby authorized to use the proceeds of DIP Facility and  
2 all Cash Collateral solely to the extent expressly permitted under the Approved Budget (subject to  
3 the Permitted Variances) and subject to the terms and conditions set forth in this Interim Order and  
4 any applicable DIP Documents. Except on the terms and conditions of this Interim Order, the  
5 Debtors shall be enjoined and prohibited from at any time using the Cash Collateral absent further  
6 order of the Court.

7 (b) Without the prior written consent of the Required DIP Lenders, the Debtors  
8 shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral  
9 (or enter into any binding agreement to do so), except as may be expressly permitted by this Interim  
10 Order and any applicable DIP Documents. All proceeds of DIP Collateral, whether from ordinary  
11 course collections, asset sales, debt or equity issuances, insurance recoveries, condemnation or  
12 otherwise, will be deposited and applied as required by this Interim Order and any applicable DIP  
13 Documents. The Debtors shall not transfer any cash, assets, properties or other DIP Collateral to  
14 any affiliate of the Debtors that is not a Debtor in these Chapter 11 Cases without the prior written  
15 consent of the Required DIP Lenders, in their sole discretion.

16 (c) Proceeds of the DIP Facility constitute postpetition assets of the Debtors,  
17 subject only to the Carve Out, Administrative Charge, DIP Liens, and adequate protection liens of  
18 the Prepetition Secured Parties, with the priorities set forth herein, and shall, for the avoidance of  
19 doubt, not be subject to any liens arising from prepetition claims against any of the Debtors,  
20 whether perfected prior to the Petition Date, after the Petition Date pursuant to section 546(b) of  
21 the Bankruptcy Code, or otherwise, regardless of where or how held. The Debtors may deposit  
22 proceeds of the DIP Facility into their existing bank accounts, and such proceeds shall not be  
23 subject to any liens or claims arising prepetition, including pursuant to chapter 108 of the Nevada  
24 Revised Statutes, whether or not eligible for perfection after the Petition Date, except for junior  
25 liens or claims of the Prepetition Secured Parties, as set forth herein. For the avoidance of doubt,  
26 to the extent of any proceeds of the DIP Facility deposited therein, no bank account of the Debtors  
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1 may be a “construction disbursement account” for purposes of chapter 108 of the Nevada Revised  
2 Statutes.

3 8. **Budget**

4 (a) *Initial Budget.* The Debtors have prepared and delivered to the DIP Lenders  
5 and the DIP Professionals an itemized thirteen-week cash flow forecast attached hereto as **Exhibit**  
6 **B** (the “*Initial Budget*,” as amended, replaced, supplemented or otherwise modified from time to  
7 time in accordance with the terms of this Interim Order and the DIP Documents, the “*Approved*  
8 *Budget*”). Except as otherwise provided herein or in the DIP Documents, the Debtors may only  
9 use Cash Collateral and the proceeds of the DIP Facility to fund payments benefitted by the Carve-  
10 Out and otherwise in accordance with the Approved Budget (subject to the Permitted Variances).

11 (b) *Proposed Budget; Budget Transition.* By no later than 12:00 p.m. (Pacific  
12 Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and  
13 continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the  
14 Debtors shall deliver to the DIP Lenders, DIP Professionals, and KfW an updated and  
15 supplemented forecast (a “*Proposed Budget*”) for the thirteen-week period commencing with the  
16 calendar week in which such Proposed Budget is delivered (the “*Budgeted Period*”); *provided,*  
17 *however,* that in no event shall the Budgeted Period extend past four weeks after the Maturity Date  
18 (as defined in the DIP Credit Agreement) of the DIP Facility. For the avoidance of doubt, if the  
19 Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts,  
20 disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for  
21 all weeks following the Maturity Date shall assume that the Debtors continue to operate in the  
22 ordinary course consistent with prior postpetition practices and that no sale of the Debtors’  
23 business will occur during such portion of the Budgeted Period. The Proposed Budget (including  
24 any subsequent revisions to any such Proposed Budget) shall become the Approved Budget  
25 effective five (5) business days after such submission (such date, the “*Budget Transition Date*”)  
26 unless the Debtors receive a written objection from the Required DIP Lenders (with e-mail from  
27 professionals acting on behalf of the Required DIP Lenders to the Debtors’ counsel being  
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sufficient) prior to 5:00 p.m. (Pacific Time) on the Budget Transition Date. If the Required DIP Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or modification to the Approved Budget or Approved Variance Report (defined below) within five (5) business days after the Required DIP Lenders' receipt thereof, then such Proposed Budget, amendment, supplement or modification shall be deemed acceptable to and approved by the DIP Lenders. In the event the Required DIP Lenders timely object to a Proposed Budget, the prior Approved Budget shall remain in full force and effect until any such Proposed Budget is approved by the Required DIP Lenders (with e-mail from the advisors acting on behalf of the Required DIP Lenders to the Debtors' counsel being sufficient). The consent of the Required DIP Lenders to any Proposed Budget or any Approved Budget shall not be construed as consent to the use of any Cash Collateral or proceeds of the DIP Facility after the occurrence of a Termination Event regardless of whether the aggregate funds shown on the Approved Budget have been expended. Until any Proposed Budget, amendment, supplement or modification has been approved (or is deemed approved in accordance with this paragraph) by the Required DIP Lenders, the Debtors shall be subject to and be governed by the terms of the Approved DIP Budget then in effect.

(c) *Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second Thursday following the Petition Date (the "**First Reporting Date**", which, for the avoidance of doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday thereafter (together with the First Reporting Date, each a "**Weekly Reporting Date**"), the Debtors shall provide to the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form and substance reasonably acceptable to the DIP Lenders (the "**Weekly Variance Report**"), setting forth in reasonable detail: (i) the intercompany transfers from Debtor entities to NCU on a Debtor-by-Debtor and an aggregate basis; (ii) the actual receipts of the Debtors on a line-by-line and aggregate basis (the "**Actual Receipts**") and the actual disbursements of the Debtors on a line-by-line and aggregate basis (such aggregate actual disbursements, the "**Actual Disbursements**"), in each case, during the applicable week ending on the Sunday preceding each such Weekly

1 Reporting Date (each such week, the “**Reporting Week**”); (iii) a comparison (whether positive or  
2 negative, expressed as a percentage) for the Reporting Week between (A) the Actual Receipts (and  
3 each line item thereof) for such Reporting Week to the amount of the Debtors’ projected receipts  
4 (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the  
5 Actual Disbursements (and each line item thereof) for such Reporting Week to the amount of the  
6 Debtors’ projected disbursements (and each line item thereof) set forth in the Approved Budget for  
7 such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to NCU  
8 to the amount of each such Debtor’s projected intercompany transfers to NCU set forth in the  
9 Approved Budget for such Reporting Week. In addition, by no later than 12:00 p.m. (Pacific Time)  
10 on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First  
11 Reporting Date, (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling  
12 Four-Week Testing Date shall be July 11, 2024) and each subsequent four-week period  
13 commencing from the beginning of the week in which the Petition Date occurs and ending on the  
14 Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing**  
15 **Period**”) the Debtors shall provide the DIP Lenders (and their advisors) and KfW (and its counsel)  
16 a report, in form and substance reasonably acceptable to the DIP Lenders (a “**Rolling Four-Week**  
17 **Variance Report**” and, together with the Weekly Variance Report, the “**Approved Variance**  
18 **Reports**”), setting forth in reasonable detail: (x) the aggregate Actual Receipts of the Debtors,  
19 aggregate Actual Disbursements of the Debtors, and aggregate intercompany transfers from each  
20 Debtor entity to NCU, in each case, during the applicable Rolling Four-Week Testing Period; and  
21 (y) a comparison (whether positive or negative, expressed as a percentage) detailing (1) the  
22 aggregate Actual Receipts (and each line item thereof) for such Rolling Four-Week Testing Period  
23 compared to the projected receipts (and each line item thereof) for such Rolling Four-Week Testing  
24 Period set forth in the Approved Budget for such Rolling Four-Week Testing Period; (2) the  
25 aggregate Actual Disbursements (and each line item thereof) for such Rolling Four-Week Testing  
26 Period compared to the projected disbursements (and each line item thereof) for such Rolling Four-  
27 Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period;  
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1 and (3) the aggregate intercompany transfers from each Debtor entity to NCU made by each such  
2 Debtor during such Rolling Four-Week Testing Period compared to the aggregate projected  
3 intercompany transfers from each such Debtor entity to NCU for such Rolling Four-Week Testing  
4 Period set forth in the Approved Budget for such Rolling Four-Week Testing Period.

5 (d) *Budget Testing; Permitted Variances.* During any Rolling Four-Week  
6 Testing Period, the Debtors shall not permit (1) total disbursements, minus (2) disbursements in  
7 respect of (i) interest, fees, and expenses in relation to the DIP Facility; (ii) Adequate Protection  
8 Obligations; (iii) DIP Professional Fees; and (iv) professional fees paid by the Debtors on behalf  
9 of themselves or any other party (the disbursements remaining after such subtractions, the “**Total**  
10 **Tested Disbursements**”) to be more than 120% of such Total Tested Disbursements set forth in the  
11 Approved Budget for such Rolling Four-Week Testing Period (collectively, the “**Permitted**  
12 **Variances**”). Additional disbursement variances, if any, from an Approved Budget, and any  
13 proposed amendments, supplements or modifications to an Approved Budget, shall be subject to  
14 the prior written approval of the Required DIP Lenders. For the avoidance of doubt, any reference  
15 to “written consent” or “written approval” hereunder shall include consent or approval granted by  
16 e-mail, including email from counsel to the DIP Lenders on behalf of the DIP Lenders.

17 9. **Reporting Requirements; Access to Records.** The Debtors shall provide (i) Akin,  
18 as counsel to the DIP Lenders, (ii) Milbank LLP (“**Milbank**”), as counsel to KfW, (iii) White &  
19 Case LLP, as counsel to Concord, (iv) Davis, Graham & Stubbs LLP, as counsel to Triple Flag (v)  
20 Cleary, Gottlieb, Steen & Hamilton LLP, as counsel to Pala, (vi) Bennett Jones LLP, as counsel to  
21 Mercuria, and (vii) Alvarez & Marsal Canada Inc., in its capacity as the Information Officer in the  
22 Recognition Proceedings, with all reporting and other information required to be provided to the  
23 DIP Agent under the DIP Documents. In addition to, and without limitation, whatever rights to  
24 access the DIP Secured Parties or KfW have under the DIP Documents, upon reasonable notice, at  
25 reasonable times during normal business hours, the Debtors shall permit representatives, agents  
26 and employees of the DIP Secured Parties and KfW to (x) have access to and inspect the Debtors’  
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assets, (y) examine the Debtors' books and records and (z) discuss the Debtors' affairs, finances and condition with the Debtors' officers and financial advisors.

10. **Adequate Protection for the Prepetition Secured Parties.** Pursuant to Bankruptcy Code sections 361, 363, and 364, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition Diminution in Value of such interests, the Prepetition Secured Parties are hereby granted the following (collectively, the "***Adequate Protection Obligations***"):

(a) ***Adequate Protection Liens.*** As security for and solely to the extent of any Diminution in Value, the Prepetition Secured Parties are hereby granted additional and replacement valid, binding, enforceable, non-avoidable and effective and automatically perfected postpetition security interests in, and liens on, as of the date of this Interim Order (the "***Adequate Protection Liens***"), subject in all cases to the priorities set forth on **Exhibit C** hereto, without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, all DIP Collateral.

(b) ***Adequate Protection Superpriority Claims.*** As further adequate protection, and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), the Prepetition Secured Parties are hereby granted allowed administrative expense claims in the Chapter 11 Cases against each of the Debtors to the extent of any Diminution in Value (the "***Adequate Protection Superpriority Claims***"). The Adequate Protection Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Action Proceeds). Subject to the terms of this Interim Order, the Adequate Protection Superpriority Claims shall have the same relative priorities as the Adequate Protection Liens (as set forth on **Exhibit C** hereto) and be subject to (i) the Carve-Out, (ii) the Administration Charge and (iii) the DIP Superpriority Claims. Except as set forth in this Interim Order, the Adequate Protection

1 Superpriority Claims shall not be junior to any other claims and shall have priority over all  
2 administrative expense claims against each of the Debtors, now existing or hereafter arising, of  
3 any kind or nature whatsoever, including, without limitation, administrative expense claims of the  
4 kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365,  
5 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and  
6 1114.

7 (c) *Fees and Expenses of the Prepetition Secured Parties.* As further adequate  
8 protection, the Debtors are authorized and directed to pay, without further Court order, reasonable  
9 and documented fees and expenses (the “**Adequate Protection Fees**”), whether incurred before or  
10 after the Petition Date, of the Prepetition Senior Secured Term Loan Agent, consisting of the  
11 following: (i) Milbank, as counsel to KfW; (ii) one Canadian counsel to KfW; (iii) one Nevada  
12 counsel to KfW; and (iv) one technical advisor to KfW; (collectively, the “**Prepetition Secured**  
13 **Parties’ Professionals**”) in accordance with the notice and review procedures set forth in  
14 paragraph 19 of this Interim Order.

15 (d) *Monthly Payments.* The Prepetition Senior Secured Term Loan Agent shall  
16 during the pendency of the Chapter 11 Cases, receive indefeasible payments in amounts equal to  
17 100% of the accrued and unpaid interest, whether accruing prior to, on or after the Petition Date,  
18 due to the Prepetition Senior Secured Term Loan Agent under the Prepetition Senior Secured Term  
19 Loan Documents (calculated at the applicable non-default rates) (the “**Adequate Protection**  
20 **Monthly Payments**” and, together with the Adequate Protection Fees, the “**Adequate Protection**  
21 **Payments**”), which shall be payable (i) in respect of payments relating to the Prepetition Senior  
22 Secured KfW Term Loan Obligations, in cash and (ii) in respect of payments relating to the  
23 Prepetition Senior Secured Term Loan A-2 Obligations, in kind; *provided* that in the event of a  
24 final determination that the Prepetition Senior Secured Term Loan Lenders are undersecured as of  
25 the Petition Date, payments received by the applicable undersecured Prepetition Senior Secured  
26 Term Loan Lender pursuant to this paragraph 10(d) may be recharacterized and applied as  
27 payments of principal.  
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(e) *Information Rights.* The Debtors shall contemporaneously provide the Prepetition Secured Parties with all reporting and information that is required to be provided to the DIP Lenders under the DIP Documents (as currently in effect, or pursuant to any additional requirements that may be added after the date hereof). The Debtors shall (a) provide the Prepetition Senior Secured Term Loan Agent and its advisors with copies of any material proposal, offer, indication of interest, or bid within two (2) business days of receipt, and (b) at the Prepetition Senior Secured Term Loan Agent's request, host a weekly call with the Prepetition Senior Secured Term Loan Agent and its advisors regarding the status of the Debtors' sale process. The Debtors shall provide the Prepetition Senior Secured Term Loan Agent and its advisors with any information reasonably requested by the Prepetition Senior Secured Term Loan Agent or its advisors in connection with any Proposed Budget, Approved Budget, or Weekly Variance Report within three (3) business days of such request. The Debtors shall conduct weekly status calls with KfW (and their technical advisor) on the status of the Underground Mine and shall respond timely to any reasonable request of KfW's technical advisor to provide information with respect to the status of the Underground Mine.

11. **Perfection of DIP Liens and Adequate Protection Liens.**

(a) This Interim Order shall be sufficient and conclusive evidence of the attachment, validity, perfection and priority of all liens and security interests granted under this Interim Order and the DIP Documents, including, without limitation, the DIP Liens and the Adequate Protection Liens, without the necessity of the execution, recordation or filing of any pledge, collateral or security agreements, mortgages, deeds of trust, lockbox or control agreements, financing statements, notations of certificates of title for titled goods, or any other document or instrument, or the taking of any other action (including, without limitation, entering into any deposit account control agreement or other act to take possession or control of any DIP Collateral, including Cash Collateral), to attach, validate, perfect or prioritize such liens and security interests, or to entitle the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition

1 Secured Parties to the priorities provided hereby and set forth on Exhibit C hereto (a “*Perfection*  
2 *Act*”).

3 (b) Without in any way limiting the automatically effective perfection of the  
4 liens granted under this Interim Order and the DIP Documents (including, without limitation, the  
5 DIP Liens and the Adequate Protection Liens), each of the Required DIP Lenders, the Prepetition  
6 Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the Prepetition TF  
7 Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, without any further  
8 consent of any party, is hereby authorized on a final basis, to execute, file or record, and such  
9 parties, as applicable, may require the execution, filing or recording, as each, in its sole discretion  
10 deems necessary, of such financing statements, mortgages, notices of lien and other similar  
11 documents to enable the Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
12 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
13 Junior Secured Term Loan Agent, as applicable, to further validate, perfect, preserve and enforce  
14 the DIP Liens or Adequate Protection Liens granted hereunder, as applicable, perfect in accordance  
15 with applicable law or to otherwise evidence the DIP Liens and/or the Adequate Protection Liens,  
16 as applicable, and all such financing statements, mortgages, notices and other documents shall be  
17 deemed to have been executed, filed or recorded as of the Petition Date; *provided, however*, that,  
18 notwithstanding any otherwise applicable law or regulation to the contrary, whether or not the  
19 Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent, the Prepetition Working  
20 Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition Junior Secured Term  
21 Loan Agent, as applicable, determine, in their sole discretion, to execute, file, record or otherwise  
22 effectuate any Perfection Act with respect to any liens or security interests granted under this  
23 Interim Order and the DIP Documents, such liens and security interests shall be deemed valid,  
24 perfected, allowed, enforceable, non-avoidable and not subject to objection, challenge, dispute,  
25 avoidance, recharacterization or subordination. The Debtors are hereby authorized and directed  
26 on a final basis to execute and deliver promptly upon demand to the Required DIP Lenders, the  
27 Prepetition Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the  
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1 Prepetition TF Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, as  
2 applicable, all such financing statements, notices and other documents as such parties may  
3 reasonably request. The Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
4 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition  
5 Junior Secured Term Loan Agent, as applicable, each in its discretion, may file a copy of this  
6 Interim Order as a financing statement with any filing or recording office or with any registry of  
7 deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or  
8 similar instruments, and in such event, the filing or recording office shall be authorized to file or  
9 record such copy of this Interim Order.

10 12. **Modification of Automatic Stay.** The automatic stay imposed by Bankruptcy  
11 Code section 362(a) is hereby modified, without application to or further order of this Court, to  
12 permit: (i) the Debtors to grant the DIP Liens and the DIP Superpriority Claims, and to perform  
13 such acts as the DIP Agent (acting at the direction of the Required DIP Lenders) and/or the  
14 Required DIP Lenders may request to assure the perfection and priority of the DIP Liens; (ii) the  
15 Debtors to incur all liabilities and obligations to the DIP Secured Parties as contemplated under  
16 this Interim Order and the DIP Documents; (iii) the Debtors to grant the Adequate Protection Liens  
17 and Adequate Protection Superpriority Claims and to perform such acts as the Prepetition Secured  
18 Parties may request to assure the perfection and priority of the Adequate Protection Liens; (iv) the  
19 Debtors to incur all liabilities and obligations to the Prepetition Secured Parties, including all  
20 Adequate Protection Superpriority Claims and other Adequate Protection Obligations, as  
21 contemplated under this Interim Order and the DIP Documents; (v) the Debtors to pay all amounts  
22 required under this Interim Order and the DIP Documents; (vi) the DIP Secured Parties and the  
23 Prepetition Secured Parties to retain and apply payments made in accordance with the terms of this  
24 Interim Order and the DIP Documents; (vii) subject in all respects to paragraph 18 of this Interim  
25 Order, the DIP Agent (acting at the direction of the Required DIP Lenders) and the applicable  
26 Prepetition Secured Parties to exercise, upon the occurrence of any Termination Event (as defined  
27 below), all rights and remedies provided for in this Interim Order, the DIP Documents or applicable  
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1 law; (viii) the Debtors to perform under this Interim Order and the DIP Documents and to take any  
2 and all other actions that may be necessary, required or desirable for the performance by the  
3 Debtors under this Interim Order and the DIP Documents and the implementation of the  
4 transactions contemplated hereunder and thereunder; and (ix) the implementation of all of the  
5 terms, rights, benefits, privileges, remedies and provisions of this Interim Order and the DIP  
6 Documents.

7 13. **Carve-Out.**

8 (a) *Carve-Out.* As used in this Interim Order, the “***Carve-Out***” means the sum  
9 of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section  
10 1930(a) of title 28 of the United States Code, together with interest, if any, under section 3717 of  
11 title 31 of the United States Code (without regard to the notice set forth in (iii) below); (ii) all  
12 reasonable fees and expenses up to \$50,000 incurred by a trustee under Bankruptcy Code section  
13 726(b) (without regard to the notice set forth in (iii) below); (iii) to the extent allowed, whether by  
14 interim order, procedural order or otherwise, all unpaid fees and expenses (the “***Allowed***  
15 ***Professional Fees***”) incurred by persons or firms retained by the Debtors pursuant to Bankruptcy  
16 Code sections 327, 328 or 363 (the “***Debtor Professionals***”) and the Creditors’ Committee  
17 pursuant to Bankruptcy Code sections 328 or 1103 (the “***Committee Professionals***” and, together  
18 with the Debtor Professionals, the “***Estate-Retained Professionals***”) at any time before or on the  
19 first calendar day following delivery of a Carve-Out Trigger Notice (as defined below), whether  
20 allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed  
21 Professional Fees of Estate-Retained Professionals, in an aggregate amount not to exceed \$750,000  
22 incurred after the first calendar day following delivery of the Carve-Out Trigger Notice, to the  
23 extent allowed, whether by interim order, procedural order or otherwise (the amounts set forth in  
24 this clause (iv) being the “***Post-Carve-Out Trigger Notice Cap***”). For purposes of the foregoing,  
25 the “***Carve-Out Trigger Notice***” shall mean a written notice delivered by e-mail by the DIP Agent  
26 (acting at the direction of the Required DIP Lenders and in accordance with the terms of this  
27 Interim Order), to the Debtors’ proposed bankruptcy counsel Allen Overy Shearman & Sterling  
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1 US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick and Sara Coelho),  
2 the U.S. Trustee, the Creditors' Committee, if any, and the Prepetition Secured Parties, which  
3 notice may be delivered following the occurrence and during the continuation of an Event of  
4 Default (as defined in the DIP Credit Agreement) and acceleration of the obligations under the DIP  
5 Facility or the occurrence of a Maturity Date (as defined in the DIP Credit Agreement), stating that  
6 the Post-Carve-Out Trigger Notice Cap has been invoked.

7 (b) *Carve-Out Reserves*. On the day on which a Carve-Out Trigger Notice is  
8 delivered (the "***Carve-Out Trigger Date***"), the Carve-Out Trigger Notice shall constitute a demand  
9 to the Debtors to utilize all cash on hand as of such date to fund a reserve in an amount equal to  
10 the then unpaid amounts of (i) the Allowed Professional Fees of Estate-Retained Professionals and  
11 (ii) the obligations accrued as of the Carve-Out Trigger Date with respect to clauses (i) and (ii) of  
12 the definition of Carve-Out set forth in paragraph 13(a) (the "***Additional Carve-Out Obligations***").  
13 The Debtors shall deposit and hold such amounts in a segregated account in a manner reasonably  
14 acceptable to the DIP Agent (acting at the direction of the Required DIP Lenders) or the Required  
15 DIP Lenders, and, following the Discharge of DIP Obligations, the Prepetition Senior Secured  
16 Term Loan Agent, in trust to pay such unpaid Allowed Professional Fees of Estate-Retained  
17 Professionals and Additional Carve-Out Obligations (the "***Pre-Carve-Out Trigger Notice***  
18 ***Reserve***") prior to the use of such reserve to pay any other claims. On the Carve-Out Trigger Date,  
19 after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining  
20 cash on hand as of such date to fund a reserve in an amount equal to the Post-Carve-Out Trigger  
21 Notice Cap (the "***Post-Carve-Out Trigger Notice Reserve***" and, together with the Pre-Carve-Out  
22 Trigger Notice Reserve, the "***Carve-Out Reserves***") prior to the use of such reserve to pay any  
23 other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the  
24 obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth in paragraph  
25 13(a) (the "***Pre-Carve-Out Amounts***"), but not, for the avoidance of doubt, the Post-Carve-Out  
26 Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice  
27 Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay any other  
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amounts (if owing) benefitted by the Carve-Out and then to the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) have been indefeasibly paid in full, in cash, and all commitments under the DIP Facility have been terminated (the “**Discharge of DIP Obligations**”), in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents and this Interim Order. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the “**Post-Carve-Out Amounts**”), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents and this Interim Order. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, if either of the Carve-Out Reserves are not funded in full in the amounts set forth in this paragraph 13(b), then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 13(b), prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent (in accordance with the terms of this Interim Order and the DIP Documents) shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a valid and perfected security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case

any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents. Further, notwithstanding anything to the contrary in this Interim Order, (x) disbursements by the Debtors from the Carve-Out Reserves shall not increase or reduce the DIP Obligations or constitute additional loans under the DIP Facility and (y) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out in respect of DIP Collateral or any recoveries thereon. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Documents or in any Prepetition Debt Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Obligations and the Prepetition Secured Obligations, and any and all other forms of adequate protection, liens or claims securing the DIP Obligations or the Prepetition Secured Obligations.

(c) *Payment of Allowed Professional Fees Prior to the Carve-Out Trigger Date.* Any payment or reimbursement made prior to the occurrence of the Carve-Out Trigger Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

(d) *No Direct Obligation to Pay Allowed Professional Fees.* None of the DIP Secured Parties or Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Estate-Retained Professional incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Estate-Retained Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) *Payment of Carve-Out on or After the Carve-Out Trigger Date.* Any payment or reimbursement made on or after the occurrence of the Carve-Out Trigger Date in respect of any Allowed Professional Fees incurred after the first business day following delivery by the DIP Agent (acting at the direction of the Required DIP Lenders) of the Carve-Out Trigger Notice shall permanently reduce the Post-Carve-Out Trigger Notice Cap on a dollar-for-dollar basis. Any funding of the Carve-Out under the DIP Facility shall be added to, and made a part of,

1 the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections  
2 granted under this Interim Order, the DIP Documents, the Bankruptcy Code and applicable law.

3 14. **Limitation on Charging Expenses Against Collateral.** Subject to entry of the  
4 Final Order (but retroactive to the Petition Date), and subject to the Carve-Out and the  
5 Administration Charge, no costs or expenses of administration of the Chapter 11 Cases, the  
6 Recognition Proceedings or any future proceeding that may result therefrom, including liquidation  
7 in bankruptcy or other proceedings under the Bankruptcy Code or the CCAA, shall be charged  
8 against or recovered from the DIP Collateral or the Prepetition Collateral, the DIP Secured Parties  
9 or the Prepetition Secured Parties pursuant to Bankruptcy Code sections 506(c) and 105(a), or any  
10 similar principle of law or equity, without the prior written consent of the DIP Secured Parties and  
11 the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other  
12 action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties.

13 15. **No Marshaling/Application of Proceeds.** Subject to entry of the Final Order, the  
14 DIP Agent and the Prepetition Secured Parties shall be entitled to apply the payments or proceeds  
15 of the DIP Collateral and the Prepetition Collateral, as applicable, in accordance with the  
16 provisions of the Interim Order or the Final Order, as applicable, the DIP Documents and the  
17 Prepetition Debt Documents, as applicable, and in no event shall the DIP Secured Parties or any  
18 of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other  
19 similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral.

20 16. **Equities of the Case.** Subject to entry of the Final Order (but retroactive to the  
21 Petition Date), (i) the Prepetition Secured Parties shall be entitled to all of the rights and benefits  
22 of Bankruptcy Code section 552(b) and (ii) the Debtors shall not invoke the “equities of the case”  
23 exception under Bankruptcy Code section 552(b) with respect to the proceeds, products, offspring  
24 or profits of any of the Prepetition Collateral.

25 17. **Termination Events.** The occurrence of any of the following shall constitute a  
26 “***Termination Event***”: (i) the occurrence of an Event of Default (as defined in the DIP Documents)  
27 to the extent not waived by the Required DIP Lenders or subject to a forbearance or similar  
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1 agreement with the Required DIP Lenders; (ii) the Debtors' failure to comply in any material  
2 respect with any provision of this Interim Order unless waived by the applicable lenders; or (iii)  
3 the occurrence of the Maturity Date (as defined in the DIP Documents).

4 18. **Remedies Upon a Termination Event.**

5 (a) Upon the occurrence of the Termination Event, the DIP Agent (acting at the  
6 direction of the Required DIP Lenders) shall be entitled to declare (A) all DIP Obligations due and  
7 payable without presentment, demand or protest or other notice of any kind, all of which are  
8 expressly waived by the Debtors, (B) the termination, reduction or restriction of all future  
9 commitments to the Borrower under the DIP Facility to the extent any such commitment remains  
10 (including, for the avoidance of doubt, any commitment to fund the DIP Facility) but without  
11 affecting the DIP Liens and DIP Obligations, (C) the termination of the DIP Facility and any DIP  
12 Documents as to any future obligation of the DIP Secured Parties, but without affecting any of the  
13 DIP Liens or any DIP Obligation, (D) the termination, reduction or restriction on the ability of the  
14 Debtors to use any Cash Collateral and the proceeds of the DIP Facility (any such declaration made  
15 by the DIP Agent to counsel to the Debtors, counsel to the applicable Prepetition Secured Parties,  
16 the U.S. Trustee and counsel to the Creditors' Committee, if any, (which may be made by e-mail),  
17 a "***Termination Declaration***," and the date which is the earliest to occur of any such Termination  
18 Declaration and the Maturity Date being herein referred to as the "***Termination Declaration***  
19 ***Date***"). The DIP Agent shall provide any Termination Declaration to the Debtors' lead  
20 restructuring counsel, the Creditors' Committee, if any, the U.S. Trustee, and Milbank, as counsel  
21 to KfW.

22 (b) The Debtors, the Committee (if appointed), and/or any party in interest shall  
23 be entitled to seek an emergency hearing before the Court within four (4) business days after the  
24 delivery of a Termination Declaration (such period being the "***Remedies Notice Period***"), for the  
25 sole purpose of contesting whether a Termination Event (other than with respect to the Maturity  
26 Date) has occurred or is continuing or for the contested use of Cash Collateral (a "***Stay***  
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1 ***Enforcement Motion***”).<sup>5</sup> The Debtors shall be entitled to continue to use Cash Collateral in  
2 accordance with the terms of this Interim Order and the DIP Documents during any Remedies  
3 Notice Period only to make payroll and fund critical expenses necessary to preserve the Prepetition  
4 Collateral, in each case, in accordance with the terms of the Approved Budget and this Interim  
5 Order, but shall not be permitted to use Cash Collateral following any Remedies Notice Period  
6 absent further order of the Court approving such use (and only to the extent so approved). Unless  
7 the Court has determined that a Termination Event has not occurred and/or is not continuing, or  
8 the Court orders otherwise, the automatic stay, as to the DIP Secured Parties shall automatically  
9 be terminated at the end of the Remedies Notice Period without further notice, order, or any further  
10 action in the Chapter 11 Cases or the Recognition Proceedings and the DIP Agent (acting at the  
11 direction of the Required DIP Lenders) shall be permitted to exercise any rights and remedies  
12 against the DIP Collateral available to the DIP Secured Parties under this Interim Order, the DIP  
13 Documents and applicable non-bankruptcy law without any further order of or application or  
14 motion to the Court, including, but not limited to, any rights to setoff against deposits and financial  
15 assets of the Debtors and to foreclose on all or any portion of the DIP Collateral, in each case,  
16 subject to the Carve-Out, the Administration Charge and any Prepetition Permitted Liens;  
17 *provided, however*, that the Required DIP Lenders shall consult with the Prepetition Secured Term  
18 Loan Agent in advance of exercising any remedies or taking action in connection with any of the  
19 DIP Collateral and shall provide the Prepetition Senior Secured Term Loan Agent with five (5)  
20 Business Days’ notice in advance of taking such actions; which period may be waived by the  
21 Prepetition Senior Secured Term Loan Agent, in its reasonable discretion.

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26 <sup>5</sup> If a hearing to consider a Stay Enforcement Motion is requested to be heard before the end of the Remedies Notice  
27 Period but is scheduled for a later date by the Court, the Remedies Notice Period shall automatically be extended  
28 to the date of such hearing, but in no event later than ten (10) business days after delivery of the Termination  
Declaration or at such other date that may be agreed to by the parties after good faith negotiations.



1           19.    **Fees and Expenses of DIP Professionals and Prepetition Secured Parties'**  
2    **Professionals.**

3           (a)    The payment of all DIP Professional Fees and Adequate Protection Fees  
4 hereunder shall not be subject to (i) further application to or approval of the Court, (ii) allowance  
5 or review by the Court or (iii) the U.S. Trustee's fee guidelines, and no attorney or advisor to the  
6 DIP Secured Parties or the Prepetition Secured Parties shall be required to file an application  
7 seeking compensation for services or reimbursement of expenses with the Court; *provided,*  
8 *however,* that any time the DIP Professionals (other than DIP Agent Counsel) seek payment of  
9 fees and expenses from the Debtors from and after the Petition Date but prior to the effective date  
10 of any chapter 11 plan,<sup>6</sup> each such party or professional shall provide summary copies of its  
11 invoices (which shall not be required to contain time entries, and which may be redacted or  
12 modified to the extent necessary to delete any information subject to the attorney-client privilege,  
13 any information constituting attorney work product or any other confidential information, and the  
14 provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any  
15 benefits of the attorney work product doctrine) to the Debtors' counsel, the U.S. Trustee, and lead  
16 counsel to the Creditors' Committee, if any (collectively, the "***Invoice Review Parties***"). Any  
17 objections raised by any Invoice Review Party with respect to such invoices must (x) be in writing  
18 (email from such party or their counsel being sufficient) (y) state with particularity the grounds for  
19 such objection and (z) be submitted to the affected professional(s) within ten (10) calendar days  
20 after delivery of such invoices to the Invoice Review Parties (such ten (10) calendar day period,  
21 the "***Invoice Review Period***"). If no written objection is received prior to the expiration of the  
22 Invoice Review Period from the Invoice Review Parties, the Debtors shall pay such invoices within  
23 two (2) calendar days following the expiration of the Invoice Review Period. If an objection is  
24 received within the Invoice Review Period from the Invoice Review Parties, the Debtors shall

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26           <sup>6</sup> For the avoidance of doubt, nothing contained in this paragraph 19 shall prevent the DIP Secured Parties or KfW  
27 from seeking payment from the Debtors of professional fees and expenses incurred prior to the Petition Date in  
28 accordance with the terms of this Interim Order and the DIP Documents.



1 promptly pay the undisputed amount of the invoice, and the disputed portion of such invoice shall  
2 not be paid until such dispute is resolved by agreement between the affected party or  
3 professional(s) and the objecting party or by order of this Court. Any hearing to consider such an  
4 objection to the payment of any fees, costs or expenses set forth in a professional fee invoice  
5 hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject  
6 of such objection.

7 (b) Notwithstanding anything contained in this Interim Order to the contrary,  
8 any and all payments, fees, costs, expenses and other amounts paid at any time by any of the  
9 Debtors to the DIP Secured Parties or the Prepetition Secured Parties (including such parties'  
10 respective professionals), as applicable, pursuant to the requirements of this Interim Order or the  
11 DIP Documents, whether prior to, on or after the Petition Date, shall be non-refundable and  
12 irrevocable, are hereby approved (and to the extent paid prior to entry of the Interim Order, ratified  
13 in full), and shall not be subject to any challenge, objection, defense, claim or cause of action of  
14 any kind or nature whatsoever, including, without limitation, avoidance (whether under Chapter 5  
15 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform  
16 Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)),  
17 reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable,  
18 contractual, or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling,  
19 surcharge or recovery or any other cause of action, whether arising under the Bankruptcy Code,  
20 applicable non-bankruptcy law or otherwise, by any person or entity.

21 20. **Limitation on Use of DIP Facility Proceeds, DIP Collateral and Cash**  
22 **Collateral.**

23 (a) Notwithstanding anything to the contrary set forth in this Interim Order,  
24 none of the DIP Facility, the DIP Collateral, the Prepetition Collateral or the proceeds thereof,  
25 including Cash Collateral, or the Carve-Out may be used: (i) to investigate (except as expressly  
26 provided herein), initiate, prosecute, join or finance the initiation or prosecution of any claim,  
27 counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense or other  
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1 litigation of any type (A) against any of the DIP Secured Parties or the Prepetition Secured Parties  
2 (in each case, in their capacities as such) and each of their respective affiliates, officers, directors,  
3 employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or  
4 successors, with respect to any transaction, occurrence, omission, action, or other matter (including  
5 formal discovery proceedings in anticipation thereof), including, without limitation, any so-called  
6 “lender liability” claims and causes of action, or seeking relief that would impair the rights and  
7 remedies of the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their  
8 capacities as such) under this Interim Order, the DIP Documents or the Prepetition Debt  
9 Documents, as applicable, to the extent permitted or provided hereunder, including, without  
10 limitation, for the payment of any services rendered by any Estate-Retained Professional in  
11 connection with the assertion of or joinder in any claim, counterclaim, action, proceeding,  
12 application, motion, objection, defense or other contested matter, the purpose of which is to seek,  
13 or the result of which would be to obtain, any order, judgment, determination, declaration or similar  
14 relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured  
15 Parties to recover on the DIP Collateral or the Prepetition Collateral (as applicable), as provided  
16 for herein, or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition  
17 Secured Parties related to the DIP Obligations or the Prepetition Secured Obligations, as  
18 applicable, (B) seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the DIP  
19 Liens, DIP Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens or the  
20 Prepetition Secured Obligations or (C) for monetary, injunctive or other affirmative relief against  
21 the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their capacities as such)  
22 that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties  
23 to assert or enforce any lien, claim, right or security interest or to realize or recover on the DIP  
24 Obligations or the Prepetition Secured Obligations to the extent permitted or provided hereunder;  
25 (ii) for objecting to or challenging in any way the legality, validity, priority, perfection or  
26 enforceability of the claims, liens or interests (including the Prepetition Liens) held by or on behalf  
27 of each of the Prepetition Secured Parties related to the Prepetition Secured Obligations, or by or  
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on behalf of the DIP Secured Parties related to the DIP Obligations; (iii) for asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Liens, the DIP Superpriority Claims, the DIP Obligations, the Prepetition Liens or the Prepetition Secured Obligations; or (iv) for prosecuting an objection to, contesting in any manner or raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of (A) any of the DIP Liens, the DIP Superpriority Claims, or any other rights or interests of the DIP Secured Parties related to the DIP Obligations or the DIP Liens or (B) any of the Prepetition Liens, Prepetition Secured Obligations or any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Secured Obligations; *provided* that no more than \$50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by the Creditors' Committee (if any) solely to investigate (but not seek formal discovery or commence any challenge, objection or prosecute any claim or cause of action relating to) the foregoing matters with respect to the Prepetition Liens or the Prepetition Secured Obligations within the Challenge Period (as defined below) (the "***Investigation Budget***").

(b) Any fees and expenses of the Committee Professionals in connection with the investigation of the matters described in paragraph 20(a) of this Interim Order in excess of the Investigation Budget shall not be entitled to administrative expense priority pursuant to section 503(b) of the Bankruptcy Code or otherwise.

21. **Effect of Stipulations on Third Parties.**

(a) The Debtors' acknowledgments, stipulations, admissions, agreements, waivers and releases set forth in this Interim Order shall be binding on the Debtors, their respective estates, representatives, successors and assigns upon entry of this Interim Order and the Debtors shall be deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date.

(b) The acknowledgments, stipulations, admissions, agreements, waivers and releases contained in this Interim Order shall also be binding upon all other parties in interest,

1 including the Creditors' Committee or non-statutory committees appointed or formed in these  
2 Chapter 11 Cases (if any) and any other person or entity seeking to act on behalf of the Debtors'  
3 estates, including any chapter 7, chapter 11 trustee or examiner appointed or elected for any of the  
4 Debtors in these Chapter 11 Cases or any Successor Cases, and each of their respective successors  
5 and assigns, in all circumstances and for all purposes, unless: (i) any such party, having obtained  
6 requisite standing, timely and properly commences and serves an adversary proceeding or  
7 contested matter (subject to the limitations contained herein) (A) objecting to or challenging the  
8 validity, perfection, priority, scope, extent or enforceability of the Prepetition Funded Debt Liens  
9 or the Prepetition Secured Obligations, (B) objecting to or alleging any basis to impair, restrict,  
10 deny or otherwise challenge the right of any of the Prepetition Secured Parties to credit bid, in  
11 whole or in part, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations under  
12 Bankruptcy Code section 363(k) or otherwise or (C) otherwise asserting or prosecuting any  
13 Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or  
14 defenses (collectively, the "**Challenges**") against the Prepetition Secured Parties in connection  
15 with any matter related to the Prepetition Collateral, the Prepetition Funded Debt Liens or the  
16 Prepetition Secured Obligations by no later than (1) with respect to any Creditors' Committee, the  
17 date that is 45 days after the later of (a) its appointment in the Chapter 11 Cases and (b) entry of  
18 the Final Order and (2) with respect to all other parties in interest, no later than the date that is 45  
19 days after the entry of this Interim Order (the time period established by the foregoing clauses (1)  
20 and (2) the "**Challenge Period**"; *provided* that in the event that, prior to the expiration of the  
21 Challenge Period, (x) these Chapter 11 Cases are converted to chapter 7 or (y) a chapter 11 trustee  
22 is appointed in these Chapter 11 Cases, then, in each such case, the Challenge Period shall be  
23 extended for a period of 10 days solely with respect to any Trustee, commencing on the occurrence  
24 of either of the events described in the foregoing clauses (x) and (y); and (ii) an order is entered  
25 by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff  
26 sustaining any such challenge in any such duly filed adversary proceeding or contested matter.  
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(c) If no such adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, without further order of this Court: (i) the Prepetition Secured Obligations shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, “claim” (as defined by Bankruptcy Code section 101(5)), impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these Chapter 11 Cases and any Successor Cases, if any; (ii) the Prepetition Funded Debt Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected and of the priority specified in paragraphs F.1(c), F.2(c), F.3(c), and F.4(c), not subject to setoff, subordination, defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment or recovery; and (iii) the Prepetition Secured Obligations, the Prepetition Funded Debt Liens on the Prepetition Collateral and the Prepetition Secured Parties (solely in their capacities as such) shall not be subject to any other or further challenge and all parties in interest shall be forever enjoined and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period).

(d) If any such adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, (i) the stipulations, admissions, agreements, waivers and releases contained in this Interim Order shall nonetheless remain binding and preclusive on the Creditors’ Committee (if any) and any other party in these Chapter 11 Cases, including any Trustee, except as to the party (or parties) that timely initiated such adversary proceeding or contested matter and, with respect to such party (or parties), solely as to any stipulations, admissions, agreements, waivers and releases that are specifically and expressly challenged in such adversary proceeding or contested matter and (ii) any Claims and Defenses not brought in such adversary proceeding or contested matter shall be forever barred; *provided* that, if and to the extent any

1 challenges to a particular stipulation, admission, agreement, waiver or release are withdrawn,  
2 denied or overruled by a final non-appealable order, such stipulation, admission, agreement,  
3 waiver and/or release also shall be binding on the Debtors' estates and all parties in interest.

4 (e) Nothing in this Interim Order vests or confers on any person (as defined in  
5 the Bankruptcy Code), including any Creditors' Committee (if any), standing or authority to pursue  
6 any cause of action belonging to the Debtors or their estates, including, without limitation, any  
7 challenge with respect to the Prepetition Debt Documents, the Prepetition Funded Debt Liens or  
8 the Prepetition Secured Obligations.

9 22. **Release.** Subject to the rights and limitations set forth in paragraphs 20 and 21 of  
10 this Interim Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf  
11 of each of their predecessors, their successors and assigns shall, to the maximum extent permitted  
12 by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish,  
13 irrevocably waive and discharge each of the DIP Secured Parties, and subject to the entry of the  
14 Final Order, the Prepetition Secured Parties (in each case, in their capacities as such) and each of  
15 their respective former, current or future officers, employees, directors, agents, representatives,  
16 owners, members, partners, affiliated investment funds or investment vehicles, managed, advised  
17 or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers,  
18 financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys,  
19 affiliates and predecessors in interest, each in their capacity as such, of and from any and all claims,  
20 demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and  
21 obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses,  
22 damages, injuries, attorneys' fees, costs, expenses or judgments of every type, whether known,  
23 unknown, asserted, unasserted, suspected unsuspected, accrued, unaccrued, fixed, contingent,  
24 pending or threatened including, without limitation, all legal and equitable theories of recovery,  
25 arising under common law, statute or regulation or by contract, of every nature and description  
26 that exist on the date hereof solely with respect to or relating to the DIP Liens, the DIP  
27 Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens and the Prepetition  
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Secured Obligations, as applicable, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties.

23. **Credit Bidding.**

(a) Consistent with Bankruptcy Code section 363(k) and applicable law, the DIP Agent (acting at the direction of the Required DIP Lenders) and each DIP Lender (in any case, either directly or through one or more acquisition vehicles), shall have the right to credit bid for all or any portion of the DIP Collateral, as applicable, up to the full amount of any DIP Superpriority Claims, as part of any sale of Debtors’ assets (in whole or in part), including without limitation, sales occurring pursuant to (i) Bankruptcy Code section 363, (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129 or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725 (each, a “***Sale Transaction***”), *provided*, that, until payment in full of the obligations under the Prepetition Working Capital Facility, the rights of the DIP Agent and each DIP Lender to credit bid on any DIP Collateral that constitutes WCF Collateral shall be subject to the right of the Prepetition Working Capital Purchaser to credit bid for all or any portion of the WCF Collateral, as applicable, up to the full amount of any Prepetition Working Capital Obligations as part of any Sale Transaction. The DIP Agent shall have the absolute right to assign, sell or otherwise dispose of its right to credit bid in connection with any credit bid by or on behalf of the DIP Lenders to any acquisition entity or joint venture formed in connection with such bid.

(b) The Prepetition Secured Parties’ rights to credit bid for all or a portion of the Prepetition Collateral as part of any Sale Transaction are fully preserved, subject in all respects to (i) payment in full in cash of all DIP Obligations and (ii) the terms and conditions of this Interim Order and the applicable Prepetition Debt Documents, including the lien and claim priorities set forth herein and therein.



1           24.     **Interim Order Governs.** In the event of any inconsistency between the provisions  
2 of this Interim Order and any DIP Documents, the provisions of this Interim Order shall govern.

3           25.     **Binding Effect; Successors and Assigns.** The DIP Documents and the provisions  
4 of this Interim Order, including all findings herein, shall be binding upon all parties in interest in  
5 these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition  
6 Secured Parties, the Creditors' Committee (if any), the Debtors and their respective successors and  
7 assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate  
8 of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104 or any  
9 other fiduciary appointed as a legal representative of any of the Debtors or with respect to the  
10 property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured  
11 Parties and the Prepetition Secured Parties; *provided*, that, except to the extent expressly set forth  
12 in this Interim Order, the Prepetition Secured Parties shall have no obligation to permit the use of  
13 Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person  
14 appointed for the estates of the Debtors.

15           26.     **Limitation of Liability.** In determining to make any loan under the DIP  
16 Documents, permitting the use of Cash Collateral or exercising any rights or remedies as and when  
17 permitted pursuant to this Interim Order, the DIP Documents or the Prepetition Debt Documents,  
18 the DIP Secured Parties and the Prepetition Secured Parties (in each case, solely in their capacities  
19 as such) shall not be deemed to be in control of the operations of the Debtors or to be acting as a  
20 "responsible person" or "owner or operator" with respect to the operation or management of the  
21 Debtors or their respective business (as such terms, or any similar terms, are used in the United  
22 States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§  
23 9601 *et seq.* as amended, or any similar federal or state statute), nor shall they owe any fiduciary  
24 duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint  
25 venture or partnership with any of the Debtors. Furthermore, nothing in this Interim Order, the  
26 DIP Documents or the Prepetition Debt Documents shall in any way be construed or interpreted  
27 to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties  
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1 of any liability for any claims arising from the prepetition or postpetition activities of any of the  
2 Debtors and their direct or indirect subsidiaries.

3 27. **Proofs of Claim.** Notwithstanding anything to the contrary contained in any prior  
4 or subsequent order of the Court, including, without limitation, any order establishing a deadline  
5 for the filing of proofs of claim or requests for payment of administrative expenses under  
6 Bankruptcy Code section 503(b), (i) the Prepetition Secured Parties shall not be required to file  
7 any proof of claim or request for payment of administrative expenses with respect to any of the  
8 Prepetition Secured Obligations or the Adequate Protection Obligations and (ii) the DIP Secured  
9 Parties shall not be required to file any proof of claim or request for payment of administrative  
10 expenses with respect to any DIP Obligations. The failure to file any such proof of claim or request  
11 for payment of administrative expenses shall not affect the validity, priority or enforceability of  
12 any of the Prepetition Debt Documents, the DIP Documents or of any other indebtedness, liabilities  
13 or obligations arising at any time thereunder or under this Interim Order, or prejudice or otherwise  
14 adversely affect the Prepetition Secured Parties' or the DIP Secured Parties' rights, remedies,  
15 powers or privileges under any of the Prepetition Debt Documents, the DIP Documents, this  
16 Interim Order or applicable law. The applicable Prepetition Secured Parties and DIP Secured  
17 Parties may (but are not required to) in their discretion file (and amend and/or supplement)  
18 applicable proofs of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or any  
19 successor cases for any claim allowed herein, and any such proof of claim may (but is not required  
20 to) be filed in the Debtors' lead Chapter 11 Case *In re* [ ], Case No. [ ] ([ ]) as one  
21 consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim  
22 against each Debtor. The provisions set forth in this paragraph 27 are intended solely for the  
23 purpose of administrative convenience and shall not affect the substantive rights of any party-in-  
24 interest or their respective successors-in-interest.

25 28. **Insurance.** The Debtors shall continue to maintain all property, operational and  
26 other insurance as required and as specified in the DIP Documents (which shall be deemed satisfied  
27 if such insurance as required under the Prepetition Secured Term Loan Credit Agreement remains  
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1 in place). The Debtors shall provide the DIP Agent (for distribution to the DIP Lenders) with  
2 commercially reasonable evidence of such insurance upon a request to counsel for the Debtors  
3 from the DIP Agent (acting at the direction of the Required DIP Lenders). Upon entry of this  
4 Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of  
5 itself and the DIP Lenders) is, and is deemed to be, without any further action or notice, named as  
6 additional insured and loss payee on each insurance policy maintained by the Debtors that in any  
7 way relates to the DIP Collateral (including all property damage and business interruption  
8 insurance policies of the Debtors, whether expired, currently in place or to be put in place in the  
9 future), and shall act in that capacity and distribute any proceeds recovered or received in respect  
10 of any such insurance policies.

11 29. **Protection of Lenders' Rights.**

12 (a) Except as expressly permitted in this Interim Order or the DIP Documents,  
13 in the event any person or entity that holds a lien on or security interest in DIP Collateral that is  
14 junior or otherwise subordinate to the DIP Liens receives any DIP Collateral or proceeds of DIP  
15 Collateral, in each case, that is subject to such junior lien, or receives any payment on account of  
16 such junior lien or security interest in the DIP Collateral on account of such junior lien (whether  
17 in connection with the exercise of any right or remedy (including setoff), any payment or  
18 distribution from the Debtors, mistake or otherwise) prior to the Payment in Full<sup>7</sup> of all DIP  
19 Obligations, such person or entity shall be deemed to have received, and shall hold, any such  
20 payment or proceeds of DIP Collateral in trust for the benefit of the DIP Secured Parties, and shall  
21 immediately turn over all such proceeds to the DIP Agent, for the benefit of itself and the DIP  
22 Lenders, in the same form as received, with any necessary endorsements, for application in  
23 accordance with this Interim Order and the DIP Documents; *provided, however*, that until the  
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25 7 For purposes hereof, the term "Paid in Full" or "Payment in Full" means, with respect to the DIP Obligations or  
26 any Prepetition Secured Obligations (as the case may be), the irrevocable and indefeasible payment in full in cash  
27 of all DIP Obligations or such Prepetition Secured Obligations (as the case may be), other than contingent  
28 indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all  
commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated,  
cancelled and discharged.

1 Payment in Full of the Prepetition Working Capital Obligations, upon receipt by the DIP Agent or  
2 any DIP Lender of any such payment or proceeds from DIP Collateral that constitutes WCF  
3 Collateral, the DIP Agent or the applicable DIP Lender shall segregate and hold in trust such  
4 payment or proceeds for the benefit of, and turn over all such payments and proceeds to, the  
5 Prepetition Working Capital Purchaser in the same form as received, with any necessary  
6 endorsements, for application in accordance with this Interim Order, the DIP Documents and the  
7 Prepetition Debt Documents.

8 (b) Other than with respect to the Carve Out, the Administration Charge and  
9 Petition Date Perfected Liens, and as otherwise expressly provided in this Interim Order and/or  
10 the DIP Documents (including Exhibit C hereto), no claim or lien having a priority senior to or  
11 *pari passu* with those granted to any of the DIP Secured Parties or the Prepetition Secured Parties  
12 by this Interim Order shall be granted or permitted while any of the DIP Obligations or the  
13 Prepetition Secured Obligations, respectively, remains outstanding. Except as expressly provided  
14 in this Interim Order and the DIP Documents (including Exhibit C hereto), each of the DIP Liens,  
15 the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection  
16 Superpriority Claims, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations:  
17 (i) shall not be made junior or subordinated to or *pari passu* with (A) any lien, security interest or  
18 claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases,  
19 whether under Bankruptcy Code section 364(d) or otherwise, (B) any lien that is avoided and  
20 preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 or  
21 otherwise, (C) any lien arising after the Petition Date including, without limitation, any lien or  
22 security interests granted in favor of any federal, state, municipal or other domestic or foreign  
23 governmental unit (including any regulatory body), commission, board or court for any liability of  
24 the Debtors or (D) any intercompany or affiliate lien or claim; and (ii) shall not be subject to  
25 Bankruptcy Code sections 510, 549, 550 or 551 and, subject to entry of the Final Order,  
26 Bankruptcy Code section 506(c).

1 (c) In the event this Interim Order or any provision hereof is vacated, reversed  
2 or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or  
3 Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur,  
4 reversal or modification of this Interim Order shall be governed in all respects by the original  
5 provisions of this Interim Order, including entitlement to all rights, remedies, privileges and  
6 benefits granted herein, and the DIP Secured Parties and the Prepetition Secured Parties shall be  
7 entitled to the protections afforded in Bankruptcy Code sections 363(m) and 364(e), as applicable,  
8 with respect to all uses of the DIP Collateral (including all Cash Collateral and all Prepetition  
9 Collateral), all DIP Obligations and all Adequate Protection Obligations.

10 (d) Subject to the Carve-Out, the Administration Charge and Petition Date  
11 Perfected Liens, unless and until all DIP Obligations and Prepetition Secured Obligations are Paid  
12 in Full and all commitments to extend credit under the DIP Facility are terminated, the Debtors  
13 irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (i) except  
14 as permitted under the DIP Documents, and with the prior written consent of the Required DIP  
15 Lenders and the Prepetition Senior Secured Term Loan Agent, (A) any modification, stay, vacatur  
16 or amendment of this Interim Order, (B) a priority claim for any administrative expense, secured  
17 claim or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind  
18 or nature whatsoever, without limitation, any administrative expense of the kind specified in  
19 Bankruptcy Code sections 503(b), 507(a) or 507(b)) in any of the Chapter 11 Cases, equal or  
20 superior to the DIP Superpriority Claims and the Adequate Protection Superpriority Claims or (C)  
21 any other order allowing the use of DIP Collateral; (ii) except as permitted under the DIP  
22 Documents, any lien on any of the DIP Collateral (including all Prepetition Collateral) with priority  
23 equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Funded Debt  
24 Liens; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents  
25 and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant  
26 to Bankruptcy Code section 546(h) (or other return of goods on account of any prepetition  
27 indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the  
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Chapter 11 Cases without the consent of the Required DIP Lenders; (vi) an order appointing a chapter 11 trustee in any of the Chapter 11 Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Chapter 11 Cases.

(e) Notwithstanding any order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise entered at any time, (i) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and any other administrative claims granted pursuant to this Interim Order, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order and the DIP Documents until such time as all DIP Obligations and Adequate Protection Obligations are Paid in Full; and (ii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (i) above.

(f) Except as expressly provided in this Interim Order and the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, shall maintain their priority as provided in this Interim Order, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission, or (ii) the entry of an order approving the sale of any DIP Collateral (including any Prepetition Collateral) pursuant to Bankruptcy Code section 363(b), except to the extent that such order provides for the attachment of DIP Liens or prepetition liens to the proceeds of such sale) or (iii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases and any Successor Cases.

1           30.     **Reservation of Rights of the DIP Secured Parties and Prepetition Secured**  
2     **Parties.** Except as otherwise expressly set forth in this Interim Order, the entry of this Interim  
3     Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or  
4     otherwise impair, as applicable: (i) any of the rights of any of the Prepetition Secured Parties to  
5     seek any other or supplemental relief in respect of the Debtors including the right to seek additional  
6     adequate protection; (ii) any of the rights of the DIP Secured Parties or the Prepetition Secured  
7     Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the  
8     right of any of the DIP Secured Parties or the Prepetition Secured Parties to (A) request  
9     modification of the automatic stay of Bankruptcy Code section 362, (B) request dismissal of any  
10    of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7 or  
11    appointment of a chapter 11 trustee or examiner with expanded powers in any of the Chapter 11  
12    Cases or (C) seek to propose, subject to the provisions of Bankruptcy Code section 1121, a chapter  
13    11 plan or plans; or (iii) any other rights, claims or privileges (whether legal, equitable or  
14    otherwise) of any of the DIP Secured Parties or the Prepetition Secured Parties. The delay in or  
15    failure of the DIP Secured Parties and/or the Prepetition Secured Parties to seek relief or otherwise  
16    exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties'  
17    or the Prepetition Secured Parties' rights and remedies under this Interim Order, the DIP  
18    Documents, the Prepetition Debt Documents or applicable law, as applicable.

19           31.     **Effectiveness.** Subject to the terms hereof, this Interim Order shall constitute  
20    findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc*  
21    to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules  
22    4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rules 62(a) of the  
23    Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable  
24    upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

25           32.     **Final Hearing.** The final hearing (the "***Final Hearing***") on the Motion shall be  
26    held on \_\_\_\_\_, 2024, at \_\_:\_\_.m. (Prevailing Pacific Time). Any party in interest objecting  
27    to the relief sought at the Final Hearing or in the Final Order shall file and serve a written objection,  
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1 which objection shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy  
2 Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick  
3 and Sara Coelho; (b) McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas,  
4 Nevada 89102, Attn: Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box  
5 270, TD South Tower Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel,  
6 Hanna Singer and Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C.  
7 Clifton Young Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel  
8 to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY  
9 10036, Attn: Brad Kahn.; 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley and (b)  
10 Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, Nevada 89134, Attn: James  
11 Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as  
12 administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York,  
13 NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments  
14 US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada,  
15 Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer  
16 under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York,  
17 NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag  
18 Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale  
19 agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary  
20 Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2  
21 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty  
22 Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Alvarez & Marsal Canada Inc., in its  
23 capacity as the Information Officer in the Recognition Proceedings, Royal Bank Plaza,  
24 South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, Attn: Al Hutchens; (x)  
25 Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich  
26 Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xi) counsel to any statutory committee  
27 appointed in these Chapter 11 Cases, in each case so as to be received no later than  
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\_\_\_\_\_, 2024, at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

33. **Headings.** Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

34. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Interim Order.

Dated: \_\_, 2024

\_\_\_\_\_  
THE HONORABLE [\_\_\_\_]  
UNITED STATES BANKRUPTCY JUDGE

Prepared and submitted by:

/s/ Ryan Works

**McDONALD CARANO LLP**

Ryan J. Works (Nevada Bar No. 9224)

Amanda M. Perach (Nevada Bar No. 12399)

2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

**ALLEN OVERY SHEARMAN STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488) (*pro hac vice pending*)

Sara Coelho (New York Bar No. 4530267) (*pro hac vice pending*)

599 Lexington Avenue

New York, New York 10022

*Proposed Counsel to the Debtors and  
Debtors in Possession*

APPROVED/DISAPPROVED



**EXHIBIT A**

**DIP Credit Agreement**

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**EXHIBIT B**

**Initial Budget**

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**EXHIBIT C****DIP / Adequate Protection Lien Priorities<sup>8</sup>**

<b>Non-WCF Collateral</b>	<b>WCF Collateral Prior to Repayment of WCF Obligations</b>	<b>WCF Collateral After Repayment of WCF Obligations</b>
DIP Liens	Working Capital Facility Adequate Protection Liens <sup>9</sup>	DIP Liens
Senior Secured Term Loan Adequate Protection Liens <sup>10</sup>	Senior Secured Term Loan Adequate Protection Liens	Senior Secured Term Loan Adequate Protection Liens
TF Adequate Protection Liens <sup>11</sup>	TF Adequate Protection Liens	TF Adequate Protection Liens
Working Capital Facility Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens
Junior Secured Term Loan Adequate Protection Liens <sup>12</sup>		

<sup>8</sup> For the avoidance of doubt, all DIP Liens and Adequate Protection Liens shall be subject to (i) the Carve-Out, (ii) the Administration Charge, (iii) the Prepetition Permitted Liens and (iv) the Prepetition Trisura Lien.

<sup>9</sup> “**Working Capital Facility Adequate Protection Liens**” means the Adequate Protection Liens granted to the Working Capital Facility Lender in accordance with the terms hereof.

<sup>10</sup> “**Senior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to KfW and the Prepetition Senior Secured Term Loan A-2 Parties in accordance with the terms hereof.

<sup>11</sup> “**TF Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition TF Stream Lender in accordance with the terms hereof.

<sup>12</sup> “**Junior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition Junior Secured Term Loan Parties in accordance with the terms hereof.

**SCHEDULE F****[FORM OF] OFFICER'S CERTIFICATE**

June \_\_, 2024

This Officer's Certificate (this "Certificate") is being executed and delivered pursuant to Sections 12.1(k) and 12.3(a), 12.3(b), 12.3(d) and 12.3(e) of that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of June \_\_, 2024 (as amended, restated, amended and restated, extended, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Nevada Copper, Inc., a Nevada corporation (the "Borrower"), the Guarantors party thereto from time to time, U.S. Bank Trust Company, National Association as Administrative Agent (the "Administrative Agent") and each Senior Lender from time to time party thereto. Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings specified in the Credit Agreement.

I, Gregory J. Martin, the duly appointed, qualified and acting Chief Financial Officer of the Borrower, solely in such capacity and not in my individual capacity (and without personal liability), as of the date of this Certificate, hereby certify on behalf of the Borrower that:

1. No Default or Event of Default has occurred and is continuing as of the date hereof, and no Default or Event of Default would result from the borrowing of the Interim Loan.
2. The representations and warranties contained in Article 8 of the Credit Agreement are true, accurate and complete in all material respects as of the date hereof.
3. Since the Petition Date, no Material Adverse Effect has occurred and is continuing.
4. The Interim Loan will be used for the purpose specified in Section 2.3.
5. True, correct and complete copies (where applicable) of the documents required to be delivered pursuant to Sections 12.1(b), 12.1(c), 12.1(f), 12.1(j), 12.1(k), and 12.3(g) of the Credit Agreement have been delivered to the Administrative Agent and/or Senior Lenders, as applicable.

*[signature page follows]*

IN WITNESS WHEREOF, I have executed this Certificate on behalf of Borrower on the date first written above.

**NEVADA COPPER, INC.**

By: \_\_\_\_\_

Name: Gregory J. Martin

Title: Chief Financial Officer

**SCHEDULE G****[FORM OF] OFFICER'S CERTIFICATE**

[ ], 2024

This Officer's Certificate (this "Certificate") is being executed and delivered pursuant to Sections 12.2(b) and 12.3(a), 12.3(b), 12.3(d) and 12.3(e) of that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of June \_\_, 2024 (as amended, restated, amended and restated, extended, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Nevada Copper, Inc., a Nevada corporation (the "Borrower"), the Guarantors party thereto from time to time, U.S. Bank Trust Company, National Association as Administrative Agent (the "Administrative Agent") and each Senior Lender from time to time party thereto. Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings specified in the Credit Agreement.

I, Gregory J. Martin, the duly appointed, qualified and acting Chief Financial Officer of the Borrower, solely in such capacity and not in my individual capacity (and without personal liability), as of the date of this Certificate, hereby certify on behalf of the Borrower that:

1. No Default or Event of Default has occurred and is continuing as of the date hereof, and no Default or Event of Default would result from the borrowing of the Final Loan.
2. The representations and warranties contained in Article 8 of the Credit Agreement are true, accurate and complete in all material respects as of the date hereof.
3. Since the Petition Date, no Material Adverse Effect has occurred and is continuing.
4. The Final Loan will be used for the purpose specified in Section 2.3.
5. True, correct and complete copies (where applicable) of the documents required to be delivered pursuant to Sections 12.2(b), 12.2(c), 12.2(f), and 12.3(g) of the Credit Agreement have been delivered to the Administrative Agent and/or Senior Lenders, as applicable.

*[signature page follows]*

IN WITNESS WHEREOF, I have executed this Certificate on behalf of Borrower on the date first written above.

**NEVADA COPPER, INC.**

By: \_\_\_\_\_

Name: Gregory J. Martin

Title: Chief Financial Officer

**SCHEDULE H**

**[RESERVED]**

H-1



**SCHEDULE I**  
**[RESERVED]**

## **SCHEDULE J**

### **PROJECT REAL PROPERTY**

#### **A. RGGGS Patented Mining Claims and Fee Lands**

A Leasehold Interest in and to the following patented mining claims and fee lands pursuant to that certain Mining Lease, dated May 4, 2006, as amended (the “Mining Lease”), by and between RGGGS Land & Minerals Ltd., L.P. (the “Landlord”) and Nevada Copper, Inc. A Memorandum of that Mining Lease is of record in Lyon County, Nevada, recorded May 11, 2006, at Document No. 381887.

**Those certain Patented Mining Claims described as follows:**

**Land Patent Number 27-70-0037**, BLM Serial No. NVN000105, granted October 14, 1969, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1964), for the lands embraced within the Lyon lode mining claims, Nos. 16, 17, 20, 21, 34, 35, 38, 52, 53, 56, 57, 70, 71, 72, 73, 74, 75, 85, 86, 87, 88, 89, 90, 91, 92, 101, 102, 145, 146, designated and described as:

Mineral Survey No. 4879, located within surveyed Sections 3, 4, 9, 10, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 585.308 acres;

**Land Patent Number 27-82-0003**, BLM Serial No. NVN005012, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 1, 2, 3, 4, 15, 18, 19 and 93, designated and described as:

Mineral Survey No. 4892, excepting the Lyon No. 22, 36, and 37 lode mining claims, located within surveyed Sections 3, 4, 10, and 11, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 161.037 acres.

**Land Patent Number 27-82-0004**, BLM Serial No. NVN006395, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 60, 62, 65, 66, 67, 79, 80, 82, 94, 95, 99, and 110, designated and described as:

Mineral Survey No. 4898, excepting the Lyon No. 78, 81, 83, 96, 97, 98, 100, 109, 111, 112, 113, 114, 123, 124, 166, 169, 170, and 171, lode mining claims, located within surveyed Sections 2 and 11, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 242.392 acres;

**Land Patent Number 27-82-0005**, BLM Serial No. NVN005011, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 6, 7, 8, 11, 12, 13, 24, 25, 26, 29, 30, 31, 42, 43, 44, 47, 48, 61, 135, and 136, designated and described as:

Mineral Survey No. 4893, excepting the Lyon No. 10, 27, 49 and 137, lode mining claims, located within surveyed Sections 1 and 2, T. 12 N., R. 26 E., and Section 35, T.13 N., R. 26 E Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 401.203 acres;

**Those certain Fee lands described as follows:**

**Tract 1:** 159.57 acres more or less, being the same land as described in a deed from Robert L. Biedebach and Aleta L. Biedebach, his wife, to United States Steel Corporation, dated January 5, 1970, and recorded as instrument No. 00117, in the Official Records of Lyon County, Nevada more particularly described as, Lot 3 or (NE/4 of the NW/4), Lot 4 or (NW/4 of the NW/4), SW/4 of the NW/4, and NW/4 of the SW/4, all in Section 4, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, sometimes identified as United States Patent Number 1221146, BLM Serial Number NVN 0051617;

4.

**Unpatented Mining Claims**

The following 616 unpatented lode mining claims situated in Sections 1, 2, 10-13, 15-18, 24, 35 and 36, T. 12 N., R. 26 E., MDBM, Sections 6, 7, 18, and 19, T. 12 N., R. 27 E., MDBM, Sections 16, 19, 20, 21 and 26-30, T. 13 N., R. 26 E., MDBM, and Sections 17-23, 26-35, T. 13 N., R. 27 E., MDBM, in Lyon and Mineral Counties, Nevada:

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	67	924374	380258	
PMK	68	924375	380259	
PMK	85	924392	380276	
PMK	86	924393	380277	
PMK	95	924402	380286	
PMK	96	924403	380287	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	98	924405	380289	
PMK	110	924417	380218	
PMK	111	924418	380219	
PMK	112	924419	380220	
PMK	113	924420	380221	
PMK	114	924421	380222	
PMK	115	924422	380223	
PMK	116	924423	380224	
PMK	117	924424	380225	
PMK	118	924425	380226	
PMK	119	924426	380227	
PMK	120	924427	380228	
PMK	121	924428	380229	
PMK	123	924429	380230	
PMK	125	924430	380231	
PMK	127	924431	380232	
PMK	129	924432	380233	
PMK	131	924433	380195	
PMK	132	924434	380196	
PMK	133	924435	380197	
PMK	134	924436	380198	
PMK	135	924437	380199	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	137	924438	380200	
PMK	170	933023	389088	
PMK	172	933025	389090	
PMK	174	933027	389092	
PMK	176	933029	389094	
PMK	178	933031	389096	
PMK	179	933032	389097	
PMK	180	933033	389098	
PMK	181	933034	389099	
PMK	182	933035	389100	
PMK	183	933036	389101	
PMK	184	933037	389102	
PMK	185	933038	389103	
PMK	186	933039	389104	
PMK	194	933047	389112	
PMK	195	933048	389113	
PMK	196	933049	389114	
PMK	197	933050	389115	
PMK	198	933051	389116	
PMK	199	933052	389117	
PMK	200	933053	389118	
PMK	235	933079	389144	



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	236	933080	389145	
PMK	237	933081	389146	
PMK	238	933082	389147	
PMK	239	933083	389148	
PMK	240	933084	389149	
PMK	261	935753	393008	
PMK	262	935754	393009	
PMK	263	935755	393010	
PMK	280	956443	407822	
PMK	285	956448	407827	
PMK	286	956449	407828	
PMK	287	956450	407829	
PMK	288	956451	407830	
PMK	289	956452	407831	
PMK	290	956453	407832	
PMK	291	956454	407833	
PMK	292	956455	407834	
PMK	293	956456	407835	
PMK	294	956457	407836	
PMK	295	956458	407837	
PMK	296	956459	407838	
PMK	297	956460	407839	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	298	956461	407840	
PMK	299	956462	407841	
PMK	300	956463	407842	
PMK	301	956464	407843	
PMK	302	956465	407844	
PMK	303	956466	407845	
PMK	304	956467	407846	
PMK	305	956468	407847	
PMK	306	956469	407848	
PMK	307	956470	407849	
PMK	344	981797	421834	
PMK	345	981798	421835	
PMK	346	981799	421836	
PMK	387	981840	421877	
PMK	388	981841	421878	
PMK	389	981842	421879	
PMK	390	981843	421880	
PMK	391	981844	421881	
PMK	392	981845	421882	
PMK	393	981846	421883	
PMK	394	981847	421884	
PMK	397	981850	421887	



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	398	981851	421888	
PMK	399	981852	421889	
PMK	400	981853	421890	
PMK	401	981854	421891	
PMK	402	981855	421892	
PMK	403	981856	421893	
PMK	404	981857	421894	
PMK	405	981858	421895	
PMK	406	981859	421896	
PMK	407	981860	421897	
PMK	408	981861	421898	
PMK	409	981862	421899	
PMK	410	981863	421900	
PMK	411	981864	421901	
PMK	412	981865	421902	
PMK	413	981866	421903	
PMK	414	981867	421904	
PMK	415	981868	421905	
PMK	417	981870	421907	
PMK	418	981871	421908	
PMK	419	981872	421909	
PMK	420	981873	421910	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	421	981874	421911	
PMK	422	981875	421912	
PMK	423	981876	421913	
PMK	424	981877	421914	
PMK	425	981878	421915	
PMK	426	981879	421916	
PMK	427	981880	421917	
PMK	428	981881	421918	
PMK	429	981882	421919	
PMK	430	981883	421920	
PMK	431	981884	421921	
PMK	432	981885	421922	
PMK	433	981886	421923	
PMK	434	981887	421924	
PMK	435	981888	421925	
PMK	436	981889	421926	
PMK	437	981890	421927	
PMK	438	981891	421928	
PMK	449	981902	421939	
PMK	450	981903	421940	
PMK	451	981904	421941	
PMK	452	981905	421942	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	453	981906	421943	
PMK	454	981907	421944	
PMK	455	981908	421945	
PMK	456	981909	421946	
PMK	457	981910	421947	
PMK	458	981911	421948	
PMK	459	981912	421949	
PMK	460	981913	421950	
PMK	461	981914	421951	
PMK	462	981915	421952	
PMK	463	981916	421953	
PMK	464	981917	421954	
PMK	465	981918	421955	
PMK	466	981919	421956	
PMK	467	981920	421957	
PMK	468	981921	421958	
PMK	469	981922	421959	
PMK	470	981923	421960	145035
PMK	471	981924	421961	145036
PMK	472	981925	421962	145037
PMK	473	981926	421963	145038
PMK	474	981927		145039

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	475	981928	421964	145040
PMK	476	981929		145041
PMK	477	981930	421965	145042
PMK	478	981931		145043
PMK	479	981932	421966	145044
PMK	480	981933		145045
PMK	481	981934	421967	145046
PMK	482	981935		145047
PMK	483	981936	421968	145048
PMK	484	981937	421969	145049
PMK	485	981938	421970	145050
PMK	486	981939	421971	145051
PMK	487	981940	421972	145052
PMK	488	981941		145053
PMK	489	981942	421973	145054
PMK	490	981943		145055
PMK	491	981944	421974	145056
PMK	492	981945		145057
PMK	493	981946	421975	145058
PMK	494	981947		145059
PMK	495	981948	421976	145060
PMK	496	981949		145061

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	497	981950	421977	145062
PMK	498	981951		145063
PMK	499	981952	421978	145064
PMK	500	981953		145065
PMK	501	981954	421979	145066
PMK	502	981955		145067
PMK	503	981956	421980	145068
PMK	504	981957		145069
PMK	505	981958	421981	145070
PMK	506	981959		145071
PMK	507	981960	421982	145072
PMK	508	981961		145073
PMK	509	981962	421983	145074
PMK	510	981963		145075
PMK	511	981964	421984	145076
PMK	512	981965		145077
PMK	513	981966	421985	145078
PMK	514	981967		145079
PMK	515	981968	421986	145080
PMK	516	981969		145081
PMK	517	981970	421987	145082
PMK	518	981971		145083

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	519	981972	421988	145084
PMK	520	981973		145085
PMK	521	981974	421989	145086
PMK	522	981975		145087
PMK	523	981976	421990	145088
PMK	524	981977		145089
PMK	525	981978	421991	145090
PMK	526	981979		145091
PMK	527	981980	421992	145092
PMK	528	981981		145093
PMK	529	981982	421993	145094
PMK	530	981983		145095
PMK	531	981984		145096
PMK	532	981985		145097
PMK	533	981986		145098
PMK	534	981987		145099
PMK	535	981988		145100
PMK	536	981989		145101
PMK	537	981990		145102
PMK	538	981991		145103
PMK	539	981992		145104
PMK	540	981993		145105

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	541	981994		145106
PMK	542	981995		145107
PMK	543	981996		145108
PMK	544	981997		145109
PMK	545	981998		145110
PMK	546	981999		145111
PMK	547	982000		145112
PMK	548	982001		145113
PMK	549	982002		145114
PMK	550	982003		145115
PMK	551	982004		145116
PMK	552	982005		145117
PMK	553	982006		145118
PMK	554	982007		145119
PMK	555	982008		145120
PMK	556	982009		145121
PMK	557	982010		145122
PMK	558	982011		145123
PMK	559	982012		145124
PMK	560	982013		145125
PMK	561	982014		145126
PMK	562	982015		145127

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	563	982016		145128
PMK	564	982017		145129
PMK	565	982018		145130
PMK	566	982019		145131
PMK	567	982020		145132
PMK	568	982021		145133
PMK	569	982022		145134
PMK	570	982023		145135
PMK	571	982024		145136
PMK	572	982025		145137
PMK	573	982026		145138
PMK	574	982027		145139
PMK	575	982028		145140
PMK	576	982029		145141
PMK	577	982030		145142
PMK	578	982031		145143
PMK	579	982032	421994	
PMK	587	982040	422002	
PMK	588	982041	422003	
PMK	590	982043	422005	
PMK	592	982045	422007	
PMK	594	982047	422009	



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	596	982049	422011	
PMK	598	982051	422013	
PMK	603	982056	422018	
PMK	604	982057	422019	
PMK	605	982058	422020	
PMK	606	982059	422021	
PMK	632	1059602	484747	
PMK	634	1059604	484749	
PMK	636	1059606	484751	
PMK	638	1059608	484753	
PMK	640	1059610	484755	
PMK	642	1059612	484757	
PMK	698	1068478	488906	155617
PMK	699	1068479		155618
PMK	700	1068480	488907	155619
PMK	701	1068481		155620
PMK	702	1068482	488908	155621
PMK	703	1068483		155622
PMK	704	1068484		155623
PMK	705	1068485		155624
PMK	706	1068486		155625
PMK	707	1068487		155626

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	708	1068488		155627
PMK	709	1068489		155628
PMK	710	1068490		155629
PMK	711	1068491		155630
PMK	712	1068492		155631
PMK	713	1068493		155632
PMK	714	1068494		155633
PMK	715	1068495		155634
PMK	716	1068496		155635
PMK	717	1068497		155636
PMK	718	1068498		155637
PMK	719	1068499		155638
PMK	720	1068500		155639
PMK	721	1068501		155640
PMK	722	1068502		155641
PMK	723	1068503		155642
PMK	724	1068504		155643
PMK	725	1068505		155644
PMK	726	1068506		155645
PMK	727	1068507		155646
PMK	728	1068508		155647
PMK	742	1186807	592261	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	743	1186808	592262	
PMK	744	1186809	592263	
PMK	745	1186810	592264	
PMK	746	1186811	592265	
PMK	747	1186812	592266	
PMK	748	1186813	592267	
PMK	749	1186814	592268	
PMK	750	1186815	592269	
PMK	751	1186816	592270	
PMK	752	1186817	592271	
PMK	753	1186818	592272	
PMK	754	1186819	592273	
PMK	755	1186820	592274	
PMK	756	1186821	592275	
PMK	757	1186822	592276	
PMK	758	1186823	592277	
PMK	759	1186824	592278	170110
PMK	760	1186825	592279	170111
PMK	761	1186826	592280	170112
PMK	762	1186827	592281	
PMK	763	1186828	592282	
PMK	764	1186829	592283	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	765	1186830	592284	170113
PMK	766	1186831	592285	
PMK	767	1186832	592286	170114
PMK	768	1186833	592287	
PMK	769	1186834	592288	170115
PMK	770	1186835	592289	
PMK	771	1186836	592290	170116
PMK	772	1186837	592291	
PMK	773	1186838	592292	170117
PMK	774	1186839	592293	170118
PMK	775	1186840	592294	170119
PMK	776	1186841	592295	170120
PMK	777	1186842		170121
PMK	778	1186843	592296	170122
PMK	779	1186844		170123
PMK	780	1186845	592297	170124
PMK	781	1186846		170125
PMK	782	1186847	592298	170126
PMK	783	1186848		170127
PMK	784	1186849	592299	170128
PMK	785	1186850		170129
PMK	786	1186851		170130

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	787	1186852		170131
PMK	788	1186853		170132
PMK	789	1186854		170133
PMK	790	1186855	592300	170134
PMK	791	1186856		170135
PMK	792	1186857	592301	170136
PMK	793	1186858		170137
PMK	794	1186859		170138
PMK	795	1186860		170139
PMK	796	1186861		170140
PMK	797	1186862		170141
PMK	798	1186863		170142
PMK	799	1186864		170143
PMK	800	1186865		170144
PMK	801	1186866		170145
PMK	802	1186867		170146
PMK	803	1186868		170147
PMK	804	1186869		170148
PMK	805	1186870		170149
PMK	806	1186871		170150
PMK	807	1186872		170151
PMK	808	1186873		170152

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	809	1186874		170153
PMK	810	1186875		170154
PMK	811	1186876		170155
PMK	812	1186877		170156
PMK	813	1186878		170157
PMK	814	1186879		170158
PMK	815	1186880		170159
PMK	816	1186881		170160
PMK	817	1186882		170161
PMK	818	1186883		170162
PMK	819	1186884		170163
PMK	820	1186885		170164
PMK	821	1186886		170165
PMK	822	1186887		170166
PMK	823	1186888		170167
PMK	824	1186889		170168
PMK	825	1186890		170169
PMK	826	1186891		170170
PMK	827	1186892		170171
PMK	828	1186893		170172
PMK	829	1186894		170173
PMK	830	1186895		170174

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	831	1186896		170175
PMK	832	1186897		170176
PMK	833	1186898		170177
PMK	834	1186899		170178
PMK	835	1186900		170179
PMK	836	1186901		170180
PMK	837	1186902		170181
PMK	838	1186903		170182
PMK	839	1186904		170183
PMK	840	1186905		170184
PMK	841	1186906		170185
PMK	842	1186907		170186
PMK	843	1186908		170187
PMK	844	1186909		170188
PMK	845	1186910		170189
PMK	846	1186911		170190
PMK	847	1186912		170191
PMK	848	1186913		170192
PMK	849	1186914		170193
PMK	850	1186915		170194
PMK	851	1186916		170195
PMK	852	1186917		170196

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	853	1186918		170197
PMK	854	1186919		170198
PMK	855	1186920		170199
PMK	856	1186921		170200
PMK	857	1186922		170201
PMK	858	1186923		170202
PMK	859	1186924		170203
PMK	860	1186925		170204
PMK	861	1186926		170205
PMK	862	1186927		170206
PMK	863	1186928		170207
PMK	864	1186929		170208
PMK	865	1186930		170209
PMK	866	1186931		170210
PMK	867	1186932		170211
PMK	868	1186933		170212
PMK	869	1186934		170213
PMK	870	1186935		170214
PMK	871	1186936		170215
PMK	872	1186937		170216
PMK	873	1186938		170217
PMK	874	1186939		170218



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	875	1186940		170219
PMK	876	1186941		170220
PMK	877	1186942		170221
PMK	878	1186943		170222
PMK	879	1186944		170223
PMK	880	1186945		170224
PMK	881	1186946		170225
PMK	882	1186947		170226
PMK	883	1186948		170227
PMK	884	1186949		170228
PMK	885	1186950		170229
PMK	886	1186951		170230
PMK	887	1186952		170231
PMK	888	1186953		170232
PMK	889	1186954		170233
PMK	890	1186955		170234
PMK	891	1186956		170235
PMK	892	1186957		170236
PMK	893	1186958		170237
PMK	894	1186959		170238
PMK	895	1186960		170239
PMK	896	1186961		170240

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	897	1186962		170241
PMK	898	1186963		170242
PMK	899	1186964		170243
PMK	900	1186965		170244
PMK	901	1186966		170245
PMK	902	1186967		170246
PMK	903	1186968		170247
PMK	904	1186969		170248
PMK	905	1186970		170249
PMK	906	1186971		170250
PMK	907	1186972		170251
PMK	908	1186973		170252
PMK	909	1186974		170253
PMK	910	1186975		170254
PMK	911	1186976		170255
PMK	912	1186977		170256
PMK	913	1186978		170257
PMK	914	1186979		170258
PMK	915	1186980		170259
PMK	916	1186981		170260
PMK	917	1186982		170261
PMK	918	1186983		170262

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	919	1186984		170263
PMK	920	1186985		170264
PMK	921	1186986		170265
PMK	922	1186987		170266
PMK	923	1186988		170267
PMK	924	1186989		170268
PMK	925	1186990		170269
PMK	926	1186991		170270
PMK	927	1186992		170271
PMK	928	1186993		170272
PMK	929	1186994		170273
PMK	930	1186995		170274
PMK	931	1186996		170275
PMK	932	1186997		170276
PMK	933	1186998		170277
PMK	934	1186999		170278
PMK	935	1187000		170279
PMK	936	1187001		170280
PMK	937	1187002		170281
PMK	938	1187003		170282
PMK	939	1187004		170283
PMK	940	1187005		170284

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	941	1187006		170285
PMK	942	1187007		170286
PMK	943	1187008		170287
PMK	944	1187009		170288
PMK	945	1187010		170289
PMK	946	1187011		170290
PMK	947	1187012		170291
PMK	948	1187013		170292
PMK	949	1187014		170293
PMK	950	1187015		170294
PMK	951	1187016		170295
PMK	952	1187017		170296
PMK	953	1187018		170297
PMK	954	1187019		170298
PMK	955	1187020		170299
PMK	956	1187021		170300
PMK	957	1187022		170301
PMK	958	1187023		170302
PMK	959	1187024		170303
PMK	960	1187025		170304
PMK	961	1187026		170305
PMK	962	1187027		170306

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	963	1187028		170307
PMK	964	1187029		170308
PMK	965	1187030		170309
PMK	966	1187031		170310
PMK	967	1187032		170311
PMK	968	1187033		170312
PMK	969	1187034		170313
PMK	970	1187035		170314
PMK	971	1187036		170315
PMK	972	1187037		170316
PMK	973	1187038		170317
PMK	974	1187039		170318
PMK	975	1187040		170319
PMK	976	1187041		170320
PMK	977	1187042		170321
PMK	978	1187043		170322
PMK	979	1187044		170323
PMK	980	1187045		170324
PMK	981	1187046		170325
PMK	982	1187047		170326
PMK	983	1187048		170327
PMK	984	1187049		170328

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	985	1187050		170329
PMK	986	1187051		170330
PMK	987	1187052		170331
PMK	988	1187053		170332
PMK	989	1187054		170333
PMK	990	1187055		170334
PMK	991	1187056		170335
PMK	992	1187057		170336
PMK	993	1187058		170337
PMK	994	1187059		170338
PMK	995	1187060		170339
PMK	996	1187061		170340
PMK	997	1187062		170341
PMK	998	1187063		170342
PMK	999	1187064		170343
PMK	1000	1187065		170344
PMK	1001	1187066		170345
PMK	1002	1187067		170346
PMK	1003	1187068		170347
PMK	1004	1187069		170348
PMK	1005	1187070		170349
PMK	1006	1187071		170350

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1007	1187072		170351
PMK	1008	1187073		170352
PMK	1009	1187074		170353
PMK	1010	1187075	592302	
PMK	1011	1187076	592303	
PMK	1012	1187077	592304	
PMK	1013	1187078	592305	
PMK	1014	1187079	592306	
PMK	1015	1187080	592307	
PMK	1016	1187081	592308	
PMK	1017	1187082	592309	
PMK	1018	1187083	592310	
PMK	1019	1187084	592311	
PMK	1023	1187088	592315	
PMK	1024	1187089	592316	
PMK	1025	1187090	592317	170354
PMK	1026	1187091	592318	
PMK	1027	1187092	592319	170355
PMK	1023	1187088	592315	
PMK	1024	1187089	592316	
PMK	1025	1187090	592317	170354
PMK	1026	1187091	592318	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1027	1187092	592319	170355
PMK	1028	1187093		170356
PMK	1072	1197066		172146
PMK	1073	1197067		172147
PMK	1074	1197068		172148
PMK	1075	1197069		172149
PMK	1076	1197070		172150
PMK	1077	1197071		172151
PMK	1078	1197072		172152
PMK	1079	1197073		172153
PMK	1080	1197074		172154
PMK	1081	1197075		172155
PMK	1082	1197076		172156
PMK	1083	1197077		172157
PMK	1084	1197078		172158
PMK	1085	1197079		172159
PMK	1086	1197080		172160
PMK	1091	1204490		173249
PMK	1092	1204491		173250
PMK	1093	1204492		173251
PMK	1094	1204493		173252
PMK	1095	1204494		173253



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1096	1204495		173254
PMK	1097	1204496		173255
PMK	1098	1204497		173256
PMK	1099	1204498		173257
PMK	1100	1204499		173258
PMK	1101	1204500		173259
PMK	1102	1204501		173260
PMK	1103	1204502		173261
PMK	1104	1204503		173262
PMK	1105	1204504		173263
PMK	1106	1204505		173264
PMK	1107	1204506		173265
PMK	1108	1204507		173266
PMK	1109	1204508		173267
PMK	1110	1204509		173268
PMK	1111	1204510		173269
PMK	1112	1204511		173270
PMK	1113	1204512		173271
PMK	1114	1204513		173272
PMK	1115	1204514		173273
PMK	1116	1204515		173274
PMK	1117	1204516		173275

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1118	1204517		173276
PMK	1119	1204518		173277
PMK	1120	1204519		173278
PMK	1121	1204520		173279
PMK	1122	1204521		173280
PMK	1123	1204522		173281
PMK	1124	1204523		173282

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc No.	Mineral County Doc No.
P	32	933116	389064	
P	33	933117	389065	
P	34	933118	389066	
P	35	933119	389067	
P	36	933120	389068	
P	45	933129	389077	
P	46	933130	389078	
P	51	933135	389083	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc No.	Mineral County Doc No.
BJ	1	953951	406304	
BJ	2	953952	406305	

BJ	3	953953	406306
BJ	4	953954	406307
BJ	5	953955	406308
BJ	6	953956	406309
BJ	7	953957	406310
BJ	8	953958	406311

### 3. Nevada Copper New Fee Land

Lyon County, Nevada

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF LYON, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

T. 12 N., R 25 E:

SEC. 12: SE 1/4 SE 1/4

SEC. 13: E 1/2 NE 1/4

T. 12 N., R 26 E:

SEC. 1: W 1/2 NW 1/4 SW 1/4 NW 1/4; W 1/2 SW 1/4 SW 1/4 NW 1/4; NW 1/4 NW 1/4 SW 1/4; SW 1/4 NW 1/4 SW 1/4; W 1/2 SE 1/4 NW 1/4 SW 1/4; W 1/2 NE 1/4 SW 1/4 SW 1/4; NW 1/4 SW 1/4 SW 1/4 AND S 1/2 SW 1/4 SW 1/4

SEC. 2: LOTS 5 THRU 14

SEC. 3: LOTS 5 THRU 13; SE 1/4 NE 1/4 AND NE 1/4 SE 1/4

SEC. 4: LOTS 5 THRU 12; SE 1/4 NW 1/4; NE 1/4 SW 1/4; SW 1/4 SW 1/4 AND NW 1/4 SE 1/4

SEC. 5: LOTS 1 AND 2; S 1/2 NE 1/4; S 1/2 NW 1/4 AND S 1/2

SEC. 6: SE 1/4 NE 1/4, NE 1/4 SE 1/4 AND S 1/2 SE 1/4

SEC. 7: LOT 4; E 1/2; SE 1/4 NW 1/4; NE 1/4 SW 1/4 AND SE 1/4 SW 1/4

SEC. 8: ALL

SEC. 9: LOTS 1 AND 2; SW 1/4 NE 1/4; NW 1/4 AND S 1/2

SEC. 10: LOTS 1 THRU 5; SW 1/4; N 1/2 SE 1/4; N 1/2 SW 1/4 SE 1/4; AND N 1/2 SE 1/4 SE 1/4

SEC. 11: LOTS 1 THRU 6; S 1/2 NE 1/4; N 1/2 SW 1/4; N 1/2 SW 1/4 SW 1/4; N 1/2 SE 1/4 SW 1/4; N 1/2 SE 1/4; N 1/2 SW 1/4 SE 1/4 AND N 1/2 SE 1/4 SE 1/4

SEC. 12: W 1/2 SW 1/4 NE 1/4 NW 1/4, W 1/2 NW 1/4; W 1/2 SE 1/4 NW 1/4; W 1/2 NE 1/4 NE 1/4 SW 1/4; W 1/2 SE 1/4 NE 1/4 SW 1/4; W 1/2 NE 1/4 SW 1/4; NW 1/4 SW 1/4; N 1/2 SW 1/4 SW 1/4 AND N 1/2 SE 1/4 SW 1/4

SEC. 15: NW 1/4

SEC. 16: N 1/2

SEC. 17: N 1/2

SEC. 18: LOTS 1 AND 2; NE 1/4 AND E 1/2 NW 1/4

T. 13 N., R 26 E.:

SEC. 19: W 1/2 SE 1/4; W 1/2 NE 1/4 SE 1/4; W 1/2 SE 1/4 SE 1/4; W 1/2 NE 1/4 NE 1/4 SE 1/4; W 1/2 SE 1/4 NE 1/4 SE 1/4; W 1/2 NE 1/4 SE 1/4 SE 1/4 AND W 1/2 SE 1/4 SE 1/4 SE 1/4

SEC. 29: S 1/2 NW 1/4 NE 1/4; SW 1/4 NE 1/4; S 1/2 NE 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4; SW 1/4; S 1/2 SE 1/4 NE 1/4 SE 1/4; S 1/2 SW 1/4 NE 1/4 SE 1/4; W 1/2 SE 1/4 AND SE 1/4 SE 1/4

SEC. 30: W 1/2 NE 1/4 NE 1/4 NE 1/4; NW 1/4 NE 1/4 NE 1/4; S 1/2 NE 1/4 NE 1/4; NW 1/4 NE 1/4; S 1/2 NE 1/4 AND SE 1/4

SEC. 31: NE 1/4 AND SE 1/4 NW 1/4

SEC. 32: N 1/2; NE 1/4 SW 1/4 AND SE 1/4

SEC. 33: LOTS 1 AND 2; S 1/2 NE 1/4 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4 NE 1/4; S 1/2 NE 1/4 NW 1/4 NE 1/4; S 1/2 NW 1/4 NW 1/4 NE 1/4; S 1/2 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4; S 1/2 NE 1/4; S 1/2 NE 1/4 NE 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4; NW 1/4 NE 1/4 NW 1/4; NW 1/4 NW 1/4; S 1/2 NW 1/4; SW 1/4 AND N 1/2 SE 1/4

SEC. 34: S 1/2 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4; S 1/2 NE 1/4; S 1/2 NE 1/4 NE 1/4 NW 1/4; S 1/2 NW 1/4 NE 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4 AND S 1/2

SEC. 35: LOTS 2, 3, 6, 9 THRU 13; NE 1/4 NW 1/4; E 1/2 NE 1/4 NW 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4;  
N 1/2 SW 1/4 AND NW 1/4 SE 1/4

SEC. 36: LOTS 5, 6 AND 12

T. 13 N., R 27 E.:

SEC. 31: ALL THAT PORTION OF LOT 6 IN LYON COUNTY SAID PARCEL AS FURTHER DELINEATED ON LYON COUNTY RECORD OF SURVEY MAP, RECORDED ON OCTOBER 12, 2015 AS DOCUMENT NO. 542177.

Mineral County, Nevada

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF MINERAL, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

T. 13 N., R 27 E.,

SEC. 28, LOT 2;

EXCLUDING that portion of Government Lot 2 of Section 28, T. 13 N., R. 27 E., MDM, more particularly described as Parcel 3B as shown on the Record of Survey for Nevada Copper, recorded June 24, 2019, in the Office of the County Recorder of Mineral County, Nevada, as File No. 170881, Mineral County, Nevada, records. (ASSESSOR'S PARCEL NUMBER FOR 2019-2020: 005-110-05).

SEC. 29, LOTS 2, 6 AND 10;

SEC. 30, LOT 6;

SEC. 31, LOTS 2 AND 6.

#### 4. Leased Fee Land (Walker River)

A leasehold interest in and to the following fee lands pursuant subject to that certain Lease dated effective December 1, 2018, by and between Walker River Irrigation District, as landlord, and Nevada Copper, Inc., as lessee, situated in Lyon County, Nevada:

All that certain real property situated in the County of Lyon, State of Nevada, described as follows:

Township 15 North, Range 25 East, M.D.B.&M.

Section 21: SW1/4 of SE1/4

EXCEPTING THEREFROM that certain real property described as commencing at a point on the West boundary of the SE1/4 of the SE1/4 of Section 21, T. 15 N., R. 25 E., M.D.B.&M., from which corner common to Sections 21, 22, 27, and 28 of said Township and Range bears S. 67° 31' E. 1424.81 feet; and running thence N. 0° 16' E. 140 feet to the intersection with the South line of the S.P.R.R. right-of-way; thence along said South line of right-of-way N. 72° 31' W. 168 feet; thence S. 39° 58' E. 248.44 feet to the point of beginning.

Legal Description appeared previously in Document recorded on December 18, 1956, in Book 40 of Deeds, Page 430 Records of Lyon County, Nevada.

ALSO EXCEPTING THEREFROM everything North of the South line of the right-of-way of the Southern Pacific Railway Company.

## B. Water Rights

The “Tibbals Water Rights” made subject to the Mining Lease by the First Amendment to Lease dated April 10, 2008, by and between Landlord and Nevada Copper Corp. The Tibbals Water Rights are located in Lyon County, Nevada, and are more particularly described as follows:

Base Water Right State of Nevada, Division of Water Resources, Water Rights Application No. 15425 filed on December 3, 1953, Certificate No. 4398 granted on August 2, 1954, as modified or supplemented by Water Rights Permit No. 77103 dated October 21, 2008, as abrogated by Water Rights permit Nos. 83450, 89451, 83452, and 88204 T. The permit was originally issued to Anaconda Copper Mining Company.

Consumptive – Water Rights Permits Nos. 77104 and 77105, on file with the State of Nevada, Division of Water Resources, and any subsequent amendments, supplements, or successor rights to said Permits.

Non-Consumptive – Water Rights Permit Nos. 83090, 83454, 83455, 83552 and 83705, on file with the State of Nevada, Division of Water Resources, and any subsequent amendments, supplements, or successor rights to said Permits.

City of Yerington and Nevada Copper Inc., Water Service Agreement dated August 10, 2009, as amended.

Property acquired from Tahoe-Reno Industrial Center, LLC

**PARCEL 1:**

**LOT 99-25 OF PARCEL MAP FOR DP OPERATING PARTNERSHIP, L.P., FILED IN THE OFFICE OF THE COUNTY RECORDER OF STOREY COUNTY, STATE OF NEVADA ON JUNE 29, 1999 AS FILE NO. 85481 OF OFFICIAL RECORDS AND CERTIFICATE OF AMENDMENT RECORDED JANUARY 23, 2001 IN BOOK 140, PAGE 256 AS DOCUMENT NO. 88850 OF OFFICIAL RECORDS.**

**PARCEL 2:**

**AN EASEMENT FOR DRIVEWAY AND UTILITIES AS SET FORTH IN THAT CERTAIN ACCESS AND UTILITY EASEMENT RECORDED JUNE 22, 2001 IN BOOK 143, PAGE 207 AS DOCUMENT NO. 89655 OF OFFICIAL RECORDS; AN AMENDMENT TO ACCESS AND UTILITY EASEMENT RECORDED OCTOBER 15, 2019 AS INSTRUMENT NO. 130593 OF OFFICIAL RECORDS.**

Patented Mining Claims (Copper Ridge)

The following patented mining claims situated in Sections 20, 21, and 29, T. 13 N., R. 26 E., MDM, in Lyon County, Nevada (the "Property):

Claim Name	Mineral Survey No.	Patent No.
Copper Ridge No. 1	3989 (Amended)	338120
Copper Ridge No. 2	3989	338120
Copper Ridge No. 3	3989	338120
Copper Ridge No. 4	3989	338120
Copper Ridge No. 5	3989	338120
Copper Ridge No. 6	3989	338120
Copper Ridge No. 8	3989	338120
Copper Ridge No. 9	3989 (Amended)	338120



The Property is identified by the Lyon County Assessor's Office as APN 014-661-05.

**SCHEDULE K**

**[RESERVED]**

## SCHEDULE L

### TERMS OF SUBORDINATION

1. General: Payment of the principal of and interest on Subordinated Intercompany Debt and other amounts payable on or in respect thereof shall be subordinated and subject in right of payment to the prior payment in full in cash in Dollars of all Obligations. Each Obligor that is a holder of Subordinated Intercompany Debt (each, a “Subordinated Lender”) agrees that it will not ask, demand, sue for, take or receive from any other Obligor, by set off or in any other manner, or retain, payment (in whole or in part) of the Subordinated Intercompany Debt, or any security therefor, other than Restricted Payments permitted under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, unless and until all of the Obligations have been paid in full. Each Subordinated Lender directs each Obligor to make, and each Obligor agrees to make, such prior payment of the Obligations. Each Obligor undertakes to satisfy any requirements under applicable law that may be necessary for the effectiveness of the Subordination Terms.

2. Payment Upon Dissolution, Etc.: In the event of (a) any insolvency or bankruptcy case or proceeding in connection therewith, relative to an Obligor or to its creditors as such, or to its assets, or (b) any liquidation, dissolution or other winding up of an Obligor, whether partial or complete and whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (c) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of an Obligor, then and in any such event the Secured Parties shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Obligations before any of the Subordinated Lenders shall be entitled to receive any payment on account of the Subordinated Intercompany Debt (whether in respect of principal, interest premium, fees, indemnities, commissions or otherwise) and to that end, any payment or distribution of any kind or character, whether in cash, property or securities which may be payable or deliverable in respect of the Subordinated Intercompany Debt in any such case, proceeding, dissolution, liquidation or other winding up or event shall instead be paid or delivered to the Secured Parties for application to Obligations, whether or not due, until the Obligations shall have first been fully paid and satisfied in cash in Dollars.

3. No Payment During Default: In the event and during the continuation of any Default or Event of Default, unless and until such Default or Event of Default shall have been remedied or waived, no payment (including any Restricted Payment) shall be made by any Obligor on or in respect of any Subordinated Intercompany Debt.

4. Proceeding Against Obligor; No Collateral: Whether or not any default in payment shall exist under any Finance Document, no Subordinated Lenders shall, without the prior consent of the Majority Lenders, (a) commence any proceeding against any Obligor in bankruptcy, insolvency or receivership law or (b) take any collateral security for any Subordinated Intercompany Debt.

5. Payment to the Secured Parties of Certain Amounts Received by Subordinated Lenders: In the event that any Subordinated Lender receives on account or in respect of the Subordinated Intercompany Debt any distribution of assets by any Obligor or payment by or on behalf of an

Obligor of any kind or character, whether in cash, securities or other property, other than Restricted Payments permitted under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, the Subordinated Lender shall hold in trust (as property of the Secured Parties) for the benefit of, and immediately upon receipt thereof, shall pay over or deliver to the Secured Parties, such distribution or payment in precisely the form received (except for the endorsement or assignment by such Subordinated Lender where necessary) for application in accordance with the Credit Agreement. In the event of failure of any Subordinated Lender to make any such endorsement or assignment, the Secured Parties irrevocably are authorized and empowered by and on behalf of each Subordinated Lender to make the same.

6. Authorizations to the Secured Parties: Each Subordinated Lender (a) irrevocably authorizes and empowers (without imposing any obligation on) the Secured Parties and the Collateral Agent to demand, sue for, collect and receive all payments and distributions on or in respect of its Subordinated Intercompany Debt which are required to be paid or delivered to the Secured Parties, as provided herein, and to file and prove all claims therefor and take all such other action, in the name of a Subordinated Lender or otherwise, as the Secured Parties may determine to be necessary or appropriate for the enforcement of these subordination provisions, all in such manner as the Majority Lenders shall instruct or otherwise in accordance with the Credit Agreement, (b) irrevocably authorizes and empowers (without imposing any obligation) the Secured Parties and the Collateral Agent to vote the Subordinated Intercompany Debt (including, without limitation, voting the Subordinated Intercompany Debt in favor of or in opposition to any matter which may come before any meeting of creditors of an Obligor generally or in connection with, or in anticipation of, any insolvency or bankruptcy case or proceeding, or any proceeding under any laws relating to the relief of debtors, readjustment of indebtedness, arrangements, reorganizations, compositions or extensions relative to an Obligor) in such manner as the Majority Lenders shall instruct or otherwise in accordance with the Credit Agreement and (c) agrees to execute and deliver to the Secured Parties all such further instruments confirming the above authorization, and all such powers of attorney, proofs of claim, assignments of claim and other instruments, and to take all such other action, as may be requested by the Secured Parties in order to enable the Secured Parties to enforce all claims upon or in respect of the Subordinated Intercompany Debt.

7. Notice: Each Subordinated Lender agrees, for the benefit of the Secured Parties, that it will give the Secured Parties prompt notice of any default by any Obligor in respect of the Subordinated Intercompany Debt.

8. No Waiver; Modification to Senior Debt: No failure on the part of the Secured Parties, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof by the Secured Parties, nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or future exercise by the Secured Parties of any other right, remedy or power. Each and every right, remedy and power granted to the Secured Parties, or allowed to the Secured Parties by law or other agreement shall be cumulative and not exclusive, and may be exercised by the Secured Parties from time to time.

At any time, without the consent of or notice to the Subordinated Lenders, without incurring responsibility or liability to the Subordinated Lenders and without impairing or releasing the subordination provided herein or the obligations hereunder of the Subordinated Lenders, the

Secured Parties may do any one or more of the following: (a) change the manner, place or terms of payment of or extend the time of payment of, or renew or alter, Obligations or any collateral security or guarantee therefor, or otherwise amend or supplement in any manner Obligations or any instruments evidencing the same or any agreement under which Obligations are outstanding or the Finance Documents; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise secured by Obligations; (c) release any Person liable in any manner for the Obligations; and (d) exercise or refrain from exercising any rights against an Obligor and any other Person. Each Subordinated Lender unconditionally waives notice of the incurring of Obligations or any part thereof.

9. Subrogation: Subject to the payment in full in cash in Dollars of all Obligations, the Subordinated Lenders shall be subrogated to the rights of the Secured Parties to receive distribution of assets of any Obligor, or payments by or on behalf of any Obligor, made on the Obligations, until the Subordinated Intercompany Debt shall be paid in full. For purposes of such subrogation, no payments over, including no payments or distributions to the Secured Parties of any cash, property or securities to which the Subordinated Lenders would be entitled except for the provisions hereof, pursuant to the provisions hereof, to the Secured Parties by the Subordinated Lenders shall, as among an Obligor, its creditors other than the Secured Parties and the Subordinated Lenders, be deemed to be a payment or distribution by an Obligor on account of the Obligations.

10. Benefit of Subordination Provisions: Nothing contained herein shall (a) impair, as among an Obligor, its creditors other than the Secured Parties and the Subordinated Lenders, the obligation of an Obligor, which is absolute and unconditional (and which, subject to the rights hereunder of the Secured Parties, is intended to rank equally with all other unsecured obligations of any Obligor), to pay the principal of and interest on the Subordinated Intercompany Debt as and when the same shall become due and payable in accordance with the terms thereof or (b) affect the relative rights against an Obligor of the Subordinated Lender and creditors of the Obligor other than the Secured Parties.

11. Further Assurances: The Subordinated Lender, at its own cost, shall take any further action as the Secured Parties may reasonably request in order to carry out more fully the intent and purpose of these subordination provisions [(including delivery of any evidence of Subordinated Intercompany Debt to the Administrative Agent or the Collateral Agent)].

12. Governing Law: These subordination provisions shall be governed by and construed in accordance with the laws of New York.

13. Amendment: These subordination provisions may not be amended or modified without the prior consent of each of the Secured Parties.

14. Transfers: Each Subordinated Lender acknowledges and agrees that Subordinated Intercompany Debt may not be transferred, assigned or encumbered in any manner except as expressly permitted by the terms and conditions of the Finance Documents as in effect from time to time.

15. Successors and Assigns: The Agreement shall be binding and inure to the benefit of the Subordinated Lenders, the Secured Parties and their respective successors and permitted assigns.

16. Ranking: All Subordinated Intercompany Debt shall be unsecured, rank junior to the Obligations in respect of payment and pledged as security for the Obligations.

**SCHEDULE M****FORM OF TRANSFER CERTIFICATE**

(Delivered pursuant to Section 14.1(c) (*Assignment by Senior Lenders*) of the Credit Agreement)

Date of this Transfer Certificate: \_\_\_\_\_, \_\_\_\_

For Transfer Date: \_\_\_\_\_, \_\_\_\_

U.S. Bank Trust Company, National Association,  
as Administrative Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com

Nevada Copper, Inc.,  
as Borrower  
61 E. Pursel Lane  
P.O. Box 1640  
Yerington, Nevada, USA  
89447  
Attention: Greg Martin  
Email: gjmartin@nevadacopper.com

Copy to:  
Attention: Matthew Anderson  
Email: manderson@nevadacopper.com

Ladies and Gentlemen:

**Nevada Copper Project – Credit Agreement**

1. [Permitted Transferee] (the “**Transferee**”) delivers this Transfer Certificate to you pursuant to that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of [•], by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in, or incorporated by reference in, the Credit Agreement.

2. [\_\_\_\_\_] (the “**Lender**”) confirms that the Lender’s participation set forth on Schedule I (“**Schedule**”) hereto is an accurate summary of its participation in the Commitments and requests the Transferee to accept and procure the transfer to the Transferee of the Percentage Transferred (set forth in Schedule I) of the Lender’s participation specified in the Schedule hereto by counter-signing and delivering this Transfer Certificate to the Administrative Agent and the

Borrower at their respective addresses for the service of notices specified in the Credit Agreement or as otherwise notified by them pursuant to the terms thereof.

3. The Transferee hereby requests, subject to Section 14.1 of the Credit Agreement, the Administrative Agent and the Borrower to accept this Transfer Certificate as being delivered to the Administrative Agent and the Borrower pursuant to and for the purposes of Section 14.1 of the Credit Agreement so as to take effect in accordance with the terms thereof on the Transfer Date stated above or on such later date as may be determined in accordance with the terms thereof.

4. The Transferee confirms that it has received a copy of each of the Finance Documents together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Lender or any Agent to check or inquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and will not rely on the Lender or any Agent to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Borrower or any other party to any of the Transaction Documents.

5. The Lender makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy, accuracy or enforceability of any of the Transaction Documents or any document relating thereto and assumes no responsibility for the financial condition of any party thereto or for the performance and observance by such party of any of its obligations under any of the Transaction Documents or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.

6. The Lender hereby gives notice that nothing herein or in the Finance Documents (or any document relating thereto) shall oblige it to (i) accept a re-transfer from the Transferee of the whole or any part of its rights, benefits and/or obligations under the Credit Agreement transferred pursuant hereto or (ii) support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever including, without limitation, the non-performance by the Borrower or any other party to any of the Transaction Documents (or any document relating thereto) of its obligations under any such document. The Transferee hereby acknowledges the absence of any such obligation as is referred to in clause (i) or (ii) above.

7. This Transfer Certificate shall be governed by the law of the State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the law of such state; provided, however, that to the extent any terms of this Transfer Certificate are incorporated in and made part of any other Finance Documents, any such term so incorporated shall for all purposes of such Finance Documents be governed by and construed in accordance with the law governing the Finance Documents into which such term is so incorporated.

[8. This Transfer Certificate becomes effective upon acceptance by the Borrower.]<sup>1</sup>

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<sup>1</sup> Include if the Borrower's consent is required pursuant to Section 14.1 of the Credit Agreement.



*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Certificate as of the respective dates set forth below.

[Transferee]

By \_\_\_\_\_  
Name:  
Title:  
Date:

[Existing Lender]

By \_\_\_\_\_  
Name:  
Title:  
Date:

[Accepted and Agreed:

Nevada Copper, Inc.,  
as the Borrower

By \_\_\_\_\_  
Name:  
Title:  
Date:]<sup>1</sup>

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<sup>1</sup> Include if the Borrower's consent is required pursuant to Section 14.1 of the Credit Agreement.

SCHEDULE I

1. Lender:
2. Transferee:
3. Transfer Date:
4. Lender's Participation:
5. Lender's Portion of the Outstanding Commitment:
6. Percentage Transferred:
7. Administrative Details of Transferee

Address:

Contact Department and Name:

Account for Payments:

Facsimile:

Telephone:

**SCHEDULE N**  
**UTILIZATION REQUEST**

[DATE]

TO: U.S. Bank Trust Company, National Association, as Administrative Agent

FROM: Nevada Copper, Inc. as Borrower

RE: Utilization Request Pursuant to Section 3.1 of the Senior Secured Superpriority Debtor-in-Possession Credit Agreement (as amended from time to time, the “**Credit Agreement**”)

The Borrower hereby requests disbursement of Loans on [DATE]<sup>1</sup> to the accounts and in the amounts set forth in the funds flow attached hereto.

1. The Borrower hereby represents and warrants to the Administrative Agent and each Senior Lender that, as of the date of the Utilization:
  - (a) The disbursements requested hereby are scheduled to be utilized in accordance with Section 2.3 of the Credit Agreement.
  - (b) The disbursements of Loans made to date (if any) have been or are being utilized in accordance with Section 2.3 of the Credit Agreement.
2. The Borrower hereby certifies to the Administrative Agent and each Senior Lender as of the date of the Utilization pursuant to Sections 12.3 (a), (b), (c), (d), and (e) of the Credit Agreement:<sup>2</sup>
  - (a) no Default or Event of Default shall have occurred and be continuing or would result from the making of the proposed Loan;
  - (b) no Change of Control has occurred;
  - (c) the proposed loan will be used for the purpose specified in “Use of Proceeds” in accordance with Section 2.3 of the Credit Agreement;
  - (d) no Material Adverse Effect has occurred and is continuing; and
  - (e) the representations and warranties contained in Section 8.1 of the Credit Agreement are true, accurate and complete as of the date of the Utilization in all material respects.

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<sup>1</sup> The proposed Utilization Date must be a Business Day.

<sup>2</sup> All other factual or evidentiary CPs to be delivered separately.

3. The Borrower agrees that, if prior to its receipt of the disbursement requested hereby it determines that any matter certified by it herein will not be true and correct as of the time of such receipt, it will promptly so notify the Administrative Agent.
4. All defined terms used herein and not defined herein have the meanings assigned to them in the Credit Agreement.

*[Signature Page Follows]*

**NEVADA COPPER, INC.,**  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE O

### FORM OF NOTE

\$[ ]

[ ], 20\_\_

FOR VALUE RECEIVED, the undersigned (the “**Borrower**”), hereby promises to pay to [ ] (the “**Lender**”), to the account designated by the Administrative Agent as provided for by the Credit Agreement referred to below, for the account of the Lender, the principal sum of US \$[ ] (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to the Borrower under the Credit Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof; *provided*, that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Loans made by the Lender.

This Note evidences Loans made by the Lender under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•] (as amended, modified or supplemented and in effect from time to time, the “**Credit Agreement**”), among Nevada Copper, Inc. as Borrower, the Guarantors from time to time party thereto, the Senior Lenders from time to time party thereto, and U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent. Terms used but not defined in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

Except as permitted by Section Article 14 (*Changes to Parties*) of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York.

**NEVADA COPPER, INC.,**  
as Borrower

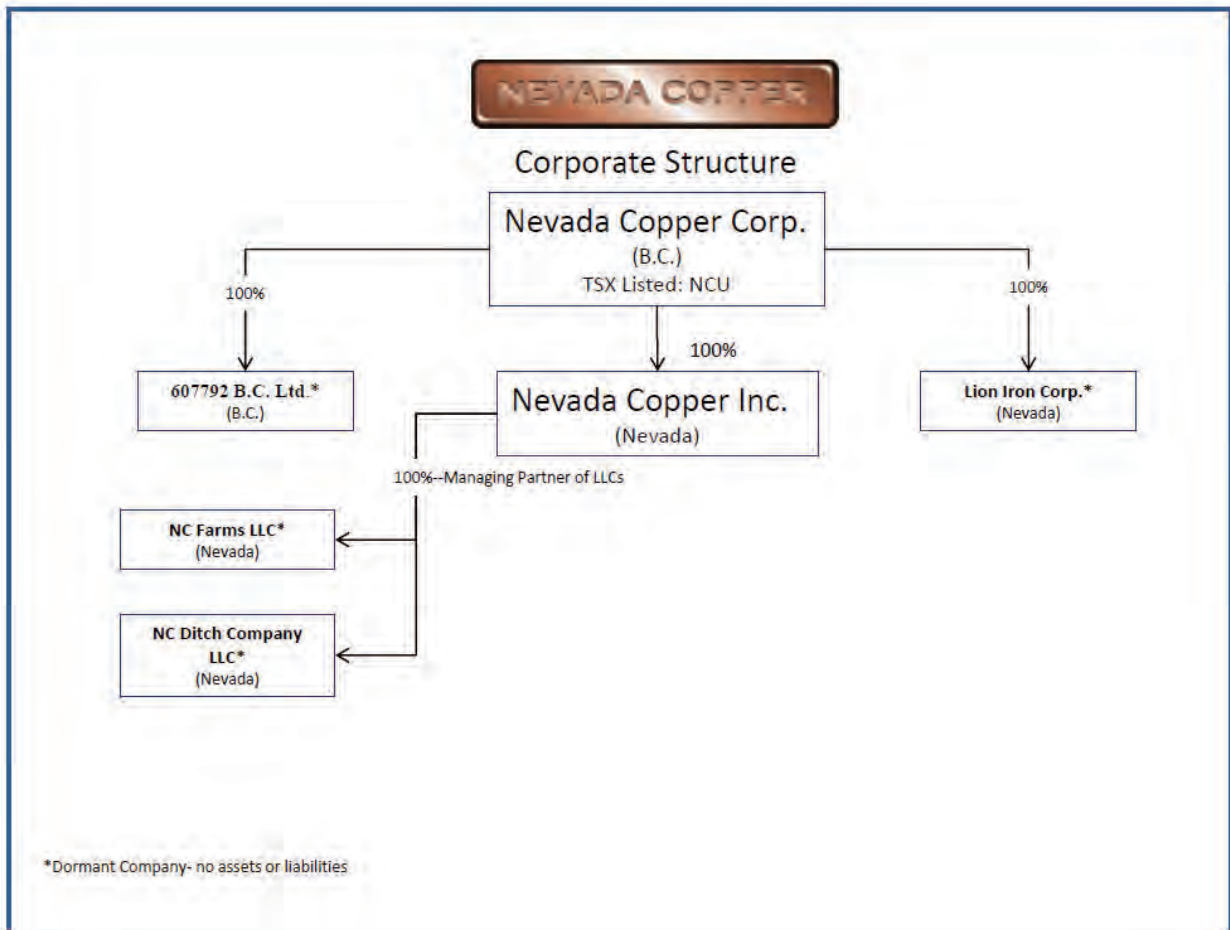
By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE P**

**[RESERVED]**

**SCHEDULE Q**  
**CORPORATE ORGANIZATION CHART**



**SCHEDULE R  
BANK ACCOUNTS**

**Nevada Copper, Inc. Bank Accounts**

<b>Bank</b>	<b>Account Type</b>	<b>Last 4 Digits of Account Number</b>	<b>Description</b>	<b>Bank Address</b>
BMO Harris Bank, N.A.	DDA – payroll and FSA/HSA	5804	Disbursement Account (Payroll Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – operations; vendor payments	5812	Disbursement Account (Operating Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – proceeds; fundings/payments per customers	6629	Proceeds Account	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – debt service reserve account	6637	Inactive Account (Debt Service Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – loss proceeds account	6645	Inactive Account (Loss Proceeds Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – approved open pit account	6652	Inactive Account (Approved Open Pit Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – restricted payment account	6702	Inactive Account (Restricted Payment Account)	11 W. Monroe St., Chicago, IL 60603

**Nevada Copper Corp. Bank Accounts**

<b>Bank</b>	<b>Bank Account Type</b>	<b>Last 4 Digits of Account Number</b>	<b>Description</b>	<b>Bank Address</b>
Bank of Montreal	DDA – payroll	6175	Disbursement Account (Payroll Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – Canada checking	6458	Disbursement Account (Operating Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – US checking (loan proceeds account)	0506	NCU Concentration Account	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – payroll	6728	Inactive Account (Cost Overrun Reserve Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7

**SCHEDULE S**

**[RESERVED]**

**SCHEDULE T****RELATED-PARTY TRANSACTIONS**

(Excluding the transactions in respect of Subordinated Intercompany Debt, including the Equity Contribution Agreement, transactions referenced in Section 12.5(i) and Section 12.5(l), the ownership of equity, the Working Capital Facility Documents, any Material Project Document in effect on the Closing Date and as permitted in Section 11.12(l))

1. Fourth Lien Intercreditor Agreement, dated as of October 28, 2022, among Nevada Copper Corp., Nevada Copper Inc., KfW IPEX-Bank GmbH, in its capacity as Administrative Agent, Triple Flag International Ltd., Concord Resources Limited and Pala Investments Limited.
2. Pala/Tranche B Letter Agreement, dated as of October 28, 2022, among Pala Investments Limited, Nevada Copper Inc., KfW IPEX-Bank GmbH, as Administrative Agent and KfW IPEX-Bank GmbH, as Tranche B Senior Lender.
3. Pala Corporate Guaranty Affirmation Letter, dated as of October 28, 2022, among Pala Investments Limited, Nevada Copper Inc., KfW IPEX-Bank GmbH, as Administrative Agent and KfW IPEX-Bank GmbH, as Tranche B Senior Lender.
4. Amended and Restated Pala Credit Facility, dated as of October 28, 2022, among Nevada Copper Inc., Nevada Copper Corp. and Pala Investments Limited.
5. Fourth Lien Security Agreement, dated as of October 28, 2022, among Nevada Copper Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC, NC Ditch Company LLC and Pala Investments Limited.
6. Fourth Lien Pledge Agreement, dated as of October 28, 2022, between Nevada Copper Corp. and Pala Investments Limited.
7. Lyon County Deed of Trust dated as of October 28, 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
8. Mineral County Deed of Trust dated as of October 28, 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
9. Storey County Deed of Trust dated as of October 28 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
10. Second Amended and Restated Credit Agreement, entered into as of October 28, 2022, among the Borrower, the Guarantors, Pala Investments Limited, as a senior lender, Mercuria Investments US, Inc., as a senior lender, the other senior lenders party thereto and KfW IPEX-Bank as administrative agent (as amended, amended and restated, supplemented or otherwise modified from time to time).

11. Promissory Note dated as of March 27, 2024, by Nevada Copper Corp. to the order of Pala Investments Limited.
12. Promissory Note dated as of April 15, 2024, by Nevada Copper Corp. to the order of Pala Investments Limited.

**SCHEDULE U**

**[RESERVED]**



**SCHEDULE V**

**[RESERVED]**

**SCHEDULE W**  
**LITIGATION DISCLOSURE**

None.

## EXHIBIT A-1

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lender Parties That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)**

## U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (ii) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF SENIOR LENDER]

By \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A-2

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)**

## U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF PARTICIPANT]

By \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A-3

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Partnerships  
For U.S. Federal Income Tax Purposes)**

## U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners or members is a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners or members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners or members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s or member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (A) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (B) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF PARTICIPANT]

By \_\_\_\_\_  
Name:  
Title:



## EXHIBIT A-4

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lender Parties That Are Partnerships  
For U.S. Federal Income Tax Purposes)**

## U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan (s)) in respect of which it is providing this certificate, (b) its direct or indirect partners or members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners or members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners or members is a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners or members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners or members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W- 8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W- 8BEN-E from each of such partner’s or member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (A) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (B) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF SENIOR LENDER]

By \_\_\_\_\_  
Name:  
Title:

**EXHIBIT B**

**Initial Budget**

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Nevada Copper Inc.  
13-Week DIP Budget as of Jun-06

Preliminary and Subject to Revision  
Confidential - Subject to FRE 408 and Other Relevant Analogs

(\$ in thousands)														13 Wk Period
Week Ending	Fcast Week 1	Fcast Week 2	Fcast Week 3	Fcast Week 4	Fcast Week 5	Fcast Week 6	Fcast Week 7	Fcast Week 8	Fcast Week 9	Fcast Week 10	Fcast Week 11	Fcast Week 12	Fcast Week 13	
	14-Jun	21-Jun	28-Jun	5-Jul	12-Jul	19-Jul	26-Jul	2-Aug	9-Aug	16-Aug	23-Aug	30-Aug	6-Sep	
<b>Receipts</b>														
Other receipts	\$ -	\$ -	\$ 41	\$ -	\$ -	\$ -	\$ 41	\$ -	\$ -	\$ -	\$ -	\$ 41	\$ -	\$ 123
<b>Total Receipts</b>	-	-	41	-	-	-	41	-	-	-	-	41	-	123
<b>Operating Disbursements</b>														
Payroll, PR Taxes, 401k	-	(539)	(450)	(426)	-	(629)	-	(426)	-	(539)	-	(426)	-	(3,436)
Benefits & Insurance	(26)	(295)	-	(55)	(100)	-	(267)	(55)	-	-	(110)	(29)	(26)	(962)
Concentrate Delivery & Logistics	-	-	-	-	-	-	-	-	-	-	-	-	-	-
UG Mining Materials, Equip., & Services	(164)	(10)	(30)	(10)	(10)	(10)	(30)	(10)	(10)	(10)	(30)	(10)	(10)	(344)
Supplies, Parts & Services	(73)	(27)	(162)	(39)	(9)	(27)	(147)	(39)	(9)	(27)	(147)	(39)	(9)	(753)
Leases - Equip. & Other	(201)	-	(8)	(986)	-	-	(8)	(148)	-	-	(8)	-	(139)	(1,498)
Leases - Land	-	-	-	(47)	(150)	-	-	-	-	-	-	-	-	(197)
Property, Casualty, & Bonding Insurance	(129)	(51)	-	(129)	-	-	(1,200)	(129)	(670)	-	-	(129)	-	(2,439)
Utilities	-	-	(9)	-	-	(536)	(9)	-	-	(360)	(9)	-	-	(923)
Regulatory	(44)	(2)	(45)	(165)	(1)	-	-	(45)	-	-	-	(45)	-	(347)
Contingency	(103)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(1,303)
<b>Total Operating Disbursements</b>	(739)	(1,024)	(804)	(1,958)	(370)	(1,302)	(1,760)	(953)	(789)	(1,036)	(404)	(779)	(284)	(12,202)
<b>Non-Operating Disbursements</b>														
<b>Tested</b>														
Critical Vendors Payments	(1,371)	-	-	-	(1,421)	-	-	-	(285)	-	-	-	-	(3,078)
Lienholder Payments	(538)	-	-	-	(620)	-	-	-	(365)	-	-	-	-	(1,522)
KERP	-	-	(189)	-	-	-	-	-	-	-	-	-	-	(189)
Reduction in Force Expense	-	(492)	-	(492)	-	(492)	-	(692)	-	-	-	-	-	(2,168)
Equipment Lease Buyouts & AP Backlog	(2,079)	-	(258)	-	-	-	(447)	-	-	-	-	(63)	-	(2,847)
Critical Capex	(59)	-	-	(177)	-	-	-	-	-	-	-	-	-	(235)
D&O Tail Insurance	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Professionals (Ordinary Course)	-	-	(25)	-	-	-	(25)	-	-	-	-	(15)	-	(65)
Independent Director Fees	-	-	-	(622)	-	-	-	-	-	-	-	-	-	(622)
Utility & Other Deposits	(330)	-	-	-	-	-	-	-	-	-	-	-	-	(330)
<b>Total Tested Non-Op. Disbursements</b>	\$ (4,376)	\$ (492)	\$ (472)	\$ (1,290)	\$ (2,041)	\$ (492)	\$ (472)	\$ (692)	\$ (650)	\$ -	\$ -	\$ (78)	\$ -	\$ (11,055)
Bankruptcy Professional & US Trustee Fees	-	-	-	-	(773)	(600)	(100)	(3,240)	(311)	-	(100)	(3,140)	-	(8,263)
DIP Fees	(1,000)	-	-	-	-	(2,048)	-	-	-	-	-	-	-	(3,048)
Interest & Adequate Protection	-	-	-	(127)	-	-	-	(6,013)	-	-	-	-	(723)	(6,863)
<b>Total Non-Operating Disbursements</b>	(5,376)	(492)	(472)	(1,417)	(2,814)	(3,140)	(572)	(9,946)	(960)	-	(100)	(3,218)	(723)	(29,229)
Transfer NCI (to) / from NCU	(30)	(27)	(88)	(79)	(57)	(27)	(58)	(119)	(27)	(57)	(27)	(57)	(52)	(705)
<b>Net Cash Flows</b>	<b>\$ (6,145)</b>	<b>\$ (1,543)</b>	<b>\$ (1,323)</b>	<b>\$ (3,454)</b>	<b>\$ (3,241)</b>	<b>\$ (4,469)</b>	<b>\$ (2,349)</b>	<b>\$ (11,017)</b>	<b>\$ (1,776)</b>	<b>\$ (1,093)</b>	<b>\$ (531)</b>	<b>\$ (4,013)</b>	<b>\$ (1,060)</b>	<b>\$ (42,013)</b>
<b>Total Tested Disbursements</b>	(5,115)	(1,516)	(1,276)	(3,248)	(2,411)	(1,794)	(2,232)	(1,645)	(1,439)	(1,036)	(404)	(857)	(284)	(23,257)
Beginning Cash Balance	\$ 83	\$ 13,939	\$ 12,396	\$ 11,073	\$ 7,619	\$ 4,378	\$ 39,909	\$ 37,560	\$ 26,543	\$ 24,766	\$ 23,673	\$ 23,143	\$ 19,130	\$ 83
Net Cash Flows	(6,145)	(1,543)	(1,323)	(3,454)	(3,241)	(4,469)	(2,349)	(11,017)	(1,776)	(1,093)	(531)	(4,013)	(1,060)	(42,013)
Borrowing/Repayment (net)	20,000	-	-	-	-	40,000	-	-	-	-	-	-	-	60,000
<b>Ending Cash Balance</b>	<b>\$ 13,939</b>	<b>\$ 12,396</b>	<b>\$ 11,073</b>	<b>\$ 7,619</b>	<b>\$ 4,378</b>	<b>\$ 39,909</b>	<b>\$ 37,560</b>	<b>\$ 26,543</b>	<b>\$ 24,766</b>	<b>\$ 23,673</b>	<b>\$ 23,143</b>	<b>\$ 19,130</b>	<b>\$ 18,070</b>	<b>\$ 18,070</b>
<b>Cumulative DIP Borrowing</b>	20,000	20,000	20,000	20,000	20,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000
<b>Cumulative Transfer NCI (to) / from NCU</b>	(30)	(57)	(145)	(224)	(281)	(308)	(366)	(485)	(512)	(569)	(596)	(653)	(705)	(818)

**EXHIBIT C****DIP / Adequate Protection Lien Priorities<sup>8</sup>**

<b>Non-WCF Collateral</b>	<b>WCF Collateral Prior to Repayment of WCF Obligations</b>	<b>WCF Collateral After Repayment of WCF Obligations</b>
DIP Liens	Working Capital Facility Adequate Protection Liens <sup>9</sup>	DIP Liens
Senior Secured Term Loan Adequate Protection Liens <sup>10</sup>	Senior Secured Term Loan Adequate Protection Liens	Senior Secured Term Loan Adequate Protection Liens
TF Adequate Protection Liens <sup>11</sup>	TF Adequate Protection Liens	TF Adequate Protection Liens
Working Capital Facility Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens
Junior Secured Term Loan Adequate Protection Liens <sup>12</sup>		

<sup>8</sup> For the avoidance of doubt, all DIP Liens and Adequate Protection Liens shall be subject to (i) the Carve-Out, (ii) the Administration Charge, (iii) the Prepetition Permitted Liens and (iv) the Prepetition Trisura Lien.

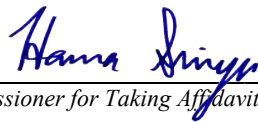
<sup>9</sup> “**Working Capital Facility Adequate Protection Liens**” means the Adequate Protection Liens granted to the Working Capital Facility Lender in accordance with the terms hereof.

<sup>10</sup> “**Senior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to KfW and the Prepetition Senior Secured Term Loan A-2 Parties in accordance with the terms hereof.

<sup>11</sup> “**TF Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition TF Stream Lender in accordance with the terms hereof.

<sup>12</sup> “**Junior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition Junior Secured Term Loan Parties in accordance with the terms hereof.

This is **Exhibit “Q”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

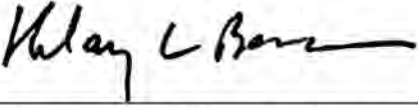


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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

  
 Honorable Hilary L. Barnes  
 United States Bankruptcy Judge



Entered on Docket  
 June 17, 2024

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566-hlb  
 Chapter 11

Hearing Date: June 13, 2024  
 Hearing Time: 1:30 p.m.

**ORDER AUTHORIZING NEVADA COPPER, INC.,  
 TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order (this “*Order*”), pursuant to sections 105(a) and 1505 of the Bankruptcy Code and Bankruptcy Rule 6003, (i) authorizing, but not directing, Debtor Nevada Copper, Inc. (“*NCT*”), to (a) act as the foreign representative of the Debtors; (b) seek recognition by the Canadian Court (as defined below) of the Chapter 11 Cases and of certain orders made by this Court in the Chapter 11 Cases from time to time; (c) request that the Canadian Court lend assistance to this Court and grant comity to the foreign representative; and (d) seek any other appropriate relief from the Canadian Court that is just and proper, and (ii) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 may enter a final order consistent with Article III of the United States Constitution; and, under the  
2 circumstances, proper and adequate notice of the Motion and the hearing thereon having been  
3 given; and it appearing that no other or further notice is necessary; and this Court having reviewed  
4 the Motion and having heard the statements in support of the relief requested therein at a hearing  
5 before this Court; and it appearing that the legal and factual bases set forth in the Motion establish  
6 just cause for the relief granted herein; and this Court having determined that the relief sought in  
7 the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in  
8 interest; and after due deliberation and sufficient cause appearing therefor;

9 IT IS HEREBY ORDERED THAT:

10 1. The Motion is GRANTED as set forth herein.

11 2. Nevada Copper, Inc. (“**NCI**”), is authorized, but not directed, (i) to act as the foreign  
12 representative of the Debtors, (ii) to seek recognition by the Canadian Court of the Chapter 11  
13 Cases and of certain orders made by the Court in the Chapter 11 Cases from time to time, (iii) to  
14 request that the Canadian Court lend assistance to this Court and grant comity to the foreign  
15 representative, and (iv) to seek any other appropriate relief from the Canadian Court that the  
16 Debtors deem just and proper.

17 3. This Court requests the aid and assistance of the Canadian Court to recognize these  
18 Chapter 11 Cases as a “foreign main proceeding” and NCI as a “foreign representative” pursuant  
19 to the Companies’ Creditors Arrangement Act and to recognize and give full force and effect to  
20 this Order in all provinces and territories of Canada.

21 4. This Court requests the assistance of the Canadian Court to act in aid of and be  
22 auxiliary to this Court in relation to the protection of the Debtors’ assets in Canada, including by  
23 giving effect to the automatic stay under section 362(a) of the Bankruptcy Code in Canada.

24 5. Nothing in the Motion or this Order shall be deemed or construed as: (i) an  
25 admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors’ rights  
26 to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an  
27 admission that any particular claim is of a type specified or defined hereunder; (v) a request to  
28



1 assume any executory contract or unexpired lease; or (vi) a waiver of the Debtors' rights under the  
2 Bankruptcy Code or any other applicable law.

3 6. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of  
4 the Motion or otherwise deemed waived.

5 7. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
6 contrary, the Debtors are not subject to any stay in the implementation, enforcement, or realization  
7 of the relief granted in this Order, and the Debtors may, in their discretion and without further  
8 delay, take any action and perform any act necessary to implement the relief granted in this Order.

9 8. This Court shall retain jurisdiction over any and all matters arising from or related  
10 to the interpretation or implementation of this Order.

11 **IT IS SO ORDERED.**

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In accordance with LR 9021, counsel submitting this **ORDER AUTHORIZING NEVADA COPPER, INC., TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS** certifies that the order accurately reflects the court's ruling and that (check one):

☐ The Court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document].

JARED A. DAY  
*United States Trustee*

**APPROVED** / ~~DISAPPROVED~~

STEVEN D. JEROME  
*Attorneys for RAM Enterprise, Inc.*

**APPROVED** / ~~DISAPPROVED~~

KATE DOORLEY  
*Attorneys for DIP Lenders*

**APPROVED** / ~~DISAPPROVED~~

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Prepared and submitted by:

McDONALD CARANO LLP

/s/ Ryan J. Works

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Amanda M. Perach (NSBN 12399)  
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ALLEN OVERY SHEARMAN STERLING US LLP  
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[sara.coelho@aoshearman.com](mailto:sara.coelho@aoshearman.com)

*Proposed Counsel to the Debtors and Debtors in Possession*

This is **Exhibit “R”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

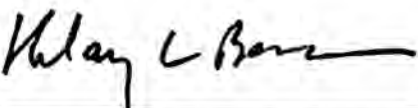


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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W



Honorable Hilary L. Barnes  
United States Bankruptcy Judge



Entered on Docket  
June 18, 2024

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re: NEVADA COPPER, INC., <sup>1</sup> Debtor.	Case No.: 24-50566-hlb Chapter 11
In re: NEVADA COPPER CORP., Debtor.	Case No.: 24-50567-hlb Chapter 11
In re: NC DITCH COMPANY LLC, Debtor.	Case No.: 24-50568-hlb Chapter 11
In re: NC FARMS LLC, Debtor.	Case No.: 24-50569-hlb Chapter 11
In re: LION IRON CORP., Debtor.	Case No.: 24-50570-hlb Chapter 11
In re: 0607792 B.C. LTD., Debtor.	Case No.: 24-50571-hlb Chapter 11
	Hearing Date: June 13, 2024 Hearing Time: 1:30 p.m.

**ORDER AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order (this “*Order*”), pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015 authorizing the joint administration of the Debtors’ related chapter 11 cases; and upon the First Day Declaration; and it appearing that

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. 1408 and 1409; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and, under the circumstances, proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015, the above-captioned chapter 11 related cases are consolidated for administrative purposes only and shall be jointly administered by this Court as Case No. 24-50566-hlb.
3. The consolidated caption of the jointly administered cases shall read as follows:

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>3</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

<sup>3</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British

1           4.     A docket entry shall be made in each Debtor's chapter 11 case substantially as  
2 follows:

3           An Order has been entered in this case under Rule 1015(b) of the Federal Rules of  
4 Bankruptcy Procedure directing the procedural consolidation and joint  
5 administration of the Chapter 11 cases of Nevada Copper, Inc., Nevada Copper  
6 Corp. (5323) (British Columbia); NC Ditch Company LLC, NC Farms LLC, Lion  
7 Iron Corp., and 0607792 B.C. Ltd. All further pleadings and other papers shall be  
filed in, and all further docket entries shall be made in the docket of Nevada Copper,  
Inc., Case No. 24-50566-hlb and such docket should be consulted for all matters  
affecting these chapter 11 cases.

8           5.     One consolidated docket, one file and one consolidated service list shall be  
9 maintained by Nevada Copper, Inc., or its claims agent, and kept by the clerk of the Court in  
10 these Chapter 11 Cases. Notwithstanding the foregoing, each Debtor shall maintain a separate  
11 claims register through its claims agent, and shall file separate operating reports, schedules of  
12 assets and liabilities, and statements of financial affairs.

13          6.     Nothing contained in the Motion or this Order shall be deemed or construed as  
14 directing or otherwise affecting a substantive consolidation of these Chapter 11 Cases, or  
15 creating any other implication regarding the separateness (or lack of separateness) of the  
16 Debtors' estates for any purpose.

17          7.     This Order shall apply to any future filing of any affiliate of the Debtors,  
18 *provided, however*, that the Debtors shall file a notice with the Court identifying the cases of  
19 such affiliates and stating that this Order shall apply to such cases.

20          8.     This Order shall constitute notice of related cases pursuant to Local Rule  
21 1015(a), as it sets forth the title case number and filing date of each related case together with  
22 a brief statement of the relationship of the Debtors.

23          9.     The Debtors are authorized and empowered to take all actions necessary to  
24 implement the relief granted in this Order.

25  
26 \_\_\_\_\_  
27 Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC  
(0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).  
28

##

In accordance with LR 9021, counsel submitting this **ORDER AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES** certifies that the order accurately reflects the court's ruling and that (check one):

☐ The Court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document].

JARED A. DAY  
*United States Trustee*

**APPROVED** / ~~DISAPPROVED~~

STEVEN D. JEROME  
*Attorneys for RAM Enterprise, Inc.*

**APPROVED** / ~~DISAPPROVED~~

KATE DOORLEY  
*Attorneys for DIP Lenders*

**APPROVED** / ~~DISAPPROVED~~

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Prepared and submitted by:

McDONALD CARANO LLP

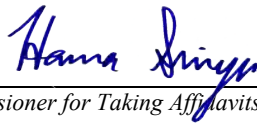
/s/ Ryan J. Works

Ryan J. Works (NSBN 9224)  
Amanda M. Perach (NSBN 12399)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

ALLEN OVERY SHEARMAN STERLING US LLP  
Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)  
599 Lexington Avenue  
New York, New York 10022  
*Proposed Counsel to the Debtors and Debtors in Possession*



This is **Exhibit “S”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

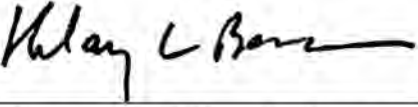


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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

  
Honorable Hilary L. Barnes  
United States Bankruptcy Judge



Entered on Docket  
June 17, 2024

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566-hlb  
Chapter 11

Hearing Date: June 13, 2024  
Hearing Time: 1:30 p.m.

**INTERIM ORDER AUTHORIZING THE DEBTORS TO CONTINUE TO  
(I) USE THEIR EXISTING CASH MANAGEMENT SYSTEM, (II) USE AND  
MAINTAIN EXISTING BANK ACCOUNTS, (III) CONTINUE INTERCOMPANY  
TRANSACTIONS AND (IV) USE THEIR EXISTING BUSINESS FORMS**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”), pursuant to sections 105(a), 345(b), and 363 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004, authorizing the Debtors to (i) continue use of their existing Cash Management System, including honoring certain prepetition obligations related thereto, (ii) maintain their existing Bank Accounts (including by authorizing the Banks to continue to maintain, service and administer the Bank Accounts), (iii) continue Intercompany Transactions in the ordinary course of business, (iv) grant administrative expense status to postpetition Intercompany Transactions and Superpriority administrative expense status to claims resulting from Intercompany Transactions transferring proceeds of debtor-in-possession financing to NCU,

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(v) continue use of their existing business forms, (vi) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and, under the circumstances, proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Cash Management System. The Debtors are authorized, but not directed, to continue to use the Cash Management System, including any intercompany transfers among Bank Accounts, in accordance with the ordinary course and historical practices of the Cash Management System and subject to compliance with the Approved Budget (as defined in the DIP Motion); *provided*, that the Debtors shall maintain detailed records reflecting all transfers of funds, so that all such transactions, including prepetition and postpetition transactions, readily may be ascertained, traced and recorded properly on applicable accounts.
3. The Debtors are further authorized to honor and pay all obligations related to the Cash Management System, including all undisputed prepetition Bank Fees as described in the Motion.
4. Proceeds of the DIP Facility constitute postpetition assets of the Debtors, subject only to the Carve Out, Administrative Charge, DIP Lenders' first priority Liens, and adequate protection liens of the Prepetition Secured Parties (each as defined in the applicable Financing

1 Orders), with the priorities set forth in the Financing Orders, and shall, for the avoidance of doubt,  
2 not be subject to any liens arising from prepetition claims against any of the Debtors, whether  
3 perfected prior to the Petition Date, after the Petition Date pursuant to section 546(b) of the  
4 Bankruptcy Code, or otherwise, regardless of where or how held. The Debtors may deposit  
5 proceeds of the DIP Facility into their existing Bank Accounts, and such proceeds shall not be  
6 subject to any liens or claims arising pre-petition, including pursuant to chapter 108 of the Nevada  
7 Revised Statutes, whether or not eligible for perfection after the Petition Date, except for junior  
8 liens or claims of the Prepetition Secured Parties, as set forth in the Financing Orders. For the  
9 avoidance of doubt, to the extent of any proceeds of the DIP Facility deposited therein, no Bank  
10 Account of the Debtors may be a “construction disbursement account” for the purposes of chapter  
11 108 of the Nevada Revised Statutes.

12 5. Maintenance of Bank Accounts. Subject to the limitations of this Interim Order  
13 and pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized and empowered  
14 to: (i) designate, maintain and continue to use any and all of the bank accounts in existence as of  
15 the Petition Date, including, without limitation, the accounts identified in **Exhibit 4** to the Motion  
16 (the “**Bank Accounts**”); *provided, however*, that the Debtors shall direct the financial institutions  
17 where the Bank Accounts are maintained (collectively, the “**Banks**”) to code the Bank Accounts  
18 internally as debtor-in-possession accounts; (ii) subject to the consent of the DIP Lenders, open  
19 new accounts wherever they are needed; *provided, however*, that the Debtors shall give the United  
20 States Trustee, and any statutory committee that may be appointed in these Chapter 11 Cases, five  
21 days’ advance notice (or such shorter notice as the United States Trustee and any committee may  
22 agree to) of each such newly opened account, and any new account shall be opened at one of the  
23 Banks or at a bank that has executed, or is willing to execute, a Uniform Depositary Agreement  
24 with the United States Trustee; (iii) treat the Bank Accounts for all purposes as accounts of the  
25 Debtors in their capacity as debtors in possession; and (iv) close any Bank Account, *provided*,  
26 *however*, that the Debtors shall give the United States Trustee, the applicable Bank, the DIP  
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1 Lenders, and any statutory committee that may be appointed in these Chapter 11 Cases five days'  
2 written notice following any such account closure.

3 6. For all purposes in this Order, any and all accounts opened by the Debtors on or  
4 after the Petition Date shall be deemed a Bank Account (as if it had been opened prior to the  
5 Petition Date and listed on **Exhibit 4** to the Motion) and any and all Banks at which such accounts  
6 are opened shall similarly be subject to the rights and obligations of this Order.

7 7. The Banks are authorized to continue to treat, service, and administer the Bank  
8 Accounts as accounts of the respective Debtor as a debtor-in-possession without interruption and  
9 in the usual and ordinary course, and to receive, process and honor and pay, to the extent of  
10 available funds, any and all postpetition checks, drafts, wires, or ACH transfers drawn on the Bank  
11 Accounts by the holders or makers thereof, as the case may be.

12 8. The Banks are authorized to debit the Debtors' accounts in the ordinary course of  
13 business without the need for further order of this Court for: (i) all checks drawn on the Debtors'  
14 accounts which are cashed at such Bank or exchanged for cashier's checks by the payees thereof  
15 prior to the Petition Date; (ii) all checks or other items deposited in one of the Debtors' accounts  
16 with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any  
17 reason, together with any fees and costs in connection therewith, to the same extent the Debtor  
18 was responsible for such items prior to the Petition Date; and (iii) all undisputed prepetition  
19 amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the  
20 maintenance of the Cash Management System.

21 9. A Bank may rely on the representations of the Debtors with respect to whether any  
22 check, item or other payment order drawn or issued by the Debtors prior to the Petition Date should  
23 be honored pursuant to this or any other order of this Court. The Banks have no duty to make an  
24 independent inquiry as to whether such payments are authorized by an order of this Court.

25 10. The Banks shall not be liable to any party on account of (i) following the Debtors'  
26 instructions or representations as to any order of this Court, or (ii) honoring any prepetition check  
27 or item in a good faith belief that the Court has authorized such prepetition check or item to be  
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1 honored.

2 11. Use of Business Forms. The Debtors are authorized, but not directed, to continue  
3 to use their Business Forms existing immediately prior to the Petition Date without alteration or  
4 change and without the designation "Debtor in Possession" or a Debtor in Possession case number  
5 imprinted upon them and are granted a waiver of the requirement that the legend "DIP" or "Debtor  
6 in Possession" be printed on their checks; *provided, however*, that the Debtors shall imprint the  
7 legend "DIP" or "Debtor in Possession" on their electronic Business Forms and shall note "DIP"  
8 or "Debtor in Possession" on electronically printed checks within 15 days of entry of this Interim  
9 Order.

10 12. Intercompany Transactions. Subject to the limitations of this Interim Order, the  
11 Debtors are authorized to continue performing intercompany transactions arising from or related  
12 to the operation of their business in the ordinary course (the "***Intercompany Transactions***"). In  
13 connection with the Intercompany Transactions, the Debtors shall continue to maintain current  
14 records with respect to all transfers such that all Intercompany Transactions readily may be  
15 ascertained, traced, and properly recorded.

16 13. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all valid  
17 postpetition payments on account of a postpetition Intercompany Transaction shall, in each case,  
18 be accorded administrative expense status, subject and junior to the claims, including adequate  
19 protection claims, granted in connection with a Financing Order; *provided* that claims arising from  
20 or related to Intercompany Transactions in which proceeds from the DIP Facility or Cash  
21 Collateral (each as defined in the Financing Orders), as applicable, are transferred from any Debtor  
22 entity (or entities) to Debtor NCU shall be accorded superpriority administrative expenses priority  
23 and shall have priority over any and all administrative expenses and claims of any kind or nature  
24 whatsoever, including, without limitation, all Adequate Protection Claims (as defined in the  
25 Financing Orders) granted under the Financing Orders and any administrative expenses of the  
26 kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364,  
27 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113, and 1114 of the Bankruptcy Code, and any  
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1 other provision of the Bankruptcy Code, subject only to the Carve-Out and the Administrative  
2 Charge (each as defined in the applicable Financing Orders).

3 14. All proceeds of the DIP Facility (as defined in the DIP Motion) and all cash  
4 collateral of the DIP Lenders (other than amounts on deposit in accounts owned by NCU prior to  
5 any funding of the DIP Facility) shall be held at NCI and shall not be transferred or lent to any  
6 other Debtor absent the prior written consent of the DIP Lenders, except for amounts disbursed to  
7 NCU pursuant to the Approved Budget or otherwise agreed to by the DIP Lenders.

8 15. Notwithstanding anything to the contrary in this Interim Order, any payment made  
9 or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any)  
10 imposed on the Debtors under any applicable Financing Order, including any documentation with  
11 respect to such financing and any budget in connection with such Financing Order. In the event  
12 of any conflict between the terms of this Interim Order and any Financing Order, the terms of the  
13 applicable Financing Order shall control (solely to the extent of such conflict). Nothing in this  
14 Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the  
15 date of the Final Hearing (as defined below).

16 16. The final hearing (the “**Final Hearing**”) on the Motion shall be held on July 12,  
17 2024, at 10:30 a.m. (Prevailing Pacific Time). Any party in interest objecting to the relief sought  
18 at the Final Hearing or in the Final Order shall file and serve a written objection, which objection  
19 shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy Shearman Sterling US  
20 LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick and Sara Coelho; (b)  
21 McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102, Attn:  
22 Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower  
23 Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel, Hanna Singer and  
24 Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C. Clifton Young  
25 Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel to the DIP  
26 Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036,  
27 Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and (b) Shea  
28

1 Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James Patrick  
2 Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as administrative  
3 agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York, NY 10001,  
4 Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments US, Inc., 3400  
5 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada, Attn: Simon  
6 Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer under the  
7 Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York, NY 10020,  
8 Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag Mining  
9 Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement;  
10 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary Gottlieb Steen  
11 & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall  
12 Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New  
13 York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Kelley Drye & Warren, LLP, as counsel to the  
14 DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007, Attn: James S.  
15 Carr, Esq.; (x) the Banks; and (xi) counsel to any statutory committee appointed in these Chapter  
16 11 Cases, in each case so as to be received no later than June 28, 2024, at 11:59 p.m. (Prevailing  
17 Pacific Time). If no objections to the entry of the Final Order are timely filed, this Court may enter  
18 the Final Order without further notice or a hearing.

19 17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents  
20 of the Motion.

21 18. Notice of the Motion, as provided therein, is deemed good and sufficient and the  
22 requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

23 19. Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Interim  
24 Order shall be immediately effective and enforceable upon its entry.

25 20. All time periods set forth in this Interim Order shall be calculated in accordance  
26 with Bankruptcy Rule 9006(a).



1           21.     Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
2 contrary, the Debtors are not subject to any stay in the implementation, enforcement or realization  
3 of the relief granted in this Interim Order, and the Debtors may take, in their discretion and without  
4 further delay, any action and perform any act necessary to implement the relief granted in this  
5 Interim Order.

6           22.     This Court shall retain jurisdiction over any and all matters arising from or related  
7 to the interpretation or implementation of this Interim Order.

8           **IT IS SO ORDERED.**

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1 In accordance with LR 9021, counsel submitting this **INTERIM ORDER**  
2 **AUTHORIZING THE DEBTORS TO CONTINUE TO (I) USE THEIR EXISTING CASH**  
3 **MANAGEMENT SYSTEM, (II) USE AND MAINTAIN EXISTING BANK ACCOUNTS,**  
4 **(III) CONTINUE INTERCOMPANY TRANSACTIONS AND (IV) USE THEIR EXISTING**  
5 **BUSINESS FORMS** certifies that the order accurately reflects the court's ruling and that (check  
6 one):

7 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

8 ☐ No party appeared at the hearing or filed an objection to the motion.

9 ☒ I have delivered a copy of this proposed order to all counsel who appeared at the  
10 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
11 disapproved the order, or failed to respond, as indicated below [list each party and whether the party  
12 has approved, disapproved, or failed to respond to the document].

11 JARED A. DAY  
12 *United States Trustee*

**APPROVED** / ~~DISAPPROVED~~

13 STEVEN D. JEROME  
14 *Attorneys for RAM Enterprise, Inc.*

**APPROVED** / ~~DISAPPROVED~~

15 KATE DOORLEY  
16 *Attorneys for DIP Lenders*

**APPROVED** / ~~DISAPPROVED~~

17 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
18 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
19 content of the order.  
20  
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28

1 Prepared and submitted by:

2 McDONALD CARANO LLP

3 /s/ Ryan J. Works

4 Ryan J. Works (NSBN 9224)

5 Amanda M. Perach (NSBN 12399)

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10 ALLEN OVERY SHEARMAN STERLING US LLP

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12 Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)

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14 New York, New York 10022

15 [fsosnick@aoshearman.com](mailto:fsosnick@aoshearman.com)

16 [sara.coelho@aoshearman.com](mailto:sara.coelho@aoshearman.com)

17 *Proposed Counsel to the Debtors and Debtors in Possession*

This is **Exhibit “T”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

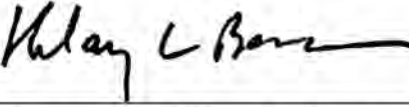


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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

  
 Honorable Hilary L. Barnes  
 United States Bankruptcy Judge



Entered on Docket  
 June 17, 2024

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566-hlb  
 Chapter 11

Hearing Date: June 13, 2024  
 Hearing Time: 1:30 p.m.

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE THEIR PREPETITION INSURANCE POLICIES, (B) CONTINUE THEIR PREPETITION SURETY BOND PROGRAM AND (C) ENTER INTO NEW PREMIUM FINANCING AGREEMENTS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”), pursuant to sections 105(a), 363, and 364(c) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors to (a) continue their existing insurance policies and satisfy payment obligations related thereto, (b) pay Surety Premiums and continue and renew their surety bond program on an uninterrupted basis, (c) revise, extend, renew, supplement, replace or enter into new premium financing agreements as needed, and (ii) granting related relief; and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order  
2 consistent with Article III of the United States Constitution; and, under the circumstances, proper  
3 and adequate notice of the Motion and the hearing thereon having been given; and it appearing  
4 that no other or further notice being necessary; and this Court having reviewed the Motion and  
5 having heard the statements in support of the relief requested therein at a hearing before this Court;  
6 and it appearing that the legal and factual bases set forth in the Motion establish just cause for the  
7 relief granted herein; and this Court having determined that the relief sought in the Motion is in  
8 the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after  
9 due deliberation and sufficient cause appearing therefor;

10 IT IS HEREBY ORDERED THAT:

11 1. The Motion is GRANTED as set forth herein.

12 2. The Debtors are authorized, but not directed, to pay (i) all premiums, claims,  
13 deductibles, excess, retrospective adjustments, administrative fees, and all other obligations arising  
14 under or in relation to the Insurance Policies and Insurance Program, including any self-insured  
15 retention amounts (the “**Insurance Obligations**”) and (ii) all premiums, and any related  
16 miscellaneous fees or other costs associated therewith, for the Debtors’ surety bonds (the “**Surety**  
17 **Premiums**”), in each case, as they deem appropriate in the ordinary course of business without  
18 further application to this Court, including making all payments, and honoring and satisfying all  
19 obligations, whether relating to the period prior or subsequent to the Petition Date; *provided*,  
20 *however*, that the Debtors shall not be authorized to pay in excess of \$315,000.00 on account of  
21 such obligations that have accrued but that remain unpaid as of the Petition Date, absent further  
22 order of this Court.

23 3. The Debtors are authorized and empowered, but not directed, to continue their  
24 Insurance Program without interruption, on the same basis and in accordance with the same  
25 practices and procedures as were in effect prior to the Petition Date. The Debtors are authorized,  
26 but not directed, to renew, amend, supplement, extend, terminate, replace, increase, decrease, or  
27 enter into new insurance coverage and change insurance carriers in the ordinary course of business.  
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1           4.     The Debtors are authorized, but not directed, to continue their Surety Program  
2 without interruption, including renewing Surety Bonds or, with the prior written consent of the  
3 Required DIP Lenders, obtaining new Surety Bonds, obtaining additional surety coverage, or  
4 changing carriers in connection with the Surety Program in the ordinary course of business.

5           5.     The Debtors are authorized, but not directed, subject to the reasonable consent of  
6 the Required DIP Lenders, to renew, amend, supplement, extend, terminate, replace, increase,  
7 decrease, or enter into new insurance premium financing agreements in the ordinary course of  
8 business.

9           6.     The Debtors shall notify the Required DIP Lenders, the United States Trustee for  
10 Region 17, and any statutory committee appointed in these Chapter 11 Cases as soon as reasonably  
11 practicable, but not later than five (5) business days prior to the Debtors choosing to renew, amend,  
12 supplement, extend, terminate, replace, increase, decrease or enter into new insurance premium  
13 financing agreements or obtain additional surety or insurance coverage or change insurance or  
14 surety carriers.

15          7.     The Debtors are not authorized by this Interim Order, absent the reasonable consent  
16 of the Required DIP Lenders, to take any action with respect to a Surety Bond that would have the  
17 effect of transforming a Surety Bond obligation into a postpetition or secured obligation in each  
18 case that is senior to any liens or claims granted in connection with any Financing Order(s) (as  
19 defined below). To the extent the Required DIP Lenders consent to any such action, such relief  
20 may be sought by a separate motion which may be heard on an expedited basis.

21          8.     Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims  
22 pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity  
23 of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any  
24 grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular  
25 claim is an Insurance Obligation or Surety Obligation.

26          9.     All banks and other financial institutions are authorized to receive, process, honor,  
27 and pay all checks presented for payment of, and to honor all fund transfer requests made by the  
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1 Debtors related to the Insurance Program and Surety Bonds, regardless of whether the checks were  
2 presented or fund transfer requests were submitted before or after the Petition Date; *provided* that  
3 funds are available in the Debtors' accounts to cover the checks and fund transfers. Banks and  
4 other financial institutions may rely on the representations of the Debtors with respect to whether  
5 any check, item or other payment order drawn or issued by the Debtors prior to the Petition Date  
6 should be honored pursuant to this or any other order of this Court, and such bank or financial  
7 institution shall not have any liability to any party for relying on such representations by the  
8 Debtors as provided for herein.

9 10. The Debtors are authorized to issue postpetition checks or to effect postpetition  
10 fund transfer requests in replacement of any checks or fund transfer requests in respect of the  
11 Insurance Program or Surety Bonds that are or have been dishonored or rejected as a consequence  
12 of the commencement of the Chapter 11 Cases, and take all other steps reasonably necessary to  
13 implement and effectuate the relief sought in the Motion.

14 11. Notwithstanding anything to the contrary in this Interim Order, any payment made  
15 or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any)  
16 imposed on the debtors under any order(s) of this Court approving a postpetition debtor in  
17 possession financing facility and/or the use of cash collateral (any such order, a "**Financing**  
18 **Order**"), including any documentation with respect to such financing and any budget in connection  
19 with such Financing Order. In the event of any conflict between the terms of this Interim Order  
20 and a Financing Order, the terms of the applicable Financing Order shall control (solely to the  
21 extent of such conflict). Nothing in this Interim Order authorizes the Debtors to accelerate any  
22 payments not otherwise due prior to the date of the Final Hearing.

23 12. The final hearing (the "**Final Hearing**") on the Motion shall be held on July 12,  
24 2024, at 10:30 a.m. (Prevailing Pacific Time). Any party in interest objecting to the relief sought  
25 at the Final Hearing or in the Final Order shall file and serve a written objection, which objection  
26 shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy Shearman Sterling US  
27 LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick and Sara Coelho; (b)  
28



McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102, Attn: Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel, Hanna Singer and Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C. Clifton Young Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada, Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York, NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (x) counsel to any statutory committee appointed in these Chapter 11 Cases, in each case so as to be received no later than June 28, 2024, at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

13. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

1           14.     The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents  
2 of the Motion.

3           15.     Notice of the Motion, as provided therein, is deemed good and sufficient and the  
4 requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

5           16.     Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Interim  
6 Order shall be immediately effective and enforceable upon its entry.

7           17.     Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the  
8 contrary, the Debtors are not subject to any stay in the implementation, enforcement, or realization  
9 of the relief granted in this Interim Order, and the Debtors may, in their discretion and without  
10 further delay, take any action and perform any act necessary to implement the relief granted in this  
11 Interim Order.

12           18.     This Court shall retain jurisdiction over any and all matters arising from or related  
13 to the interpretation or implementation of this Interim Order.

14           **IT IS SO ORDERED.**

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In accordance with LR 9021, counsel submitting this **INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE THEIR PREPETITION INSURANCE POLICIES, (B) CONTINUE THEIR PREPETITION SURETY BOND PROGRAM AND (C) ENTER INTO NEW PREMIUM FINANCING AGREEMENTS AND (II) GRANTING RELATED RELIEF** certifies that the order accurately reflects the court's ruling and that (check one):

☐ The Court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document].

JARED A. DAY  
*United States Trustee*

**APPROVED** / ~~DISAPPROVED~~

STEVEN D. JEROME  
*Attorneys for RAM Enterprise, Inc.*

**APPROVED** / ~~DISAPPROVED~~

KATE DOORLEY  
*Attorneys for DIP Lenders*

**APPROVED** / ~~DISAPPROVED~~

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Prepared and submitted by:

McDONALD CARANO LLP

/s/ Ryan J. Works

Ryan J. Works (NSBN 9224)  
Amanda M. Perach (NSBN 12399)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

ALLEN OVERY SHEARMAN STERLING US LLP  
Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)  
599 Lexington Avenue  
New York, New York 10022

*Proposed Counsel to the Debtors and Debtors in Possession*

This is **Exhibit “U”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

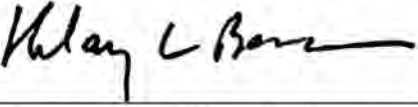


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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

  
Honorabile Hilary L. Barnes  
United States Bankruptcy Judge



Entered on Docket  
June 17, 2024

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566-hlb  
Chapter 11

Hearing Date: June 13, 2024  
Hearing Time: 1:30 p.m.

**INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) PAY  
PREPETITION EMPLOYEE WAGES, SALARIES, AND OTHER  
COMPENSATION, (II) REIMBURSE PREPETITION BUSINESS  
EXPENSES, (III) CONTINUE PREPETITION EMPLOYEE BENEFITS  
PROGRAMS, (IV) MAKE PAYMENTS FOR WHICH PREPETITION  
PAYROLL DEDUCTIONS HAVE BEEN WITHHELD AND PAY CERTAIN  
EMPLOYMENT-RELATED TAXES, (V) PAY AMOUNTS THAT WERE AWARDED  
UNDER THE DEBTORS' 2023 SHORT TERM INCENTIVE PROGRAM,  
AND (VI) PAY ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING**

Upon the motion (the "*Motion*")<sup>2</sup> of the Debtors for entry of an interim order (this "*Interim Order*") authorizing, but not directing, the Debtors, *inter alia*, to (i) pay all prepetition employee wages, salaries and other accrued compensation, (ii) reimburse prepetition business expenses, (iii) continue prepetition employee benefits programs (including by making contributions in connection therewith, and continuing such programs on a post-petition basis), (iv) make all payments for which prepetition payroll deductions have been withheld and pay certain employment-related taxes, (v) pay amounts that were awarded under the Debtors' 2023 short term incentive program, (vi) pay all costs and expenses incident to the foregoing, and

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(vii) setting the date of a final hearing and granting related relief; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b), and that this Court may enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court pursuant to 28 U.S.C. § § 1408 and 1409; and, under the circumstances, proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice being necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to honor and pay all prepetition claims and obligations related to the Prepetition Compensation Obligations, up to a maximum amount for any individual that equals, together with any unpaid Prepetition Unpaid Employee Benefits, \$15,150 per individual, and approximately \$1,483,500, in the aggregate for amounts paid to Employees.
3. The Debtors are authorized, but not directed, to honor and continue their Leave Policies, including paying amounts thereunder, in the ordinary course of business and consistent with prepetition practices, regardless of when the benefits under the Leave Policies accrued, *provided, however*, the Debtors shall not pay any Employee in cash on account of the Leave Policies prior to entry of a final order granting the relief requested in the Motion.
4. The Debtors are authorized, but not directed, to honor and to pay all prepetition claims and obligations related to and including the following: (i) Unpaid Medical Plan Expenses; (ii) Unpaid Insurance Expenses; (iii) Unpaid Short-Term Disability Insurance Expenses; (iv) Unpaid Long-Term Disability Insurance Expenses; (v) Unpaid Workers'

1 Compensation Insurance Expenses; (vi) Unpaid Contributions; (vii) U.S. Additional Benefits;  
2 (viii) Unpaid Canadian Benefits; and (ix) Unpaid Canadian Workers' Compensation Insurance  
3 Expenses (collectively, the "***Prepetition Unpaid Employee Benefits***"); *provided, however*, that  
4 absent further order of this Court, the aggregate amount of such payments for Prepetition Unpaid  
5 Employee Benefits paid directly (and not *via* effecting an offset) shall not exceed \$633,500.

6 5. The Debtors are authorized, but not directed, to honor and to pay all prepetition  
7 claims and obligations related to and including the following: (i) Unpaid Reimbursable  
8 Expenses; (ii) Unremitted Deductions; (iii) Unpaid Employment Taxes, including, in the case  
9 of Provincial Medical Taxes, though offsetting against tax overpayments owing to the Debtors;  
10 and (iv) Unpaid Third-Party Administrative Costs (collectively, the "***Prepetition Unpaid***  
11 ***Employee Costs***"); *provided, however*, that absent further order of this Court, the aggregate  
12 amount of such payments for Prepetition Unpaid Employee Costs paid directly (and not *via*  
13 effecting an offset) shall not exceed \$288,500.

14 6. All banks, and other financial institutions are authorized to receive, process,  
15 honor and pay all checks presented for payment and to honor all electronic payment requests or  
16 credit card payments made by the Debtors related to the prepetition obligations described in the  
17 Motion.

18 7. Nothing in this Order shall be deemed to authorize the payment of any amounts  
19 subject to section 503(c) of the Bankruptcy Code.

20 8. The Debtors shall file a list under seal identifying each Employee that will receive  
21 Prepetition Compensation Obligations, identifying the Employee by title or work function only,  
22 together with the proposed Prepetition Compensation Obligations to be paid to such Employee,  
23 the accrued prepetition vested vacation for each Employee, and, where applicable, the 2023  
24 STIP, which list shall be provided on an unredacted basis to the United States Trustee and any  
25 official committee of unsecured creditors appointed in the Chapter 11 Cases.

26 9. The Debtors are authorized, but not directed, to continue and/or modify, change,  
27 or discontinue the Wages and Benefits on a post-petition basis, in the ordinary course of  
28 business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors'

1 discretion, to pay and honor amounts related thereto, irrespective of whether such obligations  
2 arose prepetition or post-petition.

3 10. Notwithstanding anything to the contrary in this Interim Order, any payment  
4 made or to be made hereunder, and any authorization herein, shall be subject to the requirements  
5 (if any) imposed on the debtors under any order(s) of this Court approving a postpetition debtor  
6 in possession financing facility and/or the use of cash collateral (any such order, a “**Financing**  
7 **Order**”), including any documentation with respect to such financing and any budget in  
8 connection with such Financing Order. In the event of any conflict between the terms of this  
9 Interim Order and a Financing Order, the terms of the applicable Financing Order shall control  
10 (solely to the extent of such conflict). Nothing in this Interim Order authorizes the Debtors to  
11 accelerate any payments not otherwise due prior to the date of the Final Hearing.

12 11. The final hearing (the “**Final Hearing**”) on the Motion shall be held on July 12,  
13 2024, at 10:30 a.m. (prevailing Pacific Time). Any party in interest objecting to the relief sought  
14 at the Final Hearing or in the Final Order shall file and serve a written objection, which objection  
15 shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy Shearman Sterling  
16 US LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick and Sara  
17 Coelho; (b) McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada  
18 89102, Attn: Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD  
19 South Tower Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel, Hanna  
20 Singer and Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C. Clifton  
21 Young Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel to  
22 the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY  
23 10036, Attn: Brad Kahn; 2001 K St. NW, Washington, D.C. 20006, Attn: Kate Doorley; and  
24 (b) Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James  
25 Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as  
26 administrative agent under the Debtors’ prepetition credit agreement, 55 Hudson Yards, New  
27 York, NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria  
28 Investments US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X



1 1A4, Canada, Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources  
2 Limited as buyer under the Debtors' prepetition advance payment agreement, 1221 6th Avenue,  
3 New York, NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to  
4 Triple Flag Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase  
5 and sale agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii)  
6 Cleary Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition  
7 lender, 2 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh;  
8 One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Kelley Drye &  
9 Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich Street, New  
10 York, NY 10007, Attn: James S. Carr, Esq.; and (x) counsel to any statutory committee  
11 appointed in these Chapter 11 Cases, in each case so as to be received no later than June 28,  
12 2024, at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order  
13 are timely filed, this Court may enter the Final Order without further notice or a hearing.

14 12. Nothing in this Interim Order should be read to constitute a prohibition on the  
15 Debtors' right to seek authority to pay any employee compensation or employee benefits for  
16 which relief is not sought by the Motion or to pay any amounts in the ordinary course of business  
17 consistent with the requirements of the Bankruptcy Code.

18 13. All banks and other financial institutions are authorized to receive, process, honor  
19 and pay all checks presented for payment and to honor all electronic payment requests or credit  
20 card payments made by the Debtors related to the prepetition obligations described in the  
21 Motion.

22 14. The Debtors are authorized and empowered to take all actions necessary to  
23 implement the relief granted in this Interim Order.

24 15. Notwithstanding the relief granted herein and any actions taken pursuant hereto,  
25 nothing herein shall prohibit the Debtors from continuing or modifying, changing, or otherwise  
26 discontinuing the Employee Benefits Programs and Employee Benefits or implementing new  
27 programs, policies, and benefits, in the ordinary course of business during these Chapter 11  
28 Cases, subject to applicable law, and nothing herein shall be deemed: (i) an admission as to the

1 validity of any claim against the Debtors; (ii) a waiver of the Debtors' right to dispute any claim  
2 on any grounds and raise any available defenses; (iii) a promise or requirement to pay any claim;  
3 (iv) an admission that any particular claim is of a type specified or defined hereunder; (v) a  
4 request to assume any executory contract or unexpired lease or a postpetition assumption or  
5 adoption of any programs, policies, or agreements described herein; or (vi) a waiver of the  
6 Debtors' rights under the Bankruptcy Code or any other applicable law.

7 16. Notwithstanding the relief granted herein and any actions taken pursuant to this  
8 Order, nothing herein is intended to create any rights in favor of, or enhance the status of, any  
9 claim held by any person.

10 17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the  
11 contents of the Motion.

12 18. Notice of the Motion, as provided therein, is deemed good and sufficient and the  
13 requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

14 19. Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this  
15 Interim Order shall be immediately effective and enforceable upon its entry.

16 20. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to  
17 the contrary, the Debtors are not subject to any stay in the implementation, enforcement or  
18 realization of the relief granted in this Interim Order, and the Debtors may take, in their  
19 discretion and without further delay, any action and perform any act necessary to implement  
20 the relief granted in this Interim Order.

21 21. This Court shall retain jurisdiction over any and all matters arising from or related  
22 to the interpretation or implementation of this Interim Order.

23 **IT IS SO ORDERED.**

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1 In accordance with LR 9021, counsel submitting this **INTERIM ORDER**  
2 **AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION EMPLOYEE WAGES,**  
3 **SALARIES, AND OTHER COMPENSATION, (II) REIMBURSE PREPETITION**  
4 **BUSINESS EXPENSES, (III) CONTINUE PREPETITION EMPLOYEE BENEFITS**  
5 **PROGRAMS, (IV) MAKE PAYMENTS FOR WHICH PREPETITION PAYROLL**  
6 **DEDUCTIONS HAVE BEEN WITHHELD AND PAY CERTAIN EMPLOYMENT-**  
7 **RELATED TAXES, (V) PAY AMOUNTS THAT WERE AWARDED UNDER THE**  
8 **DEBTORS' 2023 SHORT TERM INCENTIVE PROGRAM, AND (VI) PAY ALL COSTS**  
9 **AND EXPENSES INCIDENT TO THE FOREGOING** certifies that the order accurately  
10 reflects the court's ruling and that (check one):

11 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

12 ☐ No party appeared at the hearing or filed an objection to the motion.

13 ☒ I have delivered a copy of this proposed order to all counsel who appeared at the  
14 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
15 disapproved the order, or failed to respond, as indicated below [list each party and whether the  
party has approved, disapproved, or failed to respond to the document].

16 JARED A. DAY  
17 *United States Trustee*

**APPROVED** / ~~DISAPPROVED~~

18 STEVEN D. JEROME  
19 *Attorneys for RAM Enterprise, Inc.*

**APPROVED** / ~~DISAPPROVED~~

20 KATE DOORLEY  
21 *Attorneys for DIP Lenders*

**APPROVED** / ~~DISAPPROVED~~

22 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
23 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
24 content of the order.  
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1 Prepared and submitted by:

2 McDONALD CARANO LLP

3 /s/ Ryan J. Works

4 Ryan J. Works (NSBN 9224)  
5 Amanda M. Perach (NSBN 12399)  
6 2300 West Sahara Avenue, Suite 1200  
7 Las Vegas, Nevada 89102

8 [rworks@mcdonaldcarano.com](mailto:rworks@mcdonaldcarano.com)  
9 [aperach@mcdonaldcarano.com](mailto:aperach@mcdonaldcarano.com)

10 ALLEN OVERY SHEARMAN STERLING US LLP  
11 Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
12 Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)  
13 599 Lexington Avenue  
14 New York, New York 10022  
15 [fsosnick@aoshearman.com](mailto:fsosnick@aoshearman.com)  
16 [sara.coelho@aoshearman.com](mailto:sara.coelho@aoshearman.com)

17 *Proposed Counsel to the Debtors and Debtors in Possession*  
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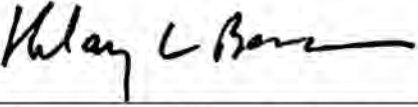
This is **Exhibit “V”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**  
LSO #: 81994W

  
 Honorable Hilary L. Barnes  
 United States Bankruptcy Judge



Entered on Docket  
 June 14, 2024

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566-hlb  
 Chapter 11

Hearing Date: June 13, 2024  
 Hearing Time: 1:30 p.m. (PST)

**INTERIM ORDER (I) AUTHORIZING THE  
 DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B) GRANT LIENS,  
 INCLUDING SENIOR SECURED PRIMING LIENS AND SUPERPRIORITY  
 ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH COLLATERAL;  
 (II) GRANTING ADEQUATE PROTECTION TO CERTAIN  
 PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY;  
 (IV) SCHEDULING FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”),<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”) and Final Order (defined below) pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 of, and Local Rules 4001 and 9006 seeking, among other things:

- (a) authorization for Nevada Copper, Inc. (the “*Borrower*”) to obtain a senior secured postpetition financing on terms and conditions consistent with the terms and

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized term used but not defined herein have the meanings ascribed to such terms in the Motion.

conditions set forth in the Senior Secured Superpriority Term Loan Debtor in Possession Credit Agreement by and among the Borrower, each of the Debtors other than the Borrower, (collectively, the “**Guarantors**,” and together with Borrower, the “**DIP Loan Parties**”), U.S Bank Trust Company, National Association, as administrative agent and collateral agent (the “**DIP Agent**”), one or more affiliates of Elliott Investment Management L.P., as lenders (collectively, the “**DIP Lenders**” and, together with the DIP Agent, the “**DIP Secured Parties**”) (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**DIP Credit Agreement**”) attached to this Interim Order at **Exhibit A**, and for the Guarantors to unconditionally guaranty, on a joint and several basis, the Borrower’s obligations in connection with such postpetition financing, consisting of: (i) a new money term loan in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$20,000,000 (the “**Interim DIP Loan**”), which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.1 and 12.3 of the DIP Credit Agreement have been satisfied (the “**Interim Closing Date**”); (ii) subject to entry of the Final Order, a new money delayed-draw term loan to be made in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$40,000,000 (the “**Final DIP Loan**” and, together with the Interim DIP Loan, the “**DIP Facility**”), which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.2 and 12.3 of the DIP Credit Agreement have been satisfied;

- (b) authorization for the DIP Loan Parties to enter into any agreements, documents and instruments in connection with the DIP Facility, including the DIP Credit Agreement and all notices, guarantees, security agreements, ancillary documents and agreements executed in connection therewith, (collectively, the “**DIP Documents**”) on terms and conditions consistent with the DIP Credit Agreement and this Interim Order, and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate or desirable in connection with the DIP Documents;
- (c) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, and authorizing the Debtors to incur, the DIP Liens (as defined below) in all DIP Collateral (as defined below), to secure the DIP Obligations (as defined below), which liens and security interests shall be automatically perfected and be subject to the lien priorities set forth in the DIP Credit Agreement, on the terms and conditions set forth herein, in the DIP Credit Agreement and in the DIP Documents;
- (d) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, allowed superpriority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations (as defined below), with priority over any and all administrative expenses of any kind or nature, subject and subordinate only to the Carve-Out and the Administration Charge (as defined below), on the terms and conditions set forth herein and in the DIP Documents;
- (e) authorization for the Debtors to use the proceeds of the DIP Facility and the Prepetition Collateral (as defined below), including Cash Collateral (as defined below), in accordance with the terms hereof, including pursuant to the Approved Budget (as defined below) as further described herein, to: (i) pay fees and interest under the DIP Facility; (ii) provide working capital for, and for other general corporate purposes of, the Debtors, including for funding the Carve-Out (as defined

below); (iii) pay for bankruptcy-related costs and expenses, including costs and expenses incurred in connection with the Recognition Proceedings (as defined below); and (iv) pay Adequate Protection Payments (as defined below);

- (f) authorization for the Debtors to pay, on a final and irrevocable basis, the principal, interest, expenses, fees, premiums and other amounts payable under the DIP Documents as such become earned, due and payable, including, without limitation, (i) the Upfront Fee, (ii) the Unused Commitment Fee, (iii) the Exit Fee, (iv) the Agency Fee (each as defined in the DIP Credit Agreement), and (iv) the reasonable fees and disbursements of the DIP Secured Parties' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with the DIP Documents (collectively, the "**DIP Obligations**");
- (g) authorization to grant adequate protection to the Prepetition Secured Parties (as defined below) on the terms set forth in the DIP Documents and this Interim Order on account of any Diminution in Value (as defined below) of the Prepetition Secured Parties' interests in the Prepetition Collateral, including Cash Collateral;
- (h) waivers of (i) the Debtors' and the estates' rights to surcharge against the DIP Collateral or the Prepetition Collateral pursuant to the Bankruptcy Code section 506(c), (ii) the "equities of the case" exception under Bankruptcy Code section 552(b) and (iii) the equitable doctrine of marshalling with respect to the DIP Collateral, including all Prepetition Collateral, in each case, subject to entry of the Final Order (but retroactive to the Petition Date);
- (i) subject to the terms of this Interim Order, authorization for the DIP Secured Parties to exercise remedies under the DIP Documents on the terms described herein upon the occurrence and during the continuance of a Termination Event (as defined below);
- (j) the modification of the automatic stay imposed pursuant to Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of this Interim Order; and
- (k) that this Court schedule a final hearing (the "**Final Hearing**") to consider entry of a final order (the "**Final Order**") authorizing and approving, on a final basis, among other things, the Debtors' entry into the DIP Facility, the borrowings under the DIP Facility, the continued use of Cash Collateral and the granting of adequate protection, in each case, as described in the Motion and as set forth in the DIP Documents.

The Court having held a hearing to consider entry of this Interim Order (the "**Interim Hearing**"); and the Court having considered the Motion and the exhibits thereto, the *Declaration of Zul Jamal in support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* (the "**DIP Declaration**"),



1 the evidence submitted or proffered and the arguments of counsel made at the Interim Hearing;  
2 and proper and sufficient notice of the Motion and the Interim Hearing having been given in  
3 accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and all objections, if any,  
4 to the relief requested in the Motion and to the entry of this Interim Order having been withdrawn,  
5 resolved or overruled by the Court; and it appearing to the Court that granting the relief requested  
6 in necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the  
7 Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their  
8 estates, creditors and parties in interest; and after due deliberation and consideration, and for good  
9 and sufficient cause appearing therefor; IT IS FOUND AND DETERMINED THAT:<sup>3</sup>

10 A. **Petition Date.** On June 9, 2024 (the “*Petition Date*”), each of the Debtors filed a  
11 voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

12 B. **Debtors in Possession.** The Debtors have continued in the management and  
13 operation of their business and properties as debtors in possession pursuant to sections 1107 and  
14 1108 of the Bankruptcy Code.

15 C. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases  
16 commenced on the Petition Date, the Motion and the parties and property affected hereby pursuant  
17 to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408  
18 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

19 D. **Committee Formation.** As of the date hereof, the United States Trustee for Region  
20 17 (the “*U.S. Trustee*”) has not yet appointed an official committee of unsecured creditors in these  
21 Chapter 11 Cases (a “*Creditors’ Committee*”) pursuant to section 1102 of the Bankruptcy Code.

22 E. **Notice.** Under the circumstances, the notice given by the Debtors of, and described  
23 in the Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient  
24 notice thereof and complies with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules,

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25 <sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law  
26 pursuant to Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent that any  
27 of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the  
28 following conclusions of law constitute findings of fact, they are adopted as such.

1 and no further notice of the relief sought at the Interim Hearing and the relief granted herein is  
2 necessary or required.

3 F. **Debtors' Stipulations.** Without prejudice to the rights of any other party, but  
4 subject to the limitations thereon contained in paragraphs 21 and 22 of this Interim Order, the  
5 Debtors represent, admit, stipulate and agree as follows:

6 1. **Prepetition Senior Secured Term Loan Facility.**

7 (a) Under that certain Second Amended and Restated Credit  
8 Agreement, dated as of October 28, 2022 (as amended, restated, amended and restated,  
9 supplemented, or otherwise modified from time to time prior to the date hereof, the "***Prepetition***  
10 ***Senior Secured Term Loan Credit Agreement***" and together with all related security agreements,  
11 collateral agreements, pledge agreements, control agreements, guarantees and other documents  
12 delivered or executed in connection therewith, the "***Prepetition Senior Secured Term Loan***  
13 ***Documents***") by and among Borrower, as borrower, the financial institutions party thereto from  
14 time to time, as lenders (the "***Prepetition Senior Secured Term Loan Lenders***"), KfW IPEX-Bank  
15 GmbH ("***KfW***"), as sole lead arranger, UFK agent, as administrative agent and collateral agent (in  
16 such capacities, the "***Prepetition Senior Secured Term Loan Agent***" and together with the  
17 Prepetition Senior Secured Term Loan Lenders, the "***Prepetition Senior Secured Term Loan***  
18 ***Parties***") the Borrower was provided with a first-lien secured term loan facility (the loans  
19 borrowed thereunder, the "***Prepetition First Lien Loans***") consisting of:

- 20 (a) Tranche A Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
21 Agreement) provided by KfW, which, as of the Petition Date, amount to an  
22 aggregate principal amount of approximately \$129,191,475.89 million (together  
23 with all accrued interest, premiums (if any), costs, fees, expenses and other  
24 obligations in respect thereof, the "***Prepetition Senior Secured Term Loan A***  
25 ***Obligations***");
- 26 (b) Tranche A-2 Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
27 Agreement) provided by Pala Investments Limited ("***Pala***"), Mercuria Investments  
28 US, Inc. ("***Mercuria***") and TF R&S Canada Ltd. ("***TF Canada***," and collectively  
with Pala and Mercuria, the "***Prepetition Senior Secured Term Loan A-2 Parties***"),  
which, as of the Petition Date, amount to an aggregate principal amount of  
approximately \$40,919,608.57 million (together with all accrued interest,  
premiums (if any), costs, fees, expenses and other obligations in respect thereof,  
the "***Prepetition Senior Secured Term Loan A-2 Obligations***"); and

1 (c) Tranche B Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
2 Agreement) provided by KfW, which, as of the Petition Date, amount to an  
3 aggregate principal amount of approximately \$17,973,301.40 million (together  
4 with all accrued interest, premiums (if any), costs, fees, expenses and other  
obligations in respect thereof, the “**Prepetition Senior Secured Term Loan B  
Obligations**” and, together with the Prepetition Senior Secured Term Loan A  
Obligations, the “**Prepetition Senior Secured KfW Term Loan Obligations**”).

5 (b) *Prepetition Senior Secured Term Loan Obligations.* As of the  
6 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
7 severally indebted and liable to the Prepetition Senior Secured Term Loan Parties under the  
8 Prepetition Senior Secured Term Loan Documents in the principal aggregate amount of not less  
9 than \$188,084,385.86 million, *plus* accrued and unpaid interest thereon as of the Petition Date,  
10 plus all other fees, costs, expenses, indemnification obligations, reimbursement obligations,  
11 charges, premiums, if any, additional interest, any other “Obligations” (as defined in the  
12 Prepetition Senior Secured Term Loan Documents) and all other obligations of whatever nature  
13 owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable  
14 under the Prepetition Senior Secured Term Loan Documents (collectively, the “**Prepetition Senior  
15 Secured Term Loan Obligations**”). The Prepetition Senior Secured Term Loan Obligations  
16 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
17 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
18 subordination, other claims, cause of action or other challenge of any kind under the Bankruptcy  
19 Code, under applicable non-bankruptcy law or otherwise. No payments or transfer made to or for  
20 the benefit of (or obligations incurred to or for the benefit of) the Prepetition Senior Secured Term  
21 Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection  
22 with any of the Prepetition Senior Secured Term Loan Documents are subject to avoidance,  
23 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
24 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
25 bankruptcy law or otherwise.

26 (c) *Prepetition Senior Secured Term Loan Liens.* Pursuant to the  
27 Prepetition Senior Secured Term Loan Documents, the Prepetition Senior Secured Term Loan  
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Obligations are secured by valid, binding, perfected and enforceable liens on and security interests in (the “**Prepetition Senior Secured Term Loan Liens**”) the “Collateral” (as defined in the Prepetition Senior Secured Term Loan Documents) (the “**Prepetition Collateral**”), subject to certain permitted liens as permitted under the Prepetition Senior Secured Term Loan Documents. The Prepetition Senior Secured Term Loan Liens are (i) senior to all other Prepetition Funded Debt Liens (as defined below) with respect to Prepetition Collateral constituting “Project Collateral” (as defined in the WCF Intercreditor Agreement (as defined below)) (the “**Non-WCF Collateral**”), and (ii) subject to the Prepetition Working Capital Lien (as defined below) with respect to Prepetition Collateral constituting “APA Collateral” (as defined in the WCF Intercreditor Agreement) (the “**WCF Collateral**”), in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Senior Secured Term Loan Liens: (i) are valid, binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with the priority set forth in the Prepetition Senior Secured Term Loan Documents and the Prepetition Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are subject and/or subordinate only to Prepetition Prior Liens (defined below), and solely with respect to the WCF Collateral, the Prepetition Working Capital Lien. In this Interim Order the term “**Prepetition Prior Liens**” shall mean, in relation to any Prepetition Funded Debt Liens (defined below), liens that are senior in relation to the liens securing such facility and are (1) valid, enforceable, perfected, non-avoidable and in existence immediately prior to the Petition Date or (2) valid, enforceable, non-avoidable and in existence immediately prior to the Petition Date, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the liens described in items (1) and (2), the “**Petition Date Perfected Liens**”), and in relation to the DIP Facility, shall mean, the Petition Date Perfected Liens not to exceed a total aggregate

amount of \$12 million less the amount attributable to the RAM Liens (as defined below).<sup>4</sup>

2. **Prepetition Working Capital Facility.**

(a) Under that certain Advance Payment Agreement, dated as of May 6, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the “***Prepetition Working Capital Agreement***” and, together with all related security agreements, collateral agreements, pledge agreements, control agreements, guarantees and other documents, the “***Prepetition Working Capital Documents***”) by and among the Borrower, as seller, and Concord Resources Limited (“***Concord***”), as purchaser (the “***Prepetition Working Capital Purchaser***”) the Borrower received certain Advance Payments (as defined in the Prepetition Working Capital Agreement) from the Prepetition Working Capital Purchaser in exchange for the sale and delivery of certain Material (as defined in the Prepetition Working Capital Documents).

(b) *Prepetition Working Capital Obligations.* As of the Petition Date, the Borrower, without defense, counterclaim or offset of any kind, was indebted and liable to the Prepetition Working Capital Purchaser under the Prepetition Working Capital Documents in the aggregate principal amount of not less than \$3.0 million under the Prepetition Working Capital Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, charges, additional interest, any other “Advance Payment Obligations” as defined in the WCF Intercreditor Agreement and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Working Capital Documents (collectively, the “***Prepetition Working Capital Obligations***”). The Prepetition Working Capital Obligations constitute legal, valid, binding and non-avoidable obligations against the Borrower and are not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law

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<sup>4</sup> For the avoidance of doubt, the total aggregate Petition Date Perfected Liens in relation to the DIP Facility *less* the amount attributable to the RAM Liens (defined below), shall not exceed \$8,073,601.71.

or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the Prepetition Working Capital Purchaser by or on behalf of any of the Debtors prior to the Petition Date under or in connection with any of the Prepetition Working Capital Documents are subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(c) *Prepetition Working Capital Lien.* Pursuant to the Prepetition Working Capital Documents, the Prepetition Working Capital Obligations are secured by a valid, binding, perfected and enforceable lien on and security interest in (the “***Prepetition Working Capital Lien***”) the Prepetition Collateral, subject to certain permitted liens as permitted under the Prepetition Working Capital Agreement. The Prepetition Working Capital Lien is (i) subject to the Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien (as defined below) with respect to all Prepetition Collateral constituting Non-WCF Collateral and (ii) senior to all other Prepetition Funded Debt Liens with respect to Prepetition Collateral constituting WCF Collateral, in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Working Capital Lien: (i) is a valid, binding, perfected and enforceable lien and security interest in the Prepetition Collateral, with the priorities set forth in the Prepetition Working Capital Documents; (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date, is subject and/or subordinate only to (1) the Prepetition Prior Liens, in relation to the Working Capital Facility, and, (2) solely with respect to the Non-WCF Collateral, the Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien.

3. **Prepetition TF Stream Obligations.**

(a) Under that certain Metals Purchase and Sale Agreement, dated as of



December 21, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “*Prepetition TF Stream Agreement*” and, together with all related security agreements, collateral agreements, pledge agreements, control agreements, guarantees and other documents, the “*Prepetition TF Stream Documents*”) by and among Borrower, as seller, NCU and its subsidiaries, as guarantor and Triple Flag International Ltd. (“*Triple Flag*”) (as successor by name change to Triple Flag Mining Finance Bermuda Ltd.), as purchaser (the “*Prepetition TF Stream Purchaser*”), the Prepetition TF Stream Purchaser paid certain deposits to the Borrower and Borrower committed to make specified deliveries of Refined Gold and Refined Silver (each as defined in the Prepetition TF Stream Agreement) to the Prepetition TF Stream Purchaser.

(b) *Prepetition TF Stream Obligations.* As of the Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and severally indebted and liable to the Prepetition TF Stream Purchaser under the Prepetition TF Stream Documents in the aggregate principal amount of not less than \$78,269,229.75 under the Prepetition TF Stream Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, charges, additional interest, any other “Obligations” (as defined in the Prepetition TF Stream Agreement) and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition TF Stream Documents (collectively, the “*Prepetition TF Stream Obligations*”). The Prepetition TF Stream Obligations constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the Prepetition TF Stream Purchaser by or on behalf of any of the Debtors prior to the Petition Date under or in connection with any of the Prepetition TF Stream Documents are subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action

1 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
2 bankruptcy law or otherwise.

3 (c) *Prepetition TF Stream Lien*. Pursuant to the Prepetition TF Stream  
4 Documents, the Prepetition TF Stream Obligations is secured by a valid, binding, perfected and  
5 enforceable lien on and security interest in (the “***Prepetition TF Stream Lien***”) the Prepetition  
6 Collateral, subject to certain permitted liens as permitted under the Prepetition TF Stream  
7 Agreement. The Prepetition TF Stream Lien is (i) subject to the Prepetition Senior Secured Term  
8 Loan Liens with respect to all Prepetition Collateral constituting Non-WCF Collateral, (ii) subject  
9 to the Prepetition Working Capital Lien and Prepetition Senior Secured Term Loan Liens with  
10 respect to Prepetition Collateral constituting WCF Collateral, and (iii) senior to the Prepetition  
11 Junior Secured Term Loan Liens, in each case, in accordance with the terms and conditions of the  
12 WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor  
13 Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition  
14 Date, the Prepetition TF Stream Lien: (i) is a valid, binding, perfected and enforceable lien and  
15 security interest in the Prepetition Collateral, with the priority set forth in the Prepetition TF Stream  
16 Documents and the Prepetition Intercreditor Agreements; (ii) is not subject, pursuant to the  
17 Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery,  
18 subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code)  
19 of any kind; and (iii) as of the Petition Date is subject and/or subordinate only to (1) the Prepetition  
20 Prior Liens, in relation to the Prepetition TF Stream Obligations, (2) with respect to the Non-WCF  
21 Collateral, the Prepetition Senior Secured Term Loan Liens and (3) with respect to the WCF  
22 Collateral, the Prepetition Working Capital Lien and the Prepetition Senior Secured Term Loan  
23 Liens.

24 4. **Prepetition Junior Secured Term Loan Obligations.**

25 (a) Under that certain Third Amended and Restated Loan Agreement,  
26 dated as of December 21, 2023 (as amended, restated, amended and restated, supplemented, or  
27 otherwise modified from time to time prior to the date hereof, the “***Prepetition Junior Secured***  
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1 *Term Loan Agreement*,” together with all related security agreements, collateral agreements,  
2 pledge agreements, control agreements, guarantees and other documents, the “*Prepetition Junior*  
3 *Secured Term Loan Documents*,” and, together with the Prepetition Senior Secured Term Loan  
4 Documents, the Prepetition Working Capital Documents and the Prepetition TF Stream  
5 Documents, the “*Prepetition Debt Documents*”), by and among NCU, as borrower, Borrower,  
6 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC, as guarantors,  
7 the lenders party thereto from time to time (the “*Prepetition Junior Secured Term Loan*  
8 *Lenders*”), and Pala, as lead arranger and collateral agent (the “*Prepetition Junior Secured Term*  
9 *Loan Agent*,” together with the Prepetition Junior Secured Term Loan Lenders, the “*Prepetition*  
10 *Junior Secured Term Loan Parties*” and, together with the Prepetition Senior Secured Term Loan  
11 Parties, the Prepetition Working Capital Purchaser and the Prepetition TF Stream Purchaser the  
12 “*Prepetition Secured Parties*”), NCU was provided with a junior secured term loan facility.

13 (b) *Prepetition Junior Secured Term Loan Obligations.* As of the  
14 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
15 severally indebted and liable to the Prepetition Junior Secured Term Loan Parties under the  
16 Prepetition Junior Secured Term Loan Documents in the aggregate principal amount of not less  
17 than \$10 million under the Prepetition Junior Secured Term Loan Agreement, *plus* accrued and  
18 unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, charges,  
19 additional interest, any other “Obligations” (as defined in the Prepetition Junior Secured Term  
20 Loan Agreement) and all other obligations of whatever nature owing, whether or not contingent,  
21 whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Junior  
22 Secured Term Loan Documents (collectively, the “*Prepetition Junior Secured Term Loan*  
23 *Obligations*” and, together with the Prepetition Senior Secured Term Loan Obligations, the  
24 Prepetition Working Capital Obligations and the Prepetition TF Stream Obligations, the  
25 “*Prepetition Secured Obligations*”). The Prepetition Junior Secured Term Loan Obligations  
26 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
27 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
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1 subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy  
2 Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or  
3 for the benefit of (or obligations incurred to or for the benefit of) the Prepetition Junior Secured  
4 Term Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in  
5 connection with any of the Prepetition Junior Secured Term Loan Documents are subject to  
6 avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim,  
7 cause of action or other challenge of any kind or nature under the Bankruptcy Code, under  
8 applicable non-bankruptcy law or otherwise.

9 (c) *Prepetition Junior Secured Term Loan Liens.* Pursuant to the  
10 Prepetition Junior Secured Term Loan Documents, the Prepetition Junior Secured Term Loan  
11 Obligations are secured by valid, binding, perfected and enforceable liens on and security interests  
12 in (the “***Prepetition Junior Secured Term Loan Liens***” and, together with the Prepetition Senior  
13 Secured Term Loan Liens, the Prepetition Working Capital Lien and the Prepetition TF Stream  
14 Lien, the “***Prepetition Funded Debt Liens***”) the Prepetition Collateral, subject to certain permitted  
15 liens as permitted under the Prepetition Junior Secured Term Loan Agreement. The Prepetition  
16 Junior Secured Term Loan Liens are subject to the Prepetition Senior Secured Term Loan Liens,  
17 the Prepetition Working Capital Lien and the Prepetition TF Stream Lien with respect to all  
18 Prepetition Collateral, in each case, in accordance with the terms and conditions of the Fourth Lien  
19 Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that,  
20 in each case as of the Petition Date, the Prepetition Junior Secured Term Loan Liens: (i) are valid,  
21 binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with  
22 the priority set forth in the Prepetition Junior Secured Term Loan Documents and the Prepetition  
23 Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable  
24 law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense  
25 or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are  
26 subject and/or subordinate only to the (1) Prepetition Prior Liens, in relation to the Prepetition  
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1 Junior Secured Term Loan Obligations, (2) the Prepetition Senior Secured Term Loan Liens, (3)  
2 the Prepetition Working Capital Lien, and (4) the Prepetition TF Stream Lien.

3 5. **Prepetition Intercreditor Agreements.**

4 (a) *WCF Intercreditor Agreement.* KfW, Triple Flag, Concord and the  
5 Borrower are parties to that certain Working Capital Facility Intercreditor Agreement, dated as of  
6 May 22, 2019, (as amended, restated, amended and restated, supplemented, or otherwise modified  
7 from time to time prior to the date hereof, the “**WCF Intercreditor Agreement**”), which governs,  
8 among other things, the rights, interests, obligations, priority and positions of the Prepetition  
9 Senior Secured Term Loan Parties, the Prepetition Working Capital Purchaser and the Prepetition  
10 TF Stream Purchaser.

11 (b) *TF Intercreditor Agreement.* KfW, Triple Flag, the Borrower, NCU  
12 and NCU’s subsidiaries are party to that certain Intercreditor Agreement, dated as of May 22, 2019,  
13 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to  
14 time prior to the date hereof, the “**TF Intercreditor Agreement**”), which governs the rights,  
15 interests, obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties  
16 and the Prepetition TF Stream Purchaser.

17 (c) *Fourth Lien Intercreditor Agreement.* KfW, Triple Flag, Concord,  
18 Pala, the Borrower, NCU and NCU’s subsidiaries are party to that certain Intercreditor Agreement,  
19 dated as of October 28, 2022 (as amended, restated, amended and restated, supplemented, or  
20 otherwise modified from time to time prior to the date hereof, the “**Fourth Lien Intercreditor**  
21 **Agreement**” and, together with the WCF Intercreditor Agreement and the TF Intercreditor  
22 Agreement, the “**Prepetition Intercreditor Agreements**”), which governs the rights, interests,  
23 obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties, the  
24 Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
25 Junior Secured Term Loan Parties.

26 (d) Each of the Debtors either is party to or otherwise acknowledged  
27 and agreed to, and are bound by, the Prepetition Intercreditor Agreements. Pursuant to Bankruptcy  
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Code section 510, the Prepetition Intercreditor Agreements, and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Debt Documents shall (i) remain in full force and effect, (ii) continue to govern the relative obligations, priorities, rights, and remedies of the applicable Prepetition Secured Parties, and (iii) not be deemed to be amended, altered or modified by the terms of this Interim Order unless expressly set forth herein or therein.

6. **Cash Collateral.** Any and all of the Debtors' cash, including any amounts generated by the collection of accounts receivable, all cash proceeds of the Prepetition Collateral, and the cash in the Debtors' banking, checking or other deposit accounts with financial institutions as of the Petition Date (excluding cash deposits that secure any outstanding letters of credit) or deposited into the Debtors' banking, checking or other deposit accounts with financial institutions after the Petition Date constitutes cash collateral of the Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "***Cash Collateral***").

7. **Adequate Protection.** Pursuant to Bankruptcy Code sections 105, 361, 362 and 363(e), the Prepetition Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition diminution in value of their interests in the Prepetition Collateral resulting from, among other things, and without limitation, (i) subordination of the Prepetition Secured Parties' interests in the Prepetition Collateral, (ii) the use of Cash Collateral during the Chapter 11 Cases, (iii) the use, sale or lease of any of the Prepetition Collateral, (iv) the imposition of the automatic stay pursuant to Bankruptcy Code section 362(a), and/or (v) for any other reason for which adequate protection may be granted under the Bankruptcy Code ("***Diminution in Value***"). Based on the Motion, the DIP Declaration, and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral, including the Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

G. **Findings Regarding the DIP Facility and Use of Cash Collateral.** Based on the record established and evidence presented at the Interim Hearing, including the DIP Declaration, and the representations of the parties, the Court makes the following findings:

1                   1.     **Need for Postpetition Financing and Use of Cash Collateral.** The  
2 Debtors have a need to use Cash Collateral on an interim basis and obtain credit in the form of the  
3 Interim DIP Loans pursuant to the DIP Facility in order to, among other things, (a) permit the  
4 orderly continuation of their business, (b) maintain business relationships with their vendors,  
5 suppliers, customers and other parties, (c) make payroll, (d) pay Adequate Protection Payments  
6 and (e) pay the costs of administering the Chapter 11 Cases, in each case, in compliance with, and  
7 subject in all respects to, the Approved Budget, the terms hereof and the DIP Documents. The  
8 ability of the Debtors to maintain business relationships with their vendors, suppliers, and  
9 customers, to pay their employees, and otherwise finance their operations requires the availability  
10 of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of  
11 which, on an interim basis as contemplated hereunder, would immediately and irreparably harm  
12 the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available  
13 sources of working capital and financing to operate their business, maintain their properties in the  
14 ordinary course of business, and fund the Chapter 11 Cases without the authorization to use Cash  
15 Collateral and to borrow the Interim Amount. Without the ability to access the DIP Facility and  
16 the authority to use Cash Collateral, the Debtors' chances for a successful chapter 11 restructuring  
17 would be jeopardized.

18                   2.     **Priming of Prepetition Liens.** The priming of the Prepetition Funded Debt  
19 Liens on the Prepetition Collateral, to the extent set forth herein, under Bankruptcy Code section  
20 364(d)(1), as contemplated by this Interim Order and the DIP Facility, and as further described  
21 below, will enable the Debtors to obtain the DIP Facility and, among other benefits, to continue to  
22 operate their businesses for the benefit of their estates and stakeholders.

23                   3.     **No Credit Available on More Favorable Terms.** As set forth in the DIP  
24 Declaration, the Debtors have been unable to obtain financing from sources other than the DIP  
25 Lenders on terms more favorable than those provided under the DIP Facility, as set forth in the  
26 DIP Documents. The Debtors have been unable to obtain adequate unsecured credit allowable  
27 under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also have  
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1 been unable to obtain sufficient credit (i) on an unsecured basis having priority over all other  
2 administrative expenses, (ii) secured solely by a lien on property of the Debtors and their estates  
3 that is not otherwise subject to a lien or (iii) secured solely by a junior lien on property of the  
4 Debtors and their estates that is subject to a lien. Postpetition financing is not otherwise available  
5 without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (x) the DIP Liens (as  
6 defined below) on all DIP Collateral (as defined below), as set forth herein, (y) the DIP  
7 Superpriority Claims (as defined below) and (z) the other protections set forth in this Interim Order.  
8 The terms of the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the  
9 Debtors' exercise of sound and prudent business judgment consistent with their fiduciary duties,  
10 constitute reasonably equivalent value and fair consideration and are in the best interest of the  
11 Debtors' estates and stakeholders.

12 4. **Good Faith.** The DIP Facility and the Adequate Protection Obligations  
13 have been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the DIP  
14 Lenders, and the Prepetition Secured Parties and all of the Debtors' obligations and indebtedness  
15 arising under, in respect of or in connection with the DIP Documents including, without limitation,  
16 all loans made to and guarantees issued by the Debtors pursuant to this Interim Order, and all other  
17 Interim DIP Loans, including, without limitation, any and all fees and other amounts approved  
18 pursuant to this Interim Order, shall be deemed to have been extended by the DIP Agent and the  
19 DIP Lenders in good faith as that term is used in Bankruptcy Code section 364(e) and in express  
20 reliance upon the protections offered by Bankruptcy Code section 364(e). The interim DIP  
21 Obligations, including, without limitation any and all fees and other amounts approved pursuant  
22 to this Interim Order, and the interim DIP Liens shall be entitled to the full protection of  
23 Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is  
24 vacated, reversed or modified on appeal or otherwise, and any liens or claims granted to the DIP  
25 Agent or the DIP Lenders hereunder arising prior to the effective date of any such vacatur, reversal  
26 or modification of this Interim Order shall be governed in all respects by the original provisions  
27 of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted  
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1 herein.

2 H. **Consent of the Prepetition Secured Parties.** The Prepetition Secured Parties have  
3 consented to or are deemed to consent under the applicable Prepetition Intercreditor Agreements  
4 to the priming of the Prepetition Funded Debt Liens, as applicable, to the extent set forth herein,  
5 and the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions  
6 provided for in this Interim Order; *provided* that nothing in this Interim Order shall constitute the  
7 consent of the Prepetition Senior Secured Term Loan Agent to priming of the Prepetition Senior  
8 Secured Term Loan Liens by DIP Liens securing DIP Obligations in an amount greater than \$51.4  
9 million, and KfW reserves its rights with respect to the Final Order in all respects.

10 I. **Sections 506(c) and 552(b).** As a material inducement to the DIP Lenders to agree  
11 to provide the DIP Facility and the Prepetition Secured Parties to agree to the use of Cash  
12 Collateral, and in exchange for (i) the DIP Agent's and DIP Lenders' agreement to subordinate  
13 their liens and superpriority claims to the Carve-Out to the extent set forth herein and (ii) the  
14 Prepetition Secured Parties' agreement to (a) subordinate their Prepetition Funded Debt Liens and  
15 the Adequate Protection Liens to the Carve-Out and the DIP Liens, each to the extent provided  
16 herein, and (b) consent to the use of Cash Collateral in accordance with and subject to the  
17 Approved Budget (subject to the Permitted Variances (as defined below)), the DIP Documents and  
18 the terms of this Interim Order, each of the DIP Agent, the DIP Lenders and the Prepetition Secured  
19 Parties is entitled to receive (1) a waiver of any "equities of the case" exceptions or claims under  
20 Bankruptcy Code section 552(b), (2) a waiver of the provisions of Bankruptcy Code section  
21 506(c), and (3) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with  
22 respect to the DIP Collateral or the Prepetition Collateral (as applicable).

23 J. **Immediate Entry.** The Debtors have requested entry of this Interim Order  
24 pursuant to Bankruptcy Rule 4001(b)(2), (c) and (d) and Local Rules 4001(c)(2) and 9006. Absent  
25 granting the interim relief sought by this Interim Order, the Debtors' estates could be immediately  
26 and irreparably harmed. Thus, sufficient cause exists for immediate entry of this Interim Order  
27 pursuant to Bankruptcy Rule 4001(b)(2), (c), and (d) and Local Rules 4001(c)(2) and 9006.  
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1 Based upon the foregoing findings and conclusions, the Motion, the DIP Declaration, and  
2 the record before the Court with respect to the Motion, and after due consideration and good and  
3 sufficient cause appearing therefor,

4 IT IS HEREBY ORDERED THAT:

5 1. **Motion Granted.** The relief sought by the Motion is granted, and the DIP Facility  
6 and the use of Cash Collateral are hereby authorized and approved, in each case, upon the terms  
7 and conditions of this Interim Order and the DIP Documents.

8 2. **Objections Overruled.** Any objections to the Motion that have not been  
9 withdrawn, waived or settled, and all reservations of rights or other statements inconsistent with  
10 this Interim Order, are hereby denied and overruled. This Interim Order shall become effective  
11 and enforceable immediately upon its entry.

12 3. **Approval and Authorization of DIP Facility.**

13 (a) *Authorization of DIP Facility and DIP Documents.* The DIP Facility is  
14 hereby approved on an interim basis on the terms and conditions set forth herein. The DIP Loan  
15 Parties are expressly and immediately authorized and empowered to: (i) (A) enter into and perform  
16 all of their obligations, (B) as required by the DIP Lenders, execute, deliver and perform under the  
17 DIP Documents and (C) pay all fees, costs, expenses, indemnities and other amounts contemplated  
18 under this Interim Order and the applicable DIP Documents; and (ii) perform all acts, to make,  
19 execute, deliver, enter into and perform under any and all other agreements, instruments,  
20 certificates and other documents (including, without limitation, the execution and/or recordation  
21 of any collateral, pledge and security documents, mortgages, deeds of trust, control agreements,  
22 financing statements or other documents), and to perform all such other and further acts, that may  
23 be necessary, required or desirable for the DIP Agent or the DIP Lenders to perform their  
24 obligations under the DIP Facility, this Interim Order and any applicable DIP Document and to  
25 implement the transactions contemplated thereunder and hereunder.

26 (b) **Authorization to Borrow.** The Debtors are hereby authorized to borrow  
27 under the DIP Facility, from the period between the date of entry of this Interim Order and the  
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1 Final Hearing (the “**Interim Period**”), a principal amount of up to \$20,000,000, subject to the terms  
2 and conditions (including any conditions precedent to such borrowing) set forth in this Interim  
3 Order and the DIP Documents. The DIP Lenders shall have no obligation to make any loan or  
4 advance under the DIP Documents, unless all of the conditions precedent to the making of such  
5 extension of credit under the DIP Documents and this Interim Order have been satisfied in full or  
6 waived in accordance with the DIP Documents and this Interim Order.

7 (c) *Use of DIP Proceeds and Cash Collateral.* The Debtors are hereby  
8 authorized to use the proceeds of the DIP Facility and all Cash Collateral solely in the manner and  
9 for the purposes expressly permitted in the Approved Budget (subject to the Permitted Variances),  
10 this Interim Order and the DIP Documents.

11 (d) *DIP Interest, Fees and Expenses.* The Debtors are authorized and directed  
12 to pay any and all (i) interest, fees, premiums or other amounts payable under the DIP Documents,  
13 including, without limitation, the Upfront Fee, the Unused Commitment Fee, the Exit Fee, the  
14 Agency Fee, (ii) amounts due (or that may become due) to any Indemnified Person (as defined  
15 below) in respect of the indemnification obligations under this Interim Order and the DIP  
16 Documents and (iii) any other amounts payable in connection with the DIP Facility, including all  
17 reasonable and documented pre- and postpetition fees, expenses and disbursements in connection  
18 with the DIP Facility and these Chapter 11 Cases of (A) Akin Gump Strauss Hauer & Feld LLP  
19 (“**Akin**”), as counsel to the DIP Lenders, (B) Blake, Cassels & Graydon LLP, as Canadian counsel  
20 to the DIP Lenders, (C) Shea Larson PC, as Nevada local counsel to the DIP Lenders, (D) Kelley  
21 Drye & Warren, LLP, as counsel to the DIP Agent (“**DIP Agent Counsel**”), and (E) any other  
22 attorneys, financial advisors, consultants or other professionals retained by the DIP Secured Parties  
23 (the professionals set forth in clauses (A) through (E), collectively, the “**DIP Professionals**”), in  
24 each case whether or not such payments, premiums, fees, costs, expenses and disbursements arose  
25 before or after the Interim Closing Date. The payment of the fees, costs, expenses and  
26 disbursements of the DIP Professionals other than DIP Agent Counsel (the “**DIP Professional**  
27 **Fees**”) shall be subject to the notice and review procedures set forth in paragraph 19 of this Interim  
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1 Order. For the avoidance of doubt, the Debtors shall be jointly and severally liable for the  
2 obligations to pay the DIP Professional Fees in accordance with this Interim Order.

3 (e) *Indemnification.* As set forth in the DIP Documents, the Debtors will jointly  
4 and severally indemnify the DIP Agent, the DIP Lenders, the DIP Professionals and their respective  
5 affiliates, successors and assigns and the officers, directors, employees, agents, advisors,  
6 controlling persons and members of each of the foregoing (each an “**Indemnified Person**”), and  
7 hold them harmless from and against any and all losses, claims, damages, costs, expenses  
8 (including, but not limited to reasonable and documented legal fees and expenses) and liabilities  
9 arising out of or relating to the execution or delivery of the DIP Documents, transactions  
10 contemplated hereby and thereby and any actual or proposed use of the proceeds of any loans made  
11 under the DIP Facility in accordance with the terms of the DIP Credit Agreement and the other  
12 DIP Documents; *provided* that no such Indemnified Person will be indemnified for costs, expenses  
13 or liabilities to the extent determined by a final, non-appealable judgment of a court of competent  
14 jurisdiction to have been incurred solely by reason of the actual gross negligence or willful  
15 misconduct of such person (or their related persons). No Indemnified Person shall have any  
16 liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any  
17 shareholders or creditors of the Debtors for or in connection with the transactions contemplated  
18 hereby, except to the extent such liability is found in a final non-appealable judgment by a court  
19 of competent jurisdiction to have resulted solely from such Indemnified Person’s gross negligence  
20 or willful misconduct, and in no event shall any Indemnified Person be liable on any theory for  
21 any special indirect, consequential or punitive damages.

22 (f) *Modification of DIP Documents.* The DIP Agent (acting at the direction of  
23 the Required DIP Lenders)<sup>5</sup> and the Required DIP Lenders are hereby authorized to execute,  
24 deliver and perform under one or more amendments, waivers, consents or other modifications to  
25 and under the DIP Documents, in each case, in accordance with the provisions of any applicable

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26 <sup>5</sup> The term “**Required DIP Lenders**” as used in this Interim Order, shall have the same meaning ascribed to the  
27 term “Majority Lenders” in the DIP Credit Agreement.

DIP Documents governing amendments thereto, each without further application to or order of the Court; *provided, however*, that any amendments, waivers, consents or other modifications to and under the DIP Documents that (i) modify the original stated maturity of the DIP Facility, (ii) increase the aggregate commitments thereunder or (iii) increase the rate of interest or fees payable with respect thereto shall require further Court approval; *provided further*, that any amendment that may affect the rights, obligations, protections, immunities or indemnities of the DIP Agent shall require the consent of the DIP Agent.

4. **DIP Obligations**

(a) Upon entry of this Interim Order, the obligations under any applicable DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each Debtor, and shall be fully enforceable against each of the Debtors, their estates and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of these Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the foregoing, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the “*Successor Cases*”), in each case, in accordance with the terms of the DIP Documents and this Interim Order.

(b) Upon entry of this Interim Order, the Debtors shall be jointly and severally liable for all DIP Obligations, including, without limitation, all loans, advances, indebtedness, obligations, extensions of credit, financial accommodations, principal, interest, payments or similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other amounts, whether or not such obligations arose before or after the Petition Date, whenever the same shall become due and payable, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the DIP Lenders under the DIP Documents or this Interim Order.

(c) All obligations incurred, payments made and transfers or grants of liens and security interests set forth in this Interim Order and/or the DIP Documents by the Debtors are

1 granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably  
2 equivalent value and are granted contemporaneously with the making of the loans and  
3 commitments and other financial accommodations secured thereby. No obligation, payment,  
4 transfer or grant of liens or security interests under this Interim Order or the DIP Documents to the  
5 DIP Secured Parties shall be limited, stayed, restrained, voidable, avoidable or recoverable under  
6 the Bankruptcy Code or under any applicable law, or subject to any challenge, objection, defense  
7 or claim, including, without limitation, avoidance (whether under chapter 5 of the Bankruptcy  
8 Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer  
9 Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff,  
10 offset, recoupment, recharacterization, subordination (whether equitable, contractual or  
11 otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge,  
12 recovery or other cause of action of any kind or nature whatsoever, whether arising under the  
13 Bankruptcy Code, applicable non-bankruptcy law or otherwise (subject, solely in the case of the  
14 DIP Professional Fees, only to the procedures set forth in paragraph 19 of this Interim Order).

15       5.       **DIP Superpriority Claims**. Pursuant to Bankruptcy Code section 364(c)(1), all of  
16 the DIP Obligations shall constitute allowed senior administrative expense claims of the DIP  
17 Secured Parties, against each of the Debtors' estates (the "***DIP Superpriority Claims***"), without  
18 the need to file any proof of claim or request for payment of administrative expenses, with priority  
19 over any and all administrative expenses, adequate protection claims, diminution claims and all  
20 other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever,  
21 including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code  
22 sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising  
23 under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a  
24 Final Order), 507(a), 507(b), 726, 1113 or 1114 or otherwise, whether or not such expenses or  
25 claims may become secured by a judgment lien or other non-consensual lien, levy or attachment,  
26 which allowed claims shall for the purposes of Bankruptcy Code section 1129(a)(9)(A) be  
27 considered administrative expenses allowed under Bankruptcy Code section 503(b) and 507(b),  
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and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including actions to recover property transferred pursuant to Bankruptcy Code section 549, and subject to the entry of the Final Order, the proceeds of, and property that is recovered from or becomes unencumbered as a result of (whether by judgment, settlement or otherwise), all claims and causes of action arising under chapter 5 of the Bankruptcy Code or under any applicable state law of a similar nature (such claims and causes of action, “**Avoidance Actions**” and the proceeds thereof, “**Avoidance Action Proceeds**”), subordinate only to the Carve-Out and the administrative charge granted by the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) in the proceedings (the “**Recognition Proceedings**”) under Part IV of the Companies’ Creditors Arrangement Act (Canada) (the “**CCAA**”) commenced by the Debtors in Canada in respect of certain Canadian-related professional fees, in an aggregate amount not to exceed CAD\$500,000 (the “**Administration Charge**”). Except as set forth in, or permitted by, this Interim Order, or otherwise permitted pursuant to an order of this Court, no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

6. **DIP Liens.**

(a) As security for the DIP Obligations, effective and automatically perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted by the DIP Loan Parties continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the “**DIP Liens**”) upon all DIP Collateral as security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of all of the DIP Obligations.

(b) The term “**DIP Collateral**” means all assets and properties of each of the Debtors and their estates, of any kind or nature whatsoever, wherever located, whether tangible or

1 intangible, real, personal or mixed, whether now owned or consigned by or to, or leased from or  
2 to, or hereafter acquired by, or arising in favor of, each of the Debtors (including under any trade  
3 names, styles or derivations thereof), whether prior to or after the Petition Date, including, without  
4 limitation: (i) all Prepetition Collateral (including Cash Collateral); (ii) all intercompany claims,  
5 including, but not limited to, all Intercompany Superpriority Claims (as defined below); (iii) all  
6 money, cash and cash equivalents; (iii) all funds in any deposit accounts (excluding cash deposits  
7 that secure any outstanding letters of credit), securities accounts, commodities accounts, or other  
8 accounts (together with and all money, cash and cash equivalents, instruments and other property  
9 deposited therein or credited thereto from time to time); (iv) all accounts and other receivables  
10 (including those generated by intercompany transactions); (v) all contracts and contract rights; (vi)  
11 all instruments, documents and chattel paper; (vii) all securities (whether or not marketable); (viii)  
12 all goods, as-extracted collateral, furniture, machinery, equipment, inventory and fixtures; (ix) all  
13 real property interests; (x) all interests in leaseholds; (xi) all franchise rights; (xii) all patents,  
14 tradenames, trademarks, copyrights, licenses and all other intellectual property; (xiii) all general  
15 intangibles, tax or other refunds or insurance proceeds; (xiv) all equity interests, capital stock,  
16 limited liability company interests, partnership interests and financial assets; (xv) all investment  
17 property; (xvi) all supporting obligations; (xvii) all letters of credit and letter of credit rights; (xviii)  
18 all commercial tort claims; (xix) subject to the entry of the Final Order, all Avoidance Action  
19 Proceeds (but not avoidance actions themselves), (xx) all books and records (including, without  
20 limitation, customers lists, credit files, computer programs, printouts and other computer materials,  
21 and records); (xxi) to the extent not covered by the foregoing, all other goods, assets or properties  
22 of the Debtors, whether tangible, intangible, real, personal or mixed; and (xxii) all products,  
23 offspring, profits and proceeds of each of the foregoing and all accessions to, substitutions and  
24 replacements for, and rents, profits and products of, each of the foregoing, including any and all  
25 proceeds of any insurance (including any business interruption and property insurance), indemnity,  
26 warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing.  
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(c) Subject in all cases to the terms of this Interim Order and the DIP Documents, the DIP Secured Parties shall be granted the following DIP Liens in respect of the DIP Facility:

- (1) First Priority Lien on Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable and fully-perfected first priority senior security interest in and lien upon all DIP Collateral that, as of the Petition Date, is unencumbered and not subject to any liens (including Petition Date Perfected Liens), which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, and (B) the Administration Charge.
- (2) Priming Lien on WCF Collateral. Upon the payment in full of the obligations under the Prepetition Working Capital Facility, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes WCF Collateral, which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (3) Priming Lien on Non-WCF Collateral. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes Non-WCF Collateral, *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge and (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (4) Lien on Intercompany Superpriority Claims. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority priming security interest in and lien on all claims in respect of intercompany transfers of proceeds from the DIP Facility or of Cash Collateral from any Debtor to NCU (the “*Intercompany Superpriority Claims*”), *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, and (C) Petition Date Perfected Liens (excluding any Prepetition Trisura Lien).

(d) To the fullest extent permitted by the Bankruptcy Code or applicable law, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other instrument or agreement that requires the consent or the payment of any fees or obligations to any governmental entity or non-governmental entity for the Debtors to pledge, grant, mortgage, sell, assign or otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral, shall have no force or effect with respect to the DIP Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of

1 any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in  
2 accordance with the terms of the DIP Documents and this Interim Order.

3 (e) With respect to priming liens provided on DIP Collateral in favor of the DIP  
4 Secured Parties pursuant to this Interim Order, as set forth in sections 6(c)(2) and (3) above, such  
5 liens shall be junior and subordinate to the \$3,926,398.29 million prepetition liens of RAM  
6 Enterprise, Inc. (“**RAM**” and RAM’s liens, the “**RAM Liens**”) that were valid, fully perfected,  
7 secured and enforceable as of the Petition Date; *provided* that, the Debtors’ right, and the right of  
8 other parties in interest, to contest the legality, validity, priority, secured status, perfection, or  
9 enforceability of the RAM Liens shall be preserved, and nothing in this Interim Order shall impact  
10 any relief sought by the Debtors, or other parties in interest, with respect to the RAM Liens  
11 pursuant to a Final Order, including priming such liens or demonstrating that such liens are  
12 adequately protected; *provided further* that, the claims secured by the RAM Liens permitted  
13 pursuant to this paragraph (e) shall not exceed \$3,926,398.29. For the avoidance of doubt this  
14 Interim Order: (i) shall not impact the priority of the RAM Liens relative to any creditor other than  
15 the DIP Secured Parties; (ii) the priming liens provided on DIP Collateral are junior to the RAM  
16 Liens and therefore, if the property securing the RAM Liens (the “**RAM Collateral**”) is sold or  
17 transferred, the DIP Secured Parties shall not recover from any proceeds resulting from the sale or  
18 transfer of the RAM Collateral unless and until the RAM Liens have been satisfied in full; and (iii)  
19 all of RAM’s rights to argue for adequate protection or assert any claim against the estate, including  
20 but not limited to a claim resulting from any diminution in value, are preserved. RAM’s objection  
21 filed at ECF No. 48 (and subsequently amended at ECF No. 65) is not overruled by this Interim  
22 Order and is deferred to the Final Hearing.

23 (f) For the avoidance of doubt, the Debtors’ right and the rights of other parties  
24 in interest to contest the legality, validity, priority, perfection, or enforceability of any Petition Date  
25 Perfected Liens shall be preserved, and nothing in this Interim Order shall impact any relief sought  
26 by the Debtors with respect to the Petition Date Perfected Liens, including priming such liens or  
27 demonstrating that such liens are adequately protected pursuant to a final order.



1           7.       **Use of DIP Collateral and Cash Collateral**

2           (a)       The Debtors are hereby authorized to use the proceeds of DIP Facility and  
3 all Cash Collateral solely to the extent expressly permitted under the Approved Budget (subject to  
4 the Permitted Variances) and subject to the terms and conditions set forth in this Interim Order and  
5 any applicable DIP Documents. Except on the terms and conditions of this Interim Order, the  
6 Debtors shall be enjoined and prohibited from at any time using the Cash Collateral absent further  
7 order of the Court.

8           (b)       Without the prior written consent of the Required DIP Lenders, the Debtors  
9 shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral  
10 (or enter into any binding agreement to do so), except as may be expressly permitted by this Interim  
11 Order and any applicable DIP Documents. All proceeds of DIP Collateral, whether from ordinary  
12 course collections, asset sales, debt or equity issuances, insurance recoveries, condemnation or  
13 otherwise, will be deposited and applied as required by this Interim Order and any applicable DIP  
14 Documents. The Debtors shall not transfer any cash, assets, properties or other DIP Collateral to  
15 any affiliate of the Debtors that is not a Debtor in these Chapter 11 Cases without the prior written  
16 consent of the Required DIP Lenders, in their sole discretion.

17           (c)       Proceeds of the DIP Facility constitute postpetition assets of the Debtors,  
18 subject only to the Carve Out, Administrative Charge, DIP Liens, and adequate protection liens of  
19 the Prepetition Secured Parties, with the priorities set forth herein, and shall, for the avoidance of  
20 doubt, not be subject to any liens arising from prepetition claims against any of the Debtors,  
21 whether perfected prior to the Petition Date, after the Petition Date pursuant to section 546(b) of  
22 the Bankruptcy Code, or otherwise, regardless of where or how held. The Debtors may deposit  
23 proceeds of the DIP Facility into their existing bank accounts, and such proceeds shall not be  
24 subject to any liens or claims arising prepetition, including pursuant to chapter 108 of the Nevada  
25 Revised Statutes, whether or not eligible for perfection after the Petition Date, except for junior  
26 liens or claims of the Prepetition Secured Parties, as set forth herein. For the avoidance of doubt,  
27 to the extent of any proceeds of the DIP Facility deposited therein, no bank account of the Debtors  
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1 may be a “construction disbursement account” for purposes of chapter 108 of the Nevada Revised  
2 Statutes.

3 8. **Budget**

4 (a) *Initial Budget.* The Debtors have prepared and delivered to the DIP Lenders  
5 and the DIP Professionals an itemized thirteen-week cash flow forecast attached hereto as **Exhibit**  
6 **B** (the “*Initial Budget*,” as amended, replaced, supplemented or otherwise modified from time to  
7 time in accordance with the terms of this Interim Order and the DIP Documents, the “*Approved*  
8 *Budget*”). Except as otherwise provided herein or in the DIP Documents, the Debtors may only  
9 use Cash Collateral and the proceeds of the DIP Facility to fund payments benefitted by the Carve-  
10 Out and otherwise in accordance with the Approved Budget (subject to the Permitted Variances).

11 (b) *Proposed Budget; Budget Transition.* By no later than 12:00 p.m. (Pacific  
12 Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and  
13 continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the  
14 Debtors shall deliver to the DIP Lenders, DIP Professionals, and KfW an updated and  
15 supplemented forecast (a “*Proposed Budget*”) for the thirteen-week period commencing with the  
16 calendar week in which such Proposed Budget is delivered (the “*Budgeted Period*”); *provided,*  
17 *however,* that in no event shall the Budgeted Period extend past four weeks after the Maturity Date  
18 (as defined in the DIP Credit Agreement) of the DIP Facility. For the avoidance of doubt, if the  
19 Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts,  
20 disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for  
21 all weeks following the Maturity Date shall assume that the Debtors continue to operate in the  
22 ordinary course consistent with prior postpetition practices and that no sale of the Debtors’  
23 business will occur during such portion of the Budgeted Period. The Proposed Budget (including  
24 any subsequent revisions to any such Proposed Budget) shall become the Approved Budget  
25 effective five (5) business days after such submission (such date, the “*Budget Transition Date*”)  
26 unless the Debtors receive a written objection from the Required DIP Lenders (with e-mail from  
27 professionals acting on behalf of the Required DIP Lenders to the Debtors’ counsel being  
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1 sufficient) prior to 5:00 p.m. (Pacific Time) on the Budget Transition Date. If the Required DIP  
2 Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or  
3 modification to the Approved Budget or Approved Variance Report (defined below) within five  
4 (5) business days after the Required DIP Lenders' receipt thereof, then such Proposed Budget,  
5 amendment, supplement or modification shall be deemed acceptable to and approved by the DIP  
6 Lenders. In the event the Required DIP Lenders timely object to a Proposed Budget, the prior  
7 Approved Budget shall remain in full force and effect until any such Proposed Budget is approved  
8 by the Required DIP Lenders (with e-mail from the advisors acting on behalf of the Required DIP  
9 Lenders to the Debtors' counsel being sufficient). The consent of the Required DIP Lenders to  
10 any Proposed Budget or any Approved Budget shall not be construed as consent to the use of any  
11 Cash Collateral or proceeds of the DIP Facility after the occurrence of a Termination Event  
12 regardless of whether the aggregate funds shown on the Approved Budget have been  
13 expended. Until any Proposed Budget, amendment, supplement or modification has been  
14 approved (or is deemed approved in accordance with this paragraph) by the Required DIP Lenders,  
15 the Debtors shall be subject to and be governed by the terms of the Approved DIP Budget then in  
16 effect.

17 (c) *Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second  
18 Thursday following the Petition Date (the "**First Reporting Date**", which, for the avoidance of  
19 doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday  
20 thereafter (together with the First Reporting Date, each a "**Weekly Reporting Date**"), the Debtors  
21 shall provide to the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form  
22 and substance reasonably acceptable to the DIP Lenders (the "**Weekly Variance Report**"), setting  
23 forth in reasonable detail: (i) the intercompany transfers from Debtor entities to NCU on a Debtor-  
24 by-Debtor and an aggregate basis; (ii) the actual receipts of the Debtors on a line-by-line and  
25 aggregate basis (the "**Actual Receipts**") and the actual disbursements of the Debtors on a line-by-  
26 line and aggregate basis (such aggregate actual disbursements, the "**Actual Disbursements**"), in  
27 each case, during the applicable week ending on the Sunday preceding each such Weekly  
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1 Reporting Date (each such week, the “**Reporting Week**”); (iii) a comparison (whether positive or  
2 negative, expressed as a percentage) for the Reporting Week between (A) the Actual Receipts (and  
3 each line item thereof) for such Reporting Week to the amount of the Debtors’ projected receipts  
4 (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the  
5 Actual Disbursements (and each line item thereof) for such Reporting Week to the amount of the  
6 Debtors’ projected disbursements (and each line item thereof) set forth in the Approved Budget for  
7 such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to NCU  
8 to the amount of each such Debtor’s projected intercompany transfers to NCU set forth in the  
9 Approved Budget for such Reporting Week. In addition, by no later than 12:00 p.m. (Pacific Time)  
10 on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First  
11 Reporting Date, (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling  
12 Four-Week Testing Date shall be July 11, 2024) and each subsequent four-week period  
13 commencing from the beginning of the week in which the Petition Date occurs and ending on the  
14 Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing**  
15 **Period**”) the Debtors shall provide the DIP Lenders (and their advisors) and KfW (and its counsel)  
16 a report, in form and substance reasonably acceptable to the DIP Lenders (a “**Rolling Four-Week**  
17 **Variance Report**” and, together with the Weekly Variance Report, the “**Approved Variance**  
18 **Reports**”), setting forth in reasonable detail: (x) the aggregate Actual Receipts of the Debtors,  
19 aggregate Actual Disbursements of the Debtors, and aggregate intercompany transfers from each  
20 Debtor entity to NCU, in each case, during the applicable Rolling Four-Week Testing Period; and  
21 (y) a comparison (whether positive or negative, expressed as a percentage) detailing (1) the  
22 aggregate Actual Receipts (and each line item thereof) for such Rolling Four-Week Testing Period  
23 compared to the projected receipts (and each line item thereof) for such Rolling Four-Week Testing  
24 Period set forth in the Approved Budget for such Rolling Four-Week Testing Period; (2) the  
25 aggregate Actual Disbursements (and each line item thereof) for such Rolling Four-Week Testing  
26 Period compared to the projected disbursements (and each line item thereof) for such Rolling Four-  
27 Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period;  
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1 and (3) the aggregate intercompany transfers from each Debtor entity to NCU made by each such  
2 Debtor during such Rolling Four-Week Testing Period compared to the aggregate projected  
3 intercompany transfers from each such Debtor entity to NCU for such Rolling Four-Week Testing  
4 Period set forth in the Approved Budget for such Rolling Four-Week Testing Period.

5 (d) *Budget Testing; Permitted Variances.* During any Rolling Four-Week  
6 Testing Period, the Debtors shall not permit (1) total disbursements, minus (2) disbursements in  
7 respect of (i) interest, fees, and expenses in relation to the DIP Facility; (ii) Adequate Protection  
8 Obligations; (iii) DIP Professional Fees; and (iv) professional fees paid by the Debtors on behalf  
9 of themselves or any other party (the disbursements remaining after such subtractions, the “**Total**  
10 **Tested Disbursements**”) to be more than 120% of such Total Tested Disbursements set forth in the  
11 Approved Budget for such Rolling Four-Week Testing Period (collectively, the “**Permitted**  
12 **Variances**”). Additional disbursement variances, if any, from an Approved Budget, and any  
13 proposed amendments, supplements or modifications to an Approved Budget, shall be subject to  
14 the prior written approval of the Required DIP Lenders. For the avoidance of doubt, any reference  
15 to “written consent” or “written approval” hereunder shall include consent or approval granted by  
16 e-mail, including email from counsel to the DIP Lenders on behalf of the DIP Lenders.

17 9. **Reporting Requirements; Access to Records.** The Debtors shall provide (i) Akin,  
18 as counsel to the DIP Lenders, (ii) Milbank LLP (“**Milbank**”), as counsel to KfW, (iii) White &  
19 Case LLP, as counsel to Concord, (iv) Davis, Graham & Stubbs LLP, as counsel to Triple Flag (v)  
20 Cleary, Gottlieb, Steen & Hamilton LLP, as counsel to Pala, (vi) Bennett Jones LLP, as counsel to  
21 Mercuria, and (vii) Alvarez & Marsal Canada Inc., in its capacity as the Information Officer in the  
22 Recognition Proceedings, with all reporting and other information required to be provided to the  
23 DIP Agent under the DIP Documents. In addition to, and without limitation, whatever rights to  
24 access the DIP Secured Parties or KfW have under the DIP Documents, upon reasonable notice, at  
25 reasonable times during normal business hours, the Debtors shall permit representatives, agents  
26 and employees of the DIP Secured Parties and KfW to (x) have access to and inspect the Debtors’  
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assets, (y) examine the Debtors' books and records and (z) discuss the Debtors' affairs, finances and condition with the Debtors' officers and financial advisors.

10. **Adequate Protection for the Prepetition Secured Parties.** Pursuant to Bankruptcy Code sections 361, 363, and 364, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition Diminution in Value of such interests, the Prepetition Secured Parties are hereby granted the following (collectively, the "***Adequate Protection Obligations***"):

(a) ***Adequate Protection Liens.*** As security for and solely to the extent of any Diminution in Value, the Prepetition Secured Parties are hereby granted additional and replacement valid, binding, enforceable, non-avoidable and effective and automatically perfected postpetition security interests in, and liens on, as of the date of this Interim Order (the "***Adequate Protection Liens***"), subject in all cases to the priorities set forth on **Exhibit C** hereto, without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, all DIP Collateral.

(b) ***Adequate Protection Superpriority Claims.*** As further adequate protection, and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), the Prepetition Secured Parties are hereby granted allowed administrative expense claims in the Chapter 11 Cases against each of the Debtors to the extent of any Diminution in Value (the "***Adequate Protection Superpriority Claims***"). The Adequate Protection Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Action Proceeds). Subject to the terms of this Interim Order, the Adequate Protection Superpriority Claims shall have the same relative priorities as the Adequate Protection Liens (as set forth on **Exhibit C** hereto) and be subject to (i) the Carve-Out, (ii) the Administration Charge and (iii) the DIP Superpriority Claims. Except as set forth in this Interim Order, the Adequate Protection



1 Superpriority Claims shall not be junior to any other claims and shall have priority over all  
2 administrative expense claims against each of the Debtors, now existing or hereafter arising, of  
3 any kind or nature whatsoever, including, without limitation, administrative expense claims of the  
4 kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365,  
5 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and  
6 1114.

7 (c) *Fees and Expenses of the Prepetition Secured Parties.* As further adequate  
8 protection, the Debtors are authorized and directed to pay, without further Court order, reasonable  
9 and documented fees and expenses (the “**Adequate Protection Fees**”), whether incurred before or  
10 after the Petition Date, of the Prepetition Senior Secured Term Loan Agent, consisting of the  
11 following: (i) Milbank, as counsel to KfW; (ii) one Canadian counsel to KfW; (iii) one Nevada  
12 counsel to KfW; and (iv) one technical advisor to KfW; (collectively, the “**Prepetition Secured**  
13 **Parties’ Professionals**”) in accordance with the notice and review procedures set forth in  
14 paragraph 19 of this Interim Order.

15 (d) *Monthly Payments.* The Prepetition Senior Secured Term Loan Agent shall  
16 during the pendency of the Chapter 11 Cases, receive indefeasible payments in amounts equal to  
17 100% of the accrued and unpaid interest, whether accruing prior to, on or after the Petition Date,  
18 due to the Prepetition Senior Secured Term Loan Agent under the Prepetition Senior Secured Term  
19 Loan Documents (calculated at the applicable non-default rates) (the “**Adequate Protection**  
20 **Monthly Payments**” and, together with the Adequate Protection Fees, the “**Adequate Protection**  
21 **Payments**”), which shall be payable (i) in respect of payments relating to the Prepetition Senior  
22 Secured KfW Term Loan Obligations, in cash and (ii) in respect of payments relating to the  
23 Prepetition Senior Secured Term Loan A-2 Obligations, in kind; *provided* that in the event of a  
24 final determination that the Prepetition Senior Secured Term Loan Lenders are undersecured as of  
25 the Petition Date, payments received by the applicable undersecured Prepetition Senior Secured  
26 Term Loan Lender pursuant to this paragraph 10(d) may be recharacterized and applied as  
27 payments of principal.  
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(e) *Information Rights.* The Debtors shall contemporaneously provide the Prepetition Secured Parties with all reporting and information that is required to be provided to the DIP Lenders under the DIP Documents (as currently in effect, or pursuant to any additional requirements that may be added after the date hereof). The Debtors shall (a) provide the Prepetition Senior Secured Term Loan Agent and its advisors with copies of any material proposal, offer, indication of interest, or bid within two (2) business days of receipt, and (b) at the Prepetition Senior Secured Term Loan Agent's request, host a weekly call with the Prepetition Senior Secured Term Loan Agent and its advisors regarding the status of the Debtors' sale process. The Debtors shall provide the Prepetition Senior Secured Term Loan Agent and its advisors with any information reasonably requested by the Prepetition Senior Secured Term Loan Agent or its advisors in connection with any Proposed Budget, Approved Budget, or Weekly Variance Report within three (3) business days of such request. The Debtors shall conduct weekly status calls with KfW (and their technical advisor) on the status of the Underground Mine and shall respond timely to any reasonable request of KfW's technical advisor to provide information with respect to the status of the Underground Mine.

11. **Perfection of DIP Liens and Adequate Protection Liens.**

(a) This Interim Order shall be sufficient and conclusive evidence of the attachment, validity, perfection and priority of all liens and security interests granted under this Interim Order and the DIP Documents, including, without limitation, the DIP Liens and the Adequate Protection Liens, without the necessity of the execution, recordation or filing of any pledge, collateral or security agreements, mortgages, deeds of trust, lockbox or control agreements, financing statements, notations of certificates of title for titled goods, or any other document or instrument, or the taking of any other action (including, without limitation, entering into any deposit account control agreement or other act to take possession or control of any DIP Collateral, including Cash Collateral), to attach, validate, perfect or prioritize such liens and security interests, or to entitle the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition



1 Secured Parties to the priorities provided hereby and set forth on Exhibit C hereto (a “*Perfection*  
2 *Act*”).

3 (b) Without in any way limiting the automatically effective perfection of the  
4 liens granted under this Interim Order and the DIP Documents (including, without limitation, the  
5 DIP Liens and the Adequate Protection Liens), each of the Required DIP Lenders, the Prepetition  
6 Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the Prepetition TF  
7 Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, without any further  
8 consent of any party, is hereby authorized on a final basis, to execute, file or record, and such  
9 parties, as applicable, may require the execution, filing or recording, as each, in its sole discretion  
10 deems necessary, of such financing statements, mortgages, notices of lien and other similar  
11 documents to enable the Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
12 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
13 Junior Secured Term Loan Agent, as applicable, to further validate, perfect, preserve and enforce  
14 the DIP Liens or Adequate Protection Liens granted hereunder, as applicable, perfect in accordance  
15 with applicable law or to otherwise evidence the DIP Liens and/or the Adequate Protection Liens,  
16 as applicable, and all such financing statements, mortgages, notices and other documents shall be  
17 deemed to have been executed, filed or recorded as of the Petition Date; *provided, however*, that,  
18 notwithstanding any otherwise applicable law or regulation to the contrary, whether or not the  
19 Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent, the Prepetition Working  
20 Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition Junior Secured Term  
21 Loan Agent, as applicable, determine, in their sole discretion, to execute, file, record or otherwise  
22 effectuate any Perfection Act with respect to any liens or security interests granted under this  
23 Interim Order and the DIP Documents, such liens and security interests shall be deemed valid,  
24 perfected, allowed, enforceable, non-avoidable and not subject to objection, challenge, dispute,  
25 avoidance, recharacterization or subordination. The Debtors are hereby authorized and directed  
26 on a final basis to execute and deliver promptly upon demand to the Required DIP Lenders, the  
27 Prepetition Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the  
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1 Prepetition TF Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, as  
2 applicable, all such financing statements, notices and other documents as such parties may  
3 reasonably request. The Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
4 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition  
5 Junior Secured Term Loan Agent, as applicable, each in its discretion, may file a copy of this  
6 Interim Order as a financing statement with any filing or recording office or with any registry of  
7 deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or  
8 similar instruments, and in such event, the filing or recording office shall be authorized to file or  
9 record such copy of this Interim Order.

10 12. **Modification of Automatic Stay**. The automatic stay imposed by Bankruptcy  
11 Code section 362(a) is hereby modified, without application to or further order of this Court, to  
12 permit: (i) the Debtors to grant the DIP Liens and the DIP Superpriority Claims, and to perform  
13 such acts as the DIP Agent (acting at the direction of the Required DIP Lenders) and/or the  
14 Required DIP Lenders may request to assure the perfection and priority of the DIP Liens; (ii) the  
15 Debtors to incur all liabilities and obligations to the DIP Secured Parties as contemplated under  
16 this Interim Order and the DIP Documents; (iii) the Debtors to grant the Adequate Protection Liens  
17 and Adequate Protection Superpriority Claims and to perform such acts as the Prepetition Secured  
18 Parties may request to assure the perfection and priority of the Adequate Protection Liens; (iv) the  
19 Debtors to incur all liabilities and obligations to the Prepetition Secured Parties, including all  
20 Adequate Protection Superpriority Claims and other Adequate Protection Obligations, as  
21 contemplated under this Interim Order and the DIP Documents; (v) the Debtors to pay all amounts  
22 required under this Interim Order and the DIP Documents; (vi) the DIP Secured Parties and the  
23 Prepetition Secured Parties to retain and apply payments made in accordance with the terms of this  
24 Interim Order and the DIP Documents; (vii) subject in all respects to paragraph 18 of this Interim  
25 Order, the DIP Agent (acting at the direction of the Required DIP Lenders) and the applicable  
26 Prepetition Secured Parties to exercise, upon the occurrence of any Termination Event (as defined  
27 below), all rights and remedies provided for in this Interim Order, the DIP Documents or applicable  
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1 law; (viii) the Debtors to perform under this Interim Order and the DIP Documents and to take any  
2 and all other actions that may be necessary, required or desirable for the performance by the  
3 Debtors under this Interim Order and the DIP Documents and the implementation of the  
4 transactions contemplated hereunder and thereunder; and (ix) the implementation of all of the  
5 terms, rights, benefits, privileges, remedies and provisions of this Interim Order and the DIP  
6 Documents.

7 13. **Carve-Out.**

8 (a) *Carve-Out.* As used in this Interim Order, the “***Carve-Out***” means the sum  
9 of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section  
10 1930(a) of title 28 of the United States Code, together with interest, if any, under section 3717 of  
11 title 31 of the United States Code (without regard to the notice set forth in (iii) below); (ii) all  
12 reasonable fees and expenses up to \$50,000 incurred by a trustee under Bankruptcy Code section  
13 726(b) (without regard to the notice set forth in (iii) below); (iii) to the extent allowed, whether by  
14 interim order, procedural order or otherwise, all unpaid fees and expenses (the “***Allowed***  
15 ***Professional Fees***”) incurred by persons or firms retained by the Debtors pursuant to Bankruptcy  
16 Code sections 327, 328 or 363 (the “***Debtor Professionals***”) and the Creditors’ Committee  
17 pursuant to Bankruptcy Code sections 328 or 1103 (the “***Committee Professionals***” and, together  
18 with the Debtor Professionals, the “***Estate-Retained Professionals***”) at any time before or on the  
19 first calendar day following delivery of a Carve-Out Trigger Notice (as defined below), whether  
20 allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed  
21 Professional Fees of Estate-Retained Professionals, in an aggregate amount not to exceed \$750,000  
22 incurred after the first calendar day following delivery of the Carve-Out Trigger Notice, to the  
23 extent allowed, whether by interim order, procedural order or otherwise (the amounts set forth in  
24 this clause (iv) being the “***Post-Carve-Out Trigger Notice Cap***”). For purposes of the foregoing,  
25 the “***Carve-Out Trigger Notice***” shall mean a written notice delivered by e-mail by the DIP Agent  
26 (acting at the direction of the Required DIP Lenders and in accordance with the terms of this  
27 Interim Order), to the Debtors’ proposed bankruptcy counsel Allen Overy Shearman & Sterling  
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1 US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick and Sara Coelho),  
2 the U.S. Trustee, the Creditors' Committee, if any, and the Prepetition Secured Parties, which  
3 notice may be delivered following the occurrence and during the continuation of an Event of  
4 Default (as defined in the DIP Credit Agreement) and acceleration of the obligations under the DIP  
5 Facility or the occurrence of a Maturity Date (as defined in the DIP Credit Agreement), stating that  
6 the Post-Carve-Out Trigger Notice Cap has been invoked.

7 (b) *Carve-Out Reserves*. On the day on which a Carve-Out Trigger Notice is  
8 delivered (the "***Carve-Out Trigger Date***"), the Carve-Out Trigger Notice shall constitute a demand  
9 to the Debtors to utilize all cash on hand as of such date to fund a reserve in an amount equal to  
10 the then unpaid amounts of (i) the Allowed Professional Fees of Estate-Retained Professionals and  
11 (ii) the obligations accrued as of the Carve-Out Trigger Date with respect to clauses (i) and (ii) of  
12 the definition of Carve-Out set forth in paragraph 13(a) (the "***Additional Carve-Out Obligations***").  
13 The Debtors shall deposit and hold such amounts in a segregated account in a manner reasonably  
14 acceptable to the DIP Agent (acting at the direction of the Required DIP Lenders) or the Required  
15 DIP Lenders, and, following the Discharge of DIP Obligations, the Prepetition Senior Secured  
16 Term Loan Agent, in trust to pay such unpaid Allowed Professional Fees of Estate-Retained  
17 Professionals and Additional Carve-Out Obligations (the "***Pre-Carve-Out Trigger Notice***  
18 ***Reserve***") prior to the use of such reserve to pay any other claims. On the Carve-Out Trigger Date,  
19 after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining  
20 cash on hand as of such date to fund a reserve in an amount equal to the Post-Carve-Out Trigger  
21 Notice Cap (the "***Post-Carve-Out Trigger Notice Reserve***" and, together with the Pre-Carve-Out  
22 Trigger Notice Reserve, the "***Carve-Out Reserves***") prior to the use of such reserve to pay any  
23 other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the  
24 obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth in paragraph  
25 13(a) (the "***Pre-Carve-Out Amounts***"), but not, for the avoidance of doubt, the Post-Carve-Out  
26 Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice  
27 Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay any other  
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amounts (if owing) benefitted by the Carve-Out and then to the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) have been indefeasibly paid in full, in cash, and all commitments under the DIP Facility have been terminated (the “**Discharge of DIP Obligations**”), in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents and this Interim Order. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the “**Post-Carve-Out Amounts**”), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents and this Interim Order. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, if either of the Carve-Out Reserves are not funded in full in the amounts set forth in this paragraph 13(b), then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 13(b), prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent (in accordance with the terms of this Interim Order and the DIP Documents) shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a valid and perfected security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case

any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents. Further, notwithstanding anything to the contrary in this Interim Order, (x) disbursements by the Debtors from the Carve-Out Reserves shall not increase or reduce the DIP Obligations or constitute additional loans under the DIP Facility and (y) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out in respect of DIP Collateral or any recoveries thereon. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Documents or in any Prepetition Debt Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Obligations and the Prepetition Secured Obligations, and any and all other forms of adequate protection, liens or claims securing the DIP Obligations or the Prepetition Secured Obligations.

(c) *Payment of Allowed Professional Fees Prior to the Carve-Out Trigger Date.* Any payment or reimbursement made prior to the occurrence of the Carve-Out Trigger Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

(d) *No Direct Obligation to Pay Allowed Professional Fees.* None of the DIP Secured Parties or Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Estate-Retained Professional incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Estate-Retained Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) *Payment of Carve-Out on or After the Carve-Out Trigger Date.* Any payment or reimbursement made on or after the occurrence of the Carve-Out Trigger Date in respect of any Allowed Professional Fees incurred after the first business day following delivery by the DIP Agent (acting at the direction of the Required DIP Lenders) of the Carve-Out Trigger Notice shall permanently reduce the Post-Carve-Out Trigger Notice Cap on a dollar-for-dollar basis. Any funding of the Carve-Out under the DIP Facility shall be added to, and made a part of,



1 the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections  
2 granted under this Interim Order, the DIP Documents, the Bankruptcy Code and applicable law.

3 14. **Limitation on Charging Expenses Against Collateral.** Subject to entry of the  
4 Final Order (but retroactive to the Petition Date), and subject to the Carve-Out and the  
5 Administration Charge, no costs or expenses of administration of the Chapter 11 Cases, the  
6 Recognition Proceedings or any future proceeding that may result therefrom, including liquidation  
7 in bankruptcy or other proceedings under the Bankruptcy Code or the CCAA, shall be charged  
8 against or recovered from the DIP Collateral or the Prepetition Collateral, the DIP Secured Parties  
9 or the Prepetition Secured Parties pursuant to Bankruptcy Code sections 506(c) and 105(a), or any  
10 similar principle of law or equity, without the prior written consent of the DIP Secured Parties and  
11 the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other  
12 action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties.

13 15. **No Marshaling/Application of Proceeds.** Subject to entry of the Final Order, the  
14 DIP Agent and the Prepetition Secured Parties shall be entitled to apply the payments or proceeds  
15 of the DIP Collateral and the Prepetition Collateral, as applicable, in accordance with the  
16 provisions of the Interim Order or the Final Order, as applicable, the DIP Documents and the  
17 Prepetition Debt Documents, as applicable, and in no event shall the DIP Secured Parties or any  
18 of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other  
19 similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral.

20 16. **Equities of the Case.** Subject to entry of the Final Order (but retroactive to the  
21 Petition Date), (i) the Prepetition Secured Parties shall be entitled to all of the rights and benefits  
22 of Bankruptcy Code section 552(b) and (ii) the Debtors shall not invoke the “equities of the case”  
23 exception under Bankruptcy Code section 552(b) with respect to the proceeds, products, offspring  
24 or profits of any of the Prepetition Collateral.

25 17. **Termination Events.** The occurrence of any of the following shall constitute a  
26 “***Termination Event***”: (i) the occurrence of an Event of Default (as defined in the DIP Documents)  
27 to the extent not waived by the Required DIP Lenders or subject to a forbearance or similar  
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1 agreement with the Required DIP Lenders; (ii) the Debtors' failure to comply in any material  
2 respect with any provision of this Interim Order unless waived by the applicable lenders; or (iii)  
3 the occurrence of the Maturity Date (as defined in the DIP Documents).

4 18. **Remedies Upon a Termination Event.**

5 (a) Upon the occurrence of the Termination Event, the DIP Agent (acting at the  
6 direction of the Required DIP Lenders) shall be entitled to declare (A) all DIP Obligations due and  
7 payable without presentment, demand or protest or other notice of any kind, all of which are  
8 expressly waived by the Debtors, (B) the termination, reduction or restriction of all future  
9 commitments to the Borrower under the DIP Facility to the extent any such commitment remains  
10 (including, for the avoidance of doubt, any commitment to fund the DIP Facility) but without  
11 affecting the DIP Liens and DIP Obligations, (C) the termination of the DIP Facility and any DIP  
12 Documents as to any future obligation of the DIP Secured Parties, but without affecting any of the  
13 DIP Liens or any DIP Obligation, (D) the termination, reduction or restriction on the ability of the  
14 Debtors to use any Cash Collateral and the proceeds of the DIP Facility (any such declaration made  
15 by the DIP Agent to counsel to the Debtors, counsel to the applicable Prepetition Secured Parties,  
16 the U.S. Trustee and counsel to the Creditors' Committee, if any, (which may be made by e-mail),  
17 a "***Termination Declaration***," and the date which is the earliest to occur of any such Termination  
18 Declaration and the Maturity Date being herein referred to as the "***Termination Declaration***  
19 ***Date***"). The DIP Agent shall provide any Termination Declaration to the Debtors' lead  
20 restructuring counsel, the Creditors' Committee, if any, the U.S. Trustee, and Milbank, as counsel  
21 to KfW.

22 (b) The Debtors, the Committee (if appointed), and/or any party in interest shall  
23 be entitled to seek an emergency hearing before the Court within four (4) business days after the  
24 delivery of a Termination Declaration (such period being the "***Remedies Notice Period***"), for the  
25 sole purpose of contesting whether a Termination Event (other than with respect to the Maturity  
26 Date) has occurred or is continuing or for the contested use of Cash Collateral (a "***Stay***  
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1 **Enforcement Motion**”).<sup>6</sup> The Debtors shall be entitled to continue to use Cash Collateral in  
2 accordance with the terms of this Interim Order and the DIP Documents during any Remedies  
3 Notice Period only to make payroll and fund critical expenses necessary to preserve the Prepetition  
4 Collateral, in each case, in accordance with the terms of the Approved Budget and this Interim  
5 Order, but shall not be permitted to use Cash Collateral following any Remedies Notice Period  
6 absent further order of the Court approving such use (and only to the extent so approved). Unless  
7 the Court has determined that a Termination Event has not occurred and/or is not continuing, or  
8 the Court orders otherwise, the automatic stay, as to the DIP Secured Parties shall automatically  
9 be terminated at the end of the Remedies Notice Period without further notice, order, or any further  
10 action in the Chapter 11 Cases or the Recognition Proceedings and the DIP Agent (acting at the  
11 direction of the Required DIP Lenders) shall be permitted to exercise any rights and remedies  
12 against the DIP Collateral available to the DIP Secured Parties under this Interim Order, the DIP  
13 Documents and applicable non-bankruptcy law without any further order of or application or  
14 motion to the Court, including, but not limited to, any rights to setoff against deposits and financial  
15 assets of the Debtors and to foreclose on all or any portion of the DIP Collateral, in each case,  
16 subject to the Carve-Out, the Administration Charge and any Prepetition Permitted Liens;  
17 *provided, however*, that the Required DIP Lenders shall consult with the Prepetition Secured Term  
18 Loan Agent in advance of exercising any remedies or taking action in connection with any of the  
19 DIP Collateral and shall provide the Prepetition Senior Secured Term Loan Agent with five (5)  
20 Business Days’ notice in advance of taking such actions; which period may be waived by the  
21 Prepetition Senior Secured Term Loan Agent, in its reasonable discretion.

22 19. **Fees and Expenses of DIP Professionals and Prepetition Secured Parties’**

23 **Professionals.**

24 (a) The payment of all DIP Professional Fees and Adequate Protection Fees

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26 <sup>6</sup> If a hearing to consider a Stay Enforcement Motion is requested to be heard before the end of the Remedies Notice  
27 Period but is scheduled for a later date by the Court, the Remedies Notice Period shall automatically be extended  
28 to the date of such hearing, but in no event later than ten (10) business days after delivery of the Termination  
Declaration or at such other date that may be agreed to by the parties after good faith negotiations.

1 hereunder shall not be subject to (i) further application to or approval of the Court, (ii) allowance  
2 or review by the Court or (iii) the U.S. Trustee's fee guidelines, and no attorney or advisor to the  
3 DIP Secured Parties or the Prepetition Secured Parties shall be required to file an application  
4 seeking compensation for services or reimbursement of expenses with the Court; *provided*,  
5 *however*, that any time the DIP Professionals (other than DIP Agent Counsel) seek payment of  
6 fees and expenses from the Debtors from and after the Petition Date but prior to the effective date  
7 of any chapter 11 plan,<sup>7</sup> each such party or professional shall provide summary copies of its  
8 invoices (which shall not be required to contain time entries, and which may be redacted or  
9 modified to the extent necessary to delete any information subject to the attorney-client privilege,  
10 any information constituting attorney work product or any other confidential information, and the  
11 provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any  
12 benefits of the attorney work product doctrine) to the Debtors' counsel, the U.S. Trustee, and lead  
13 counsel to the Creditors' Committee, if any (collectively, the "***Invoice Review Parties***"). Any  
14 objections raised by any Invoice Review Party with respect to such invoices must (x) be in writing  
15 (email from such party or their counsel being sufficient) (y) state with particularity the grounds for  
16 such objection and (z) be submitted to the affected professional(s) within ten (10) calendar days  
17 after delivery of such invoices to the Invoice Review Parties (such ten (10) calendar day period,  
18 the "***Invoice Review Period***"). If no written objection is received prior to the expiration of the  
19 Invoice Review Period from the Invoice Review Parties, the Debtors shall pay such invoices within  
20 two (2) calendar days following the expiration of the Invoice Review Period. If an objection is  
21 received within the Invoice Review Period from the Invoice Review Parties, the Debtors shall  
22 promptly pay the undisputed amount of the invoice, and the disputed portion of such invoice shall  
23 not be paid until such dispute is resolved by agreement between the affected party or  
24 professional(s) and the objecting party or by order of this Court. Any hearing to consider such an  
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26 <sup>7</sup> For the avoidance of doubt, nothing contained in this paragraph 19 shall prevent the DIP Secured Parties or KfW  
27 from seeking payment from the Debtors of professional fees and expenses incurred prior to the Petition Date in  
28 accordance with the terms of this Interim Order and the DIP Documents.

1 objection to the payment of any fees, costs or expenses set forth in a professional fee invoice  
2 hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject  
3 of such objection.

4 (b) Notwithstanding anything contained in this Interim Order to the contrary,  
5 any and all payments, fees, costs, expenses and other amounts paid at any time by any of the  
6 Debtors to the DIP Secured Parties or the Prepetition Secured Parties (including such parties'  
7 respective professionals), as applicable, pursuant to the requirements of this Interim Order or the  
8 DIP Documents, whether prior to, on or after the Petition Date, shall be non-refundable and  
9 irrevocable, are hereby approved (and to the extent paid prior to entry of the Interim Order, ratified  
10 in full), and shall not be subject to any challenge, objection, defense, claim or cause of action of  
11 any kind or nature whatsoever, including, without limitation, avoidance (whether under Chapter 5  
12 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform  
13 Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)),  
14 reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable,  
15 contractual, or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling,  
16 surcharge or recovery or any other cause of action, whether arising under the Bankruptcy Code,  
17 applicable non-bankruptcy law or otherwise, by any person or entity.

18 20. **Limitation on Use of DIP Facility Proceeds, DIP Collateral and Cash**  
19 **Collateral.**

20 (a) Notwithstanding anything to the contrary set forth in this Interim Order,  
21 none of the DIP Facility, the DIP Collateral, the Prepetition Collateral or the proceeds thereof,  
22 including Cash Collateral, or the Carve-Out may be used: (i) to investigate (except as expressly  
23 provided herein), initiate, prosecute, join or finance the initiation or prosecution of any claim,  
24 counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense or other  
25 litigation of any type (A) against any of the DIP Secured Parties or the Prepetition Secured Parties  
26 (in each case, in their capacities as such) and each of their respective affiliates, officers, directors,  
27 employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or  
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1 successors, with respect to any transaction, occurrence, omission, action, or other matter (including  
2 formal discovery proceedings in anticipation thereof), including, without limitation, any so-called  
3 “lender liability” claims and causes of action, or seeking relief that would impair the rights and  
4 remedies of the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their  
5 capacities as such) under this Interim Order, the DIP Documents or the Prepetition Debt  
6 Documents, as applicable, to the extent permitted or provided hereunder, including, without  
7 limitation, for the payment of any services rendered by any Estate-Retained Professional in  
8 connection with the assertion of or joinder in any claim, counterclaim, action, proceeding,  
9 application, motion, objection, defense or other contested matter, the purpose of which is to seek,  
10 or the result of which would be to obtain, any order, judgment, determination, declaration or similar  
11 relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured  
12 Parties to recover on the DIP Collateral or the Prepetition Collateral (as applicable), as provided  
13 for herein, or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition  
14 Secured Parties related to the DIP Obligations or the Prepetition Secured Obligations, as  
15 applicable, (B) seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the DIP  
16 Liens, DIP Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens or the  
17 Prepetition Secured Obligations or (C) for monetary, injunctive or other affirmative relief against  
18 the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their capacities as such)  
19 that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties  
20 to assert or enforce any lien, claim, right or security interest or to realize or recover on the DIP  
21 Obligations or the Prepetition Secured Obligations to the extent permitted or provided hereunder;  
22 (ii) for objecting to or challenging in any way the legality, validity, priority, perfection or  
23 enforceability of the claims, liens or interests (including the Prepetition Liens) held by or on behalf  
24 of each of the Prepetition Secured Parties related to the Prepetition Secured Obligations, or by or  
25 on behalf of the DIP Secured Parties related to the DIP Obligations; (iii) for asserting, commencing  
26 or prosecuting any claims or causes of action whatsoever, including, without limitation, any  
27 Avoidance Actions related to the DIP Liens, the DIP Superpriority Claims, the DIP Obligations,  
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1 the Prepetition Liens or the Prepetition Secured Obligations; or (iv) for prosecuting an objection  
2 to, contesting in any manner or raising any defenses to, the validity, extent, amount, perfection,  
3 priority or enforceability of (A) any of the DIP Liens, the DIP Superpriority Claims, or any other  
4 rights or interests of the DIP Secured Parties related to the DIP Obligations or the DIP Liens or (B)  
5 any of the Prepetition Liens, Prepetition Secured Obligations or any other rights or interests of any  
6 of the Prepetition Secured Parties related to the Prepetition Secured Obligations; *provided* that no  
7 more than \$50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition  
8 Collateral, including the Cash Collateral, in the aggregate, may be used by the Creditors'  
9 Committee (if any) solely to investigate (but not seek formal discovery or commence any  
10 challenge, objection or prosecute any claim or cause of action relating to) the foregoing matters  
11 with respect to the Prepetition Liens or the Prepetition Secured Obligations within the Challenge  
12 Period (as defined below) (the "***Investigation Budget***").

13 (b) Any fees and expenses of the Committee Professionals in connection with  
14 the investigation of the matters described in paragraph 20(a) of this Interim Order in excess of the  
15 Investigation Budget shall not be entitled to administrative expense priority pursuant to section  
16 503(b) of the Bankruptcy Code or otherwise.

17 21. **Effect of Stipulations on Third Parties.**

18 (a) The Debtors' acknowledgments, stipulations, admissions, agreements,  
19 waivers and releases set forth in this Interim Order shall be binding on the Debtors, their respective  
20 estates, representatives, successors and assigns upon entry of this Interim Order and the Debtors  
21 shall be deemed to have irrevocably waived and relinquished all Challenges (as defined below) as  
22 of the Petition Date.

23 (b) The acknowledgments, stipulations, admissions, agreements, waivers and  
24 releases contained in this Interim Order shall also be binding upon all other parties in interest,  
25 including the Creditors' Committee or non-statutory committees appointed or formed in these  
26 Chapter 11 Cases (if any) and any other person or entity seeking to act on behalf of the Debtors'  
27 estates, including any chapter 7, chapter 11 trustee or examiner appointed or elected for any of the  
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Debtors in these Chapter 11 Cases or any Successor Cases, and each of their respective successors and assigns, in all circumstances and for all purposes, unless: (i) any such party, having obtained requisite standing, timely and properly commences and serves an adversary proceeding or contested matter (subject to the limitations contained herein) (A) objecting to or challenging the validity, perfection, priority, scope, extent or enforceability of the Prepetition Funded Debt Liens or the Prepetition Secured Obligations, (B) objecting to or alleging any basis to impair, restrict, deny or otherwise challenge the right of any of the Prepetition Secured Parties to credit bid, in whole or in part, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations under Bankruptcy Code section 363(k) or otherwise or (C) otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the “**Challenges**”) against the Prepetition Secured Parties in connection with any matter related to the Prepetition Collateral, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations by no later than (1) with respect to any Creditors’ Committee, the date that is 45 days after the later of (a) its appointment in the Chapter 11 Cases and (b) entry of the Final Order and (2) with respect to all other parties in interest, no later than the date that is 45 days after the entry of this Interim Order (the time period established by the foregoing clauses (1) and (2) the “**Challenge Period**”); *provided* that in the event that, prior to the expiration of the Challenge Period, (x) these Chapter 11 Cases are converted to chapter 7 or (y) a chapter 11 trustee is appointed in these Chapter 11 Cases, then, in each such case, the Challenge Period shall be extended for a period of 10 days solely with respect to any Trustee, commencing on the occurrence of either of the events described in the foregoing clauses (x) and (y); and (ii) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge in any such duly filed adversary proceeding or contested matter.

(c) If no such adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, without further order of this Court: (i) the Prepetition Secured Obligations shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense,

1 avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance,  
2 recovery, disgorgement, attachment, “claim” (as defined by Bankruptcy Code section 101(5)),  
3 impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any  
4 kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these  
5 Chapter 11 Cases and any Successor Cases, if any; (ii) the Prepetition Funded Debt Liens shall be  
6 deemed to have been, as of the Petition Date, legal, valid, binding, perfected and of the priority  
7 specified in paragraphs F.1(c), F.2(c), F.3(c), and F.4(c), not subject to setoff, subordination,  
8 defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment or  
9 recovery; and (iii) the Prepetition Secured Obligations, the Prepetition Funded Debt Liens on the  
10 Prepetition Collateral and the Prepetition Secured Parties (solely in their capacities as such) shall  
11 not be subject to any other or further challenge and all parties in interest shall be forever enjoined  
12 and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action,  
13 including any successor thereto (including any estate representative or a Trustee, whether such  
14 Trustee is appointed or elected prior to or following the expiration of the Challenge Period).

15 (d) If any such adversary proceeding or contested matter is timely filed prior to  
16 the expiration of the Challenge Period, (i) the stipulations, admissions, agreements, waivers and  
17 releases contained in this Interim Order shall nonetheless remain binding and preclusive on the  
18 Creditors’ Committee (if any) and any other party in these Chapter 11 Cases, including any Trustee,  
19 except as to the party (or parties) that timely initiated such adversary proceeding or contested  
20 matter and, with respect to such party (or parties), solely as to any stipulations, admissions,  
21 agreements, waivers and releases that are specifically and expressly challenged in such adversary  
22 proceeding or contested matter and (ii) any Claims and Defenses not brought in such adversary  
23 proceeding or contested matter shall be forever barred; *provided* that, if and to the extent any  
24 challenges to a particular stipulation, admission, agreement, waiver or release are withdrawn,  
25 denied or overruled by a final non-appealable order, such stipulation, admission, agreement,  
26 waiver and/or release also shall be binding on the Debtors’ estates and all parties in interest.

27 (e) Nothing in this Interim Order vests or confers on any person (as defined in  
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1 the Bankruptcy Code), including any Creditors' Committee (if any), standing or authority to pursue  
2 any cause of action belonging to the Debtors or their estates, including, without limitation, any  
3 challenge with respect to the Prepetition Debt Documents, the Prepetition Funded Debt Liens or  
4 the Prepetition Secured Obligations.

5 22. **Release.** Subject to the rights and limitations set forth in paragraphs 20 and 21 of  
6 this Interim Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf  
7 of each of their predecessors, their successors and assigns shall, to the maximum extent permitted  
8 by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish,  
9 irrevocably waive and discharge each of the DIP Secured Parties, and subject to the entry of the  
10 Final Order, the Prepetition Secured Parties (in each case, in their capacities as such) and each of  
11 their respective former, current or future officers, employees, directors, agents, representatives,  
12 owners, members, partners, affiliated investment funds or investment vehicles, managed, advised  
13 or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers,  
14 financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys,  
15 affiliates and predecessors in interest, each in their capacity as such, of and from any and all claims,  
16 demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and  
17 obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses,  
18 damages, injuries, attorneys' fees, costs, expenses or judgments of every type, whether known,  
19 unknown, asserted, unasserted, suspected unsuspected, accrued, unaccrued, fixed, contingent,  
20 pending or threatened including, without limitation, all legal and equitable theories of recovery,  
21 arising under common law, statute or regulation or by contract, of every nature and description  
22 that exist on the date hereof solely with respect to or relating to the DIP Liens, the DIP  
23 Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens and the Prepetition  
24 Secured Obligations, as applicable, including, without limitation, (i) any so-called "lender  
25 liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action  
26 arising under the Bankruptcy Code and (iii) any and all claims and causes of action regarding the  
27 validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP  
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1 Secured Parties and the Prepetition Secured Parties.

2 23. **Credit Bidding.**

3 (a) Consistent with Bankruptcy Code section 363(k) and applicable law, the  
4 DIP Agent (acting at the direction of the Required DIP Lenders) and each DIP Lender (in any case,  
5 either directly or through one or more acquisition vehicles), shall have the right to credit bid for  
6 all or any portion of the DIP Collateral, as applicable, up to the full amount of any DIP  
7 Superpriority Claims, as part of any sale of Debtors' assets (in whole or in part), including without  
8 limitation, sales occurring pursuant to (i) Bankruptcy Code section 363, (ii) a plan of  
9 reorganization or a plan of liquidation under Bankruptcy Code section 1129 or (iii) a sale or  
10 disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725 (each, a "***Sale***  
11 ***Transaction***"), *provided*, that, until payment in full of the obligations under the Prepetition  
12 Working Capital Facility, the rights of the DIP Agent and each DIP Lender to credit bid on any  
13 DIP Collateral that constitutes WCF Collateral shall be subject to the right of the Prepetition  
14 Working Capital Purchaser to credit bid for all or any portion of the WCF Collateral, as applicable,  
15 up to the full amount of any Prepetition Working Capital Obligations as part of any Sale  
16 Transaction. The DIP Agent shall have the absolute right to assign, sell or otherwise dispose of its  
17 right to credit bid in connection with any credit bid by or on behalf of the DIP Lenders to any  
18 acquisition entity or joint venture formed in connection with such bid.

19 (b) The Prepetition Secured Parties' rights to credit bid for all or a portion of  
20 the Prepetition Collateral as part of any Sale Transaction are fully preserved, subject in all respects  
21 to (i) payment in full in cash of all DIP Obligations and (ii) the terms and conditions of this Interim  
22 Order and the applicable Prepetition Debt Documents, including the lien and claim priorities set  
23 forth herein and therein.

24 24. **Interim Order Governs.** In the event of any inconsistency between the provisions  
25 of this Interim Order and any DIP Documents, the provisions of this Interim Order shall govern.

26 25. **Binding Effect; Successors and Assigns.** The DIP Documents and the provisions  
27 of this Interim Order, including all findings herein, shall be binding upon all parties in interest in  
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1 these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition  
2 Secured Parties, the Creditors' Committee (if any), the Debtors and their respective successors and  
3 assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate  
4 of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104 or any  
5 other fiduciary appointed as a legal representative of any of the Debtors or with respect to the  
6 property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured  
7 Parties and the Prepetition Secured Parties; *provided*, that, except to the extent expressly set forth  
8 in this Interim Order, the Prepetition Secured Parties shall have no obligation to permit the use of  
9 Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person  
10 appointed for the estates of the Debtors.

11 26. **Limitation of Liability.** In determining to make any loan under the DIP  
12 Documents, permitting the use of Cash Collateral or exercising any rights or remedies as and when  
13 permitted pursuant to this Interim Order, the DIP Documents or the Prepetition Debt Documents,  
14 the DIP Secured Parties and the Prepetition Secured Parties (in each case, solely in their capacities  
15 as such) shall not be deemed to be in control of the operations of the Debtors or to be acting as a  
16 "responsible person" or "owner or operator" with respect to the operation or management of the  
17 Debtors or their respective business (as such terms, or any similar terms, are used in the United  
18 States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§  
19 9601 *et seq.* as amended, or any similar federal or state statute), nor shall they owe any fiduciary  
20 duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint  
21 venture or partnership with any of the Debtors. Furthermore, nothing in this Interim Order, the  
22 DIP Documents or the Prepetition Debt Documents shall in any way be construed or interpreted  
23 to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties  
24 of any liability for any claims arising from the prepetition or postpetition activities of any of the  
25 Debtors and their direct or indirect subsidiaries.

26 27. **Proofs of Claim.** Notwithstanding anything to the contrary contained in any prior  
27 or subsequent order of the Court, including, without limitation, any order establishing a deadline  
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1 for the filing of proofs of claim or requests for payment of administrative expenses under  
2 Bankruptcy Code section 503(b), (i) the Prepetition Secured Parties shall not be required to file  
3 any proof of claim or request for payment of administrative expenses with respect to any of the  
4 Prepetition Secured Obligations or the Adequate Protection Obligations and (ii) the DIP Secured  
5 Parties shall not be required to file any proof of claim or request for payment of administrative  
6 expenses with respect to any DIP Obligations. The failure to file any such proof of claim or request  
7 for payment of administrative expenses shall not affect the validity, priority or enforceability of  
8 any of the Prepetition Debt Documents, the DIP Documents or of any other indebtedness, liabilities  
9 or obligations arising at any time thereunder or under this Interim Order, or prejudice or otherwise  
10 adversely affect the Prepetition Secured Parties' or the DIP Secured Parties' rights, remedies,  
11 powers or privileges under any of the Prepetition Debt Documents, the DIP Documents, this  
12 Interim Order or applicable law. The applicable Prepetition Secured Parties and DIP Secured  
13 Parties may (but are not required to) in their discretion file (and amend and/or supplement)  
14 applicable proofs of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or any  
15 successor cases for any claim allowed herein, and any such proof of claim may (but is not required  
16 to) be filed in the Debtors' lead Chapter 11 Case *In re* [ ], Case No. [ ] ([ ]) as one  
17 consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim  
18 against each Debtor. The provisions set forth in this paragraph 27 are intended solely for the  
19 purpose of administrative convenience and shall not affect the substantive rights of any party-in-  
20 interest or their respective successors-in-interest.

21 28. **Insurance.** The Debtors shall continue to maintain all property, operational and  
22 other insurance as required and as specified in the DIP Documents (which shall be deemed satisfied  
23 if such insurance as required under the Prepetition Secured Term Loan Credit Agreement remains  
24 in place). The Debtors shall provide the DIP Agent (for distribution to the DIP Lenders) with  
25 commercially reasonable evidence of such insurance upon a request to counsel for the Debtors  
26 from the DIP Agent (acting at the direction of the Required DIP Lenders). Upon entry of this  
27 Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of  
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1 itself and the DIP Lenders) is, and is deemed to be, without any further action or notice, named as  
2 additional insured and loss payee on each insurance policy maintained by the Debtors that in any  
3 way relates to the DIP Collateral (including all property damage and business interruption  
4 insurance policies of the Debtors, whether expired, currently in place or to be put in place in the  
5 future), and shall act in that capacity and distribute any proceeds recovered or received in respect  
6 of any such insurance policies.

7       29.     **Protection of Lenders' Rights.**

8             (a)     Except as expressly permitted in this Interim Order or the DIP Documents,  
9 in the event any person or entity that holds a lien on or security interest in DIP Collateral that is  
10 junior or otherwise subordinate to the DIP Liens receives any DIP Collateral or proceeds of DIP  
11 Collateral, in each case, that is subject to such junior lien, or receives any payment on account of  
12 such junior lien or security interest in the DIP Collateral on account of such junior lien (whether  
13 in connection with the exercise of any right or remedy (including setoff), any payment or  
14 distribution from the Debtors, mistake or otherwise) prior to the Payment in Full<sup>8</sup> of all DIP  
15 Obligations, such person or entity shall be deemed to have received, and shall hold, any such  
16 payment or proceeds of DIP Collateral in trust for the benefit of the DIP Secured Parties, and shall  
17 immediately turn over all such proceeds to the DIP Agent, for the benefit of itself and the DIP  
18 Lenders, in the same form as received, with any necessary endorsements, for application in  
19 accordance with this Interim Order and the DIP Documents; *provided, however*, that until the  
20 Payment in Full of the Prepetition Working Capital Obligations, upon receipt by the DIP Agent or  
21 any DIP Lender of any such payment or proceeds from DIP Collateral that constitutes WCF  
22 Collateral, the DIP Agent or the applicable DIP Lender shall segregate and hold in trust such  
23 payment or proceeds for the benefit of, and turn over all such payments and proceeds to, the

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24  
25       8     For purposes hereof, the term "Paid in Full" or "Payment in Full" means, with respect to the DIP Obligations or  
26 any Prepetition Secured Obligations (as the case may be), the irrevocable and indefeasible payment in full in cash  
27 of all DIP Obligations or such Prepetition Secured Obligations (as the case may be), other than contingent  
28 indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all  
commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated,  
cancelled and discharged.

1 Prepetition Working Capital Purchaser in the same form as received, with any necessary  
2 endorsements, for application in accordance with this Interim Order, the DIP Documents and the  
3 Prepetition Debt Documents.

4 (b) Other than with respect to the Carve Out, the Administration Charge and  
5 Petition Date Perfected Liens, and as otherwise expressly provided in this Interim Order and/or  
6 the DIP Documents (including Exhibit C hereto), no claim or lien having a priority senior to or  
7 *pari passu* with those granted to any of the DIP Secured Parties or the Prepetition Secured Parties  
8 by this Interim Order shall be granted or permitted while any of the DIP Obligations or the  
9 Prepetition Secured Obligations, respectively, remains outstanding. Except as expressly provided  
10 in this Interim Order and the DIP Documents (including Exhibit C hereto), each of the DIP Liens,  
11 the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection  
12 Superpriority Claims, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations:  
13 (i) shall not be made junior or subordinated to or *pari passu* with (A) any lien, security interest or  
14 claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases,  
15 whether under Bankruptcy Code section 364(d) or otherwise, (B) any lien that is avoided and  
16 preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 or  
17 otherwise, (C) any lien arising after the Petition Date including, without limitation, any lien or  
18 security interests granted in favor of any federal, state, municipal or other domestic or foreign  
19 governmental unit (including any regulatory body), commission, board or court for any liability of  
20 the Debtors or (D) any intercompany or affiliate lien or claim; and (ii) shall not be subject to  
21 Bankruptcy Code sections 510, 549, 550 or 551 and, subject to entry of the Final Order,  
22 Bankruptcy Code section 506(c).

23 (c) In the event this Interim Order or any provision hereof is vacated, reversed  
24 or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or  
25 Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur,  
26 reversal or modification of this Interim Order shall be governed in all respects by the original  
27 provisions of this Interim Order, including entitlement to all rights, remedies, privileges and  
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benefits granted herein, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to the protections afforded in Bankruptcy Code sections 363(m) and 364(e), as applicable, with respect to all uses of the DIP Collateral (including all Cash Collateral and all Prepetition Collateral), all DIP Obligations and all Adequate Protection Obligations.

(d) Subject to the Carve-Out, the Administration Charge and Petition Date Perfected Liens, unless and until all DIP Obligations and Prepetition Secured Obligations are Paid in Full and all commitments to extend credit under the DIP Facility are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (i) except as permitted under the DIP Documents, and with the prior written consent of the Required DIP Lenders and the Prepetition Senior Secured Term Loan Agent, (A) any modification, stay, vacatur or amendment of this Interim Order, (B) a priority claim for any administrative expense, secured claim or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, without limitation, any administrative expense of the kind specified in Bankruptcy Code sections 503(b), 507(a) or 507(b)) in any of the Chapter 11 Cases, equal or superior to the DIP Superpriority Claims and the Adequate Protection Superpriority Claims or (C) any other order allowing the use of DIP Collateral; (ii) except as permitted under the DIP Documents, any lien on any of the DIP Collateral (including all Prepetition Collateral) with priority equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Funded Debt Liens; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant to Bankruptcy Code section 546(h) (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the Chapter 11 Cases without the consent of the Required DIP Lenders; (vi) an order appointing a chapter 11 trustee in any of the Chapter 11 Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Chapter 11 Cases.

(e) Notwithstanding any order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise entered at any time, (i) the DIP Liens, the DIP

1 Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority  
2 Claims and any other administrative claims granted pursuant to this Interim Order, shall continue  
3 in full force and effect and shall maintain their priorities as provided in this Interim Order and the  
4 DIP Documents until such time as all DIP Obligations and Adequate Protection Obligations are  
5 Paid in Full; and (ii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the  
6 purposes of enforcing the claims, liens and security interests referred to in clause (i) above.

7 (f) Except as expressly provided in this Interim Order and the DIP Documents,  
8 the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate  
9 Protection Superpriority Claims and all other rights and remedies of the DIP Secured Parties and  
10 the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP  
11 Documents shall survive, shall maintain their priority as provided in this Interim Order, and shall  
12 not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter  
13 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint  
14 administration of these Chapter 11 Cases or by any other act or omission, or (ii) the entry of an  
15 order approving the sale of any DIP Collateral (including any Prepetition Collateral) pursuant to  
16 Bankruptcy Code section 363(b), except to the extent that such order provides for the attachment  
17 of DIP Liens or prepetition liens to the proceeds of such sale) or (iii) the entry of an order  
18 confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy  
19 Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP  
20 Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order  
21 and the DIP Documents shall continue in these Chapter 11 Cases and any Successor Cases.

22 30. **Reservation of Rights of the DIP Secured Parties and Prepetition Secured**  
23 **Parties.** Except as otherwise expressly set forth in this Interim Order, the entry of this Interim  
24 Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or  
25 otherwise impair, as applicable: (i) any of the rights of any of the Prepetition Secured Parties to  
26 seek any other or supplemental relief in respect of the Debtors including the right to seek additional  
27 adequate protection; (ii) any of the rights of the DIP Secured Parties or the Prepetition Secured  
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Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the DIP Secured Parties or the Prepetition Secured Parties to (A) request modification of the automatic stay of Bankruptcy Code section 362, (B) request dismissal of any of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7 or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Chapter 11 Cases or (C) seek to propose, subject to the provisions of Bankruptcy Code section 1121, a chapter 11 plan or plans; or (iii) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Secured Parties or the Prepetition Secured Parties. The delay in or failure of the DIP Secured Parties and/or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights and remedies under this Interim Order, the DIP Documents, the Prepetition Debt Documents or applicable law, as applicable.

31. **Effectiveness.** Subject to the terms hereof, this Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rules 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

32. **Final Hearing.** The final hearing (the "***Final Hearing***") on the Motion shall be held on July 12, 2024, at 10:30 a.m. (Prevailing Pacific Time). Any party in interest objecting to the relief sought at the Final Hearing or in the Final Order shall file and serve a written objection, which objection shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick and Sara Coelho; (b) McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102, Attn: Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel, Hanna Singer and Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C.



1 Clifton Young Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel  
2 to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY  
3 10036, Attn: Brad Kahn,; 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley and (b)  
4 Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, Nevada 89134, Attn: James  
5 Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as  
6 administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York,  
7 NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments  
8 US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada,  
9 Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer  
10 under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York,  
11 NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag  
12 Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale  
13 agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary  
14 Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2  
15 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty  
16 Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Alvarez & Marsal Canada Inc., in its  
17 capacity as the Information Officer in the Recognition Proceedings, Royal Bank Plaza,  
18 South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, Attn: Al Hutchens; (x)  
19 Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich  
20 Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xi) counsel to any statutory committee  
21 appointed in these Chapter 11 Cases, in each case so as to be received no later than June 28, 2024,  
22 at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order are timely  
23 filed, this Court may enter the Final Order without further notice or a hearing.

24 33. **Headings**. Section headings used herein are for convenience only and are not to  
25 affect the construction of or to be taken into consideration in interpreting this Interim Order.  
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1           34.     **Retention of Jurisdiction.** This Court retains exclusive jurisdiction to resolve any  
2 dispute arising from or related to the interpretation or enforcement of this Interim Order.

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1 In accordance with LR 9021, counsel submitting this **INTERIM ORDER (I)**  
2 **AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B)**  
3 **GRANT LIENS, INCLUDING SENIOR SECURED PRIMING LIENS AND**  
4 **SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH**  
5 **COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO CERTAIN**  
6 **PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY; (IV)**  
7 **SCHEDULING FINAL HEARING; AND (V) GRANTING RELATED RELIEF** certifies that  
8 the order accurately reflects the court's ruling and that (check one):

9 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

10 ☐ No party appeared at the hearing or filed an objection to the motion.

11 ☒ I have delivered a copy of this proposed order to all counsel who appeared at the  
12 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or  
13 disapproved the order, or failed to respond, as indicated below [list each party and whether the  
party has approved, disapproved, or failed to respond to the document].

14 JARED A. DAY  
15 *United States Trustee*

**APPROVED** / ~~DISAPPROVED~~

16 STEVEN D. JEROME  
17 *Attorneys for RAM Enterprise, Inc.*

**APPROVED** / ~~DISAPPROVED~~

18 KATE DOORLEY  
19 *Attorneys for DIP Lenders*

**APPROVED** / ~~DISAPPROVED~~

20 KYLER BURGI  
21 *Attorneys for Triple Flag International, Ltd.*

**APPROVED** / ~~DISAPPROVED~~

22 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
23 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
24 content of the order.  
25  
26  
27  
28

1 Prepared and submitted by:

2 McDONALD CARANO LLP

3  
4 /s/ Ryan J. Works

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18 *Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**DIP Credit Agreement**

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**EXECUTION VERSION**

**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

June 9, 2024

among

**NEVADA COPPER, INC.**  
as Borrower

**the Guarantors party hereto from time to time**

**U.S. Bank Trust Company, National Association**  
as Administrative Agent and Collateral Agent

– and –

**the Senior Lenders party hereto from time to time**

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**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (this “**Agreement**”), dated as of June 9, 2024 (the “**Entry Date**”), among **NEVADA COPPER, INC.**, a corporation that is duly incorporated and validly existing under the laws of Nevada (the “**Borrower**”); the **GUARANTORS** from time to time party hereto, **U.S. Bank Trust Company, National Association**, as Administrative Agent (in such capacity together with its successors and permitted assigns, the “**Administrative Agent**”) and as Collateral Agent (in such capacity together with its successors and permitted assigns, the “**Collateral Agent**”), and **THE FINANCIAL INSTITUTIONS** listed on Schedule A (*Commitments*) as lenders; and other parties party hereto from time to time.

**WHEREAS**, on June 9, 2024 (the “**Petition Date**”), the Borrower and certain of its affiliates and subsidiaries (collectively, the “**Debtors**” and, each individually, a “**Debtor**”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”);

**WHEREAS**, from and after the Petition Date, each of the Debtors continues to operate its business and manage its property as a debtor and a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code;

**WHEREAS**, shortly after the Petition Date, the Debtors will commence a recognition proceeding under Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) to recognize in Canada the Chapter 11 Cases (as defined herein) as “foreign main proceedings” (the “**Recognition Proceedings**”);

**WHEREAS**, the Borrower has requested, and the Senior Lenders have agreed, subject to the conditions and terms set forth herein, to commit and provide a senior secured superpriority multi-draw credit facility to the Borrower, in an aggregate principal amount not to exceed \$60,000,000;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **Article 1** **INTERPRETATION**

### **1.1 Definitions.**

For the purposes of this Agreement, the following capitalized terms shall have the following meanings:

“**Acceptable Insurer**” means:

- (a) any insurance company or international reinsurance company (i) authorized to do business in Nevada if required by law or regulation and (ii) with a minimum of “A-” or higher from A.M. Best or Standard & Poor’s Rating Services; or
- (b) any other insurance company reasonably acceptable to the Majority Lenders.

“**Accretive Investment**” means an Investment or Acquisition.

“**Account and Investment Property**” has the meaning ascribed to such term in Section 9.1(e) (*Grant of Security Interest*).

**“Acquisition”** means, with respect to any Person, any purchase or other acquisition by such Person, regardless of how accomplished or effected (including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization or by way of purchase, lease or other acquisition arrangements), of (a) any other Person (including any purchase or acquisition of such number of the issued and outstanding securities of, or such portion of an equity interest in, such other Person so that such other Person becomes a Subsidiary of the purchaser or of any of its Affiliates) or of all or substantially all of the property of any other Person, or (b) any division, business, project, operation or undertaking of any other Person or of all or substantially all of the property of any division, business, project, operation or undertaking of any other Person.

**“Additional Material Project Documents”** means each agreement (a) involving the potential expenditure by or revenue to any Obligor of more than \$1,000,000 individually and, the breach, loss or termination of which would reasonably be expected to be materially adverse to the care and maintenance of the Project or otherwise result in a Material Adverse Effect relating to the Project; or (b) involving the potential expenditure by or revenue to any Obligor of more than \$2,500,000 individually.

**“Adequate Protection Superpriority Claims”** has the meaning assigned to such term in the DIP Order.

**“Adequate Protection Liens”** has the meaning assigned to such term in the DIP Order.

**“Adequate Protection Obligations”** has the meaning assigned to such term in the DIP Order.

**“Administration Charge”** has the meaning assigned to such term in the DIP Order.

**“Administrative Agent”** has the meaning ascribed to such term in the preamble hereto.

**“Affiliate”** means, with respect to any Person, any other Person which directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

**“Agency Fee Letter”** means the fee letter of the Agent, accepted by the Borrower on June 3, 2024.

**“Agent”** means the Collateral Agent and/or the Administrative Agent.

**“Agreement”** has the meaning ascribed to such term in the preamble hereto.

**“AML Laws”** means any laws, rules or regulations relating to money laundering or terrorism financing, including, but not limited to, the Bank Secrecy Act, as amended by the USA PATRIOT ACT, and Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

**“Anti-Corruption Laws”** means any laws, rules or regulations relating to corruption or bribery, including, but not limited to, the U.S. Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1 et seq.), as amended, and the Corruption of Foreign Public Officials Act (Canada).

**“Applicable Law”** means any law (including common law and equity), any international or other treaty, any domestic or foreign constitution or any multinational, federal, provincial, territorial, state, municipal, county or local statute, law, ordinance, code, rule, regulation, Order (including any consent, decree or administrative Order), or Authorization of a Governmental Body in any case applicable to any specified Person, property, transaction or event, or any such Person’s property or assets (and, in the case of Section 7.3 (*Change in Circumstances*), whether or not having the force of law).

**“Applicable Margin”** means 9.00% per annum.

“**Applicable Percentage**” means, with respect to any Senior Lender at any time, the percentage of the total principal amount of the Loans held by such Senior Lender or, if at such time, no Loans have yet been advanced, the percentage of the Total Commitments of all Senior Lenders held by such Senior Lender at such time.

“**Approved Bidding Procedures**” means the Bidding Procedures set forth in the Bidding Procedures Motion that are approved by the Bankruptcy Court pursuant to an order of the Bankruptcy Court.

“**Approved Budget**” means the Initial Approved Budget as amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms of the Interim Order and Section 11.2 of this Agreement.

“**Approved Sale**” means a sale of all or substantially all of the Debtor’s assets pursuant to section 363 of the Bankruptcy Code consummated in accordance with the Approved Bidding Procedures and the Sale Approval Order.

“**Approved Variance Reports**” has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

“**Assigned Agreements**” has the meaning assigned to such term in Section 9.1(f) (*Grant of Security Interest*).

“**Assigned Insurance Policies**” has the meaning assigned to such term in Section 9.1(i) (*Grant of Security Interest*).

“**Aurubis Offtake Agreement**” means that certain offtake agreement, dated May 6, 2019, entered into by and among the Borrower, Concord as Borrower’s agent, and Aurubis AG, Hamburg, Germany and Aurubis Bulgarias AD, Pirdop, Bulgaria.

“**Authorization**” means any authorization, approval, consent, concession, exemption, license, lease, grant, permit, franchise, right, privilege or no-action letter from any Governmental Body having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person’s property or business and affairs (including any zoning approval, mining permit, development permit or building permit) or from any Person in connection with any easements, contractual rights or other matters.

“**Automatic Stay**” shall mean the automatic stay imposed pursuant to section 362 of the Bankruptcy Code.

“**Avoidance Actions**” has the meaning assigned to such term in the DIP Order.

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time.

“**Bankruptcy Code**” has the meaning ascribed to such term in the recitals.

“**Bankruptcy Court**” has the meaning ascribed to such term in the recitals.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Bidding Procedures**” has the meaning given to it in Section 11.13(g)(i) (*Milestones*).

“**Bidding Procedures Motion**” has the meaning given to it in Section 11.13(g) (*Milestones*).

“**Bidding Procedures Order**” has the meaning given to it in Section 11.13(g) (*Milestones*).

“**Borrower**” has the meaning ascribed to such term in the preamble hereto.

“**Break Costs**” means the amount (if any) by which:

- (a) the interest which a Senior Lender should have received for the period from the date of funding (or proposed funding) of all or any part of its participation in the Loans to the last day of the current Interest Period in respect of the Loans, had the Loans been made and the principal amount been paid on the last day of such Interest Period;

exceeds:

- (b) the sum of the amount it did receive as interest plus the amount which such Senior Lender would be able to obtain by placing an amount equal to the principal amount received by it on deposit with a leading bank in the interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Budget Period**” means the thirteen-week period set forth in the Approved Budget in effect at such time.

“**Business**” means the maintenance and care of, and sale of Minerals (to the extent extracted prior to the Entry Date) from, the Underground Project.

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in any one of New York City, New York; Reno, Nevada; or Vancouver, British Columbia Canada or a day on which banks are generally closed in any one of those cities.

“**Canadian Collateral**” means the Collateral of the Debtors located in Canada.

“**Canadian Court**” has the meaning ascribed to such term in the recitals.

“**Canadian Priority Charges**” means the Administration Charge and the DIP Charge.

“**Capital Expenditures**” means expenditures (including in respect of any Capitalized Lease Obligations) made by (or on behalf of) the Borrower to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding repairs) during such period computed in accordance with the IFRS applicable to the Borrower (other than (a) such expenditures paid out of Net Insurance Proceeds, (b) replacement property acquired with asset sale proceeds in accordance with the terms of the Finance Documents and (c) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent of any credit granted by the seller of such equipment for the equipment being traded in at such time).



“**Capital Stock**” shall mean, with respect to any Person, any and all shares (whether common or preferred), interests, participations, certificates and other instruments, partnership interests or other equity or ownership interests in such person (however designated and whether or not voting) and any warrants, rights or options to purchase any of such equity or ownership interests.

“**Capitalized Lease Obligation**” means, for any Person, any payment obligation of such Person under an agreement for the lease, license or rental of, or providing such Person with the right to use, property that, in accordance with IFRS, is required to be classified and accounted for as capital leases on a balance sheet of such Person and the amount of such obligation shall be the capitalized amount thereof determined in accordance with IFRS.

“**Carve-Out**” has the meaning assigned to such term in the DIP Order.

“**Cash Management Order**” an order of the Bankruptcy Court, in form and substance satisfactory to the Administrative Agent and the Majority Lenders, authorizing the Debtors to continue their cash management system and/or continue performing intercompany transfers.

“**CAT Equipment Lease**” means that certain Master Equity Lease Agreement, dated February 8, 2019, by and between the Borrower and Caterpillar Financial Services Corporation.

“**CAA**” has the meaning ascribed to such term in the recitals.

“**Change of Control**” means:

- (a) the Parent ceases to have control or direction (directly or indirectly) over 100% of the outstanding voting shares and economic interests of the Borrower or its Subsidiaries, or otherwise ceases to have the ability (directly or indirectly) to elect a majority of the board of directors of any such Obligor;
- (b) Pala ceases to have control or direction (directly or indirectly) over 19.9% of the outstanding voting shares and economic interests of the Parent;
- (c) the occupation of a majority of the seats (other than vacant seats) on the board of directors of an Obligor by an entity which is neither (i) nominated by such board of directors nor (ii) appointed by directors so nominated as of the date hereof; or
- (d) Pala or any Obligor, as applicable, takes any actions to effect any of the foregoing.

“**Chapter 11 Cases**” means the chapter 11 cases of the Obligors which are being jointly administered under the Bankruptcy Code and are pending in the Bankruptcy Court.

“**Claim**” means any claim, loss or liability of any nature whatsoever, including but not limited to administrative, regulatory enforcement or judicial or equitable action, claim, suit, or judgment by any other Person or any written notice by any Governmental Body.

“**Collateral**” has the meaning given to it in Section 9.1 (*Grant of Security Interest*) and the term “DIP Collateral” in the DIP Order.

“**Collateral Accounts**” means, collectively, the accounts set forth on Schedule R.

“**Collateral Agent**” has the meaning ascribed to such term in the preamble hereto.



“**Commercial Tort Claims Collateral**” has the meaning assigned to such term in Section 9.1(h) (*Grant of Security Interest*).

“**Commitment**” means, an Interim Commitment and/or Final Commitment.

“**Compounded SOFR Calculated Daily Rate**” means the percentage rate per annum calculated by the Administrative Agent (rounded if necessary to five decimal places with 0.000005 being rounded upwards) which results from the formula set out below:

$$\left[ \prod_{i=1}^{d_b} \left( 1 + \frac{r_i * n_i}{360} \right) - 1 \right] * \frac{360}{d_c}$$

where:

$d_b$  is, for any Observation Period, the number of US SOFR Banking Days in that Observation Period.

$d_c$  is the number of calendar days in that Observation Period.

$i$  is a series of whole numbers from 1 (one) to  $d_b$ , each representing the relevant US SOFR Banking Day in chronological order from, and including, the first US SOFR Banking Day in the relevant Observation Period.

$r_i$  is the SOFR Daily Rate applicable on US SOFR Banking Day  $i$  in the relevant Observation Period, as published on the US SOFR Banking Day immediately after US SOFR Banking Day  $i$ .

$n_i$  is, for any US SOFR Banking Day “ $i$ ” in the relevant Observation Period, the number of calendar days for which rate  $r_i$  applies, being the number of calendar days from (and including) such US SOFR Banking Day “ $i$ ” to (but excluding) the following US SOFR Banking Day, irrespective of whether that following US SOFR Banking Day is included in the Observation Period. (Therefore, on most days,  $n_i$  will be 1, but on a Friday it will generally be 3, and it will also be greater than 1 on the US SOFR Banking Day before a holiday).

“**Compounded SOFR Calculated Index Rate**” means the percentage rate per annum calculated by the Administrative Agent (rounded if necessary to five decimal places with 0.000005 being rounded upwards) which results from applying the formula set out below:

$$\left( \frac{SOFR\ Index_{End}}{SOFR\ Index_{Start}} - 1 \right) * \left( \frac{360}{d_c} \right)$$

where:

$SOFR\ Index_{Start}$  is the value of the SOFR Index that is applicable to the first day of the Observation Period relating to the relevant Interest Period;

$SOFR Index_{End}$  is the value of the SOFR Index that is applicable to the last day of the Observation Period relating to the relevant Interest Period; and

$d_c$  is the number of calendar days in the relevant Observation Period.

**“Compounded SOFR Primary Screen Rate”** means the publicly available percentage rate per annum (before any correction, recalculation or republication by its administrator) which:

- (a) is constituted primarily by the daily compounding of the SOFR reference rate over a period similar to the Observation Period and uses a compounding methodology which is the same as that specified in this Agreement for the calculation of the Compounded SOFR Calculated Daily Rate;
- (b) is produced by an administrator;
- (c) is made available no later than the following US SOFR Banking Day on which the Observation Period to which it relates ends; and
- (d) is specified as the “Compounded SOFR Primary Screen Rate” by the Administrative Agent in a Technical Adjustment Notification.

**“Compounded SOFR Reference Rate”** means each of the Compounded SOFR Primary Screen Rate, the Compounded SOFR Calculated Index Rate and the Compounded SOFR Calculated Daily Rate.

**“Computer Software”** has the meaning assigned to such term in Section 9.1(g)(iv) (*Grant of Security Interest*).

**“Concord”** means Concord Resources Limited.

**“Confidential Information”** has the meaning given to it in Section 23.1 (*Confidential Information*).

**“Contested”** or **“Contest”** means, with respect to any matter or claim involving any Person, that such Person is contesting such matter or claim in good faith and by appropriate proceedings timely instituted; provided, that the following conditions are satisfied:

- (a) such Person has posted a bond or other security acceptable to the Administrative Agent or has established adequate reserves with respect to the contested items in accordance with IFRS;
- (b) during the period of such contest, the enforcement of any contested item is effectively stayed; and
- (c) such contest and any resultant failure to pay or discharge the claimed or assessed amount does not, and could not reasonably be expected to, result in a Material Adverse Effect or the sale, forfeiture or loss of any material part of the Collateral.

**“Contract”** means any agreement, contract, lease, license, concession, option, indenture, or other instrument or similar arrangement.

**“Contract Rights”** means all of the applicable Obligor’s right, title and interest in and to each and all of the Project Documents, including but not limited to: (a)(i) all of the applicable Obligor’s rights to payment, accounts and payment intangibles under any such Project Document and (ii) all payments, accounts and payment intangibles due and to become due to such Obligor under each such Project Document, whether as contractual obligations, damages or otherwise; (b) all of such Obligor’s claims, rights, powers or privileges and remedies under any such Project Document, including all general intangibles, whether as

contractual obligations, damages or otherwise; (c) all rights of the Obligor to receive any proceeds of any payment or performance bond, insurance, indemnity, warranty or guaranty with respect to any such Project Document; and (d) all of the Obligor's rights under any such Project Document to take any action, to make determinations, to exercise any election (including, but not limited to, election of remedies) or option to give or receive any notice, consent, waiver or approval with respect to any such Project Document, together with full power and authority to demand, receive, enforce, collect or receive any of the foregoing rights or any Project Property which is the subject of any such Project Document, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which may be necessary or advisable in connection with any of the foregoing.

**“Contractual Obligation”** means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Control”** means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power including the ownership of voting securities, by contract or otherwise in respect of both ordinary and extraordinary matters (including reorganization, restructuring and the amendment of any applicable constitutional document). **“Controlled”** shall have the meaning correlative thereto.

**“Corrective Action Plan”** means a written plan from the Borrower approved by the Administrative Agent to correct and remedy any E&S Event, which plan shall include:

- (a) the proposed actions to specifically correct, and to remedy damage caused by, such E&S Event;
- (b) the proposed assignment of primary responsibility for implementing such proposed actions;
- (c) a time schedule for implementing such proposed actions to remedy the E&S Event, including the start date, the estimated end date and key milestones; and
- (d) an estimated cost for implementing such actions or any other costs arising from the E&S Event.

**“Creditors’ Committee”** has the meaning assigned to such term in Section 2.3 (*Purpose and Use of Proceeds*).

**“Credit Spread Adjustment”** means 10 basis points per annum.

**“Debt”** means, at any time, with respect to any Person, without duplication:

- (a) all obligations, that would be considered to be indebtedness for borrowed money, and all obligations, whether or not with respect to the borrowing of money, that are evidenced by bonds, debentures, notes or other similar instruments;
- (b) the face amount of all bankers’ acceptances and similar instruments;
- (c) any capital stock of that Person, or of any Subsidiary of that Person, which capital stock, by its terms or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder, or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part;

- (d) all Capitalized Lease Obligations, synthetic lease obligations, obligations under Sale-Leasebacks and Purchase Money Obligations;
- (e) the amount of all contingent liabilities in respect of letters of credit and similar instruments;
- (f) (i) all obligations in respect of the deferred purchase price of property and (ii) accounts payable and accruals, in each case that are over one hundred twenty (120) days past due (except to the extent being Contested or subject to stay of collection pursuant to the Automatic Stay);
- (g) any hedging, swap, forward, option, future or other derivative transaction (it being understood that when calculating the value of any such Debt, only the marked-to-market value shall be considered);
- (h) contingent liabilities in respect of performance bonds and surety bonds, in each case only to the extent that the contingent liability is required by IFRS to be treated as a liability on a balance sheet of the Person contingently liable; and
- (i) the amount of the contingent liability under any Guarantee of all or any part of an obligation of another Person of the type included in paragraphs (a) through (h) above.

**“Debtor”** has the meaning ascribed to such term in the recitals.

**“Default”** means any event or condition which, upon notice, lapse of time, or both, would constitute an Event of Default.

**“DIP Charge”** means the superpriority charge on the Canadian Collateral granted by the Canadian Court in favor of the Senior Lenders pursuant to the Interim DIP Recognition Order, which DIP Charge shall be subordinate to the Administration Charge.

**“DIP Order”** means the Interim Order, unless the Final Order shall have been entered, in which case it means the Final Order.

**“DIP Recognition Order”** means the Interim DIP Recognition Order and the Final DIP Recognition Order, as applicable under the circumstances.

**“Disposition”** means any sale, assignment, transfer, conveyance, lease, license, granting of an option or other disposition (or agreement to dispose) of any nature or kind whatsoever of any property or of any right, title or interest in or to any property, but does not include the payment of a dividend, and the verb **“Dispose”** has a correlative meaning.

**“E&S Event” means:**

- (a) (i) any event, incident, accident or condition, including any Environmental or Social Matter, that has had, or would reasonably be expected to have, a Material Adverse Environmental and Social Effect or (ii) non-compliance by the Borrower or its Subsidiaries with any Environmental and Social Requirement that has either resulted in material damage to the Environment; or
- (b) any event, incident, accident or condition, including any Environmental or Social Matter, that requires a material corrective action by, or imposes material liability upon, Borrower or any of its Subsidiaries pursuant to any Environmental and Social Requirement.

**“EEA Member Country”** means any member state of the European Union, Iceland, Liechtenstein and Norway, as well as any other country which becomes an EEA Member country in the future.

**“Encumbrance”** means any mortgage, debenture, pledge, hypothec, lien, charge, deed of trust, trust arrangement, assignment by way of security, contractual right of set-off, consignment, lease, hypothecation, security interest, including a purchase money security interest, or other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and **“Encumbered”**, **“Encumbrancer”** and **“Encumbrances”** shall have corresponding meanings.

**“Entitled Person”** has the meaning assigned to that term in Section 25.8 (*Judgment Currency*).

**“Entry Date”** has the meaning ascribed to such term in the preamble hereto.

**“Environment”** means all or any of the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers);
- (c) soil and land (including, without limitation, land under water); and
- (d) any ecological systems, animals, plants and all other living organisms supported by these media.

**“Environmental and Social Requirements”** means all Environmental Laws, the Performance Standards, Equator Principles and any Corrective Action Plan.

**“Environmental Bond”** means each environmental bond to be provided and maintained in accordance with the Environmental Licenses and Environmental Law.

**“Environmental Claim”** means any Claim alleging or asserting that, in relation to the Project, the Borrower or any of its Subsidiaries is liable under any Environmental and Social Requirements for investigatory costs, cleanup costs, remediation, corrective action, governmental response costs, damage to natural resources (including without limitation wetlands, wildlife, aquatic and terrestrial flora and fauna), damage to the Environment, damage to property, personal injuries, or fines or penalties, in each case arising out of, based on or resulting from:

- (a) any Release;
- (b) any violation of any Environmental Law; or
- (c) any other Environmental or Social Matter.

**“Environmental Law”** means all Applicable Laws of any Governmental Body relating to the protection of the Environment, natural resources, Hazardous Substances including human health and safety, as such relates to exposure to Hazardous Substances, and the rehabilitation, reclamation and closure of lands used in connection with, the Project.

**“Environmental License”** means each Project Authorization required or issued pursuant to Environmental Law or with respect to any Environmental or Social Matter.

**“Environmental or Social Matter”** means:

- (i) any Release of Hazardous Substances into the Environment;
- (ii) any nuisance, noise, health and safety at work, industrial illness, or industrial injury due to environmental factors;
- (iii) any conservation, preservation or protection of the Environment;
- (iv) any conservation of archaeological and historical sites;
- (v) any resettlement of or adverse impact to indigenous peoples;
- (vi) labor, worker rights or human rights;
- (vii) any community impact or development activities; and
- (viii) any other matter whatsoever relating to human, environmental or social issues or health and safety that has or could reasonably be expected to have a significant adverse impact or risk relating to the Project.

**“Epiroc Equipment Lease”** means that certain Master Lease Agreement, dated July 10, 2018, by and between the Borrower and Epiroc Financial Solutions USA LLC.

**“Equator Principles”** means those principles set out in the paper entitled “A financial industry benchmark for determining, assessing and managing environmental and social risk in projects” dated June 2013 and available at: [https://equator-principles.com/wp-content/uploads/2017/03/equator\\_principles\\_III.pdf](https://equator-principles.com/wp-content/uploads/2017/03/equator_principles_III.pdf).

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

**“Event of Default”** has the meaning ascribed to it in Section 13.1 (*Events of Default*).

**“Event of Loss”** means an event which causes all or a substantial portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever including through a failure of title.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Senior Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Senior Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Senior Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Senior Lender acquires such interest in the Loan or Commitment or (ii) such Senior Lender changes its lending office, except in each case to the extent that, pursuant to Section 6.1 (*Taxes*), amounts with respect to such Taxes were payable either to such Senior Lender’s assignor immediately before such Senior Lender became a party hereto or to such Senior Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 6.1(g) (*Taxes*) and (d) any withholding Taxes imposed under FATCA.



“**Existing Lender**” has the meaning ascribed to it in Section 14.1(b) (*Assignment to by Senior Lenders*).

“**Exit Fee**” has the meaning ascribed to it in Section 5.9(c) (*Exit Fee*).

“**Exit Fee Event**” has the meaning ascribed to it in Section 5.9(c) (*Exit Fee*).

“**Expropriation Event**” means, with respect to any Project Property (including any rights to use the Project Property) or equity interests of the Borrower or Subordinated Intercompany Debt issued by the Borrower, any action or series of actions, omission or series of omissions, that has the effect of:

- (a) a *de jure* or *de facto* taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation, rescission or similar action or proceeding, by a Governmental Body of:
  - (i) all or a material portion of the Project;
  - (ii) all or a material portion of the assets of the Borrower (including the RGGS Lease); or
  - (iii) the equity interests of or Subordinated Intercompany Debt issued by the Borrower;

provided, that (A) insofar as such action relates to a material portion of the Project or the assets of the Borrower, such action shall cause or reasonably be likely to cause a material adverse impact on deliveries of copper on the terms set forth in the Finance Documents or the ability of such Person to operate the Project or perform its obligations under the Finance Documents or (B) such action shall (1) result in a material loss (in each case), irreparable damage to, destruction of any, or diminution in value of the Collateral or otherwise materially and adversely affect (x) the ability of the Secured Parties to access or utilize Collateral or (y) the liens granted in the Collateral pursuant to the Finance Documents or (2) impair to any material extent the validity or priority of any security interest purported to be granted to the Secured Parties under the Finance Documents, except for negotiated expropriations by the government, planned for and agreed upon as part of, and that would not reasonably be expected to result in a material impact on, the expected normal operations of the Project, subject to the approval of the Majority Lenders, such approval not to be unreasonably withheld; or

- (b) any taking or any action by a Governmental Body for the dissolution or disestablishment of the Borrower;
- (c) actually depriving the Borrower whether *de jure* or *de facto* by the implementation of Applicable Law or actions by Governmental Bodies of its rights necessary to construct or operate the Underground Project; or
- (d) a decision of a judicial or arbitral tribunal with respect to any of the events described in paragraphs (a) through (c) above;

provided, that no action described in paragraph (a), (b), (c) or (if the decision of a judicial tribunal or arbitral tribunal is with respect to the events described in paragraph (a), (b) or (c)) (d) above shall constitute a Expropriation Event if it is a *bona fide* non-discriminatory measure of general application of a kind that governments normally take for such purposes as ensuring public safety, protecting the Environment or regulating economic activities, and, where applicable, adequate compensation has been paid to the affected party and does not have a confiscatory effect.

“**Extraordinary Receipts**” means any cash received by or paid to or for the account of any Obligor or any of its Subsidiaries not in the ordinary course of business after the Petition Date consisting of (i) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action that was pending as of the Petition Date, (ii) foreign, United States, state, or local Tax refunds, in each case, net of reasonable and documented costs and expenses associated therewith; provided that, Extraordinary Receipts shall not include sales tax receipts contemplated to be received by any of the Obligors as set forth in the Approved Budget).

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Bodies and implementing such Sections of the IRC.

“**Final Commitment**” means, in respect of each Senior Lender at any time, the amount specified with respect to such Senior Lender on Schedule A (*Commitments*) (as amended in accordance with Section 14.1 (*Assignment by Senior Lenders*) from time to time), as such amount may be reduced from time to time by such Senior Lender’s Applicable Percentage of any cancellation of any unused portion of the Final Commitment.

“**Final DIP Recognition Order**” means an order of the Canadian Court in the Recognition Proceedings recognizing the Final Order in the Recognition Proceedings and giving it full force and effect in Canada, in a form acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower on the other hand.

“**Final Loans**” means the loans extended pursuant to Section 2.1(b) (*Loan*).

“**Final Order**” means an order of the Bankruptcy Court in the Chapter 11 Cases, substantially in the form of the Interim Order or with such changes (other than conforming changes necessary to transform the Interim Order into the Final Order) acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower, on the other hand, authorizing and approving on a final basis, among other things, the borrowings by the Borrower under this Agreement.

“**Finance Documents**” means:

- (a) this Agreement;
- (b) the DIP Order;
- (c) each Note;
- (d) the Agency Fee Letter; and
- (e) any Transfer Certificate;

and all other agreements, instruments and documents from time to time (both before and after the date of this Agreement) designated as such by the Administrative Agent and the Borrower.

“**Finance Party**” means each Senior Lender and the Agents.



“**Financial Statements**” means the financial statements required to be delivered pursuant to Sections 11.7(b) (*Quarterly Financial Reporting*).

“**First Day Orders**” has the meaning given to it in Section 12.1(g) (*Conditions Precedent to the Interim Loan*).

“**First Lien Facility**” means that certain Second Amended and Restated Credit Agreement, entered into on or about the October 28, 2022, among the Borrower, the Guarantors, the lenders party thereto and KfW IPEX-Bank as administrative agent (as amended, amended and restated, supplemented or otherwise modified from time to time).

“**First Reporting Date**” has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

“**Fiscal Quarter**” means each calendar quarter ending on March 31, June 30, September 30 and December 31 of each year.

“**Fiscal Year**” means the period of January 1 to December 31 of each year.

“**Foreign Senior Lender**” means a Senior Lender that is not a U.S. Person.

“**Fourth Lien Facility**” means that certain Third Amended and Restated Loan Agreement, dated as of December 21, 2023, by and among Parent, as borrower, Borrower, as guarantor, the other guarantors party thereto, the lenders party thereto and Pala, as agent and lead arranger (as amended, amended and restated, supplemented or otherwise modified from time to time).

“**Funding Rate**” means in relation to a Loan and Interest Period, the rate which expresses as a percentage rate per annum the average cost (determined either on an actual or a notional basis) which a Senior Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the relevant Loan for a period equal in length to that Interest Period.

“**Good Industry Practice**” means, in relation to any decision, undertaking, practice, method or act, the exercise of that degree of diligence, skill, care, prudence, oversight, economy and stewardship which is commonly observed by skilled and experienced professionals in the United States of America engaged in the mining industry in the same type of decision, undertaking, practice, method or act, as the case may be, under, and with the same or similar circumstances and/or degree of complexity to accomplish the desired result in a manner consistent with applicable standards, equipment manufacturing recommendations, good business practice, reliability, safety, dependability, efficiency, environmental protection and Applicable Law.

“**Governmental Body**” means the government of the United States of America or Canada or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, arbitrator or arbitrators, tribunal, central bank or enterprise that is owned, sponsored, or controlled by any government, or any other entity exercising executive, legislative, judicial or arbitral, taxing, regulatory or administrative powers or functions or pertaining to government (including any supra- national bodies such as the European Union or the European Central Bank) and in each case having jurisdiction over an Obligor, the Project, the Project Property or the Finance Documents, as the context may require.

“**Guarantee**” means, with respect to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Debt of another, including any such Debt directly or indirectly guaranteed,

endorsed (otherwise than for collection or deposit in the ordinary course of business) or discounted or sold with recourse by such Person, or in respect of which such Person is otherwise directly or indirectly liable, including any such Debt in effect guaranteed by such Person through any agreement (contingent or otherwise) to purchase, repurchase or otherwise acquire such Debt or any security therefor, or to provide funds for the payment or discharge of such Debt (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain the solvency or any balance sheet or other financial condition of the obligor of such Debt (including keep-well covenants), or to make payment for any products, materials or supplies or for any transportation or services regardless of the non-delivery or non-furnishing thereof, in any such case if the purpose or intent of such agreement is to provide assurance that such Debt will be paid or discharged, or that any agreements relating thereto will be complied with, or that the lender of such Debt will be protected against loss in respect thereof. The amount of any guarantee shall be equal to the outstanding principal amount of the Debt guaranteed or such lesser amount to which the maximum exposure of the guarantor shall have been specifically limited.

**“Guaranteed Obligations”** has the meaning ascribed to it in Section 10.1(a) (*Guaranty; Limitation of Liability*).

**“Guarantors”** means Parent and each Subsidiary thereof that Guarantees the Obligations pursuant to Article 10 (*Guaranty*).

**“Guaranty”** has the meaning ascribed to it in Section 10.1(a) (*Guaranty; Limitation of Liability*).

**“Hazardous Substances”** means any pollutant, contaminant or deleterious, hazardous or toxic substances, materials or wastes defined, listed, regulated or prohibited in or by any applicable Environmental Law, including toxic mine tailings; radioactive materials; flammable substances; explosives; petroleum and petroleum products; polychlorinated biphenyls; chlorinated solvents; and asbestos or asbestos-containing materials.

**“Hedge Agreements”** means any agreement or instrument relating to hedging, swap, forward, option, future or other derivative transactions in respect of interest rate or copper price exposure (including a swap, option, cap, collar or floor).

**“Hedge Termination Value”** means, in respect of any Hedge Agreement, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreement:

- (a) for any date on or after the date such Hedge Agreement has been closed out and termination value determined in accordance therewith, such termination value; and
- (b) for any date prior to the date referenced in paragraph (a) above, the amount determined as the mark-to-market value for such Hedge Agreement, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreement.

**“IFC Environmental, Health and Safety Guidelines”** means the following guidelines:

- (a) IFC General Environmental, Health and Safety Guidelines (2007); and
- (b) IFC Environmental, Health and Safety Guidelines for Mining (2007).

**“IFRS”** means the International Financial Reporting Standards adopted by the International Accounting Standards Board from time to time.

“**Indemnified Party**” has the meaning ascribed to such term in Section 7.5(a).

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Finance Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“**Information Officer**” means the information officer appointed by the Canadian Court in the Recognition Proceedings.

“**Initial Approved Budget**” means the first thirteen-week cash flow forecast that has been approved by the Senior Lenders on the Petition Date.

“**Initial Pledged Interests**” has the meaning ascribed to such term in Section 9.1(e)(ii) (*Grant of Security Interest*).

“**Initial Recognition Order**” means an order of the Canadian Court recognizing the Chapter 11 Cases in form and substance satisfactory to the Administrative Agent and the Senior Lenders in their sole discretion.

“**Interest Payment Date**” means, subject to Article 5 (*Interest, Interest Periods and Fees*), the first Business Day of each month.

“**Interest Period**” means each period determined in accordance with Article 5 (*Interest, Interest Periods and Fees*) of this Agreement and, in relation to overdue amounts, each period determined in accordance with Section 5.2 (*Default Interest*).

“**Interest Rate**” means any interest rate determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*).

“**Interim Commitment**” means, in respect of each Senior Lender at any time, the amount specified with respect to such Senior Lender on Schedule A (*Commitments*) (as amended in accordance with Section 14.1 (*Assignment by Senior Lenders*) from time to time), as such amount may be reduced from time to time by such Senior Lender’s Applicable Percentage of any cancellation of any unused portion of the Interim Commitment.

“**Interim DIP Recognition Order**” means an order of the Canadian Court in the Recognition Proceedings in such form acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, recognizing the Interim Order in the Recognition Proceedings and giving it full force and effect in Canada and granting the DIP Charge, which order for greater certainty may be the supplemental recognition order granted by the Canadian Court concurrently with the Initial Recognition Order.

“**Interim Loans**” means the loans extended pursuant to Section 2.1(a) (*Loan*).

“**Interim Order**” means an order issued by the Bankruptcy Court in the Chapter 11 Cases substantially in the form of Schedule E (*Interim Order*) or with such changes acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower, on the other hand, authorizing and approving on an interim basis, among other things, the borrowings by the Borrower under this Agreement.

“**Investment**” means, with respect to any Person, the making by such Person of:

- (a) any direct or indirect investment in or purchase or other acquisition of the securities of or an equity interest in any other Person;
- (b) any loan or advance to, or arrangement for the purpose of providing funds or credit to (excluding extensions of trade credit in the ordinary course of business in accordance with customary commercial terms and excluding advances of cash from the Borrower to Parent in accordance with the terms of the Cash Management Order), any other Person; or
- (c) Investments consisting of money deposits required in connection with surety bonds;
- (d) any capital contribution to (whether by means of a transfer of cash or other property or any payment for property or services for the account or use of) any other Person; provided, that, for greater certainty, an Acquisition shall not be treated as an Investment.

“**IRC**” means the US Internal Revenue Code of 1986, as amended.

“**IRS**” means the United States Internal Revenue Service.

“**Issuer**” means, individually or collectively as the context may require, each of (i) the Borrower, (ii) 0607792 B.C. Ltd., a limited company incorporated under the laws of British Columbia, Canada, and (iii) Lion Iron Corp., a corporation incorporated under the laws of the State of Nevada.

“**Judgment Currency**” has the meaning assigned to that term in Section 25.8 (*Judgment Currency*).

“**KfW IPEX-Bank**” means KfW IPEX-Bank GmbH.

“**Lag Time**” means the time period as stipulated under Section 5.2(d) (*Interest Rate*).

“**Loans**” means, collectively or individually as context requires, the Interim Loans and the Final Loans.

“**Majority Lenders**” means, at any time, one or more Senior Lenders holding in the aggregate more than fifty percent (50%) of the Commitments or, if Loans have been made, of outstanding principal amount of the Loans.

“**Majuba/Renegade Royalty Deed**” means that certain Royalty Deed, dated August 21, 2006, by and between the Borrower, Majuba Mining Ltd. and Renegade Resources Corporation.

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the business, assets, results of operations or financial condition of the Borrower and the Guarantors taken as a whole, excluding the effect of filing the Chapter 11 Cases, the events and conditions customarily resulting from the commencement and continuation of the Chapter 11 Cases, the effects thereof and any action required to be taken under the Finance Documents or the DIP Order, and the Chapter 11 Cases themselves;
- (b) [reserved];
- (c) the ability of the Borrower or any other Obligor, to consummate the transactions contemplated by the Finance Documents or to perform its obligations under the Finance Documents in accordance with their respective terms;
- (d) the validity, legality or enforceability of any Finance Document;

- (e) the rights and remedies of the Administrative Agent or Senior Lenders under the Finance Documents; or
- (f) the validity or priority of any security interest in the Collateral purported to be granted to any Secured Party under the DIP Order.

**“Material Adverse Environmental and Social Effect”** means:

- (a) any fatality;
- (b) any material adverse community or worker-related impact, including any protestation or challenge to the Project; or
- (c) any Environmental or Social Matter that is materially adverse to the Environment or the community or requires material measures or corrective action to remediate or restore the Environment or causes material damage to critical habitats or endangered, threatened or other protected species.

**“Material Project Authorizations”** means any Project Authorization, the breach, loss, modification or termination of which, or failure to obtain, could reasonably be expected to have a material adverse effect on the development, construction, procurement, engineering or operation of commercial production (including commercial production transactions) of the Underground Project.

**“Material Project Documents”** means (a) the RGGS Lease, (b) the NV Energy Power Supply Contract, (c) that certain water service agreement, dated August 10, 2009, by and between the Borrower and the City of Yerington, as amended, and (d) the Additional Material Project Documents, if any.

**“Maturity Date”** means the earliest to occur of (i) the date that is four (4) months following the Petition Date, (ii) forty-five (45) calendar days after the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or before such date, (iii) fourteen (14) calendar days after the Petition Date if the Interim DIP Recognition Order has not been entered by the Canadian Court on or before such date, (iv) the date of consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, (v) the date of “substantial consummation” (as defined in section 1101 of the Bankruptcy Code, and which for purposes hereof shall be no later than the “effective date” thereof) of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court, (vi) the date of entry of an order by the Bankruptcy Court approving (a) a motion seeking conversion or dismissal of any or all of the Chapter 11 Cases or (b) a motion seeking appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtors’ business, (vii) the date the Bankruptcy Court orders the conversion of the bankruptcy case of any of the Debtors to a liquidation pursuant to chapter 7 of the Bankruptcy Code, and (viii) the date of acceleration of all or any portion of the Loans and the termination of the Commitments upon the occurrence of an Event of Default.

**“Minerals”** means any and all marketable metal bearing material in whatever form or state that is mined, produced, extracted, severed or otherwise recovered from the Project Real Property, and including any such material derived from any processing or reprocessing of any tailings, waste rock or other waste products originally derived from the Project Real Property, and including ore, concentrates, doré, specimens, minerals in solution and any other products resulting from the further milling, processing or other beneficiation of Minerals whether stored or stockpiled on the Project Real Property or elsewhere.

**“Monthly Operations Report”** means a written report prepared by or on behalf of the Borrower in relation to the immediately preceding calendar month (consistent with generally accepted operational reporting

standards common in the mining industry), which report shall include all material information pertaining to the development, production or operations of the Project, including the following information for such quarter:

- (a) a review of the operating activities for the quarter and a report on any material issues arising in connection with the operation and maintenance of the Project;
- (b) details of any new material environmental, social, health or safety activities or events, including any material E&S Events, Environmental Claims, or any material non-compliance with the Environmental and Social Requirements;
- (c) such other information regarding the performance of the Borrower's obligations under the Finance Documents as the Majority Lenders may reasonably request; and
- (d) details of planned or actual material maintenance.

The Monthly Operations Report shall also contain a report on any Encumbrances placed on the Collateral after the Petition Date securing amounts greater than \$1,000,000 in the aggregate, other than the Security.

**"Net Cash Proceeds"** means, with respect to any sale of, or any dividend, distribution, return of capital or other return on investment in respect of equity interests, the cash proceeds thereof, net of all Taxes and customary fees, discounts, commissions, costs and other expenses incurred in connection therewith.

**"Net Disposition Proceeds"** means, with respect to any disposition of assets or Expropriation Event, the aggregate amount of cash payments net of (a) the amount of any costs, expenses, commissions and fees paid or payable by or on behalf of the Borrower in connection with such disposition (as evidenced by supporting documentation provided to the Senior Lenders upon request), and (b) any Taxes imposed on and payable or reasonably estimated to be payable by the Borrower as a result of such disposition.

**"Net Insurance Proceeds"** means the aggregate cash proceeds of (a) business interruption insurance (only to the extent the Project is being abandoned) and (b) insurance received by the Borrower in respect of any loss, damage to or destruction of any of the Collateral, in each case, after deducting therefrom all reasonable fees, costs and expenses (including legal and accounting fees) incurred in connection with the collection of such proceeds (as evidenced by supporting documentation provided to the Senior Lenders upon request), without deduction for any insurance premiums or similar payments; provided, however, that insurance proceeds arising from third- party liability insurance shall not constitute Net Insurance Proceeds.

**"Normet Equipment Lease"** means that certain equipment lease agreement, dated January 17, 2019, by and between the Borrower and Normet Americas, Inc.

**"Note"** has the meaning ascribed to such term in Section 2.5(b) (*Evidence of Debt*).

**"NV Energy Power Supply Contract"** means that certain power supply agreement dated November 30, 2018, by and between the Borrower and Sierra Pacific Power Company d/b/a NV Energy as amended by the First Amendment to the Rule 9, Section B.2 High Voltage Distribution Agreement, dated February 21, 2019.

**"NY Fed OBFR"** means the overnight bank funding rate as provided by the Federal Reserve Bank of New York (or a successor administrator) on the New York Fed's Website (currently published on: <https://apps.newyorkfed.org/markets/autorates/obfr>).



**“NY Fed OBFR Adjustment Spread”** means the arithmetic mean (calculated by the Administrative Agent) of the daily difference between SOFR and the NY Fed OBFR over an observation period of the thirty (30) most immediately preceding US SOFR Banking Days for which SOFR was Available.

**“NY Fed Target Rate”** means the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York on the Federal Reserve’s Website from time to time or, if the Federal Open Market Committee does not target a single rate, the mid-point of the short-term interest rate target range set by the Federal Open Market Committee as published on the Federal Reserve’s Website (calculated as the arithmetic average of the upper bound of the target range and the lower bound of the target range, rounded, if necessary, upwards to five (5) decimal places).

**“NY Fed Target Rate Adjustment Spread”** means in relation to the NY Fed Target Rate prevailing at the close of business on a US SOFR Banking Day, the twenty (20) percent trimmed arithmetic mean (calculated by the Administrative Agent) of the daily difference between SOFR and the NY Fed Target Rate over an observation period of the five (5) most immediately preceding US SOFR Banking Days for which SOFR was Available.

**“Obligations”** means all indebtedness, liabilities, indemnities and other obligations owed by any Obligor to any Secured Party hereunder or under any other Finance Document, whether actual or contingent, direct or indirect, matured or not, now existing or hereafter arising (including any fees or premium payable hereunder, including the Exit Fee).

**“Obligor”** means each of the Borrower and the Guarantors.

**“Observation Period”** means, in relation to an Interest Period, the time period the beginning of which and the end of which is in each case the Lag Time before the beginning and the end of the relevant Interest Period to which such Observation Period belongs (including the first day but excluding the last day of such time period).

**“OFAC”** means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**“Officer’s Certificate”** means a certificate signed on behalf of any Obligor by the chief executive officer, the chief financial officer or any other officer or representative who has been given sufficient powers and authority under Applicable Law and such Obligor’s constitutional documents (or powers of attorney or written resolutions executed in accordance with such Obligor’s constitutional documents) and, in each case, whose name appears on a certificate of incumbency delivered to the Administrative Agent concurrently with the execution of this Agreement, as such certificate of incumbency may be amended from time to time (and delivered to the Administrative Agent) to identify names of the individuals then holding such offices or the names of such representatives and the capacity in which they are acting.

**“Offtake Agreement”** means:

- (a) the Aurubis Offtake Agreement; and
- (b) any other offtake arrangements entered into by the Borrower for the sale of copper or other Minerals from the Project.

**“Order”** means any order, directive, decree, judgment, ruling, award, injunction, direction or request of any Governmental Body or other decision-making authority.

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Finance Document, or sold or assigned an interest in any Loan or Finance Document).

**“Other Rights”** means all licenses, approvals, authorizations, consents, rights (including surface rights, access rights and rights of way), privileges, concessions or franchises held by the Borrower or required to be obtained from any Person (other than a Governmental Body) for the development, construction, procurement, engineering and operation of the Project.

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Finance Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

**“Pala”** means Pala Investments Limited.

**“Parent”** means Nevada Copper Corp., a corporation organized under the laws of British Columbia, Canada.

**“Participant”** has the meaning ascribed to such term in Section 14.1(h) (*Assignment by Senior Lenders*).

**“Participant Register”** has the meaning ascribed to such term in Section 14.1(i) (*Assignment by Senior Lenders*).

**“Performance Standards”** means, to the extent applicable to the Borrower or the Underground Project, (i) each of the eight (8) IFC Performance Standards on Environmental and Social Sustainability (January 2012) and (ii) the IFC Environmental, Health and Safety Guidelines.

**“Permitted Asset Disposition”** means, as at any particular time, a sale, transfer or other Disposition of:

- (a) inventory on arm’s length terms and in the ordinary course of business;
- (b) tangible personal property that is obsolete, or worn-out property no longer required in the conduct of the Business;
- (c) Transmission Line and associated Project Real Property and access rights to NV Energy pursuant to the terms of the NV Energy Power Supply Contract;
- (d) minerals pursuant to this Agreement, the Streaming Agreement, the Royalty Agreements, the Offtake Agreements or otherwise in the ordinary course of business in compliance with the terms of this Agreement; and
- (e) assets to the extent approved by the Bankruptcy Court and either approved by the Majority Lenders or sold in accordance with the Approved Bidding Procedures;

in each case excluding any such sale, transfer or other disposition of minerals to another Debtor.



**“Permitted Capital Expenditures”** means, with respect to the Borrower, Capital Expenditures that are in accordance with the Approved Budget (subject to Permitted Variances).

**“Permitted Debt”** means:

- (a) the Obligations;
- (b) Debt of the Borrower representing Purchase Money Obligations and Capitalized Lease Obligations not to exceed at any time outstanding the amount permitted by paragraph (i) of the definition of “Permitted Encumbrances”;
- (c) in respect of the Borrower, Subordinated Intercompany Debt or intercompany debt permitted by and incurred in accordance with the Cash Management Order;
- (d) [reserved];
- (e) in respect of the Borrower, Debt in respect of performance, surety or completion bonds, standby letters of credit or letters of guarantee securing mine closure, asset retirement, environmental reclamation and labor related obligations of the Borrower to the extent required by Applicable Laws or a Governmental Body; provided, that the aggregate principal amount of all such Debt pursuant to this paragraph (e) incurred by the Borrower and that remains outstanding at any time shall not at any time exceed \$15,000,000;
- (f) CAT Equipment Lease, Epiroc Equipment Lease and Normet Equipment Lease;
- (g) [reserved];
- (h) [reserved]; and
- (i) Debt incurred in respect of the Prepetition Funded Debt Liens.

**“Permitted Encumbrances”** means any of the following:

- (a) any Encumbrances created in favor of the Secured Parties or pursuant to the terms of the Finance Documents;
- (b) the Encumbrances securing: (i) the Obligations; (ii) the Adequate Protection Liens; (iii) the Carve-Out; and (iv) the Canadian Priority Charges;
- (c) any Encumbrances arising from any tax, assessment or other governmental charge or other Encumbrances arising by operation of law, in each case if the obligation underlying any such Encumbrances is timely paid, paid under a First Day Order, not yet due or, if due, is being Contested.
- (d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like Encumbrances arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are subject to Contest and, where Contested, individually or together with all other Permitted Encumbrances outstanding on any date of determination do not materially adversely affect the use of the property to which they relate;
- (e) pledges or deposits in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation, other than any Encumbrances

imposed by ERISA (*The Employee Retirement Income Security Act of 1974* of the United States of America and the rules and regulations promulgated thereunder, together with any successors) or which interferes with the ordinary conduct of business of the Project;

- (f) deposits not to exceed \$2,000,000 to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (g) easements, rights of way and other similar non-monetary encumbrances affecting real property which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower;
- (h) Encumbrances securing judgments for the payment of money not constituting an Event of Default hereunder or securing appeal or other surety bonds related to such judgments;
- (i) Encumbrances securing (i) Permitted Debt or (ii) Purchase Money Obligations and Capitalized Lease Obligations, in the case of (i) and (ii) incurred on and after the Petition Date and relating solely to the acquisition of mobile equipment necessary for the development, construction or operation of the Project; provided, that the aggregate amount of the Debt outstanding at any time in respect of the Permitted Debt and the Purchase Money Obligations and Capitalized Lease Obligations referred to in this paragraph (i) of the Borrower shall not exceed \$2,000,000;
- (j) the Prepetition Trisura Lien;
- (k) the Prepetition Funded Debt Liens;
- (l) Tax Encumbrances;
- (m) the Prepetition Encumbrances set forth on Schedule B hereto, as may be amended with the consent of the Majority Lenders from time to time; and
- (n) Prepetition Encumbrances that are (i) valid, enforceable, perfected, non-avoidable and in existence immediately prior to the Petition Date or (ii) valid, enforceable, non-avoidable and in existence immediately prior to the Petition Date, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, up to an aggregate total amount under this paragraph (m) not to exceed \$12,000,000.

**“Permitted Transferee”** means (a) any Senior Lender or any Affiliate of any Senior Lender, and (b) any other lending, bank or financial institution which is regularly engaged in or established for the purposes of making or investing in loans.

**“Permitted Variances”** has the meaning ascribed to such term in Section 11.12(z)(2)(iv) (*Negative Covenants*).

**“Person”** means and includes individuals, corporations, bodies corporate, limited or general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, funds, Governmental Bodies or any other type of organization or entity, whether or not a legal entity.

**“Petition Date”** has the meaning ascribed to such term in the recitals.

“**Pledged Interests**” has the meaning assigned to such term in Section 9.1(e)(iii) (*Grant of Security Interest*).

“**PPSA**” means the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia) or any other applicable Canadian federal, provincial or territorial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens, and hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections.

“**Prepetition Debt Documents**” has the meaning assigned to such term in the DIP Order.

“**Prepetition Encumbrances**” means Encumbrances arising from obligations or payments that arise or would have been due prior to the Petition Date, including, without limitation, the Prepetition Funded Debt Liens, Prepetition Trisura Lien.

“**Prepetition Funded Debt Liens**” has the meaning assigned to such term in the DIP Order.

“**Prepetition Indebtedness**” means the Debt of the Borrower and its Subsidiaries outstanding immediately prior to the Petition Date.

“**Prepetition Secured Obligations**” has the meaning assigned to such term in the DIP Order.

“**Prepetition Secured Parties**” has the meaning assigned to such term in the DIP Order.

“**Prepetition Trisura Lien**” means the Encumbrance on the assets of the Parent in favor of Trisura Guarantee Insurance Company with respect to surety bonds in an amount not to exceed \$14,600,000.

“**Project**” means the Pumpkin Hollow copper project located in Lyon County, Nevada, including all owned or leased fee lands, patented mining claims, unpatented mining claims or mill sites or other interests in real property that contain the Project’s ore deposits, which includes the Project Property, whether open-pit, underground or otherwise.

“**Project Authorization**” means an Authorization or other right (including an environmental Authorization) necessary for the development, construction, procurement, engineering and operation of the Underground Project.

“**Project Documents**” means, individually or collectively, as the context may require, the following:

- (a) each Material Project Document;
- (b) any performance bond, advanced payment bond, guarantee or other credit support provided to the Borrower pursuant to any agreement referred to in this definition of “Project Documents”; and
- (c) any other Contract to which the Borrower or its Subsidiaries are a party from time to time in relation to the Project (including any replacement of an existing Project Document) other than a Finance Document or the Working Capital Facility, the First Lien Facility or the Fourth Lien Facility.

“**Project Property**” means all of the property, assets, undertaking, approvals, licenses, permits and rights of the Obligors in and relating to the Project, whether now owned or existing or hereafter acquired or arising, including real property, personal property and mineral interests, and specifically including, but not limited to:

- (a) the Project Real Property and appurtenances thereto, water rights and Minerals;
- (b) all accounts, instruments, chattel paper, deposit accounts, documents, intangibles, goods (including inventory, equipment and fixtures), money, letter of credit rights, supporting obligations, contracts, bonds, claims, causes of action and other legal rights and investment property in each case relating to the Project;
- (c) all products, proceeds (including proceeds of proceeds), rents and profits of the foregoing; and
- (d) all books and records of the Obligors related to any of the foregoing.

**“Project Real Property”** means all real property interests, rights of ways, easements, leases and licenses, whether severed estate or otherwise, all patented mining claims, unpatented mining claims, mineral claims, mineral leases and other mineral rights, water rights, ditch rights, interests in any ditch company or cooperative, weirs, pipes, concessions and interests, and all surface access rights held by any Obligor relating to the Project (which as of the date hereof, are as set forth on Schedule J (*Project Real Property*)), and all buildings, structures, improvements, appurtenances and fixtures thereon or attached thereto, whether created privately or by the action of any Governmental Body. **“Project Real Property”** shall also include any term extension, renewal, replacement, conversion or substitution of any such real property interests, mineral claims, mineral leases, mineral rights, waste dump, heap leach pad and any material placed thereon, whether currently in process or abandoned, concessions or interests, and surface access rights, owned or in respect of which an interest is held, directly or indirectly, by any Obligor at any time during the term of this Agreement, whether or not such ownership or interest is held continuously.

**“Proposed Budget”** means the rolling thirteen-week cash flow forecast delivered by the Obligors to the Administrative Agent and Senior Lenders in accordance with Section 11.2(a) of this Agreement (*DIP Budget and Variance Reporting*).

**“Purchase Money Obligations”** means the outstanding balance of the purchase price of real and/or personal property, title to which has been acquired or will be acquired upon payment of such purchase price, or indebtedness to non-vendor third parties incurred to finance the acquisition of such new and not replacement real and/or personal property, or any refinancing of such indebtedness or outstanding balance.

**“Receivables”** has the meaning ascribed to such term in Section 9.1(d) (*Grant of Security Interest*).

**“Recipient”** means (a) the Administrative Agent or (b) any Senior Lender.

**“Recognition Proceedings”** has the meaning ascribed to such term in the recitals.

**“Recovered Amount”** has the meaning ascribed to such term in Section 18.1 (*Payments to Finance Parties*).

**“Recovering Finance Party”** has the meaning ascribed to such term in Section 18.1 (*Payments to Finance Parties*).

**“Redistributed Amount”** has the meaning ascribed to such term in Section 18.4(a) (*Reversal of Redistribution*).

**“Reference Rate”** means Term SOFR, each Compounded SOFR Reference Rate and any other reference interest rate selected by the Majority Lenders in consultation with the Borrower.

**“Reference Rate Determination Date”** means, in relation to an Interest Period for which a variable interest rate is to be determined:

- (a) [reserved];
- (b) if the Reference Rate is Term SOFR, the second US SOFR Banking Day before the first day of that Interest Period;
- (c) if the Reference Rate is any Compounded SOFR Reference Rate, the US SOFR Banking Day immediately following the last day of the Observation Period relating to the relevant Interest Period; and
- (d) in relation to any other Reference Rate, the date as determined by the Majority Lenders in accordance with market practice for such Reference Rate;

provided that, if market practice differs or changes in the relevant market with respect to any of the Reference Rates, the Reference Rate Determination Date for such Reference Rate will be determined by the Majority Lenders in accordance with the market practice applicable in the relevant market and notified to the Borrower by way of a Technical Adjustment Notification.

**“Reference Rate Non-Utilisation Event”** means any of the following events in relation to a Reference Rate:

- (a) *Unavailability*. The Reference Rate is Unavailable; or
- (b) *Non-representativeness*. The later of (x) one (1) month and (y) the future date specified in the relevant official statement has passed since the supervisor of the administrator of a Reference Rate has published an official statement that the relevant Reference Rate is no longer or, as of a specified future date will no longer be, representative of the underlying market or the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor) and such official statements is made with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication;

and such Reference Rate Non-Utilisation Event is continuing on a Reference Rate Determination Date if on such date:

- (i) in relation to clause (a) above, the Reference Rate remains Unavailable; and
- (ii) in relation to clause (b) above, the supervisor has not revoked or rescinded its official statement or has in any other way re-confirmed the representativeness of the relevant Reference Rate.

**“Register”** has the meaning ascribed to such term in Section 14.1(f) (*Assignment by Senior Lenders*).

**“Related Contracts”** has the meaning ascribed to such term in Section 9.1(d) (*Grant of Security Interest*).

**“Related Party”** means, with respect to any Person (the “first named Person”), any Person that does not deal at arm’s length with the first named Person or is an associate of the first named Person and, in the case of any Obligor, includes:

- (a) any director, officer, employee or associate of Pala or any of its Affiliates;
- (b) any Person that does not deal at arm's length with Pala or any of its Affiliates; and
- (c) any Person that does not deal at arm's length with, or is an associate of, a director, officer, employee or associate of Pala or any of its Affiliates.

**"Release"** means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Substances into the indoor or outdoor Environment, including the movement of such Hazardous Substances through ambient air, soil, surface water, groundwater, wetlands, land or subsurface strata.

**"Reporting Week"** has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Testing Date"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Testing Period"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Variance Report"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Remedies Notice Period"** has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

**"Resolution Authority"** means anybody which has authority to exercise any Write-Down and Conversion Powers.

**"Restricted Payment"** means any payment by a Person to:

- (a) any other Person, of dividends or other distribution (whether in cash, securities or other property or assets) and any return of capital including any payment in respect, or on the redemption, of any share capital whether at a premium or otherwise;
- (b) any other Person on account of any payment of interest, principal or any other amount in respect of any loans or loan notes or in respect of any financial indebtedness owed by the Borrower (other than (i) any adequate protection payments for the benefit of the Prepetition Secured Parties as set forth in the DIP Order or (ii) any repayment of the Working Capital Facility, solely to the extent paid from the proceeds of the WCF Collateral, in each case, as expressly provided for in the Interim Order or in the Approved Budget);
- (c) [reserved];
- (d) any other Person of any payment of any management, administration, advisory, consultancy or other similar type of fees or expenses made by the Borrower to any of its Affiliates (but excluding any amount paid by the Borrower to its Affiliates in reimbursement of costs and expenses incurred (i) by such Affiliate and (ii) any amounts paid to cure contracts assumed in connection with an Approved Sale on behalf of the Borrower, in each case to the extent approved by the Administrative Agent); and



- (e) redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire equity interest of such Person now or hereafter outstanding;

provided that Restricted Payment shall not include any payment to any Debtor (other than Parent), any advances of cash from the Borrower to Parent in accordance with the terms of the Cash Management Order, or any payments made with the consent of the Majority Lenders.

**“RGGS Lease”** means that certain Mining Lease, dated May 4, 2006 by and between the Borrower and RGGS Land & Mineral Ltd., L.P, as amended.

**“RGGS Royalty Deed”** means that certain Royalty Deed, dated January 10, 2017 by and between the Borrower and RGGS Land & Mineral Ltd., L.P.

**“Royalties”** means those royalties for which the Borrower is liable under the Royalty Agreements.

**“Royalty Agreements”** means each of: (a) RGGS Royalty Deed and royalty payable under the RGGS Lease and (b) Majuba/Renegade Royalty Deed.

**“Sale-Leaseback”** means an arrangement under which title to any property or an interest therein is transferred by or on the direction of a Person (“X”) to another Person which leases or otherwise grants the right to use such property, asset or interest (or other property, which X intends to use for the same or a similar purpose) to X (or nominee of X), whether or not in connection therewith X also acquires a right or is subject to an obligation to acquire the property, asset or interest, and regardless of the accounting treatment of such arrangement.

**“Sale Approval Order”** has the meaning given to it in Section 11.13(j) (*Milestones*).

**“Sale Transaction”** has the meaning given to it in Section 11.13(j) (*Milestones*).

**“Sanctioned Jurisdiction”** means, at any time, a country, territory or geographical region which is itself the subject or target of any comprehensive territorial-based Sanctions.

**“Sanctions”** means any laws, rules, regulations and requirements relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any U.S. Governmental Body (including, but not limited to, OFAC and the U.S. Department of State), the United Nations Security Council, the European Union and each of its member states, His Majesty’s Treasury of the United Kingdom, any Governmental Body of Canada (including but not limited to, Global Affairs Canada and Public Safety Canada), or any other relevant Governmental Body with jurisdiction over the Obligors or any of their Subsidiaries.

**“Sanctions List”** means any list of designated Persons that are the subject or target of Sanctions, including, without limitation: (a) the Specially Designated Nationals and Blocked Persons List maintained by OFAC; (b) the Consolidated United Nation Security Council Sanctions List; (c) the consolidated list of persons, groups and entities subject to EU financial sanctions maintained by the European Union; (d) the Consolidated List of Financial Sanctions Targets in the UK maintained by Her Majesty’s Treasury of the United Kingdom; and (e) the Consolidated Canadian Autonomous Sanctions List maintained by Global Affairs Canada.

**“Sanctions Target”** means any Person:

- (a) identified on any Sanctions List;

- (b) located, organized or resident in, or the government or any agency or instrumentality of the government of, any Sanctioned Jurisdiction;
- (c) owned or controlled by, or acting for or on behalf of, one or more Persons described in the foregoing paragraph (a) or (b);
- (d) otherwise the subject or target of any Sanctions.

“**Secured Parties**” means, collectively, the Agents and the Senior Lenders.

“**Security**” means the Encumbrances granted in favor of the Collateral Agent pursuant to the Finance Documents.

“**Senior Lender**” means each Person that is a party on the date hereof to this Agreement as an “initial Senior Lender” and each other lender party hereto from time to time pursuant to Section 14.1 (Assignment by Senior Lenders), and their respective permitted successors and assigns.

“**Sharing Finance Parties**” has the meaning ascribed to such term in Section 18.2 (*Redistribution of Payments*).

“**Sharing Payment**” has the meaning ascribed to such term in Section 18.1(c) (*Payments to Finance Parties*).

“**SOFR**” means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate) on the relevant date at approximately 8:00 a.m. New York time.

“**SOFR Daily Rate**” means, in relation to any US SOFR Banking Day:

- (a) the SOFR rate for that US SOFR Banking Day; or
- (b) if SOFR is Unavailable for that US SOFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the NY Fed Target Rate for that US SOFR Banking Day; and
  - (ii) the applicable NY Fed Target Rate Adjustment Spread; or
- (c) if both rates stipulated under clauses (a) and (b) above are Unavailable, the percentage rate per annum which is the aggregate of:
  - (i) the NY Fed OBFR for that US SOFR Banking Day; and
  - (ii) the applicable NY Fed OBFR Adjustment Spread.

“**SOFR Index**” means, either:

- (a) the publicly available index produced by the Federal Reserve Bank of New York (before any correction, recalculation or republication by its administrator) which measures the cumulative



impact of compounding SOFR on a unit of investment over time, with the initial value set to 1.00000000 on 2 April 2018; or

- (b) any other publicly available index which is produced by an administrator (before any correction, recalculation or republication by its administrator) which measures the cumulative impact of compounding SOFR on a unit of investment over time using a compounding methodology which is the same as that specified in this Agreement for the calculation of the Compounded SOFR Calculated Daily Rate,

as published by such administrator or on a page or screen of an information service and, with respect to clause (b) above, specified as the “SOFR Index” by the Administrative Agent in a Technical Adjustment Notification.

“**Streaming Agreement**” means the purchase and sale agreement dated December 21, 2017 (as amended, amended and restated, modified or supplemented from time to time), by and among the Borrower, the Parent and Triple Flag.

“**Streaming Documents**” mean the Streaming Agreement and each “Security Document” under and as defined in the Streaming Agreement.

“**Subordinated Intercompany Debt**” means any debts, liabilities or obligations owing by an Obligor to any other Obligor, on any account and in any capacity, subordinated in accordance with the provisions of the Subordination Agreement.

“**Subordination Agreement**” means a Subordination Agreement in favor of the Collateral Agent in respect of Subordinated Intercompany Debt substantially in the form of Schedule L (*Terms of Subordination*) to this Agreement.

“**Subsidiary**” means with respect to any Person, any other Person which is Controlled directly or indirectly by that Person, and “**Subsidiaries**” means all of such other Persons.

“**Tax Returns**” means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes, including any schedule or attachment thereto or amendment thereof.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Body, including any interest, additions to tax or penalties applicable thereto.

“**Tax Encumbrance**” means the liens placed on the Project for delinquent tax payments as set forth on that certain Notice of Seizure from the Assessor of Lyon County, Nevada dated April 23, 2024.

“**Technical Adjustment Notification**” has the meaning ascribed to such term in Section 5.2(g) (*Interest Rate*).

“**Term SOFR**” means, for the relevant Interest Period, the publicly available percentage rate per annum (before any correction, recalculation or republication by its administrator) which:

- (a) is a forward-looking term rate based on SOFR;
- (b) is produced by an administrator;

- (c) is constituted as a term adjusted SOFR reference rate for a period equal in length to the Interest Period and uses a term adjustment methodology approved by the relevant supervisory authority of the administrator;
- (d) is made available on the relevant Reference Rate Determination Date; and
- (e) is specified as the “Term SOFR” for this Agreement by the Administrative Agent in a Technical Adjustment Notification;

as such rate is quoted in the USD wholesale market on the relevant Reference Rate Determination Date for the same period as the relevant Interest Period or, if none of the periods available are the same as that Interest Period, interpolating, where appropriate, between the yield quotations for the next shorter and next longer maturities; provided that if no such Term SOFR rates are published or provided on the relevant Reference Rate Determination Date and it is therefore not possible for the Administrative Agent to determine the relevant Term SOFR on the basis of this paragraph, but any such rates were published or were otherwise available for any US SOFR Banking Day within the last five (5) US SOFR Banking Days before the relevant Reference Rate Determination Date, the Administrative Agent will use the relevant most recent rate(s) available for determining and/or calculating (e.g. by way of interpolation) the relevant Term SOFR for the relevant Interest Period and Term SOFR shall be deemed to be Available.

“**Termination Amounts**” means the Hedge Termination Value described in paragraph (a) of the definition thereof payable by the Borrower in connection with an early termination (whether as a result of the occurrence of an event of default thereunder or other termination event) of any Hedge Agreement in accordance with the terms thereof; provided, that, for the avoidance of doubt, “Termination Amounts” shall not include any regularly scheduled payments due under any Hedge Agreement from time to time, calculated in accordance with the terms of such Hedge Agreement, including all cash settlement payments due in connection with interest rate swaps and forward- starting interest rate swaps due under any such Hedge Agreement.

“**Termination Declaration**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Termination Declaration Date**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Termination Declaration Notice**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Total Commitments**” means \$60,000,000.

“**Total Tested Disbursements**” has the meaning given such term in Section 11.12(z)(2)(iv) (*Negative Covenants*).

“**Transfer Certificate**” means a certificate substantially in the form set out on Schedule M (*Transfer Certificate*) with any amendments which the Administrative Agent may approve or reasonably require or any other form agreed between the Administrative Agent and the Borrower.

“**Transfer Date**” means the Transfer Date as indicated on the Transfer Certificate delivered pursuant to Section 14.1(c) (*Assignment by Senior Lenders*).

“**Transmission Line**” means the 120 kV transmission line from the Wassuk substation to the Project, owned and operated by Sierra Pacific Power Company d/b/a NV Energy.

“**Triple Flag**” means Triple Flag International Ltd.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that, if by reason of mandatory provisions of law, perfection or the effect of perfection or non-perfection or the priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority and for purposes of definitions related to such provisions.

“**Unavailability of a Reference Rate**” means Reference Rates whereby:

- (a) *Factual.* no screen rate(s) of the relevant Reference Rate is or are published or are in any other way provided by the administrator of such Reference Rate on the relevant Reference Rate Determination Date or for the relevant Observation Period and no other means exist or calculations are possible for the Administrative Agent (including by way of interpolation) to determine the relevant Reference Rate on its Reference Rate Determination Date;
- (b) *Legal.* it is prohibited or in any other way unlawful for the Administrative Agent, a Senior Lender or the Borrower the use such Reference Rate under this Agreement, in particular for calculating or paying interest;
- (c) *Identity change.* the methodology, economic characteristics or formulas for calculating the Reference Rate have materially changed; provided that as long as the underlying interest or market or economic reality that the Reference Rate is intended to measure remains unchanged, any change in formulas, economic characteristics or other methodology is not considered material; or
- (d) *Other.* the relevant Reference Rate may, for any other reason in the reasonable opinion of the Majority Lenders no longer be used for the purposes of this Agreement;

and, correspondingly, such Reference Rate is “**Available**” if it is not Unavailable.

“**Underground Minerals**” means any and all marketable metal bearing material in whatever form or state that is mined, produced, extracted or otherwise recovered from underground operations of the Project including any such material derived from any processing or reprocessing of any tailings, waste rock or other waste products originally derived from those underground operations, and including ore and any other products resulting from the further milling, processing or other beneficiation of such material, including concentrates, derived from those underground operations.

“**Underground Project**” means that portion of the Project that is or was used or is or will be reasonably expected to be used, for or in connection with the exploration, development, extraction, beneficiation, processing, treatment, refining, transportation, sale or commercialization of Underground Minerals.

“**Unpaid Sum**” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“**Unused Commitment**” means, in respect of each Senior Lender at any time, such Senior Lender’s Commitment (including, for the avoidance of doubt, the Interim Commitment and Final Commitment) *minus* the aggregate of (i) the principal amount of Loans then held by such Senior Lender, (ii) the principal

that was held by such Senior Lender and prepaid by the Borrower and (iii) the principal that was held by such Senior Lender and assigned to another Senior Lender.

“**Unused Commitment Fee**” has the meaning ascribed to it in Section 5.9(a) (*Unused Commitment Fee*).

“**Upfront Fee**” means the upfront fee payable to the Senior Lenders in accordance with Section 5.9(b)(*Fees*).

“**USA PATRIOT ACT**” means the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the IRC.

“**US SOFR Banking Day**” means any day other than (i) a Saturday or Sunday or (ii) a day on which the Securities Industry and Financial Markets Association (or any successor organization) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

“**U.S. Tax Compliance Certificate**” has the meaning specified in Section 6.1(g)(ii)(B)(3) (Taxes).

“**Utilization**” means the borrowing of a Loan.

“**Utilization Date**” means the date of a Utilization, being the date on which the relevant Loan is made or is to be made.

“**Utilization Request**” means a written notice (substantially in the form set out on Schedule N (*Utilization Request*)) requesting a Utilization in accordance with Section 3.1 (*Delivery of a Utilization Request*).

“**WCF Collateral**” means the as extracted copper concentrates from the Underground Project, together with any such copper concentrates in process and finished goods inventory derived therefrom located at such Underground Project, and all proceeds thereof.

“**WCF Intercreditor Agreement**” means the intercreditor agreement, dated on or about the May 22, 2019, entered into by and among KfW IPEX-Bank (on behalf of the secured parties under the First Lien Facility), the secured parties under the Streaming Documents and the secured parties under the Working Capital Facility (as amended, amended and restated, supplemented or otherwise modified from time to time).

“**Weekly Reporting Date**” has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

“**Weekly Variance Report**” has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*). “**Withholding Agent**” means the Borrower and the Administrative Agent.

“**Working Capital Facility**” means the Advance Payment Agreement, entered into on or about the May 6, 2019 among the Borrower and Concord (as amended, amended and restated, supplemented or otherwise modified from time to time).

“**Working Capital Facility Documents**” means (i) the WCF Intercreditor Agreement; (ii) the Working Capital Facility; (iii) the Third Lien Security Agreement entered into on or about May 6, 2019, by and

among the Borrower, Concord, as collateral agent, and Concord, as secured party (as amended, amended and restated, supplemented or otherwise modified from time to time); (iv) the Third Lien Pledge Agreement entered into on or about May 6, 2019, by and among the Borrower, Concord, as collateral agent, and Concord, as secured party (as amended, amended and restated, supplemented or otherwise modified from time to time); and (v) the Third Lien Deed of Trust entered into on or about May 6, 2019, by the Borrower, as trustor, in favor of the trustee named therein for the benefit of Concord, as beneficiary (as amended, amended and restated, supplemented or otherwise modified from time to time).

**“Write-down and Conversion Powers”** means, in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule.

## **1.2 Certain Rules of Interpretation.**

In this Agreement, unless otherwise specifically provided or unless the context otherwise requires:

- (a) the terms “Agreement,” “this Agreement,” “the Agreement,” “hereto,” “hereof,” “herein,” “hereby,” “hereunder” and similar expressions refer to this Agreement in its entirety and not to any particular Article, Section, Schedule, or other portion hereof or thereof;
- (b) references to a “paragraph,” “Section” or “Article” followed by a number or letter refer to the specified paragraph, Section or Article of this Agreement;
- (c) the division of this Agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular shall include the plural and vice versa, and words importing gender shall include all genders;
- (e) the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”;
- (f) the terms “party” and “the parties” refer to a party or the parties to this Agreement, and references to a Person in this Agreement means such Person or its successors or permitted assigns;
- (g) the term “continuing,” when used in relation to a Default or Event of Default, means that such Default or Event of Default is continuing unremedied or unwaived in accordance with the terms of the Finance Documents;
- (h) the term “repay” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “prepay” (or, as the case may be, the corresponding derivative form thereof);
- (i) the words “will” and “shall” are to be treated as synonymous;
- (j) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement;

- (k) references to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, supplementing, interpreting or replacing the statute or regulation referred to;
- (l) except as otherwise specifically provided herein, where any payment is required to be made or any other action is required to be taken on a particular day and such day is not a Business Day and, as a result, such payment cannot be made or action cannot be taken on such day, then this Agreement shall be deemed to provide that such payment shall be made or such action shall be taken on the next Business Day in the same calendar month (if there is one) or the immediately preceding Business Day (if there is not);
- (m) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;
- (n) a period equal in length to an Interest Period shall disregard any inconsistency arising from the first or last day of that Interest Period being adjusted or determined pursuant to the Business Day rules or other terms of this Agreement;
- (o) a page or screen of an information service displaying a rate shall include:
  - (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
 and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by Majority Lenders; and
- (p) a law or provision of law is a reference to that law or provision as amended and includes any subordinate legislation.

### 1.3 Currency.

Any reference in this Agreement to currency, “**Dollar**”, “**U.S. Dollar**” or to “**\$**”, unless otherwise expressly indicated, shall be to the lawful currency of the United States of America, being referred to herein as United States dollars. Any amounts to be advanced, paid, prepaid, or repaid shall be made in United States dollars.

### 1.4 Time of Essence.

Time shall be of the essence of this Agreement.

### 1.5 Knowledge.

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the “knowledge” of a Person, it shall be deemed to refer to the actual knowledge of any Chief Executive Officer, Chief Financial Officer, General Counsel, Chief Operations Officer, any Vice President or any other officer or director (or Person performing any role of substantially the same scope and responsibility of any of the foregoing) of such Person and all information which ought to have been known by any of them after conducting a reasonable inquiry into the matters in question, whether or not any such inquiry was actually made; provided, that each such Person shall be deemed to have knowledge of all events,



conditions and circumstances described in any notice delivered to the Borrower pursuant to the terms of this Agreement or any other Finance Document.

#### **1.6 No Subordination.**

The use of the term “Permitted Encumbrances” to describe any interests and Encumbrances permitted hereunder shall mean that they are permitted to exist (whether in priority to, *pari passu* with or subordinated to the Security, as determined by Applicable Law or set forth in the DIP Order) and shall not be interpreted as meaning that such interests and Encumbrances are entitled to priority over the Security.

#### **1.7 Conflict.**

In the case of any conflict or inconsistency between this Agreement (or any Finance Document) and any DIP Order, the applicable DIP Order shall govern.

### **Article 2 LOANS**

#### **2.1 Loan.**

Subject to the terms of this Agreement, each of the Senior Lenders severally agrees to make available to the Borrower:

- (a) Upon entry of the Interim Order, a term loan in an aggregate amount equal to the Interim Commitments of such Senior Lender; and
- (b) Upon entry of the Final Order, a term loan in an aggregate amount equal to the Final Commitments of such Senior Lender.

#### **2.2 Finance Parties' Rights and Obligations.**

- (a) The obligations of each Finance Party under the Finance Documents are several. Each Senior Lender is severally liable for its Commitment and the Senior Lenders are not jointly liable or jointly and severally liable. No Senior Lender shall be responsible for the failure of any other Senior Lender to so make its Loans.
- (b) Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Finance Party under the Finance Documents.
- (c) No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (d) The rights of each Finance Party under, or in connection with, the Finance Documents are separate and independent rights.
- (e) Any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with this paragraph (e). The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party's participation in a

Loan or its role under a Finance Document (including any such amount payable to an Agent on its behalf) is a debt owing to that Finance Party by the Borrower.

### 2.3 Purpose and Use of Proceeds.

The Borrower shall use the proceeds of the Loans in accordance with this Agreement and the Approved Budget for (a) working capital costs and general corporate purposes, (b) costs and expenses in connection with the Chapter 11 Cases (including costs and expenses incurred in connection with the Recognition Proceedings), (c) amounts owing under or in connection with the Finance Documents and (d) other purposes permitted by the Approved Budget. The proceeds of the Loans shall not be applied to (i) any amounts owing under any other Debt, except to the extent permitted by the Approved Budget or (ii) investigating, challenging, objecting to or contesting the validity, security, perfection, priority, extent or enforceability of any amount due under, or the liens or claims granted under or in connection with, this Agreement or any of the Prepetition Debt Documents; provided that, the official committee of unsecured creditors (the “**Creditors’ Committee**”) appointed in the Chapter 11 Cases, if any, may use up to \$50,000 to investigate (but not seek formal discovery in connection with or commence any challenge or objection to or prosecution of) any such claims or causes of action; provided further that the foregoing shall not affect the ability of the Information Officer to conduct an ordinary course security review, as appropriate. The proceeds of the Loans shall not be distributed to, or used for the benefit of, any non-Debtor affiliates or subsidiaries of the Debtors, or applied toward (directly or indirectly) their administration without the prior written approval of the Majority Lenders.

### 2.4 Monitoring.

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to any Finance Document.

### 2.5 Evidence of Debt.

- (a) Each Senior Lender may maintain in accordance with its usual practice an account or accounts evidencing the Debt of the Borrower to such Senior Lender resulting from each Loan made by such Senior Lender, including the amounts of principal and interest payable and paid to such Senior Lender from time to time hereunder. In the case of a Senior Lender that does not request, pursuant to clause (b) below, execution and delivery of a Note evidencing the Loans made by such Senior Lender to the Borrower, such account or accounts shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be prima facie evidence of such Debt of the Borrower absent manifest error; provided, that the failure of any Senior Lender to maintain such account or accounts or any error in any such account shall not limit or otherwise affect any repayment obligations of the Borrower hereunder.
- (b) The Borrower agrees that, upon the request by any Senior Lender, the Borrower will execute and deliver to such Senior Lender a promissory note substantially in the form of Schedule O (*Form of Note*) (each, a “**Note**”) payable to such Senior Lender in an amount equal to such Senior Lender’s Loans evidencing the Loans made by such Senior Lender. The Borrower hereby irrevocably authorizes each Senior Lender to make (or cause to be made) appropriate notations on the grid attached to such Senior Lender’s Notes (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal amount of, and the interest rate and Interest Period applicable to the Loans evidenced thereby. Such notations shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be prima facie evidence of the applicable Debt of the Borrower absent manifest error; provided, that the failure of any Senior Lender to make any such notations or any error in any such notations shall



not limit or otherwise affect any obligations of the Borrower. A Note and the obligation evidenced thereby may be assigned or otherwise transferred in whole or in part only in accordance with Section 14.1(b) (*Assignment by Senior Lenders*). Any Note issued under this Agreement need not be presented or surrendered for any payment made by the Agents.

### **Article 3** **UTILIZATION OF LOANS**

#### **3.1 Delivery of a Utilization Request.**

- (a) Subject to the conditions referred to in Article 12 (*Conditions Precedent*) having been satisfied in accordance with the provisions of this Agreement, the Borrower may utilize the Loans by delivering to the Administrative Agent a duly completed Utilization Request not later than 12:00 noon New York time (x) one (1) Business Day prior to the proposed Utilization Date for the Interim Loan and (y) two (2) Business Days prior to the proposed Utilization Date for the Final Loans (in each case, or such later time approved by the Majority Lenders in their reasonable discretion).
- (b) Each Utilization Request shall be substantially in the form of Schedule N (*Utilization Request*) and shall include all certifications and documentation required therein.

#### **3.2 Completion of a Utilization Request.**

Each Utilization Request is irrevocable and shall not be regarded as having been duly completed unless:

- (a) the Utilization Request includes a certification by the Borrower that the Utilization will be used for the purposes set out in Section 2.3 (*Purpose and Use of Proceeds*);
- (b) the proposed Utilization Date is a Business Day;
- (c) the currency and amount of the Utilization shall be Dollars;
- (d) the Utilization Request specifies the wire instructions for transfer of the proceeds of the Loan;
- (e) the proposed Interest Period specified therein complies with Article 5 (*Interest, Interest Periods and Fees*); and
- (f) the Utilization Request is executed by a Person duly authorized to do so on behalf of the Borrower.

#### **3.3 [Reserved].**

#### **3.4 Notification of Utilization of the Loan.**

Following the delivery of a duly completed Utilization Request by the Borrower, the Administrative Agent shall promptly notify each Senior Lender of the proposed Utilization Date, Interest Period and the amount of such Senior Lender's share of the proposed Loan.

#### **3.5 Senior Lenders' Participation.**

- (a) If the conditions set out in this Agreement have been met, and subject to Article 4 (*Repayment, Prepayment and Cancellation*), each Senior Lender shall make its participation in each Loan available on or prior to 10:00 a.m. New York time on the applicable Utilization Date through its lending office.

- (b) The amount of each Senior Lender's participation in each Loan shall be pro rata to its Unused Commitment immediately prior to making the Loan.

### 3.6 Partial Payments.

- (a) Subject to Section 13.4, if the Administrative Agent receives a payment for application against amounts due in respect of this Agreement that is insufficient to discharge all the amounts then due and payable by the Borrower under this Agreement, the Administrative Agent, subject to the terms of the DIP Order, shall apply such payment towards the obligations of the Borrower under this Agreement in the following order:
  - (i) **first**, in or towards payment of any unpaid fees, expenses, indemnities, losses or other amounts owing to the Agents under the Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee (including, without limitation, the Unused Commitment Fee and the Exit Fee) or commission of the Loans due but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal of the Loans due but unpaid under this Agreement; and
  - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under this Agreement.

## Article 4 REPAYMENT, PREPAYMENT AND CANCELLATION

### 4.1 Repayments.

- (a) The Borrower shall repay the Utilizations made to it in accordance with the terms of this Agreement and the DIP Order.
- (b) [Reserved].
- (c) The Borrower shall not reborrow any part of the Loans which are repaid or prepaid.
- (d) The Borrower shall repay the aggregate Loans (whether principal, interest, fees or otherwise) in full to the extent they are outstanding under or in respect of the Loans on the Maturity Date.

### 4.2 Mandatory Prepayments.

The Borrower shall apply each of the following to a mandatory prepayment in accordance with Section 4.9 (*Application*) and the terms of the DIP Order:

- (a) **Net Insurance Proceeds.** Net Insurance Proceeds received (other than any insurance proceeds in respect of third-party liability insurance where such proceeds are to be paid to third parties or for losses with respect to WCF Collateral prior to the repayment in full of all obligations under the Working Capital Facility Documents) by any Obligor shall be applied to prepay the Loans within five (5) Business Days after receipt thereof, other than any Net Insurance Proceeds received by any Obligor of up to \$10,000,000 in any Fiscal Year that are used by the Obligors to repair and/or replace the property that is the subject of such Net Insurance Proceeds.

- (b) **Liquidated Damages.** If the Borrower receives or is entitled to offset any liquidated or delay damages for any reason under any Material Project Document, 100% of such proceeds in excess of such amounts certified by an authorized officer of the Borrower as necessary to perform such construction or repair that is reasonably related to cure the events or circumstances that gave rise to the payment of such liquidated damages, shall be applied to prepay the Loans within five (5) Business Days of the receipt of such liquidated damages.
- (c) **Expropriation Net Disposition Proceeds.** If any Obligor receives any Net Disposition Proceeds from one or more Expropriation Events, 100% of such proceeds shall be applied to prepay the Loans within five (5) Business Days after receipt thereof.
- (d) **Other Net Disposition Proceeds.** If any Obligor receives any Net Disposition Proceeds from any disposition of Collateral other than the sale of inventory in the ordinary course of business, 100% of such Net Disposition Proceeds shall be applied within five (5) Business Days of receipt by any Obligor and/or any of its Subsidiaries to prepay the Loans; provided that for purposes of this clause (d), Net Disposition Proceeds shall not include, solely to the extent such disposition includes WCF Collateral, any amounts received in respect of the disposition of such WCF Collateral not to exceed the amount necessary to repay in full the obligations due under the Working Capital Facility Documents.
- (e) **Extraordinary Receipts.** If any Obligor receives any Extraordinary Receipts, 100% of such Extraordinary Receipts shall be applied within five (5) Business Days of receipt by any Obligor and/or any of its Subsidiaries to prepay the Loans.
- (f) **Equity Issuances.** If any Obligor receives any Net Cash Proceeds from any sale of, or any dividend, distribution, return of capital or other return on investment in respect of, the equity interests of any non-Debtor Subsidiary of any Obligor, 100% of such Net Cash Proceeds shall be applied within five (5) Business Days of receipt by such Obligor to prepay the Loans.

#### 4.3 [Reserved].

#### 4.4 [Reserved].

#### 4.5 Voluntary Cancellation.

Subject to the other terms of this Agreement, the Borrower may at any time cancel all or any part of the Commitments; provided, that:

- (a) it has given not less than ten (10) Business Days' prior written notice to the Administrative Agent; and
- (b) if such cancellation is for part only of total outstanding Commitments:
  - (i) such cancellation shall be in a minimum amount of \$2,000,000 and an integral multiple of \$1,000,000; and
  - (ii) such cancellation will reduce the Commitment of each Senior Lender pro rata.

#### 4.6 Voluntary Prepayment.

Subject to the other terms of this Agreement, the Borrower may prepay all or any part of the Loans; provided, that:

- (a) the Borrower has given not less than three (3) Business Days' notice to the Administrative Agent (or such later time as the Majority Lenders may agree to);
- (b) subject to Section 4.10(b) (*Miscellaneous*), the Borrower simultaneously pays all accrued interest on the amount prepaid, together with all costs and expenses, fees and all other amounts then due and payable under the Finance Documents, including Break Costs (if any) and the Exit Fee;
- (c) if such a prepayment is of all of the Loans then outstanding, they are all repaid or prepaid simultaneously in full;
- (d) if such a prepayment is a partial prepayment of the Loans then outstanding:
  - (i) such prepayment shall be in a minimum amount of \$5,000,000 (or, if less, the remaining outstanding amount) and an integral multiple of \$1,000,000;
  - (ii) such prepayment will be applied as provided in Section 4.9 (*Application*), and the Borrower shall ensure that such amounts are repaid or prepaid simultaneously; and
- (e) such a prepayment shall not cause or result in a Default or Event of Default immediately prior to and immediately following such a prepayment.

#### 4.7 Automatic Cancellation.

Each Senior Lender's Unused Commitment will be automatically cancelled on the Maturity Date unless previously cancelled.

#### 4.8 Right of Cancellation and Repayment in Relation to a Single Senior Lender.

- (a) The Borrower may at any time, cancel any available Commitments of any Senior Lender or repay the Loans held by an individual Senior Lender (together with any other accrued and unpaid amounts owing to such Senior Lender under the Finance Documents) if such Senior Lender claims indemnification from the Borrower under Section 7.5 (*Indemnities*) or any amount under Section 7.3 (*Change in Circumstances*). The Borrower may, while the circumstances giving rise to the requirement for that increase or indemnification continue, give notice to the Administrative Agent, as applicable of cancellation of the Commitment(s) of such Senior Lender and its intention to procure the repayment of the Loans held by such Senior Lender.
- (b) On receipt of a notice referred to in Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*) in relation to a Senior Lender, the Commitments of such Senior Lender will immediately be reduced to zero.
- (c) On the last day of the Interest Period in which the Borrower has given notice under Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*) in relation to a Senior Lender (or, if earlier, the date specified by the Borrower in the notice under Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*)), the Borrower will repay

such Senior Lender's participation in the Utilizations, together with all interest and other amounts accrued under the Finance Documents (if any).

**4.9 Application.**

- (a) Except in the case of a prepayment or repayment under Section 7.2 (*Illegality*) or Section 4.8 (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*):
  - (i) any cancellation pursuant to this Article 4 (*Repayment, Prepayment and Cancellation*) shall:
    - (A) be applied *pro rata* between each Senior Lender; and
    - (B) if in part, reduce the Commitment of each Senior Lender *pro rata*;
  - (ii) any prepayment pursuant to this Article 4 (*Repayment, Prepayment and Cancellation*) shall be applied *pro rata* among each Loan.

**4.10 Miscellaneous.**

- (a) Any notice of cancellation or prepayment under this Article 4 (*Repayment, Prepayment and Cancellation*):
  - (i) is irrevocable; and
  - (ii) unless a contrary indication appears in this Agreement, shall specify:
    - (A) the date upon which the relevant cancellation or prepayment is to be made; and
    - (B) the amount of that cancellation or prepayment.
- (b) Subject to the requirements of the other provisions of this Article 4 (*Repayment, Prepayment and Cancellation*), any prepayment under this Agreement is without premium or penalty other than:
  - (i) the Exit Fee payable in respect of, and on, any amounts applied in prepayment in accordance with Sections 4.2 (*Mandatory Prepayments*) and 4.6 (*Voluntary Prepayment*);
  - (ii) Break Costs to the extent that the prepayment is made on a date other than an Interest Payment Date.
- (c) Any prepayment under this Agreement shall be made together with accrued and unpaid interest as of such date.
- (d) [Reserved].
- (e) No prepayment, repayment or cancellation is allowed except at the times and in the manner expressly provided for in this Agreement.
- (f) No amount of the Commitments cancelled under this Agreement may be subsequently reinstated.
- (g) If the Administrative Agent receives a notice under this Article 4 (*Repayment, Prepayment and Cancellation*), it shall promptly forward a copy of that notice to each Senior Lender.

**Article 5**  
**INTEREST, INTEREST PERIODS AND FEES**

**5.1 Payment of Interest and Interest Payment Dates.**

Interest shall accrue on each Loan at a *per annum* rate during each Interest Period equal to the Interest Rate as determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*). The Borrower shall pay accrued interest on the Loans on each Interest Payment Date. Accrued interest shall be calculated on the basis of (i) the Interest Rate determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*) which shall be applicable for each day of an Interest Period for which interest accrues and (ii) a 360-day year and shall be payable in arrears at the end of each Interest Period. Accrued interest shall be paid on the basis of actual days elapsed and shall include the first day of the Interest Period but exclude the last day of such Interest Period.

**5.2 Interest Rate**

The Interest Rate applicable to a Loan for a certain Interest Period shall be determined as a variable interest rate in accordance with the following provisions:

- (a) *[Reserved]*.
- (b) *Term SOFR*. The Interest Rate for the relevant Interest Period shall be determined as the aggregate of:
  - (i) the Term SOFR for such Interest Period; and
  - (ii) the Credit Spread Adjustment; and
  - (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR on the applicable Reference Rate Determination Date.

The Administrative Agent shall promptly, after the relevant Reference Rate Determination Date, notify the Borrower of the relevant Term SOFR and the aggregate Interest Rate determined on this basis under this paragraph (b) (*Term SOFR*).

- (c) *Compounded SOFR Primary Screen Rate*. If a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:
  - (i) the Compounded SOFR Primary Screen Rate for such Interest Period; and
  - (ii) the Credit Spread Adjustment; and
  - (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate on the applicable Reference Rate Determination Date.

*Lag Time.* When determining the Interest Rate under this paragraph (c), a Lag Time of five (5) US SOFR Banking Days shall apply.

- (d) *Compounded SOFR Calculated Index Rate.* If both a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR and a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:

- (i) the Compounded SOFR Calculated Index Rate for such Interest Period; and
- (ii) the Credit Spread Adjustment; and
- (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Calculated Index Rate on the applicable Reference Rate Determination Date.

When determining the Interest Rate under this paragraph (d) (*Compounded SOFR Calculated Index Rate*), the provisions with respect to the Lag Time as stipulated under paragraph (c) (*Compounded SOFR Primary Screen Rate*) above shall apply equally.

- (e) *Compounded SOFR Calculated Daily Rate.* If a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR, a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate and a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Calculated Index Rate on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:

- (i) the Compounded SOFR Calculated Daily Rate for such Interest Period; and
- (ii) the Credit Spread Adjustment; and
- (iii) the Applicable Margin.

When determining the Interest Rate under this paragraph (e) (*Compounded SOFR Calculated Daily Rate*), the provisions with respect to the Lag Time as stipulated under paragraph (c) (*Compounded SOFR Primary Screen Rate*) above shall apply equally.

- (f) *Floor.* If the Reference Rate would be less than 0.00% per annum, such Reference Rate shall be deemed to be 0.00% per annum for purposes of this Agreement.
- (g) *Conforming Adjustments.* Further to the provisions of this Section 5.2, the Majority Lenders may make such further technical, administrative, operational and other conforming changes and adjustments to these provisions as are required to permit the administration, calculation or determination of the relevant Reference Rate in a manner substantially consistent with market practice or as are required to make the interest provisions, in particular the timing and frequency of determining rates, the calculation rules, the notification periods and similar technical, administrative or operational measures, administratively feasible. To this effect, the Administrative Agent (acting at the direction of the Majority Lenders) may send the Borrower a notification (a



“**Technical Adjustment Notification**”) which shall supplement and adjust this Agreement and which shall, upon receipt by the Borrower, form an integral part of this Agreement.

- (h) *Administrative Agent.* Notwithstanding anything to the contrary herein or in any other Finance Document, (A) the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability in respect of, (a) the monitoring, determination or verification of the unavailability or cessation of any Interest Rate, including the giving of any notices related thereto, (b) the continuation of, administration of, submission of, calculation of or any other matter related to any Interest Rate, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable, replacement or successor rate or adjustment thereto, including whether the composition or characteristics of any such alternative, comparable, replacement or successor rate or adjustment will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Interest Rate or any other rate, or (c) the effect, implementation or composition of any changes in any Technical Adjustment Notification; and (B) no amendments or other changes (including in any Technical Adjustment Notification) shall, unless agreed by the Administrative Agent, affect the rights, indemnities or obligations of the Administrative Agent. The Administrative Agent may select information sources or services to ascertain any Interest Rate, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Senior Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

### 5.3 Default Interest.

- (a) If any Event of Default has occurred and is continuing, the principal amount of the Loans (whether or not accelerated) and all other Obligations that are due and unpaid shall automatically bear interest at a rate per annum that is the rate that would otherwise be applicable thereto plus two percent (2%) per annum, in each case, from the date of written demand from the Administrative Agent (acting at the direction of the Majority Lenders) following the occurrence of such Event of Default to the date on which such Event of Default ceases to exist or is otherwise cured. Any interest accruing under this Section 5.3 (*Default Interest*) shall be immediately payable by the Borrower on demand by the relevant Agent or Senior Lender;
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan;
- (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
- (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two (2) percent per annum higher than the rate which would have applied if the overdue amount had not become due; and
- (c) default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (d) No accrued interest shall become due and payable other than in accordance with the provisions of Section 5.1 (*Payment of Interest and Interest Payment Dates*) or this Section 5.3 (*Default Interest*).



#### 5.4 Limitation on Interest.

If at any time the interest rate applicable to any Loan, together with all other amounts that are treated as interest on such Loan under Applicable Law, exceeds the maximum lawful rate under the laws of New York, the interest payable in respect of such Loan, together with all other amounts treated as interest on such Loan, shall be limited to interest calculated at the maximum lawful rate under the laws of New York.

#### 5.5 Determination of Interest Periods.

- (a) Subject to paragraph (b) below, each Interest Period for any Loan shall be of a duration of one (1) month.
- (b) Each Interest Period for a Loan shall start on an Interest Payment Date (except in the case of the first Interest Period applicable to the Loan, which shall start on its Utilization Date) and end on the day immediately before the Interest Payment Date that corresponds to the last day of the Interest Period or, if earlier, the Maturity Date.

#### 5.6 Non-Business Days.

If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall instead end on the next Business Day in that calendar month (if there is one) or the immediately preceding Business Day (if there is not).

#### 5.7 Market Disruption.

If the Administrative Agent notifies the Borrower prior to the end of an Interest Period (the “**Affected Interest Period**”) that:

- (a) the Administrative Agent determines that the interest rate for such Loan in relation to the Affected Interest Period cannot be determined by the Administrative Agent in accordance with Section 5.2 (*Interest Rate*); or
- (b) the Administrative Agent has received notifications from a Senior Lender or Senior Lenders (whose participations in such Loan exceed thirty percent (30%) of that Loan) that the difference between
  - (i) the interest rate determined in accordance with Section 5.2 (*Interest Rate*); minus
  - (ii) the Funding Rate of such Senior Lender or Senior Lenders in relation to such Affected Interest Period
 is below the Applicable Margin,

(each of (a) and (b) above, a “**Market Disruption Event**”),

then the Borrower shall pay interest on the respective Loan for the Affected Interest Period with respect to each participation of an affected Lender at a rate equal to the aggregate of:

- (i) the Funding Rate of such Lender in relation to the Affected Interest Period, as determined by such Lender and notified by such Lender to the Administrative Agent (provided that if any such rate is less than zero, the Funding Rate shall be deemed to be zero); and
- (ii) the Applicable Margin.

In the notification to the Borrower that a Market Disruption Event has occurred, the Administrative Agent will also notify the Borrower about the Interest Rate determined in accordance with this Section 5.7 (*Market Disruption*) and the interest amount payable by the Borrower in respect of the Affected Interest Period.

If this Section 5.7 (*Market Disruption*) applies and the Majority Lenders or the Borrower so requires, the Majority Lenders and the Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest. Any alternative basis thus agreed shall, with the prior consent of all the Senior Lenders and the Borrower, be binding on all parties hereto.

If within such period of thirty (30) days the parties to this Agreement do not reach any agreement, the Interest Rate notified to the Borrower in accordance with this Section 5.7 (*Market Disruption*) will continue to apply for the Affected Interest Period.

## **5.8 Break Costs.**

The Borrower shall indemnify, compensate and reimburse each Senior Lender for all Break Costs which such Senior Lender may sustain:

- (a) if the Borrower withdraws or reduces the amount specified for a utilization in a Utilization Request or fails to satisfy any of the conditions precedent specified in Article 12 (*Conditions Precedent*) after delivering a Utilization Request and as a result a Utilization of a Loan does not occur on the Utilization Date; provided, that if the Borrower withdraws or reduces the amount specified for any Utilization Request, then the Applicable Margin shall be included in the calculation of Break Costs but in all other cases (including clauses (b) and (c) of this Section 5.8 (*Break Costs*), the Applicable Margin should not be included in the calculation of Break Costs).
- (b) if the Borrower fails to pay any amount of principal of the Loans due and payable under a Finance Document on its due date; or
- (c) if any repayment or prepayment (whether mandatory or voluntary) of its Loan occurs on a date that is not an Interest Payment Date for the Loan, in accordance with Article 4 (*Repayment, Prepayment and Cancellation*) of this Agreement.

Each Senior Lender shall furnish to the Borrower a certificate setting forth the basis and amount of each request by such Senior Lender for compensation under this Section 5.8 (*Break Costs*) which certificate shall be conclusive and binding on the Borrower in the absence of manifest error. The Borrower shall pay such Senior Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

## **5.9 Fees.**

- (a) **Unused Commitment Fee.** The Borrower shall pay to the Administrative Agent (for the account of each Senior Lender) an unused commitment fee (the “**Unused Commitment Fee**”) on the average daily Unused Commitment of such Senior Lender for the period from and including the Entry Date to the Maturity Date, in each case at a rate per annum equal to 1.00%. Accrued Unused Commitment Fees shall be payable monthly, in arrears and in cash, on each Interest Payment Date or, in the case of the last installment of the Unused Commitment Fee payable hereunder, on the date of termination or cancellation of the Unused Commitment.

- (b) **Upfront Fee.** The Borrower shall pay an upfront fee (the “**Upfront Fee**”) to each Senior Lender (for its own account) in an amount equal to 5.00% multiplied by the aggregate principal amount of each Senior Lender’s Commitment under this Agreement, which shall be payable in cash (x) on the Utilization Date of the Interim Loan with respect to the portion of the Upfront Fee allocable to the Interim Loan that, at the option of the Borrower, may be net funded in whole or in part from the proceeds of the Interim Loan borrowing on the Utilization Date of the Interim Loan and (y) on the Utilization Date of the Final Loan with respect to the portion of the Upfront Fee allocable to the Final Loan that, at the option of the Borrower, may be net funded in whole or in part from the proceeds of the Final Loan on the Utilization Date of the Final Loan.
- (c) **Exit Fee.** Upon any prepayment or repayment of any portion or all of the Loans, whether at maturity, as a prepayment, repayment, acceleration or termination of the Loans (including, but not limited to, any prepayment or repayment after the occurrence of an Event of Default or after acceleration of the Loans) or upon the occurrence of the Maturity Date or upon the acceleration of the Loans (the occurrence of any such events, an “**Exit Fee Event**”), the Borrower shall pay to the Administrative Agent (for the account of each Senior Lender) an exit fee (the “**Exit Fee**”) in cash equal to (a) the principal amount of the Loans being prepaid, repaid or accelerated multiplied by (b) 1.00%. The Exit Fee shall be fully earned, due and payable on the date such Exit Fee Event occurs and non-refundable when made. The parties acknowledge and agree that (i) the Senior Lenders forwent receiving additional compensation, fees and pricing on the Entry Date in return for the parties agreeing to the Exit Fee, (ii) the Agents and the Senior Lenders would not have entered into this Agreement and the Senior Lenders would not have provided the Loans without the Obligor agreeing to pay the Exit Fee in the aforementioned instances and (iii) the Exit Fee set forth in this Section 5.9(c) (*Fees*) is not intended to act as a penalty or to punish the Borrower or any other Obligor for any such payment, repayment, redemption, prepayment or termination.
- (d) **Agent’s Fee.** The Borrower shall pay to the Agent (for its own account) agency fees in the amounts and manner agreed in the Agency Fee Letter.

## Article 6 TAXES

### 6.1 Taxes.

- (a) **Defined Terms.** For purposes of this section, the term “Applicable Law” includes FATCA.
- (b) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower under any Finance Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Body in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 6.1. (Taxes)), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made. The Administrative Agent shall act as a Withholding Agent under this Agreement with respect to U.S. withholding only.

- (c) **Payment of Other Taxes by Borrower.** The Borrower shall timely pay to the relevant Governmental Body in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.
- (d) **Indemnification by Borrower.** The Borrower shall indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 6.1 (*Taxes*)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, other than any penalties and interest resulting from the willful misconduct or gross negligence (as determined in the final and non-appealable judgment of a court of competent jurisdiction) of the Administrative Agent or such Senior Lender, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to the Borrower by a Senior Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Senior Lender, shall be conclusive absent manifest error.
- (e) **Indemnification by the Senior Lenders.** Each Senior Lender shall severally indemnify the Administrative Agent within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Senior Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Senior Lender's failure to comply with the provisions of Section 14.1(i) (*Assignment by Senior Lenders*) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Senior Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Finance Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to any Senior Lender by the Administrative Agent shall be conclusive absent manifest error. Each Senior Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Senior Lender under any Finance Document or otherwise payable by the Administrative Agent to the Senior Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).
- (f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by the Borrower to a Governmental Body pursuant to this section, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.
- (g) **Status of Senior Lenders.** (i) Any Senior Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Finance Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Senior Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Senior Lender is subject to backup withholding or information reporting

requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (g)(ii)(A), (ii)(B) and (ii)(D) of this section) shall not be required if in the Senior Lender's reasonable judgment such completion, execution or submission would subject such Senior Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Senior Lender.

(ii) Without limiting the generality of the foregoing,

- (A) any Senior Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or about the date on which such Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Senior Lender is exempt from U.S. federal backup withholding tax;
- (B) any Foreign Senior Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:
  - (1) in the case of a Foreign Senior Lender claiming the benefits of an income tax treaty to which the United States of America is a party (x) with respect to payments of interest under any Finance Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Finance Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
  - (2) executed copies of IRS Form W-8ECI;
  - (3) in the case of a Foreign Senior Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) a certificate substantially in the form of Exhibit A-1 to the effect that such Foreign Senior Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the IRC, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the IRC (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or
  - (4) to the extent a Foreign Senior Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit A-2 or Exhibit A-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as



applicable; provided, that if the Foreign Senior Lender is a partnership and one or more direct or indirect partners of such Foreign Senior Lender are claiming the portfolio interest exemption, such Foreign Senior Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit A-4 on behalf of each such direct and indirect partner;

- (C) any Foreign Senior Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and
- (D) each Senior Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Senior Lender has complied with such Senior Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Senior Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

- (h) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes (including any tax credit in lieu of a refund) as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section 6.1 (*Taxes*)) and which is immediately allocable to the Taxes, it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Body) in the event that such indemnified party is required to repay such refund to such Governmental Body. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (h) shall not be construed to require any

indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

- (i) **Survival.** Each party's obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Senior Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Finance Document.

## Article 7 OTHER PROVISIONS RELATING TO THE LOANS

### 7.1 Payments Generally.

- (a) The Borrower shall make each payment required to be made by it under this Agreement on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim not later than a time determined by the Administrative Agent in its sole discretion and communicated to the Borrower.
- (b) Any amounts received after such time on any date may, in the discretion of the Majority Lenders, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon.
- (c) All such payments shall be made to the account designated by the Administrative Agent from time to time, except that payments pursuant to Sections 7.3 (*Change in Circumstances*), 7.4 (Payment of Costs and Expenses) and 7.5 (*Indemnities*) shall be made directly to the Persons entitled thereto.
- (d) The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof.
- (e) All payments under this Agreement shall be made in Dollars.

### 7.2 Illegality.

If any Applicable Law comes into force after the Entry Date, or if any change in any existing Applicable Law or in the interpretation or application thereof by any court or Governmental Body now or hereafter makes it unlawful for a Senior Lender to have advanced or acquired an interest in any of the Loans or to fund or otherwise maintain any of the Loans or to give effect to its obligations in respect thereof, such Senior Lender may, by written notice thereof to the Borrower, declare its obligations under this Agreement to be terminated, and the Borrower shall immediately cancel any available Commitments of such Senior Lender and prepay, within the time required by such law, the Loans and any other amounts owing under this Agreement (including accrued and unpaid interest) as may be applicable to the date of such payment. If any such event shall, in the opinion of such Senior Lender, only affect part of its obligations under this Agreement, the remainder of this Agreement shall be unaffected and the obligations of the Borrower and the other Obligor under the Finance Documents shall continue. Each Senior Lender agrees to use commercially reasonable efforts to designate a different lending office if such designation will avoid the need for such notice and will not, in the judgment of such Senior Lender, acting reasonably, otherwise be materially disadvantageous to such Senior Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Senior Lender in connection with any such designation or assignment.

**7.3 Change in Circumstances.**

- (a) If the introduction of or any change in any Applicable Law relating to a Senior Lender or any change in the interpretation or application thereof by any Governmental Body or compliance by a Senior Lender with any request or direction of any Governmental Body:
- (i) subjects such Senior Lender to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;
  - (ii) imposes, modifies or deems applicable any reserve, liquidity, cash margin, capital, special deposit, deposit insurance or assessment, or any other regulatory or similar requirement against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds for loans by, such Senior Lender or any direct or indirect holding company of such Senior Lender;
  - (iii) imposes on such Senior Lender or any direct or indirect holding company of such Senior Lender or requires there to be maintained by such Senior Lender any capital adequacy, liquidity or additional liquidity capital requirement (including, without limitation, a requirement which affects such Senior Lender's or such holding company's allocation of capital resources to its obligations) in respect of such Senior Lender's obligations hereunder; or
  - (iv) imposes on such Senior Lender any other condition or requirement with respect to this Agreement (other than Excluded Taxes);
- (b) and subject to paragraph (c) below, such occurrence has the effect of:
- (i) increasing the cost to such Senior Lender of agreeing to make or making, maintaining or funding the Loan or any portion thereof;
  - (ii) reducing the amount of the Obligations owing to such Senior Lender;
  - (iii) directly or indirectly reducing the effective return to such Senior Lender under this Agreement or on its overall capital as a result of entering into this Agreement or as a result of any of the transactions or obligations contemplated by this Agreement; or
  - (iv) causing such Senior Lender to make any payment or to forgo any interest, fees or other return on or calculated by reference to any sum received or receivable by such Senior Lender under this Agreement;

then, upon written request of such Senior Lender, the Borrower will pay to such Senior Lender such additional amount or amounts as will compensate such Senior Lender for such additional costs incurred or reduction suffered. A certificate of a Senior Lender setting forth the amount or amounts necessary to compensate such Senior Lender and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Senior Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

For purposes of the foregoing, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, regulations,



guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed a “change in Applicable Law” regardless of the date enacted, adopted, applied or issued.

#### **7.4 Payment of Costs and Expenses.**

The Borrower shall pay to the Agents and the Senior Lenders on demand all reasonable costs and expenses (other than in the case of Section 7.4(f) (*Payment of Costs and Expenses*) below, in which case, subject to the terms of the DIP Order and DIP Recognition Order, the Borrower shall pay the Agents and the Senior Lenders on demand all costs and expenses) of the Agents and the Senior Lenders and their agents, counsel, advisors (including a technical advisor) and any receiver or receiver-manager appointed by them or by a court (including, without limitation, all reasonable fees, properly invoiced and documented expenses and disbursements of legal counsel) in connection with this Agreement and the other Finance Documents, the Chapter 11 Cases and the Recognition Proceedings, including, without limitation:

- (a) the preparation, negotiation, and completion of the Finance Documents, or any actual or proposed amendment or modification thereof or any waiver thereunder and all instruments supplemental or ancillary thereto, and, in the case of the Agents, the administration of the Finance Documents;
- (b) [reserved];
- (c) the reasonable and properly invoiced and documented fees and expenses of the Senior Lenders incurred as part of the Senior Lenders’ due diligence or, subject to Section 11.1(d) (*Affirmative Covenants*), for the ongoing monitoring, investigation or information gathering in respect of the Borrower and the Project;
- (d) the registration, maintenance and/or discharge of any of the Security in any public record office;
- (e) obtaining advice as any Agent’s or the Senior Lenders’ rights and responsibilities under this Agreement or the other Finance Documents; and
- (f) the defense, establishment, protection or enforcement of any of the rights or remedies of the Agents or the Senior Lenders under this Agreement or any of the other Finance Documents, including all costs and expenses of establishing the validity and enforceability of, or of collection of amounts owing under, any of the Finance Documents or any enforcement of the Security, or otherwise due from the Borrower or any Guarantor under this Agreement.

#### **7.5 Indemnities.**

- (a) The Borrower shall indemnify and hold harmless each Agent, each Senior Lender and their Affiliates, officers, directors and employees (each, an “**Indemnified Party**”) from all Claims (including the reasonable and properly invoiced and documented fees, expenses and disbursements of outside legal counsel to the Senior Lenders and outside legal counsel to the Agents in each applicable jurisdiction), which may be incurred by any Indemnified Party as a consequence of or in respect of:
  - (i) default by the Borrower in the payment when due of any Obligation or any other Default or Event of Default hereunder which is continuing;

- (ii) the entering into by the relevant Agents and the Senior Lenders of the Finance Documents and any amendment, waiver or consent relating thereto, and the performance by such Agents and the Senior Lenders of their obligations under this Agreement and the other Finance Documents;
  - (iii) failure of the Borrower to comply with any Applicable Law, including, without limitation, any Environmental Law or applicable Anti-Corruption Laws, AML Laws or Sanctions, with respect to the Project;
  - (iv) any E&S Event, Environmental or Social Matter and Environmental Claim with respect to the Project;
  - (v) the application by the Borrower of the proceeds of the Loan; or
  - (vi) any material Claim arising in connection with the development, construction, procurement, engineering and operation of the Project, except for any such Claim that a court of competent jurisdiction determined in a final and non-appealable order arose primarily on account of the relevant Indemnified Party's gross negligence or willful misconduct.
- (b) In connection with any Claim described in Section 7.5(a) (*Indemnities*) above, the applicable Indemnified Party shall deliver a certificate of an officer of the Administrative Agent or the applicable Senior Lender as to:
- (i) any such Claim; and
  - (ii) reasonable details of the calculation of the amount of such Claim (which calculation shall be, absent manifest error, *prima facie* evidence of the calculation of the amount of such Claim).

## Article 8 REPRESENTATIONS AND WARRANTIES

### 8.1 Representations and Warranties of the Borrower.

To induce each Senior Lender to enter into this Agreement and the other Finance Documents to which each such Senior Lender is a party, and to induce each Senior Lender to make available the Loans under this Agreement and the other Finance Documents to which it is a party, the Borrower makes the representations and warranties set forth below to each Senior Lender as of the Entry Date and each Utilization Date.

- (a) **Organization and Powers.** Subject to any restriction arising on account of the Borrower's and its Subsidiaries' status as a "debtor" under the Bankruptcy Code and entry of the DIP Order or any restriction on the Borrower and its Subsidiaries as a result of the Recognition Proceedings and any required approvals of the Bankruptcy Court, the Borrower and each of its Subsidiaries:
- (i) has been duly incorporated or formed and is validly existing under the laws of its incorporation or formation, as applicable;
  - (ii) has all requisite corporate power and authority to own and lease its property and assets and to carry on its business;

- (iii) has all requisite corporate power and authority to enter into and deliver each of the Finance Documents, and the transactions contemplated thereby, to which it is or will become a party, and to take all necessary action to perform its obligations thereunder (including the power and authority to grant the Security pursuant to the Finance Documents and to perform the obligations set forth therein); and
  - (iv) is duly qualified, licensed or registered to do business in each jurisdiction in which the nature of its business or the property or assets owned or leased by it make such qualification, licensing or registration necessary. No proceeding has been instituted or, to the knowledge of the Borrower, threatened in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, limit or curtail, such power and authority or qualification, licensing or registration. The Borrower is up-to-date in all of its corporate filings in all material respects and is (if applicable) in good standing under Applicable Laws.
- (b) **Authorization; No Conflict.** Subject to the entry of the DIP Order and the DIP Recognition Order, the execution and delivery by the Borrower and each of its Subsidiaries of the Finance Documents to which each is a party, and the performance by it of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate or other action on its part and do not and will not:
  - (i) contravene any provision of its constitutional documents (or the constitutional documents of any of its Subsidiaries), including, without limitation, any shareholder agreements or declarations, as applicable, or any resolution of its shareholders, partners or directors (or any committee thereof);
  - (ii) conflict with, result in a breach of, or constitute a default or an event creating rights of acceleration, termination, modification or cancellation or a loss of rights under (with or without the giving of notice or lapse of time or both), the Streaming Agreement or any material contract to which any of its Subsidiaries is a party, in each case, to the extent not subject to the automatic stay under the Chapter 11 Cases or executed after the Petition Date;
  - (iii) violate any Applicable Law; or
  - (iv) other than as contemplated by the Finance Documents, result in, or require, the creation or imposition of any Encumbrance on any property or assets of the Borrower.
- (c) **Execution; Binding Obligation.** Subject to entry of the DIP Order and the DIP Recognition Order, each Finance Document to which the Borrower is or will become a party:
  - (i) has been, or when delivered under or in connection with this Agreement will be, duly executed and delivered by the Borrower; and
  - (ii) constitutes, or when delivered under or in connection with this Agreement will constitute, a legal, valid and binding agreement of the Borrower, in full force and effect and enforceable against the Borrower in accordance with its terms and admissible into evidence in the courts of New York, except to the extent enforcement may be affected by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity.

- (d) **Consents.** The Borrower and its Subsidiaries are not required to give any notice to, make any filing with or obtain any Authorization, Order or other consent or approval of any Person in connection with the execution or delivery of or performance of its obligations under any Finance Document to which they are a party, or the consummation of the transactions contemplated herein and therein, other than:
- (i) the entry of the DIP Order and the DIP Recognition Order;
  - (ii) consents and approvals required under contracts or other agreements stayed by the Automatic Stay;
  - (iii) with respect to the grant of the priming lien, Trisura Guarantee Insurance Company; and
  - (iv) those that have already been obtained and copies of which have been provided to the Senior Lenders or those consents that are reflected in the DIP Order.
- (e) **Corporate Structure; Subsidiaries.**
- (i) Part A of Schedule Q (*Corporate Organization Chart*) sets forth the true and complete list of all Subsidiaries of the Borrower, including the type and number of issued and outstanding shares or other equity interests of each such Subsidiary and the Person in whose name such shares or equity interests are registered.
  - (ii) Except as set out in Part A of Schedule Q (*Corporate Organization Chart*) no Person has any option, warrant, right (pre-emptive, contractual or otherwise) or other security or conversion privilege of any kind that is exercisable or convertible into, or exchangeable for, or otherwise carries the right of the holder to purchase or otherwise acquire (whether or not subject to conditions) common shares or other equity interests of the Borrower or its Subsidiaries.
  - (iii) The Borrower is not engaged in any joint purchasing arrangement, joint venture, partnership and other joint enterprise with any other Person.
  - (iv) No Person has a direct or indirect ownership interest in the Borrower, except as set out in Part A of Schedule Q (*Corporate Organization Chart*), or the Project Property or is otherwise involved in any manner in the operation of the Project.
  - (v) To the Borrower's knowledge and belief, no funds invested in the shares of the Borrower are of illicit origin.
- (f) **Principal Place of Business and Other Locations.** The jurisdiction of incorporation, principal place of business, location of corporate records, and location of tangible assets (except for inventory which is in transit) of the Borrower as of the date hereof is Nevada.
- (g) **Residence for Tax Purposes.** For tax purposes, the Borrower is resident of Nevada and the United States of America (and no other state or non-U.S. jurisdiction).
- (h) **[Reserved].**
- (i) **No Expropriation.** No Expropriation Event has occurred nor has any notice been given or proceeding commenced by a Governmental Body or Person in respect thereof nor, to the knowledge

of the Borrower, is there any intent or proposal to give any such notice or commence with respect to an Expropriation Event.

(j) **[Reserved]**.

(k) **Title to Project Real Property.** Schedule J (*Project Real Property*) (or if such Schedule is replaced in accordance with this Agreement, such replacement Schedule) sets out a complete and accurate list of the Project Real Property in which the Borrower and its Subsidiaries have a right, title or interest. The Borrower, subject to Permitted Encumbrances:

- (i) has valid and subsisting leasehold title to all leases of real property and mineral interests included within the Project Real Property;
- (ii) has valid possessory and record title to all mineral interests included within the Project Real Property, except such mineral interests that are leased to the Borrower and are covered under paragraph (k)(i) above; and
- (iii) has good and marketable title to such other real property interests included within the Project Real Property and not otherwise included under paragraphs (k)(i) and (k)(ii).

Such Project Real Property is free and clear of all Encumbrances other than Permitted Encumbrances. The Borrower and its Subsidiaries do not hold any other freehold, leasehold or other real property interests or rights (including licenses from landholders permitting the use of land, leases, rights of way, occupancy rights, surface rights and easements).

(l) **Other Collateral.** The Borrower has good and valid title to, or leasehold interest in, all other Collateral that is not Project Real Property, free and clear of all Encumbrances other than Permitted Encumbrances.

(m) **Project Property.** Without limiting the generality of Section 8.1(j) (*Representations and Warranties of the Borrower*) and Section 8.1(k) (*Representations and Warranties of the Borrower*):

- (i) the Borrower owns or otherwise has valid rights to use all of, and does not own any material properties or assets other than, the Project Property, and no Person other than the Borrower has any rights to participate in the Project Real Property or operate the Project;
- (ii) the Borrower's Subsidiaries do not own or otherwise have valid rights to use any of the Project Property;
- (iii) the Project Real Property constitutes all real property, unpatented mining claims, mineral, surface interests and ancillary rights (including rights of access) necessary for the development and mining operations of the Project;
- (iv) other than the Royalties, the Offtake Agreements, the Working Capital Facility, the Streaming Agreement, the First Lien Facility and this Agreement, none of the Project Real Property or any Minerals produced therefrom are subject to an option, right of first refusal or right, title, interest, reservation, claim, rent, royalty, or payment in the nature of rent or royalty, or right capable of becoming an agreement, option, right of first refusal or right, title, interest, reservation, claim, rent, royalty, or payment in the nature of rent or royalty; and

- (v) other than pursuant to Applicable Laws, there are no restrictions on the ability of the Borrower to exploit the Project Real Property.
- (n) **Maintenance of Project Property.** All mining concession, maintenance fees, recording fees, preservation patents and Taxes (other than the Tax Encumbrances) and all other amounts have been paid when due and payable and all other actions and all other obligations as are required to maintain the Project Property in good standing, have been taken and complied with in all material respects. All water permits and certificates have been perfected and maintained in good standing and all proofs of beneficial use have been duly and properly filed in compliance with all applicable regulations of the State of Nevada, Division of Water Resources.
- (o) **Insurance.** The Collateral and the businesses and operations of the Borrower are insured in accordance with Section 11.1(e) (*Affirmative Covenants*). The Borrower has not breached the terms and conditions of any insurance policies it is required to obtain and maintain in accordance with Section 11.1(e) (*Affirmative Covenants*) in any material respect nor failed to promptly give any notice or present any material claim thereunder. There are no material claims under any such policy as to which any insurer is denying liability or defending under a reservation of rights clause.
- (p) **Status of Authorizations.** The Borrower has the Authorizations needed for the care and maintenance of the Project. Except the non-validity of which would not reasonably be expected to have a Material Adverse Effect, each Material Project Authorization necessary for the current stage of the Project is valid and in full force and effect.
- (q) **Project Documents.** Other than to the extent affected by the filing of the Chapter 11 Cases, the Recognition Proceedings, the entry of the DIP Order or the Automatic Stay or as would not reasonably be expected to have a Material Adverse Effect, each Material Project Document and each other Project Document necessary for the current stage of the Project is valid and in full force and effect.
- (r) **Applicable Laws; Conduct of Operations.** Each of the Borrower and its Subsidiaries, including in the conduct of operations at the Project, is in compliance in all material respects with all Applicable Laws and, without limiting the generality of the foregoing, all exploration, development and mining operations in respect of the Project Real Property have been conducted in accordance with Good Industry Practice and all material workers' compensation and health and safety regulations have been complied with. There is no pending or, to the knowledge of the Borrower, proposed changes to Applicable Laws that would render illegal or materially restrict the development of the Project or the conduct of operations at the Project, or that could otherwise reasonably be expected to result in a Material Adverse Effect.
- (s) **Sanctions.**
  - (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) is a Sanctions Target; (B) has engaged in the past five (5) years, or intends to engage in the future in any dealings, with, involving or for the benefit of a Sanctions Target; or (C) is or has been, in the past five (5) years, subject to any action, litigation, claim, investigation or proceeding with regard to any actual or alleged violation of Sanctions;
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable Sanctions; and



- (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans (A) to fund or facilitate any activities or business of, with or involving any Sanctions Target or (B) in any manner that would constitute or give rise to a violation of Sanctions by any Person, including any Senior Lender.
- (t) **Anti-Corruption Laws.**
  - (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) have, in the past five (5) years, taken any action, directly or indirectly, that would constitute or give rise to a violation of applicable Anti-Corruption Laws; or (B) is or has been, in the past five (5) years, subject to any action, litigation, claim, investigation or proceeding with regard to any actual or alleged violation of Anti-Corruption Laws.
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable Anti-Corruption Laws; and
  - (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value to any Person in a manner that would constitute or give to a violation of applicable Anti-Corruption Laws.
- (u) **AML Laws; FinCen Regulations.**
  - (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) has, in the past five (5) years, taken any action, directly or indirectly, that would constitute or give rise to a violation of applicable AML Laws;
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable AML Laws;
  - (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans for any activity that would constitute or give rise to violation of applicable AML Laws; and
  - (iv) The information included in the Beneficial Ownership Certification is true and correct in all respects.
- (v) **Environmental Compliance.** Without limiting the generality of Sections 8.1(p) (*Representations and Warranties of the Borrower*) and 8.1(r) (*Representations and Warranties of the Borrower*):
  - (i) the Borrower and its Subsidiaries, and, to the knowledge of the Borrower and its Subsidiaries, the conduct of the care and maintenance of the Project, is in compliance with all Environmental and Social Requirements in each case and, as applicable, in accordance with the actions and time schedules established in any Corrective Action Plan;
  - (ii) the Borrower and its Subsidiaries have obtained, and maintained in full force and effect, all material Environmental Licenses any of them are currently required to hold and that are necessary to maintain and operate the Project;

- (iii) no Hazardous Substances have been generated, used, treated, recycled, stored on or transported to or from, or Released on, or to the knowledge of the Borrower, are migrating from or are present on all or any portion of the Project Real Property or the Project, except to the extent any such Hazardous Substance would not reasonably be expected to result in a material Environmental Claim (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)) against the Borrower, any of its Subsidiaries or with respect to the Project; and
- (iv) none of the Borrower, its Subsidiaries nor the Project is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)), (and, to the knowledge of the Borrower or its Subsidiaries, there is no basis for any such Environmental Claim), (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)).
- (w) **Community Matters.** Neither the Borrower nor its Subsidiaries have received notice that the Project Real Property or the Project is subject to any material actions, suits and proceedings (including arbitral and administrative proceedings) by indigenous peoples that are individually, or in the aggregate, material, and, to the knowledge of the Borrower or its Subsidiaries, there are no such current, pending or threatened (in writing) actions, suits or proceedings materially affecting the Project Real Property or the Project. Neither the Borrower nor its Subsidiaries have received notice of any claim or assertion, written or oral, whether proven or unproven, from any other such affected persons or groups, or Persons acting on their behalf, with respect to any title (including collective title), rights or other interests which could reasonably be expected to conflict with the Project if such claim or assertion were valid.
- (x) **Employee and Labor Matters.** The Borrower, and each of its Subsidiaries, is in material compliance with all Applicable Laws and Performance Standards in respect of employment and employment practices, terms and conditions of employment, pay equity and wages; there is not currently any labor disruption or conflict involving the Borrower, its Subsidiaries or directly affecting the Project. Neither the Borrower nor its Subsidiaries are a party to a collective bargaining agreement. None of the Borrower's Subsidiaries have any employees.
- (y) **Security.** The Borrower has implemented security practices and procedures at the Project in accordance with Applicable Laws and consistent with the Good Industry Practice.
- (z) **Employee Benefit Plans.** Each Employee Benefit Plan mandated by a Governmental Body that is intended to qualify for special tax treatment meets all of the requirements for such treatment and has obtained all necessary approvals of all relevant Governmental Bodies. No Employee Benefit Plan has any unfunded liabilities, determined in accordance with IFRS, that have not been fully accrued on the Financial Statements or that will not be fully offset by insurance. All Employee Benefit Plans are registered where required by, and are in good standing under, all Applicable Laws. For purposes of this Section 8.1(z) (*Representations and Warranties of the Borrower*), "**Employee Benefit Plan**" means any employee benefit plan, pension plan, program, policy or arrangement sponsored, maintained or contributed to by the Borrower or with respect to which the Borrower has any liability or obligation. No event has occurred and no condition exists that could subject Borrower or its Subsidiaries, either directly or by reason of its affiliation with any member of their Controlled Group, to any liability imposed by Title IV of ERISA, or to any lien imposed



by Section 430 of the IRC or Section 303 or Title IV of ERISA. “Controlled Group” means any trade or business (whether or not incorporated) (i) which is or has at any relevant time been under common control within the meaning of Section 4001(b)(1) of ERISA with Borrower or its Subsidiaries or (ii) which together with Borrower or its Subsidiaries is or was at any relevant time treated as a single employer under Section 414(b), (c), (m) or (o) of the IRC.

- (aa) **Taxes.** The Borrower and its Subsidiaries have filed all material federal, state and other tax returns and reports required to be filed, have paid all material federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (i) to the extent prohibited by the automatic stay of the Bankruptcy Code (or the applicable provision of the CCAA), (ii) for the Tax Encumbrances, and (iii) for Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with IFRS.
- (bb) **Intellectual Property.** The Borrower owns, licenses or otherwise has the right to use all material licenses, Authorizations, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, franchises, authorizations and other intellectual property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto (other than any intellectual property the absence of which or any such infringement upon or conflict with respect to which would not have a material impact on the Borrower’s ability to maintain or operate the Project and carry on the Business).
- (cc) **Books and Records.** The minute books and corporate records of the Borrower and each of its Subsidiaries are true and correct in all material respects and contain all minutes of all meetings and all resolutions of the shareholders or directors (or any committee thereof), as applicable, of the Borrower.
- (dd) **Financial Statements.**
  - (i) The Borrower’s Financial Statements have been prepared in accordance with IFRS applied on a consistent basis throughout and complied, as of their date of filing, and such Financial Statements present fairly, in all material respects, the financial condition of the Borrower and its Subsidiaries (on a consolidated basis), as at the date specified therein and for the period then ended. The Borrower does not intend to correct or restate, nor, to the knowledge of the Borrower, is there any basis for any correction or restatement of, any aspect of its Financial Statements.
  - (ii) There are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of the Borrower or any of its Subsidiaries with unconsolidated entities or other Persons.
  - (iii) PricewaterhouseCoopers (PwC) has been the auditor of the Borrower since April 10, 2018.
- (ee) **Absence of Change.** Except for the Chapter 11 Cases and the Recognition Proceedings and the facts disclosed in the filings made in connection therewith (including any filing with the SEC prior to the Petition Date) and for the transition of the operations of the Project to care and maintenance, since the Petition Date, there has been no event, change or effect which, individually or in the aggregate, has had a Material Adverse Effect.

- (ff) **Related-Party Transactions.** Except as disclosed on Schedule T (*Related-Party Transactions*) or as permitted by this Agreement after the date hereof, neither Borrower nor any of its Subsidiaries have: (i) made any payment or loan to, or borrowed any moneys from or otherwise been indebted to, any Related Party thereof; or (ii) been a party to any contract with any Related Party thereof, other than independent contractor or indemnification agreements entered into with officers or directors of the Borrower which, in the case of clause (i) or (ii) hereof, remains in effect on the date hereof.
- (gg) **Other Contracts.** No Obligor has entered in any material contracts relating to the Project (other than the Project Documents, Finance Documents, the First Lien Facility, the WCF Capital Facility and the Fourth Lien Facility) that have not been disclosed in writing to the Finance Parties.
- (hh) **No Liabilities.** Neither the Borrower nor any of its Subsidiaries has any material liabilities, contingent or otherwise, that would be required to be reflected in the Borrower's Financial Statements in accordance with IFRS, other than those (i) reflected in the most recently delivered Financial Statements and the Finance Documents or (ii) arising in the ordinary course of business since the date of the most recently delivered Financial Statements.
- (ii) **Litigation.** Subject to any restrictions arising on account of the Borrower's status as a "debtor" under the Bankruptcy Code and other than the Chapter 11 Cases, the right of the relevant parties to investigate and challenge this Agreement and the facilities provided hereunder during the applicable Challenge Periods (as provided and defined in the DIP Order), and as disclosed in Schedule W (*Litigation Disclosure*), there are no Orders which remain unsatisfied against the Borrower or its Subsidiaries or consent decrees or injunctions to which the Borrower or its Subsidiaries are subject which would have a Material Adverse Effect on the Borrower and its Subsidiaries taken as a whole. There are no material investigations, actions, suits or proceedings at law or in equity or by any Person by or before any Governmental Body pending or, to the knowledge of the Borrower, threatened against or directly affecting the Borrower (or any of its properties or assets) or otherwise having a material impact on the ability of the Borrower to develop or operate the Project and, to the knowledge of the Borrower, there is no ground on which any such action, suit or proceeding might be commenced.
- (jj) **Debt Instruments.** The Borrower and its Subsidiaries do not have any Debt other than Permitted Debt.
- (kk) **No Subordination.** There is no contract to which the Borrower is a party or by which it or any of its properties or assets may be bound that requires the subordination in right of payment of any of the Obligations under the Finance Documents to any other obligation of it.
- (ll) **[Reserved].**
- (mm) **No Default.** No Default or Event of Default has occurred and is continuing.
- (nn) **Disclosure.** All information which has been prepared by or on behalf of the Borrower relating to the Obligors and their Subsidiaries and/or in connection with the Project or its financing (including in connection with the Streaming Agreement) and disclosed in writing to the Finance Parties or any one of them, is, as of the date of such information, true, complete and accurate in all material respects.
- (oo) **[Reserved].**

- (pp) **[Reserved]**.
- (qq) **Senior Obligations.** After the entry of the DIP Order, and pursuant to and to the extent permitted in the DIP Order, as provided in Section 364(c)(1) of the Bankruptcy Code, the Obligations of the Obligors constitute allowed senior administrative expenses against each of the Obligors in the Chapter 11 Cases (without the need to file any proof of claim or request for payment of administrative expense), with priority, subject only to the Carve-Out, the Administration Charge and as otherwise set forth in the DIP Order or the DIP Recognition Order, over any and all other administrative expenses, adequate protection claims, diminution claims and all other claims against the Obligors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expense claims arising under Sections 105, 326, 328, 330, 331, 361, 362, 363, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other nonconsensual Lien, levy or attachment, which allowed claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which shall be payable from and have recourse to all pre- and post-petition property of the Obligors and their estates and all proceeds thereof, including, without limitation, and subject to entry of the Final Order, any proceeds of Avoidance Actions.
- (rr) **Valid Security Interests.** This Agreement and the other Finance Documents, upon execution and delivery thereof by the parties thereto and entry of the DIP Order and the DIP Recognition Order (and subject to the terms therein), will create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described herein and therein and the proceeds thereof, which security interest shall be deemed valid and perfected upon entry of the DIP Order and the DIP Recognition Order with respect to each Obligor and which shall constitute continuing Encumbrances on the Collateral having priority on the Collateral as set forth in the DIP Order, securing all the Obligations. The Senior Lenders shall not be required to file or record (but shall have the option and authority to file or record) any financing statements, mortgages, notices of Lien or similar instruments, in any jurisdiction or filing office or to take any other action in order to validate, perfect or establish the priority of the Encumbrances and security interest granted by or pursuant to this Agreement, any other Finance Document, the DIP Order and the DIP Recognition Order.
- (ss) **Investment Company Act of 1940.** The Borrower is not, and after giving effect to the transactions contemplated hereby, will not be, subject to registration as an “investment company” or “controlled” by a company subject to registration as an “investment company,” within the meaning of the United States Investment Company Act of 1940, as amended.
- (tt) **Margin Regulations.** The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for such purpose and no part of the proceeds of any Loan will be used for the purpose whether immediate, incidental or ultimate, of buying or carrying any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for such purpose. No part of the proceeds of any Loan will be used, whether directly or indirectly and whether immediately, incidentally or ultimately, for any purpose which entails a violation of or which is inconsistent with Regulation G, T, U or X promulgated by the Board of Governors of the

Federal Reserve System of the United States (12 C.F.R. Sections 207, 220, 221 and 224, respectively).

- (uu) **Use of Proceeds.** The proceeds of all Utilizations have been and will be used in accordance with the terms and conditions of this Agreement and all applicable Finance Documents.
- (vv) **Streaming Agreement.** Except as a result of the Chapter 11 Cases or the Recognition Proceedings or to the extent arising prior to the Petition Date, no event has occurred or circumstance exists that (with or without the giving of notice or lapse of time or both) has contravened, conflicted with or resulted in or given any Person the right to declare a default and exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, the Streaming Documents and, to the knowledge of the Borrower, each other Person that is party thereto is in compliance in all material respects with the terms and requirements thereof. Without limiting the generality of the foregoing, except as a result of the Chapter 11 Cases or the Recognition Proceedings or arising prior to the Petition Date:
  - (i) neither the Borrower, nor, to the knowledge of the Borrower, any other Person, is in default or breach in the observance or performance of any material term, covenant or obligation to be performed by the Borrower or such Person under the Streaming Documents and the Streaming Documents are in good standing, constitutes a valid and binding agreement of each of the parties thereto, is in full force and effect and is enforceable in accordance with its terms, except to the extent enforcement may be affected by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity; and
  - (ii) the Borrower has no knowledge of the invalidity of or grounds for rescission, avoidance or repudiation of any such Streaming Document and the Borrower has not received notice of any sanctioning procedure by a Governmental Body or notice of any intention to terminate any such Streaming Document or repudiate or disclaim any transaction contemplated thereby.

## **8.2 Survival of Representations and Warranties.**

- (a) The representations and warranties made in this Agreement are made by the Borrower as of the date hereof.
- (b) The representations and warranties made in this Agreement are deemed to be made to each Finance Party by reference to the fact and circumstances then existing on each applicable date on which the representations and warranties are made notwithstanding any investigation made at any time by or on behalf of the Administrative Agent or the Senior Lenders.

## **Article 9 SECURITY**

### **9.1 Grant of Security Interest.**

Each of the Obligors, to secure the timely payment (whether at stated maturity, by acceleration or otherwise) of the Obligations, hereby assigns, grants and pledges to the Collateral Agent for the equal and ratable benefit of the Secured Parties a first priority perfected lien (subject to the Carve-Out and Administration Charge and as otherwise set forth in the DIP Order or DIP Recognition Order) on and continuing security interest in and to the following (in each case, as to each type of property described

below, whether now owned or hereafter acquired by the Obligors, and whether now or hereafter existing or arising) (collectively, the “**Collateral**”):

(a) all mine inventory including any coarse ore in stockpile, crushed ore in stockpile, ore in process, or copper in inventory from time to time (other than any WCF Collateral);

(b) all right, title and interest of the Borrower and the Subsidiaries to any proceeds arising from, in connection with or under any Expropriation Event, together with, if an Event of Default has occurred and is continuing, full power and authority, in its name or otherwise, to institute proceedings (whether before a court or judge or by way of arbitration or otherwise) to enforce such claims, execute judgments or awards made pursuant thereto and collect and receive all proceeds arising from, in connection with or under any Expropriation Event;

(c) all equipment in all of its forms, including all machinery, tools, motor vehicles, vessels, aircraft, furniture and fixtures, and all parts thereof and all accessions thereto, including computer programs and supporting information that constitute equipment within the meaning of the UCC;

(d) all accounts, chattel paper (including, without limitation, tangible chattel paper and electronic chattel paper), instruments (including, without limitation, promissory notes), letter-of-credit rights, general intangibles and other obligations of any kind, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services and whether or not earned by performance, and all rights now or hereafter existing in and to all supporting obligations and in and to all security agreements, mortgages, liens, leases, letters of credit and other contracts securing or otherwise relating to the foregoing property (any and all of such accounts, chattel paper, instruments, letter-of-credit rights, general intangibles and other obligations, to the extent not referred to in clause (e) or (f) below, being the “**Receivables**”, and any and all such supporting obligations, security agreements, mortgages, liens, leases, letters of credit and other contracts being the “**Related Contracts**”);

(e) the following (the “**Account and Investment Property**”):

(i) all indebtedness from time to time owed to the Obligors, including Subordinated Intercompany Debt and other intercompany debt permitted by the Cash Management Order and all promissory notes, checks or other instruments, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness;

(ii) the Capital Stock held by the Obligors and identified on Schedule C (*Pledged Interests*) hereto, including the Obligor’s Capital Stock in each of the Issuers, and (A) the Obligor’s status as an equity holder of each Issuer and the Obligor’s right to vote, nominate members of the board or otherwise participate in the management of the business and affairs of such Issuer and any other right of the Obligor as an equity holder of such Issuer (the “**Initial Pledged Interests**”) and the certificates, if any, representing the Initial Pledged Interests, and all equity dividends, cash dividends, cash, instruments, chattel paper and other rights, property or proceeds and products (including all other payments due or to become due to the Obligor as an equity holder in respect of the Initial Pledged Interests, including all rights of the Obligor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Initial Pledged Interests), from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Initial Pledged Interests and (B) all claims of the Obligor for damages arising out of or for breach of or default under any right of the Obligor as an equity holder;



(iii) all additional Capital Stock of each Issuer at any time acquired by the Obligor in any manner, and (A) the certificates representing such additional Capital Stock (and any such additional Capital Stock, along with the Initial Pledged Interests shall constitute “**Pledged Interests**”), and all equity dividends, cash dividends, distributions, cash, instruments, chattel paper and other rights, property or proceeds and products from time to time received, receivable or otherwise distributed in respect of or in exchange for any additional Pledged Interests, (B) all other payments due or to become due to the Obligor as an equity holder in respect of the additional Pledged Interests, including all rights of the Obligor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to additional Pledged Interests, (C) all claims of the Obligor for damages arising out of or for breach of or default under any right of the Obligor as an equity holder of additional Pledged Interests and (D) all the Obligor’s ownership interests as an equity holder in respect of the additional Pledged Interests in the property of each Issuer;

(iv) all deposit accounts and all funds from time to time credited thereto and all certificates and instruments, if any, from time to time, representing or evidencing such deposit accounts;

(v) all other investment property (including, without limitation, all (A) securities, whether certificated or uncertificated; (B) security entitlements; (C) securities accounts; (D) commodity contracts; (E) financial assets; and (F) commodity accounts) from time to time in which the Obligors have now, or acquire from time to time hereafter, any right, title or interest in any manner, and the certificates or instruments, if any, representing or evidencing such investment property; and

(vi) all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the types of property referred to in clauses (i) through (v) above and all warrants, rights or options issued thereon or with respect thereto;

(f) all of the Obligors’ rights, title and interest in and to the Contract Rights and all other Contractual Obligations to which any of the Obligors are now or may hereafter become a party, in each case as such Contractual Obligations may be amended, amended and restated, supplemented or otherwise modified from time to time (collectively, the “**Assigned Agreements**”), including (i) all rights of the Obligors to receive monies due and to become due under or pursuant to the Assigned Agreements, (ii) all rights of the Obligors to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements or any other instrument, agreement or other document delivered pursuant thereto, (iii) claims of the Obligors for damages arising out of or for breach of or default under the Assigned Agreements, and (iv) the right of the Obligors to terminate the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder (all such Collateral referred to in this clause (f) being the “**Agreement Collateral**”);

(g) the following:

(i) all patents, patent applications, utility models and statutory invention registrations, all inventions claimed or disclosed therein and all improvements thereto;

(ii) all trademarks, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, whether registered or unregistered (provided, that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark

applications under applicable federal law), together, in each case, with the goodwill symbolized thereby;

(iii) all copyrights, including copyrights in Computer Software (as hereinafter defined), internet web sites and the content thereof, whether registered or unregistered;

(iv) all computer software, programs and databases (including source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights, hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing (“**Computer Software**”);

(v) all confidential and proprietary information, including, without limitation, know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and all other intellectual, industrial and intangible property of any type, including, without limitation, industrial designs and mask works, and all tangible embodiments of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of the Obligors accruing thereunder or pertaining thereto;

(vi) all registrations and applications for registration for any of the foregoing;

(vii) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

(h) any tort, indemnity, warranty or guarantee claims under commercial contracts (the “**Commercial Tort Claims Collateral**”);

(i) any and all of the Obligors’ interest under any and all policies of insurance (including any substitutions therefor or conversions thereof, and any supplementary contracts issued in connection therewith on certain property of the Obligors’, collectively the “**Assigned Insurance Policies**”), including, without limitation, (i) all rights of the Obligors to receive monies due and to become due under or pursuant to the Assigned Insurance Policies, including, without limitation, all insurance proceeds paid or payable upon the occurrence of an Event of Loss together with all dividends, benefits and advantages at any time appertaining thereto or derived therefrom, (ii) all claims of the Obligors for damages arising out of or for breach of or default under the Assigned Insurance Policies and (iii) all other rights, remedies, options, benefits and privileges of the Obligors under the Assigned Insurance Policies, including, without limitation, all title and interest in and to the Assigned Insurance Policies and all rights to terminate, amend, supplement, modify or waive performance under the Assigned Insurance Policies and to compel performance and otherwise to exercise all rights and remedies thereunder;

(j) all claims in respect of intercompany transfers of proceeds of the Loans or of cash and cash equivalents from any Debtor to Parent;

(k) all books and records (including, without limitation, customer lists, credit files, printouts and other computer output materials and records) of the Obligors pertaining to any of the Collateral;

(l) all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the Collateral (including, without limitation, proceeds, collateral and supporting obligations that constitute property of the types described in clauses (a) through (h) of this Section 9.1 (*Grant of Security Interest*)) and, to the extent not otherwise included, all (i) payments under insurance (whether or not the Collateral Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral, and (ii) cash; and

(m) all other tangible and intangible personal property whatsoever.

Upon the repayment in full and discharge of all obligations under the Working Capital Facility, each of the Obligors, to secure the timely payment (whether at stated maturity, by acceleration or otherwise) of the Obligations, shall automatically, without further action from any party, assign, grant and pledge to the Collateral Agent for the equal and ratable benefit of the Secured Parties in accordance with the DIP Order and DIP Recognition Order, a first priority perfected lien (subject to the Carve-Out and Administration Charge and as otherwise set forth in the DIP Order or DIP Recognition Order) on and continuing security interest in and to the WCF Collateral.

## **9.2 Security for Obligations.**

The grant of security interests under Section 9.1 (*Grant of Security Interest*) secures the payment of all Obligations now or hereafter existing under the Finance Documents, and with respect to the WCF Collateral in accordance with the DIP Order and DIP Recognition Order, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, fees, premiums, penalties, indemnifications, contract causes of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, the grant of security interests under Section 9.1 (*Grant of Security Interest*) secures the payment of all amounts that constitute part of the Obligations and would be owed by the Obligors to any Secured Party under the Finance Documents, and with respect to the WCF Collateral in accordance with the DIP Order and DIP Recognition Order, but for the fact that they are unenforceable or not allowable due to the existence of any bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity involving the Obligors.

## **9.3 Obligors Remain Liable.**

Anything herein to the contrary notwithstanding, (a) the applicable Obligor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by any Secured Party of any of its respective rights hereunder shall not release the applicable Obligor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) no Secured Party shall have any obligation or liability under the contracts and agreements included in the Security solely by reason of this Agreement or any other Finance Document, except as set forth in section 9-207 of the UCC or the receipt by the Collateral Agent of any payment relating to any Collateral, nor shall any Secured Party be obligated to perform any of the obligations or duties of the applicable Obligor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

## **9.4 Delivery and Control of Account and Investment Property.**

(a) Upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), the Obligors shall ensure that all certificates or instruments representing



or evidencing Account and Investment Property shall be delivered to and held by or on behalf of the Collateral Agent pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Collateral Agent. The Collateral Agent (acting at the direction of the Majority Lenders) shall have the right at any time after an Event of Default has occurred and is continuing to (i) exchange certificates or instruments representing or evidencing Account and Investment Property for certificates or instruments of smaller or larger denominations and (ii) to exercise the voting rights attributable to the Account and Investment Property. The Obligor hereby make, constitute, and appoint the Collateral Agent and its officers as the proxies and attorneys-in-fact of and for the Obligor, with full power to exercise or to refrain from exercising any and all voting rights attributable to the Account and Investment Property upon the occurrence and during the continuance of any Event of Default. Upon the occurrence and during the continuance of an Event of Default, all rights of the Obligor to receive and retain cash dividends and other distributions upon the Account and Investment Property shall cease and shall thereupon be vested in the Collateral Agent, and the Obligor shall promptly deliver, or shall cause to be promptly delivered, all such cash dividends and other distributions with respect to the Account and Investment Property to the Collateral Agent (together with all necessary endorsements and negotiable documents or instruments so distributed) to be held as additional collateral or applied to the Obligations.

- (b) With respect to any Account and Investment Property that constitutes an uncertificated security, upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), the Obligor will cause the issuer thereof either (i) to register the Collateral Agent as the registered owner of such security or (ii) to agree with the Borrower and the Collateral Agent that such issuer will comply with instructions with respect to such security originated by the Collateral Agent without further consent of the Obligor, such agreement to be in form and substance reasonably satisfactory to the Collateral Agent (acting at the direction of the Majority Lenders).
- (c) With respect to any Account and Investment Property that is located in the United States and constitutes a security entitlement, upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order), the Obligor will cause such financial institution with respect to such security entitlement either to (i) identify in its records the Collateral Agent as the entitlement holder thereof or (ii) agree with the Borrower and the Collateral Agent that such financial institution will comply with entitlement orders originated by the Collateral Agent without further consent of the Borrower, such agreement to be in form and substance reasonably satisfactory to the Collateral Agent (acting at the direction of the Majority Lenders).
- (d) Upon the request of the Collateral Agent (acting at the direction of the Majority Lenders), and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), at any time after the occurrence of and during the continuance of an Event of Default, the Obligor will notify each issuer of Account and Investment Property granted by them hereunder that such Account and Investment Property is subject to the security interest granted hereunder.

#### **9.5 Further Assurances – Security.**

At any time and from time to time, the Obligor shall give, execute, file and/or record any notice, financing statement, continuation statement, public deed, instrument, document or agreement and shall take, or cause

to be taken, such action, in each case as is necessary or as any Senior Lender may consider necessary or reasonably desirable to create, preserve, continue, perfect or validate any security interest granted hereunder or pursuant hereto or to enable the Collateral Agent to exercise or enforce its rights hereunder with respect to such security interest. Without limiting the generality of the foregoing, the Majority Lenders, on behalf of the Collateral Agent, shall be authorized (a) to file or cause the filing under the laws of the State of New York or other applicable law financing statements, continuation statements or other documents in connection with such security interest, and (b) to execute and file or cause the execution and filing of public deeds or other instruments or documents under the laws of Canada necessary to preserve such security interest, in each case without the signature of the Obligor (to the extent permitted by law).

## **9.6 Remedies.**

- (a) Each Obligor recognizes that the Collateral Agent may be unable to effect a public sale of any or all of the Collateral that constitutes securities to be sold by reason of certain prohibitions contained in the laws of any jurisdiction outside the United States or in applicable federal, provincial, territorial or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Obligor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by law, be deemed to have been made in a commercially reasonable manner. Unless required by applicable law, the Collateral Agent shall not be under any obligation to delay a sale of any of such Collateral to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable federal, provincial, territorial or state securities laws, even if such issuer would agree to do so. Each Obligor further agrees to do or cause to be done, to the extent that such Obligor may do so under applicable law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of such Collateral or other property to be sold valid and binding and in compliance with any and all applicable laws at the Obligors' expense. Each Obligor further agrees that a breach of any of the covenants contained in this Section 9.6(a) (*Remedies*) will cause irreparable injury to the Secured Parties for which there is no adequate remedy at law and, as a consequence, agrees that each covenant contained in this Section 9.6(a) (*Remedies*) shall be specifically enforceable against such Obligor, and each Obligor hereby waives and agrees, to the fullest extent permitted by law, not to assert as a defense against an action for specific performance of such covenants that (i) such Obligor's failure to perform such covenants will not cause irreparable injury to the Secured Parties or (ii) the Secured Parties have an adequate remedy at law in respect of such breach. Each Obligor further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by the Secured Parties by reason of a breach of any of the covenants contained in this Section 9.6(a) (*Remedies*) and, consequently, agrees that, if such Obligor shall breach any of such covenants and the Secured Parties shall sue for damages for such breach, such Obligor shall pay to the Collateral Agent, for the benefit of the Secured Parties, as liquidated damages and not as a penalty, an aggregate amount equal to the value of the Collateral or other property to be sold on the date the Collateral Agent shall demand compliance with this Section 9.6(a) (*Remedies*).
- (b) Subject to the terms of the DIP Order and the DIP Recognition Order and the passing of the Remedies Notice Period, if an Event of Default has occurred and is continuing, the Collateral Agent shall have for the benefit of the Secured Parties, in addition to all other rights of the Secured Parties, the rights and remedies of a secured party under the UCC and the PPSA, and without limiting the generality of the foregoing, the Collateral Agent (acting at the direction of the Majority Lenders)

shall be empowered and entitled to: (i) take possession of, foreclose on and/or request a receiver of the Collateral and keep it on any Obligor's premises at any time, at no cost to the Secured Parties, or remove any part of it to such other place or places as the Collateral Agent may determine, or the Obligors shall, upon the Majority Lender's demand, at the Obligors' cost, assemble the Collateral and make it available to the Collateral Agent at a place reasonably convenient to the Collateral Agent; (ii) exercise of set-off rights on cash collateral or deposits; (iii) sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Majority Lenders deem advisable, in their sole discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale; (iv) hold, lease, develop, manage, operate, control and otherwise use the Collateral upon such terms and conditions as may be reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as may be reasonably necessary or desirable), exercise all such rights and powers of each Obligor with respect to the Collateral, whether in the name of such Obligor or otherwise, including without limitation the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents, in each case, in accordance with the standards applicable to the Collateral Agent under the Finance Documents, and (v) take any other reasonable actions, as may be reasonably necessary or desirable, in connection with the Collateral (including preparing for the disposition thereof), and all actual, reasonable, out-of-pocket fees and expenses incurred in connection therewith shall be borne by the Obligors. Promptly following written demand from the Collateral Agent (acting at the direction of the Majority Lenders), the applicable Obligor shall direct the grantor or licensor of, or the contracting party to, any property agreement with respect to any property to recognize and accept the Collateral Agent, for the benefit of and on behalf of the Secured Parties, as the party to such agreement for any and all purposes as fully as it would recognize and accept such Obligor and the performance of such Obligor thereunder and, in such event, without further notice or demand and at such Obligor's sole cost and expense, the Collateral Agent, for the benefit of and on behalf of the Secured Parties, may exercise all rights of such Obligor arising under such agreements. Without in any way requiring notice to be given in the following manner, each Obligor agrees that any notice by the Collateral Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC and the PPSA or otherwise, shall constitute reasonable notice to such Obligor if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least five (5) Business Days prior to such action to the Obligors' address specified in or pursuant to Article 24 (*Notices*). If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent or the Senior Lenders receive payment, and if the buyer defaults in payment, the Collateral Agent may resell the Collateral. In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Obligor irrevocably waives (to the extent permitted by applicable law): (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Collateral Agent retain possession and not dispose of any Collateral until after trial or final judgment. Each Obligor agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Collateral Agent is hereby granted a license or other right to use, without charge, each Obligor's labels, patents, copyrights, name, trade secrets, trade names, trademarks and advertising matter, or any similar property, in completing production of, advertising or selling any Collateral, and each such Obligor's rights under all licenses and all franchise agreements shall inure to the Collateral Agent's benefit for such purpose. The Collateral Agent will return any excess to the applicable Obligor and the Obligors shall remain liable for any deficiency. The proceeds of sale shall be applied as required pursuant to Section 13.4 (*Application of Proceeds*) hereof.

### 9.7 Security Effective Notwithstanding Date of the Loans.

The Security shall be effective and the undertakings in this Agreement and the other Finance Documents with respect thereto shall be continuing, whether the monies hereby or thereby secured or any part thereof shall be advanced before or after or at the same time as the creation of any such Security or before or after or upon the date of execution of this Agreement. The Security shall not be affected by any payments under this Agreement or any of the other Finance Documents but shall constitute continuing security interests to and in favor of the Collateral Agent for the benefit of the Secured Parties for the Obligations from time to time.

### 9.8 No Merger.

The Security shall not merge in any other security interests. No judgment obtained by or on behalf of the Senior Lenders shall in any way affect any of the provisions of this Agreement, the other Finance Documents or the Security. For greater certainty, no judgment obtained by or on behalf of the Senior Lenders shall in any way affect the obligation of the Borrower to pay interest or to pay other amounts at the rates, times and in the manner provided in this Agreement.

### 9.9 Stockpiling.

If the Borrower intends to stockpile, store, warehouse or otherwise place Minerals or other minerals forming part of the Collateral with a value in excess of \$10,000,000 of the Project Real Property, before doing so, the Borrower shall obtain from the property owner, operator or both, as applicable, where such stockpiling, storage, warehousing or other placement occurs, to provide in favor of the Collateral Agent a written acknowledgment in form and substance satisfactory to the Majority Lenders, acting reasonably, which provides that the Borrower's and/or its Affiliates', as applicable, rights to the Minerals or other minerals forming part of the Collateral shall be preserved and which acknowledges the Senior Lenders' Encumbrances thereon and provides the Collateral Agent with a right of access in the event of enforcement by the Collateral Agent of the Security.

## Article 10 GUARANTY

### 10.1 Guaranty; Limitation of Liability.

- (a) Each Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the performance and punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Obligor now or hereafter existing under or in respect of the Finance Documents, whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise (such Obligations being the "**Guaranteed Obligations**"), and agrees to pay any and all reasonable out-of-pocket expenses (including reasonable out-of-pocket fees and expenses of counsel to the extent reimbursable pursuant to Sections 7.4 (*Payment of Costs and Expenses*) and 7.5 (*Indemnities*) but excluding allocated costs of in-house counsel) incurred by the Agents in enforcing any rights under the guarantee provided under this Article 10 (*Guaranty*) (the "**Guaranty**") or any other Finance Document. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Obligor to any Agent or any Senior Lender under or in respect of the Finance Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization, winding-up or similar proceeding involving such other Obligor.

- (b) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to any Agent or any Senior Lender under this Guaranty, such Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Agents and the Senior Lenders under or in respect of the Finance Documents.
- 10.2 Guaranty Absolute.** Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Finance Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Collateral Agent or any Senior Lender with respect thereto. The Obligations of each Guarantor under or in respect of this Guaranty are independent of the Guaranteed Obligations or any other Obligations of any other Obligor under or in respect of the Finance Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against the Borrower or any other Obligor or whether the Borrower or any other Obligor is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:
- (a) any lack of validity or enforceability of any provision under this Agreement, any Finance Document or any agreement or instrument relating thereto;
  - (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any other Obligor under or in respect of the Finance Documents, or any other amendment or waiver of or any consent to departure from any Finance Document, including any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Obligor or otherwise;
  - (c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the Guaranteed Obligations;
  - (d) any manner of application of Collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Guaranteed Obligations or any other Obligations of any Obligor under the Finance Documents or any other assets of any Obligor;
  - (e) any change, restructuring or termination of the corporate structure or existence of any Obligor;
  - (f) any failure of the Agents or any Senior Lender to disclose to any Obligor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Obligor now or hereafter known to the Agents or such Senior Lender, as the case may be (each Guarantor waiving any duty on the part of the Agents and the Senior Lenders to disclose such information);
  - (g) the failure of any other Person to execute or deliver this Guaranty or the release or reduction of liability of any Guarantor or surety with respect to the Guaranteed Obligations; or
  - (h) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation by the Agents or any Senior Lender that might otherwise constitute a defense



available to, or a discharge of, any Obligor or any other guarantor or surety, in its capacity as a guarantor or surety (other than payment or performance).

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Collateral Agent or any Senior Lender or any other Person, for whatever reason, all as though such payment had not been made.

### **10.3 Waivers and Acknowledgments**

- (a) Each Guarantor hereby unconditionally and irrevocably waives (to the extent permitted by applicable law) any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.
- (b) Each Guarantor hereby unconditionally and irrevocably waives (to the extent permitted by applicable law) (i) any defense arising by reason of any claim or defense based upon an election of remedies by any Agent or any Senior Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Obligors, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the Obligations of such Guarantor hereunder.
- (c) Each Guarantor acknowledges that the Collateral Agent may, to the extent permitted by applicable law and the DIP Order and the DIP Recognition Order, without notice to or demand upon such Guarantor and without affecting the liability of such Guarantor under this Guaranty, foreclose under any Finance Document by non-judicial sale, and each Guarantor hereby waives (to the extent permitted by applicable law) any defense to the recovery by the Collateral Agent and the Senior Lenders against such Guarantor of any deficiency after such non-judicial sale and any defense or benefits that may be afforded by applicable law.
- (d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of any Agent or any Senior Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Obligor or any of its Subsidiaries now or hereafter known by such Agent or such Senior Lender, as the case may be.
- (e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Finance Documents and that the waivers set forth in Section 10.2 (*Guaranty Absolute*) and this Section 10.3 (*Waivers and Acknowledgments*) are knowingly made in contemplation of such benefits.

### **10.4 Subrogation**

Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Borrower or any other Obligor that arise from the existence, payment, performance or enforcement of such Guarantor's Obligations under or in respect of this Guaranty or any other Finance Document, including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Collateral Agent or any Senior Lender against the Borrower or any other Obligor, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from the Borrower or any other Obligor, directly or indirectly, in cash or other property or by set-off or in any other manner,

payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) shall have been paid in full in cash and the Commitments shall have expired or been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of (a) the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and (b) the Maturity Date, such amount shall be received and held in trust for the benefit of the Collateral Agent and the Senior Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Finance Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) any Guarantor shall make payment to the Administrative Agent of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) shall have been paid in full in cash and (iii) the Maturity Date shall have occurred, the Collateral Agent and the Senior Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

#### **10.5 Continuing Guaranty; Assignments**

This Guaranty is a continuing guaranty and shall (a) remain in full force and effect until the payment in full in cash of the Guaranteed Obligations (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and the termination or expiration of all Commitments, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Administrative Agent and the Senior Lenders and their respective successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Permitted Transferee that has been assigned or transferred all or any portion of a Senior Lender's Loans, Commitments or rights and obligations under this Agreement in accordance with Section 14.1 (*Assignment by Senior Lenders*), shall thereupon become vested with all the benefits granted to such transferring Senior Lender under this Guaranty. No Guarantor shall have the right to assign its rights hereunder or any interest herein or delegate any of its duties, liabilities or obligations hereunder or under any other Finance Document without the prior written consent of the Majority Lenders, except as otherwise permitted hereby.

#### **10.6 Release**

- (a) An Obligor shall automatically be released from its obligations hereunder and the security interest in the Collateral of such Obligor shall be automatically released as it relates to the Obligations, upon the consummation of any transaction permitted under this Agreement as a result of which such Obligor ceases to be an Obligor.
- (b) The security interest granted hereby in any Collateral shall automatically and without further action be released upon the effectiveness of any written consent to the release of the security interest granted hereby in such Collateral pursuant to this Agreement. Any such release in connection with

any sale, transfer or other disposition of such Collateral shall result in such Collateral being sold, transferred or disposed of, as applicable, free and clear of the Lien and security interest created hereby.

- (c) In connection with any termination or release pursuant to paragraph (a) or (b) above, so long as the Borrower shall have provided the Agents and Senior Lenders such certifications or documents as the Majority Lenders shall reasonably request, the Administrative Agent or the Collateral Agent (in each case, acting at the direction of the Majority Lenders) shall execute and deliver to any Obligor, at such Obligor's expense, all documents that such Obligor shall reasonably request to evidence such termination or release.

## **Article 11 COVENANTS**

### **11.1 Affirmative Covenants.**

The Borrower shall:

- (a) duly and punctually pay the Obligations at the times and places and in the manner required by the terms of the Finance Documents;
- (b) except to the extent excused by the Automatic Stay, applicable provision of the Bankruptcy Code or order of the Bankruptcy Court, maintain its corporate existence; keep proper books of account and records; maintain its good standing status (if applicable) at all times in all jurisdictions where it carries on business; and operate its business and maintain and operate the Project in accordance with Good Industry Practice, Applicable Law, Project Authorizations, Other Rights, Material Project Documents and solely with respect to Applicable Law, comply with Applicable Law in all material respects unless the Borrower has Contested the applicability of any Applicable Law or the Borrower's necessity to comply with it;
- (c) except as otherwise permitted by this Agreement or otherwise stayed by the Automatic Stay, maintain the Project Real Property in good standing, performing or causing to be performed all required assessment work thereon, paying or causing to be paid all concession, permit and license maintenances fees in respect thereof, paying or causing to be paid all rents and other payments in respect of leased properties forming a part thereof, paying all fees in connection with the unpatented mining claims (including fees payable to the United States Bureau of Land Management) and otherwise maintaining the Project Real Property in compliance, in all material respects, with Applicable Law and Good Industry Practice, except where the failure to make such payment (or cause such payment to be made) or to so own or maintain such Project Real Property would not reasonably be expected to materially and adversely affect the ownership, operation or safety of the Project;
- (d) subject to applicable health and safety procedures maintained by the Borrower in accordance with Applicable Law, Good Industry Practice and the Environmental and Social Requirements:
  - (i) the Borrower shall permit a monthly visit by two persons designated by the Senior Lenders at the cost and expense of the Borrower; and
  - (ii) at all times if an Event of Default shall have occurred and be continuing,



permit representatives from among the Administrative Agent, the Collateral Agent and, the Senior Lenders (including their consultants and/or the assignees) to enter into or onto its property to conduct inspections and testing, to inspect any of the Collateral and to examine its financial books, accounts and records and to discuss its financial condition with its senior officers and its auditors at the cost and expense of the Borrower (x) in the case of paragraph (d)(i), at a time agreed with the Borrower and (y) in the case of paragraph (d)(ii), at any time and upon reasonable advance notice in writing; provided, that in all cases (x) visits should be during normal business hours, in a manner that does not unreasonably disrupt the operation of the Project, and (y) the Administrative Agent, the Collateral Agent and the Senior Lenders, shall coordinate their visits to the Project site to the extent reasonably practicable to do so;

- (e) keep insured with Acceptable Insurers all of its Collateral (including the Project Property) in amounts and against losses or damages on a basis consistent with Good Industry Practice and Applicable Law;
- (f) provide the Administrative Agent as soon as reasonably practicable with such evidence of insurance as the Administrative Agent (acting at the direction of the Majority Lenders) may from time to time reasonably require;
- (g) subject to Section 11.1(s) (*Affirmative Covenants*), obtain, as and when required, and preserve, maintain, and comply with, all Material Project Authorizations which are required to permit the Borrower to maintain and care for the Project as contemplated by the Approved Budget and the DIP Order, it being understood that the Borrower will maintain minimal operations for the purpose of preserving its assets and nothing herein shall obligate the Borrower to maintain or operate its Business or assets or perform any obligations under any agreement (other than this Agreement) in a manner that requires funding that is not provided for in the Approved Budget;
- (h) except to the extent such payment is excused by, or is otherwise prohibited by, the provisions of the Bankruptcy Code or order of the Bankruptcy Court, timely file, or cause to be timely filed, all Tax Returns required to be filed by it and pay, or cause to be paid (other than the Tax Encumbrances), all Taxes due and payable by it, whether shown to be due and payable on such Tax Returns or on any assessment received by it or otherwise, except to the extent any such Taxes are being Contested;
- (i) conduct any environmental remedial activities required of it pursuant to any Environmental and Social Requirement, any Governmental Body and Good Industry Practice;
- (j) promptly conduct any action required pursuant to, and comply with any Corrective Action Plan required in accordance with Section 11.9(d) (*Corporate Policies*);
- (k) maintain in effect environmental and social monitoring arrangements, including arrangements to provide reasonable access to any material documents related to the development and operation of the Project that are in the Borrower's custody or control;
- (l) (i) ensure that the only mining activities taking place on the Project Real Property are those under the control and direction of the Borrower and (ii) maintain and operate the Project in material compliance with the requirements of any Environmental License, Order or other Authorization in respect of the Project;
- (m) warrant and defend the right, title and interest of the Borrower in and to any of the Collateral, and every part thereof, against the claims of any Person, subject only to Permitted Encumbrances;

- (n) cause the care and maintenance of the Project (including any work not currently contemplated by the Approved Budget but approved in accordance with this Agreement) to be carried out and completed with diligence and continuity and in all material respects in accordance with Applicable Law, the Environmental and Social Requirements and Good Industry Practice;
- (o) maintain at all times the necessary power supply required for the Project;
- (p) perform all such acts and execute all such documents as are reasonably required by the Senior Lenders to perfect and maintain the Security in the Collateral created pursuant to the Finance Documents;
- (q) maintain all of its and its Subsidiaries' ownership, lease, use, license and other interests in the Project assets as are necessary for it to be able to operate the Project in accordance with Good Industry Practice;
- (r) comply with all applicable Sanctions, Anti-Corruption Laws, and AML Laws, and maintain and enforce policies and procedures designed to promote and achieve compliance with applicable Sanctions, Anti-Corruption Laws and AML Laws;
- (s) use the proceeds of the Loans solely in accordance with Section 2.3 (*Purpose and Use of Proceeds*);
- (t) [reserved];
- (u) refrain from amending, suspending, waiving or repudiating any portion of, an Environmental License or a Material Project Authorization that would result in a Material Adverse Effect, without prior written consent of the Majority Lenders;
- (v) (i) cooperate, consult with, and provide to the Administrative Agent and the Senior Lenders all such information as required or as reasonably requested by the Administrative Agent and the Senior Lenders and (ii) participate in meetings (which shall be telephonic or virtual unless otherwise agreed and for which two (2) days' prior notice will be provided) with the Senior Lenders and their respective management teams and advisors, on not less than a weekly basis, at which the Borrower shall provide to the Senior Lenders access to all information reasonably requested upon prior reasonable notice;
- (w) maintain the Environmental Bonds in full force and effect other than to the extent unable to do so as a result of the Chapter 11 Cases;
- (x) comply with the Approved Budget (subject to the Permitted Variances) and with the provisions of the DIP Order;
- (y) take or cause to be taken all reasonably appropriate action to do or cause to be done all things necessary proper or advisable under applicable law, and to execute and deliver such documents as may be required or reasonably requested by the Senior Lenders to carry out the provisions of this Agreement and the DIP Order;
- (z) [reserved];
- (aa) take or cause to be taken all appropriate action to remain the sole owner of the Collateral, free of Encumbrances other than Permitted Encumbrances;

- (bb) except to the extent excused by the Automatic Stay, applicable provision of the Bankruptcy Code or order of the Bankruptcy Court, take or cause to be taken all appropriate action to comply with all material applicable laws applicable to the Obligors or the Collateral unless failure to comply could not reasonably be expected to result in a Material Adverse Effect;
- (cc) subject to the Approved Budget and the Tax Encumbrances, pay when due all taxes prior to the date on which penalties attach, except where such tax is being contested in good faith and adequate reserves have been established in accordance with GAAP or to the extent payment and/or enforcement thereof is stayed as a result of the Chapter 11 Cases;
- (dd) provide copies of all pleadings, motions applications, judicial information, financial information and other documents intended to be filed by or on behalf of any Obligor with the Bankruptcy Court in the Chapter 11 Cases or the Canadian Court in the Recognition Proceedings to the Administrative Agent and the Senior Lenders (and their advisors) at least two (2) calendar days in advance of such filing or as promptly as reasonably practicable;
- (ee) promptly provide such additional information concerning the Obligors or the Collateral as the Administrative Agent or any Senior Lender may reasonably request;
- (ff) maintain its cash management system in a manner acceptable to the Majority Lenders (which shall be deemed satisfied if the cash management system is substantially the same as the cash management system in existence on the Petition Date, with such modifications as permitted under the Cash Management Order, as entered);
- (gg) deposit all distributions, dividends and other payments (other than payments of intercompany trade payables in the ordinary course of business) made by or on account of non-Debtor subsidiaries of the Obligors in a segregated account established by the Obligors (or in another account after receiving the prior written consent of the Administrative Agent (acting at the direction of the Majority Lenders, in their sole discretion)) at or prior to the time of receipt thereof, and maintain all such funds in such account unless otherwise approved in writing by the Administrative Agent (acting at the direction of the Majority Lenders, in their sole discretion) unless such distributions, dividends and other payments are remitted directly to the Administrative Agent for application to the Loans;
- (hh) within fourteen (14) calendar days of the entry Interim Order by the Bankruptcy Court, obtain the Initial Recognition Order and Interim DIP Recognition Order;
- (ii) within fourteen (14) calendar days of the entry of the Final Order by the Bankruptcy Court, obtain the Final DIP Recognition Order;
- (jj) to the extent practicable under the circumstances, provide each Senior Lender (and their respective advisors) with advance notice (verbal notice or notice by email is sufficient) prior to any transfer of \$100,000 or more on account of a prepetition critical vendor claim in accordance with the prepetition critical vendor order(s) in form and substance acceptable to the Senior Lenders and approved by the Bankruptcy Court;
- (kk) on each Weekly Reporting Date, provide each Senior Lender (and their respective advisors) with a report scheduling the payments made by the Obligors to their critical vendors during the previous calendar week; and

- (II) deliver or cause to be delivered to the Senior Lenders, copies of all monthly reports or projections in respect of each of the Obligors' business or financial condition as well as all pleadings, motions, applications and judicial information filed by or on behalf of the Borrower with the Bankruptcy Court or the Canadian Court or any Creditors' Committee or the Information Officer in the Recognition Proceedings, in each case, at the time such document is filed with the Bankruptcy Court, the Canadian Court or provided by or to the Information Officer, as applicable. The parties hereto agree that filing such papers through PACER shall satisfy the foregoing requirement to deliver such as filed in the Bankruptcy Court.

Notwithstanding anything to the contrary in this Section 11.1 (*Affirmative Covenants*), the Borrower shall not be required to comply with any provision of this Section 11.1 (*Affirmative Covenants*) to the extent it would conflict with or cause a breach of Section 11.12(u) (*Negative Covenants*).

## 11.2 Approved Budget and Variance Reporting .

The Borrower shall:

- (a) *Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a Proposed Budget for the next thirteen weeks, commencing with the calendar week in which such Proposed Budget is delivered (such period, the "**Budgeted Period**"); provided that, (i) in no event shall the Budgeted Period extend past four weeks after the Maturity Date and (ii) if the Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts, disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for all weeks following the Maturity Date shall assume that the Debtors continue to operate in the ordinary course consistent with prior postpetition practices and that no sale of the Debtors' business will occur during such portion of the Budgeted Period. The Proposed Budget shall become the Approved Budget for the Budget Period covered thereby unless the Obligors receive a written objection from the Majority Lenders (with e-mail from professionals acting on behalf of the Majority Lenders to the Obligors' counsel being sufficient) prior to 5:00 p.m. (Pacific Time) on the fifth Business Day following delivery of the Proposed Budget to the Administrative Agent and the Senior Lenders. If the Majority Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or modification to the Approved Budget or Approved Variance Report by 5:00 p.m. (Pacific Time) on the fifth Business Day following delivery of the Proposed Budget to the Administrative Agent and Senior Lenders, then such Proposed Budget, amendment, supplement or modification shall be deemed acceptable to and approved by the Majority Lenders and shall become the Approved Budget. In the event the Majority Lenders timely object to a Proposed Budget, the prior Approved Budget shall remain in full force and effect until any such Proposed Budget is approved by the Majority Lenders (with e-mail from the advisors acting on behalf of the Majority Lenders to the Debtors' counsel being sufficient). Until any Proposed Budget, or any amendment, supplement or modification to the Approved Budget has been approved (or is deemed approved in accordance with this paragraph (a)) by the Majority Lenders, the Debtors shall be subject to and be governed by the terms of the Approved Budget then in effect.
- (b) *Weekly Variance Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second Thursday after the Petition Date (the "**First Reporting Date**", which, for the avoidance of doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday thereafter (together with the First Reporting Date, each a "**Weekly Reporting Date**"), the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a variance report (each, a "**Weekly Variance**

**Report**”) setting forth, in reasonable detail, (i) the actual receipts of the Obligors on a line-by-line and aggregate basis; (ii) the actual disbursements of the Obligors on a line-by-line and aggregate basis; and (iii) the aggregate actual intercompany transfers from Debtor entities to Parent on a Debtor-by-Debtor basis, in each case, during the applicable week ending on the Sunday preceding each such Weekly Reporting Date (each such week, a “**Reporting Week**”) and (iv) a comparison (whether positive or negative, expressed as a percentage) for the Reporting Week between (A) the actual receipts in clause (i) above (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected receipts (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the actual disbursements in clause (ii) above (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected disbursements (and each line item thereof) set forth in the Approved Budget for such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to Parent to the amount of each such Debtor’s aggregate projected intercompany transfers to Parent set forth in the Approved Budget for such Reporting Week.

- (c) *Monthly Variance Reporting.* By no later than 12:00 p.m. (Pacific Time) on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First Reporting Date (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling Four-Week Testing Date shall be July 11, 2024) and each such subsequent four-week period ending on the Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing Period**”), the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a report reasonably detailing (i) the aggregate actual receipts and aggregate actual disbursements of the Obligors and aggregate intercompany transfers from Debtor entities to Parent, in each case, during the applicable Rolling Four-Week Testing Period; and (ii) any variance (whether positive or negative, expressed as a percentage) between (A) the aggregate actual receipts received by the Obligors during such Rolling Four-Week Testing Period against the projected receipts for such Rolling Four-Week Testing Period as set forth in the Approved Budget, (B) the aggregate actual disbursements made by the Obligors during such Rolling Four-Week Testing Period against the aggregate projected disbursements for such Rolling Four-Week Testing Period as set forth in the applicable Approved Budget and (C) the aggregate actual intercompany transfers from Debtor entities to Parent made by such Debtors during such Rolling Four-Week Testing Period against the aggregate projected intercompany transfers from Debtor entities to Parent for such Rolling Four-Week Testing Period as set forth in the applicable Approved Budget (a “**Rolling Four-Week Variance Report**,” together with the Weekly Variance Report, the “**Approved Variance Reports**”), in each case, broken down by each line item.

### 11.3 Notifications to the Senior Lenders.

The Borrower shall:

- (a) Promptly notify the Administrative Agent of any of the following (but in any event no later than (x) solely with respect to clause (a)(i), two (2) Business Days from the Borrower’s discovery thereof and (y) otherwise, five (5) days from the Borrower’s discovery thereof), and only to the extent:
- (i) any Default or Event of Default upon becoming aware of its occurrence;
  - (ii) any Change of Control upon becoming aware of its occurrence;
  - (iii) any material damage to the Project, and whether the Borrower has made, or plans to make, any insurance claims with respect thereto with respect to such damage;



- (iv) any material disputes or disturbances pertaining to the Project involving local communities, including, without limitation and any indigenous peoples;
- (v) other than to the extent subject to the Automatic Stay or otherwise stayed by an applicable provision of the Bankruptcy Code, or order of the Bankruptcy Court:
  - (A) any material default by any party under or termination or threatened termination or termination right arising under any Material Project Document, of which it becomes aware;
  - (B) the loss of or material non-compliance with the terms of, or any threat (whether or not in writing) by a Governmental Body to revoke or suspend or modify, any Material Project Authorization, including, without limitation, any enforcement action brought by the Nevada Division of Environmental Protection, any code enforcement action by the county in which the Project Real Property is located affecting construction or alteration of any work of construction, and any notice of deficiency in the payment of Nevada Net Proceeds of Minerals Tax;
  - (C) all material actions, suits and proceedings (including arbitral and administrative proceedings) for damages in excess of in aggregate \$2,000,000, or which, if adversely determined, would be likely to have a Material Adverse Effect, before any Governmental Body or arbitrator pending, or to the knowledge of the Borrower, threatened, against or directly affecting the Borrower, the Project or any Material Project Documents, including any actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower or in any material respect, in relation to the ownership, development, construction, use, maintenance and operation of the Project;
  - (D) any violation of any Applicable Law by the Borrower or any of its Subsidiaries in any material respect;
- (vi) [Reserved];
- (vii) [Reserved];
- (viii) any material labor disruption involving the workforce at the Project;
- (ix) other than any "Default" or "Event of Default" under and as defined in the Streaming Agreement or a default under the First Lien Facility, the Working Capital Facility or any Offtake Agreements arising solely arising from the entry of the DIP Order, the commencement of the Chapter 11 Case and the application of the Automatic Stay (A) any event, circumstance or fact that could reasonably be expected to give rise to a "Default" or an "Event of Default" under and as defined in, the Streaming Agreement or a default under the Working Capital Facility or any Offtake Agreement, or (B) any event or condition which, upon notice, lapse of time, or both, would constitute a "Default" or an "Event of Default" as defined under the Streaming Agreement or a default under the Working Capital Facility or any Offtake Agreement, or (C) a "Default" or an "Event of Default" as defined in any other agreement in respect of Debt of the Borrower in a principal amount of \$5,000,000 or more without giving effect to any amendments or waivers from the creditor party thereunder;

- (x) any material change in operational planning that requires additional Authorizations (and all relevant information related thereto) pursuant to any Applicable Law or Good Industry Practice; and
- (xi) any rejection or request for additional information from any public registry or Governmental Body in respect of the actions being taken to perfect the security interest in the Collateral pursuant to Article 9 (*Security*),

in each case, accompanied by an Officer's Certificate of the Borrower setting forth details of the occurrence referred to therein.

- (b) Promptly notify the Administrative Agent, including in the notification the intended action to be taken by them, upon:
  - (i) any written threat of any action or public announcement of any intended action or series of actions that would reasonably be construed or expected to result in an Expropriation Event or a Material Adverse Effect;
  - (ii) any notice of cancellation of any of the Borrower's water rights and any diminution of the rights available for lease from the City of Yerington;
  - (iii) any material claim, complaint, notice or order under, or any violations of, any Environmental Laws, Sanctions, Anti-Corruption Laws, labor organizing activity, or AML Laws, affecting any of the Borrower, its Subsidiaries or the Project;
  - (iv) becoming aware of the presence of any Hazardous Substances located on, above or below the surface of any land which the Borrower occupies or controls, except those being stored, used or otherwise handled in compliance with Environmental Laws, in each case which could reasonably be expected to have a material cost or material impact on the Borrower's ability to carry on the Business and to develop or operate the Project;
  - (v) the occurrence of any Release of Hazardous Substances that has occurred on or from such land or otherwise with respect to the Project which could reasonably be expected to have a material cost or material impact on the Borrower's ability to carry on the Business and to develop or operate the Project or which could reasonably be expected to have a Material Adverse Environmental and Social Effect;
  - (vi) any E&S Event;
  - (vii) any proposed change in the use or occupation of the Project Real Property which may have a material cost or material impact on the Borrower's ability to carry on the Business or develop and operate the Project; and
  - (viii) any other notice given or received by the Borrower with respect to the occurrence of any force majeure or delay event (howsoever described) under any Project Document;

provided, that, in the event any action set forth in Section 11.3(b)(i) (*Notifications to the Senior Lenders*) is notified to the Senior Lenders, the Borrower shall promptly consult with the Senior Lenders to determine appropriate steps to mitigate against or otherwise negotiate the resolution of the action or series of actions that may otherwise result in an Expropriation Event.

- (c) Promptly (but in any event no less than thirty (30) days prior to such change) notify the Senior Lenders upon becoming aware of any proposed change or change in name or jurisdiction of incorporation or principal place of business of the Borrower or any of its Subsidiaries.
- (d) The Borrower shall promptly notify the Senior Lenders of (and shall provide a true and complete copy, where applicable):
  - (i) the acquisition by the Borrower or its Subsidiaries of any Project Real Property (including mineral rights) with a value, individually or in the aggregate, of more than \$5,000,000 or which is material to the Project, whether owned or leased;
  - (ii) any new locations of tangible assets of the Borrower or its Subsidiaries (other than inventory in transit);
  - (iii) any new Material Project Document or any amendment or revision to any existing Material Project Document (provided, that any amendment or revision to any existing Material Project Document and any new Material Project Document shall be subject to Section 11.12(j) (*Negative Covenants*));
  - (iv) any amendment or revision to the Working Capital Facility or Streaming Documents (provided, that any amendment or revision the Working Capital Facility shall be subject to Section 11.12(j) (*Negative Covenants*)); and
  - (v) any new Material Project Authorization or any amendment, revision, reissuance or replacement of any existing Material Project Authorization.
- (e) [Reserved].
- (f) On the first Business Day of each calendar quarter, the Borrower shall notify the Administrative Agent of:
  - (i) the acquisition by the Borrower and its Subsidiaries of all real property (including mineral rights) during the immediately prior calendar quarter (or a certification that no such acquisition was made);
  - (ii) evidence, satisfactory to the Administrative Agent (acting at the direction of the Majority Lenders), that a valid and fully perfected Encumbrance granting a security interest over such after-acquired real property has been created in accordance with Section 9.1(b) (*Grant of Security Interest*); and
  - (iii) the proposed amended and restated Schedule J (*Project Real Property*) to reflect the acquisition of such real property which, upon to the approval of the Administrative Agent (acting at the direction of the Majority Lenders), shall be and shall be deemed to constitute Schedule J (*Project Real Property*) hereunder.
- (g) [Reserved].
- (h) The Borrower shall provide details of any other information reasonably requested with reasonable notice by the Majority Lenders in respect of the financial condition, business and/or operations of the Borrower or the Project.



**11.4 Other Reports.**

The Borrower shall promptly deliver or furnish, or cause to be delivered or furnished, to the Senior Lenders a copy of any material reports, certificates and notices relating to the Project which are delivered by or to the Borrower under the Material Project Documents, the First Lien Facility, the Working Capital Facility and the Streaming Agreement to the extent not already delivered to the Senior Lenders under the Finance Documents.

**11.5 Project Reporting.**

The Borrower shall promptly deliver or furnish, or cause to be delivered or furnished, to the Administrative Agent, for prompt delivery to each Senior Lender, a copy or copies of:

- (a) **[Reserved].**
- (b) **[Reserved].**
- (c) **Monthly Operations Reports.** Monthly Operations Reports on or before 5th calendar day after each calendar month (including material variations from the prior month) in a form reasonably satisfactory to the Majority Lenders.
- (d) **Emissions Report.** If disclosure is required under Annex A of the Equator Principles due to the amount of emissions from the Project, the Borrower will publish and maintain on its website at [www.nevadacopper.com](http://www.nevadacopper.com) all times information with respect to greenhouse gas emissions in the substance and form required by Annex A of the Equator Principles. The Senior Lenders will have the right to publish information required under Annex B of the Equator Principles and Borrower hereby consents to the publishing thereof.

**11.6 [Reserved].****11.7 Quarterly Financial Reporting.**

- (a) The Borrower shall provide to the Administrative Agent, for prompt delivery to each Senior Lender, for each bank account of the Borrower copies of the relevant bank statements.
- (b) As soon as available and in any event within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the Borrower shall deliver to the Administrative Agent, for prompt delivery to each Senior Lender, a copy of each Obligors' quarterly unaudited financial statements for such Fiscal Quarter.

**11.8 [Reserved].****11.9 Corporate Policies.**

The Borrower shall:

- (a) **[Reserved];**
- (b) ensure that all operations in respect of the Project comply in all material respects with Environmental Law;

- (c) keep, or cause its Subsidiaries to keep, all relevant documentation in order for the Senior Lenders to verify such compliance;
- (d) If an E&S Event occurs or is identified by the Borrower:
  - (i) the Borrower shall promptly notify the Senior Lenders in accordance with Section 11.3(a) (*Notifications to the Senior Lenders*); and
  - (ii) the Borrower shall, and shall cause its Subsidiaries to, (A) prepare, and provide the Administrative Agent with a copy of, a Corrective Action Plan to set forth the proposed actions to correct or to remedy any damage and adverse consequences that has been or would reasonably be expected to be caused by such E&S Event, including timeframes for the implementation of such actions, (B) conduct all such actions within such timeframes and (C) where relevant, upon the request of the Administrative Agent (acting at the direction of the Majority Lenders, acting reasonably), provide the Administrative Agent with any information relating to measures or monitoring undertaken by or on behalf of its Subsidiary consistent with the Environmental and Social Requirements or under any Corrective Action Plan; and
- (e) If an E&S Event occurs that has had or could potentially have a Material Adverse Environmental and Social Effect, the Borrower and its Subsidiaries shall take such immediate action as is necessary to rectify such E&S Event prior to the development and implementation of any Corrective Action Plan.

#### **11.10 Changes to Accounting Policies.**

If there is any material change in a period to the accounting policies, practices and calculation methods used by the Borrower in preparing its Financial Statements or components thereof as compared to any previous period, the Borrower shall provide the Senior Lenders reasonable advance notice of the proposed material change including with it, all information which the Senior Lenders may reasonably require relating to the impact of any such material change on the comparability of the reports provided to the Senior Lenders after any such material change to previous reports. Until the Administrative Agent has approved such material change in writing, the Borrower shall continue to prepare and provide any reports to the Senior Lenders hereunder in accordance with the accounting policies, practices and calculation methods in effect prior to such material change.

#### **11.11 Know Your Customer Documentation; Beneficial Ownership Certification.**

- (a) The Borrower shall promptly, upon the request of any Senior Lender, supply to such Senior Lender any documentation or evidence that is reasonably required by such Senior Lender (whether for itself or on behalf of any person to whom such Senior Lender may, or may intend to, transfer any of its rights or obligations under this Agreement) to enable such Senior Lender to carry out and be satisfied that it has complied with all necessary “know your customer” requirements that such Senior Lender is obliged to carry out under applicable AML Laws.
- (b) The Borrower shall promptly notify the Administrative Agent and each Senior Lender of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification.
- (c) The Borrower shall promptly notify the relevant Senior Lenders of any changes in any information supplied by it relating to any matter referred to in paragraph (a) above of such as:

- (i) a change in the Borrower's board of directors;
- (ii) a change in the legal or beneficial ownership of 25% or more of the Borrower's issued share capital, as well as information about a Person acquiring a legal or beneficial interest in 25% or more of the Borrower's issued share capital; and
- (iii) a change in the nature of the Borrower's business from the Entry Date, as well as information about the Borrower starting or ceasing business operations in a state of the United States other than Nevada or a country other than the United States.

#### **11.12 Negative Covenants.**

- (a) Neither the Borrower nor its Subsidiaries shall:
  - (i) use, directly or indirectly, any part of the proceeds of the Loans (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value to any Person in a manner that would constitute or give rise to a violation of applicable Anti-Corruption Laws (B) to fund or facilitate any activities or business of, with or involving any Sanctions Target or in any manner that would constitute or give rise to a violation of Sanctions by any Person, including any Senior Lender; or (C) in any manner that would constitute or give rise to a violation of applicable AML Laws;
  - (ii) other than in connection with the Sale Transaction, sell, transfer or otherwise dispose of all or any part of the (A) Borrower or its Subsidiaries', as applicable, present or future assets except on arm's-length terms in the ordinary course of trade or the Project Property including any portion of any mining concessions (or other mineral interest) or the Collateral, except pursuant to a Permitted Asset Disposition or (B) Borrower's present or future assets to its Subsidiaries;
  - (iii) make any payment of royalties in respect of Minerals from the Project Real Property other than the amounts required by the Royalties, or enter into any royalty, stream financing or similar agreement with any other Person in relation to the Project Real Property other than the Royalties, the Streaming Agreement, any Offtake Agreement and the RGGGS Lease and the Royalty Agreements;
  - (iv) create, incur, assume or suffer to exist any Encumbrance upon all or any part of the Collateral, whether now owned or hereafter acquired, other than Permitted Encumbrances;
  - (v) permit to occur any event or condition that could subject Borrower or its Subsidiaries, either directly or by reason of its affiliation with any member of their Controlled Group, to any liability imposed by Title IV of ERISA, or to any lien imposed by Section 430 of the IRC or Section 303 or Title IV of ERISA;
- (b) The Borrower shall not be entitled to incur or make any expenditure, Restricted Payment, Investment, loan or other payment without the prior written consent of the Majority Lenders other than in accordance with the Approved Budget, subject to the Permitted Variances; provided that any distributions made by the Obligors' foreign non-Debtor affiliates to the Obligors shall be placed in a segregated account to be established by the Obligors, and no funds shall be withdrawn from such account without the prior written consent of the Majority Lenders, unless such distributions are remitted directly to the Administrative Agent for application to the Loans;

- (c) Neither the Borrower nor its Subsidiaries, other than as resulting from the commencement of the Chapter 11 Cases or as provided in the DIP Order, shall (i) except for the Finance Documents, the First Lien Facility, Working Capital Facility, the Fourth Lien Facility and the Streaming Agreement, enter into any agreement or arrangement or take any action which restricts or purports to restrict the ability of the Borrower, its Subsidiaries, the Borrower's shareholders or any of their Affiliates to pay dividends, or make any other distributions to, or repay Debt, in each case, owing to the Borrower, its Subsidiaries, the Borrower's shareholders or any of their Affiliates, or (ii) enter into any agreement or arrangement or take any action which restricts or purports to restrict the ability of the Borrower or any of its Affiliates to deliver Minerals or perform its other obligations under the Finance Documents, Working Capital Facility, the First Lien Facility, the Fourth Lien Facility, the Aurubis Offtake Agreements or the Streaming Agreement;
- (d) Neither the Borrower nor its Subsidiaries shall create, incur, assume, or otherwise become directly or indirectly liable upon or in respect of, or suffer to exist, any Debt other than Permitted Debt;
- (e) Neither the Borrower nor its Subsidiaries shall enter into any hedge instrument or incur any hedge obligations;
- (f) Neither the Borrower nor its Subsidiaries shall change its jurisdiction of incorporation or any material respect of the nature of its business or operations from the Business, or engage directly or indirectly in any material business activity, or purchase or otherwise acquire any material property, in either case, not related to or in furtherance of the conduct of the Business, or as reasonably required to perform its obligations under the Finance Documents;
- (g) Neither the Borrower nor its Subsidiaries shall have any material liabilities, contingent or otherwise, that would be required to be reflected in the Borrower's Financial Statements in accordance with IFRS, other than those (i) reflected in the most recently delivered Financial Statements and the Finance Documents or (ii) arising in the ordinary course of business since the date of the most recently delivered Financial Statements.
- (h) Neither the Borrower nor its Subsidiaries shall issue any guarantees or indemnities, other than to the extent permitted in the Finance Documents, including by the endorsement of negotiable instruments for deposit or collection (or similar) in the ordinary course of business, guarantees of obligations of employees, guarantees of obligations of suppliers in the ordinary course of business and guarantees provided in connection with the granting of performance bonds in favor of contractors/Governmental Bodies in the ordinary course of business.
- (i) Neither the Borrower nor its Subsidiaries shall make any Accretive Investment, except, in respect of the Borrower:
  - (i) Short-term Investments in money market instruments with remaining maturities of twelve (12) months or less at the date of purchase including securities issued by government agencies, and term deposits and bank accounts with financial institutions; provided, that such short-term Investments are readily convertible to cash; and
  - (ii) Accretive Investment with a value up to \$5,000,000 in the aggregate.
- (j) The Borrower shall not:
  - (i) enter into any Additional Material Project Documents without the approval of the Majority Lenders; or

- (ii) amend in any material respect or waive any material provision of or suspend, terminate or assign or transfer or give notice of suspension, termination or assignment or transfer of:
  - (A) any Material Project Document or the Working Capital Facility without Majority Lender consent;
  - (B) [Reserved];
  - (C) the Aurubis Offtake Agreement without Majority Lender consent; or
  - (D) any other Offtake Agreement that constitutes a Material Project Document without Majority Lender consent;
- (iii) settle any dispute or claim under a Material Project Document or compromise or settle any liability, in either case that results in payments in excess of \$10,000,000 becoming due from the Borrower;
- (iv) [reserved]; or
- (v) permit its Subsidiaries to enter into any material contract.
- (k) Neither the Borrower nor its Subsidiaries shall make any Capital Expenditures other than Permitted Capital Expenditures;
- (l) The Borrower shall not, subject to Section 11.12(j) (*Negative Covenants*), directly or indirectly, enter into, or amend, any transaction or agreement with or for the benefit of any Affiliate of the Borrower (other than as listed on Schedule T (*Related-Party Transactions*) or to the extent constituting a Permitted Asset Disposition) except in the ordinary course of business and upon terms and conditions at least as favorable to the Borrower as would be obtainable by the Borrower at the time in a comparable arm's-length transaction with a Person that is not an Affiliate of the Borrower;
- (m) The Borrower shall not transfer or assign any Debt owed to it or consent to the assignment of any Debt owed by it to any Obligor;
- (n) [Reserved];
- (o) Neither the Borrower nor its Subsidiaries shall, other than as permitted under the Finance Documents, directly or indirectly purchase, acquire or lease any property from, or sell, transfer or otherwise Dispose of any property to, or otherwise deal or enter into any agreement with, any Related Party, unless such transaction is undertaken on fair and commercially reasonable terms and conditions no less favorable to the Borrower than would have been obtained in a comparable fair market transaction with a person who is not an Affiliate of the Borrower;
- (p) Except as otherwise contemplated by the DIP Order and the Chapter 11 Cases, neither the Borrower nor its Subsidiaries shall enter into any transaction to change or reorganize its capital structure or amend its articles, by laws or any other corporate documents;
- (q) Except in connection with the Sale Transaction or as otherwise contemplated by the DIP Order, neither the Borrower nor its Subsidiaries shall undertake or permit any merger, spin-off, consolidation, reorganization or other fundamental corporate transaction;

- (r) Neither the Borrower nor its Subsidiaries shall establish or acquire any subsidiary, other than the Borrower's Subsidiaries disclosed to the Senior Lenders prior to the Petition Date, without the prior consent of the Senior Lenders (such consent not to be unreasonably withheld or delayed);
- (s) Except as required by order of the Bankruptcy Court, neither the Borrower nor any of its Subsidiaries shall maintain any deposit or security accounts other than the accounts listed on Schedule R (*Bank Accounts*);
- (t) [Reserved];
- (u) Neither the Borrower nor its Subsidiaries shall conduct activities, or incur any costs, in relation to the Project other than activities (and incurred costs) related to (i) health and safety measures for persons and property at or affected by the Project, (ii) security measures for persons and property at the Project, (iii) actions necessary or advisable to protect persons and property in the event of emergency conditions at the Project, (iv) actions and activities necessary or advisable to comply with all applicable laws and permitting requirements and any inspections of the Project, (v) actions and activities necessary or advisable to (x) preserve the value of the Project and its assets and (y) transition the Project to a state appropriate for care and maintenance (including maintaining appropriate ventilation systems, pumping systems, access to the Project and any inventory mined prior to the Petition Date), (vi) maintaining and caring for the Project in accordance with Good Industry Practice and (vii) actions, activities or other measures permitted by the Approved Budget. Other than as may be incidental to their transition to care and maintenance mode, in no circumstances shall the Borrower or its Subsidiaries conduct, or incur costs, in connection with development and mining and processing activities designed to produce additional inventory after the Petition Date; it being understood that the Debtors may process and sell inventory mined prior to the Petition Date or in the transition to care and maintenance of the Project;
- (v) Neither the Borrower nor its Subsidiaries shall create or permit to exist any other superpriority claim which is *pari passu* with or senior to the Obligations, except for claims in respect of the Carve-Out or the Administration Charge;
- (w) Unless authorized by the Administrative Agent in writing, no materials, fixtures, or articles of personal property incorporated into the Project may be installed under any security agreement or other agreement whereby the seller reserves or purports to reserve (i) title or the right of removal or repossession, (ii) the right to consider such items as personal property after their incorporation into the Project, or (iii) a security interest, in each case after such material, fixture or article of personal property is incorporated into the Project;
- (x) The Obligors shall not transfer any cash or cash equivalents that constitute Collateral to a Subsidiary of Parent that is not an Obligor without the prior written approval of the Majority Lenders;
- (y) The Borrower and its Subsidiaries shall not make any payment or prepayment or redemption or acquisition for value or any cancellation or other retirement of any Prepetition Indebtedness or other obligations arising prior to the Petition Date, except the obligations in respect of the Working Capital Facility, solely to the extent paid from proceeds of WCF Collateral and obligations paid pursuant to authority granted under a First Day Order; provided that the Obligors shall be permitted to make adequate protection payments in respect of certain interest, professional fees and expenses incurred by the Prepetition Secured Parties, as set forth in the DIP Order; and



- (z) During any Rolling Four-Week Testing Period, the Obligors shall not allow the (1) total aggregate disbursements, minus (2) disbursements in respect of (i) interest, fees and expenses in relation to this Agreement and any of the Obligors' other funded debt obligations; (ii) Adequate Protection Obligations; (iii) DIP Professional Fees (as defined in the Interim Order); and (iv) professional fees paid by the Obligors on behalf of themselves or any other parties (the "**Total Tested Disbursements**") to exceed 120% of such Total Tested Disbursements set forth in the Approved Budget for such Rolling Four-Week Testing Period. Additional disbursement variances, if any, from an Approved Budget, and any proposed amendments, supplements or modifications to an Approved Budget, shall be subject to the prior written approval of the Majority Lenders (the foregoing, collectively, the "**Permitted Variances**").

### 11.13 Milestones.

The Borrower shall, and shall cause each of its Subsidiaries and any other Obligor to comply with the following milestones (each of which may be extended or waived with the prior written consent of the Majority Lenders in their sole discretion, without further order of the Bankruptcy Court or the Canadian Court):

- (a) No later than one (1) calendar day following the Petition Date, the Debtors shall have filed a motion in the Bankruptcy Court seeking approval of this Agreement and the Loans, in form and substance acceptable to the Majority Lenders.
- (b) No later than five (5) Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim Order.
- (c) No later than fourteen (14) calendar days following the entry of the Interim Order by the Bankruptcy Court, the Canadian Court shall have granted the Initial Recognition Order and Interim DIP Recognition Order.
- (d) No later than fourteen (14) calendar days following entry of the Final DIP Order by the Bankruptcy Court, the Canadian Court shall have entered the Final DIP Recognition Order.
- (e) No later than fourteen (14) calendar days following entry of the Sale Approval Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance satisfactory to the Administrative Agent and Senior Lenders in their sole discretion, recognizing and enforcing the Sale Approval Order in Canada.
- (f) No later than fourteen (14) calendar days following the entry of the Bidding Procedures Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance satisfactory to the Administrative Agent and Senior Lenders in their sole discretion, recognizing and enforcing the Bidding Procedures Order in Canada.
- (g) No later than ten (10) calendar days following the Petition Date, the Debtors shall have filed a motion (the "**Bidding Procedures Motion**") in form and substance acceptable to the Majority Lenders, for entry of an order (the "**Bidding Procedures Order**") (i) approving the procedures to be used and bid protections to be provided in connection with the Sale Transaction (as may be amended from time to time in accordance with their terms, the "**Bidding Procedures**"), (ii) setting the dates for the submission of bids, the auction (if any) and the hearing on the approval of the Sale Transaction and approving all notices related thereto and (iii) authorizing certain procedures related to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale Transaction.

- (h) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered a Bidding Procedures Order approving the Bidding Procedures Motion, which shall be in form and substance acceptable to the Majority Lenders.
- (i) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered the Final Order.
- (j) No later than one hundred eight (108) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order (the “**Sale Approval Order**”) approving a sale (or sales) of all or substantially all of the business of the Debtors (the “**Sale Transaction**”), in form and substance acceptable to the Majority Lenders.
- (k) No later than one hundred twenty (120) calendar days following the Petition Date, the Sale Transaction shall be consummated.

## Article 12

### CONDITIONS PRECEDENT

Notwithstanding the following requirements in Sections 12.1, 12.2 and 12.3 of this Agreement, each Senior Lender’s commitment to lend (subject to the terms and conditions of this Agreement, including, without limitation, Article 12 of this Agreement) shall be effective upon the Senior Lenders’ receipt of the Obligors’ duly executed signatures pages to this Agreement and the Senior Lenders’ deliver of duly executed signature pages to the Obligors.

#### 12.1 Conditions Precedent to the Interim Loan.

No Senior Lender will be obligated to make available the Interim Loan (or any part thereof) or make the first Utilization under the Interim Loan unless each of the following conditions has been fulfilled, in each case in form and substance satisfactory to each Senior Lender (unless waived in accordance with Section 25.4 (*Amendment and Waiver*)).

- (a) **[Reserved].**
- (b) **Corporate Documentation.**

The Administrative Agent and the Senior Lenders shall have received all of the following (in each case in form and substance satisfactory to each Senior Lender):

- (i) Certified copies of the constitutional documents (including, without limitation, any shareholder agreements or declarations, as applicable) of each Obligor, attached in each case to an Officer’s Certificate of each Obligor, as applicable;
- (ii) A copy of the resolutions of the board of directors and shareholders meeting (as applicable) of each Obligor approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party and authorizing a specified person or persons to execute the Finance Documents to which it is a party on its behalf, attached in each case to the Officer’s Certificate of such Obligor;
- (iii) Specimen signatures of each person from each Obligor authorized by the resolutions to sign the Finance Documents to which it is a party, a copy of the duly registered powers of



attorney and any other notices or documents under or in connection with the Finance Documents to which it is a party, attached in each case to the Officer's Certificate of such Obligor;

- (iv) A certificate of each of the Obligors (signed by an authorized representative) confirming that (i) borrowing or guaranteeing or securing, as appropriate, the total commitments would not cause any borrowing, guarantee, security or similar limit binding on such Obligor to be exceeded; (ii) each copy document relating to it specified in this section is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement; and (iii) all representations and warranties contained in Article 8 (*Representations and Warranties*) are true, accurate and complete; and (iv) other than the Chapter 11 Cases, no event has occurred and is continuing or would result from the Finance Documents as at the date of this Agreement which constitutes an Event of Default; and
- (v) A certificate of status, compliance, good standing or like certificate with respect to each Obligor issued by the appropriate government official in the jurisdiction of its incorporation.

**(c) Finance Documents.**

The Administrative Agent and the Senior Lenders shall have received a copy of each Finance Document (other than any Note and any Transfer Certificate).

**(d) Fees.**

All invoiced and documented fees, premiums, expenses (including reasonable fees and expenses of counsel to the Agents and the Senior Lenders) and other out-of-pocket transaction costs incurred in connection with the transactions contemplated hereby and fees and expenses required to be paid under the Agency Fee Letter on the Entry Date to the Agents shall have been paid in full in accordance with the terms of the Interim Order.

**(e) Know Your Customer Information.**

Each of the Obligors shall have provided all information necessary to comply with any AML Laws, know your customer checks and other out-of-pocket identification procedures as may be requested by the Administrative Agent. If the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, each Senior Lender shall have received, or had access to, at least one (1) Business Days prior to the date hereof, a Beneficial Ownership Certification in relation to the Borrower.

**(f) Interim Order.**

The Administrative Agent and the Senior Lenders shall have received a copy of the Interim Order which Interim Order (x) shall have been entered on the docket of the Bankruptcy Court no later than five (5) Business Days after the Petition Date and (y) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Senior Lenders.

(g) **First Day Orders.**

The “first day” orders (including, without limitation, any motions related to the Finance Documents, cash management and any critical vendor or supplier motions), in form, scope and substance satisfactory to the Senior Lenders and their counsel shall have been entered in the Chapter 11 Cases (the “**First Day Orders**”).

(h) **Security.**

(i) All Obligations shall be secured by a perfected lien and security interest on the Collateral of the Obligors, and such Lien and security interests shall have the priorities set forth in the Interim Order, subject only to the Permitted Encumbrances and the Carve-Out and all filings and recordings as reasonably required by the Senior Lenders in respect thereof shall have been made and filing and recording fees and taxes with respect to such Encumbrances and security interests that are due and payable as of the Entry Date shall have been duly paid.

(ii) [Reserved].

(iii) The Senior Lenders shall have received evidence that no liens or encumbrances are recorded or registered against the Obligors (other than Permitted Encumbrances).

(i) [Reserved].

(j) **Approved Budget.**

The Senior Lenders shall have received a copy of the Initial Approved Budget.

(k) **Officer’s Certificate.**

The Administrative Agent and the Senior Lenders shall have received an Officer’s Certificate substantially in the form of Schedule F hereto.

**12.2 Conditions Precedent to the Final Loans.**

No Senior Lender will be obligated to make available the Final Loan (or any part thereof) or make the first Utilization under the Final Loan unless each of the following conditions has been fulfilled, in each case in form and substance satisfactory to each Senior Lender (unless waived in accordance with Section 25.4 (*Amendment and Waiver*)):

(a) [Reserved].

(b) **Officer’s Certificate.**

The Administrative Agent and the Senior Lenders shall have received an Officer’s Certificate substantially in the form of Schedule G hereto.

(c) **Approved Budget.**

The Senior Lenders shall have received a copy of the Approved Budget.

(d) **Security.**

The Encumbrances in favor of the Collateral Agent for the benefit of the Secured Parties have been perfected by the Final Order, and without the necessity of the execution of mortgages, security agreements, pledge agreement, financing statements or other agreements, and shall constitute first priority Encumbrances (subject only to the Carve-Out, the Administration Charge, the Lien securing the Working Capital Facility (solely with respect to WCF Collateral) and Encumbrances senior by operation of law, and otherwise as set forth in the Final Order).

**(e) Fees.**

All fees, premiums, expenses (including reasonable fees and expenses of counsel to the Agents and the Senior Lenders) and other out-of-pocket transaction costs incurred in connection with the transactions contemplated hereby shall have been paid in full in accordance with the terms of the Final Order.

**(f) Final Order.**

The Final Order (x) shall have been entered on the docket of the Bankruptcy Court no later than forty-five (45) days after the Petition Date and (y) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Senior Lenders.

**12.3 Conditions Precedent to All Utilizations.**

No Senior Lender will be obligated to make available any Loan, including the Interim Loans and the Final Loans, (or any part thereof) unless each of the conditions applicable to the proposed Utilization under the Loan and each of the following conditions has been fulfilled, in each case in form and substance satisfactory to the Majority Lenders (or have been waived in accordance with Section 25.4 (*Amendment and Waiver*)):

**(a) No Default.**

An Officer's Certificate of the Borrower confirming that no Default or Event of Default shall have occurred and be continuing or would result from the making of the proposed Loan.

**(b) Representations.**

An Officer's Certificate of the Borrower shall have been delivered to the Administrative Agent and the Senior Lenders confirming that the representations and warranties in the Finance Documents to be made by each Obligor are true, accurate and complete in all material respects.

**(c) No Change of Control.**

No Change of Control shall have occurred.

**(d) Purpose.**

The Administrative Agent and the Senior Lenders shall have received an Officer's Certificate of the Borrower confirming that the proposed loan will be used for the purpose specified in Section 2.3 (*Use of Proceeds*).

**(e) No MAE.**

The Administrative Agent and the Senior Lenders shall have received an Officer's Certificate of the Borrower confirming that since the Petition Date, no Material Adverse Effect has occurred and is continuing.

(f) **Payment of Fees.**

To the extent invoiced and documented at least two (2) days prior to the requested Utilizations, all fees payable in accordance with the Finance Documents, and all costs and expenses due at such time have been paid, or irrevocable instructions, satisfactory to the Senior Lenders, shall be in place to pay such amounts and fees simultaneously with such requested Utilization.

(g) **Utilization Request.**

The Borrower shall have delivered a Utilization Request to the Administrative Agent no later than 12:00 noon New York time (x) one (1) Business Day prior to the proposed Utilization Date for the Interim Loans and (y) two (2) Business Days prior to the proposed Utilization Date for the Final Loans (in each case, or such later date approved by the Majority Lenders at their reasonable discretion).

**Article 13**  
**EVENTS OF DEFAULT AND REMEDIES**

**13.1 Events of Default.**

Subject to the provisions of Section 362 of the Bankruptcy Code to the extent provided in the DIP Order, with respect to the Debtor and without notice, application or motion, hearing before, or order of the Bankruptcy Court or any notice to any Debtor, the occurrence of any of the following events, following the lapse of the applicable cure period (if any) set forth below, or the issuance of notice (if any) in respect thereof, shall constitute an “**Event of Default**”:

- (a) If the Borrower fails to pay on or before the due date, (x) any principal amount due to the Senior Lenders or (y) any other amount payable by it to any Finance Party (unless the failure to pay is remedied within two (2) Business Days);
- (b) [reserved];
- (c) Any Obligor shall default in the due performance or observance of any term, condition or provision of a Finance Document to which they are a party, not otherwise specified in this Section 13.1 (*Events of Default*) and, other than in the case of any breach of Section 11.2 (*DIP Budget and Variance Reporting*), Section 11.12 (*Negative Covenants*), Section 11.13 (*Milestones*) and Section 11.3(a)(i) (*Notifications to the Senior Lenders*) (in each case for which no cure period shall apply), such breach remains unremedied for a period of ten (10) Business Days after the earlier of: (i) written notice by the Administrative Agent to the Borrower (acting at the direction of the Majority Lenders), and (ii) any Obligor becoming aware of such breach;
- (d) the Borrower makes any representation or warranty under any Finance Document to which it is a party, or in any certificate, Financial Statement or other document furnished by it to any Secured Party, which is incorrect or incomplete when made or deemed to be made (except to the extent any such representation or warranty expressly relates to an earlier date, and in such case, shall be true and correct on and as of such earlier date) and, to the extent such representation or warranty is not already qualified by materiality, such representation or warranty is incorrect or incomplete in a material respect when made or deemed to be made and in each case the circumstances so misrepresented are (i) susceptible to cure and (ii) not corrected within ten (10) Business Days after

the earlier of (A) written notice by the Administrative Agent to the Borrower (acting at the direction of the Majority Lenders), and (B) any Obligor becoming aware of such breach;

- (e) [reserved];
- (f) the Borrower (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt (other than Debt subject to the Automatic Stay) having a principal amount in excess of \$1,000,000, and any applicable grace period in relation thereto as provided for under the applicable instrument or agreement evidencing such Debt has expired; (ii) defaults in the observance or performance of any other agreement or condition in relation to any such Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs or condition exists, the effect of which is to cause, or to permit the holder of such Debt to declare such Debt to become due prior to its stated maturity date, in each case to the extent not subject to the Automatic Stay; or (iii) fails to pay any Adequate Protection Obligations when due and payable in accordance with the DIP Order;
- (g) [reserved];
- (h) [reserved];
- (i) an order is made or a resolution is passed for the winding up, liquidation or dissolution of the Borrower;
- (j) [reserved];
- (k) any Finance Document is repudiated, contested or disaffirmed by any Obligor in whole or in part, ceases to be in full force and effect, or is invalidated, becomes unlawful, or rendered unenforceable by any act, regulation or governmental action or is determined to be invalid or unenforceable by a court or other judicial entity or if any Obligor has ceased to perform its obligations under any Finance Document;
- (l) security interests intended to be granted by or pursuant to this Agreement or any other Finance Document over the Collateral, shall not be valid, perfected, first priority security interests (subject, in the case of the Collateral, to the existence of any Permitted Encumbrances) in favor of the Collateral Agent for the benefit of the Secured Parties and enforceable thereby;
- (m) an adverse final judgment, order, writ of execution, garnishment, attachment, arbitral award or similar process that is not capable of further appeal, for an amount in excess of \$1,500,000, is issued or levied against the Borrower, the Collateral, in each case, to the extent not subject to the automatic stay under the Chapter 11 Cases; provided that, to the extent that any such action or process is appealable or contestable, such judgment, order, writ of execution, garnishment, attachment, arbitral award or similar process remains unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of thirty (30) days after the right of appeal or contest arises;
- (n) all or any material portion of the Collateral is attached, sold, transferred, Encumbered or assigned by a Person other than the Secured Parties or without the consent of the Senior Lenders (other than pursuant to a Permitted Asset Disposition or Permitted Encumbrance, as applicable) and in the case of such attachment shall remain unlifted, unstayed or undischarged for a period of thirty (30) days;
- (o) an Encumbrancer, or any other Person, other than the Secured Parties, legally takes possession of (i) any Collateral Account (other than by the collateral agent under the First Lien Facility), or (ii)

- any portion of the Collateral with a value in excess of \$1,500,000 by appointment of a receiver, receiver and manager, or otherwise but excluding the legal possession of any cash collateral held as security by third parties;
- (p) the Borrower abandons all or any material portion of the Collateral other than in regard to its transition into care and maintenance operations;
  - (q) [Reserved];
  - (r) the Borrower fails to obtain, or loses the right to, or benefit of, a Material Project Authorization, or any Material Project Authorization in respect of the transactions contemplated by the Finance Documents is modified in a manner that has a Material Adverse Effect; provided, that the foregoing shall not constitute the occurrence of an Event of Default if such circumstance is capable of being remedied and the Borrower is diligently pursuing and obtains a replacement of such Material Project Authorization within forty-five (45) days after failing to obtain or losing the right to, or benefit of, a Material Project Authorization;
  - (s) a Change of Control occurs;
  - (t) any Material Project Document is terminated (other than at scheduled maturity, with the prior written consent of the Majority Lenders) or otherwise becomes invalid, illegal or otherwise ceases to be in full force and effect; provided, that the foregoing shall not constitute the occurrence of an Event of Default in the case of the NV Energy Power Supply Contract, if the Majority Lenders have, acting reasonably, determined that the NV Energy Power Supply Contract is capable of replacement;
  - (u) (i) the Borrower or any director or officer thereof has violated, any AML Laws, Anti-Corruption Laws or Sanctions, or (ii) any employee or agent of the Borrower has violated any AML Laws, Anti-Corruption Laws or Sanctions, unless such Obligor takes action to remedy such violation as may be reasonably acceptable to the Administrative Agent within ten (10) days of acquiring actual knowledge of such violation and thereafter continues to take such action as may be reasonably acceptable to the Administrative Agent;
  - (v) the occurrence of an Expropriation Event which is continuing for thirty (30) days or more; provided, that such cure period shall apply only if the Obligors are actively and diligently pursuing a resolution to regain ownership and control over the Project substantially as held prior to such event;
  - (w) failure by any Obligor to be in compliance in all material respects with the applicable provisions of any Finance Document, the DIP Order or DIP Recognition Order, after giving effect to applicable cure periods set forth herein or therein;
  - (x) any request made by any Obligor for, or the reversal, modification, amendment, stay, reconsideration or vacatur of any DIP Order, as entered by the Bankruptcy Court, or any DIP Recognition Order, as granted by the Canadian Court, in each case, without the prior written consent of the Majority Lenders;
  - (y) the filing of any application by any Obligor (other than the application for financing provided by a third party which seeks authority to pay all of the Obligations in full in cash upon the closing of such financing) for the approval of (or an order is entered by the Bankruptcy Court approving) any claim arising under section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy



Code or any security, mortgage, collateral interest or other Encumbrance in any of the Chapter 11 Cases which is *pari passu* with or senior to the Encumbrances securing the Obligations, excluding (i) the Carve-Out, (ii) the Administration Charge, (iii) solely with respect to the WCF Collateral, the Encumbrances securing the Working Capital Facility, (iv) prior to the entry of the Final Order, any Prepetition Trisura Lien, (v) Encumbrances arising under the DIP Order or pursuant to any other financing agreement made with the prior written consent of the Majority Lenders or (vi) as provided in the First Day Orders with the prior written consent of the Majority Lenders;

- (z) any Obligor (or any direct or indirect non-Debtor affiliate or Subsidiary of an Obligor) commences (or supports) any action (other than an action permitted by the DIP Order and the DIP Recognition Order) seeking or consenting to, or any order is entered granting, (i) the invalidation, subordination or other challenge to the Prepetition Secured Obligations, the Prepetition Funded Debt Liens, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, the Encumbrances securing the Obligations or the DIP Superpriority Claims (as defined in the DIP Order) or (ii) any relief under sections 506(c) or 552(b) of the Bankruptcy Code with respect to any Prepetition Collateral (as defined in the DIP Order) (including cash collateral), any Collateral or against any of the Prepetition Secured Parties, the Agent or the Senior Lenders;
- (aa) (i) any Obligor files a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify any Finance Document or any DIP Order or DIP Recognition Order, or to disallow any Obligations, in whole or in part, or (ii) any material provision of any Finance Document, the DIP Order, any DIP Recognition Order or any other order of the Bankruptcy Court or Canadian Court approving the Obligors' use of Cash Collateral (as defined in the DIP Order), shall for any reason cease to be valid and binding (without the prior written consent of the Majority Lenders);
- (bb) the entry of an order by the Bankruptcy Court in favor of the Creditors' Committee (if any), any ad hoc committee or any other party in interest, (i) granting such party standing to pursue any claims against the Senior Lenders or the Prepetition Secured Parties, (ii) sustaining an objection to claims of the Senior Lenders or the Prepetition Secured Parties or (iii) avoiding any liens held by the Senior Lenders or the Prepetition Secured Parties, *provided*, that the foregoing shall not be deemed to prohibit the investigation by any such committee of any such claims or liens in respect of the Prepetition Secured Obligations in accordance with the terms of the DIP Order;
- (cc) without the prior written consent of the Majority Lenders, the filing with the Bankruptcy Court of a motion seeking approval of a sale under section 363 of the Bankruptcy Code or a plan of reorganization or liquidation in any of the Chapter 11 Cases that, in either case, does not provide for indefeasible payment in full in cash of all Obligations upon closing of such sale or the effective date of such plan;
- (dd) the appointment in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code);
- (ee) without the prior written consent of the Majority Lenders, the granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the Collateral with an aggregate value of at least \$1,500,000;
- (ff) the conversion of any Chapter 11 Case into a case pursuant to Chapter 7 of the Bankruptcy Code;

- (gg) the termination of any of the Debtors' exclusive right to propose a plan of reorganization under Chapter 11 of the Bankruptcy Code;
- (hh) a dismissal of any of the Chapter 11 Cases or Recognition Proceedings;
- (ii) without the prior written consent of the Majority Lenders, a request by the Debtors to use cash collateral or to obtain financing under section 364 of the Bankruptcy Code (other than pursuant to this Agreement), unless such financing would repay in full in cash all Obligations upon consummation thereof;
- (jj) without the consent of the Majority Lenders, the filing of any motion seeking approval of a sale of any Collateral;
- (kk) a Material Adverse Effect has arisen after the Petition Date and is continuing;
- (ll) the failure to meet any Milestone; or
- (mm) the entry of an Interim Order or Final Order in form or substance that is not acceptable to the Majority Lenders in their sole discretion.

### 13.2 Remedies Upon Default.

- (a) Upon the occurrence, and during the continuance, of any Event of Default, subject to the terms of the DIP Order and the Remedies Notice Period, the Majority Lenders or the Administrative Agent as directed by the Majority Lenders may, by notice given to the Borrower, take any of the following actions:
  - (i) declare all Obligations to be immediately due and payable; and/or
  - (ii) terminate this Agreement and any other Finance Documents as to any future liability or obligation of the Agent and the Senior Lenders, but without affecting any of the Encumbrances securing the Obligations, the Loans or any other Obligation;
  - (iii) terminate, reduce or restrict the ability of the Obligors to use any cash collateral and the proceeds of the Loans (other than during the Remedies Notice Period referenced below, cash collateral for payroll and other expenses critical to keep operating the business of the Obligors, subject to the Approved Budget) (any such declaration made by the Administrative Agent (acting at the direction of the Majority Lenders) to the Obligors, a "**Termination Declaration**" and the date which is the earliest to occur of any such Termination Declaration and the Maturity Date being herein referred to as the "**Termination Declaration Date**"); provided that, (i) the Termination Declaration shall not be effective until notice has been provided by electronic mail to counsel to the Debtors, counsel to the Creditors' Committee (if any), and the U.S. Trustee (the "**Termination Declaration Notice**") and (ii) four (4) Business Days following the receipt of the Termination Declaration Notice by the parties listed in clause (i) of this proviso (the "**Remedies Notice Period**"), the Agent shall have relief from the automatic stay without any further action in the Chapter 11 Cases or the Recognition Proceedings and may set off against deposits and financial assets of the Obligors and foreclose on all or any portion of the Collateral other than the WCF Collateral, and during the Remedies Notice Period, the Obligors and the Creditors' Committee (if any) shall be entitled to seek an emergency hearing before the Bankruptcy Court for the sole purpose of contesting whether an Event



of Default has occurred; and, unless during such period the Bankruptcy Court determines that an Event of Default has not occurred and/or is not continuing or the Bankruptcy Court orders otherwise, the automatic stay, as to all of the Senior Lenders and the Agents, shall automatically be terminated at the end of the Remedies Notice Period and without further notice or order;

- (iv) to the extent permitted by Applicable Law and by the DIP Order:
  - (A) direct the Collateral Agent to realize upon all or any part of the Security;
  - (B) take such actions and commence such proceedings (or direct the Collateral Agent to take such actions or commence such proceedings) as may be permitted at law or in equity (whether or not provided for herein or in the Finance Documents) including, but not limited to, delaying, postponing or waiving any such proceedings, as the Majority Lenders may determine is admissible, in their sole and absolute discretion at such times and in such manner as the Majority Lenders, in their sole discretion, may consider expedient;
  - (C) take possession of the Project; and
  - (D) cancel any or all Unused Commitments,

and all of the foregoing without any additional notice, presentment, demand, protest, notice of protest, dishonor or any other action except as required by law. The rights and remedies of the Administrative Agent, the Senior Lenders and the Collateral Agent hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Applicable Law or by any of the other Finance Documents.

- (b) It is understood and agreed that if the Loans are accelerated or otherwise become due prior to the Maturity Date (including the acceleration of claims by operation of law), the Exit Fee will also automatically be due and payable and shall constitute part of the Obligations with respect to the Loans, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Senior Lender's lost profits as a result thereof. Any such Exit Fee payable shall be presumed to be the liquidated damages sustained by each Senior Lender as the result of the early prepayment and each of the Obligors agrees that it is reasonable under the circumstances currently existing. Each of the Obligors expressly waives (to the fullest extent it may lawfully do so) the provisions of any present or future statute or law that prohibits or may prohibit the collection of the foregoing amounts in connection with any such acceleration, any rescission of such acceleration. Each of the Obligors expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Exit Fee is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Exit Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Senior Lenders and the Obligors giving specific consideration in this transaction for such agreement to pay the Exit Fee; and (D) the Obligors shall be estopped hereafter from claiming differently than as agreed to in this paragraph.
- (c) The Administrative Agent (acting at the direction of the Majority Lenders) shall promptly notify the Borrower, the Collateral Agent and each Senior Lender upon the cessation of an Event of Default.

### 13.3 Set-Off upon Event of Default.

Upon the occurrence and during the continuance of an Event of Default, the Senior Lenders may, without notice to the Borrower or to any other Person, and subject to the terms of the DIP Order, combine, consolidate and merge all or any of the Borrower's accounts with, and liabilities to, the Senior Lenders and set off, any indebtedness and liability of the Senior Lenders to the Borrower, matured or unmatured, against and on account of the Obligations when due.

### 13.4 Application of Proceeds.

The proceeds received by any Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Agents of their remedies, and any other funds realized by any Agent during the continuance of an Event of Default, shall be applied, subject in all respects to the terms of the DIP Order and to Applicable Law, in full or in part, together with any other sums then held by the Agents pursuant to this Agreement, promptly by the Administrative Agent as follows:

- (a) *first*, (x) to the payment of all fees, expenses, losses, indemnities and other amounts payable to the Agents under the Finance Documents and then (y) to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Agents (acting on behalf of the Senior Lenders) and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Agents in connection therewith and all amounts for which the relevant Agent is entitled to indemnification pursuant to the provisions of any Finance Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;
- (b) *second*, to the payment in full in cash of all amounts owing in respect of interest and fees (including, but not limited to, the Exit Fee) under this Agreement;
- (c) *third*, to the payment in full in cash, *pro rata*, of the principal and other remaining obligations hereunder and all other Obligations, in each case equally and ratably in accordance with the respective amounts thereof then due and owing; and
- (d) *fourth*, the balance, if any, to the Person lawfully entitled thereto (including the Obligors) or as a final and non-appealable judgment of a court may direct.

## Article 14 CHANGES TO PARTIES

### 14.1 Assignment by Senior Lenders.

- (a) This Agreement and the other Finance Documents shall enure to the benefit of and be binding upon the parties hereto and thereto, their respective successors and any permitted assignee of some or all of the parties' rights or obligations under this Agreement and the other Finance Documents as permitted under this Section 14.1 (*Assignment by Senior Lenders*).
- (b) A Senior Lender (the "**Existing Lender**") may assign or transfer all or any part of its rights in respect of the Obligations, this Agreement and the other Finance Documents to or in favor of any Permitted Transferee without the consent of the Borrower and have its corresponding obligations hereunder and thereunder assumed by such Person; provided, that:

- (i) except with respect to an assignment or transfer to any Senior Lender or Affiliate of any Senior Lender, no Senior Lender shall be permitted to make a partial assignment or transfer of Loans in a principal amount of less than \$5,000,000;
  - (ii) the Borrower's consent to assignment shall be required (which consent shall not be unreasonably withheld, delayed or conditioned) for any assignment to a Person other than an existing Senior Lender or an Affiliate thereof, unless an Event of Default has occurred and is continuing and in such case a Senior Lender may make an assignment or transfer to any Person and such transfer or assignment shall not require the consent of the Borrower and shall not be subject to any restriction (including those set forth in this Section 14.1 (*Assignment by Senior Lenders*)); and
  - (iii) a Note, if applicable, and all or any part of the Senior Lenders' rights in respect of the Obligations, this Agreement and any of the other Finance Documents shall be assigned or transferred together.
- (c) Any assignment made hereunder shall become effective when the Borrower has been notified thereof by the Administrative Agent and the Administrative Agent receives:
  - (i) a duly completed and executed Transfer Certificate which is delivered by the Existing Lender and the Permitted Transferee; and
  - (ii) any documents required by local counsel and requested by the Majority Lender to ensure the assignee Senior Lender receives the benefit of the Security, andany such assignee shall be treated as a party to this Agreement for all purposes of this Agreement and the other Finance Documents and shall be entitled to the full benefit hereof and thereof and shall be subject to the obligations of the Senior Lenders to the same extent as if it were an initial party in respect of the rights assigned to it and obligations assumed by it and the Senior Lender making such assignment shall be released and discharged accordingly.
- (d) If the consent of the Borrower is required for any assignment, the Administrative Agent shall not be obligated to accept a Transfer Certificate if the Borrower withholds its consent.
- (e) The Senior Lenders may provide to any permitted assignee or transferee such information, including Confidential Information, concerning this Agreement, the other Finance Documents, and the financial position and the operations of the Obligors as, in the reasonable opinion of the Senior Lenders, may be relevant or useful in connection with this Agreement, the other Finance Documents or any portion thereof proposed to be acquired by such assignee or transferee; provided, that each recipient of such information agrees not to disclose such information to any other Person except as permitted pursuant to Section 23.1(d) (*Confidential Information*).
- (f) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a copy of each assignment delivered to it and a register for the recordation of the names and addresses of the Senior Lenders, and the Commitments of, and principal amounts of (and stated interest on) the Loans owing to, each Senior Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Senior Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Senior Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Senior Lender, at any reasonable time and from time to time upon reasonable prior notice.

- (g) [Reserved].
- (h) Any Senior Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Obligors or any of the Obligors' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Senior Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided, that (i) such Senior Lender's obligations under this Agreement shall remain unchanged, (ii) such Senior Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrower, the Administrative Agent and Senior Lenders shall continue to deal solely and directly with such Senior Lender in connection with such Senior Lender's rights and obligations under this Agreement.
- (i) Any agreement or instrument pursuant to which a Senior Lender sells such a participation shall provide that such Senior Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Senior Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver of Section 25.4 (*Amendment and Waiver*) that affects such Participant and that requires the consent of each Senior Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.3 (*Set-Off upon Event of Default*) as though it were a Senior Lender; provided, that such Participant agrees to be subject to Section 15.25 (*Payments*) as though it were a Senior Lender. Each Senior Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Finance Documents (the "**Participant Register**"); provided, that no Senior Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Finance Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the proposed United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Senior Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.
- (j) Any Senior Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Senior Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; provided, that no such pledge or assignment shall release such Senior Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Senior Lender as a party hereto.
- (k) The Borrower agrees that each Participant shall be entitled to the benefits of Sections 6.1 and 7.3 (subject to the requirements and limitations therein, including the requirements under Section 6.1(g) (it being understood that the documentation required under Section 6.1(g) shall be delivered to the participating Senior Lender)) to the same extent as if it were a Senior Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant shall not be entitled to receive any greater payment under Section 6.1 or 7.3, with respect to any

participation, than its participating Senior Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Applicable Law that occurs after the Participant acquired the applicable participation.

- (l) In connection with any assignment, participation or pledge made pursuant to this Section 14.1 (*Assignment by Senior Lenders*), the Borrower agrees to enter into such documents as may reasonably be required by a Senior Lender to evidence such assignment, participation or pledge.

#### **14.2 Assignment by Borrower.**

The Borrower shall not assign all or any part of its rights, benefits or obligations under this Agreement or any of the other Finance Documents to which it is a party without the prior written consent of the Senior Lenders.

### **Article 15 ADMINISTRATIVE PARTIES**

#### **15.1 Appointment of the Administrative Agent and the Collateral Agent.**

- (a) Each Senior Lender hereby irrevocably appoints and authorizes each of the Administrative Agent and the Collateral Agent to act on its behalf as its agent under and in connection with the Finance Documents. By its signature below, each of the Administrative Agent and the Collateral Agent (or any successor thereto pursuant to this Article 15) accepts such appointment.
- (b) Each Senior Lender irrevocably authorizes each of the Administrative Agent and the Collateral Agent in such respective capacity to:
  - (i) take such actions, perform the duties and to exercise the rights, powers and authorities that are specifically delegated to the Administrative Agent or the Collateral Agent, as applicable, under the Finance Documents, together with any other incidental rights, powers and authorities as are reasonably incidental thereto; and
  - (ii) enter into, deliver and perform each Finance Document expressed to be entered into by the Administrative Agent or the Collateral Agent, as applicable.
- (c) The provisions of this Article 15 (*Administrative Parties*) are solely for the benefit of the Finance Parties and the Borrower shall not have rights as a third-party beneficiary of any such provision. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under pursuant to, the Finance Documents, each Agent shall have all of the rights, immunities, indemnities and other protections granted to it under this Agreement (in addition to those that may be granted to it under the terms of such other agreement or agreements).

#### **15.2 Instructions to the Agents.**

- (a) Notwithstanding any provision of this Agreement or the other Finance Documents to the contrary, before taking or omitting any action to be taken or omitted by any Agent under the terms of this Agreement and the other Finance Documents, such Agent may seek the written direction of the Majority Lenders (which written direction may be in the form of an email), and such Agent is entitled to rely (and is fully protected in so relying) upon such direction. No Agent shall be liable with respect to any action taken or omitted to be taken by it in accordance with such direction. If any Agent requests such direction with respect to any action, such Agent is entitled to refrain from



such action unless and until such Agent has received such direction, and such Agent does not incur liability to any Person by reason of so refraining. In the absence of an express statement in the Finance Documents regarding which Senior Lenders shall direct in any circumstance, the direction of the Majority Lenders shall apply and be sufficient for all purposes. The instructions of the Majority Lenders shall be binding on all Senior Lenders.

- (b) Notwithstanding anything else to the contrary herein or in the other Finance Documents, whenever reference is made in this Agreement or any other Finance Document to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by any Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by any Agent, it is understood that such Agent shall be acting at the direction of the Majority Lenders and shall be fully protected in acting pursuant to such directions.

### **15.3 Duties of the Agents.**

- (a) The Agents' duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Administrative Agent shall forward promptly to the Senior Lenders any document which it receives under this Agreement and the other Finance Documents, including notices, certificates, reports, opinions and agreements, which are delivered to the Administrative Agent for the Senior Lenders.
- (c) No Agent shall have any responsibility for the accuracy or completeness of any information supplied by any Person in connection with the Project or the Finance Documents or for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other document referred to herein or therein or provided for herein or therein or for any recitals, statements, representations or warranties made by the Borrower or any other Person contained in this Agreement or any other Finance Document or in any certificate or other document referred to or provided for in or received by such Agent, hereunder or thereunder. No Agent shall be liable as a result of any failure by the Borrower or its Affiliates or any Person party hereto or to any other Finance Document to perform their respective obligations hereunder or under any other Finance Document or any document referred to or provided for herein or therein or as a result of taking or omitting to take any action hereunder or thereunder or in relation to any Finance Document, except to the extent set forth in this Agreement. No Agent shall be liable for the satisfaction of any condition set forth in this Agreement, other than to confirm receipt of items expressly required to be delivered to such Agent.
- (d) No Agent shall be obligated to monitor or enquire whether a Default or Event of Default has occurred. No Agent shall be deemed to have knowledge of or notice of the occurrence of a Default or Event of Default unless such Agent has received a written notice from a Senior Lender or the Borrower, referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "Notice of Default." If any Agent has received such a "Notice of Default," such Agent shall deliver a copy thereof to each Senior Lender. Each Agent shall take such action with respect to such Default or Event of Default as is provided in Article 13 (*Events of Default and Remedies*).
- (e) No Agent shall be bound to inquire as to (A) whether or not any representation made by any other Person in connection with any Finance Document is true, (B) the occurrence or otherwise of any

Default or Event of Default, (C) the performance by any other Person of its obligations under any of the Finance Documents or (D) any breach or default by any other Person of its obligations under any of the Finance Documents.

- (f) Each Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is a party (and no others shall be implied).
- (g) It is understood and agreed by each Senior Lender (for itself and any Person claiming through it) that it has itself been and will continue to be, solely responsible for making its own independent appraisal of and investigations into, the financial condition, creditworthiness, condition, affairs, status and nature of each Person and, accordingly, each such Senior Lender warrants to the Agents that such Senior Lender has not relied on and will not hereafter rely on any Agent:
  - (i) in making its decision to enter into this Agreement, any other Finance Document or any amendment, waiver or other modification hereto or thereto;
  - (ii) to check or inquire on its behalf into the adequacy, accuracy or completeness or any information provided by any Person in connection with any of the Finance Documents or the transactions therein contemplated (whether or not such information has been or is hereafter circulated to such Person by any Agent);
  - (iii) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of any Person.
- (h) No Agent shall be responsible for or have any obligation whatsoever to assure (i) that the Collateral exists or is owned (whether in fee or by leasehold) by the Person purporting to own it, or is cared for, protected, or insured or has been encumbered, (ii) the genuineness or value of any Collateral or the validity or sufficiency of any agreement contained therein or the validity of the title of any Obligor to the Collateral, or (iii) that the liens granted to the Collateral Agent have been properly or sufficiently or lawfully created, perfected, protected, or enforced, or are entitled to any particular priority. Notwithstanding anything contained in the Finance Documents or otherwise to the contrary, no Agent shall have any duty to (i) file or prepare any financing or continuation statements or record any documents or instruments in any public office for purposes of creating, perfecting or maintaining any lien or security interest created under the Finance Documents or otherwise; (ii) take any steps to preserve rights against any Person with respect to any Collateral; (iii) insure, monitor or maintain the Collateral; (iv) pay any taxes, charges, assessments or liens upon the Collateral; or (v) take any action to protect against any diminution in value of the Collateral.

#### **15.4 Rights of the Agents.**

- (a) Notwithstanding any other provision of the Finance Documents, no Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request, instruction or direction of the Majority Lenders (or such other number or percentage of the Senior Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment.
- (b) No Agent shall have any duty to take any discretionary actions or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Finance Documents to which it is a party that such Agent is required to exercise at the direction of the Majority Lenders (or such other number or percentage of Senior Lenders as shall be expressly provided for herein or

in the other Finance Document); provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Finance Document, the DIP Order or Applicable Law. No direction given to any Agent (whether given by the Senior Lenders or the Borrower, as the case may be, or otherwise by any other Person) which imposes, or purports to impose, upon such Agent any obligation not set forth in or arising under any Finance Document shall be binding upon such Agent unless such Agent elects, at its sole option, to accept such direction.

- (c) Notwithstanding anything to the contrary in any Finance Document, no Agent shall be required to exercise any rights or remedies under any Finance Document or give any consent under any Finance Document or enter into any agreement amending, modifying, supplementing or waiving any provision of any Finance Document, including this Agreement.
- (d) No provision of this Agreement or any Finance Document shall require any Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or under any Finance Document or in the exercise of any of its rights or powers.

#### **15.5 No Fiduciary Duties.**

- (a) Nothing in the Finance Documents makes an Agent a trustee or fiduciary of any other Person;
- (b) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing; and
- (c) no Agent shall be bound to account to any Senior Lender for any sum or the profit element of any sum received by it for its own account.

#### **15.6 Business with the Borrower.**

- (a) Each Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower.
- (b) If it is also a Senior Lender, each Agent has the same rights and powers under the Finance Documents, as applicable, as any other Senior Lender and may exercise those rights and powers as though it were not an Agent.
- (c) Each Agent may carry on any business with the Borrower or its related entities (including acting as an agent or a trustee in connection with any other financing).

#### **15.7 Responsibility for Documentation.**

No Agent is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any statement or information (whether oral or written) made, given or supplied by any Person in or in connection with any Finance Document, as applicable;
- (b) the legality, validity, effectiveness, adequacy, completeness or enforceability of any Finance Document or the Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Security; or



- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

No Agent shall, except as expressly set forth herein and in the other Finance Documents to which such Agent is a party, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

### **15.8 Exclusion of Liability.**

- (a) Nothing in this Agreement shall obligate any Agent to carry out:
  - (i) any “know your customer” or other checks in relation to any Person; or
  - (ii) any check on the extent to which any transaction contemplated by the Finance Documents might be unlawful for any Senior Lender,

on behalf of any Senior Lender and each Senior Lender confirms to each Agent that such Senior Lender is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by any Agent.

- (b) Without prejudice to any provision of any Finance Document excluding or limiting an Agent’s liability, any liability of an Agent arising under or in connection with any Finance Document or the Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered but without reference to any special conditions or circumstances known to such Agent at any time which increase the amount of such loss. In no event shall any Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not foreseeable, whether or not such Agent has been advised of the possibility of such loss or damages and regardless of whether the claim for loss or damage is made in negligence, breach of contract, duty or otherwise.
- (c) No Agent shall be responsible for delays or failures to perform any act or fulfill any duty, obligation or responsibility as a result of any occurrence beyond its control. Such acts shall include, but not be limited to, any act of God, riots, wars, fires, earthquakes or other natural disasters, terrorism, provision of any present or future law or regulation or act of any governmental authority, civil unrest, labor dispute, disease, epidemic or pandemic, quarantine, national emergency, utility failure, computer hardware or software failure, malware or ransomware attack, communications system failure, unavailability of the Federal Reserve Bank wire or telex system or other applicable wire or funds transfer system, or unavailability of any securities clearing system.

### **15.9 Senior Lender’s Indemnity.**

- (a) Without limiting the liability of the Borrower under the Finance Documents, each Senior Lender shall indemnify (in proportion to such Senior Lender’s share of total outstanding Loans or, if no Loans are then outstanding, its share of the Total Commitments), each Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by such Agent, except to the extent that the cost, loss or liability is caused by such Agent’s gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Each Senior Lender’s obligations under this Section 15.9 shall survive the termination of this Agreement, payment of the

obligations hereunder, the resignation or removal of any Agent or any assignment of rights by, or the replacement of, a Senior Lender.

- (b) The Borrower shall immediately on demand reimburse any Senior Lender for any payment such Senior Lender makes to an Agent under this Section 15.9 (*Senior Lender's Indemnity*).

#### **15.10 Reliance by Agents.**

The Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agents also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Senior Lender, the Agents may presume that such condition is satisfactory to such Senior Lender unless such Agent shall have received notice to the contrary from such Senior Lender prior to the making of such Loan. The Agents may consult with legal counsel (who may be counsel for the Borrower or any Senior Lender), independent accountants and other experts selected by any such Agent, and shall not be liable for any action taken or not taken by the Agents in accordance with the advice of any such counsel, accountants or experts.

#### **15.11 Delegation of Duties.**

Each Agent may perform any and all of its respective duties and exercise its rights and powers hereunder or under any other Finance Document by or through any one or more sub agents appointed by such Agent. The exculpatory provisions of this Article shall apply to any such sub agent of any Agent. The Agents shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agents acted with gross negligence or willful misconduct in the selection of such sub agents.

#### **15.12 Resignation and Replacement of the Agents.**

- (a) Any Agent may resign by giving thirty (30) days' written notice to the Senior Lenders and the Borrower, in which case the Majority Lenders (with the consent of the Borrower so long as no Event of Default has occurred and is continuing) may appoint a successor Agent.
- (b) The Majority Lenders may remove any Agent from its appointment hereunder with or without cause by giving thirty (30) days' prior written notice to that effect to such Agent and the Borrower.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation or removal was given, the retiring e Agent (with the consent of the Borrower so long as no Event of Default has occurred and is continuing) may (but shall not be obligated to) appoint a successor Agent. If no successor Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the notice of resignation or removal was given (or such earlier day as shall be agreed by the Majority Lenders) (the "Resignation Effective Date"), then whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

- (d) Any successor Agent that has accepted such appointment shall succeed to the position of the applicable Agent and the term “**Administrative Agent**” or “Collateral Agent”, as applicable, shall mean the successor Agent.
- (e) Upon its resignation or removal becoming effective, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Article 15 and Section 7.5 of this Agreement. The provisions of this Agreement shall inure to the retiring Agent’s benefit as to any actions taken or omitted to be taken by it under this Agreement and the other Finance Documents while it was such Agent. Any successor and each of the other Finance Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an initial Finance Party.

**15.13 [Reserved].**

**15.14 [Reserved].**

**15.15 General Provisions Relating to the Collateral Agent.**

- (a) Except for the safe custody of any Collateral in its possession and the accounting for monies actually received by it hereunder, the Collateral Agent shall not have any duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not any Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. The Collateral Agent will be deemed to have exercised reasonable care in the custody of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords similar property of other customers in similar transactions, and the Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Agent in good faith.
- (b) In the event that the Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto which in the Collateral Agent’s sole discretion may cause the Collateral Agent to be considered an “owner or operator” under any Environmental Laws or otherwise cause the Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Collateral Agent reserves the right, instead of taking such action, either to resign as Collateral Agent or to arrange for the transfer of the title or control of the asset to the Senior Lenders or, if the Majority Lenders so direct, to a court appointed receiver. The Collateral Agent shall not be liable to any Person for any environmental liability or any environmental claims or contribution actions under any Federal, state or local law, rule or regulation by reason of the Collateral Agent’s actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.
- (c) In the event of any conflict between any terms and provisions set forth in this Agreement and those set forth in any other Finance Document with respect to the matters addressed in this Agreement, the terms and provisions of this Agreement shall supersede and control the terms and provisions of such other Finance Document. In the event there is any bona fide, good faith disagreement between the other parties to this Agreement or any of the other Finance Documents resulting in adverse claims being made in connection with Collateral held by the Collateral Agent and the terms of this Agreement or any of the other Finance Documents do not unambiguously mandate the action the Collateral Agent is to take or not to take in connection therewith under the circumstances then

existing, or the Collateral Agent is in doubt as to what action it is required to take or not to take hereunder or under the other Finance Documents, the Collateral Agent will be entitled to refrain from taking any action (and will incur no liability for doing so) until directed otherwise in writing by order of a court of competent jurisdiction.

#### **15.16 Agents Appointed Attorneys-in-Fact.**

Each Obligor hereby irrevocably appoints each of the Agents as such Obligor's attorney in fact, with full authority in the place and stead of such Obligor and in the name of such Obligor or otherwise, from time to time after the occurrence and during the continuance of an Event of Default, in each Agent's determination (in each case acting at the direction of the Majority Lenders), to take any action and to execute any instrument that the Majority Lenders may deem necessary under Applicable Law to accomplish the purposes of this Agreement, including, without limitation:

- (a) to obtain and adjust insurance required to be paid to the Agents pursuant to the terms of the Finance Documents;
- (b) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for monies due and to become due under or in respect of any of the Collateral;
- (c) to receive, indorse and collect any drafts or other instruments, documents and chattel paper;
- (d) to file any claims or take any action or institute any proceedings that the Majority Lenders may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any Assigned Agreement or the rights of the Agents with respect to any of the Collateral;
- (e) to sell, transfer, assign or otherwise deal in or with the Collateral or any part thereof pursuant to the terms and conditions hereunder and under the other Finance Documents;
- (f) to defend, settle, compromise or adjust any suit, action or proceeding relating to the Collateral and, in connection therewith, to give such discharges or releases as the Majority Lenders may reasonably deem appropriate;
- (g) to pay or discharge adverse claims levied or placed on or threatened against the Collateral;
- (h) to direct any parties liable for any payment under the Collateral to make payment of any and all monies due and to become due thereunder directly to the Agents or as the Agents shall direct;
- (i) to sign and indorse any drafts, assignments, proxies, verifications, notices and other documents relating to the Collateral;
- (j) to execute and deliver all assignments, conveyances, statements, affidavits, notices and other agreements, instruments and documents that the Majority Lenders may determine necessary in order to perfect and maintain the security interests and liens granted in this Agreement and in order to fully consummate all of the transactions contemplated herein; and
- (k) to sign any instrument sanctioning the transfer of any or all of the Collateral into the name of any transferee to whom the Agents or any part thereof may be sold pursuant to this Agreement.

#### **15.17 [Reserved].**

**15.18 [Reserved].**

**15.19 [Reserved].**

**15.20 [Reserved].**

**15.21 Agent's Confidentiality.**

- (a) In acting as an agent for the Senior Lenders, each Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions and departments.
- (b) If information is received by another division or department of any Agent, it may be treated as confidential to such division or department and such Agent shall not be deemed to have notice of it.

**15.22 [Reserved].**

**15.23 Credit Appraisal by the Senior Lenders.**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Senior Lender confirms to each Agent that it has been, and shall continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document, including but not limited to:

- (a) the financial condition, creditworthiness, status and nature of the Borrower;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security;
- (c) whether such Senior Lender has recourse, and the nature and extent of such recourse, against any Finance Party or any of its respective assets under or in connection with any Finance Document, the Security, the transactions contemplated by the Finance Documents, or any other agreement, arrangement or document entered into made or executed in anticipation of, under or in connection with any Finance Document or the Security;
- (d) the adequacy, accuracy and/or completeness of any reports and any other information provided by any Agent, by any Finance Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of, the Security, the priority of any of the Security or the existence of any security interest affecting the Collateral.

**15.24 Deduction from Amounts Payable by Agents.**

If any Senior Lender owes an amount to any Agent under the Finance Documents, such Agent may, after giving notice to such Senior Lender, deduct an amount not exceeding such amount from any payment to such Senior Lender which such Agent would otherwise be obligated to make under the Finance Documents,

and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents, such Senior Lender shall be regarded as having received the amount so deducted.

#### **15.25 Notice Period.**

Where a Finance Document specifies a minimum period of notice to be given to any Agent, such Agent may, at its discretion, accept a shorter notice period.

#### **15.26 [Reserved].**

#### **15.27 Payments.**

- (a) While no Event of Default is continuing, the Borrower shall make all payments in accordance with Article 19 (*Payment Mechanics*).
- (b) Following an Event of Default that is continuing, provided the Administrative Agent has declared all Obligations immediately due and payable, all payments shall be made to the Administrative Agent for distribution to the Senior Lenders in accordance with Section 13.4 of this Agreement, such that the benefit of all such payments shall be shared by the Senior Lenders ratably in accordance with the Applicable Percentage owing to them; provided, that the provisions of this Section 15.27 (*Payments*) shall not be construed to apply to:
  - (i) any payment made in respect of an obligation that is secured by a Permitted Encumbrance or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Finance Documents;
  - (ii) any payment to which such Senior Lender is entitled as a result of any form of credit protection obtained by such Senior Lender; or
  - (iii) any payment to which such Senior Lender is entitled in its capacity as a party to any Finance Document separate than in its capacity as a Senior Lender.

#### **15.28 Agents as Senior Lender.**

With respect to its Commitment and the Loans made by it, any Person serving as an Agent hereunder shall have the same rights and powers under the Finance Documents as any other Senior Lender and may exercise the same as though it were not such Agent. The term "Senior Lender", "Finance Party" or "Secured Party", when used with respect to each Agent, shall unless otherwise expressly indicated, include such Agent in its individual capacity (if applicable). Each Agent and its Affiliates may accept deposits from, lend money to, act as trustee under, act as financial advisor or in any other advisory capacity for and generally engage in any kind of business with, any Person as if such Agent were not the applicable Agent hereunder, without any duty to account therefor to any other Person.

#### **15.29 Erroneous Payments.**

- (a) If an Agent notifies a Senior Lender or any Person who has received funds on behalf of a Senior Lender (any such Senior Lender (and each of their respective successors and assigns) a "**Payment Recipient**") that the such Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from such Agent) received by such Payment Recipient from such Agent of any of its Affiliates were erroneously or mistakenly transmitted, to, or otherwise erroneously or mistakenly received



by, such Payment Recipient (whether or not known to such Senior Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**” and (y) demands in writing the return of such Erroneous Payment (or a portion thereof) (provided that, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within fifteen (15) calendar days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of such Agent pending its return or repayment as contemplated below in this Section 15.29 (*Erroneous Payments*) and held in trust for the benefit of such Agent, and such Senior Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as such Agent may, in its sole discretion, specify in writing), return to such Agent the amount of any such Erroneous Payment (or portion thereof) as to which such demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the such Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to such Agent in same day funds at the rate determined by such Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of such Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

- (b) Without limiting immediately preceding clause (a), each Senior Lender or any Person who has received funds on behalf of a Senior Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the such Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by such Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment sent by such Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by such Agent (or any of its Affiliates), or (z) that such Senior Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case.
  - (i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from such Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and
  - (ii) such Senior Lender shall cause promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify such Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that is so notifying such Agent pursuant to this Section 15.29(b) (*Erroneous Payments*).

For the avoidance of doubt, the failure to deliver a notice to such Agent pursuant to this Section 15.29(b) (*Erroneous Payments*) shall not have any effect on a Payment Recipient’s obligations pursuant to Section 15.29(a) (*Erroneous Payments*) or on whether or not an Erroneous Payment has been made.

- (c) Each Senior Lender hereby authorizes such Agent to set off, net and apply any and all amounts at any time owing to such Senior Lender under any Finance Document, or otherwise payable or distributable by such Agent to such Senior Lender under any Finance Document with respect to any payment of principal, interest, fees or other amounts, against any amount that such Agent has demanded to be returned under immediately preceding clause (a).
- (d) The parties hereto agree that (x) irrespective of whether such Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not received from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason such Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Senior Lender, to the rights and interests of such Senior Lender, as the case may be) under the Finance Documents with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower; provided that this Section 15.29 (*Erroneous Payments*) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by such Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by such Agent from, or on behalf of (including through the exercise of remedies under any Finance Document), the Borrower for the purpose of a payment on the Obligations.
- (e) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by such Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

Each party’s obligations, agreements and waivers under this Section 15.29 (*Erroneous Payments*) shall survive the resignation or replacement of any Agent, any transfer of rights or obligations by, or the replacement of a Senior Lender, the termination of the applicable Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Finance Document.

## Article 16 [RESERVED]

## Article 17 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

### 17.1 Conduct of Business by the Finance Parties.

No provision of any Finance Document will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it deems appropriate;
- (b) obligate any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or



- (c) obligate any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## **Article 18**

### **SHARING AMONG THE FINANCE PARTIES**

#### **18.1 Payments to Senior Lenders.**

If a Senior Lender (a “**Recovering Finance Party**”) receives or recovers any amount from the Borrower other than in accordance with Article 19 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under a Finance Document then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Administrative Agent;
- (b) the Administrative Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Administrative Agent and distributed in accordance with Article 19 (*Payment Mechanics*) without taking account of any Tax which would be imposed on the Administrative Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Administrative Agent, pay to the Administrative Agent an amount (the “**Sharing Payment**”) equal to that receipt or recovery less any amount which the Administrative Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made under this Agreement.

#### **18.2 Redistribution of Payments.**

The Administrative Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it to the Senior Lenders (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with this Agreement towards the obligations of the Borrower to the Sharing Finance Parties.

#### **18.3 Recovering Finance Party’s Rights.**

On a distribution by the Administrative Agent under Section 18.2 (*Redistribution of Payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

#### **18.4 Reversal of Redistribution.**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, on request of the Administrative Agent, pay to the Administrative Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (the “**Redistributed Amount**”); and

- (b) as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

**18.5 Exceptions.**

- (a) This Article 18 will not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Article 18, have a valid and enforceable claim against the Borrower.
- (b) A Recovering Finance Party is not obligated to share with any other Senior Lender any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that Senior Lender of the legal or arbitration proceedings; and
  - (ii) that Senior Lender had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

**Article 19**  
**PAYMENT MECHANICS**

**19.1 Payments to the Agents.**

- (a) On each date on which the Borrower or a Senior Lender is required to make a payment under a Finance Document, the Borrower or such Senior Lender shall make the same available to the Administrative Agent in Dollars.
- (b) Payment shall be made to such account as the Administrative Agent specifies.

**19.2 Distributions by the Agents.**

Each payment received by an Agent under the Finance Documents for the Borrower or a Senior Lender shall, subject to Section 19.3 (*Distributions to the Borrower*) and Section 19.4 (*Clawback*), be made available by that Agent as soon as practicable after receipt to the Person entitled to receive payment in accordance with the Finance Documents, and:

- (a) in the case of payment for the Borrower, to an account of the Borrower designated by the Borrower; and
- (b) in the case of payment for a Senior Lender, for the account of its lending office as designated by such Senior Lender.

**19.3 Distributions to the Borrower.**

Each Agent may (with the consent of the Borrower or in accordance with Section 20.1 (*Set-Off*)) apply any amount received by it for the Borrower in or towards payment (as soon as practicable after receipt) of any amount due from the Borrower under the Finance Documents.

**19.4 Clawback.**

- (a) Where a sum is to be paid to an Agent under the Finance Documents for another party, such Agent is not obligated to pay that sum to that other party until such Agent has been able to establish to its satisfaction that it has actually received that sum.
- (b) If an Agent pays an amount to another party and it proves to be the case that such Agent has not actually received such amount, then the party to whom such amount was paid by such Agent shall on demand refund such amount to such Agent.

**19.5 [Reserved].****19.6 [Reserved].****19.7 No Set-Off by the Borrower.**

- (a) All payments to be made by the Borrower under the Finance Documents will be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (b) Paragraph (a) above does not apply to any payment netting provision contained in a Hedge Agreement entered into in accordance with this Agreement.

**19.8 Business Days.**

- (a) Any payment which is due to be made on a day that is not a Business Day will be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum approved by the Finance Parties under a Finance Document, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

**19.9 Currency of Account.**

- (a) Subject to paragraph (b) below, Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

**19.10 Change of Currency.**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country will be translated into, or paid in, the currency or currency unit of that country designated by the Administrative Agent (after consultation with the Borrower); and

- (ii) any translation from one currency or currency unit to another will be at the official rate of exchange recognized by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Administrative Agent (acting reasonably).
- (b) If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognized at the same time as the lawful currency of a country), the Finance Documents will, to the extent the Administrative Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant interbank market and otherwise reflect the change in currency.

## **Article 20**

### **SET-OFF**

#### **20.1 Set-Off.**

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **Article 21**

### **BAIL-IN PROVISIONS**

#### **21.1 Contractual Recognition of Bail-In.**

Notwithstanding anything to the contrary in any Finance Document or in any other agreement, arrangement or understanding among any such Finance Parties, each Finance Party hereto acknowledges and accepts that any liability of any Finance Party to any other Finance Party under or in connection with the Finance Documents, to the extent such liability is unsecured, may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) The application of any Bail-In Action to any such liabilities arising hereunder which may be payable to it by any Finance Party hereto; and
- (b) The effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction, in full or in part, or cancellation in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability; and
  - (ii) a conversion of all, or a portion of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
- (c) The variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

**Article 22**  
**CALCULATIONS AND CERTIFICATES**

**22.1 Day Count Conventions.**

Except as otherwise expressly provided in a Finance Document, any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred sixty (360) days or, in any case where the practice in the relevant interbank market differs, in accordance with that market practice.

**22.2 Financial Calculations.**

All financial calculations to be made under, or for the purposes of, this Agreement and any other Finance Document shall be made in accordance with IFRS and, except as otherwise required to conform to any provision of this Agreement, shall be calculated from the then-most-recently issued quarterly financial statements which the Borrower is obligated to furnish to the Finance Parties under Section 11.7 (*Quarterly Financial Reporting*).

**Article 23**  
**CONFIDENTIAL INFORMATION**

**23.1 Confidential Information.**

The Borrower and the Finance Parties each agree that it shall maintain as confidential and, without the prior written consent of the relevant party(ies), shall not disclose the terms of this Agreement and any non-public information concerning the other party or its business and operations (the “**Confidential Information**”); provided, that a party may disclose such information:

- (a) where such information becomes publicly available or widely known by the public other than by a breach of this Agreement, or is known by the receiving party prior to the entry of this Agreement or obtained independently of this Agreement, and the disclosure of such information would not breach any other confidentiality obligations;
- (b) if required by Applicable Law, or the Bankruptcy Court as part of the Chapter 11 Cases or requested by any Governmental Body having jurisdiction over such party;
- (c) to its Affiliates and those of its and its Affiliates’ directors, officers, employees, advisors, insurers, insurance brokers and representatives who need to have knowledge of such information;
- (d) to any Person to whom such party, in good faith, anticipates assigning an interest in this Agreement as contemplated by Section 14.1 (*Assignment by Senior Lenders*) and such Person’s Affiliates and the representatives, consultants and advisors of such Person or its Affiliates who have a legitimate need to know such information; and
- (e) in connection with the exercise of any duties or remedies hereunder or any suit, action or proceeding relating to this Agreement.

In the case of disclosure pursuant to paragraph (c), (d) or (e) above, the disclosing party shall be responsible to ensure that the recipient of such Confidential Information does not disclose such information to the same extent as if it were bound by the same non-disclosure obligations of the disclosing party under this

Agreement, and shall be liable to the disclosing party for any improper use or disclosure of such information by such recipient.

### **23.2 Entire Agreement Regarding Confidentiality.**

- (a) This Article 23 (*Confidential Information*) constitutes the entire agreement between the Borrower and the Finance Parties in relation to the obligations under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) No Finance Party will be liable for any loss, cost, liability or other claim in connection with the Confidential Information beyond reasonably foreseeable losses and will not be liable for lost profits or consequential or punitive damages.

### **23.3 Inside Information.**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

### **23.4 [Reserved].**

### **23.5 Continuing Obligations.**

The obligations in this Section 23.5 (*Continuing Obligations*) are continuing and, in particular, will survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

### **23.6 Equator Principles.**

Each of the Finance Parties and the Borrower consent to the reporting of the Project name pursuant to Annex B of the Equator Principles on any publicly available Internet website maintained by any Finance Party. The Borrower shall publish and maintain a non-technical summary of the Underground Project on its website at <https://nevadacopper.com> in the substance and form required by Principle 10 of the Equator Principles.

## **Article 24 NOTICES**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the day of sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below. Notices of change of address shall

also be governed by this Article 24 (*Notices*). Notices and other communications shall be addressed as follows:

- (a) if to the Borrower:

Nevada Copper, Inc.  
61 E. Pursel Lane  
P.O. Box 1640  
Yerington, Nevada, USA  
89447  
Attention: Greg Martin  
Email: gmartin@nevadacopper.com

Copy to:  
Attention: Matthew Anderson  
Email: manderson@nevadacopper.com

or at such other address, facsimile number or email address as the Borrower from time to time directs in writing to the other parties hereto.

- (b) if to the Administrative Agent:

U.S. Bank Trust Company, National Association, as Administrative Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com  
Telephone number: 302-545-9778

or at such other address, facsimile number or email address as the Administrative Agent from time to time directs in writing to the other parties hereto.

- (c) if to the Collateral Agent:

U.S. Bank Trust Company, National Association, as Collateral Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com  
Telephone number: 302-545-9778

or at such other address, facsimile number or email address as the Collateral Agent from time to time directs in writing to the other parties hereto.

- (d) if to the Senior Lenders, at the addresses noted on Schedule A (*Commitments*) or at such other address, facsimile number or email address as a Senior Lender from time to time directs in writing to the other parties hereto or as set forth in connection with any Transfer Certificate; and
- (e) in accordance with Section 25.5 (*English Language*), any notices and communications given in respect of this Agreement shall be given in the English language, or if given in any other language,



that notice or communication shall be accompanied by an English translation of it, which shall be certified as being a true and correct translation of the notice or communication.

#### **24.2 Notification of Address and Fax Number.**

Each party shall promptly notify the other parties of a change of address pursuant to this Article 24 (*Notices*).

#### **24.3 Electronic Communication.**

- (a) Any communication to be made between any of the parties under or in connection with the Finance Documents, may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the relevant parties:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their electronic mail address or any other such information supplied by them by not less than five (5) Business Days' notice.

Each Senior Lender hereby agrees that any communication to be made to the Senior Lenders under or in connection with the Finance Documents may be made by electronic mail or other electronic means.

- (b) Any such electronic communication as specified in paragraph (a) above made between any two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by party to any Agent only if it is addressed in such a manner as such Agent may specify for this purpose.
- (c) Any electronic communication which would otherwise become effective on a non-working day or after business hours in the place of receipt will be deemed only to become effective on the next working day in that place.
- (d) Any reference in a Finance Document to a communication being sent or received will be construed to include that communication being made available in accordance with this Section 24.3 (*Electronic Communication*).

#### **24.4 Communications to the Agents.**

If pursuant to this Article 24 (*Notices*) any Agent is to act on instructions or directions delivered by fax, electronic mail, other electronic means or any other unsecured method of communication, such Agent shall have:

- (a) no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of any Person, and
- (b) no liability for any losses, liabilities, costs or expenses incurred or sustained by any Person as a result of such reliance upon or compliance with such instructions or directions.



## **Article 25 GENERAL**

### **25.1 Partial Invalidity.**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Finance Documents; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other provision of the Finance Documents.

### **25.2 Reliance and Non-Merger.**

All covenants, agreements, representations and warranties of the Borrower made herein or in any other Finance Document or in any certificate or other document signed by any of its directors or officers and delivered by or on behalf of the Borrower pursuant hereto or thereto are material, shall be deemed to have been relied upon by the Administrative Agent and each Senior Lender notwithstanding any investigation heretofore or hereafter made by the Administrative Agent, the Senior Lenders or Senior Lenders' counsel or any employee or other representative of any of them and shall survive the execution and delivery of this Agreement and the other Finance Documents until all Obligations owed to the Administrative Agent or the Senior Lenders under this Agreement and the other Finance Documents shall have been satisfied and performed and the Senior Lenders shall have no further obligation to make the Loan hereunder.

### **25.3 Remedies and Waivers.**

- (a) No investigation by or on behalf of any Finance Party, into the affairs of the Borrower will prejudice any rights or remedies held by or on behalf of a Finance Party under the Finance Documents.
- (b) No failure to exercise, nor any delay in exercising, on the part of or on behalf of any Finance Party, any right or remedy under a Finance Document will operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of or on behalf of any Finance Party will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

### **25.4 Amendment and Waiver.**

- (a) Required Consents.
  - (i) Except as otherwise expressly provided in this Agreement and subject to paragraph (a)(ii) and paragraph (b) below, any term of the Finance Documents may be amended, modified, waived or supplemented only with the consent of the Majority Lenders, the Borrower, to the extent they are a party, the Obligors and the Administrative Agent (acting at the direction of the Majority Lenders), and any such amendment, waiver, modification or supplement shall be binding on all parties.

- (ii) Except as otherwise expressly provided in the relevant agreement or document, no waiver, consent, annulment, modification or supplement of any term or condition of any Finance Document may be given or granted by the Borrower or the Senior Lenders except in accordance with the DIP Order.
- (b) Notwithstanding paragraph (a) above, an amendment, modification, supplement or waiver which relates to the rights, duties, protections or obligations of the Agents (each in their capacity as such) may not be effected without the consent of the Agents (as the case may be).
- (c) Notwithstanding paragraph (a) above, each Senior Lender shall be required to consent to any amendment, modification, supplement or waiver of:
  - (i) the definitions of “Majority Lenders” or any other provision in the Finance Documents specifying the number or percentage of Senior Lenders required to waive, amend or modify any rights thereunder or make any determination or grant thereunder;
  - (ii) the definition of “Permitted Transferee”;
  - (iii) Sections 12.1 (*Conditions Precedent to the Interim Loan*) and 12.2 (*Conditions Precedent to the Final Loans*);
  - (iv) a reduction in the Applicable Margin, or a reduction in the amount of any payment of principal, interest, fees or other amounts payable to a Senior Lender under the Finance Documents;
  - (v) an increase in, or an extension of, a Commitment or the Total Commitments;
  - (vi) a release of the Borrower, any other Obligor or any other party (other than a Secured Party) from a Finance Document (other than pursuant to the terms of such Finance Document), or the release of all or a material part of the Collateral from the Encumbrance of the Finance Documents;
  - (vii) a change to the order of application of any reduction in the Commitments or any prepayment of Loans from the application thereof set forth in the applicable provisions of Section 4.2 (*Mandatory Prepayments*), Section 4.5 (*Voluntary Cancellation*), and Section 4.6 (*Voluntary Prepayment*);
  - (viii) a term or provision of a Finance Document that expressly requires the consent, approval or instructions of each Senior Lender;
  - (ix) the right of a Senior Lender to assign or transfer its rights or obligations under the Finance Documents in accordance with Section 14.1 (*Assignment by Senior Lenders*);
    - (A) this Section 25.4 (*Amendment and Waiver*);
    - (B) Section 25.9 (*Remedies Cumulative*);
  - (x) the DIP Order; or

- (xi) change the order of priority of payments set forth in Section 13.4 (Application of Proceeds) or any provision in the Finance Documents relating to the pro rata nature of the Utilizations or any amount.

provided, however, that notwithstanding anything in this paragraph (c) or in any other Section or paragraph of this Agreement or any other Finance Document to the contrary, any amendment, waiver or other modification required to permit the Borrower or any other Obligor to enter into any Hedge Agreement secured by any or all of the Collateral (including to modify the application of payments or proceeds of Collateral and the granting of a Lien on the Collateral) shall require only Majority Lenders approval.

#### **25.5 English Language.**

- (a) Any communication made under or in connection with any Finance Document shall be in English.
- (b) All other documents provided under or in connection with any Finance Document shall be:
  - (i) in English; or
  - (ii) if not in English, accompanied by an English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

#### **25.6 Further Assurances.**

Whether before or after the happening of an Event of Default, the Borrower shall at its own expense do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, things, agreements, documents and instruments in connection with this Agreement, the other Finance Documents as the Administrative Agent (acting at the direction of the Majority Lenders) may reasonably request from time to time for the purpose of giving effect to the terms of this Agreement, the other Finance Documents including, for the purpose of facilitating the enforcement of the Security, all promptly upon the request of the Administrative Agent.

#### **25.7 [Reserved].**

#### **25.8 Judgment Currency.**

If for the purpose of obtaining or enforcing judgment in any court it is necessary to convert a sum due hereunder or under any other Finance Document in Dollars into another currency (the “**Judgment Currency**”), the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures a Secured Party, as applicable, could purchase such Dollars in the United States of America with the Judgment Currency on the Business Day next preceding the day on which such judgment is rendered. The obligation of the Borrower in respect of any such sum due from it to such Secured Party hereunder or under any other Finance Document (an “**Entitled Person**”) shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following the receipt by such Entitled Person of any sum adjudged to be due hereunder or under any other Finance Document in the Judgment Currency, such Entitled Person may in accordance with normal banking procedures purchase and transfer Dollars to the United States of America with the amount of the Judgment Currency so adjudged to be due; and the Borrower hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify such Entitled Person on demand, in Dollars, for

the amount (if any) by which the sum originally due to such Entitled Person in Dollars hereunder or under any other Finance Document exceeds the amount of the Dollars so purchased and transferred.

#### **25.9 Remedies Cumulative.**

Subject to Applicable Law, no failure or delay on the part of any Secured Party in exercising any right, power or privilege hereunder or under any other Finance Document and no course of dealing between the Borrower or any its Affiliates, on the one hand and any Secured Party, on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Finance Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Finance Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which any party thereto would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Secured Party to any other or further action in any circumstances without notice or demand.

#### **25.10 Entire Agreement.**

This Agreement and the other Finance Documents constitute the entire agreement between the parties pertaining to the subject matter described herein and therein. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with such subject matter except as specifically set forth or referred to in this Agreement and the other Finance Documents. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made either prior to, contemporaneously with, or after the entering into of this Agreement, the other Finance Documents, or any amendment or supplement thereto, by any party to this Agreement or any of the other Finance Documents or its directors, officers, partners, employees or agents, where applicable, to any other party to this Agreement or any of the other Finance Documents or its directors, officers, partners, employees or agents, where applicable, except to the extent that the same has been reduced to writing and included as a term of this Agreement or any of the other Finance Documents.

#### **25.11 Governing Law; Jurisdiction.**

- (a) THIS AGREEMENT AND EACH OF THE OTHER FINANCE DOCUMENTS (UNLESS SUCH DOCUMENT EXPRESSLY STATES OTHERWISE THEREIN), THE RELATIONSHIP BETWEEN THE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS AGREEMENT OR SUCH OTHER FINANCE DOCUMENT OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (EXCEPT AS GOVERNED BY THE BANKRUPTCY CODE).
- (b) Any legal action or proceeding with respect to this Agreement or any other Finance Document shall, except as provided below, be brought in the Bankruptcy Court and/or, solely with respect to the Parent's assets in Canada, the Canadian Court and if the Bankruptcy Court and/or Canadian Court does not have (or abstain from) jurisdiction, courts of the State of New York in the County of New York or of the United States for the Southern District of New York and any appellate court from any thereof and, by execution and delivery of this Agreement, each party hereto hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each party hereto agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it, and

may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

- (c) Each party hereto hereby irrevocably waives any objection that it may now have or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Finance Document brought in the Bankruptcy Court and/or, solely with respect to the Parent's assets in Canada, the Canadian Court, and if the Bankruptcy Court and/or Canadian Court does not have (or abstain from) jurisdiction, the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (d) Nothing in this Section 25.11 (*Governing Law; Jurisdiction*) shall limit the right of the Secured Parties to refer any claim against the Borrower to any court of competent jurisdiction outside of the State of New York, nor shall the taking of proceedings by any Secured Party before the courts in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

#### **25.12 Service of Process.**

- (a) The Borrower irrevocably acknowledges and agree that service of process in any such action or proceeding may be effected by mailing a copy thereof by first class mail, postage prepaid, together with two copies of a statement of service by mail and acknowledgment of receipt, with a postage-prepaid return envelope addressed to the sender, to the Borrower at their address set forth in Article 24 (*Notices*) or at such other address of which the Administrative Agent shall have been notified pursuant to Article 24 (*Notices*).
- (b) This Section 25.12 (*Service of Process*) does not affect any other method of service allowed by Applicable Law.
- (c) To the extent that the Borrower may, in any action or proceeding arising out of or relating to any of the Finance Documents, be entitled under any Applicable Law to require or claim that any Secured Party post security for costs or take similar action, the Borrower hereby irrevocably waives and agrees not to claim the benefit of such entitlement.

#### **25.13 Waiver of Jury Trial.**

EACH OF THE PARTIES HERETO HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER FINANCE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

#### **25.14 USA PATRIOT Act.**

To the extent that it is subject to the requirements of the USA PATRIOT ACT or any other anti- money laundering rules and regulations applicable to such Secured Party, each Secured Party hereby notifies the Borrower that, pursuant to the requirements of the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party and the customer due diligence requirements for

financial institutions of the Financial Crimes Enforcement Network (as published at 81 FR 29397, 31 CFR 1010, 1020, 1023, 1024, and 1026), it is required to obtain, verify and record information that identifies the Borrower and its direct and indirect beneficial owners, which information includes the name and address of such Persons and other information that will allow such Secured Party, as the case may be, to identify the Borrower and its direct and indirect beneficial owners in accordance with the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party and the customer due diligence requirements for financial institutions of the Financial Crimes Enforcement Network. The Borrower agrees that it will promptly provide each Secured Party with such information as it may request in order for such Secured Party, respectively, to satisfy the requirements of the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party.

#### **25.15 Counterparts.**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts (including facsimile), with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

#### **25.16 No Third-Party Beneficiaries.**

The agreement of the Senior Lenders to make the Loans to the Borrower, on the terms and conditions set forth in this Agreement, is solely for the benefit of the Borrower and the Secured Parties, and no other Person (including any contractor, subcontractor, supplier, workman, carrier, warehouseman or materialman furnishing labor, supplies, goods or services to or for the benefit of the Project) shall have any rights under this Agreement or under any other Finance Document or with respect to any extension of credit contemplated by this Agreement.

#### **25.17 Severability.**

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated in this Agreement are fulfilled to the extent possible.

#### **25.18 Survival.**

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans. The provisions of Sections 7.3 (*Change in Circumstances*), 7.4 (*Payment of Costs and Expenses*) and 7.5 (*Indemnities*) and Article 15 (*Administrative Parties*) and Article 23 (*Confidential Information*) shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the resignation or removal of any Agent, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.



**25.19 Reinstatement.**

The obligations of the Borrower under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Obligations is rescinded or shall be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower agrees that it will indemnify each Secured Party on demand for all reasonable and documented costs and expenses (including fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such reasonable and documented costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.


**25.20 Incorporation of DIP Order by Reference.**

Each of the Obligors, the Administrative Agent, the Collateral Agent and the Senior Lenders agrees that any reference contained herein to (i) the Interim Order and the Interim DIP Recognition Order shall include all terms, conditions and provisions of such Interim Order and Interim DIP Recognition Order and that the Interim Order and Interim DIP Recognition Order are incorporated herein for all purposes and (ii) the Final Order and the Final DIP Recognition Order shall include all terms, conditions and provisions of such Final Order and the Final DIP Recognition Order and that the Final Order and the Final DIP Recognition Order are incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement and the terms of either the Interim Order, the Final Order, the Interim DIP Recognition Order or the Final DIP Recognition Order, the terms of the Interim Order, the Final Order, the Interim DIP Recognition Order or the Final DIP Recognition Order, as applicable, shall govern.

*[signature pages to follow]*

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first written above.

**NEVADA COPPER, INC.,**  
as Borrower

By:   
Name: Gregory J. Martin  
Title: Chief Financial Officer



**NEVADA COPPER CORP.,**

as Guarantor

A handwritten signature in dark ink, appearing to read "Greg J. Martin", is written over a horizontal line.

By: \_\_\_\_\_

Name: Gregory J. Martin

Title: Chief Financial Officer

**0607792 B.C. LTD.,**

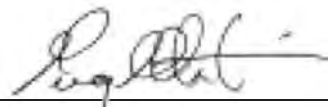
as Guarantor

By: 

Name: Gregory J. Martin

Title: Chief Financial Officer

**NC DITCH COMPANY LLC,**  
as Guarantor

By:   
Name: Gregory J. Martin  
Title: Chief Financial Officer

**NC FARMS LLC,**  
as Guarantor

By: 

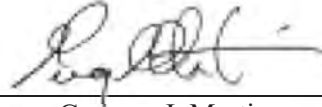
Name: Gregory J. Martin

Title: Chief Financial Officer

**LION IRON CORP.,**

as Guarantor

By: \_\_\_\_\_



Name: Gregory J. Martin

Title: Chief Financial Officer

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,**  
as Administrative Agent and Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

**MANCHESTER SECURITIES CORP.,**  
as Senior Lender

By: 

Name: Elliot Greenberg  
Title: Vice President

**ZIWA INVESTMENTS LIMITED,**  
as Senior Lender

By: 

Name: Elliot Greenberg  
Title: Vice President

**SCHEDULE A**  
**COMMITMENTS**

<b>Lender</b>	<b>Interim Commitment</b>	<b>Final Commitment</b>	<b>Total</b>	<b>Address for Notices</b>
Manchester Securities Corp.	\$6,400,000	\$12,800,000	\$19,200,000	Elliott Investment Management L.P. 360 S. Rosemary Ave, 18th Floor West Palm Beach FL 33401
Ziwa Investments Limited	\$13,600,000	\$27,200,000	\$40,800,000	Elliott Investment Management L.P. 360 S. Rosemary Ave, 18th Floor West Palm Beach FL 33401



**SCHEDULE B****PREPETITION ENCUMBRANCES**

<b><u>Name</u></b>	<b><u>Category</u></b>	<b><u>Potential Lienholder</u></b>	<b><u>A/P 6.7.34 ('000s)</u></b>	<b><u>Total ('000s)</u></b>
Catepillar Financial SARL	Equipment Leases	Potential exposure to repossess equipment	\$1,132.9	\$1,132.9
Epiroc Financial Solutions USA LLC	Equipment Leases	Potential exposure to repossess equipment	\$816.5	\$816.5

**SCHEDULE C**  
**PLEDGED INTERESTS**

Name, Jurisdiction of Formation and Type of Entity	Class or Type of Pledged Interest	Total Amount of Class or Type of Collateral Authorized	Total Amount of Class or Type Outstanding	Total Amount Pledged	Number of Securities	Certificated (Y/N)	Certificate Number
Nevada Copper, Inc., a Nevada corporation	Common Stock	100%	100%	100%	100	Y	2
0607792 B.C. Ltd, A British Columbia limited company	Common Stock	100%	100%	100%	21,980,000	Y	38
Lion Iron Corp., a Nevada corporation	Common Stock	100%	100%	100%	100	Y	1
NC Farms LLC, a Nevada limited liability company	Membership Interests	100%	100%	100%	0	N	N/A
NC Ditch Company LLC, a Nevada limited liability company	Membership Interests	100%	100%	100%	0	N	N/A

**SCHEDULE D**

**[RESERVED]**

**SCHEDULE E**  
**INTERIM ORDER**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: [BK-24-\_\_\_\_-\_\_\_\_]  
 Chapter 11

Jointly Administered with:

Case No. [BK-24-\_\_\_\_-\_\_\_\_]  
 Case No. [BK-24-\_\_\_\_-\_\_\_\_]  
 Case No. [BK-24-\_\_\_\_-\_\_\_\_]  
 Case No. [BK-24-\_\_\_\_-\_\_\_\_]  
 Case No. [BK-24-\_\_\_\_-\_\_\_\_]

**INTERIM ORDER (I) AUTHORIZING THE  
 DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B) GRANT LIENS,  
 INCLUDING SENIOR SECURED PRIMING LIENS AND SUPERPRIORITY  
 ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH COLLATERAL;  
 (II) GRANTING ADEQUATE PROTECTION TO CERTAIN  
 PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY;  
 (IV) SCHEDULING FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”),<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”) and Final Order (defined below) pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 of, and Local Rules 4001 and 9006 seeking, among other things:

- (a) authorization for Nevada Copper, Inc. (the “*Borrower*”) to obtain a senior secured postpetition financing on terms and conditions consistent with the terms and conditions set forth in the Senior Secured Superpriority Term Loan Debtor in Possession Credit Agreement by and among the Borrower, each of the Debtors other than the Borrower, (collectively, the “*Guarantors*,” and together with

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized term used but not defined herein have the meanings ascribed to such terms in the Motion.

Borrower, the "**DIP Loan Parties**"), U.S Bank Trust Company, National Association, as administrative agent and collateral agent (the "**DIP Agent**"), one or more affiliates of Elliott Investment Management L.P., as lenders (collectively, the "**DIP Lenders**") and, together with the DIP Agent, the "**DIP Secured Parties**") (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**DIP Credit Agreement**") attached to this Interim Order at **Exhibit A**, and for the Guarantors to unconditionally guaranty, on a joint and several basis, the Borrower's obligations in connection with such postpetition financing, consisting of: (i) a new money term loan in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$20,000,000 (the "**Interim DIP Loan**"), which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.1 and 12.3 of the DIP Credit Agreement have been satisfied (the "**Interim Closing Date**"); (ii) subject to entry of the Final Order, a new money delayed-draw term loan to be made in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$40,000,000 (the "**Final DIP Loan**" and, together with the Interim DIP Loan, the "**DIP Facility**"), which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.2 and 12.3 of the DIP Credit Agreement have been satisfied;

- (b) authorization for the DIP Loan Parties to enter into any agreements, documents and instruments in connection with the DIP Facility, including the DIP Credit Agreement and all notices, guarantees, security agreements, ancillary documents and agreements executed in connection therewith, (collectively, the "**DIP Documents**") on terms and conditions consistent with the DIP Credit Agreement and this Interim Order, and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate or desirable in connection with the DIP Documents;
- (c) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, and authorizing the Debtors to incur, the DIP Liens (as defined below) in all DIP Collateral (as defined below), to secure the DIP Obligations (as defined below), which liens and security interests shall be automatically perfected and be subject to the lien priorities set forth in the DIP Credit Agreement, on the terms and conditions set forth herein, in the DIP Credit Agreement and in the DIP Documents;
- (d) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, allowed superpriority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations (as defined below), with priority over any and all administrative expenses of any kind or nature, subject and subordinate only to the Carve-Out and the Administration Charge (as defined below), on the terms and conditions set forth herein and in the DIP Documents;
- (e) authorization for the Debtors to use the proceeds of the DIP Facility and the Prepetition Collateral (as defined below), including Cash Collateral (as defined below), in accordance with the terms hereof, including pursuant to the Approved Budget (as defined below) as further described herein, to: (i) pay fees and interest under the DIP Facility; (ii) provide working capital for, and for other general corporate purposes of, the Debtors, including for funding the Carve-Out (as defined below); (iii) pay for bankruptcy-related costs and expenses, including costs and expenses incurred in connection with the Recognition Proceedings (as defined below); and (iv) pay Adequate Protection Payments (as defined below);

- (f) authorization for the Debtors to pay, on a final and irrevocable basis, the principal, interest, expenses, fees, premiums and other amounts payable under the DIP Documents as such become earned, due and payable, including, without limitation, (i) the Upfront Fee, (ii) the Unused Commitment Fee, (iii) the Exit Fee, (iv) the Agency Fee (each as defined in the DIP Credit Agreement), and (iv) the reasonable fees and disbursements of the DIP Secured Parties' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with the DIP Documents (collectively, the "**DIP Obligations**");
- (g) authorization to grant adequate protection to the Prepetition Secured Parties (as defined below) on the terms set forth in the DIP Documents and this Interim Order on account of any Diminution in Value (as defined below) of the Prepetition Secured Parties' interests in the Prepetition Collateral, including Cash Collateral;
- (h) waivers of (i) the Debtors' and the estates' rights to surcharge against the DIP Collateral or the Prepetition Collateral pursuant to the Bankruptcy Code section 506(c), (ii) the "equities of the case" exception under Bankruptcy Code section 552(b) and (iii) the equitable doctrine of marshalling with respect to the DIP Collateral, including all Prepetition Collateral, in each case, subject to entry of the Final Order (but retroactive to the Petition Date);
- (i) subject to the terms of this Interim Order, authorization for the DIP Secured Parties to exercise remedies under the DIP Documents on the terms described herein upon the occurrence and during the continuance of a Termination Event (as defined below);
- (j) the modification of the automatic stay imposed pursuant to Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of this Interim Order; and
- (k) that this Court schedule a final hearing (the "**Final Hearing**") to consider entry of a final order (the "**Final Order**") authorizing and approving, on a final basis, among other things, the Debtors' entry into the DIP Facility, the borrowings under the DIP Facility, the continued use of Cash Collateral and the granting of adequate protection, in each case, as described in the Motion and as set forth in the DIP Documents.

The Court having held a hearing to consider entry of this Interim Order (the "**Interim Hearing**"); and the Court having considered the Motion and the exhibits thereto, the *Declaration of Zul Jamal in support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* (the "**DIP Declaration**"), the evidence submitted or proffered and the arguments of counsel made at the Interim Hearing; and proper and sufficient notice of the Motion and the Interim Hearing having been given in

1 accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and all objections, if any,  
2 to the relief requested in the Motion and to the entry of this Interim Order having been withdrawn,  
3 resolved or overruled by the Court; and it appearing to the Court that granting the relief requested  
4 in necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the  
5 Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their  
6 estates, creditors and parties in interest; and after due deliberation and consideration, and for good  
7 and sufficient cause appearing therefor; IT IS FOUND AND DETERMINED THAT:<sup>3</sup>

8 A. **Petition Date.** On June 9, 2024 (the “*Petition Date*”), each of the Debtors filed a  
9 voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

10 B. **Debtors in Possession.** The Debtors have continued in the management and  
11 operation of their business and properties as debtors in possession pursuant to sections 1107 and  
12 1108 of the Bankruptcy Code.

13 C. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases  
14 commenced on the Petition Date, the Motion and the parties and property affected hereby pursuant  
15 to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408  
16 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

17 D. **Committee Formation.** As of the date hereof, the United States Trustee for Region  
18 17 (the “*U.S. Trustee*”) has not yet appointed an official committee of unsecured creditors in these  
19 Chapter 11 Cases (a “*Creditors’ Committee*”) pursuant to section 1102 of the Bankruptcy Code.

20 E. **Notice.** Under the circumstances, the notice given by the Debtors of, and described  
21 in the Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient  
22 notice thereof and complies with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules,  
23 and no further notice of the relief sought at the Interim Hearing and the relief granted herein is  
24 necessary or required.

25  
26 <sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law  
27 pursuant to Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent that any  
28 of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the  
following conclusions of law constitute findings of fact, they are adopted as such.



1 F. **Debtors' Stipulations.** Without prejudice to the rights of any other party, but  
2 subject to the limitations thereon contained in paragraphs 21 and 22 of this Interim Order, the  
3 Debtors represent, admit, stipulate and agree as follows:

4 1. **Prepetition Senior Secured Term Loan Facility.**

5 (a) Under that certain Second Amended and Restated Credit  
6 Agreement, dated as of October 28, 2022 (as amended, restated, amended and restated,  
7 supplemented, or otherwise modified from time to time prior to the date hereof, the "***Prepetition***  
8 ***Senior Secured Term Loan Credit Agreement***" and together with all related security agreements,  
9 collateral agreements, pledge agreements, control agreements, guarantees and other documents  
10 delivered or executed in connection therewith, the "***Prepetition Senior Secured Term Loan***  
11 ***Documents***") by and among Borrower, as borrower, the financial institutions party thereto from  
12 time to time, as lenders (the "***Prepetition Senior Secured Term Loan Lenders***"), KfW IPEX-Bank  
13 GmbH ("***KfW***"), as sole lead arranger, UFK agent, as administrative agent and collateral agent (in  
14 such capacities, the "***Prepetition Senior Secured Term Loan Agent***" and together with the  
15 Prepetition Senior Secured Term Loan Lenders, the "***Prepetition Senior Secured Term Loan***  
16 ***Parties***") the Borrower was provided with a first-lien secured term loan facility (the loans  
17 borrowed thereunder, the "***Prepetition First Lien Loans***") consisting of:

- 18 (a) Tranche A Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
19 Agreement) provided by KfW, which, as of the Petition Date, amount to an  
20 aggregate principal amount of approximately \$129,191,475.89 million (together  
21 with all accrued interest, premiums (if any), costs, fees, expenses and other  
22 obligations in respect thereof, the "***Prepetition Senior Secured Term Loan A***  
23 ***Obligations***");
- 24 (b) Tranche A-2 Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
25 Agreement) provided by Pala Investments Limited ("***Pala***"), Mercuria Investments  
26 US, Inc. ("***Mercuria***") and TF R&S Canada Ltd. ("***TF Canada***," and collectively  
27 with Pala and Mercuria, the "***Prepetition Senior Secured Term Loan A-2 Parties***"),  
28 which, as of the Petition Date, amount to an aggregate principal amount of  
approximately \$40,919,608.57 million (together with all accrued interest,  
premiums (if any), costs, fees, expenses and other obligations in respect thereof,  
the "***Prepetition Senior Secured Term Loan A-2 Obligations***"); and
- (c) Tranche B Loans (as defined in the Prepetition Senior Secured Term Loan Credit  
Agreement) provided by KfW, which, as of the Petition Date, amount to an  
aggregate principal amount of approximately \$17,973,301.40 million (together

1 with all accrued interest, premiums (if any), costs, fees, expenses and other  
2 obligations in respect thereof, the “**Prepetition Senior Secured Term Loan B  
Obligations**” and, together with the Prepetition Senior Secured Term Loan A  
3 Obligations, the “**Prepetition Senior Secured KfW Term Loan Obligations**”).

4 (b) *Prepetition Senior Secured Term Loan Obligations.* As of the  
5 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
6 severally indebted and liable to the Prepetition Senior Secured Term Loan Parties under the  
7 Prepetition Senior Secured Term Loan Documents in the principal aggregate amount of not less  
8 than \$188,084,385.86 million, *plus* accrued and unpaid interest thereon as of the Petition Date,  
9 plus all other fees, costs, expenses, indemnification obligations, reimbursement obligations,  
10 charges, premiums, if any, additional interest, any other “Obligations” (as defined in the  
11 Prepetition Senior Secured Term Loan Documents) and all other obligations of whatever nature  
12 owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable  
13 under the Prepetition Senior Secured Term Loan Documents (collectively, the “**Prepetition Senior  
Secured Term Loan Obligations**”). The Prepetition Senior Secured Term Loan Obligations  
14 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
15 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
16 subordination, other claims, cause of action or other challenge of any kind under the Bankruptcy  
17 Code, under applicable non-bankruptcy law or otherwise. No payments or transfer made to or for  
18 the benefit of (or obligations incurred to or for the benefit of) the Prepetition Senior Secured Term  
19 Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection  
20 with any of the Prepetition Senior Secured Term Loan Documents are subject to avoidance,  
21 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
22 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
23 bankruptcy law or otherwise.

24 (c) *Prepetition Senior Secured Term Loan Liens.* Pursuant to the  
25 Prepetition Senior Secured Term Loan Documents, the Prepetition Senior Secured Term Loan  
26 Obligations are secured by valid, binding, perfected and enforceable liens on and security interests  
27 in (the “**Prepetition Senior Secured Term Loan Liens**”) the “Collateral” (as defined in the  
28

Prepetition Senior Secured Term Loan Documents) (the “**Prepetition Collateral**”), subject to certain permitted liens as permitted under the Prepetition Senior Secured Term Loan Documents. The Prepetition Senior Secured Term Loan Liens are (i) senior to all other Prepetition Funded Debt Liens (as defined below) with respect to Prepetition Collateral constituting “Project Collateral” (as defined in the WCF Intercreditor Agreement (as defined below)) (the “**Non-WCF Collateral**”), and (ii) subject to the Prepetition Working Capital Lien (as defined below) with respect to Prepetition Collateral constituting “APA Collateral” (as defined in the WCF Intercreditor Agreement) (the “**WCF Collateral**”), in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Senior Secured Term Loan Liens: (i) are valid, binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with the priority set forth in the Prepetition Senior Secured Term Loan Documents and the Prepetition Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are subject and/or subordinate only to Prepetition Prior Liens (defined below), and solely with respect to the WCF Collateral, the Prepetition Working Capital Lien. In this Interim Order the term “**Prepetition Prior Liens**” shall mean, in relation to any Prepetition Funded Debt Facility (defined below), liens that are senior in relation to the liens securing such facility and are (1) valid, enforceable, perfected, non-avoidable and in existence immediately prior to the Petition Date or (2) valid, enforceable, non-avoidable and in existence immediately prior to the Petition Date, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the liens described in items (1) and (2), the “**Petition Date Perfected Liens**”), and in relation to the DIP Facility, shall mean, the Petition Date Perfected Liens not to exceed a total aggregate amount of \$12 million.

1                   2.       **Prepetition Working Capital Facility.**

2                   (a)       Under that certain Advance Payment Agreement, dated as of May 6,  
3                   2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time  
4                   to time prior to the date hereof, the “**Prepetition Working Capital Agreement**” and, together with  
5                   all related security agreements, collateral agreements, pledge agreements, control agreements,  
6                   guarantees and other documents, the “**Prepetition Working Capital Documents**”) by and among  
7                   the Borrower, as seller, and Concord Resources Limited (“**Concord**”), as purchaser (the  
8                   “**Prepetition Working Capital Purchaser**”) the Borrower received certain Advance Payments (as  
9                   defined in the Prepetition Working Capital Agreement) from the Prepetition Working Capital  
10                  Purchaser in exchange for the sale and delivery of certain Material (as defined in the Prepetition  
11                  Working Capital Documents).

12                  (b)       *Prepetition Working Capital Obligations.* As of the Petition Date,  
13                  the Borrower, without defense, counterclaim or offset of any kind, was indebted and liable to the  
14                  Prepetition Working Capital Purchaser under the Prepetition Working Capital Documents in the  
15                  aggregate principal amount of not less than \$3.0 million under the Prepetition Working Capital  
16                  Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
17                  costs, expenses, charges, additional interest, any other “Advance Payment Obligations” as defined  
18                  in the WCF Intercreditor Agreement and all other obligations of whatever nature owing, whether  
19                  or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the  
20                  Prepetition Working Capital Documents (collectively, the “**Prepetition Working Capital**  
21                  **Obligations**”). The Prepetition Working Capital Obligations constitute legal, valid, binding and  
22                  non-avoidable obligations against the Borrower and are not subject to any avoidance,  
23                  recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
24                  or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law  
25                  or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or  
26                  for the benefit of) the Prepetition Working Capital Purchaser by or on behalf of any of the Debtors  
27                  prior to the Petition Date under or in connection with any of the Prepetition Working Capital  
28

Documents are subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(c) *Prepetition Working Capital Lien*. Pursuant to the Prepetition Working Capital Documents, the Prepetition Working Capital Obligations are secured by a valid, binding, perfected and enforceable lien on and security interest in (the “***Prepetition Working Capital Lien***”) the Prepetition Collateral, subject to certain permitted liens as permitted under the Prepetition Working Capital Agreement. The Prepetition Working Capital Lien is (i) subject to the Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien (as defined below) with respect to all Prepetition Collateral constituting Non-WCF Collateral and (ii) senior to all other Prepetition Funded Debt Liens with respect to Prepetition Collateral constituting WCF Collateral, in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Working Capital Lien: (i) is a valid, binding, perfected and enforceable lien and security interest in the Prepetition Collateral, with the priorities set forth in the Prepetition Working Capital Documents; (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date, is subject and/or subordinate only to (1) the Prepetition Prior Liens, in relation to the Working Capital Facility, and, (2) solely with respect to the Non-WCF Collateral, the Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien.

3. **Prepetition TF Stream Obligations.**

(a) Under that certain Metals Purchase and Sale Agreement, dated as of December 21, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “***Prepetition TF Stream Agreement***” and, together with all related security agreements, collateral agreements, pledge agreements, control

1 agreements, guarantees and other documents, the “**Prepetition TF Stream Documents**”) by and  
2 among Borrower, as seller, NCU and its subsidiaries, as guarantor and Triple Flag International  
3 Ltd. (“**Triple Flag**”) (as successor by name change to Triple Flag Mining Finance Bermuda Ltd.),  
4 as purchaser (the “**Prepetition TF Stream Purchaser**”), the Prepetition TF Stream Purchaser paid  
5 certain deposits to the Borrower and Borrower committed to make specified deliveries of Refined  
6 Gold and Refined Silver (each as defined in the Prepetition TF Stream Agreement) to the  
7 Prepetition TF Stream Purchaser.

8 (b) *Prepetition TF Stream Obligations.* As of the Petition Date, the  
9 Debtors, without defense, counterclaim or offset of any kind, were jointly and severally indebted  
10 and liable to the Prepetition TF Stream Purchaser under the Prepetition TF Stream Documents in  
11 the aggregate principal amount of not less than \$78,269,229.75 under the Prepetition TF Stream  
12 Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
13 costs, expenses, charges, additional interest, any other “Obligations” (as defined in the Prepetition  
14 TF Stream Agreement) and all other obligations of whatever nature owing, whether or not  
15 contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition  
16 TF Stream Documents (collectively, the “**Prepetition TF Stream Obligations**”). The Prepetition  
17 TF Stream Obligations constitute legal, valid, binding and non-avoidable obligations against each  
18 of the Debtors and are not subject to any avoidance, recharacterization, effect, counterclaim,  
19 defense, offset, subordination, other claim, cause of action or other challenge of any kind under  
20 the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or  
21 transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the  
22 Prepetition TF Stream Purchaser by or on behalf of any of the Debtors prior to the Petition Date  
23 under or in connection with any of the Prepetition TF Stream Documents are subject to avoidance,  
24 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
25 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
26 bankruptcy law or otherwise.



(c) *Prepetition TF Stream Lien.* Pursuant to the Prepetition TF Stream Documents, the Prepetition TF Stream Obligations is secured by a valid, binding, perfected and enforceable lien on and security interest in (the “***Prepetition TF Stream Lien***”) the Prepetition Collateral, subject to certain permitted liens as permitted under the Prepetition TF Stream Agreement. The Prepetition TF Stream Lien is (i) subject to the Prepetition Senior Secured Term Loan Liens with respect to all Prepetition Collateral constituting Non-WCF Collateral, (ii) subject to the Prepetition Working Capital Lien and Prepetition Senior Secured Term Loan Liens with respect to Prepetition Collateral constituting WCF Collateral, and (iii) senior to the Prepetition Junior Secured Term Loan Liens, in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition TF Stream Lien: (i) is a valid, binding, perfected and enforceable lien and security interest in the Prepetition Collateral, with the priority set forth in the Prepetition TF Stream Documents and the Prepetition Intercreditor Agreements; (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date is subject and/or subordinate only to (1) the Prepetition Prior Liens, in relation to the Prepetition TF Stream Obligations, (2) with respect to the Non-WCF Collateral, the Prepetition Senior Secured Term Loan Liens and (3) with respect to the WCF Collateral, the Prepetition Working Capital Lien and the Prepetition Senior Secured Term Loan Liens.

4. **Prepetition Junior Secured Term Loan Obligations.**

(a) Under that certain Third Amended and Restated Loan Agreement, dated as of December 21, 2023 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “***Prepetition Junior Secured Term Loan Agreement***,” together with all related security agreements, collateral agreements, pledge agreements, control agreements, guarantees and other documents, the “***Prepetition Junior***

1 *Secured Term Loan Documents*,” and, together with the Prepetition Senior Secured Term Loan  
2 Documents, the Prepetition Working Capital Documents and the Prepetition TF Stream  
3 Documents, the “*Prepetition Debt Documents*”), by and among NCU, as borrower, Borrower,  
4 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC, as guarantors,  
5 the lenders party thereto from time to time (the “*Prepetition Junior Secured Term Loan*  
6 *Lenders*”), and Pala, as lead arranger and collateral agent (the “*Prepetition Junior Secured Term*  
7 *Loan Agent*,” together with the Prepetition Junior Secured Term Loan Lenders, the “*Prepetition*  
8 *Junior Secured Term Loan Parties*” and, together with the Prepetition Senior Secured Term Loan  
9 Parties, the Prepetition Working Capital Purchaser and the Prepetition TF Stream Purchaser the  
10 “*Prepetition Secured Parties*”), NCU was provided with a junior secured term loan facility.

11 (b) *Prepetition Junior Secured Term Loan Obligations.* As of the  
12 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
13 severally indebted and liable to the Prepetition Junior Secured Term Loan Parties under the  
14 Prepetition Junior Secured Term Loan Documents in the aggregate principal amount of not less  
15 than \$10 million under the Prepetition Junior Secured Term Loan Agreement, *plus* accrued and  
16 unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, charges,  
17 additional interest, any other “Obligations” (as defined in the Prepetition Junior Secured Term  
18 Loan Agreement) and all other obligations of whatever nature owing, whether or not contingent,  
19 whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Junior  
20 Secured Term Loan Documents (collectively, the “*Prepetition Junior Secured Term Loan*  
21 *Obligations*” and, together with the Prepetition Senior Secured Term Loan Obligations, the  
22 Prepetition Working Capital Obligations and the Prepetition TF Stream Obligations, the  
23 “*Prepetition Secured Obligations*”). The Prepetition Junior Secured Term Loan Obligations  
24 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
25 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
26 subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy  
27 Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or  
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1 for the benefit of (or obligations incurred to or for the benefit of) the Prepetition Junior Secured  
2 Term Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in  
3 connection with any of the Prepetition Junior Secured Term Loan Documents are subject to  
4 avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim,  
5 cause of action or other challenge of any kind or nature under the Bankruptcy Code, under  
6 applicable non-bankruptcy law or otherwise.

7 (c) *Prepetition Junior Secured Term Loan Liens.* Pursuant to the  
8 Prepetition Junior Secured Term Loan Documents, the Prepetition Junior Secured Term Loan  
9 Obligations are secured by valid, binding, perfected and enforceable liens on and security interests  
10 in (the “***Prepetition Junior Secured Term Loan Liens***” and, together with the Prepetition Senior  
11 Secured Term Loan Liens, the Prepetition Working Capital Lien and the Prepetition TF Stream  
12 Lien, the “***Prepetition Funded Debt Liens***”) the Prepetition Collateral, subject to certain permitted  
13 liens as permitted under the Prepetition Junior Secured Term Loan Agreement. The Prepetition  
14 Junior Secured Term Loan Liens are subject to the Prepetition Senior Secured Term Loan Liens,  
15 the Prepetition Working Capital Lien and the Prepetition TF Stream Lien with respect to all  
16 Prepetition Collateral, in each case, in accordance with the terms and conditions of the Fourth Lien  
17 Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that,  
18 in each case as of the Petition Date, the Prepetition Junior Secured Term Loan Liens: (i) are valid,  
19 binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with  
20 the priority set forth in the Prepetition Junior Secured Term Loan Documents and the Prepetition  
21 Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable  
22 law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense  
23 or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are  
24 subject and/or subordinate only to the (1) Prepetition Prior Liens, in relation to the Prepetition  
25 Junior Secured Term Loan Obligations, (2) the Prepetition Senior Secured Term Loan Liens, (3)  
26 the Prepetition Working Capital Lien, and (4) the Prepetition TF Stream Lien.

1                   5.       **Prepetition Intercreditor Agreements.**

2                   (a)       *WCF Intercreditor Agreement.* KfW, Triple Flag, Concord and the  
3 Borrower are parties to that certain Working Capital Facility Intercreditor Agreement, dated as of  
4 May 22, 2019, (as amended, restated, amended and restated, supplemented, or otherwise modified  
5 from time to time prior to the date hereof, the “*WCF Intercreditor Agreement*”), which governs,  
6 among other things, the rights, interests, obligations, priority and positions of the Prepetition  
7 Senior Secured Term Loan Parties, the Prepetition Working Capital Purchaser and the Prepetition  
8 TF Stream Purchaser.

9                   (b)       *TF Intercreditor Agreement.* KfW, Triple Flag, the Borrower, NCU  
10 and NCU’s subsidiaries are party to that certain Intercreditor Agreement, dated as of May 22, 2019,  
11 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to  
12 time prior to the date hereof, the “*TF Intercreditor Agreement*”), which governs the rights,  
13 interests, obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties  
14 and the Prepetition TF Stream Purchaser.

15                   (c)       *Fourth Lien Intercreditor Agreement.* KfW, Triple Flag, Concord,  
16 Pala, the Borrower, NCU and NCU’s subsidiaries are party to that certain Intercreditor Agreement,  
17 dated as of October 28, 2022 (as amended, restated, amended and restated, supplemented, or  
18 otherwise modified from time to time prior to the date hereof, the “*Fourth Lien Intercreditor*  
19 *Agreement*” and, together with the WCF Intercreditor Agreement and the TF Intercreditor  
20 Agreement, the “*Prepetition Intercreditor Agreements*”), which governs the rights, interests,  
21 obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties, the  
22 Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
23 Junior Secured Term Loan Parties.

24                   (d)       Each of the Debtors either is party to or otherwise acknowledged  
25 and agreed to, and are bound by, the Prepetition Intercreditor Agreements. Pursuant to Bankruptcy  
26 Code section 510, the Prepetition Intercreditor Agreements, and any other applicable intercreditor  
27 or subordination provisions contained in any of the Prepetition Debt Documents shall (i) remain  
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1 in full force and effect, (ii) continue to govern the relative obligations, priorities, rights, and  
2 remedies of the applicable Prepetition Secured Parties, and (iii) not be deemed to be amended,  
3 altered or modified by the terms of this Interim Order unless expressly set forth herein or therein.

4 6. **Cash Collateral.** Any and all of the Debtors' cash, including any amounts  
5 generated by the collection of accounts receivable, all cash proceeds of the Prepetition Collateral,  
6 and the cash in the Debtors' banking, checking or other deposit accounts with financial institutions  
7 as of the Petition Date (excluding cash deposits that secure any outstanding letters of credit) or  
8 deposited into the Debtors' banking, checking or other deposit accounts with financial institutions  
9 after the Petition Date constitutes cash collateral of the Prepetition Secured Parties within the  
10 meaning of Bankruptcy Code section 363(a) (the "***Cash Collateral***").

11 7. **Adequate Protection.** Pursuant to Bankruptcy Code sections 105, 361, 362  
12 and 363(e), the Prepetition Secured Parties are entitled to adequate protection of their interests in  
13 the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition  
14 diminution in value of their interests in the Prepetition Collateral resulting from, among other  
15 things, and without limitation, (i) subordination of the Prepetition Secured Parties' interests in the  
16 Prepetition Collateral, (ii) the use of Cash Collateral during the Chapter 11 Cases, (iii) the use, sale  
17 or lease of any of the Prepetition Collateral, (iv) the imposition of the automatic stay pursuant to  
18 Bankruptcy Code section 362(a), and/or (v) for any other reason for which adequate protection  
19 may be granted under the Bankruptcy Code ("***Diminution in Value***"). Based on the Motion, the  
20 DIP Declaration, and the record presented to the Court at the Interim Hearing, the terms of the  
21 proposed adequate protection arrangements and of the use of the Prepetition Collateral, including  
22 the Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

23 G. **Findings Regarding the DIP Facility and Use of Cash Collateral.** Based on the  
24 record established and evidence presented at the Interim Hearing, including the DIP Declaration,  
25 and the representations of the parties, the Court makes the following findings:

26 1. **Need for Postpetition Financing and Use of Cash Collateral.** The  
27 Debtors have a need to use Cash Collateral on an interim basis and obtain credit in the form of the  
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Interim DIP Loans pursuant to the DIP Facility in order to, among other things, (a) permit the orderly continuation of their business, (b) maintain business relationships with their vendors, suppliers, customers and other parties, (c) make payroll, (d) pay Adequate Protection Payments and (e) pay the costs of administering the Chapter 11 Cases, in each case, in compliance with, and subject in all respects to, the Approved Budget, the terms hereof and the DIP Documents. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which, on an interim basis as contemplated hereunder, would immediately and irreparably harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their business, maintain their properties in the ordinary course of business, and fund the Chapter 11 Cases without the authorization to use Cash Collateral and to borrow the Interim Amount. Without the ability to access the DIP Facility and the authority to use Cash Collateral, the Debtors' chances for a successful chapter 11 restructuring would be jeopardized.

2. **Priming of Prepetition Liens.** The priming of the Prepetition Funded Debt Liens on the Prepetition Collateral, to the extent set forth herein, under Bankruptcy Code section 364(d)(1), as contemplated by this Interim Order and the DIP Facility, and as further described below, will enable the Debtors to obtain the DIP Facility and, among other benefits, to continue to operate their businesses for the benefit of their estates and stakeholders.

3. **No Credit Available on More Favorable Terms.** As set forth in the DIP Declaration, the Debtors have been unable to obtain financing from sources other than the DIP Lenders on terms more favorable than those provided under the DIP Facility, as set forth in the DIP Documents. The Debtors have been unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also have been unable to obtain sufficient credit (i) on an unsecured basis having priority over all other administrative expenses, (ii) secured solely by a lien on property of the Debtors and their estates

1 that is not otherwise subject to a lien or (iii) secured solely by a junior lien on property of the  
2 Debtors and their estates that is subject to a lien. Postpetition financing is not otherwise available  
3 without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (x) the DIP Liens (as  
4 defined below) on all DIP Collateral (as defined below), as set forth herein, (y) the DIP  
5 Superpriority Claims (as defined below) and (z) the other protections set forth in this Interim Order.  
6 The terms of the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the  
7 Debtors' exercise of sound and prudent business judgment consistent with their fiduciary duties,  
8 constitute reasonably equivalent value and fair consideration and are in the best interest of the  
9 Debtors' estates and stakeholders.

10 4. **Good Faith.** The DIP Facility and the Adequate Protection Obligations  
11 have been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the DIP  
12 Lenders, and the Prepetition Secured Parties and all of the Debtors' obligations and indebtedness  
13 arising under, in respect of or in connection with the DIP Documents including, without limitation,  
14 all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents, and all  
15 other DIP Obligations shall be deemed to have been extended by the DIP Agent and the DIP  
16 Lenders in good faith as that term is used in Bankruptcy Code section 364(e) and in express  
17 reliance upon the protections offered by Bankruptcy Code section 364(e). The DIP Obligations  
18 and the DIP Liens shall be entitled to the full protection of Bankruptcy Code section 364(e) in the  
19 event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or  
20 otherwise, and any liens or claims granted to the DIP Agent or the DIP Lenders hereunder arising  
21 prior to the effective date of any such vacatur, reversal or modification of this Interim Order shall  
22 be governed in all respects by the original provisions of this Interim Order, including entitlement  
23 to all rights, remedies, privileges and benefits granted herein.

24 H. **Consent of the Prepetition Secured Parties.** The Prepetition Secured Parties have  
25 consented to or are deemed to consent under the applicable Prepetition Intercreditor Agreements  
26 to the priming of the Prepetition Funded Debt Liens, as applicable, to the extent set forth herein,  
27 and the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions  
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provided for in this Interim Order; *provided* that nothing in this Interim Order shall constitute the consent of the Prepetition Senior Secured Term Loan Agent to priming of the Prepetition Senior Secured Term Loan Liens by DIP Liens securing DIP Obligations in an amount greater than \$51.4 million, and KfW reserves its rights with respect to the Final Order in all respects.

I. **Sections 506(c) and 552(b)**. As a material inducement to the DIP Lenders to agree to provide the DIP Facility and the Prepetition Secured Parties to agree to the use of Cash Collateral, and in exchange for (i) the DIP Agent's and DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve-Out to the extent set forth herein and (ii) the Prepetition Secured Parties' agreement to (a) subordinate their Prepetition Funded Debt Liens and the Adequate Protection Liens to the Carve-Out and the DIP Liens, each to the extent provided herein, and (b) consent to the use of Cash Collateral in accordance with and subject to the Approved Budget (subject to the Permitted Variances (as defined below)), the DIP Documents and the terms of this Interim Order, each of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties is entitled to receive (1) a waiver of any "equities of the case" exceptions or claims under Bankruptcy Code section 552(b), (2) a waiver of the provisions of Bankruptcy Code section 506(c), and (3) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable).

J. **Immediate Entry**. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2), (c) and (d) and Local Rules 4001(c)(2) and 9006. Absent granting the interim relief sought by this Interim Order, the Debtors' estates could be immediately and irreparably harmed. Thus, sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2), (c), and (d) and Local Rules 4001(c)(2) and 9006.

Based upon the foregoing findings and conclusions, the Motion, the DIP Declaration, and the record before the Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor,

1 IT IS HEREBY ORDERED THAT:

2 1. **Motion Granted.** The relief sought by the Motion is granted, and the DIP Facility  
3 and the use of Cash Collateral are hereby authorized and approved, in each case, upon the terms  
4 and conditions of this Interim Order and the DIP Documents.

5 2. **Objections Overruled.** Any objections to the Motion that have not been  
6 withdrawn, waived or settled, and all reservations of rights or other statements inconsistent with  
7 this Interim Order, are hereby denied and overruled. This Interim Order shall become effective  
8 and enforceable immediately upon its entry.

9 3. **Approval and Authorization of DIP Facility.**

10 (a) *Authorization of DIP Facility and DIP Documents.* The DIP Facility is  
11 hereby approved on an interim basis on the terms and conditions set forth herein. The DIP Loan  
12 Parties are expressly and immediately authorized and empowered to: (i) (A) enter into and perform  
13 all of their obligations, (B) as required by the DIP Lenders, execute, deliver and perform under the  
14 DIP Documents and (C) pay all fees, costs, expenses, indemnities and other amounts contemplated  
15 under this Interim Order and the applicable DIP Documents; and (ii) perform all acts, to make,  
16 execute, deliver, enter into and perform under any and all other agreements, instruments,  
17 certificates and other documents (including, without limitation, the execution and/or recordation  
18 of any collateral, pledge and security documents, mortgages, deeds of trust, control agreements,  
19 financing statements or other documents), and to perform all such other and further acts, that may  
20 be necessary, required or desirable for the DIP Agent or the DIP Lenders to perform their  
21 obligations under the DIP Facility, this Interim Order and any applicable DIP Document and to  
22 implement the transactions contemplated thereunder and hereunder.

23 (b) **Authorization to Borrow.** The Debtors are hereby authorized to borrow  
24 under the DIP Facility, from the period between the date of entry of this Interim Order and the  
25 Final Hearing (the “*Interim Period*”), a principal amount of up to \$20,000,000, subject to the terms  
26 and conditions (including any conditions precedent to such borrowing) set forth in this Interim  
27 Order and the DIP Documents. The DIP Lenders shall have no obligation to make any loan or  
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1 advance under the DIP Documents, unless all of the conditions precedent to the making of such  
2 extension of credit under the DIP Documents and this Interim Order have been satisfied in full or  
3 waived in accordance with the DIP Documents and this Interim Order.

4 (c) *Use of DIP Proceeds and Cash Collateral.* The Debtors are hereby  
5 authorized to use the proceeds of the DIP Facility and all Cash Collateral solely in the manner and  
6 for the purposes expressly permitted in the Approved Budget (subject to the Permitted Variances),  
7 this Interim Order and the DIP Documents.

8 (d) *DIP Interest, Fees and Expenses.* The Debtors are authorized and directed  
9 to pay any and all (i) interest, fees, premiums or other amounts payable under the DIP Documents,  
10 including, without limitation, the Upfront Fee, the Unused Commitment Fee, the Exit Fee, the  
11 Agency Fee, (ii) amounts due (or that may become due) to any Indemnified Person (as defined  
12 below) in respect of the indemnification obligations under this Interim Order and the DIP  
13 Documents and (iii) any other amounts payable in connection with the DIP Facility, including all  
14 reasonable and documented pre- and postpetition fees, expenses and disbursements in connection  
15 with the DIP Facility and these Chapter 11 Cases of (A) Akin Gump Strauss Hauer & Feld LLP  
16 (“*Akin*”), as counsel to the DIP Lenders, (B) Blake, Cassels & Graydon LLP, as Canadian counsel  
17 to the DIP Lenders, (C) Shea Larson PC, as Nevada local counsel to the DIP Lenders, (D) Kelley  
18 Drye & Warren, LLP, as counsel to the DIP Agent (“*DIP Agent Counsel*”), and (E) any other  
19 attorneys, financial advisors, consultants or other professionals retained by the DIP Secured Parties  
20 (the professionals set forth in clauses (A) through (E), collectively, the “*DIP Professionals*”), in  
21 each case whether or not such payments, premiums, fees, costs, expenses and disbursements arose  
22 before or after the Interim Closing Date. The payment of the fees, costs, expenses and  
23 disbursements of the DIP Professionals other than DIP Agent Counsel (the “*DIP Professional*  
24 *Fees*”) shall be subject to the notice and review procedures set forth in paragraph 19 of this Interim  
25 Order. For the avoidance of doubt, the Debtors shall be jointly and severally liable for the  
26 obligations to pay the DIP Professional Fees in accordance with this Interim Order.



1 (e) *Indemnification.* As set forth in the DIP Documents, the Debtors will jointly  
2 and severally indemnify the DIP Agent, the DIP Lenders, the DIP Professionals and their respective  
3 affiliates, successors and assigns and the officers, directors, employees, agents, advisors,  
4 controlling persons and members of each of the foregoing (each an “**Indemnified Person**”), and  
5 hold them harmless from and against any and all losses, claims, damages, costs, expenses  
6 (including, but not limited to reasonable and documented legal fees and expenses) and liabilities  
7 arising out of or relating to the execution or delivery of the DIP Documents, transactions  
8 contemplated hereby and thereby and any actual or proposed use of the proceeds of any loans made  
9 under the DIP Facility in accordance with the terms of the DIP Credit Agreement and the other  
10 DIP Documents; *provided* that no such Indemnified Person will be indemnified for costs, expenses  
11 or liabilities to the extent determined by a final, non-appealable judgment of a court of competent  
12 jurisdiction to have been incurred solely by reason of the actual gross negligence or willful  
13 misconduct of such person (or their related persons). No Indemnified Person shall have any  
14 liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any  
15 shareholders or creditors of the Debtors for or in connection with the transactions contemplated  
16 hereby, except to the extent such liability is found in a final non-appealable judgment by a court  
17 of competent jurisdiction to have resulted solely from such Indemnified Person’s gross negligence  
18 or willful misconduct, and in no event shall any Indemnified Person be liable on any theory for  
19 any special indirect, consequential or punitive damages.

20 (f) *Modification of DIP Documents.* The DIP Agent (acting at the direction of  
21 the Required DIP Lenders)<sup>4</sup> and the Required DIP Lenders are hereby authorized to execute,  
22 deliver and perform under one or more amendments, waivers, consents or other modifications to  
23 and under the DIP Documents, in each case, in accordance with the provisions of any applicable  
24 DIP Documents governing amendments thereto, each without further application to or order of the  
25 Court; *provided, however*, that any amendments, waivers, consents or other modifications to and

26  
27 <sup>4</sup> The term “**Required DIP Lenders**” as used in this Interim Order, shall have the same meaning ascribed to the  
28 term “Majority Lenders” in the DIP Credit Agreement.

under the DIP Documents that (i) modify the original stated maturity of the DIP Facility, (ii) increase the aggregate commitments thereunder or (iii) increase the rate of interest or fees payable with respect thereto shall require further Court approval; *provided further*, that any amendment that may affect the rights, obligations, protections, immunities or indemnities of the DIP Agent shall require the consent of the DIP Agent.

4. **DIP Obligations**

(a) Upon entry of this Interim Order, the obligations under any applicable DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each Debtor, and shall be fully enforceable against each of the Debtors, their estates and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of these Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the foregoing, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the “***Successor Cases***”), in each case, in accordance with the terms of the DIP Documents and this Interim Order.

(b) Upon entry of this Interim Order, the Debtors shall be jointly and severally liable for all DIP Obligations, including, without limitation, all loans, advances, indebtedness, obligations, extensions of credit, financial accommodations, principal, interest, payments or similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other amounts, whether or not such obligations arose before or after the Petition Date, whenever the same shall become due and payable, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the DIP Lenders under the DIP Documents or this Interim Order.

(c) All obligations incurred, payments made and transfers or grants of liens and security interests set forth in this Interim Order and/or the DIP Documents by the Debtors are granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and

1 commitments and other financial accommodations secured thereby. No obligation, payment,  
2 transfer or grant of liens or security interests under this Interim Order or the DIP Documents to the  
3 DIP Secured Parties shall be limited, stayed, restrained, voidable, avoidable or recoverable under  
4 the Bankruptcy Code or under any applicable law, or subject to any challenge, objection, defense  
5 or claim, including, without limitation, avoidance (whether under chapter 5 of the Bankruptcy  
6 Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer  
7 Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff,  
8 offset, recoupment, recharacterization, subordination (whether equitable, contractual or  
9 otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge,  
10 recovery or other cause of action of any kind or nature whatsoever, whether arising under the  
11 Bankruptcy Code, applicable non-bankruptcy law or otherwise (subject, solely in the case of the  
12 DIP Professional Fees, only to the procedures set forth in paragraph 19 of this Interim Order).

13 5. **DIP Superpriority Claims.** Pursuant to Bankruptcy Code section 364(c)(1), all of  
14 the DIP Obligations shall constitute allowed senior administrative expense claims of the DIP  
15 Secured Parties, against each of the Debtors' estates (the "***DIP Superpriority Claims***"), without  
16 the need to file any proof of claim or request for payment of administrative expenses, with priority  
17 over any and all administrative expenses, adequate protection claims, diminution claims and all  
18 other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever,  
19 including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code  
20 sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising  
21 under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a  
22 Final Order), 507(a), 507(b), 726, 1113 or 1114 or otherwise, whether or not such expenses or  
23 claims may become secured by a judgment lien or other non-consensual lien, levy or attachment,  
24 which allowed claims shall for the purposes of Bankruptcy Code section 1129(a)(9)(A) be  
25 considered administrative expenses allowed under Bankruptcy Code section 503(b) and 507(b),  
26 and which shall be payable from and have recourse to all prepetition and postpetition property of  
27 the Debtors and all proceeds thereof, including actions to recover property transferred pursuant to  
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Bankruptcy Code section 549, and subject to the entry of the Final Order, the proceeds of, and property that is recovered from or becomes unencumbered as a result of (whether by judgment, settlement or otherwise), all claims and causes of action arising under chapter 5 of the Bankruptcy Code or under any applicable state law of a similar nature (such claims and causes of action, “**Avoidance Actions**” and the proceeds thereof, “**Avoidance Action Proceeds**”), subordinate only to the Carve-Out and the administrative charge granted by the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) in the proceedings (the “**Recognition Proceedings**”) under Part IV of the Companies’ Creditors Arrangement Act (Canada) (the “**CCAA**”) commenced by the Debtors in Canada in respect of certain Canadian-related professional fees, in an aggregate amount not to exceed CAD\$500,000 (the “**Administration Charge**”). Except as set forth in, or permitted by, this Interim Order, or otherwise permitted pursuant to an order of this Court, no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

6. **DIP Liens.**

(a) As security for the DIP Obligations, effective and automatically perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted by the DIP Loan Parties continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the “**DIP Liens**”) upon all DIP Collateral as security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of all of the DIP Obligations.

(b) The term “**DIP Collateral**” means all assets and properties of each of the Debtors and their estates, of any kind or nature whatsoever, wherever located, whether tangible or intangible, real, personal or mixed, whether now owned or consigned by or to, or leased from or to, or hereafter acquired by, or arising in favor of, each of the Debtors (including under any trade

names, styles or derivations thereof), whether prior to or after the Petition Date, including, without limitation: (i) all Prepetition Collateral (including Cash Collateral); (ii) all intercompany claims, including, but not limited to, all Intercompany Superpriority Claims (as defined below); (iii) all money, cash and cash equivalents; (iii) all funds in any deposit accounts (excluding cash deposits that secure any outstanding letters of credit), securities accounts, commodities accounts, or other accounts (together with and all money, cash and cash equivalents, instruments and other property deposited therein or credited thereto from time to time); (iv) all accounts and other receivables (including those generated by intercompany transactions); (v) all contracts and contract rights; (vi) all instruments, documents and chattel paper; (vii) all securities (whether or not marketable); (viii) all goods, as-extracted collateral, furniture, machinery, equipment, inventory and fixtures; (ix) all real property interests; (x) all interests in leaseholds; (xi) all franchise rights; (xii) all patents, tradenames, trademarks, copyrights, licenses and all other intellectual property; (xiii) all general intangibles, tax or other refunds or insurance proceeds; (xiv) all equity interests, capital stock, limited liability company interests, partnership interests and financial assets; (xv) all investment property; (xvi) all supporting obligations; (xvii) all letters of credit and letter of credit rights; (xviii) all commercial tort claims; (xix) subject to the entry of the Final Order, all Avoidance Action Proceeds (but not avoidance actions themselves), (xx) all books and records (including, without limitation, customers lists, credit files, computer programs, printouts and other computer materials, and records); (xxi) to the extent not covered by the foregoing, all other goods, assets or properties of the Debtors, whether tangible, intangible, real, personal or mixed; and (xxii) all products, offspring, profits and proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, including any and all proceeds of any insurance (including any business interruption and property insurance), indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing.

(c) Subject in all cases to the terms of this Interim Order and the DIP Documents, the DIP Secured Parties shall be granted the following DIP Liens in respect of the DIP Facility:

- (1) First Priority Lien on Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable and fully-perfected first priority senior security interest in and lien upon all DIP Collateral that, as of the Petition Date, is unencumbered and not subject to any liens (including Petition Date Perfected Liens), which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, and (B) the Administration Charge.
- (2) Priming Lien on WCF Collateral. Upon the payment in full of the obligations under the Prepetition Working Capital Facility, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes WCF Collateral, which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (3) Priming Lien on Non-WCF Collateral. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes Non-WCF Collateral, *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge and (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (4) Lien on Intercompany Superpriority Claims. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority priming security interest in and lien on all claims in respect of intercompany transfers of proceeds from the DIP Facility or of Cash Collateral from any Debtor to NCU (the “*Intercompany Superpriority Claims*”), *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, and (C) Petition Date Perfected Liens (excluding any Prepetition Trisura Lien).

(d) To the fullest extent permitted by the Bankruptcy Code or applicable law, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other instrument or agreement that requires the consent or the payment of any fees or obligations to any governmental entity or non-governmental entity for the Debtors to pledge, grant, mortgage, sell, assign or otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral, shall have no force or effect with respect to the DIP Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Documents and this Interim Order.

7. **Use of DIP Collateral and Cash Collateral**

1 (a) The Debtors are hereby authorized to use the proceeds of DIP Facility and  
2 all Cash Collateral solely to the extent expressly permitted under the Approved Budget (subject to  
3 the Permitted Variances) and subject to the terms and conditions set forth in this Interim Order and  
4 any applicable DIP Documents. Except on the terms and conditions of this Interim Order, the  
5 Debtors shall be enjoined and prohibited from at any time using the Cash Collateral absent further  
6 order of the Court.

7 (b) Without the prior written consent of the Required DIP Lenders, the Debtors  
8 shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral  
9 (or enter into any binding agreement to do so), except as may be expressly permitted by this Interim  
10 Order and any applicable DIP Documents. All proceeds of DIP Collateral, whether from ordinary  
11 course collections, asset sales, debt or equity issuances, insurance recoveries, condemnation or  
12 otherwise, will be deposited and applied as required by this Interim Order and any applicable DIP  
13 Documents. The Debtors shall not transfer any cash, assets, properties or other DIP Collateral to  
14 any affiliate of the Debtors that is not a Debtor in these Chapter 11 Cases without the prior written  
15 consent of the Required DIP Lenders, in their sole discretion.

16 (c) Proceeds of the DIP Facility constitute postpetition assets of the Debtors,  
17 subject only to the Carve Out, Administrative Charge, DIP Liens, and adequate protection liens of  
18 the Prepetition Secured Parties, with the priorities set forth herein, and shall, for the avoidance of  
19 doubt, not be subject to any liens arising from prepetition claims against any of the Debtors,  
20 whether perfected prior to the Petition Date, after the Petition Date pursuant to section 546(b) of  
21 the Bankruptcy Code, or otherwise, regardless of where or how held. The Debtors may deposit  
22 proceeds of the DIP Facility into their existing bank accounts, and such proceeds shall not be  
23 subject to any liens or claims arising prepetition, including pursuant to chapter 108 of the Nevada  
24 Revised Statutes, whether or not eligible for perfection after the Petition Date, except for junior  
25 liens or claims of the Prepetition Secured Parties, as set forth herein. For the avoidance of doubt,  
26 to the extent of any proceeds of the DIP Facility deposited therein, no bank account of the Debtors  
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1 may be a “construction disbursement account” for purposes of chapter 108 of the Nevada Revised  
2 Statutes.

3 8. **Budget**

4 (a) *Initial Budget.* The Debtors have prepared and delivered to the DIP Lenders  
5 and the DIP Professionals an itemized thirteen-week cash flow forecast attached hereto as **Exhibit**  
6 **B** (the “*Initial Budget*,” as amended, replaced, supplemented or otherwise modified from time to  
7 time in accordance with the terms of this Interim Order and the DIP Documents, the “*Approved*  
8 *Budget*”). Except as otherwise provided herein or in the DIP Documents, the Debtors may only  
9 use Cash Collateral and the proceeds of the DIP Facility to fund payments benefitted by the Carve-  
10 Out and otherwise in accordance with the Approved Budget (subject to the Permitted Variances).

11 (b) *Proposed Budget; Budget Transition.* By no later than 12:00 p.m. (Pacific  
12 Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and  
13 continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the  
14 Debtors shall deliver to the DIP Lenders, DIP Professionals, and KfW an updated and  
15 supplemented forecast (a “*Proposed Budget*”) for the thirteen-week period commencing with the  
16 calendar week in which such Proposed Budget is delivered (the “*Budgeted Period*”); *provided,*  
17 *however,* that in no event shall the Budgeted Period extend past four weeks after the Maturity Date  
18 (as defined in the DIP Credit Agreement) of the DIP Facility. For the avoidance of doubt, if the  
19 Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts,  
20 disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for  
21 all weeks following the Maturity Date shall assume that the Debtors continue to operate in the  
22 ordinary course consistent with prior postpetition practices and that no sale of the Debtors’  
23 business will occur during such portion of the Budgeted Period. The Proposed Budget (including  
24 any subsequent revisions to any such Proposed Budget) shall become the Approved Budget  
25 effective five (5) business days after such submission (such date, the “*Budget Transition Date*”)  
26 unless the Debtors receive a written objection from the Required DIP Lenders (with e-mail from  
27 professionals acting on behalf of the Required DIP Lenders to the Debtors’ counsel being  
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1 sufficient) prior to 5:00 p.m. (Pacific Time) on the Budget Transition Date. If the Required DIP  
2 Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or  
3 modification to the Approved Budget or Approved Variance Report (defined below) within five  
4 (5) business days after the Required DIP Lenders' receipt thereof, then such Proposed Budget,  
5 amendment, supplement or modification shall be deemed acceptable to and approved by the DIP  
6 Lenders. In the event the Required DIP Lenders timely object to a Proposed Budget, the prior  
7 Approved Budget shall remain in full force and effect until any such Proposed Budget is approved  
8 by the Required DIP Lenders (with e-mail from the advisors acting on behalf of the Required DIP  
9 Lenders to the Debtors' counsel being sufficient). The consent of the Required DIP Lenders to  
10 any Proposed Budget or any Approved Budget shall not be construed as consent to the use of any  
11 Cash Collateral or proceeds of the DIP Facility after the occurrence of a Termination Event  
12 regardless of whether the aggregate funds shown on the Approved Budget have been  
13 expended. Until any Proposed Budget, amendment, supplement or modification has been  
14 approved (or is deemed approved in accordance with this paragraph) by the Required DIP Lenders,  
15 the Debtors shall be subject to and be governed by the terms of the Approved DIP Budget then in  
16 effect.

17 (c) *Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second  
18 Thursday following the Petition Date (the "**First Reporting Date**", which, for the avoidance of  
19 doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday  
20 thereafter (together with the First Reporting Date, each a "**Weekly Reporting Date**"), the Debtors  
21 shall provide to the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form  
22 and substance reasonably acceptable to the DIP Lenders (the "**Weekly Variance Report**"), setting  
23 forth in reasonable detail: (i) the intercompany transfers from Debtor entities to NCU on a Debtor-  
24 by-Debtor and an aggregate basis; (ii) the actual receipts of the Debtors on a line-by-line and  
25 aggregate basis (the "**Actual Receipts**") and the actual disbursements of the Debtors on a line-by-  
26 line and aggregate basis (such aggregate actual disbursements, the "**Actual Disbursements**"), in  
27 each case, during the applicable week ending on the Sunday preceding each such Weekly  
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1 Reporting Date (each such week, the “**Reporting Week**”); (iii) a comparison (whether positive or  
2 negative, expressed as a percentage) for the Reporting Week between (A) the Actual Receipts (and  
3 each line item thereof) for such Reporting Week to the amount of the Debtors’ projected receipts  
4 (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the  
5 Actual Disbursements (and each line item thereof) for such Reporting Week to the amount of the  
6 Debtors’ projected disbursements (and each line item thereof) set forth in the Approved Budget for  
7 such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to NCU  
8 to the amount of each such Debtor’s projected intercompany transfers to NCU set forth in the  
9 Approved Budget for such Reporting Week. In addition, by no later than 12:00 p.m. (Pacific Time)  
10 on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First  
11 Reporting Date, (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling  
12 Four-Week Testing Date shall be July 11, 2024) and each subsequent four-week period  
13 commencing from the beginning of the week in which the Petition Date occurs and ending on the  
14 Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing**  
15 **Period**”) the Debtors shall provide the DIP Lenders (and their advisors) and KfW (and its counsel)  
16 a report, in form and substance reasonably acceptable to the DIP Lenders (a “**Rolling Four-Week**  
17 **Variance Report**” and, together with the Weekly Variance Report, the “**Approved Variance**  
18 **Reports**”), setting forth in reasonable detail: (x) the aggregate Actual Receipts of the Debtors,  
19 aggregate Actual Disbursements of the Debtors, and aggregate intercompany transfers from each  
20 Debtor entity to NCU, in each case, during the applicable Rolling Four-Week Testing Period; and  
21 (y) a comparison (whether positive or negative, expressed as a percentage) detailing (1) the  
22 aggregate Actual Receipts (and each line item thereof) for such Rolling Four-Week Testing Period  
23 compared to the projected receipts (and each line item thereof) for such Rolling Four-Week Testing  
24 Period set forth in the Approved Budget for such Rolling Four-Week Testing Period; (2) the  
25 aggregate Actual Disbursements (and each line item thereof) for such Rolling Four-Week Testing  
26 Period compared to the projected disbursements (and each line item thereof) for such Rolling Four-  
27 Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period;  
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1 and (3) the aggregate intercompany transfers from each Debtor entity to NCU made by each such  
2 Debtor during such Rolling Four-Week Testing Period compared to the aggregate projected  
3 intercompany transfers from each such Debtor entity to NCU for such Rolling Four-Week Testing  
4 Period set forth in the Approved Budget for such Rolling Four-Week Testing Period.

5 (d) *Budget Testing; Permitted Variances.* During any Rolling Four-Week  
6 Testing Period, the Debtors shall not permit (1) total disbursements, minus (2) disbursements in  
7 respect of (i) interest, fees, and expenses in relation to the DIP Facility; (ii) Adequate Protection  
8 Obligations; (iii) DIP Professional Fees; and (iv) professional fees paid by the Debtors on behalf  
9 of themselves or any other party (the disbursements remaining after such subtractions, the “**Total**  
10 **Tested Disbursements**”) to be more than 120% of such Total Tested Disbursements set forth in the  
11 Approved Budget for such Rolling Four-Week Testing Period (collectively, the “**Permitted**  
12 **Variances**”). Additional disbursement variances, if any, from an Approved Budget, and any  
13 proposed amendments, supplements or modifications to an Approved Budget, shall be subject to  
14 the prior written approval of the Required DIP Lenders. For the avoidance of doubt, any reference  
15 to “written consent” or “written approval” hereunder shall include consent or approval granted by  
16 e-mail, including email from counsel to the DIP Lenders on behalf of the DIP Lenders.

17 9. **Reporting Requirements; Access to Records.** The Debtors shall provide (i) Akin,  
18 as counsel to the DIP Lenders, (ii) Milbank LLP (“**Milbank**”), as counsel to KfW, (iii) White &  
19 Case LLP, as counsel to Concord, (iv) Davis, Graham & Stubbs LLP, as counsel to Triple Flag (v)  
20 Cleary, Gottlieb, Steen & Hamilton LLP, as counsel to Pala, (vi) Bennett Jones LLP, as counsel to  
21 Mercuria, and (vii) Alvarez & Marsal Canada Inc., in its capacity as the Information Officer in the  
22 Recognition Proceedings, with all reporting and other information required to be provided to the  
23 DIP Agent under the DIP Documents. In addition to, and without limitation, whatever rights to  
24 access the DIP Secured Parties or KfW have under the DIP Documents, upon reasonable notice, at  
25 reasonable times during normal business hours, the Debtors shall permit representatives, agents  
26 and employees of the DIP Secured Parties and KfW to (x) have access to and inspect the Debtors’  
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1 assets, (y) examine the Debtors' books and records and (z) discuss the Debtors' affairs, finances  
2 and condition with the Debtors' officers and financial advisors.

3 10. **Adequate Protection for the Prepetition Secured Parties.** Pursuant to  
4 Bankruptcy Code sections 361, 363, and 364, and in consideration of the stipulations and consents  
5 set forth herein, as adequate protection of their interests in the Prepetition Collateral (including  
6 Cash Collateral), for and equal in amount to the aggregate postpetition Diminution in Value of  
7 such interests, the Prepetition Secured Parties are hereby granted the following (collectively, the  
8 "***Adequate Protection Obligations***"):

9 (a) ***Adequate Protection Liens.*** As security for and solely to the extent of any  
10 Diminution in Value, the Prepetition Secured Parties are hereby granted additional and replacement  
11 valid, binding, enforceable, non-avoidable and effective and automatically perfected postpetition  
12 security interests in, and liens on, as of the date of this Interim Order (the "***Adequate Protection***  
13 ***Liens***"), subject in all cases to the priorities set forth on **Exhibit C** hereto, without the necessity of  
14 the execution by the Debtors (or recordation or other filing) of security agreements, control  
15 agreements, pledge agreements, financing statements, mortgages or other similar documents, all  
16 DIP Collateral.

17 (b) ***Adequate Protection Superpriority Claims.*** As further adequate protection,  
18 and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), the Prepetition Secured  
19 Parties are hereby granted allowed administrative expense claims in the Chapter 11 Cases against  
20 each of the Debtors to the extent of any Diminution in Value (the "***Adequate Protection***  
21 ***Superpriority Claims***"). The Adequate Protection Superpriority Claims shall be payable from and  
22 have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof  
23 (excluding Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Action  
24 Proceeds). Subject to the terms of this Interim Order, the Adequate Protection Superpriority  
25 Claims shall have the same relative priorities as the Adequate Protection Liens (as set forth on  
26 **Exhibit C** hereto) and be subject to (i) the Carve-Out, (ii) the Administration Charge and (iii) the  
27 DIP Superpriority Claims. Except as set forth in this Interim Order, the Adequate Protection  
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1 Superpriority Claims shall not be junior to any other claims and shall have priority over all  
2 administrative expense claims against each of the Debtors, now existing or hereafter arising, of  
3 any kind or nature whatsoever, including, without limitation, administrative expense claims of the  
4 kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365,  
5 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and  
6 1114.

7 (c) *Fees and Expenses of the Prepetition Secured Parties.* As further adequate  
8 protection, the Debtors are authorized and directed to pay, without further Court order, reasonable  
9 and documented fees and expenses (the “**Adequate Protection Fees**”), whether incurred before or  
10 after the Petition Date, of the Prepetition Senior Secured Term Loan Agent, consisting of the  
11 following: (i) Milbank, as counsel to KfW; (ii) one Canadian counsel to KfW; (iii) one Nevada  
12 counsel to KfW; and (iv) one technical advisor to KfW; (collectively, the “**Prepetition Secured**  
13 **Parties’ Professionals**”) in accordance with the notice and review procedures set forth in  
14 paragraph 19 of this Interim Order.

15 (d) *Monthly Payments.* The Prepetition Senior Secured Term Loan Agent shall  
16 during the pendency of the Chapter 11 Cases, receive indefeasible payments in amounts equal to  
17 100% of the accrued and unpaid interest, whether accruing prior to, on or after the Petition Date,  
18 due to the Prepetition Senior Secured Term Loan Agent under the Prepetition Senior Secured Term  
19 Loan Documents (calculated at the applicable non-default rates) (the “**Adequate Protection**  
20 **Monthly Payments**” and, together with the Adequate Protection Fees, the “**Adequate Protection**  
21 **Payments**”), which shall be payable (i) in respect of payments relating to the Prepetition Senior  
22 Secured KfW Term Loan Obligations, in cash and (ii) in respect of payments relating to the  
23 Prepetition Senior Secured Term Loan A-2 Obligations, in kind; *provided* that in the event of a  
24 final determination that the Prepetition Senior Secured Term Loan Lenders are undersecured as of  
25 the Petition Date, payments received by the applicable undersecured Prepetition Senior Secured  
26 Term Loan Lender pursuant to this paragraph 10(d) may be recharacterized and applied as  
27 payments of principal.  
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(e) *Information Rights.* The Debtors shall contemporaneously provide the Prepetition Secured Parties with all reporting and information that is required to be provided to the DIP Lenders under the DIP Documents (as currently in effect, or pursuant to any additional requirements that may be added after the date hereof). The Debtors shall (a) provide the Prepetition Senior Secured Term Loan Agent and its advisors with copies of any material proposal, offer, indication of interest, or bid within two (2) business days of receipt, and (b) at the Prepetition Senior Secured Term Loan Agent's request, host a weekly call with the Prepetition Senior Secured Term Loan Agent and its advisors regarding the status of the Debtors' sale process. The Debtors shall provide the Prepetition Senior Secured Term Loan Agent and its advisors with any information reasonably requested by the Prepetition Senior Secured Term Loan Agent or its advisors in connection with any Proposed Budget, Approved Budget, or Weekly Variance Report within three (3) business days of such request. The Debtors shall conduct weekly status calls with KfW (and their technical advisor) on the status of the Underground Mine and shall respond timely to any reasonable request of KfW's technical advisor to provide information with respect to the status of the Underground Mine.

11. **Perfection of DIP Liens and Adequate Protection Liens.**

(a) This Interim Order shall be sufficient and conclusive evidence of the attachment, validity, perfection and priority of all liens and security interests granted under this Interim Order and the DIP Documents, including, without limitation, the DIP Liens and the Adequate Protection Liens, without the necessity of the execution, recordation or filing of any pledge, collateral or security agreements, mortgages, deeds of trust, lockbox or control agreements, financing statements, notations of certificates of title for titled goods, or any other document or instrument, or the taking of any other action (including, without limitation, entering into any deposit account control agreement or other act to take possession or control of any DIP Collateral, including Cash Collateral), to attach, validate, perfect or prioritize such liens and security interests, or to entitle the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition

1 Secured Parties to the priorities provided hereby and set forth on Exhibit C hereto (a “*Perfection*  
2 *Act*”).

3 (b) Without in any way limiting the automatically effective perfection of the  
4 liens granted under this Interim Order and the DIP Documents (including, without limitation, the  
5 DIP Liens and the Adequate Protection Liens), each of the Required DIP Lenders, the Prepetition  
6 Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the Prepetition TF  
7 Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, without any further  
8 consent of any party, is hereby authorized on a final basis, to execute, file or record, and such  
9 parties, as applicable, may require the execution, filing or recording, as each, in its sole discretion  
10 deems necessary, of such financing statements, mortgages, notices of lien and other similar  
11 documents to enable the Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
12 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
13 Junior Secured Term Loan Agent, as applicable, to further validate, perfect, preserve and enforce  
14 the DIP Liens or Adequate Protection Liens granted hereunder, as applicable, perfect in accordance  
15 with applicable law or to otherwise evidence the DIP Liens and/or the Adequate Protection Liens,  
16 as applicable, and all such financing statements, mortgages, notices and other documents shall be  
17 deemed to have been executed, filed or recorded as of the Petition Date; *provided, however*, that,  
18 notwithstanding any otherwise applicable law or regulation to the contrary, whether or not the  
19 Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent, the Prepetition Working  
20 Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition Junior Secured Term  
21 Loan Agent, as applicable, determine, in their sole discretion, to execute, file, record or otherwise  
22 effectuate any Perfection Act with respect to any liens or security interests granted under this  
23 Interim Order and the DIP Documents, such liens and security interests shall be deemed valid,  
24 perfected, allowed, enforceable, non-avoidable and not subject to objection, challenge, dispute,  
25 avoidance, recharacterization or subordination. The Debtors are hereby authorized and directed  
26 on a final basis to execute and deliver promptly upon demand to the Required DIP Lenders, the  
27 Prepetition Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the  
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1 Prepetition TF Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, as  
2 applicable, all such financing statements, notices and other documents as such parties may  
3 reasonably request. The Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
4 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition  
5 Junior Secured Term Loan Agent, as applicable, each in its discretion, may file a copy of this  
6 Interim Order as a financing statement with any filing or recording office or with any registry of  
7 deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or  
8 similar instruments, and in such event, the filing or recording office shall be authorized to file or  
9 record such copy of this Interim Order.

10 12. **Modification of Automatic Stay.** The automatic stay imposed by Bankruptcy  
11 Code section 362(a) is hereby modified, without application to or further order of this Court, to  
12 permit: (i) the Debtors to grant the DIP Liens and the DIP Superpriority Claims, and to perform  
13 such acts as the DIP Agent (acting at the direction of the Required DIP Lenders) and/or the  
14 Required DIP Lenders may request to assure the perfection and priority of the DIP Liens; (ii) the  
15 Debtors to incur all liabilities and obligations to the DIP Secured Parties as contemplated under  
16 this Interim Order and the DIP Documents; (iii) the Debtors to grant the Adequate Protection Liens  
17 and Adequate Protection Superpriority Claims and to perform such acts as the Prepetition Secured  
18 Parties may request to assure the perfection and priority of the Adequate Protection Liens; (iv) the  
19 Debtors to incur all liabilities and obligations to the Prepetition Secured Parties, including all  
20 Adequate Protection Superpriority Claims and other Adequate Protection Obligations, as  
21 contemplated under this Interim Order and the DIP Documents; (v) the Debtors to pay all amounts  
22 required under this Interim Order and the DIP Documents; (vi) the DIP Secured Parties and the  
23 Prepetition Secured Parties to retain and apply payments made in accordance with the terms of this  
24 Interim Order and the DIP Documents; (vii) subject in all respects to paragraph 18 of this Interim  
25 Order, the DIP Agent (acting at the direction of the Required DIP Lenders) and the applicable  
26 Prepetition Secured Parties to exercise, upon the occurrence of any Termination Event (as defined  
27 below), all rights and remedies provided for in this Interim Order, the DIP Documents or applicable  
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1 law; (viii) the Debtors to perform under this Interim Order and the DIP Documents and to take any  
2 and all other actions that may be necessary, required or desirable for the performance by the  
3 Debtors under this Interim Order and the DIP Documents and the implementation of the  
4 transactions contemplated hereunder and thereunder; and (ix) the implementation of all of the  
5 terms, rights, benefits, privileges, remedies and provisions of this Interim Order and the DIP  
6 Documents.

7 13. **Carve-Out.**

8 (a) *Carve-Out.* As used in this Interim Order, the “***Carve-Out***” means the sum  
9 of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section  
10 1930(a) of title 28 of the United States Code, together with interest, if any, under section 3717 of  
11 title 31 of the United States Code (without regard to the notice set forth in (iii) below); (ii) all  
12 reasonable fees and expenses up to \$50,000 incurred by a trustee under Bankruptcy Code section  
13 726(b) (without regard to the notice set forth in (iii) below); (iii) to the extent allowed, whether by  
14 interim order, procedural order or otherwise, all unpaid fees and expenses (the “***Allowed***  
15 ***Professional Fees***”) incurred by persons or firms retained by the Debtors pursuant to Bankruptcy  
16 Code sections 327, 328 or 363 (the “***Debtor Professionals***”) and the Creditors’ Committee  
17 pursuant to Bankruptcy Code sections 328 or 1103 (the “***Committee Professionals***” and, together  
18 with the Debtor Professionals, the “***Estate-Retained Professionals***”) at any time before or on the  
19 first calendar day following delivery of a Carve-Out Trigger Notice (as defined below), whether  
20 allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed  
21 Professional Fees of Estate-Retained Professionals, in an aggregate amount not to exceed \$750,000  
22 incurred after the first calendar day following delivery of the Carve-Out Trigger Notice, to the  
23 extent allowed, whether by interim order, procedural order or otherwise (the amounts set forth in  
24 this clause (iv) being the “***Post-Carve-Out Trigger Notice Cap***”). For purposes of the foregoing,  
25 the “***Carve-Out Trigger Notice***” shall mean a written notice delivered by e-mail by the DIP Agent  
26 (acting at the direction of the Required DIP Lenders and in accordance with the terms of this  
27 Interim Order), to the Debtors’ proposed bankruptcy counsel Allen Overy Shearman & Sterling  
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1 US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick and Sara Coelho),  
2 the U.S. Trustee, the Creditors' Committee, if any, and the Prepetition Secured Parties, which  
3 notice may be delivered following the occurrence and during the continuation of an Event of  
4 Default (as defined in the DIP Credit Agreement) and acceleration of the obligations under the DIP  
5 Facility or the occurrence of a Maturity Date (as defined in the DIP Credit Agreement), stating that  
6 the Post-Carve-Out Trigger Notice Cap has been invoked.

7 (b) *Carve-Out Reserves*. On the day on which a Carve-Out Trigger Notice is  
8 delivered (the "***Carve-Out Trigger Date***"), the Carve-Out Trigger Notice shall constitute a demand  
9 to the Debtors to utilize all cash on hand as of such date to fund a reserve in an amount equal to  
10 the then unpaid amounts of (i) the Allowed Professional Fees of Estate-Retained Professionals and  
11 (ii) the obligations accrued as of the Carve-Out Trigger Date with respect to clauses (i) and (ii) of  
12 the definition of Carve-Out set forth in paragraph 13(a) (the "***Additional Carve-Out Obligations***").  
13 The Debtors shall deposit and hold such amounts in a segregated account in a manner reasonably  
14 acceptable to the DIP Agent (acting at the direction of the Required DIP Lenders) or the Required  
15 DIP Lenders, and, following the Discharge of DIP Obligations, the Prepetition Senior Secured  
16 Term Loan Agent, in trust to pay such unpaid Allowed Professional Fees of Estate-Retained  
17 Professionals and Additional Carve-Out Obligations (the "***Pre-Carve-Out Trigger Notice***  
18 ***Reserve***") prior to the use of such reserve to pay any other claims. On the Carve-Out Trigger Date,  
19 after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining  
20 cash on hand as of such date to fund a reserve in an amount equal to the Post-Carve-Out Trigger  
21 Notice Cap (the "***Post-Carve-Out Trigger Notice Reserve***" and, together with the Pre-Carve-Out  
22 Trigger Notice Reserve, the "***Carve-Out Reserves***") prior to the use of such reserve to pay any  
23 other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the  
24 obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth in paragraph  
25 13(a) (the "***Pre-Carve-Out Amounts***"), but not, for the avoidance of doubt, the Post-Carve-Out  
26 Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice  
27 Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay any other  
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amounts (if owing) benefitted by the Carve-Out and then to the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) have been indefeasibly paid in full, in cash, and all commitments under the DIP Facility have been terminated (the “**Discharge of DIP Obligations**”), in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents and this Interim Order. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the “**Post-Carve-Out Amounts**”), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents and this Interim Order. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, if either of the Carve-Out Reserves are not funded in full in the amounts set forth in this paragraph 13(b), then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 13(b), prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent (in accordance with the terms of this Interim Order and the DIP Documents) shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a valid and perfected security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case

1 any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition  
2 Debt Documents. Further, notwithstanding anything to the contrary in this Interim Order, (x)  
3 disbursements by the Debtors from the Carve-Out Reserves shall not increase or reduce the DIP  
4 Obligations or constitute additional loans under the DIP Facility and (y) the failure of the Carve-  
5 Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the  
6 Carve-Out in respect of DIP Collateral or any recoveries thereon. For the avoidance of doubt and  
7 notwithstanding anything to the contrary in this Interim Order, the DIP Documents or in any  
8 Prepetition Debt Documents, the Carve-Out shall be senior to all liens and claims securing the DIP  
9 Facility, the Adequate Protection Obligations and the Prepetition Secured Obligations, and any and  
10 all other forms of adequate protection, liens or claims securing the DIP Obligations or the  
11 Prepetition Secured Obligations.

12 (c) *Payment of Allowed Professional Fees Prior to the Carve-Out Trigger Date.*  
13 Any payment or reimbursement made prior to the occurrence of the Carve-Out Trigger Date in  
14 respect of any Allowed Professional Fees shall not reduce the Carve-Out.

15 (d) *No Direct Obligation to Pay Allowed Professional Fees.* None of the DIP  
16 Secured Parties or Prepetition Secured Parties shall be responsible for the payment or  
17 reimbursement of any fees or disbursements of any Estate-Retained Professional incurred in  
18 connection with the Chapter 11 Cases or any Successor Cases. Nothing in this Interim Order or  
19 otherwise shall be construed to obligate the DIP Secured Parties or the Prepetition Secured Parties,  
20 in any way, to pay compensation to, or to reimburse expenses of, any Estate-Retained Professional  
21 or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

22 (e) *Payment of Carve-Out on or After the Carve-Out Trigger Date.* Any  
23 payment or reimbursement made on or after the occurrence of the Carve-Out Trigger Date in  
24 respect of any Allowed Professional Fees incurred after the first business day following delivery  
25 by the DIP Agent (acting at the direction of the Required DIP Lenders) of the Carve-Out Trigger  
26 Notice shall permanently reduce the Post-Carve-Out Trigger Notice Cap on a dollar-for-dollar  
27 basis. Any funding of the Carve-Out under the DIP Facility shall be added to, and made a part of,  
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1 the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections  
2 granted under this Interim Order, the DIP Documents, the Bankruptcy Code and applicable law.

3 14. **Limitation on Charging Expenses Against Collateral.** Subject to entry of the  
4 Final Order (but retroactive to the Petition Date), and subject to the Carve-Out and the  
5 Administration Charge, no costs or expenses of administration of the Chapter 11 Cases, the  
6 Recognition Proceedings or any future proceeding that may result therefrom, including liquidation  
7 in bankruptcy or other proceedings under the Bankruptcy Code or the CCAA, shall be charged  
8 against or recovered from the DIP Collateral or the Prepetition Collateral, the DIP Secured Parties  
9 or the Prepetition Secured Parties pursuant to Bankruptcy Code sections 506(c) and 105(a), or any  
10 similar principle of law or equity, without the prior written consent of the DIP Secured Parties and  
11 the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other  
12 action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties.

13 15. **No Marshaling/Application of Proceeds.** Subject to entry of the Final Order, the  
14 DIP Agent and the Prepetition Secured Parties shall be entitled to apply the payments or proceeds  
15 of the DIP Collateral and the Prepetition Collateral, as applicable, in accordance with the  
16 provisions of the Interim Order or the Final Order, as applicable, the DIP Documents and the  
17 Prepetition Debt Documents, as applicable, and in no event shall the DIP Secured Parties or any  
18 of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other  
19 similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral.

20 16. **Equities of the Case.** Subject to entry of the Final Order (but retroactive to the  
21 Petition Date), (i) the Prepetition Secured Parties shall be entitled to all of the rights and benefits  
22 of Bankruptcy Code section 552(b) and (ii) the Debtors shall not invoke the “equities of the case”  
23 exception under Bankruptcy Code section 552(b) with respect to the proceeds, products, offspring  
24 or profits of any of the Prepetition Collateral.

25 17. **Termination Events.** The occurrence of any of the following shall constitute a  
26 “***Termination Event***”: (i) the occurrence of an Event of Default (as defined in the DIP Documents)  
27 to the extent not waived by the Required DIP Lenders or subject to a forbearance or similar  
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1 agreement with the Required DIP Lenders; (ii) the Debtors' failure to comply in any material  
2 respect with any provision of this Interim Order unless waived by the applicable lenders; or (iii)  
3 the occurrence of the Maturity Date (as defined in the DIP Documents).

4 18. **Remedies Upon a Termination Event.**

5 (a) Upon the occurrence of the Termination Event, the DIP Agent (acting at the  
6 direction of the Required DIP Lenders) shall be entitled to declare (A) all DIP Obligations due and  
7 payable without presentment, demand or protest or other notice of any kind, all of which are  
8 expressly waived by the Debtors, (B) the termination, reduction or restriction of all future  
9 commitments to the Borrower under the DIP Facility to the extent any such commitment remains  
10 (including, for the avoidance of doubt, any commitment to fund the DIP Facility) but without  
11 affecting the DIP Liens and DIP Obligations, (C) the termination of the DIP Facility and any DIP  
12 Documents as to any future obligation of the DIP Secured Parties, but without affecting any of the  
13 DIP Liens or any DIP Obligation, (D) the termination, reduction or restriction on the ability of the  
14 Debtors to use any Cash Collateral and the proceeds of the DIP Facility (any such declaration made  
15 by the DIP Agent to counsel to the Debtors, counsel to the applicable Prepetition Secured Parties,  
16 the U.S. Trustee and counsel to the Creditors' Committee, if any, (which may be made by e-mail),  
17 a "***Termination Declaration***," and the date which is the earliest to occur of any such Termination  
18 Declaration and the Maturity Date being herein referred to as the "***Termination Declaration***  
19 ***Date***"). The DIP Agent shall provide any Termination Declaration to the Debtors' lead  
20 restructuring counsel, the Creditors' Committee, if any, the U.S. Trustee, and Milbank, as counsel  
21 to KfW.

22 (b) The Debtors, the Committee (if appointed), and/or any party in interest shall  
23 be entitled to seek an emergency hearing before the Court within four (4) business days after the  
24 delivery of a Termination Declaration (such period being the "***Remedies Notice Period***"), for the  
25 sole purpose of contesting whether a Termination Event (other than with respect to the Maturity  
26 Date) has occurred or is continuing or for the contested use of Cash Collateral (a "***Stay***  
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1 ***Enforcement Motion***”).<sup>5</sup> The Debtors shall be entitled to continue to use Cash Collateral in  
2 accordance with the terms of this Interim Order and the DIP Documents during any Remedies  
3 Notice Period only to make payroll and fund critical expenses necessary to preserve the Prepetition  
4 Collateral, in each case, in accordance with the terms of the Approved Budget and this Interim  
5 Order, but shall not be permitted to use Cash Collateral following any Remedies Notice Period  
6 absent further order of the Court approving such use (and only to the extent so approved). Unless  
7 the Court has determined that a Termination Event has not occurred and/or is not continuing, or  
8 the Court orders otherwise, the automatic stay, as to the DIP Secured Parties shall automatically  
9 be terminated at the end of the Remedies Notice Period without further notice, order, or any further  
10 action in the Chapter 11 Cases or the Recognition Proceedings and the DIP Agent (acting at the  
11 direction of the Required DIP Lenders) shall be permitted to exercise any rights and remedies  
12 against the DIP Collateral available to the DIP Secured Parties under this Interim Order, the DIP  
13 Documents and applicable non-bankruptcy law without any further order of or application or  
14 motion to the Court, including, but not limited to, any rights to setoff against deposits and financial  
15 assets of the Debtors and to foreclose on all or any portion of the DIP Collateral, in each case,  
16 subject to the Carve-Out, the Administration Charge and any Prepetition Permitted Liens;  
17 *provided, however*, that the Required DIP Lenders shall consult with the Prepetition Secured Term  
18 Loan Agent in advance of exercising any remedies or taking action in connection with any of the  
19 DIP Collateral and shall provide the Prepetition Senior Secured Term Loan Agent with five (5)  
20 Business Days’ notice in advance of taking such actions; which period may be waived by the  
21 Prepetition Senior Secured Term Loan Agent, in its reasonable discretion.

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26 <sup>5</sup> If a hearing to consider a Stay Enforcement Motion is requested to be heard before the end of the Remedies Notice  
27 Period but is scheduled for a later date by the Court, the Remedies Notice Period shall automatically be extended  
28 to the date of such hearing, but in no event later than ten (10) business days after delivery of the Termination  
Declaration or at such other date that may be agreed to by the parties after good faith negotiations.



1           19.     **Fees and Expenses of DIP Professionals and Prepetition Secured Parties'**  
2     **Professionals.**

3           (a)     The payment of all DIP Professional Fees and Adequate Protection Fees  
4 hereunder shall not be subject to (i) further application to or approval of the Court, (ii) allowance  
5 or review by the Court or (iii) the U.S. Trustee's fee guidelines, and no attorney or advisor to the  
6 DIP Secured Parties or the Prepetition Secured Parties shall be required to file an application  
7 seeking compensation for services or reimbursement of expenses with the Court; *provided,*  
8 *however,* that any time the DIP Professionals (other than DIP Agent Counsel) seek payment of  
9 fees and expenses from the Debtors from and after the Petition Date but prior to the effective date  
10 of any chapter 11 plan,<sup>6</sup> each such party or professional shall provide summary copies of its  
11 invoices (which shall not be required to contain time entries, and which may be redacted or  
12 modified to the extent necessary to delete any information subject to the attorney-client privilege,  
13 any information constituting attorney work product or any other confidential information, and the  
14 provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any  
15 benefits of the attorney work product doctrine) to the Debtors' counsel, the U.S. Trustee, and lead  
16 counsel to the Creditors' Committee, if any (collectively, the "***Invoice Review Parties***"). Any  
17 objections raised by any Invoice Review Party with respect to such invoices must (x) be in writing  
18 (email from such party or their counsel being sufficient) (y) state with particularity the grounds for  
19 such objection and (z) be submitted to the affected professional(s) within ten (10) calendar days  
20 after delivery of such invoices to the Invoice Review Parties (such ten (10) calendar day period,  
21 the "***Invoice Review Period***"). If no written objection is received prior to the expiration of the  
22 Invoice Review Period from the Invoice Review Parties, the Debtors shall pay such invoices within  
23 two (2) calendar days following the expiration of the Invoice Review Period. If an objection is  
24 received within the Invoice Review Period from the Invoice Review Parties, the Debtors shall

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26     <sup>6</sup> For the avoidance of doubt, nothing contained in this paragraph 19 shall prevent the DIP Secured Parties or KfW  
27 from seeking payment from the Debtors of professional fees and expenses incurred prior to the Petition Date in  
28 accordance with the terms of this Interim Order and the DIP Documents.



promptly pay the undisputed amount of the invoice, and the disputed portion of such invoice shall not be paid until such dispute is resolved by agreement between the affected party or professional(s) and the objecting party or by order of this Court. Any hearing to consider such an objection to the payment of any fees, costs or expenses set forth in a professional fee invoice hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject of such objection.

(b) Notwithstanding anything contained in this Interim Order to the contrary, any and all payments, fees, costs, expenses and other amounts paid at any time by any of the Debtors to the DIP Secured Parties or the Prepetition Secured Parties (including such parties' respective professionals), as applicable, pursuant to the requirements of this Interim Order or the DIP Documents, whether prior to, on or after the Petition Date, shall be non-refundable and irrevocable, are hereby approved (and to the extent paid prior to entry of the Interim Order, ratified in full), and shall not be subject to any challenge, objection, defense, claim or cause of action of any kind or nature whatsoever, including, without limitation, avoidance (whether under Chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling, surcharge or recovery or any other cause of action, whether arising under the Bankruptcy Code, applicable non-bankruptcy law or otherwise, by any person or entity.

20. **Limitation on Use of DIP Facility Proceeds, DIP Collateral and Cash Collateral.**

(a) Notwithstanding anything to the contrary set forth in this Interim Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral or the proceeds thereof, including Cash Collateral, or the Carve-Out may be used: (i) to investigate (except as expressly provided herein), initiate, prosecute, join or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense or other

1 litigation of any type (A) against any of the DIP Secured Parties or the Prepetition Secured Parties  
2 (in each case, in their capacities as such) and each of their respective affiliates, officers, directors,  
3 employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or  
4 successors, with respect to any transaction, occurrence, omission, action, or other matter (including  
5 formal discovery proceedings in anticipation thereof), including, without limitation, any so-called  
6 “lender liability” claims and causes of action, or seeking relief that would impair the rights and  
7 remedies of the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their  
8 capacities as such) under this Interim Order, the DIP Documents or the Prepetition Debt  
9 Documents, as applicable, to the extent permitted or provided hereunder, including, without  
10 limitation, for the payment of any services rendered by any Estate-Retained Professional in  
11 connection with the assertion of or joinder in any claim, counterclaim, action, proceeding,  
12 application, motion, objection, defense or other contested matter, the purpose of which is to seek,  
13 or the result of which would be to obtain, any order, judgment, determination, declaration or similar  
14 relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured  
15 Parties to recover on the DIP Collateral or the Prepetition Collateral (as applicable), as provided  
16 for herein, or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition  
17 Secured Parties related to the DIP Obligations or the Prepetition Secured Obligations, as  
18 applicable, (B) seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the DIP  
19 Liens, DIP Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens or the  
20 Prepetition Secured Obligations or (C) for monetary, injunctive or other affirmative relief against  
21 the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their capacities as such)  
22 that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties  
23 to assert or enforce any lien, claim, right or security interest or to realize or recover on the DIP  
24 Obligations or the Prepetition Secured Obligations to the extent permitted or provided hereunder;  
25 (ii) for objecting to or challenging in any way the legality, validity, priority, perfection or  
26 enforceability of the claims, liens or interests (including the Prepetition Liens) held by or on behalf  
27 of each of the Prepetition Secured Parties related to the Prepetition Secured Obligations, or by or  
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on behalf of the DIP Secured Parties related to the DIP Obligations; (iii) for asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Liens, the DIP Superpriority Claims, the DIP Obligations, the Prepetition Liens or the Prepetition Secured Obligations; or (iv) for prosecuting an objection to, contesting in any manner or raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of (A) any of the DIP Liens, the DIP Superpriority Claims, or any other rights or interests of the DIP Secured Parties related to the DIP Obligations or the DIP Liens or (B) any of the Prepetition Liens, Prepetition Secured Obligations or any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Secured Obligations; *provided* that no more than \$50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by the Creditors' Committee (if any) solely to investigate (but not seek formal discovery or commence any challenge, objection or prosecute any claim or cause of action relating to) the foregoing matters with respect to the Prepetition Liens or the Prepetition Secured Obligations within the Challenge Period (as defined below) (the "***Investigation Budget***").

(b) Any fees and expenses of the Committee Professionals in connection with the investigation of the matters described in paragraph 20(a) of this Interim Order in excess of the Investigation Budget shall not be entitled to administrative expense priority pursuant to section 503(b) of the Bankruptcy Code or otherwise.

21. **Effect of Stipulations on Third Parties.**

(a) The Debtors' acknowledgments, stipulations, admissions, agreements, waivers and releases set forth in this Interim Order shall be binding on the Debtors, their respective estates, representatives, successors and assigns upon entry of this Interim Order and the Debtors shall be deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date.

(b) The acknowledgments, stipulations, admissions, agreements, waivers and releases contained in this Interim Order shall also be binding upon all other parties in interest,

including the Creditors' Committee or non-statutory committees appointed or formed in these Chapter 11 Cases (if any) and any other person or entity seeking to act on behalf of the Debtors' estates, including any chapter 7, chapter 11 trustee or examiner appointed or elected for any of the Debtors in these Chapter 11 Cases or any Successor Cases, and each of their respective successors and assigns, in all circumstances and for all purposes, unless: (i) any such party, having obtained requisite standing, timely and properly commences and serves an adversary proceeding or contested matter (subject to the limitations contained herein) (A) objecting to or challenging the validity, perfection, priority, scope, extent or enforceability of the Prepetition Funded Debt Liens or the Prepetition Secured Obligations, (B) objecting to or alleging any basis to impair, restrict, deny or otherwise challenge the right of any of the Prepetition Secured Parties to credit bid, in whole or in part, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations under Bankruptcy Code section 363(k) or otherwise or (C) otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**") against the Prepetition Secured Parties in connection with any matter related to the Prepetition Collateral, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations by no later than (1) with respect to any Creditors' Committee, the date that is 45 days after the later of (a) its appointment in the Chapter 11 Cases and (b) entry of the Final Order and (2) with respect to all other parties in interest, no later than the date that is 45 days after the entry of this Interim Order (the time period established by the foregoing clauses (1) and (2) the "**Challenge Period**"); *provided* that in the event that, prior to the expiration of the Challenge Period, (x) these Chapter 11 Cases are converted to chapter 7 or (y) a chapter 11 trustee is appointed in these Chapter 11 Cases, then, in each such case, the Challenge Period shall be extended for a period of 10 days solely with respect to any Trustee, commencing on the occurrence of either of the events described in the foregoing clauses (x) and (y); and (ii) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge in any such duly filed adversary proceeding or contested matter.

1 (c) If no such adversary proceeding or contested matter is timely filed prior to  
2 the expiration of the Challenge Period, without further order of this Court: (i) the Prepetition  
3 Secured Obligations shall constitute allowed claims, not subject to any Claims and Defenses  
4 (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense,  
5 avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance,  
6 recovery, disgorgement, attachment, “claim” (as defined by Bankruptcy Code section 101(5)),  
7 impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any  
8 kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these  
9 Chapter 11 Cases and any Successor Cases, if any; (ii) the Prepetition Funded Debt Liens shall be  
10 deemed to have been, as of the Petition Date, legal, valid, binding, perfected and of the priority  
11 specified in paragraphs F.1(c), F.2(c), F.3(c), and F.4(c), not subject to setoff, subordination,  
12 defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment or  
13 recovery; and (iii) the Prepetition Secured Obligations, the Prepetition Funded Debt Liens on the  
14 Prepetition Collateral and the Prepetition Secured Parties (solely in their capacities as such) shall  
15 not be subject to any other or further challenge and all parties in interest shall be forever enjoined  
16 and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action,  
17 including any successor thereto (including any estate representative or a Trustee, whether such  
18 Trustee is appointed or elected prior to or following the expiration of the Challenge Period).

19 (d) If any such adversary proceeding or contested matter is timely filed prior to  
20 the expiration of the Challenge Period, (i) the stipulations, admissions, agreements, waivers and  
21 releases contained in this Interim Order shall nonetheless remain binding and preclusive on the  
22 Creditors’ Committee (if any) and any other party in these Chapter 11 Cases, including any Trustee,  
23 except as to the party (or parties) that timely initiated such adversary proceeding or contested  
24 matter and, with respect to such party (or parties), solely as to any stipulations, admissions,  
25 agreements, waivers and releases that are specifically and expressly challenged in such adversary  
26 proceeding or contested matter and (ii) any Claims and Defenses not brought in such adversary  
27 proceeding or contested matter shall be forever barred; *provided* that, if and to the extent any  
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1 challenges to a particular stipulation, admission, agreement, waiver or release are withdrawn,  
2 denied or overruled by a final non-appealable order, such stipulation, admission, agreement,  
3 waiver and/or release also shall be binding on the Debtors' estates and all parties in interest.

4 (e) Nothing in this Interim Order vests or confers on any person (as defined in  
5 the Bankruptcy Code), including any Creditors' Committee (if any), standing or authority to pursue  
6 any cause of action belonging to the Debtors or their estates, including, without limitation, any  
7 challenge with respect to the Prepetition Debt Documents, the Prepetition Funded Debt Liens or  
8 the Prepetition Secured Obligations.

9 22. **Release.** Subject to the rights and limitations set forth in paragraphs 20 and 21 of  
10 this Interim Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf  
11 of each of their predecessors, their successors and assigns shall, to the maximum extent permitted  
12 by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish,  
13 irrevocably waive and discharge each of the DIP Secured Parties, and subject to the entry of the  
14 Final Order, the Prepetition Secured Parties (in each case, in their capacities as such) and each of  
15 their respective former, current or future officers, employees, directors, agents, representatives,  
16 owners, members, partners, affiliated investment funds or investment vehicles, managed, advised  
17 or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers,  
18 financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys,  
19 affiliates and predecessors in interest, each in their capacity as such, of and from any and all claims,  
20 demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and  
21 obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses,  
22 damages, injuries, attorneys' fees, costs, expenses or judgments of every type, whether known,  
23 unknown, asserted, unasserted, suspected unsuspected, accrued, unaccrued, fixed, contingent,  
24 pending or threatened including, without limitation, all legal and equitable theories of recovery,  
25 arising under common law, statute or regulation or by contract, of every nature and description  
26 that exist on the date hereof solely with respect to or relating to the DIP Liens, the DIP  
27 Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens and the Prepetition  
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Secured Obligations, as applicable, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties.

23. **Credit Bidding.**

(a) Consistent with Bankruptcy Code section 363(k) and applicable law, the DIP Agent (acting at the direction of the Required DIP Lenders) and each DIP Lender (in any case, either directly or through one or more acquisition vehicles), shall have the right to credit bid for all or any portion of the DIP Collateral, as applicable, up to the full amount of any DIP Superpriority Claims, as part of any sale of Debtors’ assets (in whole or in part), including without limitation, sales occurring pursuant to (i) Bankruptcy Code section 363, (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129 or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725 (each, a “***Sale Transaction***”), *provided*, that, until payment in full of the obligations under the Prepetition Working Capital Facility, the rights of the DIP Agent and each DIP Lender to credit bid on any DIP Collateral that constitutes WCF Collateral shall be subject to the right of the Prepetition Working Capital Purchaser to credit bid for all or any portion of the WCF Collateral, as applicable, up to the full amount of any Prepetition Working Capital Obligations as part of any Sale Transaction. The DIP Agent shall have the absolute right to assign, sell or otherwise dispose of its right to credit bid in connection with any credit bid by or on behalf of the DIP Lenders to any acquisition entity or joint venture formed in connection with such bid.

(b) The Prepetition Secured Parties’ rights to credit bid for all or a portion of the Prepetition Collateral as part of any Sale Transaction are fully preserved, subject in all respects to (i) payment in full in cash of all DIP Obligations and (ii) the terms and conditions of this Interim Order and the applicable Prepetition Debt Documents, including the lien and claim priorities set forth herein and therein.



1           24.     **Interim Order Governs.** In the event of any inconsistency between the provisions  
2 of this Interim Order and any DIP Documents, the provisions of this Interim Order shall govern.

3           25.     **Binding Effect; Successors and Assigns.** The DIP Documents and the provisions  
4 of this Interim Order, including all findings herein, shall be binding upon all parties in interest in  
5 these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition  
6 Secured Parties, the Creditors' Committee (if any), the Debtors and their respective successors and  
7 assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate  
8 of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104 or any  
9 other fiduciary appointed as a legal representative of any of the Debtors or with respect to the  
10 property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured  
11 Parties and the Prepetition Secured Parties; *provided*, that, except to the extent expressly set forth  
12 in this Interim Order, the Prepetition Secured Parties shall have no obligation to permit the use of  
13 Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person  
14 appointed for the estates of the Debtors.

15           26.     **Limitation of Liability.** In determining to make any loan under the DIP  
16 Documents, permitting the use of Cash Collateral or exercising any rights or remedies as and when  
17 permitted pursuant to this Interim Order, the DIP Documents or the Prepetition Debt Documents,  
18 the DIP Secured Parties and the Prepetition Secured Parties (in each case, solely in their capacities  
19 as such) shall not be deemed to be in control of the operations of the Debtors or to be acting as a  
20 "responsible person" or "owner or operator" with respect to the operation or management of the  
21 Debtors or their respective business (as such terms, or any similar terms, are used in the United  
22 States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§  
23 9601 *et seq.* as amended, or any similar federal or state statute), nor shall they owe any fiduciary  
24 duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint  
25 venture or partnership with any of the Debtors. Furthermore, nothing in this Interim Order, the  
26 DIP Documents or the Prepetition Debt Documents shall in any way be construed or interpreted  
27 to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties  
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1 of any liability for any claims arising from the prepetition or postpetition activities of any of the  
2 Debtors and their direct or indirect subsidiaries.

3 27. **Proofs of Claim.** Notwithstanding anything to the contrary contained in any prior  
4 or subsequent order of the Court, including, without limitation, any order establishing a deadline  
5 for the filing of proofs of claim or requests for payment of administrative expenses under  
6 Bankruptcy Code section 503(b), (i) the Prepetition Secured Parties shall not be required to file  
7 any proof of claim or request for payment of administrative expenses with respect to any of the  
8 Prepetition Secured Obligations or the Adequate Protection Obligations and (ii) the DIP Secured  
9 Parties shall not be required to file any proof of claim or request for payment of administrative  
10 expenses with respect to any DIP Obligations. The failure to file any such proof of claim or request  
11 for payment of administrative expenses shall not affect the validity, priority or enforceability of  
12 any of the Prepetition Debt Documents, the DIP Documents or of any other indebtedness, liabilities  
13 or obligations arising at any time thereunder or under this Interim Order, or prejudice or otherwise  
14 adversely affect the Prepetition Secured Parties' or the DIP Secured Parties' rights, remedies,  
15 powers or privileges under any of the Prepetition Debt Documents, the DIP Documents, this  
16 Interim Order or applicable law. The applicable Prepetition Secured Parties and DIP Secured  
17 Parties may (but are not required to) in their discretion file (and amend and/or supplement)  
18 applicable proofs of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or any  
19 successor cases for any claim allowed herein, and any such proof of claim may (but is not required  
20 to) be filed in the Debtors' lead Chapter 11 Case *In re* [ ], Case No. [ ] ([ ]) as one  
21 consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim  
22 against each Debtor. The provisions set forth in this paragraph 27 are intended solely for the  
23 purpose of administrative convenience and shall not affect the substantive rights of any party-in-  
24 interest or their respective successors-in-interest.

25 28. **Insurance.** The Debtors shall continue to maintain all property, operational and  
26 other insurance as required and as specified in the DIP Documents (which shall be deemed satisfied  
27 if such insurance as required under the Prepetition Secured Term Loan Credit Agreement remains  
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in place). The Debtors shall provide the DIP Agent (for distribution to the DIP Lenders) with commercially reasonable evidence of such insurance upon a request to counsel for the Debtors from the DIP Agent (acting at the direction of the Required DIP Lenders). Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of itself and the DIP Lenders) is, and is deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral (including all property damage and business interruption insurance policies of the Debtors, whether expired, currently in place or to be put in place in the future), and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies.

29. **Protection of Lenders' Rights.**

(a) Except as expressly permitted in this Interim Order or the DIP Documents, in the event any person or entity that holds a lien on or security interest in DIP Collateral that is junior or otherwise subordinate to the DIP Liens receives any DIP Collateral or proceeds of DIP Collateral, in each case, that is subject to such junior lien, or receives any payment on account of such junior lien or security interest in the DIP Collateral on account of such junior lien (whether in connection with the exercise of any right or remedy (including setoff), any payment or distribution from the Debtors, mistake or otherwise) prior to the Payment in Full<sup>7</sup> of all DIP Obligations, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Secured Parties, and shall immediately turn over all such proceeds to the DIP Agent, for the benefit of itself and the DIP Lenders, in the same form as received, with any necessary endorsements, for application in accordance with this Interim Order and the DIP Documents; *provided, however*, that until the

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<sup>7</sup> For purposes hereof, the term "Paid in Full" or "Payment in Full" means, with respect to the DIP Obligations or any Prepetition Secured Obligations (as the case may be), the irrevocable and indefeasible payment in full in cash of all DIP Obligations or such Prepetition Secured Obligations (as the case may be), other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

1 Payment in Full of the Prepetition Working Capital Obligations, upon receipt by the DIP Agent or  
2 any DIP Lender of any such payment or proceeds from DIP Collateral that constitutes WCF  
3 Collateral, the DIP Agent or the applicable DIP Lender shall segregate and hold in trust such  
4 payment or proceeds for the benefit of, and turn over all such payments and proceeds to, the  
5 Prepetition Working Capital Purchaser in the same form as received, with any necessary  
6 endorsements, for application in accordance with this Interim Order, the DIP Documents and the  
7 Prepetition Debt Documents.

8 (b) Other than with respect to the Carve Out, the Administration Charge and  
9 Petition Date Perfected Liens, and as otherwise expressly provided in this Interim Order and/or  
10 the DIP Documents (including Exhibit C hereto), no claim or lien having a priority senior to or  
11 *pari passu* with those granted to any of the DIP Secured Parties or the Prepetition Secured Parties  
12 by this Interim Order shall be granted or permitted while any of the DIP Obligations or the  
13 Prepetition Secured Obligations, respectively, remains outstanding. Except as expressly provided  
14 in this Interim Order and the DIP Documents (including Exhibit C hereto), each of the DIP Liens,  
15 the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection  
16 Superpriority Claims, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations:  
17 (i) shall not be made junior or subordinated to or *pari passu* with (A) any lien, security interest or  
18 claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases,  
19 whether under Bankruptcy Code section 364(d) or otherwise, (B) any lien that is avoided and  
20 preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 or  
21 otherwise, (C) any lien arising after the Petition Date including, without limitation, any lien or  
22 security interests granted in favor of any federal, state, municipal or other domestic or foreign  
23 governmental unit (including any regulatory body), commission, board or court for any liability of  
24 the Debtors or (D) any intercompany or affiliate lien or claim; and (ii) shall not be subject to  
25 Bankruptcy Code sections 510, 549, 550 or 551 and, subject to entry of the Final Order,  
26 Bankruptcy Code section 506(c).

1 (c) In the event this Interim Order or any provision hereof is vacated, reversed  
2 or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or  
3 Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur,  
4 reversal or modification of this Interim Order shall be governed in all respects by the original  
5 provisions of this Interim Order, including entitlement to all rights, remedies, privileges and  
6 benefits granted herein, and the DIP Secured Parties and the Prepetition Secured Parties shall be  
7 entitled to the protections afforded in Bankruptcy Code sections 363(m) and 364(e), as applicable,  
8 with respect to all uses of the DIP Collateral (including all Cash Collateral and all Prepetition  
9 Collateral), all DIP Obligations and all Adequate Protection Obligations.

10 (d) Subject to the Carve-Out, the Administration Charge and Petition Date  
11 Perfected Liens, unless and until all DIP Obligations and Prepetition Secured Obligations are Paid  
12 in Full and all commitments to extend credit under the DIP Facility are terminated, the Debtors  
13 irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (i) except  
14 as permitted under the DIP Documents, and with the prior written consent of the Required DIP  
15 Lenders and the Prepetition Senior Secured Term Loan Agent, (A) any modification, stay, vacatur  
16 or amendment of this Interim Order, (B) a priority claim for any administrative expense, secured  
17 claim or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind  
18 or nature whatsoever, without limitation, any administrative expense of the kind specified in  
19 Bankruptcy Code sections 503(b), 507(a) or 507(b)) in any of the Chapter 11 Cases, equal or  
20 superior to the DIP Superpriority Claims and the Adequate Protection Superpriority Claims or (C)  
21 any other order allowing the use of DIP Collateral; (ii) except as permitted under the DIP  
22 Documents, any lien on any of the DIP Collateral (including all Prepetition Collateral) with priority  
23 equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Funded Debt  
24 Liens; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents  
25 and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant  
26 to Bankruptcy Code section 546(h) (or other return of goods on account of any prepetition  
27 indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the  
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Chapter 11 Cases without the consent of the Required DIP Lenders; (vi) an order appointing a chapter 11 trustee in any of the Chapter 11 Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Chapter 11 Cases.

(e) Notwithstanding any order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise entered at any time, (i) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and any other administrative claims granted pursuant to this Interim Order, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order and the DIP Documents until such time as all DIP Obligations and Adequate Protection Obligations are Paid in Full; and (ii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (i) above.

(f) Except as expressly provided in this Interim Order and the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, shall maintain their priority as provided in this Interim Order, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission, or (ii) the entry of an order approving the sale of any DIP Collateral (including any Prepetition Collateral) pursuant to Bankruptcy Code section 363(b), except to the extent that such order provides for the attachment of DIP Liens or prepetition liens to the proceeds of such sale) or (iii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases and any Successor Cases.

1           30.     **Reservation of Rights of the DIP Secured Parties and Prepetition Secured**  
2 **Parties.** Except as otherwise expressly set forth in this Interim Order, the entry of this Interim  
3 Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or  
4 otherwise impair, as applicable: (i) any of the rights of any of the Prepetition Secured Parties to  
5 seek any other or supplemental relief in respect of the Debtors including the right to seek additional  
6 adequate protection; (ii) any of the rights of the DIP Secured Parties or the Prepetition Secured  
7 Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the  
8 right of any of the DIP Secured Parties or the Prepetition Secured Parties to (A) request  
9 modification of the automatic stay of Bankruptcy Code section 362, (B) request dismissal of any  
10 of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7 or  
11 appointment of a chapter 11 trustee or examiner with expanded powers in any of the Chapter 11  
12 Cases or (C) seek to propose, subject to the provisions of Bankruptcy Code section 1121, a chapter  
13 11 plan or plans; or (iii) any other rights, claims or privileges (whether legal, equitable or  
14 otherwise) of any of the DIP Secured Parties or the Prepetition Secured Parties. The delay in or  
15 failure of the DIP Secured Parties and/or the Prepetition Secured Parties to seek relief or otherwise  
16 exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties'  
17 or the Prepetition Secured Parties' rights and remedies under this Interim Order, the DIP  
18 Documents, the Prepetition Debt Documents or applicable law, as applicable.

19           31.     **Effectiveness.** Subject to the terms hereof, this Interim Order shall constitute  
20 findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc*  
21 to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules  
22 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rules 62(a) of the  
23 Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable  
24 upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

25           32.     **Final Hearing.** The final hearing (the "***Final Hearing***") on the Motion shall be  
26 held on \_\_\_\_\_, 2024, at \_\_: \_\_.m. (Prevailing Pacific Time). Any party in interest objecting  
27 to the relief sought at the Final Hearing or in the Final Order shall file and serve a written objection,  
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1 which objection shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy  
2 Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick  
3 and Sara Coelho; (b) McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas,  
4 Nevada 89102, Attn: Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box  
5 270, TD South Tower Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel,  
6 Hanna Singer and Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C.  
7 Clifton Young Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel  
8 to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY  
9 10036, Attn: Brad Kahn.; 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley and (b)  
10 Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, Nevada 89134, Attn: James  
11 Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as  
12 administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York,  
13 NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments  
14 US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada,  
15 Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer  
16 under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York,  
17 NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag  
18 Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale  
19 agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary  
20 Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2  
21 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty  
22 Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Alvarez & Marsal Canada Inc., in its  
23 capacity as the Information Officer in the Recognition Proceedings, Royal Bank Plaza,  
24 South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, Attn: Al Hutchens; (x)  
25 Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich  
26 Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xi) counsel to any statutory committee  
27 appointed in these Chapter 11 Cases, in each case so as to be received no later than  
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\_\_\_\_\_, 2024, at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

33. **Headings.** Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

34. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Interim Order.

Dated: \_\_, 2024

\_\_\_\_\_  
THE HONORABLE [\_\_\_\_]  
UNITED STATES BANKRUPTCY JUDGE

Prepared and submitted by:

/s/ Ryan Works

**McDONALD CARANO LLP**

Ryan J. Works (Nevada Bar No. 9224)

Amanda M. Perach (Nevada Bar No. 12399)

2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

**ALLEN OVERY SHEARMAN STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488) (*pro hac vice pending*)

Sara Coelho (New York Bar No. 4530267) (*pro hac vice pending*)

599 Lexington Avenue

New York, New York 10022

*Proposed Counsel to the Debtors and  
Debtors in Possession*

APPROVED/DISAPPROVED



**EXHIBIT A**

**DIP Credit Agreement**

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**EXHIBIT B**

**Initial Budget**

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**EXHIBIT C****DIP / Adequate Protection Lien Priorities<sup>8</sup>**

<b>Non-WCF Collateral</b>	<b>WCF Collateral Prior to Repayment of WCF Obligations</b>	<b>WCF Collateral After Repayment of WCF Obligations</b>
DIP Liens	Working Capital Facility Adequate Protection Liens <sup>9</sup>	DIP Liens
Senior Secured Term Loan Adequate Protection Liens <sup>10</sup>	Senior Secured Term Loan Adequate Protection Liens	Senior Secured Term Loan Adequate Protection Liens
TF Adequate Protection Liens <sup>11</sup>	TF Adequate Protection Liens	TF Adequate Protection Liens
Working Capital Facility Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens
Junior Secured Term Loan Adequate Protection Liens <sup>12</sup>		

<sup>8</sup> For the avoidance of doubt, all DIP Liens and Adequate Protection Liens shall be subject to (i) the Carve-Out, (ii) the Administration Charge, (iii) the Prepetition Permitted Liens and (iv) the Prepetition Trisura Lien.

<sup>9</sup> “**Working Capital Facility Adequate Protection Liens**” means the Adequate Protection Liens granted to the Working Capital Facility Lender in accordance with the terms hereof.

<sup>10</sup> “**Senior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to KfW and the Prepetition Senior Secured Term Loan A-2 Parties in accordance with the terms hereof.

<sup>11</sup> “**TF Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition TF Stream Lender in accordance with the terms hereof.

<sup>12</sup> “**Junior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition Junior Secured Term Loan Parties in accordance with the terms hereof.

**SCHEDULE F****[FORM OF] OFFICER'S CERTIFICATE**

June \_\_, 2024

This Officer's Certificate (this "Certificate") is being executed and delivered pursuant to Sections 12.1(k) and 12.3(a), 12.3(b), 12.3(d) and 12.3(e) of that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of June \_\_, 2024 (as amended, restated, amended and restated, extended, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Nevada Copper, Inc., a Nevada corporation (the "Borrower"), the Guarantors party thereto from time to time, U.S. Bank Trust Company, National Association as Administrative Agent (the "Administrative Agent") and each Senior Lender from time to time party thereto. Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings specified in the Credit Agreement.

I, Gregory J. Martin, the duly appointed, qualified and acting Chief Financial Officer of the Borrower, solely in such capacity and not in my individual capacity (and without personal liability), as of the date of this Certificate, hereby certify on behalf of the Borrower that:

1. No Default or Event of Default has occurred and is continuing as of the date hereof, and no Default or Event of Default would result from the borrowing of the Interim Loan.
2. The representations and warranties contained in Article 8 of the Credit Agreement are true, accurate and complete in all material respects as of the date hereof.
3. Since the Petition Date, no Material Adverse Effect has occurred and is continuing.
4. The Interim Loan will be used for the purpose specified in Section 2.3.
5. True, correct and complete copies (where applicable) of the documents required to be delivered pursuant to Sections 12.1(b), 12.1(c), 12.1(f), 12.1(j), 12.1(k), and 12.3(g) of the Credit Agreement have been delivered to the Administrative Agent and/or Senior Lenders, as applicable.

*[signature page follows]*

IN WITNESS WHEREOF, I have executed this Certificate on behalf of Borrower on the date first written above.

**NEVADA COPPER, INC.**

By: \_\_\_\_\_

Name: Gregory J. Martin

Title: Chief Financial Officer

**SCHEDULE G****[FORM OF] OFFICER'S CERTIFICATE**

[ ], 2024

This Officer's Certificate (this "Certificate") is being executed and delivered pursuant to Sections 12.2(b) and 12.3(a), 12.3(b), 12.3(d) and 12.3(e) of that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of June \_\_, 2024 (as amended, restated, amended and restated, extended, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Nevada Copper, Inc., a Nevada corporation (the "Borrower"), the Guarantors party thereto from time to time, U.S. Bank Trust Company, National Association as Administrative Agent (the "Administrative Agent") and each Senior Lender from time to time party thereto. Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings specified in the Credit Agreement.

I, Gregory J. Martin, the duly appointed, qualified and acting Chief Financial Officer of the Borrower, solely in such capacity and not in my individual capacity (and without personal liability), as of the date of this Certificate, hereby certify on behalf of the Borrower that:

1. No Default or Event of Default has occurred and is continuing as of the date hereof, and no Default or Event of Default would result from the borrowing of the Final Loan.
2. The representations and warranties contained in Article 8 of the Credit Agreement are true, accurate and complete in all material respects as of the date hereof.
3. Since the Petition Date, no Material Adverse Effect has occurred and is continuing.
4. The Final Loan will be used for the purpose specified in Section 2.3.
5. True, correct and complete copies (where applicable) of the documents required to be delivered pursuant to Sections 12.2(b), 12.2(c), 12.2(f), and 12.3(g) of the Credit Agreement have been delivered to the Administrative Agent and/or Senior Lenders, as applicable.

*[signature page follows]*

IN WITNESS WHEREOF, I have executed this Certificate on behalf of Borrower on the date first written above.

**NEVADA COPPER, INC.**

By: \_\_\_\_\_

Name: Gregory J. Martin

Title: Chief Financial Officer

**SCHEDULE H**

**[RESERVED]**



**SCHEDULE I**  
**[RESERVED]**

**SCHEDULE J**

**PROJECT REAL PROPERTY**

**A. RGGGS Patented Mining Claims and Fee Lands**

A Leasehold Interest in and to the following patented mining claims and fee lands pursuant to that certain Mining Lease, dated May 4, 2006, as amended (the “Mining Lease”), by and between RGGGS Land & Minerals Ltd., L.P. (the “Landlord”) and Nevada Copper, Inc. A Memorandum of that Mining Lease is of record in Lyon County, Nevada, recorded May 11, 2006, at Document No. 381887.

**Those certain Patented Mining Claims described as follows:**

**Land Patent Number 27-70-0037**, BLM Serial No. NVN000105, granted October 14, 1969, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1964), for the lands embraced within the Lyon lode mining claims, Nos. 16, 17, 20, 21, 34, 35, 38, 52, 53, 56, 57, 70, 71, 72, 73, 74, 75, 85, 86, 87, 88, 89, 90, 91, 92, 101, 102, 145, 146, designated and described as:

Mineral Survey No. 4879, located within surveyed Sections 3, 4, 9, 10, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 585.308 acres;

**Land Patent Number 27-82-0003**, BLM Serial No. NVN005012, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 1, 2, 3, 4, 15, 18, 19 and 93, designated and described as:

Mineral Survey No. 4892, excepting the Lyon No. 22, 36, and 37 lode mining claims, located within surveyed Sections 3, 4, 10, and 11, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 161.037 acres.

**Land Patent Number 27-82-0004**, BLM Serial No. NVN006395, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 60, 62, 65, 66, 67, 79, 80, 82, 94, 95, 99, and 110, designated and described as:

Mineral Survey No. 4898, excepting the Lyon No. 78, 81, 83, 96, 97, 98, 100, 109, 111, 112, 113, 114, 123, 124, 166, 169, 170, and 171, lode mining claims, located within surveyed Sections 2 and 11, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 242.392 acres;

**Land Patent Number 27-82-0005**, BLM Serial No. NVN005011, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 6, 7, 8, 11, 12, 13, 24, 25, 26, 29, 30, 31, 42, 43, 44, 47, 48, 61, 135, and 136, designated and described as:

Mineral Survey No. 4893, excepting the Lyon No. 10, 27, 49 and 137, lode mining claims, located within surveyed Sections 1 and 2, T. 12 N., R. 26 E., and Section 35, T.13 N., R. 26 E Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 401.203 acres;

**Those certain Fee lands described as follows:**

**Tract 1:** 159.57 acres more or less, being the same land as described in a deed from Robert L. Biedebach and Aleta L. Biedebach, his wife, to United States Steel Corporation, dated January 5, 1970, and recorded as instrument No. 00117, in the Official Records of Lyon County, Nevada more particularly described as, Lot 3 or (NE/4 of the NW/4), Lot 4 or (NW/4 of the NW/4), SW/4 of the NW/4, and NW/4 of the SW/4, all in Section 4, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, sometimes identified as United States Patent Number 1221146, BLM Serial Number NVN 0051617;

4.

**Unpatented Mining Claims**

The following 616 unpatented lode mining claims situated in Sections 1, 2, 10-13, 15-18, 24, 35 and 36, T. 12 N., R. 26 E., MDBM, Sections 6, 7, 18, and 19, T. 12 N., R. 27 E., MDBM, Sections 16, 19, 20, 21 and 26-30, T. 13 N., R. 26 E., MDBM, and Sections 17-23, 26-35, T. 13 N., R. 27 E., MDBM, in Lyon and Mineral Counties, Nevada:

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	67	924374	380258	
PMK	68	924375	380259	
PMK	85	924392	380276	
PMK	86	924393	380277	
PMK	95	924402	380286	
PMK	96	924403	380287	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	98	924405	380289	
PMK	110	924417	380218	
PMK	111	924418	380219	
PMK	112	924419	380220	
PMK	113	924420	380221	
PMK	114	924421	380222	
PMK	115	924422	380223	
PMK	116	924423	380224	
PMK	117	924424	380225	
PMK	118	924425	380226	
PMK	119	924426	380227	
PMK	120	924427	380228	
PMK	121	924428	380229	
PMK	123	924429	380230	
PMK	125	924430	380231	
PMK	127	924431	380232	
PMK	129	924432	380233	
PMK	131	924433	380195	
PMK	132	924434	380196	
PMK	133	924435	380197	
PMK	134	924436	380198	
PMK	135	924437	380199	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	137	924438	380200	
PMK	170	933023	389088	
PMK	172	933025	389090	
PMK	174	933027	389092	
PMK	176	933029	389094	
PMK	178	933031	389096	
PMK	179	933032	389097	
PMK	180	933033	389098	
PMK	181	933034	389099	
PMK	182	933035	389100	
PMK	183	933036	389101	
PMK	184	933037	389102	
PMK	185	933038	389103	
PMK	186	933039	389104	
PMK	194	933047	389112	
PMK	195	933048	389113	
PMK	196	933049	389114	
PMK	197	933050	389115	
PMK	198	933051	389116	
PMK	199	933052	389117	
PMK	200	933053	389118	
PMK	235	933079	389144	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	236	933080	389145	
PMK	237	933081	389146	
PMK	238	933082	389147	
PMK	239	933083	389148	
PMK	240	933084	389149	
PMK	261	935753	393008	
PMK	262	935754	393009	
PMK	263	935755	393010	
PMK	280	956443	407822	
PMK	285	956448	407827	
PMK	286	956449	407828	
PMK	287	956450	407829	
PMK	288	956451	407830	
PMK	289	956452	407831	
PMK	290	956453	407832	
PMK	291	956454	407833	
PMK	292	956455	407834	
PMK	293	956456	407835	
PMK	294	956457	407836	
PMK	295	956458	407837	
PMK	296	956459	407838	
PMK	297	956460	407839	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	298	956461	407840	
PMK	299	956462	407841	
PMK	300	956463	407842	
PMK	301	956464	407843	
PMK	302	956465	407844	
PMK	303	956466	407845	
PMK	304	956467	407846	
PMK	305	956468	407847	
PMK	306	956469	407848	
PMK	307	956470	407849	
PMK	344	981797	421834	
PMK	345	981798	421835	
PMK	346	981799	421836	
PMK	387	981840	421877	
PMK	388	981841	421878	
PMK	389	981842	421879	
PMK	390	981843	421880	
PMK	391	981844	421881	
PMK	392	981845	421882	
PMK	393	981846	421883	
PMK	394	981847	421884	
PMK	397	981850	421887	



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	398	981851	421888	
PMK	399	981852	421889	
PMK	400	981853	421890	
PMK	401	981854	421891	
PMK	402	981855	421892	
PMK	403	981856	421893	
PMK	404	981857	421894	
PMK	405	981858	421895	
PMK	406	981859	421896	
PMK	407	981860	421897	
PMK	408	981861	421898	
PMK	409	981862	421899	
PMK	410	981863	421900	
PMK	411	981864	421901	
PMK	412	981865	421902	
PMK	413	981866	421903	
PMK	414	981867	421904	
PMK	415	981868	421905	
PMK	417	981870	421907	
PMK	418	981871	421908	
PMK	419	981872	421909	
PMK	420	981873	421910	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	421	981874	421911	
PMK	422	981875	421912	
PMK	423	981876	421913	
PMK	424	981877	421914	
PMK	425	981878	421915	
PMK	426	981879	421916	
PMK	427	981880	421917	
PMK	428	981881	421918	
PMK	429	981882	421919	
PMK	430	981883	421920	
PMK	431	981884	421921	
PMK	432	981885	421922	
PMK	433	981886	421923	
PMK	434	981887	421924	
PMK	435	981888	421925	
PMK	436	981889	421926	
PMK	437	981890	421927	
PMK	438	981891	421928	
PMK	449	981902	421939	
PMK	450	981903	421940	
PMK	451	981904	421941	
PMK	452	981905	421942	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	453	981906	421943	
PMK	454	981907	421944	
PMK	455	981908	421945	
PMK	456	981909	421946	
PMK	457	981910	421947	
PMK	458	981911	421948	
PMK	459	981912	421949	
PMK	460	981913	421950	
PMK	461	981914	421951	
PMK	462	981915	421952	
PMK	463	981916	421953	
PMK	464	981917	421954	
PMK	465	981918	421955	
PMK	466	981919	421956	
PMK	467	981920	421957	
PMK	468	981921	421958	
PMK	469	981922	421959	
PMK	470	981923	421960	145035
PMK	471	981924	421961	145036
PMK	472	981925	421962	145037
PMK	473	981926	421963	145038
PMK	474	981927		145039

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	475	981928	421964	145040
PMK	476	981929		145041
PMK	477	981930	421965	145042
PMK	478	981931		145043
PMK	479	981932	421966	145044
PMK	480	981933		145045
PMK	481	981934	421967	145046
PMK	482	981935		145047
PMK	483	981936	421968	145048
PMK	484	981937	421969	145049
PMK	485	981938	421970	145050
PMK	486	981939	421971	145051
PMK	487	981940	421972	145052
PMK	488	981941		145053
PMK	489	981942	421973	145054
PMK	490	981943		145055
PMK	491	981944	421974	145056
PMK	492	981945		145057
PMK	493	981946	421975	145058
PMK	494	981947		145059
PMK	495	981948	421976	145060
PMK	496	981949		145061

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	497	981950	421977	145062
PMK	498	981951		145063
PMK	499	981952	421978	145064
PMK	500	981953		145065
PMK	501	981954	421979	145066
PMK	502	981955		145067
PMK	503	981956	421980	145068
PMK	504	981957		145069
PMK	505	981958	421981	145070
PMK	506	981959		145071
PMK	507	981960	421982	145072
PMK	508	981961		145073
PMK	509	981962	421983	145074
PMK	510	981963		145075
PMK	511	981964	421984	145076
PMK	512	981965		145077
PMK	513	981966	421985	145078
PMK	514	981967		145079
PMK	515	981968	421986	145080
PMK	516	981969		145081
PMK	517	981970	421987	145082
PMK	518	981971		145083

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	519	981972	421988	145084
PMK	520	981973		145085
PMK	521	981974	421989	145086
PMK	522	981975		145087
PMK	523	981976	421990	145088
PMK	524	981977		145089
PMK	525	981978	421991	145090
PMK	526	981979		145091
PMK	527	981980	421992	145092
PMK	528	981981		145093
PMK	529	981982	421993	145094
PMK	530	981983		145095
PMK	531	981984		145096
PMK	532	981985		145097
PMK	533	981986		145098
PMK	534	981987		145099
PMK	535	981988		145100
PMK	536	981989		145101
PMK	537	981990		145102
PMK	538	981991		145103
PMK	539	981992		145104
PMK	540	981993		145105

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	541	981994		145106
PMK	542	981995		145107
PMK	543	981996		145108
PMK	544	981997		145109
PMK	545	981998		145110
PMK	546	981999		145111
PMK	547	982000		145112
PMK	548	982001		145113
PMK	549	982002		145114
PMK	550	982003		145115
PMK	551	982004		145116
PMK	552	982005		145117
PMK	553	982006		145118
PMK	554	982007		145119
PMK	555	982008		145120
PMK	556	982009		145121
PMK	557	982010		145122
PMK	558	982011		145123
PMK	559	982012		145124
PMK	560	982013		145125
PMK	561	982014		145126
PMK	562	982015		145127

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	563	982016		145128
PMK	564	982017		145129
PMK	565	982018		145130
PMK	566	982019		145131
PMK	567	982020		145132
PMK	568	982021		145133
PMK	569	982022		145134
PMK	570	982023		145135
PMK	571	982024		145136
PMK	572	982025		145137
PMK	573	982026		145138
PMK	574	982027		145139
PMK	575	982028		145140
PMK	576	982029		145141
PMK	577	982030		145142
PMK	578	982031		145143
PMK	579	982032	421994	
PMK	587	982040	422002	
PMK	588	982041	422003	
PMK	590	982043	422005	
PMK	592	982045	422007	
PMK	594	982047	422009	



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	596	982049	422011	
PMK	598	982051	422013	
PMK	603	982056	422018	
PMK	604	982057	422019	
PMK	605	982058	422020	
PMK	606	982059	422021	
PMK	632	1059602	484747	
PMK	634	1059604	484749	
PMK	636	1059606	484751	
PMK	638	1059608	484753	
PMK	640	1059610	484755	
PMK	642	1059612	484757	
PMK	698	1068478	488906	155617
PMK	699	1068479		155618
PMK	700	1068480	488907	155619
PMK	701	1068481		155620
PMK	702	1068482	488908	155621
PMK	703	1068483		155622
PMK	704	1068484		155623
PMK	705	1068485		155624
PMK	706	1068486		155625
PMK	707	1068487		155626

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	708	1068488		155627
PMK	709	1068489		155628
PMK	710	1068490		155629
PMK	711	1068491		155630
PMK	712	1068492		155631
PMK	713	1068493		155632
PMK	714	1068494		155633
PMK	715	1068495		155634
PMK	716	1068496		155635
PMK	717	1068497		155636
PMK	718	1068498		155637
PMK	719	1068499		155638
PMK	720	1068500		155639
PMK	721	1068501		155640
PMK	722	1068502		155641
PMK	723	1068503		155642
PMK	724	1068504		155643
PMK	725	1068505		155644
PMK	726	1068506		155645
PMK	727	1068507		155646
PMK	728	1068508		155647
PMK	742	1186807	592261	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	743	1186808	592262	
PMK	744	1186809	592263	
PMK	745	1186810	592264	
PMK	746	1186811	592265	
PMK	747	1186812	592266	
PMK	748	1186813	592267	
PMK	749	1186814	592268	
PMK	750	1186815	592269	
PMK	751	1186816	592270	
PMK	752	1186817	592271	
PMK	753	1186818	592272	
PMK	754	1186819	592273	
PMK	755	1186820	592274	
PMK	756	1186821	592275	
PMK	757	1186822	592276	
PMK	758	1186823	592277	
PMK	759	1186824	592278	170110
PMK	760	1186825	592279	170111
PMK	761	1186826	592280	170112
PMK	762	1186827	592281	
PMK	763	1186828	592282	
PMK	764	1186829	592283	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	765	1186830	592284	170113
PMK	766	1186831	592285	
PMK	767	1186832	592286	170114
PMK	768	1186833	592287	
PMK	769	1186834	592288	170115
PMK	770	1186835	592289	
PMK	771	1186836	592290	170116
PMK	772	1186837	592291	
PMK	773	1186838	592292	170117
PMK	774	1186839	592293	170118
PMK	775	1186840	592294	170119
PMK	776	1186841	592295	170120
PMK	777	1186842		170121
PMK	778	1186843	592296	170122
PMK	779	1186844		170123
PMK	780	1186845	592297	170124
PMK	781	1186846		170125
PMK	782	1186847	592298	170126
PMK	783	1186848		170127
PMK	784	1186849	592299	170128
PMK	785	1186850		170129
PMK	786	1186851		170130

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	787	1186852		170131
PMK	788	1186853		170132
PMK	789	1186854		170133
PMK	790	1186855	592300	170134
PMK	791	1186856		170135
PMK	792	1186857	592301	170136
PMK	793	1186858		170137
PMK	794	1186859		170138
PMK	795	1186860		170139
PMK	796	1186861		170140
PMK	797	1186862		170141
PMK	798	1186863		170142
PMK	799	1186864		170143
PMK	800	1186865		170144
PMK	801	1186866		170145
PMK	802	1186867		170146
PMK	803	1186868		170147
PMK	804	1186869		170148
PMK	805	1186870		170149
PMK	806	1186871		170150
PMK	807	1186872		170151
PMK	808	1186873		170152

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	809	1186874		170153
PMK	810	1186875		170154
PMK	811	1186876		170155
PMK	812	1186877		170156
PMK	813	1186878		170157
PMK	814	1186879		170158
PMK	815	1186880		170159
PMK	816	1186881		170160
PMK	817	1186882		170161
PMK	818	1186883		170162
PMK	819	1186884		170163
PMK	820	1186885		170164
PMK	821	1186886		170165
PMK	822	1186887		170166
PMK	823	1186888		170167
PMK	824	1186889		170168
PMK	825	1186890		170169
PMK	826	1186891		170170
PMK	827	1186892		170171
PMK	828	1186893		170172
PMK	829	1186894		170173
PMK	830	1186895		170174

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	831	1186896		170175
PMK	832	1186897		170176
PMK	833	1186898		170177
PMK	834	1186899		170178
PMK	835	1186900		170179
PMK	836	1186901		170180
PMK	837	1186902		170181
PMK	838	1186903		170182
PMK	839	1186904		170183
PMK	840	1186905		170184
PMK	841	1186906		170185
PMK	842	1186907		170186
PMK	843	1186908		170187
PMK	844	1186909		170188
PMK	845	1186910		170189
PMK	846	1186911		170190
PMK	847	1186912		170191
PMK	848	1186913		170192
PMK	849	1186914		170193
PMK	850	1186915		170194
PMK	851	1186916		170195
PMK	852	1186917		170196

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	853	1186918		170197
PMK	854	1186919		170198
PMK	855	1186920		170199
PMK	856	1186921		170200
PMK	857	1186922		170201
PMK	858	1186923		170202
PMK	859	1186924		170203
PMK	860	1186925		170204
PMK	861	1186926		170205
PMK	862	1186927		170206
PMK	863	1186928		170207
PMK	864	1186929		170208
PMK	865	1186930		170209
PMK	866	1186931		170210
PMK	867	1186932		170211
PMK	868	1186933		170212
PMK	869	1186934		170213
PMK	870	1186935		170214
PMK	871	1186936		170215
PMK	872	1186937		170216
PMK	873	1186938		170217
PMK	874	1186939		170218



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	875	1186940		170219
PMK	876	1186941		170220
PMK	877	1186942		170221
PMK	878	1186943		170222
PMK	879	1186944		170223
PMK	880	1186945		170224
PMK	881	1186946		170225
PMK	882	1186947		170226
PMK	883	1186948		170227
PMK	884	1186949		170228
PMK	885	1186950		170229
PMK	886	1186951		170230
PMK	887	1186952		170231
PMK	888	1186953		170232
PMK	889	1186954		170233
PMK	890	1186955		170234
PMK	891	1186956		170235
PMK	892	1186957		170236
PMK	893	1186958		170237
PMK	894	1186959		170238
PMK	895	1186960		170239
PMK	896	1186961		170240

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	897	1186962		170241
PMK	898	1186963		170242
PMK	899	1186964		170243
PMK	900	1186965		170244
PMK	901	1186966		170245
PMK	902	1186967		170246
PMK	903	1186968		170247
PMK	904	1186969		170248
PMK	905	1186970		170249
PMK	906	1186971		170250
PMK	907	1186972		170251
PMK	908	1186973		170252
PMK	909	1186974		170253
PMK	910	1186975		170254
PMK	911	1186976		170255
PMK	912	1186977		170256
PMK	913	1186978		170257
PMK	914	1186979		170258
PMK	915	1186980		170259
PMK	916	1186981		170260
PMK	917	1186982		170261
PMK	918	1186983		170262

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	919	1186984		170263
PMK	920	1186985		170264
PMK	921	1186986		170265
PMK	922	1186987		170266
PMK	923	1186988		170267
PMK	924	1186989		170268
PMK	925	1186990		170269
PMK	926	1186991		170270
PMK	927	1186992		170271
PMK	928	1186993		170272
PMK	929	1186994		170273
PMK	930	1186995		170274
PMK	931	1186996		170275
PMK	932	1186997		170276
PMK	933	1186998		170277
PMK	934	1186999		170278
PMK	935	1187000		170279
PMK	936	1187001		170280
PMK	937	1187002		170281
PMK	938	1187003		170282
PMK	939	1187004		170283
PMK	940	1187005		170284

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	941	1187006		170285
PMK	942	1187007		170286
PMK	943	1187008		170287
PMK	944	1187009		170288
PMK	945	1187010		170289
PMK	946	1187011		170290
PMK	947	1187012		170291
PMK	948	1187013		170292
PMK	949	1187014		170293
PMK	950	1187015		170294
PMK	951	1187016		170295
PMK	952	1187017		170296
PMK	953	1187018		170297
PMK	954	1187019		170298
PMK	955	1187020		170299
PMK	956	1187021		170300
PMK	957	1187022		170301
PMK	958	1187023		170302
PMK	959	1187024		170303
PMK	960	1187025		170304
PMK	961	1187026		170305
PMK	962	1187027		170306

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	963	1187028		170307
PMK	964	1187029		170308
PMK	965	1187030		170309
PMK	966	1187031		170310
PMK	967	1187032		170311
PMK	968	1187033		170312
PMK	969	1187034		170313
PMK	970	1187035		170314
PMK	971	1187036		170315
PMK	972	1187037		170316
PMK	973	1187038		170317
PMK	974	1187039		170318
PMK	975	1187040		170319
PMK	976	1187041		170320
PMK	977	1187042		170321
PMK	978	1187043		170322
PMK	979	1187044		170323
PMK	980	1187045		170324
PMK	981	1187046		170325
PMK	982	1187047		170326
PMK	983	1187048		170327
PMK	984	1187049		170328

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	985	1187050		170329
PMK	986	1187051		170330
PMK	987	1187052		170331
PMK	988	1187053		170332
PMK	989	1187054		170333
PMK	990	1187055		170334
PMK	991	1187056		170335
PMK	992	1187057		170336
PMK	993	1187058		170337
PMK	994	1187059		170338
PMK	995	1187060		170339
PMK	996	1187061		170340
PMK	997	1187062		170341
PMK	998	1187063		170342
PMK	999	1187064		170343
PMK	1000	1187065		170344
PMK	1001	1187066		170345
PMK	1002	1187067		170346
PMK	1003	1187068		170347
PMK	1004	1187069		170348
PMK	1005	1187070		170349
PMK	1006	1187071		170350

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1007	1187072		170351
PMK	1008	1187073		170352
PMK	1009	1187074		170353
PMK	1010	1187075	592302	
PMK	1011	1187076	592303	
PMK	1012	1187077	592304	
PMK	1013	1187078	592305	
PMK	1014	1187079	592306	
PMK	1015	1187080	592307	
PMK	1016	1187081	592308	
PMK	1017	1187082	592309	
PMK	1018	1187083	592310	
PMK	1019	1187084	592311	
PMK	1023	1187088	592315	
PMK	1024	1187089	592316	
PMK	1025	1187090	592317	170354
PMK	1026	1187091	592318	
PMK	1027	1187092	592319	170355
PMK	1023	1187088	592315	
PMK	1024	1187089	592316	
PMK	1025	1187090	592317	170354
PMK	1026	1187091	592318	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1027	1187092	592319	170355
PMK	1028	1187093		170356
PMK	1072	1197066		172146
PMK	1073	1197067		172147
PMK	1074	1197068		172148
PMK	1075	1197069		172149
PMK	1076	1197070		172150
PMK	1077	1197071		172151
PMK	1078	1197072		172152
PMK	1079	1197073		172153
PMK	1080	1197074		172154
PMK	1081	1197075		172155
PMK	1082	1197076		172156
PMK	1083	1197077		172157
PMK	1084	1197078		172158
PMK	1085	1197079		172159
PMK	1086	1197080		172160
PMK	1091	1204490		173249
PMK	1092	1204491		173250
PMK	1093	1204492		173251
PMK	1094	1204493		173252
PMK	1095	1204494		173253



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1096	1204495		173254
PMK	1097	1204496		173255
PMK	1098	1204497		173256
PMK	1099	1204498		173257
PMK	1100	1204499		173258
PMK	1101	1204500		173259
PMK	1102	1204501		173260
PMK	1103	1204502		173261
PMK	1104	1204503		173262
PMK	1105	1204504		173263
PMK	1106	1204505		173264
PMK	1107	1204506		173265
PMK	1108	1204507		173266
PMK	1109	1204508		173267
PMK	1110	1204509		173268
PMK	1111	1204510		173269
PMK	1112	1204511		173270
PMK	1113	1204512		173271
PMK	1114	1204513		173272
PMK	1115	1204514		173273
PMK	1116	1204515		173274
PMK	1117	1204516		173275

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1118	1204517		173276
PMK	1119	1204518		173277
PMK	1120	1204519		173278
PMK	1121	1204520		173279
PMK	1122	1204521		173280
PMK	1123	1204522		173281
PMK	1124	1204523		173282

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc No.	Mineral County Doc No.
P	32	933116	389064	
P	33	933117	389065	
P	34	933118	389066	
P	35	933119	389067	
P	36	933120	389068	
P	45	933129	389077	
P	46	933130	389078	
P	51	933135	389083	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc No.	Mineral County Doc No.
BJ	1	953951	406304	
BJ	2	953952	406305	

BJ	3	953953	406306
BJ	4	953954	406307
BJ	5	953955	406308
BJ	6	953956	406309
BJ	7	953957	406310
BJ	8	953958	406311

### 3. Nevada Copper New Fee Land

Lyon County, Nevada

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF LYON, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

T. 12 N., R 25 E:

SEC. 12: SE 1/4 SE 1/4

SEC. 13: E 1/2 NE 1/4

T. 12 N., R 26 E:

SEC. 1: W 1/2 NW 1/4 SW 1/4 NW 1/4; W 1/2 SW 1/4 SW 1/4 NW 1/4; NW 1/4 NW 1/4 SW 1/4; SW 1/4 NW 1/4 SW 1/4; W 1/2 SE 1/4 NW 1/4 SW 1/4; W 1/2 NE 1/4 SW 1/4 SW 1/4; NW 1/4 SW 1/4 SW 1/4 AND S 1/2 SW 1/4 SW 1/4

SEC. 2: LOTS 5 THRU 14

SEC. 3: LOTS 5 THRU 13; SE 1/4 NE 1/4 AND NE 1/4 SE 1/4

SEC. 4: LOTS 5 THRU 12; SE 1/4 NW 1/4; NE 1/4 SW 1/4; SW 1/4 SW 1/4 AND NW 1/4 SE 1/4

SEC. 5: LOTS 1 AND 2; S 1/2 NE 1/4; S 1/2 NW 1/4 AND S 1/2

SEC. 6: SE 1/4 NE 1/4, NE 1/4 SE 1/4 AND S 1/2 SE 1/4

SEC. 7: LOT 4; E 1/2; SE 1/4 NW 1/4; NE 1/4 SW 1/4 AND SE 1/4 SW 1/4

SEC. 8: ALL

SEC. 9: LOTS 1 AND 2; SW 1/4 NE 1/4; NW 1/4 AND S 1/2

SEC. 10: LOTS 1 THRU 5; SW 1/4; N 1/2 SE 1/4; N 1/2 SW 1/4 SE 1/4; AND N 1/2 SE 1/4 SE 1/4

SEC. 11: LOTS 1 THRU 6; S 1/2 NE 1/4; N 1/2 SW 1/4; N 1/2 SW 1/4 SW 1/4; N 1/2 SE 1/4 SW 1/4; N 1/2 SE 1/4; N 1/2 SW 1/4 SE 1/4 AND N 1/2 SE 1/4 SE 1/4

SEC. 12: W 1/2 SW 1/4 NE 1/4 NW 1/4, W 1/2 NW 1/4; W 1/2 SE 1/4 NW 1/4; W 1/2 NE 1/4 NE 1/4 SW 1/4; W 1/2 SE 1/4 NE 1/4 SW 1/4; W 1/2 NE 1/4 SW 1/4; NW 1/4 SW 1/4; N 1/2 SW 1/4 SW 1/4 AND N 1/2 SE 1/4 SW 1/4

SEC. 15: NW 1/4

SEC. 16: N 1/2

SEC. 17: N 1/2

SEC. 18: LOTS 1 AND 2; NE 1/4 AND E 1/2 NW 1/4

T. 13 N., R 26 E.:

SEC. 19: W 1/2 SE 1/4; W 1/2 NE 1/4 SE 1/4; W 1/2 SE 1/4 SE 1/4; W 1/2 NE 1/4 NE 1/4 SE 1/4; W 1/2 SE 1/4 NE 1/4 SE 1/4; W 1/2 NE 1/4 SE 1/4 SE 1/4 AND W 1/2 SE 1/4 SE 1/4 SE 1/4

SEC. 29: S 1/2 NW 1/4 NE 1/4; SW 1/4 NE 1/4; S 1/2 NE 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4; SW 1/4; S 1/2 SE 1/4 NE 1/4 SE 1/4; S 1/2 SW 1/4 NE 1/4 SE 1/4; W 1/2 SE 1/4 AND SE 1/4 SE 1/4

SEC. 30: W 1/2 NE 1/4 NE 1/4 NE 1/4; NW 1/4 NE 1/4 NE 1/4; S 1/2 NE 1/4 NE 1/4; NW 1/4 NE 1/4; S 1/2 NE 1/4 AND SE 1/4

SEC. 31: NE 1/4 AND SE 1/4 NW 1/4

SEC. 32: N 1/2; NE 1/4 SW 1/4 AND SE 1/4

SEC. 33: LOTS 1 AND 2; S 1/2 NE 1/4 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4 NE 1/4; S 1/2 NE 1/4 NW 1/4 NE 1/4; S 1/2 NW 1/4 NW 1/4 NE 1/4; S 1/2 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4; S 1/2 NE 1/4; S 1/2 NE 1/4 NE 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4; NW 1/4 NE 1/4 NW 1/4; NW 1/4 NW 1/4; S 1/2 NW 1/4; SW 1/4 AND N 1/2 SE 1/4

SEC. 34: S 1/2 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4; S 1/2 NE 1/4; S 1/2 NE 1/4 NE 1/4 NW 1/4; S 1/2 NW 1/4 NE 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4 AND S 1/2

SEC. 35: LOTS 2, 3, 6, 9 THRU 13; NE 1/4 NW 1/4; E 1/2 NE 1/4 NW 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4;  
N 1/2 SW 1/4 AND NW 1/4 SE 1/4

SEC. 36: LOTS 5, 6 AND 12

T. 13 N., R 27 E.:

SEC. 31: ALL THAT PORTION OF LOT 6 IN LYON COUNTY SAID PARCEL AS FURTHER DELINEATED ON LYON COUNTY RECORD OF SURVEY MAP, RECORDED ON OCTOBER 12, 2015 AS DOCUMENT NO. 542177.

Mineral County, Nevada

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF MINERAL, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

T. 13 N., R 27 E.,

SEC. 28, LOT 2;

EXCLUDING that portion of Government Lot 2 of Section 28, T. 13 N., R. 27 E., MDM, more particularly described as Parcel 3B as shown on the Record of Survey for Nevada Copper, recorded June 24, 2019, in the Office of the County Recorder of Mineral County, Nevada, as File No. 170881, Mineral County, Nevada, records. (ASSESSOR'S PARCEL NUMBER FOR 2019-2020: 005-110-05).

SEC. 29, LOTS 2, 6 AND 10;

SEC. 30, LOT 6;

SEC. 31, LOTS 2 AND 6.

#### 4. Leased Fee Land (Walker River)

A leasehold interest in and to the following fee lands pursuant subject to that certain Lease dated effective December 1, 2018, by and between Walker River Irrigation District, as landlord, and Nevada Copper, Inc., as lessee, situated in Lyon County, Nevada:

All that certain real property situated in the County of Lyon, State of Nevada, described as follows:

Township 15 North, Range 25 East, M.D.B.&M.

Section 21: SW1/4 of SE1/4

EXCEPTING THEREFROM that certain real property described as commencing at a point on the West boundary of the SE1/4 of the SE1/4 of Section 21, T. 15 N., R. 25 E., M.D.B.&M., from which corner common to Sections 21, 22, 27, and 28 of said Township and Range bears S.  $67^{\circ} 31'$  E. 1424.81 feet; and running thence N.  $0^{\circ} 16'$  E. 140 feet to the intersection with the South line of the S.P.R.R. right-of-way; thence along said South line of right-of-way N.  $72^{\circ} 31'$  W. 168 feet; thence S.  $39^{\circ} 58'$  E. 248.44 feet to the point of beginning.

Legal Description appeared previously in Document recorded on December 18, 1956, in Book 40 of Deeds, Page 430 Records of Lyon County, Nevada.

ALSO EXCEPTING THEREFROM everything North of the South line of the right-of-way of the Southern Pacific Railway Company.

## B. Water Rights

The “Tibbals Water Rights” made subject to the Mining Lease by the First Amendment to Lease dated April 10, 2008, by and between Landlord and Nevada Copper Corp. The Tibbals Water Rights are located in Lyon County, Nevada, and are more particularly described as follows:

Base Water Right State of Nevada, Division of Water Resources, Water Rights Application No. 15425 filed on December 3, 1953, Certificate No. 4398 granted on August 2, 1954, as modified or supplemented by Water Rights Permit No. 77103 dated October 21, 2008, as abrogated by Water Rights permit Nos. 83450, 89451, 83452, and 88204 T. The permit was originally issued to Anaconda Copper Mining Company.

Consumptive – Water Rights Permits Nos. 77104 and 77105, on file with the State of Nevada, Division of Water Resources, and any subsequent amendments, supplements, or successor rights to said Permits.

Non-Consumptive – Water Rights Permit Nos. 83090, 83454, 83455, 83552 and 83705, on file with the State of Nevada, Division of Water Resources, and any subsequent amendments, supplements, or successor rights to said Permits.

City of Yerington and Nevada Copper Inc., Water Service Agreement dated August 10, 2009, as amended.

Property acquired from Tahoe-Reno Industrial Center, LLC

**PARCEL 1:**

**LOT 99-25 OF PARCEL MAP FOR DP OPERATING PARTNERSHIP, L.P., FILED IN THE OFFICE OF THE COUNTY RECORDER OF STOREY COUNTY, STATE OF NEVADA ON JUNE 29, 1999 AS FILE NO. 85481 OF OFFICIAL RECORDS AND CERTIFICATE OF AMENDMENT RECORDED JANUARY 23, 2001 IN BOOK 140, PAGE 256 AS DOCUMENT NO. 88850 OF OFFICIAL RECORDS.**

**PARCEL 2:**

**AN EASEMENT FOR DRIVEWAY AND UTILITIES AS SET FORTH IN THAT CERTAIN ACCESS AND UTILITY EASEMENT RECORDED JUNE 22, 2001 IN BOOK 143, PAGE 207 AS DOCUMENT NO. 89655 OF OFFICIAL RECORDS; AN AMENDMENT TO ACCESS AND UTILITY EASEMENT RECORDED OCTOBER 15, 2019 AS INSTRUMENT NO. 130593 OF OFFICIAL RECORDS.**

Patented Mining Claims (Copper Ridge)

The following patented mining claims situated in Sections 20, 21, and 29, T. 13 N., R. 26 E., MDM, in Lyon County, Nevada (the "Property):

Claim Name	Mineral Survey No.	Patent No.
Copper Ridge No. 1	3989 (Amended)	338120
Copper Ridge No. 2	3989	338120
Copper Ridge No. 3	3989	338120
Copper Ridge No. 4	3989	338120
Copper Ridge No. 5	3989	338120
Copper Ridge No. 6	3989	338120
Copper Ridge No. 8	3989	338120
Copper Ridge No. 9	3989 (Amended)	338120



The Property is identified by the Lyon County Assessor's Office as APN 014-661-05.

**SCHEDULE K**

**[RESERVED]**

## SCHEDULE L

### TERMS OF SUBORDINATION

1. General: Payment of the principal of and interest on Subordinated Intercompany Debt and other amounts payable on or in respect thereof shall be subordinated and subject in right of payment to the prior payment in full in cash in Dollars of all Obligations. Each Obligor that is a holder of Subordinated Intercompany Debt (each, a “Subordinated Lender”) agrees that it will not ask, demand, sue for, take or receive from any other Obligor, by set off or in any other manner, or retain, payment (in whole or in part) of the Subordinated Intercompany Debt, or any security therefor, other than Restricted Payments permitted under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, unless and until all of the Obligations have been paid in full. Each Subordinated Lender directs each Obligor to make, and each Obligor agrees to make, such prior payment of the Obligations. Each Obligor undertakes to satisfy any requirements under applicable law that may be necessary for the effectiveness of the Subordination Terms.

2. Payment Upon Dissolution, Etc.: In the event of (a) any insolvency or bankruptcy case or proceeding in connection therewith, relative to an Obligor or to its creditors as such, or to its assets, or (b) any liquidation, dissolution or other winding up of an Obligor, whether partial or complete and whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (c) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of an Obligor, then and in any such event the Secured Parties shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Obligations before any of the Subordinated Lenders shall be entitled to receive any payment on account of the Subordinated Intercompany Debt (whether in respect of principal, interest premium, fees, indemnities, commissions or otherwise) and to that end, any payment or distribution of any kind or character, whether in cash, property or securities which may be payable or deliverable in respect of the Subordinated Intercompany Debt in any such case, proceeding, dissolution, liquidation or other winding up or event shall instead be paid or delivered to the Secured Parties for application to Obligations, whether or not due, until the Obligations shall have first been fully paid and satisfied in cash in Dollars.

3. No Payment During Default: In the event and during the continuation of any Default or Event of Default, unless and until such Default or Event of Default shall have been remedied or waived, no payment (including any Restricted Payment) shall be made by any Obligor on or in respect of any Subordinated Intercompany Debt.

4. Proceeding Against Obligor; No Collateral: Whether or not any default in payment shall exist under any Finance Document, no Subordinated Lenders shall, without the prior consent of the Majority Lenders, (a) commence any proceeding against any Obligor in bankruptcy, insolvency or receivership law or (b) take any collateral security for any Subordinated Intercompany Debt.

5. Payment to the Secured Parties of Certain Amounts Received by Subordinated Lenders: In the event that any Subordinated Lender receives on account or in respect of the Subordinated Intercompany Debt any distribution of assets by any Obligor or payment by or on behalf of an

Obligor of any kind or character, whether in cash, securities or other property, other than Restricted Payments permitted under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, the Subordinated Lender shall hold in trust (as property of the Secured Parties) for the benefit of, and immediately upon receipt thereof, shall pay over or deliver to the Secured Parties, such distribution or payment in precisely the form received (except for the endorsement or assignment by such Subordinated Lender where necessary) for application in accordance with the Credit Agreement. In the event of failure of any Subordinated Lender to make any such endorsement or assignment, the Secured Parties irrevocably are authorized and empowered by and on behalf of each Subordinated Lender to make the same.

6. Authorizations to the Secured Parties: Each Subordinated Lender (a) irrevocably authorizes and empowers (without imposing any obligation on) the Secured Parties and the Collateral Agent to demand, sue for, collect and receive all payments and distributions on or in respect of its Subordinated Intercompany Debt which are required to be paid or delivered to the Secured Parties, as provided herein, and to file and prove all claims therefor and take all such other action, in the name of a Subordinated Lender or otherwise, as the Secured Parties may determine to be necessary or appropriate for the enforcement of these subordination provisions, all in such manner as the Majority Lenders shall instruct or otherwise in accordance with the Credit Agreement, (b) irrevocably authorizes and empowers (without imposing any obligation) the Secured Parties and the Collateral Agent to vote the Subordinated Intercompany Debt (including, without limitation, voting the Subordinated Intercompany Debt in favor of or in opposition to any matter which may come before any meeting of creditors of an Obligor generally or in connection with, or in anticipation of, any insolvency or bankruptcy case or proceeding, or any proceeding under any laws relating to the relief of debtors, readjustment of indebtedness, arrangements, reorganizations, compositions or extensions relative to an Obligor) in such manner as the Majority Lenders shall instruct or otherwise in accordance with the Credit Agreement and (c) agrees to execute and deliver to the Secured Parties all such further instruments confirming the above authorization, and all such powers of attorney, proofs of claim, assignments of claim and other instruments, and to take all such other action, as may be requested by the Secured Parties in order to enable the Secured Parties to enforce all claims upon or in respect of the Subordinated Intercompany Debt.

7. Notice: Each Subordinated Lender agrees, for the benefit of the Secured Parties, that it will give the Secured Parties prompt notice of any default by any Obligor in respect of the Subordinated Intercompany Debt.

8. No Waiver; Modification to Senior Debt: No failure on the part of the Secured Parties, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof by the Secured Parties, nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or future exercise by the Secured Parties of any other right, remedy or power. Each and every right, remedy and power granted to the Secured Parties, or allowed to the Secured Parties by law or other agreement shall be cumulative and not exclusive, and may be exercised by the Secured Parties from time to time.

At any time, without the consent of or notice to the Subordinated Lenders, without incurring responsibility or liability to the Subordinated Lenders and without impairing or releasing the subordination provided herein or the obligations hereunder of the Subordinated Lenders, the

Secured Parties may do any one or more of the following: (a) change the manner, place or terms of payment of or extend the time of payment of, or renew or alter, Obligations or any collateral security or guarantee therefor, or otherwise amend or supplement in any manner Obligations or any instruments evidencing the same or any agreement under which Obligations are outstanding or the Finance Documents; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise secured by Obligations; (c) release any Person liable in any manner for the Obligations; and (d) exercise or refrain from exercising any rights against an Obligor and any other Person. Each Subordinated Lender unconditionally waives notice of the incurring of Obligations or any part thereof.

9. Subrogation: Subject to the payment in full in cash in Dollars of all Obligations, the Subordinated Lenders shall be subrogated to the rights of the Secured Parties to receive distribution of assets of any Obligor, or payments by or on behalf of any Obligor, made on the Obligations, until the Subordinated Intercompany Debt shall be paid in full. For purposes of such subrogation, no payments over, including no payments or distributions to the Secured Parties of any cash, property or securities to which the Subordinated Lenders would be entitled except for the provisions hereof, pursuant to the provisions hereof, to the Secured Parties by the Subordinated Lenders shall, as among an Obligor, its creditors other than the Secured Parties and the Subordinated Lenders, be deemed to be a payment or distribution by an Obligor on account of the Obligations.

10. Benefit of Subordination Provisions: Nothing contained herein shall (a) impair, as among an Obligor, its creditors other than the Secured Parties and the Subordinated Lenders, the obligation of an Obligor, which is absolute and unconditional (and which, subject to the rights hereunder of the Secured Parties, is intended to rank equally with all other unsecured obligations of any Obligor), to pay the principal of and interest on the Subordinated Intercompany Debt as and when the same shall become due and payable in accordance with the terms thereof or (b) affect the relative rights against an Obligor of the Subordinated Lender and creditors of the Obligor other than the Secured Parties.

11. Further Assurances: The Subordinated Lender, at its own cost, shall take any further action as the Secured Parties may reasonably request in order to carry out more fully the intent and purpose of these subordination provisions [(including delivery of any evidence of Subordinated Intercompany Debt to the Administrative Agent or the Collateral Agent)].

12. Governing Law: These subordination provisions shall be governed by and construed in accordance with the laws of New York.

13. Amendment: These subordination provisions may not be amended or modified without the prior consent of each of the Secured Parties.

14. Transfers: Each Subordinated Lender acknowledges and agrees that Subordinated Intercompany Debt may not be transferred, assigned or encumbered in any manner except as expressly permitted by the terms and conditions of the Finance Documents as in effect from time to time.

15. Successors and Assigns: The Agreement shall be binding and inure to the benefit of the Subordinated Lenders, the Secured Parties and their respective successors and permitted assigns.

16. Ranking: All Subordinated Intercompany Debt shall be unsecured, rank junior to the Obligations in respect of payment and pledged as security for the Obligations.

**SCHEDULE M****FORM OF TRANSFER CERTIFICATE**

(Delivered pursuant to Section 14.1(c) (*Assignment by Senior Lenders*) of the Credit Agreement)

Date of this Transfer Certificate: \_\_\_\_\_, \_\_\_\_

For Transfer Date: \_\_\_\_\_, \_\_\_\_

U.S. Bank Trust Company, National Association,  
as Administrative Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com

Nevada Copper, Inc.,  
as Borrower  
61 E. Pursel Lane  
P.O. Box 1640  
Yerington, Nevada, USA  
89447  
Attention: Greg Martin  
Email: gjmartin@nevadacopper.com

Copy to:  
Attention: Matthew Anderson  
Email: manderson@nevadacopper.com

Ladies and Gentlemen:

**Nevada Copper Project – Credit Agreement**

1. [Permitted Transferee] (the “**Transferee**”) delivers this Transfer Certificate to you pursuant to that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of [•], by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in, or incorporated by reference in, the Credit Agreement.

2. [\_\_\_\_\_] (the “**Lender**”) confirms that the Lender’s participation set forth on Schedule I (“**Schedule**”) hereto is an accurate summary of its participation in the Commitments and requests the Transferee to accept and procure the transfer to the Transferee of the Percentage Transferred (set forth in Schedule I) of the Lender’s participation specified in the Schedule hereto by counter-signing and delivering this Transfer Certificate to the Administrative Agent and the

Borrower at their respective addresses for the service of notices specified in the Credit Agreement or as otherwise notified by them pursuant to the terms thereof.

3. The Transferee hereby requests, subject to Section 14.1 of the Credit Agreement, the Administrative Agent and the Borrower to accept this Transfer Certificate as being delivered to the Administrative Agent and the Borrower pursuant to and for the purposes of Section 14.1 of the Credit Agreement so as to take effect in accordance with the terms thereof on the Transfer Date stated above or on such later date as may be determined in accordance with the terms thereof.

4. The Transferee confirms that it has received a copy of each of the Finance Documents together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Lender or any Agent to check or inquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and will not rely on the Lender or any Agent to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Borrower or any other party to any of the Transaction Documents.

5. The Lender makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy, accuracy or enforceability of any of the Transaction Documents or any document relating thereto and assumes no responsibility for the financial condition of any party thereto or for the performance and observance by such party of any of its obligations under any of the Transaction Documents or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.

6. The Lender hereby gives notice that nothing herein or in the Finance Documents (or any document relating thereto) shall oblige it to (i) accept a re-transfer from the Transferee of the whole or any part of its rights, benefits and/or obligations under the Credit Agreement transferred pursuant hereto or (ii) support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever including, without limitation, the non-performance by the Borrower or any other party to any of the Transaction Documents (or any document relating thereto) of its obligations under any such document. The Transferee hereby acknowledges the absence of any such obligation as is referred to in clause (i) or (ii) above.

7. This Transfer Certificate shall be governed by the law of the State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the law of such state; provided, however, that to the extent any terms of this Transfer Certificate are incorporated in and made part of any other Finance Documents, any such term so incorporated shall for all purposes of such Finance Documents be governed by and construed in accordance with the law governing the Finance Documents into which such term is so incorporated.

[8. This Transfer Certificate becomes effective upon acceptance by the Borrower.]<sup>1</sup>

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<sup>1</sup> Include if the Borrower's consent is required pursuant to Section 14.1 of the Credit Agreement.



*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Certificate as of the respective dates set forth below.

[Transferee]

By \_\_\_\_\_  
Name:  
Title:  
Date:

[Existing Lender]

By \_\_\_\_\_  
Name:  
Title:  
Date:

[Accepted and Agreed:

Nevada Copper, Inc.,  
as the Borrower

By \_\_\_\_\_  
Name:  
Title:  
Date:]<sup>1</sup>

---

<sup>1</sup> Include if the Borrower's consent is required pursuant to Section 14.1 of the Credit Agreement.

SCHEDULE I

1. Lender:
2. Transferee:
3. Transfer Date:
4. Lender's Participation:
5. Lender's Portion of the Outstanding Commitment:
6. Percentage Transferred:
7. Administrative Details of Transferee

Address:

Contact Department and Name:

Account for Payments:

Facsimile:

Telephone:

**SCHEDULE N****UTILIZATION REQUEST**

[DATE]

TO: U.S. Bank Trust Company, National Association, as Administrative Agent

FROM: Nevada Copper, Inc. as Borrower

RE: Utilization Request Pursuant to Section 3.1 of the Senior Secured Superpriority Debtor-in-Possession Credit Agreement (as amended from time to time, the “**Credit Agreement**”)

The Borrower hereby requests disbursement of Loans on [DATE]<sup>1</sup> to the accounts and in the amounts set forth in the funds flow attached hereto.

1. The Borrower hereby represents and warrants to the Administrative Agent and each Senior Lender that, as of the date of the Utilization:
  - (a) The disbursements requested hereby are scheduled to be utilized in accordance with Section 2.3 of the Credit Agreement.
  - (b) The disbursements of Loans made to date (if any) have been or are being utilized in accordance with Section 2.3 of the Credit Agreement.
2. The Borrower hereby certifies to the Administrative Agent and each Senior Lender as of the date of the Utilization pursuant to Sections 12.3 (a), (b), (c), (d), and (e) of the Credit Agreement:<sup>2</sup>
  - (a) no Default or Event of Default shall have occurred and be continuing or would result from the making of the proposed Loan;
  - (b) no Change of Control has occurred;
  - (c) the proposed loan will be used for the purpose specified in “Use of Proceeds” in accordance with Section 2.3 of the Credit Agreement;
  - (d) no Material Adverse Effect has occurred and is continuing; and
  - (e) the representations and warranties contained in Section 8.1 of the Credit Agreement are true, accurate and complete as of the date of the Utilization in all material respects.

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<sup>1</sup> The proposed Utilization Date must be a Business Day.

<sup>2</sup> All other factual or evidentiary CPs to be delivered separately.

3. The Borrower agrees that, if prior to its receipt of the disbursement requested hereby it determines that any matter certified by it herein will not be true and correct as of the time of such receipt, it will promptly so notify the Administrative Agent.
4. All defined terms used herein and not defined herein have the meanings assigned to them in the Credit Agreement.

*[Signature Page Follows]*

**NEVADA COPPER, INC.,**  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE O

### FORM OF NOTE

\$[ ]

[ ], 20\_\_

FOR VALUE RECEIVED, the undersigned (the “**Borrower**”), hereby promises to pay to [ ] (the “**Lender**”), to the account designated by the Administrative Agent as provided for by the Credit Agreement referred to below, for the account of the Lender, the principal sum of US \$[ ] (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to the Borrower under the Credit Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof; *provided*, that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Loans made by the Lender.

This Note evidences Loans made by the Lender under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•] (as amended, modified or supplemented and in effect from time to time, the “**Credit Agreement**”), among Nevada Copper, Inc. as Borrower, the Guarantors from time to time party thereto, the Senior Lenders from time to time party thereto, and U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent. Terms used but not defined in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

Except as permitted by Section Article 14 (*Changes to Parties*) of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York.

**NEVADA COPPER, INC.,**  
as Borrower

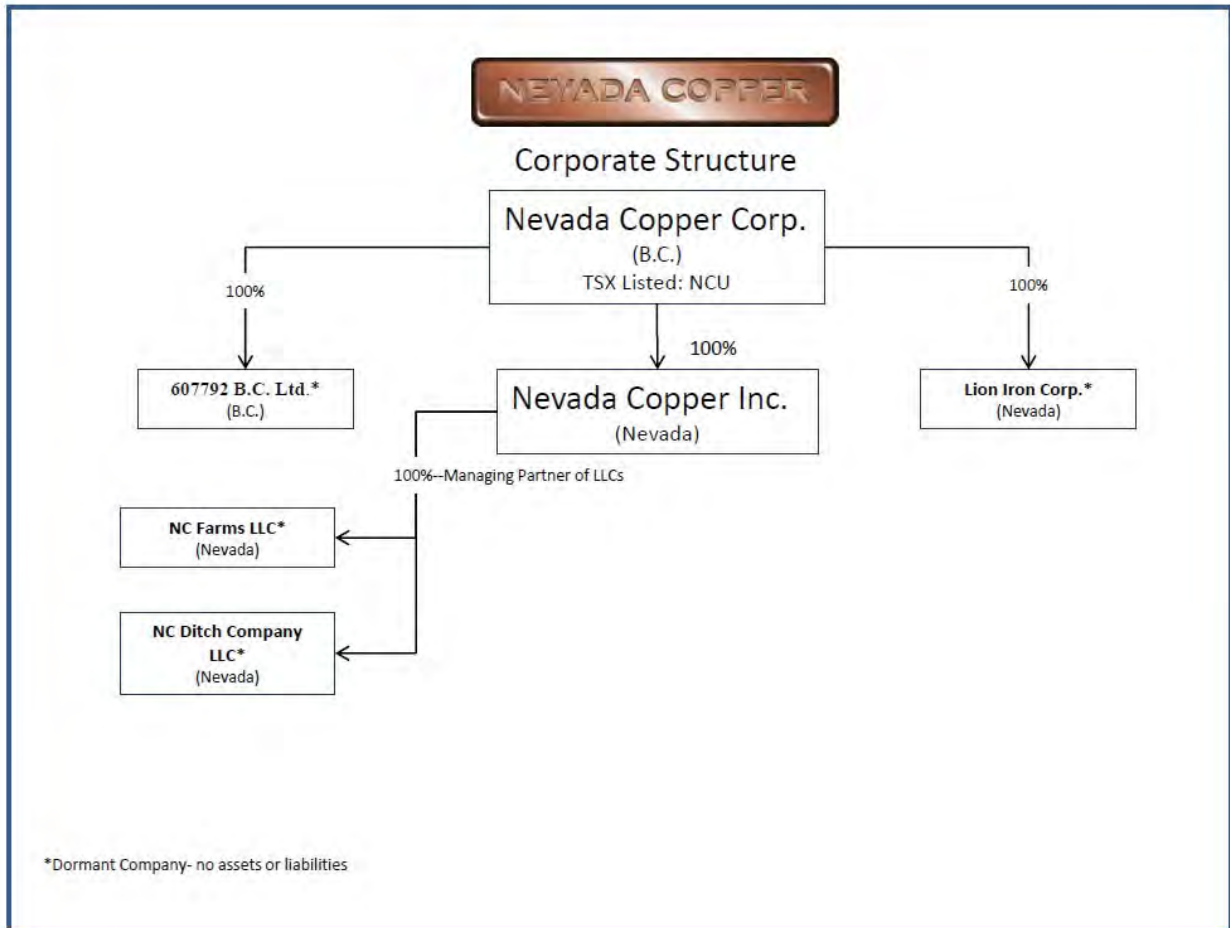
By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE P**

**[RESERVED]**

**SCHEDULE Q**  
**CORPORATE ORGANIZATION CHART**



**SCHEDULE R  
BANK ACCOUNTS**

**Nevada Copper, Inc. Bank Accounts**

<b>Bank</b>	<b>Account Type</b>	<b>Last 4 Digits of Account Number</b>	<b>Description</b>	<b>Bank Address</b>
BMO Harris Bank, N.A.	DDA – payroll and FSA/HSA	5804	Disbursement Account (Payroll Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – operations; vendor payments	5812	Disbursement Account (Operating Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – proceeds; fundings/payments per customers	6629	Proceeds Account	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – debt service reserve account	6637	Inactive Account (Debt Service Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – loss proceeds account	6645	Inactive Account (Loss Proceeds Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – approved open pit account	6652	Inactive Account (Approved Open Pit Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – restricted payment account	6702	Inactive Account (Restricted Payment Account)	11 W. Monroe St., Chicago, IL 60603

**Nevada Copper Corp. Bank Accounts**

<b>Bank</b>	<b>Bank Account Type</b>	<b>Last 4 Digits of Account Number</b>	<b>Description</b>	<b>Bank Address</b>
Bank of Montreal	DDA – payroll	6175	Disbursement Account (Payroll Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – Canada checking	6458	Disbursement Account (Operating Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – US checking (loan proceeds account)	0506	NCU Concentration Account	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – payroll	6728	Inactive Account (Cost Overrun Reserve Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7

**SCHEDULE S**

**[RESERVED]**

**SCHEDULE T****RELATED-PARTY TRANSACTIONS**

(Excluding the transactions in respect of Subordinated Intercompany Debt, including the Equity Contribution Agreement, transactions referenced in Section 12.5(i) and Section 12.5(l), the ownership of equity, the Working Capital Facility Documents, any Material Project Document in effect on the Closing Date and as permitted in Section 11.12(l))

1. Fourth Lien Intercreditor Agreement, dated as of October 28, 2022, among Nevada Copper Corp., Nevada Copper Inc., KfW IPEX-Bank GmbH, in its capacity as Administrative Agent, Triple Flag International Ltd., Concord Resources Limited and Pala Investments Limited.
2. Pala/Tranche B Letter Agreement, dated as of October 28, 2022, among Pala Investments Limited, Nevada Copper Inc., KfW IPEX-Bank GmbH, as Administrative Agent and KfW IPEX-Bank GmbH, as Tranche B Senior Lender.
3. Pala Corporate Guaranty Affirmation Letter, dated as of October 28, 2022, among Pala Investments Limited, Nevada Copper Inc., KfW IPEX-Bank GmbH, as Administrative Agent and KfW IPEX-Bank GmbH, as Tranche B Senior Lender.
4. Amended and Restated Pala Credit Facility, dated as of October 28, 2022, among Nevada Copper Inc., Nevada Copper Corp. and Pala Investments Limited.
5. Fourth Lien Security Agreement, dated as of October 28, 2022, among Nevada Copper Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC, NC Ditch Company LLC and Pala Investments Limited.
6. Fourth Lien Pledge Agreement, dated as of October 28, 2022, between Nevada Copper Corp. and Pala Investments Limited.
7. Lyon County Deed of Trust dated as of October 28, 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
8. Mineral County Deed of Trust dated as of October 28, 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
9. Storey County Deed of Trust dated as of October 28 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
10. Second Amended and Restated Credit Agreement, entered into as of October 28, 2022, among the Borrower, the Guarantors, Pala Investments Limited, as a senior lender, Mercuria Investments US, Inc., as a senior lender, the other senior lenders party thereto and KfW IPEX-Bank as administrative agent (as amended, amended and restated, supplemented or otherwise modified from time to time).

11. Promissory Note dated as of March 27, 2024, by Nevada Copper Corp. to the order of Pala Investments Limited.
12. Promissory Note dated as of April 15, 2024, by Nevada Copper Corp. to the order of Pala Investments Limited.

**SCHEDULE U**

**[RESERVED]**



**SCHEDULE V**

**[RESERVED]**

**SCHEDULE W**  
**LITIGATION DISCLOSURE**

None.

## EXHIBIT A-1

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lender Parties That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)**

## U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (ii) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF SENIOR LENDER]

By \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A-2

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)**

## U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF PARTICIPANT]

By \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A-3****FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Partnerships  
For U.S. Federal Income Tax Purposes)****U.S. TAX COMPLIANCE CERTIFICATE**

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners or members is a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners or members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners or members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s or member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (A) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (B) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF PARTICIPANT]

By \_\_\_\_\_  
Name:  
Title:



## EXHIBIT A-4

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lender Parties That Are Partnerships  
For U.S. Federal Income Tax Purposes)**

## U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan (s)) in respect of which it is providing this certificate, (b) its direct or indirect partners or members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners or members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners or members is a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners or members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners or members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W- 8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W- 8BEN-E from each of such partner’s or member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (A) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (B) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF SENIOR LENDER]

By \_\_\_\_\_  
Name:  
Title:

**EXHIBIT B**

**Initial Budget**

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(\$ in thousands)														13 Wk Period
Week Ending	Fcast Week 1 14-Jun	Fcast Week 2 21-Jun	Fcast Week 3 28-Jun	Fcast Week 4 5-Jul	Fcast Week 5 12-Jul	Fcast Week 6 19-Jul	Fcast Week 7 26-Jul	Fcast Week 8 2-Aug	Fcast Week 9 9-Aug	Fcast Week 10 16-Aug	Fcast Week 11 23-Aug	Fcast Week 12 30-Aug	Fcast Week 13 6-Sep	
<b>Receipts</b>														
Other receipts	\$ -	\$ -	\$ 41	\$ -	\$ -	\$ -	\$ 41	\$ -	\$ -	\$ -	\$ -	\$ 41	\$ -	\$ 123
Total Receipts	-	-	41	-	-	-	41	-	-	-	-	41	-	123
<b>Operating Disbursements</b>														
Payroll, PR Taxes, 401k	-	(539)	(450)	(426)	-	(629)	-	(426)	-	(539)	-	(426)	-	(3,430)
Benefits & Insurance	(26)	(295)	-	(55)	(100)	-	(267)	(55)	-	-	(110)	(29)	(26)	(993)
Concentrate Delivery & Logistics	-	-	-	-	-	-	-	-	-	-	-	-	-	-
UG Mining Materials, Equip., & Services	(164)	(10)	(30)	(10)	(10)	(10)	(30)	(10)	(10)	(10)	(30)	(10)	(10)	(345)
Supplies, Parts & Services	(73)	(27)	(162)	(39)	(9)	(27)	(147)	(39)	(9)	(27)	(147)	(39)	(9)	(753)
Leases - Equip. & Other	(201)	-	(8)	(986)	-	-	(8)	(148)	-	-	(8)	-	(139)	(1,495)
Leases - Land	-	-	-	(47)	(150)	-	-	-	-	-	-	-	-	(197)
Property, Casualty, & Bonding Insurance	(129)	(51)	-	(129)	-	-	(1,200)	(129)	(670)	-	-	(129)	-	(2,439)
Utilities	-	-	(9)	-	-	(536)	(9)	-	-	(360)	(9)	-	-	(993)
Regulatory	(44)	(2)	(45)	(165)	(1)	-	-	(45)	-	-	-	(45)	-	(347)
Contingency	(103)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(1,303)
<b>Total Operating Disbursements</b>	(739)	(1,024)	(804)	(1,958)	(370)	(1,302)	(1,760)	(953)	(789)	(1,036)	(404)	(779)	(284)	(12,205)
<b>Non-Operating Disbursements</b>														
<b>Tested</b>														
Critical Vendors Payments	(1,371)	-	-	-	(1,421)	-	-	-	(285)	-	-	-	-	(3,078)
Lienholder Payments	(538)	-	-	-	(620)	-	-	-	(365)	-	-	-	-	(1,522)
KERP	-	-	(189)	-	-	-	-	-	-	-	-	-	-	(189)
Reduction in Force Expense	-	(492)	-	(492)	-	(492)	-	(692)	-	-	-	-	-	(2,168)
Equipment Lease Buyouts & AP Backlog	(2,079)	-	(258)	-	-	-	(447)	-	-	-	-	(63)	-	(2,849)
Critical Capex	(59)	-	-	(177)	-	-	-	-	-	-	-	-	-	(233)
D&O Tail Insurance	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Professionals (Ordinary Course)	-	-	(25)	-	-	-	(25)	-	-	-	-	(15)	-	(65)
Independent Director Fees	-	-	-	(622)	-	-	-	-	-	-	-	-	-	(622)
Utility & Other Deposits	(330)	-	-	-	-	-	-	-	-	-	-	-	-	(330)
<b>Total Tested Non-Op. Disbursements</b>	\$ (4,376)	\$ (492)	\$ (472)	\$ (1,290)	\$ (2,041)	\$ (492)	\$ (472)	\$ (692)	\$ (650)	\$ -	\$ -	\$ (78)	\$ -	\$ (11,055)
Bankruptcy Professional & US Trustee Fees	-	-	-	-	(773)	(600)	(100)	(3,240)	(311)	-	(100)	(3,140)	-	(8,264)
DIP Fees	(1,000)	-	-	-	-	(2,048)	-	-	-	-	-	-	-	(3,048)
Interest & Adequate Protection	-	-	-	(127)	-	-	-	(6,013)	-	-	-	-	(723)	(6,863)
<b>Total Non-Operating Disbursements</b>	(5,376)	(492)	(472)	(1,417)	(2,814)	(3,140)	(572)	(9,946)	(960)	-	(100)	(3,218)	(723)	(29,222)
Transfer NCI (to) / from NCU	(30)	(27)	(88)	(79)	(57)	(27)	(58)	(119)	(27)	(57)	(27)	(57)	(52)	(705)
<b>Net Cash Flows</b>	<b>\$ (6,145)</b>	<b>\$ (1,543)</b>	<b>\$ (1,323)</b>	<b>\$ (3,454)</b>	<b>\$ (3,241)</b>	<b>\$ (4,469)</b>	<b>\$ (2,349)</b>	<b>\$ (11,017)</b>	<b>\$ (1,776)</b>	<b>\$ (1,093)</b>	<b>\$ (531)</b>	<b>\$ (4,013)</b>	<b>\$ (1,060)</b>	<b>\$ (42,013)</b>
<b>Total Tested Disbursements</b>	(5,115)	(1,516)	(1,276)	(3,248)	(2,411)	(1,794)	(2,232)	(1,645)	(1,439)	(1,036)	(404)	(857)	(284)	(23,255)
Beginning Cash Balance	\$ 83	\$ 13,939	\$ 12,396	\$ 11,073	\$ 7,619	\$ 4,378	\$ 39,909	\$ 37,560	\$ 26,543	\$ 24,766	\$ 23,673	\$ 23,143	\$ 19,130	\$ 60,000
Net Cash Flows	(6,145)	(1,543)	(1,323)	(3,454)	(3,241)	(4,469)	(2,349)	(11,017)	(1,776)	(1,093)	(531)	(4,013)	(1,060)	(42,013)
Borrowing/Repayment (net)	20,000	-	-	-	-	40,000	-	-	-	-	-	-	-	60,000
<b>Ending Cash Balance</b>	<b>\$ 13,939</b>	<b>\$ 12,396</b>	<b>\$ 11,073</b>	<b>\$ 7,619</b>	<b>\$ 4,378</b>	<b>\$ 39,909</b>	<b>\$ 37,560</b>	<b>\$ 26,543</b>	<b>\$ 24,766</b>	<b>\$ 23,673</b>	<b>\$ 23,143</b>	<b>\$ 19,130</b>	<b>\$ 18,070</b>	<b>\$ 18,070</b>
<b>Cumulative DIP Borrowing</b>	20,000	20,000	20,000	20,000	20,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000
<b>Cumulative Transfer NCI (to) / from NCU</b>	(30)	(57)	(145)	(224)	(281)	(308)	(366)	(485)	(512)	(569)	(596)	(653)	(705)	(815)

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**EXHIBIT C****DIP / Adequate Protection Lien Priorities<sup>9</sup>**

<b>Non-WCF Collateral</b>	<b>WCF Collateral Prior to Repayment of WCF Obligations</b>	<b>WCF Collateral After Repayment of WCF Obligations</b>
DIP Liens	Working Capital Facility Adequate Protection Liens <sup>10</sup>	DIP Liens
Senior Secured Term Loan Adequate Protection Liens <sup>11</sup>	Senior Secured Term Loan Adequate Protection Liens	Senior Secured Term Loan Adequate Protection Liens
TF Adequate Protection Liens <sup>12</sup>	TF Adequate Protection Liens	TF Adequate Protection Liens
Working Capital Facility Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens
Junior Secured Term Loan Adequate Protection Liens <sup>13</sup>		

<sup>9</sup> For the avoidance of doubt, all DIP Liens and Adequate Protection Liens shall be subject to (i) the Carve-Out, (ii) the Administration Charge, (iii) the Prepetition Permitted Liens and (iv) the Prepetition Trisura Lien.

<sup>10</sup> “**Working Capital Facility Adequate Protection Liens**” means the Adequate Protection Liens granted to the Working Capital Facility Lender in accordance with the terms hereof.

<sup>11</sup> “**Senior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to KfW and the Prepetition Senior Secured Term Loan A-2 Parties in accordance with the terms hereof.

<sup>12</sup> “**TF Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition TF Stream Lender in accordance with the terms hereof.

<sup>13</sup> “**Junior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition Junior Secured Term Loan Parties in accordance with the terms hereof.

This is **Exhibit “W”** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

**EXECUTION VERSION****SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

June 9, 2024

among

**NEVADA COPPER, INC.**  
as Borrower

**the Guarantors party hereto from time to time**

**U.S. Bank Trust Company, National Association**  
as Administrative Agent and Collateral Agent

– and –

**the Senior Lenders party hereto from time to time**

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Exhibit A-3	U.S. Tax Compliance Certificate
Exhibit A-4	U.S. Tax Compliance Certificate

**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (this “**Agreement**”), dated as of June 9, 2024 (the “**Entry Date**”), among **NEVADA COPPER, INC.**, a corporation that is duly incorporated and validly existing under the laws of Nevada (the “**Borrower**”); the **GUARANTORS** from time to time party hereto, **U.S. Bank Trust Company, National Association**, as Administrative Agent (in such capacity together with its successors and permitted assigns, the “**Administrative Agent**”) and as Collateral Agent (in such capacity together with its successors and permitted assigns, the “**Collateral Agent**”), and **THE FINANCIAL INSTITUTIONS** listed on Schedule A (*Commitments*) as lenders; and other parties party hereto from time to time.

**WHEREAS**, on June 9, 2024 (the “**Petition Date**”), the Borrower and certain of its affiliates and subsidiaries (collectively, the “**Debtors**” and, each individually, a “**Debtor**”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”);

**WHEREAS**, from and after the Petition Date, each of the Debtors continues to operate its business and manage its property as a debtor and a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code;

**WHEREAS**, shortly after the Petition Date, the Debtors will commence a recognition proceeding under Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) to recognize in Canada the Chapter 11 Cases (as defined herein) as “foreign main proceedings” (the “**Recognition Proceedings**”);

**WHEREAS**, the Borrower has requested, and the Senior Lenders have agreed, subject to the conditions and terms set forth herein, to commit and provide a senior secured superpriority multi-draw credit facility to the Borrower, in an aggregate principal amount not to exceed \$60,000,000;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **Article 1 INTERPRETATION**

### **1.1 Definitions.**

For the purposes of this Agreement, the following capitalized terms shall have the following meanings:

“**Acceptable Insurer**” means:

- (a) any insurance company or international reinsurance company (i) authorized to do business in Nevada if required by law or regulation and (ii) with a minimum of “A-” or higher from A.M. Best or Standard & Poor’s Rating Services; or
- (b) any other insurance company reasonably acceptable to the Majority Lenders.

“**Accretive Investment**” means an Investment or Acquisition.

“**Account and Investment Property**” has the meaning ascribed to such term in Section 9.1(e) (*Grant of Security Interest*).

**“Acquisition”** means, with respect to any Person, any purchase or other acquisition by such Person, regardless of how accomplished or effected (including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization or by way of purchase, lease or other acquisition arrangements), of (a) any other Person (including any purchase or acquisition of such number of the issued and outstanding securities of, or such portion of an equity interest in, such other Person so that such other Person becomes a Subsidiary of the purchaser or of any of its Affiliates) or of all or substantially all of the property of any other Person, or (b) any division, business, project, operation or undertaking of any other Person or of all or substantially all of the property of any division, business, project, operation or undertaking of any other Person.

**“Additional Material Project Documents”** means each agreement (a) involving the potential expenditure by or revenue to any Obligor of more than \$1,000,000 individually and, the breach, loss or termination of which would reasonably be expected to be materially adverse to the care and maintenance of the Project or otherwise result in a Material Adverse Effect relating to the Project; or (b) involving the potential expenditure by or revenue to any Obligor of more than \$2,500,000 individually.

**“Adequate Protection Superpriority Claims”** has the meaning assigned to such term in the DIP Order.

**“Adequate Protection Liens”** has the meaning assigned to such term in the DIP Order.

**“Adequate Protection Obligations”** has the meaning assigned to such term in the DIP Order.

**“Administration Charge”** has the meaning assigned to such term in the DIP Order.

**“Administrative Agent”** has the meaning ascribed to such term in the preamble hereto.

**“Affiliate”** means, with respect to any Person, any other Person which directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

**“Agency Fee Letter”** means the fee letter of the Agent, accepted by the Borrower on June 3, 2024.

**“Agent”** means the Collateral Agent and/or the Administrative Agent.

**“Agreement”** has the meaning ascribed to such term in the preamble hereto.

**“AML Laws”** means any laws, rules or regulations relating to money laundering or terrorism financing, including, but not limited to, the Bank Secrecy Act, as amended by the USA PATRIOT ACT, and Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

**“Anti-Corruption Laws”** means any laws, rules or regulations relating to corruption or bribery, including, but not limited to, the U.S. Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1 et seq.), as amended, and the Corruption of Foreign Public Officials Act (Canada).

**“Applicable Law”** means any law (including common law and equity), any international or other treaty, any domestic or foreign constitution or any multinational, federal, provincial, territorial, state, municipal, county or local statute, law, ordinance, code, rule, regulation, Order (including any consent, decree or administrative Order), or Authorization of a Governmental Body in any case applicable to any specified Person, property, transaction or event, or any such Person’s property or assets (and, in the case of Section 7.3 (*Change in Circumstances*), whether or not having the force of law).

**“Applicable Margin”** means 9.00% per annum.

“**Applicable Percentage**” means, with respect to any Senior Lender at any time, the percentage of the total principal amount of the Loans held by such Senior Lender or, if at such time, no Loans have yet been advanced, the percentage of the Total Commitments of all Senior Lenders held by such Senior Lender at such time.

“**Approved Bidding Procedures**” means the Bidding Procedures set forth in the Bidding Procedures Motion that are approved by the Bankruptcy Court pursuant to an order of the Bankruptcy Court.

“**Approved Budget**” means the Initial Approved Budget as amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms of the Interim Order and Section 11.2 of this Agreement.

“**Approved Sale**” means a sale of all or substantially all of the Debtor’s assets pursuant to section 363 of the Bankruptcy Code consummated in accordance with the Approved Bidding Procedures and the Sale Approval Order.

“**Approved Variance Reports**” has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

“**Assigned Agreements**” has the meaning assigned to such term in Section 9.1(f) (*Grant of Security Interest*).

“**Assigned Insurance Policies**” has the meaning assigned to such term in Section 9.1(i) (*Grant of Security Interest*).

“**Aurubis Offtake Agreement**” means that certain offtake agreement, dated May 6, 2019, entered into by and among the Borrower, Concord as Borrower’s agent, and Aurubis AG, Hamburg, Germany and Aurubis Bulgarias AD, Pirdop, Bulgaria.

“**Authorization**” means any authorization, approval, consent, concession, exemption, license, lease, grant, permit, franchise, right, privilege or no-action letter from any Governmental Body having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person’s property or business and affairs (including any zoning approval, mining permit, development permit or building permit) or from any Person in connection with any easements, contractual rights or other matters.

“**Automatic Stay**” shall mean the automatic stay imposed pursuant to section 362 of the Bankruptcy Code.

“**Avoidance Actions**” has the meaning assigned to such term in the DIP Order.

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time.

“**Bankruptcy Code**” has the meaning ascribed to such term in the recitals.

“**Bankruptcy Court**” has the meaning ascribed to such term in the recitals.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 C.F.R. § 1010.230.

**“Bidding Procedures”** has the meaning given to it in Section 11.13(g)(i) (*Milestones*).

**“Bidding Procedures Motion”** has the meaning given to it in Section 11.13(g) (*Milestones*).

**“Bidding Procedures Order”** has the meaning given to it in Section 11.13(g) (*Milestones*).

**“Borrower”** has the meaning ascribed to such term in the preamble hereto.

**“Break Costs”** means the amount (if any) by which:

- (a) the interest which a Senior Lender should have received for the period from the date of funding (or proposed funding) of all or any part of its participation in the Loans to the last day of the current Interest Period in respect of the Loans, had the Loans been made and the principal amount been paid on the last day of such Interest Period;

exceeds:

- (b) the sum of the amount it did receive as interest plus the amount which such Senior Lender would be able to obtain by placing an amount equal to the principal amount received by it on deposit with a leading bank in the interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

**“Budget Period”** means the thirteen-week period set forth in the Approved Budget in effect at such time.

**“Business”** means the maintenance and care of, and sale of Minerals (to the extent extracted prior to the Entry Date) from, the Underground Project.

**“Business Day”** means any day, other than a Saturday, Sunday or statutory holiday in any one of New York City, New York; Reno, Nevada; or Vancouver, British Columbia Canada or a day on which banks are generally closed in any one of those cities.

**“Canadian Collateral”** means the Collateral of the Debtors located in Canada.

**“Canadian Court”** has the meaning ascribed to such term in the recitals.

**“Canadian Priority Charges”** means the Administration Charge and the DIP Charge.

**“Capital Expenditures”** means expenditures (including in respect of any Capitalized Lease Obligations) made by (or on behalf of) the Borrower to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding repairs) during such period computed in accordance with the IFRS applicable to the Borrower (other than (a) such expenditures paid out of Net Insurance Proceeds, (b) replacement property acquired with asset sale proceeds in accordance with the terms of the Finance Documents and (c) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent of any credit granted by the seller of such equipment for the equipment being traded in at such time).



“**Capital Stock**” shall mean, with respect to any Person, any and all shares (whether common or preferred), interests, participations, certificates and other instruments, partnership interests or other equity or ownership interests in such person (however designated and whether or not voting) and any warrants, rights or options to purchase any of such equity or ownership interests.

“**Capitalized Lease Obligation**” means, for any Person, any payment obligation of such Person under an agreement for the lease, license or rental of, or providing such Person with the right to use, property that, in accordance with IFRS, is required to be classified and accounted for as capital leases on a balance sheet of such Person and the amount of such obligation shall be the capitalized amount thereof determined in accordance with IFRS.

“**Carve-Out**” has the meaning assigned to such term in the DIP Order.

“**Cash Management Order**” an order of the Bankruptcy Court, in form and substance satisfactory to the Administrative Agent and the Majority Lenders, authorizing the Debtors to continue their cash management system and/or continue performing intercompany transfers.

“**CAT Equipment Lease**” means that certain Master Equity Lease Agreement, dated February 8, 2019, by and between the Borrower and Caterpillar Financial Services Corporation.

“**CAA**” has the meaning ascribed to such term in the recitals.

“**Change of Control**” means:

- (a) the Parent ceases to have control or direction (directly or indirectly) over 100% of the outstanding voting shares and economic interests of the Borrower or its Subsidiaries, or otherwise ceases to have the ability (directly or indirectly) to elect a majority of the board of directors of any such Obligor;
- (b) Pala ceases to have control or direction (directly or indirectly) over 19.9% of the outstanding voting shares and economic interests of the Parent;
- (c) the occupation of a majority of the seats (other than vacant seats) on the board of directors of an Obligor by an entity which is neither (i) nominated by such board of directors nor (ii) appointed by directors so nominated as of the date hereof; or
- (d) Pala or any Obligor, as applicable, takes any actions to effect any of the foregoing.

“**Chapter 11 Cases**” means the chapter 11 cases of the Obligors which are being jointly administered under the Bankruptcy Code and are pending in the Bankruptcy Court.

“**Claim**” means any claim, loss or liability of any nature whatsoever, including but not limited to administrative, regulatory enforcement or judicial or equitable action, claim, suit, or judgment by any other Person or any written notice by any Governmental Body.

“**Collateral**” has the meaning given to it in Section 9.1 (*Grant of Security Interest*) and the term “DIP Collateral” in the DIP Order.

“**Collateral Accounts**” means, collectively, the accounts set forth on Schedule R.

“**Collateral Agent**” has the meaning ascribed to such term in the preamble hereto.

“**Commercial Tort Claims Collateral**” has the meaning assigned to such term in Section 9.1(h) (*Grant of Security Interest*).

“**Commitment**” means, an Interim Commitment and/or Final Commitment.

“**Compounded SOFR Calculated Daily Rate**” means the percentage rate per annum calculated by the Administrative Agent (rounded if necessary to five decimal places with 0.000005 being rounded upwards) which results from the formula set out below:

$$\left[ \prod_{i=1}^{d_b} \left( 1 + \frac{r_i * n_i}{360} \right) - 1 \right] * \frac{360}{d_c}$$

where:

$d_b$  is, for any Observation Period, the number of US SOFR Banking Days in that Observation Period.

$d_c$  is the number of calendar days in that Observation Period.

$i$  is a series of whole numbers from 1 (one) to  $d_b$ , each representing the relevant US SOFR Banking Day in chronological order from, and including, the first US SOFR Banking Day in the relevant Observation Period.

$r_i$  is the SOFR Daily Rate applicable on US SOFR Banking Day  $i$  in the relevant Observation Period, as published on the US SOFR Banking Day immediately after US SOFR Banking Day  $i$ .

$n_i$  is, for any US SOFR Banking Day “ $i$ ” in the relevant Observation Period, the number of calendar days for which rate  $r_i$  applies, being the number of calendar days from (and including) such US SOFR Banking Day “ $i$ ” to (but excluding) the following US SOFR Banking Day, irrespective of whether that following US SOFR Banking Day is included in the Observation Period. (Therefore, on most days,  $n_i$  will be 1, but on a Friday it will generally be 3, and it will also be greater than 1 on the US SOFR Banking Day before a holiday).

“**Compounded SOFR Calculated Index Rate**” means the percentage rate per annum calculated by the Administrative Agent (rounded if necessary to five decimal places with 0.000005 being rounded upwards) which results from applying the formula set out below:

$$\left( \frac{SOFR Index_{End}}{SOFR Index_{Start}} - 1 \right) * \left( \frac{360}{d_c} \right)$$

where:

$SOFR Index_{Start}$  is the value of the SOFR Index that is applicable to the first day of the Observation Period relating to the relevant Interest Period;

*SOFR Index*<sub>End</sub> is the value of the SOFR Index that is applicable to the last day of the Observation Period relating to the relevant Interest Period; and

$d_c$  is the number of calendar days in the relevant Observation Period.

**“Compounded SOFR Primary Screen Rate”** means the publicly available percentage rate per annum (before any correction, recalculation or republication by its administrator) which:

- (a) is constituted primarily by the daily compounding of the SOFR reference rate over a period similar to the Observation Period and uses a compounding methodology which is the same as that specified in this Agreement for the calculation of the Compounded SOFR Calculated Daily Rate;
- (b) is produced by an administrator;
- (c) is made available no later than the following US SOFR Banking Day on which the Observation Period to which it relates ends; and
- (d) is specified as the “Compounded SOFR Primary Screen Rate” by the Administrative Agent in a Technical Adjustment Notification.

**“Compounded SOFR Reference Rate”** means each of the Compounded SOFR Primary Screen Rate, the Compounded SOFR Calculated Index Rate and the Compounded SOFR Calculated Daily Rate.

**“Computer Software”** has the meaning assigned to such term in Section 9.1(g)(iv) (*Grant of Security Interest*).

**“Concord”** means Concord Resources Limited.

**“Confidential Information”** has the meaning given to it in Section 23.1 (*Confidential Information*).

**“Contested”** or **“Contest”** means, with respect to any matter or claim involving any Person, that such Person is contesting such matter or claim in good faith and by appropriate proceedings timely instituted; provided, that the following conditions are satisfied:

- (a) such Person has posted a bond or other security acceptable to the Administrative Agent or has established adequate reserves with respect to the contested items in accordance with IFRS;
- (b) during the period of such contest, the enforcement of any contested item is effectively stayed; and
- (c) such contest and any resultant failure to pay or discharge the claimed or assessed amount does not, and could not reasonably be expected to, result in a Material Adverse Effect or the sale, forfeiture or loss of any material part of the Collateral.

**“Contract”** means any agreement, contract, lease, license, concession, option, indenture, or other instrument or similar arrangement.

**“Contract Rights”** means all of the applicable Obligor’s right, title and interest in and to each and all of the Project Documents, including but not limited to: (a)(i) all of the applicable Obligor’s rights to payment, accounts and payment intangibles under any such Project Document and (ii) all payments, accounts and payment intangibles due and to become due to such Obligor under each such Project Document, whether as contractual obligations, damages or otherwise; (b) all of such Obligor’s claims, rights, powers or privileges and remedies under any such Project Document, including all general intangibles, whether as

contractual obligations, damages or otherwise; (c) all rights of the Obligor to receive any proceeds of any payment or performance bond, insurance, indemnity, warranty or guaranty with respect to any such Project Document; and (d) all of the Obligor's rights under any such Project Document to take any action, to make determinations, to exercise any election (including, but not limited to, election of remedies) or option to give or receive any notice, consent, waiver or approval with respect to any such Project Document, together with full power and authority to demand, receive, enforce, collect or receive any of the foregoing rights or any Project Property which is the subject of any such Project Document, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which may be necessary or advisable in connection with any of the foregoing.

**“Contractual Obligation”** means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Control”** means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power including the ownership of voting securities, by contract or otherwise in respect of both ordinary and extraordinary matters (including reorganization, restructuring and the amendment of any applicable constitutional document). **“Controlled”** shall have the meaning correlative thereto.

**“Corrective Action Plan”** means a written plan from the Borrower approved by the Administrative Agent to correct and remedy any E&S Event, which plan shall include:

- (a) the proposed actions to specifically correct, and to remedy damage caused by, such E&S Event;
- (b) the proposed assignment of primary responsibility for implementing such proposed actions;
- (c) a time schedule for implementing such proposed actions to remedy the E&S Event, including the start date, the estimated end date and key milestones; and
- (d) an estimated cost for implementing such actions or any other costs arising from the E&S Event.

**“Creditors’ Committee”** has the meaning assigned to such term in Section 2.3 (*Purpose and Use of Proceeds*).

**“Credit Spread Adjustment”** means 10 basis points per annum.

**“Debt”** means, at any time, with respect to any Person, without duplication:

- (a) all obligations, that would be considered to be indebtedness for borrowed money, and all obligations, whether or not with respect to the borrowing of money, that are evidenced by bonds, debentures, notes or other similar instruments;
- (b) the face amount of all bankers’ acceptances and similar instruments;
- (c) any capital stock of that Person, or of any Subsidiary of that Person, which capital stock, by its terms or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder, or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part;

- (d) all Capitalized Lease Obligations, synthetic lease obligations, obligations under Sale-Leasebacks and Purchase Money Obligations;
- (e) the amount of all contingent liabilities in respect of letters of credit and similar instruments;
- (f) (i) all obligations in respect of the deferred purchase price of property and (ii) accounts payable and accruals, in each case that are over one hundred twenty (120) days past due (except to the extent being Contested or subject to stay of collection pursuant to the Automatic Stay);
- (g) any hedging, swap, forward, option, future or other derivative transaction (it being understood that when calculating the value of any such Debt, only the marked-to-market value shall be considered);
- (h) contingent liabilities in respect of performance bonds and surety bonds, in each case only to the extent that the contingent liability is required by IFRS to be treated as a liability on a balance sheet of the Person contingently liable; and
- (i) the amount of the contingent liability under any Guarantee of all or any part of an obligation of another Person of the type included in paragraphs (a) through (h) above.

**“Debtor”** has the meaning ascribed to such term in the recitals.

**“Default”** means any event or condition which, upon notice, lapse of time, or both, would constitute an Event of Default.

**“DIP Charge”** means the superpriority charge on the Canadian Collateral granted by the Canadian Court in favor of the Senior Lenders pursuant to the Interim DIP Recognition Order, which DIP Charge shall be subordinate to the Administration Charge.

**“DIP Order”** means the Interim Order, unless the Final Order shall have been entered, in which case it means the Final Order.

**“DIP Recognition Order”** means the Interim DIP Recognition Order and the Final DIP Recognition Order, as applicable under the circumstances.

**“Disposition”** means any sale, assignment, transfer, conveyance, lease, license, granting of an option or other disposition (or agreement to dispose) of any nature or kind whatsoever of any property or of any right, title or interest in or to any property, but does not include the payment of a dividend, and the verb **“Dispose”** has a correlative meaning.

**“E&S Event” means:**

- (a) (i) any event, incident, accident or condition, including any Environmental or Social Matter, that has had, or would reasonably be expected to have, a Material Adverse Environmental and Social Effect or (ii) non-compliance by the Borrower or its Subsidiaries with any Environmental and Social Requirement that has either resulted in material damage to the Environment; or
- (b) any event, incident, accident or condition, including any Environmental or Social Matter, that requires a material corrective action by, or imposes material liability upon, Borrower or any of its Subsidiaries pursuant to any Environmental and Social Requirement.

**“EEA Member Country”** means any member state of the European Union, Iceland, Liechtenstein and Norway, as well as any other country which becomes an EEA Member country in the future.

**“Encumbrance”** means any mortgage, debenture, pledge, hypothec, lien, charge, deed of trust, trust arrangement, assignment by way of security, contractual right of set-off, consignment, lease, hypothecation, security interest, including a purchase money security interest, or other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and **“Encumbered”**, **“Encumbrancer”** and **“Encumbrances”** shall have corresponding meanings.

**“Entitled Person”** has the meaning assigned to that term in Section 25.8 (*Judgment Currency*).

**“Entry Date”** has the meaning ascribed to such term in the preamble hereto.

**“Environment”** means all or any of the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers);
- (c) soil and land (including, without limitation, land under water); and
- (d) any ecological systems, animals, plants and all other living organisms supported by these media.

**“Environmental and Social Requirements”** means all Environmental Laws, the Performance Standards, Equator Principles and any Corrective Action Plan.

**“Environmental Bond”** means each environmental bond to be provided and maintained in accordance with the Environmental Licenses and Environmental Law.

**“Environmental Claim”** means any Claim alleging or asserting that, in relation to the Project, the Borrower or any of its Subsidiaries is liable under any Environmental and Social Requirements for investigatory costs, cleanup costs, remediation, corrective action, governmental response costs, damage to natural resources (including without limitation wetlands, wildlife, aquatic and terrestrial flora and fauna), damage to the Environment, damage to property, personal injuries, or fines or penalties, in each case arising out of, based on or resulting from:

- (a) any Release;
- (b) any violation of any Environmental Law; or
- (c) any other Environmental or Social Matter.

**“Environmental Law”** means all Applicable Laws of any Governmental Body relating to the protection of the Environment, natural resources, Hazardous Substances including human health and safety, as such relates to exposure to Hazardous Substances, and the rehabilitation, reclamation and closure of lands used in connection with, the Project.

**“Environmental License”** means each Project Authorization required or issued pursuant to Environmental Law or with respect to any Environmental or Social Matter.

**“Environmental or Social Matter”** means:

- (i) any Release of Hazardous Substances into the Environment;
- (ii) any nuisance, noise, health and safety at work, industrial illness, or industrial injury due to environmental factors;
- (iii) any conservation, preservation or protection of the Environment;
- (iv) any conservation of archaeological and historical sites;
- (v) any resettlement of or adverse impact to indigenous peoples;
- (vi) labor, worker rights or human rights;
- (vii) any community impact or development activities; and
- (viii) any other matter whatsoever relating to human, environmental or social issues or health and safety that has or could reasonably be expected to have a significant adverse impact or risk relating to the Project.

**“Epiroc Equipment Lease”** means that certain Master Lease Agreement, dated July 10, 2018, by and between the Borrower and Epiroc Financial Solutions USA LLC.

**“Equator Principles”** means those principles set out in the paper entitled “A financial industry benchmark for determining, assessing and managing environmental and social risk in projects” dated June 2013 and available at: [https://equator-principles.com/wp-content/uploads/2017/03/equator\\_principles\\_III.pdf](https://equator-principles.com/wp-content/uploads/2017/03/equator_principles_III.pdf).

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

**“Event of Default”** has the meaning ascribed to it in Section 13.1 (*Events of Default*).

**“Event of Loss”** means an event which causes all or a substantial portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever including through a failure of title.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Senior Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Senior Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Senior Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Senior Lender acquires such interest in the Loan or Commitment or (ii) such Senior Lender changes its lending office, except in each case to the extent that, pursuant to Section 6.1 (*Taxes*), amounts with respect to such Taxes were payable either to such Senior Lender’s assignor immediately before such Senior Lender became a party hereto or to such Senior Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 6.1(g) (*Taxes*) and (d) any withholding Taxes imposed under FATCA.

“**Existing Lender**” has the meaning ascribed to it in Section 14.1(b) (*Assignment to by Senior Lenders*).

“**Exit Fee**” has the meaning ascribed to it in Section 5.9(c) (*Exit Fee*).

“**Exit Fee Event**” has the meaning ascribed to it in Section 5.9(c) (*Exit Fee*).

“**Expropriation Event**” means, with respect to any Project Property (including any rights to use the Project Property) or equity interests of the Borrower or Subordinated Intercompany Debt issued by the Borrower, any action or series of actions, omission or series of omissions, that has the effect of:

- (a) a *de jure* or *de facto* taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation, rescission or similar action or proceeding, by a Governmental Body of:
  - (i) all or a material portion of the Project;
  - (ii) all or a material portion of the assets of the Borrower (including the RGGS Lease); or
  - (iii) the equity interests of or Subordinated Intercompany Debt issued by the Borrower;

provided, that (A) insofar as such action relates to a material portion of the Project or the assets of the Borrower, such action shall cause or reasonably be likely to cause a material adverse impact on deliveries of copper on the terms set forth in the Finance Documents or the ability of such Person to operate the Project or perform its obligations under the Finance Documents or (B) such action shall (1) result in a material loss (in each case), irreparable damage to, destruction of any, or diminution in value of the Collateral or otherwise materially and adversely affect (x) the ability of the Secured Parties to access or utilize Collateral or (y) the liens granted in the Collateral pursuant to the Finance Documents or (2) impair to any material extent the validity or priority of any security interest purported to be granted to the Secured Parties under the Finance Documents, except for negotiated expropriations by the government, planned for and agreed upon as part of, and that would not reasonably be expected to result in a material impact on, the expected normal operations of the Project, subject to the approval of the Majority Lenders, such approval not to be unreasonably withheld; or

- (b) any taking or any action by a Governmental Body for the dissolution or disestablishment of the Borrower;
- (c) actually depriving the Borrower whether *de jure* or *de facto* by the implementation of Applicable Law or actions by Governmental Bodies of its rights necessary to construct or operate the Underground Project; or
- (d) a decision of a judicial or arbitral tribunal with respect to any of the events described in paragraphs (a) through (c) above;

provided, that no action described in paragraph (a), (b), (c) or (if the decision of a judicial tribunal or arbitral tribunal is with respect to the events described in paragraph (a), (b) or (c)) (d) above shall constitute a Expropriation Event if it is a *bona fide* non-discriminatory measure of general application of a kind that governments normally take for such purposes as ensuring public safety, protecting the Environment or regulating economic activities, and, where applicable, adequate compensation has been paid to the affected party and does not have a confiscatory effect.



**“Extraordinary Receipts”** means any cash received by or paid to or for the account of any Obligor or any of its Subsidiaries not in the ordinary course of business after the Petition Date consisting of (i) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action that was pending as of the Petition Date, (ii) foreign, United States, state, or local Tax refunds, in each case, net of reasonable and documented costs and expenses associated therewith; provided that, Extraordinary Receipts shall not include sales tax receipts contemplated to be received by any of the Obligors as set forth in the Approved Budget).

**“FATCA”** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Bodies and implementing such Sections of the IRC.

**“Final Commitment”** means, in respect of each Senior Lender at any time, the amount specified with respect to such Senior Lender on Schedule A (*Commitments*) (as amended in accordance with Section 14.1 (*Assignment by Senior Lenders*) from time to time), as such amount may be reduced from time to time by such Senior Lender’s Applicable Percentage of any cancellation of any unused portion of the Final Commitment.

**“Final DIP Recognition Order”** means an order of the Canadian Court in the Recognition Proceedings recognizing the Final Order in the Recognition Proceedings and giving it full force and effect in Canada, in a form acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower on the other hand.

**“Final Loans”** means the loans extended pursuant to Section 2.1(b) (*Loan*).

**“Final Order”** means an order of the Bankruptcy Court in the Chapter 11 Cases, substantially in the form of the Interim Order or with such changes (other than conforming changes necessary to transform the Interim Order into the Final Order) acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower, on the other hand, authorizing and approving on a final basis, among other things, the borrowings by the Borrower under this Agreement.

**“Finance Documents”** means:

- (a) this Agreement;
- (b) the DIP Order;
- (c) each Note;
- (d) the Agency Fee Letter; and
- (e) any Transfer Certificate;

and all other agreements, instruments and documents from time to time (both before and after the date of this Agreement) designated as such by the Administrative Agent and the Borrower.

**“Finance Party”** means each Senior Lender and the Agents.

**“Financial Statements”** means the financial statements required to be delivered pursuant to Sections 11.7(b) (*Quarterly Financial Reporting*).

**“First Day Orders”** has the meaning given to it in Section 12.1(g) (*Conditions Precedent to the Interim Loan*).

**“First Lien Facility”** means that certain Second Amended and Restated Credit Agreement, entered into on or about the October 28, 2022, among the Borrower, the Guarantors, the lenders party thereto and KfW IPEX-Bank as administrative agent (as amended, amended and restated, supplemented or otherwise modified from time to time).

**“First Reporting Date”** has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

**“Fiscal Quarter”** means each calendar quarter ending on March 31, June 30, September 30 and December 31 of each year.

**“Fiscal Year”** means the period of January 1 to December 31 of each year.

**“Foreign Senior Lender”** means a Senior Lender that is not a U.S. Person.

**“Fourth Lien Facility”** means that certain Third Amended and Restated Loan Agreement, dated as of December 21, 2023, by and among Parent, as borrower, Borrower, as guarantor, the other guarantors party thereto, the lenders party thereto and Pala, as agent and lead arranger (as amended, amended and restated, supplemented or otherwise modified from time to time).

**“Funding Rate”** means in relation to a Loan and Interest Period, the rate which expresses as a percentage rate per annum the average cost (determined either on an actual or a notional basis) which a Senior Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the relevant Loan for a period equal in length to that Interest Period.

**“Good Industry Practice”** means, in relation to any decision, undertaking, practice, method or act, the exercise of that degree of diligence, skill, care, prudence, oversight, economy and stewardship which is commonly observed by skilled and experienced professionals in the United States of America engaged in the mining industry in the same type of decision, undertaking, practice, method or act, as the case may be, under, and with the same or similar circumstances and/or degree of complexity to accomplish the desired result in a manner consistent with applicable standards, equipment manufacturing recommendations, good business practice, reliability, safety, dependability, efficiency, environmental protection and Applicable Law.

**“Governmental Body”** means the government of the United States of America or Canada or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, arbitrator or arbitrators, tribunal, central bank or enterprise that is owned, sponsored, or controlled by any government, or any other entity exercising executive, legislative, judicial or arbitral, taxing, regulatory or administrative powers or functions or pertaining to government (including any supra- national bodies such as the European Union or the European Central Bank) and in each case having jurisdiction over an Obligor, the Project, the Project Property or the Finance Documents, as the context may require.

**“Guarantee”** means, with respect to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Debt of another, including any such Debt directly or indirectly guaranteed,

endorsed (otherwise than for collection or deposit in the ordinary course of business) or discounted or sold with recourse by such Person, or in respect of which such Person is otherwise directly or indirectly liable, including any such Debt in effect guaranteed by such Person through any agreement (contingent or otherwise) to purchase, repurchase or otherwise acquire such Debt or any security therefor, or to provide funds for the payment or discharge of such Debt (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain the solvency or any balance sheet or other financial condition of the obligor of such Debt (including keep-well covenants), or to make payment for any products, materials or supplies or for any transportation or services regardless of the non-delivery or non-furnishing thereof, in any such case if the purpose or intent of such agreement is to provide assurance that such Debt will be paid or discharged, or that any agreements relating thereto will be complied with, or that the lender of such Debt will be protected against loss in respect thereof. The amount of any guarantee shall be equal to the outstanding principal amount of the Debt guaranteed or such lesser amount to which the maximum exposure of the guarantor shall have been specifically limited.

**“Guaranteed Obligations”** has the meaning ascribed to it in Section 10.1(a) (*Guaranty; Limitation of Liability*).

**“Guarantors”** means Parent and each Subsidiary thereof that Guarantees the Obligations pursuant to Article 10 (*Guaranty*).

**“Guaranty”** has the meaning ascribed to it in Section 10.1(a) (*Guaranty; Limitation of Liability*).

**“Hazardous Substances”** means any pollutant, contaminant or deleterious, hazardous or toxic substances, materials or wastes defined, listed, regulated or prohibited in or by any applicable Environmental Law, including toxic mine tailings; radioactive materials; flammable substances; explosives; petroleum and petroleum products; polychlorinated biphenyls; chlorinated solvents; and asbestos or asbestos-containing materials.

**“Hedge Agreements”** means any agreement or instrument relating to hedging, swap, forward, option, future or other derivative transactions in respect of interest rate or copper price exposure (including a swap, option, cap, collar or floor).

**“Hedge Termination Value”** means, in respect of any Hedge Agreement, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreement:

- (a) for any date on or after the date such Hedge Agreement has been closed out and termination value determined in accordance therewith, such termination value; and
- (b) for any date prior to the date referenced in paragraph (a) above, the amount determined as the mark-to-market value for such Hedge Agreement, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreement.

**“IFC Environmental, Health and Safety Guidelines”** means the following guidelines:

- (a) IFC General Environmental, Health and Safety Guidelines (2007); and
- (b) IFC Environmental, Health and Safety Guidelines for Mining (2007).

**“IFRS”** means the International Financial Reporting Standards adopted by the International Accounting Standards Board from time to time.

“**Indemnified Party**” has the meaning ascribed to such term in Section 7.5(a).

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Finance Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“**Information Officer**” means the information officer appointed by the Canadian Court in the Recognition Proceedings.

“**Initial Approved Budget**” means the first thirteen-week cash flow forecast that has been approved by the Senior Lenders on the Petition Date.

“**Initial Pledged Interests**” has the meaning ascribed to such term in Section 9.1(e)(ii) (*Grant of Security Interest*).

“**Initial Recognition Order**” means an order of the Canadian Court recognizing the Chapter 11 Cases in form and substance satisfactory to the Administrative Agent and the Senior Lenders in their sole discretion.

“**Interest Payment Date**” means, subject to Article 5 (*Interest, Interest Periods and Fees*), the first Business Day of each month.

“**Interest Period**” means each period determined in accordance with Article 5 (*Interest, Interest Periods and Fees*) of this Agreement and, in relation to overdue amounts, each period determined in accordance with Section 5.2 (*Default Interest*).

“**Interest Rate**” means any interest rate determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*).

“**Interim Commitment**” means, in respect of each Senior Lender at any time, the amount specified with respect to such Senior Lender on Schedule A (*Commitments*) (as amended in accordance with Section 14.1 (*Assignment by Senior Lenders*) from time to time), as such amount may be reduced from time to time by such Senior Lender’s Applicable Percentage of any cancellation of any unused portion of the Interim Commitment.

“**Interim DIP Recognition Order**” means an order of the Canadian Court in the Recognition Proceedings in such form acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, recognizing the Interim Order in the Recognition Proceedings and giving it full force and effect in Canada and granting the DIP Charge, which order for greater certainty may be the supplemental recognition order granted by the Canadian Court concurrently with the Initial Recognition Order.

“**Interim Loans**” means the loans extended pursuant to Section 2.1(a) (*Loan*).

“**Interim Order**” means an order issued by the Bankruptcy Court in the Chapter 11 Cases substantially in the form of Schedule E (*Interim Order*) or with such changes acceptable to the Administrative Agent and the Senior Lenders in their sole discretion, on the one hand, and the Borrower, on the other hand, authorizing and approving on an interim basis, among other things, the borrowings by the Borrower under this Agreement.

“**Investment**” means, with respect to any Person, the making by such Person of:

- (a) any direct or indirect investment in or purchase or other acquisition of the securities of or an equity interest in any other Person;
- (b) any loan or advance to, or arrangement for the purpose of providing funds or credit to (excluding extensions of trade credit in the ordinary course of business in accordance with customary commercial terms and excluding advances of cash from the Borrower to Parent in accordance with the terms of the Cash Management Order), any other Person; or
- (c) Investments consisting of money deposits required in connection with surety bonds;
- (d) any capital contribution to (whether by means of a transfer of cash or other property or any payment for property or services for the account or use of) any other Person; provided, that, for greater certainty, an Acquisition shall not be treated as an Investment.

“**IRC**” means the US Internal Revenue Code of 1986, as amended.

“**IRS**” means the United States Internal Revenue Service.

“**Issuer**” means, individually or collectively as the context may require, each of (i) the Borrower, (ii) 0607792 B.C. Ltd., a limited company incorporated under the laws of British Columbia, Canada, and (iii) Lion Iron Corp., a corporation incorporated under the laws of the State of Nevada.

“**Judgment Currency**” has the meaning assigned to that term in Section 25.8 (*Judgment Currency*).

“**KfW IPEX-Bank**” means KfW IPEX-Bank GmbH.

“**Lag Time**” means the time period as stipulated under Section 5.2(d) (*Interest Rate*).

“**Loans**” means, collectively or individually as context requires, the Interim Loans and the Final Loans.

“**Majority Lenders**” means, at any time, one or more Senior Lenders holding in the aggregate more than fifty percent (50%) of the Commitments or, if Loans have been made, of outstanding principal amount of the Loans.

“**Majuba/Renegade Royalty Deed**” means that certain Royalty Deed, dated August 21, 2006, by and between the Borrower, Majuba Mining Ltd. and Renegade Resources Corporation.

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the business, assets, results of operations or financial condition of the Borrower and the Guarantors taken as a whole, excluding the effect of filing the Chapter 11 Cases, the events and conditions customarily resulting from the commencement and continuation of the Chapter 11 Cases, the effects thereof and any action required to be taken under the Finance Documents or the DIP Order, and the Chapter 11 Cases themselves;
- (b) [reserved];
- (c) the ability of the Borrower or any other Obligor, to consummate the transactions contemplated by the Finance Documents or to perform its obligations under the Finance Documents in accordance with their respective terms;
- (d) the validity, legality or enforceability of any Finance Document;

- (e) the rights and remedies of the Administrative Agent or Senior Lenders under the Finance Documents; or
- (f) the validity or priority of any security interest in the Collateral purported to be granted to any Secured Party under the DIP Order.

**“Material Adverse Environmental and Social Effect”** means:

- (a) any fatality;
- (b) any material adverse community or worker-related impact, including any protestation or challenge to the Project; or
- (c) any Environmental or Social Matter that is materially adverse to the Environment or the community or requires material measures or corrective action to remediate or restore the Environment or causes material damage to critical habitats or endangered, threatened or other protected species.

**“Material Project Authorizations”** means any Project Authorization, the breach, loss, modification or termination of which, or failure to obtain, could reasonably be expected to have a material adverse effect on the development, construction, procurement, engineering or operation of commercial production (including commercial production transactions) of the Underground Project.

**“Material Project Documents”** means (a) the RGGS Lease, (b) the NV Energy Power Supply Contract, (c) that certain water service agreement, dated August 10, 2009, by and between the Borrower and the City of Yerington, as amended, and (d) the Additional Material Project Documents, if any.

**“Maturity Date”** means the earliest to occur of (i) the date that is four (4) months following the Petition Date, (ii) forty-five (45) calendar days after the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or before such date, (iii) fourteen (14) calendar days after the Petition Date if the Interim DIP Recognition Order has not been entered by the Canadian Court on or before such date, (iv) the date of consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, (v) the date of “substantial consummation” (as defined in section 1101 of the Bankruptcy Code, and which for purposes hereof shall be no later than the “effective date” thereof) of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court, (vi) the date of entry of an order by the Bankruptcy Court approving (a) a motion seeking conversion or dismissal of any or all of the Chapter 11 Cases or (b) a motion seeking appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtors’ business, (vii) the date the Bankruptcy Court orders the conversion of the bankruptcy case of any of the Debtors to a liquidation pursuant to chapter 7 of the Bankruptcy Code, and (viii) the date of acceleration of all or any portion of the Loans and the termination of the Commitments upon the occurrence of an Event of Default.

**“Minerals”** means any and all marketable metal bearing material in whatever form or state that is mined, produced, extracted, severed or otherwise recovered from the Project Real Property, and including any such material derived from any processing or reprocessing of any tailings, waste rock or other waste products originally derived from the Project Real Property, and including ore, concentrates, doré, specimens, minerals in solution and any other products resulting from the further milling, processing or other beneficiation of Minerals whether stored or stockpiled on the Project Real Property or elsewhere.

**“Monthly Operations Report”** means a written report prepared by or on behalf of the Borrower in relation to the immediately preceding calendar month (consistent with generally accepted operational reporting

standards common in the mining industry), which report shall include all material information pertaining to the development, production or operations of the Project, including the following information for such quarter:

- (a) a review of the operating activities for the quarter and a report on any material issues arising in connection with the operation and maintenance of the Project;
- (b) details of any new material environmental, social, health or safety activities or events, including any material E&S Events, Environmental Claims, or any material non-compliance with the Environmental and Social Requirements;
- (c) such other information regarding the performance of the Borrower's obligations under the Finance Documents as the Majority Lenders may reasonably request; and
- (d) details of planned or actual material maintenance.

The Monthly Operations Report shall also contain a report on any Encumbrances placed on the Collateral after the Petition Date securing amounts greater than \$1,000,000 in the aggregate, other than the Security.

**“Net Cash Proceeds”** means, with respect to any sale of, or any dividend, distribution, return of capital or other return on investment in respect of equity interests, the cash proceeds thereof, net of all Taxes and customary fees, discounts, commissions, costs and other expenses incurred in connection therewith.

**“Net Disposition Proceeds”** means, with respect to any disposition of assets or Expropriation Event, the aggregate amount of cash payments net of (a) the amount of any costs, expenses, commissions and fees paid or payable by or on behalf of the Borrower in connection with such disposition (as evidenced by supporting documentation provided to the Senior Lenders upon request), and (b) any Taxes imposed on and payable or reasonably estimated to be payable by the Borrower as a result of such disposition.

**“Net Insurance Proceeds”** means the aggregate cash proceeds of (a) business interruption insurance (only to the extent the Project is being abandoned) and (b) insurance received by the Borrower in respect of any loss, damage to or destruction of any of the Collateral, in each case, after deducting therefrom all reasonable fees, costs and expenses (including legal and accounting fees) incurred in connection with the collection of such proceeds (as evidenced by supporting documentation provided to the Senior Lenders upon request), without deduction for any insurance premiums or similar payments; provided, however, that insurance proceeds arising from third- party liability insurance shall not constitute Net Insurance Proceeds.

**“Normet Equipment Lease”** means that certain equipment lease agreement, dated January 17, 2019, by and between the Borrower and Normet Americas, Inc.

**“Note”** has the meaning ascribed to such term in Section 2.5(b) (*Evidence of Debt*).

**“NV Energy Power Supply Contract”** means that certain power supply agreement dated November 30, 2018, by and between the Borrower and Sierra Pacific Power Company d/b/a NV Energy as amended by the First Amendment to the Rule 9, Section B.2 High Voltage Distribution Agreement, dated February 21, 2019.

**“NY Fed OBFR”** means the overnight bank funding rate as provided by the Federal Reserve Bank of New York (or a successor administrator) on the New York Fed's Website (currently published on: <https://apps.newyorkfed.org/markets/autorates/obfr>).

**“NY Fed OBFR Adjustment Spread”** means the arithmetic mean (calculated by the Administrative Agent) of the daily difference between SOFR and the NY Fed OBFR over an observation period of the thirty (30) most immediately preceding US SOFR Banking Days for which SOFR was Available.

**“NY Fed Target Rate”** means the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York on the Federal Reserve’s Website from time to time or, if the Federal Open Market Committee does not target a single rate, the mid-point of the short-term interest rate target range set by the Federal Open Market Committee as published on the Federal Reserve’s Website (calculated as the arithmetic average of the upper bound of the target range and the lower bound of the target range, rounded, if necessary, upwards to five (5) decimal places).

**“NY Fed Target Rate Adjustment Spread”** means in relation to the NY Fed Target Rate prevailing at the close of business on a US SOFR Banking Day, the twenty (20) percent trimmed arithmetic mean (calculated by the Administrative Agent) of the daily difference between SOFR and the NY Fed Target Rate over an observation period of the five (5) most immediately preceding US SOFR Banking Days for which SOFR was Available.

**“Obligations”** means all indebtedness, liabilities, indemnities and other obligations owed by any Obligor to any Secured Party hereunder or under any other Finance Document, whether actual or contingent, direct or indirect, matured or not, now existing or hereafter arising (including any fees or premium payable hereunder, including the Exit Fee).

**“Obligor”** means each of the Borrower and the Guarantors.

**“Observation Period”** means, in relation to an Interest Period, the time period the beginning of which and the end of which is in each case the Lag Time before the beginning and the end of the relevant Interest Period to which such Observation Period belongs (including the first day but excluding the last day of such time period).

**“OFAC”** means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**“Officer’s Certificate”** means a certificate signed on behalf of any Obligor by the chief executive officer, the chief financial officer or any other officer or representative who has been given sufficient powers and authority under Applicable Law and such Obligor’s constitutional documents (or powers of attorney or written resolutions executed in accordance with such Obligor’s constitutional documents) and, in each case, whose name appears on a certificate of incumbency delivered to the Administrative Agent concurrently with the execution of this Agreement, as such certificate of incumbency may be amended from time to time (and delivered to the Administrative Agent) to identify names of the individuals then holding such offices or the names of such representatives and the capacity in which they are acting.

**“Offtake Agreement”** means:

- (a) the Aurubis Offtake Agreement; and
- (b) any other offtake arrangements entered into by the Borrower for the sale of copper or other Minerals from the Project.

**“Order”** means any order, directive, decree, judgment, ruling, award, injunction, direction or request of any Governmental Body or other decision-making authority.



**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Finance Document, or sold or assigned an interest in any Loan or Finance Document).

**“Other Rights”** means all licenses, approvals, authorizations, consents, rights (including surface rights, access rights and rights of way), privileges, concessions or franchises held by the Borrower or required to be obtained from any Person (other than a Governmental Body) for the development, construction, procurement, engineering and operation of the Project.

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Finance Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

**“Pala”** means Pala Investments Limited.

**“Parent”** means Nevada Copper Corp., a corporation organized under the laws of British Columbia, Canada.

**“Participant”** has the meaning ascribed to such term in Section 14.1(h) (*Assignment by Senior Lenders*).

**“Participant Register”** has the meaning ascribed to such term in Section 14.1(i) (*Assignment by Senior Lenders*).

**“Performance Standards”** means, to the extent applicable to the Borrower or the Underground Project, (i) each of the eight (8) IFC Performance Standards on Environmental and Social Sustainability (January 2012) and (ii) the IFC Environmental, Health and Safety Guidelines.

**“Permitted Asset Disposition”** means, as at any particular time, a sale, transfer or other Disposition of:

- (a) inventory on arm’s length terms and in the ordinary course of business;
- (b) tangible personal property that is obsolete, or worn-out property no longer required in the conduct of the Business;
- (c) Transmission Line and associated Project Real Property and access rights to NV Energy pursuant to the terms of the NV Energy Power Supply Contract;
- (d) minerals pursuant to this Agreement, the Streaming Agreement, the Royalty Agreements, the Offtake Agreements or otherwise in the ordinary course of business in compliance with the terms of this Agreement; and
- (e) assets to the extent approved by the Bankruptcy Court and either approved by the Majority Lenders or sold in accordance with the Approved Bidding Procedures;

in each case excluding any such sale, transfer or other disposition of minerals to another Debtor.

**“Permitted Capital Expenditures”** means, with respect to the Borrower, Capital Expenditures that are in accordance with the Approved Budget (subject to Permitted Variances).

**“Permitted Debt”** means:

- (a) the Obligations;
- (b) Debt of the Borrower representing Purchase Money Obligations and Capitalized Lease Obligations not to exceed at any time outstanding the amount permitted by paragraph (i) of the definition of “Permitted Encumbrances”;
- (c) in respect of the Borrower, Subordinated Intercompany Debt or intercompany debt permitted by and incurred in accordance with the Cash Management Order;
- (d) [reserved];
- (e) in respect of the Borrower, Debt in respect of performance, surety or completion bonds, standby letters of credit or letters of guarantee securing mine closure, asset retirement, environmental reclamation and labor related obligations of the Borrower to the extent required by Applicable Laws or a Governmental Body; provided, that the aggregate principal amount of all such Debt pursuant to this paragraph (e) incurred by the Borrower and that remains outstanding at any time shall not at any time exceed \$15,000,000;
- (f) CAT Equipment Lease, Epiroc Equipment Lease and Normet Equipment Lease;
- (g) [reserved];
- (h) [reserved]; and
- (i) Debt incurred in respect of the Prepetition Funded Debt Liens.

**“Permitted Encumbrances”** means any of the following:

- (a) any Encumbrances created in favor of the Secured Parties or pursuant to the terms of the Finance Documents;
- (b) the Encumbrances securing: (i) the Obligations; (ii) the Adequate Protection Liens; (iii) the Carve-Out; and (iv) the Canadian Priority Charges;
- (c) any Encumbrances arising from any tax, assessment or other governmental charge or other Encumbrances arising by operation of law, in each case if the obligation underlying any such Encumbrances is timely paid, paid under a First Day Order, not yet due or, if due, is being Contested.
- (d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like Encumbrances arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are subject to Contest and, where Contested, individually or together with all other Permitted Encumbrances outstanding on any date of determination do not materially adversely affect the use of the property to which they relate;
- (e) pledges or deposits in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation, other than any Encumbrances

imposed by ERISA (*The Employee Retirement Income Security Act of 1974* of the United States of America and the rules and regulations promulgated thereunder, together with any successors) or which interferes with the ordinary conduct of business of the Project;

- (f) deposits not to exceed \$2,000,000 to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (g) easements, rights of way and other similar non-monetary encumbrances affecting real property which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower;
- (h) Encumbrances securing judgments for the payment of money not constituting an Event of Default hereunder or securing appeal or other surety bonds related to such judgments;
- (i) Encumbrances securing (i) Permitted Debt or (ii) Purchase Money Obligations and Capitalized Lease Obligations, in the case of (i) and (ii) incurred on and after the Petition Date and relating solely to the acquisition of mobile equipment necessary for the development, construction or operation of the Project; provided, that the aggregate amount of the Debt outstanding at any time in respect of the Permitted Debt and the Purchase Money Obligations and Capitalized Lease Obligations referred to in this paragraph (i) of the Borrower shall not exceed \$2,000,000;
- (j) the Prepetition Trisura Lien;
- (k) the Prepetition Funded Debt Liens;
- (l) Tax Encumbrances;
- (m) the Prepetition Encumbrances set forth on Schedule B hereto, as may be amended with the consent of the Majority Lenders from time to time; and
- (n) Prepetition Encumbrances that are (i) valid, enforceable, perfected, non-avoidable and in existence immediately prior to the Petition Date or (ii) valid, enforceable, non-avoidable and in existence immediately prior to the Petition Date, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, up to an aggregate total amount under this paragraph (m) not to exceed \$12,000,000.

**“Permitted Transferee”** means (a) any Senior Lender or any Affiliate of any Senior Lender, and (b) any other lending, bank or financial institution which is regularly engaged in or established for the purposes of making or investing in loans.

**“Permitted Variances”** has the meaning ascribed to such term in Section 11.12(z)(2)(iv) (*Negative Covenants*).

**“Person”** means and includes individuals, corporations, bodies corporate, limited or general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, funds, Governmental Bodies or any other type of organization or entity, whether or not a legal entity.

**“Petition Date”** has the meaning ascribed to such term in the recitals.

**“Pledged Interests”** has the meaning assigned to such term in Section 9.1(e)(iii) (*Grant of Security Interest*).

**“PPSA”** means the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia) or any other applicable Canadian federal, provincial or territorial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens, and hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections.

**“Prepetition Debt Documents”** has the meaning assigned to such term in the DIP Order.

**“Prepetition Encumbrances”** means Encumbrances arising from obligations or payments that arise or would have been due prior to the Petition Date, including, without limitation, the Prepetition Funded Debt Liens, Prepetition Trisura Lien.

**“Prepetition Funded Debt Liens”** has the meaning assigned to such term in the DIP Order.

**“Prepetition Indebtedness”** means the Debt of the Borrower and its Subsidiaries outstanding immediately prior to the Petition Date.

**“Prepetition Secured Obligations”** has the meaning assigned to such term in the DIP Order.

**“Prepetition Secured Parties”** has the meaning assigned to such term in the DIP Order.

**“Prepetition Trisura Lien”** means the Encumbrance on the assets of the Parent in favor of Trisura Guarantee Insurance Company with respect to surety bonds in an amount not to exceed \$14,600,000.

**“Project”** means the Pumpkin Hollow copper project located in Lyon County, Nevada, including all owned or leased fee lands, patented mining claims, unpatented mining claims or mill sites or other interests in real property that contain the Project’s ore deposits, which includes the Project Property, whether open-pit, underground or otherwise.

**“Project Authorization”** means an Authorization or other right (including an environmental Authorization) necessary for the development, construction, procurement, engineering and operation of the Underground Project.

**“Project Documents”** means, individually or collectively, as the context may require, the following:

- (a) each Material Project Document;
- (b) any performance bond, advanced payment bond, guarantee or other credit support provided to the Borrower pursuant to any agreement referred to in this definition of “Project Documents”; and
- (c) any other Contract to which the Borrower or its Subsidiaries are a party from time to time in relation to the Project (including any replacement of an existing Project Document) other than a Finance Document or the Working Capital Facility, the First Lien Facility or the Fourth Lien Facility.

**“Project Property”** means all of the property, assets, undertaking, approvals, licenses, permits and rights of the Obligors in and relating to the Project, whether now owned or existing or hereafter acquired or arising, including real property, personal property and mineral interests, and specifically including, but not limited to:

- (a) the Project Real Property and appurtenances thereto, water rights and Minerals;
- (b) all accounts, instruments, chattel paper, deposit accounts, documents, intangibles, goods (including inventory, equipment and fixtures), money, letter of credit rights, supporting obligations, contracts, bonds, claims, causes of action and other legal rights and investment property in each case relating to the Project;
- (c) all products, proceeds (including proceeds of proceeds), rents and profits of the foregoing; and
- (d) all books and records of the Obligor related to any of the foregoing.

**“Project Real Property”** means all real property interests, rights of ways, easements, leases and licenses, whether severed estate or otherwise, all patented mining claims, unpatented mining claims, mineral claims, mineral leases and other mineral rights, water rights, ditch rights, interests in any ditch company or cooperative, weirs, pipes, concessions and interests, and all surface access rights held by any Obligor relating to the Project (which as of the date hereof, are as set forth on Schedule J (*Project Real Property*)), and all buildings, structures, improvements, appurtenances and fixtures thereon or attached thereto, whether created privately or by the action of any Governmental Body. **“Project Real Property”** shall also include any term extension, renewal, replacement, conversion or substitution of any such real property interests, mineral claims, mineral leases, mineral rights, waste dump, heap leach pad and any material placed thereon, whether currently in process or abandoned, concessions or interests, and surface access rights, owned or in respect of which an interest is held, directly or indirectly, by any Obligor at any time during the term of this Agreement, whether or not such ownership or interest is held continuously.

**“Proposed Budget”** means the rolling thirteen-week cash flow forecast delivered by the Obligor to the Administrative Agent and Senior Lenders in accordance with Section 11.2(a) of this Agreement (*DIP Budget and Variance Reporting*).

**“Purchase Money Obligations”** means the outstanding balance of the purchase price of real and/or personal property, title to which has been acquired or will be acquired upon payment of such purchase price, or indebtedness to non-vendor third parties incurred to finance the acquisition of such new and not replacement real and/or personal property, or any refinancing of such indebtedness or outstanding balance.

**“Receivables”** has the meaning ascribed to such term in Section 9.1(d) (*Grant of Security Interest*).

**“Recipient”** means (a) the Administrative Agent or (b) any Senior Lender.

**“Recognition Proceedings”** has the meaning ascribed to such term in the recitals.

**“Recovered Amount”** has the meaning ascribed to such term in Section 18.1 (*Payments to Finance Parties*).

**“Recovering Finance Party”** has the meaning ascribed to such term in Section 18.1 (*Payments to Finance Parties*).

**“Redistributed Amount”** has the meaning ascribed to such term in Section 18.4(a) (*Reversal of Redistribution*).

**“Reference Rate”** means Term SOFR, each Compounded SOFR Reference Rate and any other reference interest rate selected by the Majority Lenders in consultation with the Borrower.

**“Reference Rate Determination Date”** means, in relation to an Interest Period for which a variable interest rate is to be determined:

- (a) [reserved];
- (b) if the Reference Rate is Term SOFR, the second US SOFR Banking Day before the first day of that Interest Period;
- (c) if the Reference Rate is any Compounded SOFR Reference Rate, the US SOFR Banking Day immediately following the last day of the Observation Period relating to the relevant Interest Period; and
- (d) in relation to any other Reference Rate, the date as determined by the Majority Lenders in accordance with market practice for such Reference Rate;

provided that, if market practice differs or changes in the relevant market with respect to any of the Reference Rates, the Reference Rate Determination Date for such Reference Rate will be determined by the Majority Lenders in accordance with the market practice applicable in the relevant market and notified to the Borrower by way of a Technical Adjustment Notification.

**“Reference Rate Non-Utilisation Event”** means any of the following events in relation to a Reference Rate:

- (a) *Unavailability*. The Reference Rate is Unavailable; or
- (b) *Non-representativeness*. The later of (x) one (1) month and (y) the future date specified in the relevant official statement has passed since the supervisor of the administrator of a Reference Rate has published an official statement that the relevant Reference Rate is no longer or, as of a specified future date will no longer be, representative of the underlying market or the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor) and such official statements is made with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication;

and such Reference Rate Non-Utilisation Event is continuing on a Reference Rate Determination Date if on such date:

- (i) in relation to clause (a) above, the Reference Rate remains Unavailable; and
- (ii) in relation to clause (b) above, the supervisor has not revoked or rescinded its official statement or has in any other way re-confirmed the representativeness of the relevant Reference Rate.

**“Register”** has the meaning ascribed to such term in Section 14.1(f) (*Assignment by Senior Lenders*).

**“Related Contracts”** has the meaning ascribed to such term in Section 9.1(d) (*Grant of Security Interest*).

**“Related Party”** means, with respect to any Person (the “first named Person”), any Person that does not deal at arm’s length with the first named Person or is an associate of the first named Person and, in the case of any Obligor, includes:

- (a) any director, officer, employee or associate of Pala or any of its Affiliates;
- (b) any Person that does not deal at arm's length with Pala or any of its Affiliates; and
- (c) any Person that does not deal at arm's length with, or is an associate of, a director, officer, employee or associate of Pala or any of its Affiliates.

**"Release"** means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Substances into the indoor or outdoor Environment, including the movement of such Hazardous Substances through ambient air, soil, surface water, groundwater, wetlands, land or subsurface strata.

**"Reporting Week"** has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Testing Date"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Testing Period"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Rolling Four-Week Variance Report"** has the meaning assigned to such term in Section 11.2(c) (*Approved Budget and Variance Reporting*).

**"Remedies Notice Period"** has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

**"Resolution Authority"** means anybody which has authority to exercise any Write-Down and Conversion Powers.

**"Restricted Payment"** means any payment by a Person to:

- (a) any other Person, of dividends or other distribution (whether in cash, securities or other property or assets) and any return of capital including any payment in respect, or on the redemption, of any share capital whether at a premium or otherwise;
- (b) any other Person on account of any payment of interest, principal or any other amount in respect of any loans or loan notes or in respect of any financial indebtedness owed by the Borrower (other than (i) any adequate protection payments for the benefit of the Prepetition Secured Parties as set forth in the DIP Order or (ii) any repayment of the Working Capital Facility, solely to the extent paid from the proceeds of the WCF Collateral, in each case, as expressly provided for in the Interim Order or in the Approved Budget);
- (c) [reserved];
- (d) any other Person of any payment of any management, administration, advisory, consultancy or other similar type of fees or expenses made by the Borrower to any of its Affiliates (but excluding any amount paid by the Borrower to its Affiliates in reimbursement of costs and expenses incurred (i) by such Affiliate and (ii) any amounts paid to cure contracts assumed in connection with an Approved Sale on behalf of the Borrower, in each case to the extent approved by the Administrative Agent); and

- (e) redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire equity interest of such Person now or hereafter outstanding;

provided that Restricted Payment shall not include any payment to any Debtor (other than Parent), any advances of cash from the Borrower to Parent in accordance with the terms of the Cash Management Order, or any payments made with the consent of the Majority Lenders.

**“RGGS Lease”** means that certain Mining Lease, dated May 4, 2006 by and between the Borrower and RGGS Land & Mineral Ltd., L.P., as amended.

**“RGGS Royalty Deed”** means that certain Royalty Deed, dated January 10, 2017 by and between the Borrower and RGGS Land & Mineral Ltd., L.P.

**“Royalties”** means those royalties for which the Borrower is liable under the Royalty Agreements.

**“Royalty Agreements”** means each of: (a) RGGS Royalty Deed and royalty payable under the RGGS Lease and (b) Majuba/Renegade Royalty Deed.

**“Sale-Leaseback”** means an arrangement under which title to any property or an interest therein is transferred by or on the direction of a Person (“X”) to another Person which leases or otherwise grants the right to use such property, asset or interest (or other property, which X intends to use for the same or a similar purpose) to X (or nominee of X), whether or not in connection therewith X also acquires a right or is subject to an obligation to acquire the property, asset or interest, and regardless of the accounting treatment of such arrangement.

**“Sale Approval Order”** has the meaning given to it in Section 11.13(j) (*Milestones*).

**“Sale Transaction”** has the meaning given to it in Section 11.13(j) (*Milestones*).

**“Sanctioned Jurisdiction”** means, at any time, a country, territory or geographical region which is itself the subject or target of any comprehensive territorial-based Sanctions.

**“Sanctions”** means any laws, rules, regulations and requirements relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any U.S. Governmental Body (including, but not limited to, OFAC and the U.S. Department of State), the United Nations Security Council, the European Union and each of its member states, His Majesty’s Treasury of the United Kingdom, any Governmental Body of Canada (including but not limited to, Global Affairs Canada and Public Safety Canada), or any other relevant Governmental Body with jurisdiction over the Obligors or any of their Subsidiaries.

**“Sanctions List”** means any list of designated Persons that are the subject or target of Sanctions, including, without limitation: (a) the Specially Designated Nationals and Blocked Persons List maintained by OFAC; (b) the Consolidated United Nation Security Council Sanctions List; (c) the consolidated list of persons, groups and entities subject to EU financial sanctions maintained by the European Union; (d) the Consolidated List of Financial Sanctions Targets in the UK maintained by Her Majesty’s Treasury of the United Kingdom; and (e) the Consolidated Canadian Autonomous Sanctions List maintained by Global Affairs Canada.

**“Sanctions Target”** means any Person:

- (a) identified on any Sanctions List;



- (b) located, organized or resident in, or the government or any agency or instrumentality of the government of, any Sanctioned Jurisdiction;
- (c) owned or controlled by, or acting for or on behalf of, one or more Persons described in the foregoing paragraph (a) or (b);
- (d) otherwise the subject or target of any Sanctions.

“**Secured Parties**” means, collectively, the Agents and the Senior Lenders.

“**Security**” means the Encumbrances granted in favor of the Collateral Agent pursuant to the Finance Documents.

“**Senior Lender**” means each Person that is a party on the date hereof to this Agreement as an “initial Senior Lender” and each other lender party hereto from time to time pursuant to Section 14.1 (Assignment by Senior Lenders), and their respective permitted successors and assigns.

“**Sharing Finance Parties**” has the meaning ascribed to such term in Section 18.2 (*Redistribution of Payments*).

“**Sharing Payment**” has the meaning ascribed to such term in Section 18.1(c) (*Payments to Finance Parties*).

“**SOFR**” means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate) on the relevant date at approximately 8:00 a.m. New York time.

“**SOFR Daily Rate**” means, in relation to any US SOFR Banking Day:

- (a) the SOFR rate for that US SOFR Banking Day; or
- (b) if SOFR is Unavailable for that US SOFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the NY Fed Target Rate for that US SOFR Banking Day; and
  - (ii) the applicable NY Fed Target Rate Adjustment Spread; or
- (c) if both rates stipulated under clauses (a) and (b) above are Unavailable, the percentage rate per annum which is the aggregate of:
  - (i) the NY Fed OBFR for that US SOFR Banking Day; and
  - (ii) the applicable NY Fed OBFR Adjustment Spread.

“**SOFR Index**” means, either:

- (a) the publicly available index produced by the Federal Reserve Bank of New York (before any correction, recalculation or republication by its administrator) which measures the cumulative

impact of compounding SOFR on a unit of investment over time, with the initial value set to 1.00000000 on 2 April 2018; or

- (b) any other publicly available index which is produced by an administrator (before any correction, recalculation or republication by its administrator) which measures the cumulative impact of compounding SOFR on a unit of investment over time using a compounding methodology which is the same as that specified in this Agreement for the calculation of the Compounded SOFR Calculated Daily Rate,

as published by such administrator or on a page or screen of an information service and, with respect to clause (b) above, specified as the “SOFR Index” by the Administrative Agent in a Technical Adjustment Notification.

“**Streaming Agreement**” means the purchase and sale agreement dated December 21, 2017 (as amended, amended and restated, modified or supplemented from time to time), by and among the Borrower, the Parent and Triple Flag.

“**Streaming Documents**” mean the Streaming Agreement and each “Security Document” under and as defined in the Streaming Agreement.

“**Subordinated Intercompany Debt**” means any debts, liabilities or obligations owing by an Obligor to any other Obligor, on any account and in any capacity, subordinated in accordance with the provisions of the Subordination Agreement.

“**Subordination Agreement**” means a Subordination Agreement in favor of the Collateral Agent in respect of Subordinated Intercompany Debt substantially in the form of Schedule L (*Terms of Subordination*) to this Agreement.

“**Subsidiary**” means with respect to any Person, any other Person which is Controlled directly or indirectly by that Person, and “**Subsidiaries**” means all of such other Persons.

“**Tax Returns**” means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes, including any schedule or attachment thereto or amendment thereof.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Body, including any interest, additions to tax or penalties applicable thereto.

“**Tax Encumbrance**” means the liens placed on the Project for delinquent tax payments as set forth on that certain Notice of Seizure from the Assessor of Lyon County, Nevada dated April 23, 2024.

“**Technical Adjustment Notification**” has the meaning ascribed to such term in Section 5.2(g) (*Interest Rate*).

“**Term SOFR**” means, for the relevant Interest Period, the publicly available percentage rate per annum (before any correction, recalculation or republication by its administrator) which:

- (a) is a forward-looking term rate based on SOFR;
- (b) is produced by an administrator;

- (c) is constituted as a term adjusted SOFR reference rate for a period equal in length to the Interest Period and uses a term adjustment methodology approved by the relevant supervisory authority of the administrator;
- (d) is made available on the relevant Reference Rate Determination Date; and
- (e) is specified as the “Term SOFR” for this Agreement by the Administrative Agent in a Technical Adjustment Notification;

as such rate is quoted in the USD wholesale market on the relevant Reference Rate Determination Date for the same period as the relevant Interest Period or, if none of the periods available are the same as that Interest Period, interpolating, where appropriate, between the yield quotations for the next shorter and next longer maturities; provided that if no such Term SOFR rates are published or provided on the relevant Reference Rate Determination Date and it is therefore not possible for the Administrative Agent to determine the relevant Term SOFR on the basis of this paragraph, but any such rates were published or were otherwise available for any US SOFR Banking Day within the last five (5) US SOFR Banking Days before the relevant Reference Rate Determination Date, the Administrative Agent will use the relevant most recent rate(s) available for determining and/or calculating (e.g. by way of interpolation) the relevant Term SOFR for the relevant Interest Period and Term SOFR shall be deemed to be Available.

“**Termination Amounts**” means the Hedge Termination Value described in paragraph (a) of the definition thereof payable by the Borrower in connection with an early termination (whether as a result of the occurrence of an event of default thereunder or other termination event) of any Hedge Agreement in accordance with the terms thereof; provided, that, for the avoidance of doubt, “Termination Amounts” shall not include any regularly scheduled payments due under any Hedge Agreement from time to time, calculated in accordance with the terms of such Hedge Agreement, including all cash settlement payments due in connection with interest rate swaps and forward- starting interest rate swaps due under any such Hedge Agreement.

“**Termination Declaration**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Termination Declaration Date**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Termination Declaration Notice**” has the meaning assigned to such term in Section 13.2(a)(iii) (*Remedies Upon Default*).

“**Total Commitments**” means \$60,000,000.

“**Total Tested Disbursements**” has the meaning given such term in Section 11.12(z)(2)(iv) (*Negative Covenants*).

“**Transfer Certificate**” means a certificate substantially in the form set out on Schedule M (*Transfer Certificate*) with any amendments which the Administrative Agent may approve or reasonably require or any other form agreed between the Administrative Agent and the Borrower.

“**Transfer Date**” means the Transfer Date as indicated on the Transfer Certificate delivered pursuant to Section 14.1(c) (*Assignment by Senior Lenders*).

“**Transmission Line**” means the 120 kV transmission line from the Wassuk substation to the Project, owned and operated by Sierra Pacific Power Company d/b/a NV Energy.

“**Triple Flag**” means Triple Flag International Ltd.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that, if by reason of mandatory provisions of law, perfection or the effect of perfection or non-perfection or the priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority and for purposes of definitions related to such provisions.

“**Unavailability of a Reference Rate**” means Reference Rates whereby:

- (a) *Factual.* no screen rate(s) of the relevant Reference Rate is or are published or are in any other way provided by the administrator of such Reference Rate on the relevant Reference Rate Determination Date or for the relevant Observation Period and no other means exist or calculations are possible for the Administrative Agent (including by way of interpolation) to determine the relevant Reference Rate on its Reference Rate Determination Date;
- (b) *Legal.* it is prohibited or in any other way unlawful for the Administrative Agent, a Senior Lender or the Borrower the use such Reference Rate under this Agreement, in particular for calculating or paying interest;
- (c) *Identity change.* the methodology, economic characteristics or formulas for calculating the Reference Rate have materially changed; provided that as long as the underlying interest or market or economic reality that the Reference Rate is intended to measure remains unchanged, any change in formulas, economic characteristics or other methodology is not considered material; or
- (d) *Other.* the relevant Reference Rate may, for any other reason in the reasonable opinion of the Majority Lenders no longer be used for the purposes of this Agreement;

and, correspondingly, such Reference Rate is “**Available**” if it is not Unavailable.

“**Underground Minerals**” means any and all marketable metal bearing material in whatever form or state that is mined, produced, extracted or otherwise recovered from underground operations of the Project including any such material derived from any processing or reprocessing of any tailings, waste rock or other waste products originally derived from those underground operations, and including ore and any other products resulting from the further milling, processing or other beneficiation of such material, including concentrates, derived from those underground operations.

“**Underground Project**” means that portion of the Project that is or was used or is or will be reasonably expected to be used, for or in connection with the exploration, development, extraction, beneficiation, processing, treatment, refining, transportation, sale or commercialization of Underground Minerals.

“**Unpaid Sum**” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“**Unused Commitment**” means, in respect of each Senior Lender at any time, such Senior Lender’s Commitment (including, for the avoidance of doubt, the Interim Commitment and Final Commitment) *minus* the aggregate of (i) the principal amount of Loans then held by such Senior Lender, (ii) the principal

that was held by such Senior Lender and prepaid by the Borrower and (iii) the principal that was held by such Senior Lender and assigned to another Senior Lender.

“**Unused Commitment Fee**” has the meaning ascribed to it in Section 5.9(a) (*Unused Commitment Fee*).

“**Upfront Fee**” means the upfront fee payable to the Senior Lenders in accordance with Section 5.9(b)(*Fees*).

“**USA PATRIOT ACT**” means the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the IRC.

“**US SOFR Banking Day**” means any day other than (i) a Saturday or Sunday or (ii) a day on which the Securities Industry and Financial Markets Association (or any successor organization) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

“**U.S. Tax Compliance Certificate**” has the meaning specified in Section 6.1(g)(ii)(B)(3) (Taxes).

“**Utilization**” means the borrowing of a Loan.

“**Utilization Date**” means the date of a Utilization, being the date on which the relevant Loan is made or is to be made.

“**Utilization Request**” means a written notice (substantially in the form set out on Schedule N (*Utilization Request*)) requesting a Utilization in accordance with Section 3.1 (*Delivery of a Utilization Request*).

“**WCF Collateral**” means the as extracted copper concentrates from the Underground Project, together with any such copper concentrates in process and finished goods inventory derived therefrom located at such Underground Project, and all proceeds thereof.

“**WCF Intercreditor Agreement**” means the intercreditor agreement, dated on or about the May 22, 2019, entered into by and among KfW IPEX-Bank (on behalf of the secured parties under the First Lien Facility), the secured parties under the Streaming Documents and the secured parties under the Working Capital Facility (as amended, amended and restated, supplemented or otherwise modified from time to time).

“**Weekly Reporting Date**” has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*).

“**Weekly Variance Report**” has the meaning assigned to such term in Section 11.2(b) (*Approved Budget and Variance Reporting*). “**Withholding Agent**” means the Borrower and the Administrative Agent.

“**Working Capital Facility**” means the Advance Payment Agreement, entered into on or about the May 6, 2019 among the Borrower and Concord (as amended, amended and restated, supplemented or otherwise modified from time to time).

“**Working Capital Facility Documents**” means (i) the WCF Intercreditor Agreement; (ii) the Working Capital Facility; (iii) the Third Lien Security Agreement entered into on or about May 6, 2019, by and

among the Borrower, Concord, as collateral agent, and Concord, as secured party (as amended, amended and restated, supplemented or otherwise modified from time to time); (iv) the Third Lien Pledge Agreement entered into on or about May 6, 2019, by and among the Borrower, Concord, as collateral agent, and Concord, as secured party (as amended, amended and restated, supplemented or otherwise modified from time to time); and (v) the Third Lien Deed of Trust entered into on or about May 6, 2019, by the Borrower, as trustor, in favor of the trustee named therein for the benefit of Concord, as beneficiary (as amended, amended and restated, supplemented or otherwise modified from time to time).

**“Write-down and Conversion Powers”** means, in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule.

## **1.2 Certain Rules of Interpretation.**

In this Agreement, unless otherwise specifically provided or unless the context otherwise requires:

- (a) the terms “Agreement,” “this Agreement,” “the Agreement,” “hereto,” “hereof,” “herein,” “hereby,” “hereunder” and similar expressions refer to this Agreement in its entirety and not to any particular Article, Section, Schedule, or other portion hereof or thereof;
- (b) references to a “paragraph,” “Section” or “Article” followed by a number or letter refer to the specified paragraph, Section or Article of this Agreement;
- (c) the division of this Agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular shall include the plural and vice versa, and words importing gender shall include all genders;
- (e) the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”;
- (f) the terms “party” and “the parties” refer to a party or the parties to this Agreement, and references to a Person in this Agreement means such Person or its successors or permitted assigns;
- (g) the term “continuing,” when used in relation to a Default or Event of Default, means that such Default or Event of Default is continuing unremedied or unwaived in accordance with the terms of the Finance Documents;
- (h) the term “repay” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “prepay” (or, as the case may be, the corresponding derivative form thereof);
- (i) the words “will” and “shall” are to be treated as synonymous;
- (j) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement;

- (k) references to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, supplementing, interpreting or replacing the statute or regulation referred to;
- (l) except as otherwise specifically provided herein, where any payment is required to be made or any other action is required to be taken on a particular day and such day is not a Business Day and, as a result, such payment cannot be made or action cannot be taken on such day, then this Agreement shall be deemed to provide that such payment shall be made or such action shall be taken on the next Business Day in the same calendar month (if there is one) or the immediately preceding Business Day (if there is not);
- (m) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;
- (n) a period equal in length to an Interest Period shall disregard any inconsistency arising from the first or last day of that Interest Period being adjusted or determined pursuant to the Business Day rules or other terms of this Agreement;
- (o) a page or screen of an information service displaying a rate shall include:
  - (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
 and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by Majority Lenders; and
- (p) a law or provision of law is a reference to that law or provision as amended and includes any subordinate legislation.

### 1.3 Currency.

Any reference in this Agreement to currency, “**Dollar**”, “**U.S. Dollar**” or to “**\$**”, unless otherwise expressly indicated, shall be to the lawful currency of the United States of America, being referred to herein as United States dollars. Any amounts to be advanced, paid, prepaid, or repaid shall be made in United States dollars.

### 1.4 Time of Essence.

Time shall be of the essence of this Agreement.

### 1.5 Knowledge.

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the “knowledge” of a Person, it shall be deemed to refer to the actual knowledge of any Chief Executive Officer, Chief Financial Officer, General Counsel, Chief Operations Officer, any Vice President or any other officer or director (or Person performing any role of substantially the same scope and responsibility of any of the foregoing) of such Person and all information which ought to have been known by any of them after conducting a reasonable inquiry into the matters in question, whether or not any such inquiry was actually made; provided, that each such Person shall be deemed to have knowledge of all events,

conditions and circumstances described in any notice delivered to the Borrower pursuant to the terms of this Agreement or any other Finance Document.

#### **1.6 No Subordination.**

The use of the term “Permitted Encumbrances” to describe any interests and Encumbrances permitted hereunder shall mean that they are permitted to exist (whether in priority to, *pari passu* with or subordinated to the Security, as determined by Applicable Law or set forth in the DIP Order) and shall not be interpreted as meaning that such interests and Encumbrances are entitled to priority over the Security.

#### **1.7 Conflict.**

In the case of any conflict or inconsistency between this Agreement (or any Finance Document) and any DIP Order, the applicable DIP Order shall govern.

### **Article 2 LOANS**

#### **2.1 Loan.**

Subject to the terms of this Agreement, each of the Senior Lenders severally agrees to make available to the Borrower:

- (a) Upon entry of the Interim Order, a term loan in an aggregate amount equal to the Interim Commitments of such Senior Lender; and
- (b) Upon entry of the Final Order, a term loan in an aggregate amount equal to the Final Commitments of such Senior Lender.

#### **2.2 Finance Parties’ Rights and Obligations.**

- (a) The obligations of each Finance Party under the Finance Documents are several. Each Senior Lender is severally liable for its Commitment and the Senior Lenders are not jointly liable or jointly and severally liable. No Senior Lender shall be responsible for the failure of any other Senior Lender to so make its Loans.
- (b) Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Finance Party under the Finance Documents.
- (c) No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (d) The rights of each Finance Party under, or in connection with, the Finance Documents are separate and independent rights.
- (e) Any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with this paragraph (e). The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party’s participation in a



Loan or its role under a Finance Document (including any such amount payable to an Agent on its behalf) is a debt owing to that Finance Party by the Borrower.

### 2.3 Purpose and Use of Proceeds.

The Borrower shall use the proceeds of the Loans in accordance with this Agreement and the Approved Budget for (a) working capital costs and general corporate purposes, (b) costs and expenses in connection with the Chapter 11 Cases (including costs and expenses incurred in connection with the Recognition Proceedings), (c) amounts owing under or in connection with the Finance Documents and (d) other purposes permitted by the Approved Budget. The proceeds of the Loans shall not be applied to (i) any amounts owing under any other Debt, except to the extent permitted by the Approved Budget or (ii) investigating, challenging, objecting to or contesting the validity, security, perfection, priority, extent or enforceability of any amount due under, or the liens or claims granted under or in connection with, this Agreement or any of the Prepetition Debt Documents; provided that, the official committee of unsecured creditors (the “**Creditors’ Committee**”) appointed in the Chapter 11 Cases, if any, may use up to \$50,000 to investigate (but not seek formal discovery in connection with or commence any challenge or objection to or prosecution of) any such claims or causes of action; provided further that the foregoing shall not affect the ability of the Information Officer to conduct an ordinary course security review, as appropriate. The proceeds of the Loans shall not be distributed to, or used for the benefit of, any non-Debtor affiliates or subsidiaries of the Debtors, or applied toward (directly or indirectly) their administration without the prior written approval of the Majority Lenders.

### 2.4 Monitoring.

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to any Finance Document.

### 2.5 Evidence of Debt.

- (a) Each Senior Lender may maintain in accordance with its usual practice an account or accounts evidencing the Debt of the Borrower to such Senior Lender resulting from each Loan made by such Senior Lender, including the amounts of principal and interest payable and paid to such Senior Lender from time to time hereunder. In the case of a Senior Lender that does not request, pursuant to clause (b) below, execution and delivery of a Note evidencing the Loans made by such Senior Lender to the Borrower, such account or accounts shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be prima facie evidence of such Debt of the Borrower absent manifest error; provided, that the failure of any Senior Lender to maintain such account or accounts or any error in any such account shall not limit or otherwise affect any repayment obligations of the Borrower hereunder.
- (b) The Borrower agrees that, upon the request by any Senior Lender, the Borrower will execute and deliver to such Senior Lender a promissory note substantially in the form of Schedule O (*Form of Note*) (each, a “**Note**”) payable to such Senior Lender in an amount equal to such Senior Lender’s Loans evidencing the Loans made by such Senior Lender. The Borrower hereby irrevocably authorizes each Senior Lender to make (or cause to be made) appropriate notations on the grid attached to such Senior Lender’s Notes (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal amount of, and the interest rate and Interest Period applicable to the Loans evidenced thereby. Such notations shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be prima facie evidence of the applicable Debt of the Borrower absent manifest error; provided, that the failure of any Senior Lender to make any such notations or any error in any such notations shall

not limit or otherwise affect any obligations of the Borrower. A Note and the obligation evidenced thereby may be assigned or otherwise transferred in whole or in part only in accordance with Section 14.1(b) (*Assignment by Senior Lenders*). Any Note issued under this Agreement need not be presented or surrendered for any payment made by the Agents.

### **Article 3 UTILIZATION OF LOANS**

#### **3.1 Delivery of a Utilization Request.**

- (a) Subject to the conditions referred to in Article 12 (*Conditions Precedent*) having been satisfied in accordance with the provisions of this Agreement, the Borrower may utilize the Loans by delivering to the Administrative Agent a duly completed Utilization Request not later than 12:00 noon New York time (x) one (1) Business Day prior to the proposed Utilization Date for the Interim Loan and (y) two (2) Business Days prior to the proposed Utilization Date for the Final Loans (in each case, or such later time approved by the Majority Lenders in their reasonable discretion).
- (b) Each Utilization Request shall be substantially in the form of Schedule N (*Utilization Request*) and shall include all certifications and documentation required therein.

#### **3.2 Completion of a Utilization Request.**

Each Utilization Request is irrevocable and shall not be regarded as having been duly completed unless:

- (a) the Utilization Request includes a certification by the Borrower that the Utilization will be used for the purposes set out in Section 2.3 (*Purpose and Use of Proceeds*);
- (b) the proposed Utilization Date is a Business Day;
- (c) the currency and amount of the Utilization shall be Dollars;
- (d) the Utilization Request specifies the wire instructions for transfer of the proceeds of the Loan;
- (e) the proposed Interest Period specified therein complies with Article 5 (*Interest, Interest Periods and Fees*); and
- (f) the Utilization Request is executed by a Person duly authorized to do so on behalf of the Borrower.

#### **3.3 [Reserved].**

#### **3.4 Notification of Utilization of the Loan.**

Following the delivery of a duly completed Utilization Request by the Borrower, the Administrative Agent shall promptly notify each Senior Lender of the proposed Utilization Date, Interest Period and the amount of such Senior Lender's share of the proposed Loan.

#### **3.5 Senior Lenders' Participation.**

- (a) If the conditions set out in this Agreement have been met, and subject to Article 4 (*Repayment, Prepayment and Cancellation*), each Senior Lender shall make its participation in each Loan available on or prior to 10:00 a.m. New York time on the applicable Utilization Date through its lending office.

- (b) The amount of each Senior Lender's participation in each Loan shall be pro rata to its Unused Commitment immediately prior to making the Loan.

### 3.6 Partial Payments.

- (a) Subject to Section 13.4, if the Administrative Agent receives a payment for application against amounts due in respect of this Agreement that is insufficient to discharge all the amounts then due and payable by the Borrower under this Agreement, the Administrative Agent, subject to the terms of the DIP Order, shall apply such payment towards the obligations of the Borrower under this Agreement in the following order:
  - (i) **first**, in or towards payment of any unpaid fees, expenses, indemnities, losses or other amounts owing to the Agents under the Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee (including, without limitation, the Unused Commitment Fee and the Exit Fee) or commission of the Loans due but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal of the Loans due but unpaid under this Agreement; and
  - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under this Agreement.

## Article 4 REPAYMENT, PREPAYMENT AND CANCELLATION

### 4.1 Repayments.

- (a) The Borrower shall repay the Utilizations made to it in accordance with the terms of this Agreement and the DIP Order.
- (b) [Reserved].
- (c) The Borrower shall not reborrow any part of the Loans which are repaid or prepaid.
- (d) The Borrower shall repay the aggregate Loans (whether principal, interest, fees or otherwise) in full to the extent they are outstanding under or in respect of the Loans on the Maturity Date.

### 4.2 Mandatory Prepayments.

The Borrower shall apply each of the following to a mandatory prepayment in accordance with Section 4.9 (*Application*) and the terms of the DIP Order:

- (a) **Net Insurance Proceeds.** Net Insurance Proceeds received (other than any insurance proceeds in respect of third-party liability insurance where such proceeds are to be paid to third parties or for losses with respect to WCF Collateral prior to the repayment in full of all obligations under the Working Capital Facility Documents) by any Obligor shall be applied to prepay the Loans within five (5) Business Days after receipt thereof, other than any Net Insurance Proceeds received by any Obligor of up to \$10,000,000 in any Fiscal Year that are used by the Obligors to repair and/or replace the property that is the subject of such Net Insurance Proceeds.

- (b) **Liquidated Damages.** If the Borrower receives or is entitled to offset any liquidated or delay damages for any reason under any Material Project Document, 100% of such proceeds in excess of such amounts certified by an authorized officer of the Borrower as necessary to perform such construction or repair that is reasonably related to cure the events or circumstances that gave rise to the payment of such liquidated damages, shall be applied to prepay the Loans within five (5) Business Days of the receipt of such liquidated damages.
- (c) **Expropriation Net Disposition Proceeds.** If any Obligor receives any Net Disposition Proceeds from one or more Expropriation Events, 100% of such proceeds shall be applied to prepay the Loans within five (5) Business Days after receipt thereof.
- (d) **Other Net Disposition Proceeds.** If any Obligor receives any Net Disposition Proceeds from any disposition of Collateral other than the sale of inventory in the ordinary course of business, 100% of such Net Disposition Proceeds shall be applied within five (5) Business Days of receipt by any Obligor and/or any of its Subsidiaries to prepay the Loans; provided that for purposes of this clause (d), Net Disposition Proceeds shall not include, solely to the extent such disposition includes WCF Collateral, any amounts received in respect of the disposition of such WCF Collateral not to exceed the amount necessary to repay in full the obligations due under the Working Capital Facility Documents.
- (e) **Extraordinary Receipts.** If any Obligor receives any Extraordinary Receipts, 100% of such Extraordinary Receipts shall be applied within five (5) Business Days of receipt by any Obligor and/or any of its Subsidiaries to prepay the Loans.
- (f) **Equity Issuances.** If any Obligor receives any Net Cash Proceeds from any sale of, or any dividend, distribution, return of capital or other return on investment in respect of, the equity interests of any non-Debtor Subsidiary of any Obligor, 100% of such Net Cash Proceeds shall be applied within five (5) Business Days of receipt by such Obligor to prepay the Loans.

#### 4.3 [Reserved].

#### 4.4 [Reserved].

#### 4.5 Voluntary Cancellation.

Subject to the other terms of this Agreement, the Borrower may at any time cancel all or any part of the Commitments; provided, that:

- (a) it has given not less than ten (10) Business Days' prior written notice to the Administrative Agent; and
- (b) if such cancellation is for part only of total outstanding Commitments:
  - (i) such cancellation shall be in a minimum amount of \$2,000,000 and an integral multiple of \$1,000,000; and
  - (ii) such cancellation will reduce the Commitment of each Senior Lender pro rata.

#### 4.6 Voluntary Prepayment.

Subject to the other terms of this Agreement, the Borrower may prepay all or any part of the Loans; provided, that:

- (a) the Borrower has given not less than three (3) Business Days' notice to the Administrative Agent (or such later time as the Majority Lenders may agree to);
- (b) subject to Section 4.10(b) (*Miscellaneous*), the Borrower simultaneously pays all accrued interest on the amount prepaid, together with all costs and expenses, fees and all other amounts then due and payable under the Finance Documents, including Break Costs (if any) and the Exit Fee;
- (c) if such a prepayment is of all of the Loans then outstanding, they are all repaid or prepaid simultaneously in full;
- (d) if such a prepayment is a partial prepayment of the Loans then outstanding:
  - (i) such prepayment shall be in a minimum amount of \$5,000,000 (or, if less, the remaining outstanding amount) and an integral multiple of \$1,000,000;
  - (ii) such prepayment will be applied as provided in Section 4.9 (*Application*), and the Borrower shall ensure that such amounts are repaid or prepaid simultaneously; and
- (e) such a prepayment shall not cause or result in a Default or Event of Default immediately prior to and immediately following such a prepayment.

#### 4.7 Automatic Cancellation.

Each Senior Lender's Unused Commitment will be automatically cancelled on the Maturity Date unless previously cancelled.

#### 4.8 Right of Cancellation and Repayment in Relation to a Single Senior Lender.

- (a) The Borrower may at any time, cancel any available Commitments of any Senior Lender or repay the Loans held by an individual Senior Lender (together with any other accrued and unpaid amounts owing to such Senior Lender under the Finance Documents) if such Senior Lender claims indemnification from the Borrower under Section 7.5 (*Indemnities*) or any amount under Section 7.3 (*Change in Circumstances*). The Borrower may, while the circumstances giving rise to the requirement for that increase or indemnification continue, give notice to the Administrative Agent, as applicable of cancellation of the Commitment(s) of such Senior Lender and its intention to procure the repayment of the Loans held by such Senior Lender.
- (b) On receipt of a notice referred to in Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*) in relation to a Senior Lender, the Commitments of such Senior Lender will immediately be reduced to zero.
- (c) On the last day of the Interest Period in which the Borrower has given notice under Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*) in relation to a Senior Lender (or, if earlier, the date specified by the Borrower in the notice under Section 4.8(a) (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*)), the Borrower will repay

such Senior Lender's participation in the Utilizations, together with all interest and other amounts accrued under the Finance Documents (if any).

#### **4.9 Application.**

- (a) Except in the case of a prepayment or repayment under Section 7.2 (*Illegality*) or Section 4.8 (*Right of Cancellation and Repayment in Relation to a Single Senior Lender*):
  - (i) any cancellation pursuant to this Article 4 (*Repayment, Prepayment and Cancellation*) shall:
    - (A) be applied *pro rata* between each Senior Lender; and
    - (B) if in part, reduce the Commitment of each Senior Lender *pro rata*;
  - (ii) any prepayment pursuant to this Article 4 (*Repayment, Prepayment and Cancellation*) shall be applied *pro rata* among each Loan.

#### **4.10 Miscellaneous.**

- (a) Any notice of cancellation or prepayment under this Article 4 (*Repayment, Prepayment and Cancellation*):
  - (i) is irrevocable; and
  - (ii) unless a contrary indication appears in this Agreement, shall specify:
    - (A) the date upon which the relevant cancellation or prepayment is to be made; and
    - (B) the amount of that cancellation or prepayment.
- (b) Subject to the requirements of the other provisions of this Article 4 (*Repayment, Prepayment and Cancellation*), any prepayment under this Agreement is without premium or penalty other than:
  - (i) the Exit Fee payable in respect of, and on, any amounts applied in prepayment in accordance with Sections 4.2 (*Mandatory Prepayments*) and 4.6 (*Voluntary Prepayment*);
  - (ii) Break Costs to the extent that the prepayment is made on a date other than an Interest Payment Date.
- (c) Any prepayment under this Agreement shall be made together with accrued and unpaid interest as of such date.
- (d) [Reserved].
- (e) No prepayment, repayment or cancellation is allowed except at the times and in the manner expressly provided for in this Agreement.
- (f) No amount of the Commitments cancelled under this Agreement may be subsequently reinstated.
- (g) If the Administrative Agent receives a notice under this Article 4 (*Repayment, Prepayment and Cancellation*), it shall promptly forward a copy of that notice to each Senior Lender.

## Article 5 INTEREST, INTEREST PERIODS AND FEES

### 5.1 Payment of Interest and Interest Payment Dates.

Interest shall accrue on each Loan at a *per annum* rate during each Interest Period equal to the Interest Rate as determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*). The Borrower shall pay accrued interest on the Loans on each Interest Payment Date. Accrued interest shall be calculated on the basis of (i) the Interest Rate determined in accordance with either Section 5.2 (*Interest Rate*) or Section 5.7 (*Market Disruption*) which shall be applicable for each day of an Interest Period for which interest accrues and (ii) a 360-day year and shall be payable in arrears at the end of each Interest Period. Accrued interest shall be paid on the basis of actual days elapsed and shall include the first day of the Interest Period but exclude the last day of such Interest Period.

### 5.2 Interest Rate

The Interest Rate applicable to a Loan for a certain Interest Period shall be determined as a variable interest rate in accordance with the following provisions:

- (a) *[Reserved]*.
- (b) *Term SOFR*. The Interest Rate for the relevant Interest Period shall be determined as the aggregate of:
  - (i) the Term SOFR for such Interest Period; and
  - (ii) the Credit Spread Adjustment; and
  - (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR on the applicable Reference Rate Determination Date.

The Administrative Agent shall promptly, after the relevant Reference Rate Determination Date, notify the Borrower of the relevant Term SOFR and the aggregate Interest Rate determined on this basis under this paragraph (b) (*Term SOFR*).

- (c) *Compounded SOFR Primary Screen Rate*. If a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:
  - (i) the Compounded SOFR Primary Screen Rate for such Interest Period; and
  - (ii) the Credit Spread Adjustment; and
  - (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate on the applicable Reference Rate Determination Date.



*Lag Time.* When determining the Interest Rate under this paragraph (c), a Lag Time of five (5) US SOFR Banking Days shall apply.

- (d) *Compounded SOFR Calculated Index Rate.* If both a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR and a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:
- (i) the Compounded SOFR Calculated Index Rate for such Interest Period; and
  - (ii) the Credit Spread Adjustment; and
  - (iii) the Applicable Margin;

unless a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Calculated Index Rate on the applicable Reference Rate Determination Date.

When determining the Interest Rate under this paragraph (d) (*Compounded SOFR Calculated Index Rate*), the provisions with respect to the Lag Time as stipulated under paragraph (c) (*Compounded SOFR Primary Screen Rate*) above shall apply equally.

- (e) *Compounded SOFR Calculated Daily Rate.* If a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to Term SOFR, a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Primary Screen Rate and a Reference Rate Non-Utilisation Event has occurred and is continuing in relation to the relevant Compounded SOFR Calculated Index Rate on the applicable Reference Rate Determination Date, the Interest Rate for the relevant Interest Period shall be determined as the aggregate of:
- (i) the Compounded SOFR Calculated Daily Rate for such Interest Period; and
  - (ii) the Credit Spread Adjustment; and
  - (iii) the Applicable Margin.

When determining the Interest Rate under this paragraph (e) (*Compounded SOFR Calculated Daily Rate*), the provisions with respect to the Lag Time as stipulated under paragraph (c) (*Compounded SOFR Primary Screen Rate*) above shall apply equally.

- (f) *Floor.* If the Reference Rate would be less than 0.00% per annum, such Reference Rate shall be deemed to be 0.00% per annum for purposes of this Agreement.
- (g) *Conforming Adjustments.* Further to the provisions of this Section 5.2, the Majority Lenders may make such further technical, administrative, operational and other conforming changes and adjustments to these provisions as are required to permit the administration, calculation or determination of the relevant Reference Rate in a manner substantially consistent with market practice or as are required to make the interest provisions, in particular the timing and frequency of determining rates, the calculation rules, the notification periods and similar technical, administrative or operational measures, administratively feasible. To this effect, the Administrative Agent (acting at the direction of the Majority Lenders) may send the Borrower a notification (a



“**Technical Adjustment Notification**”) which shall supplement and adjust this Agreement and which shall, upon receipt by the Borrower, form an integral part of this Agreement.

- (h) *Administrative Agent.* Notwithstanding anything to the contrary herein or in any other Finance Document, (A) the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability in respect of, (a) the monitoring, determination or verification of the unavailability or cessation of any Interest Rate, including the giving of any notices related thereto, (b) the continuation of, administration of, submission of, calculation of or any other matter related to any Interest Rate, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable, replacement or successor rate or adjustment thereto, including whether the composition or characteristics of any such alternative, comparable, replacement or successor rate or adjustment will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Interest Rate or any other rate, or (c) the effect, implementation or composition of any changes in any Technical Adjustment Notification; and (B) no amendments or other changes (including in any Technical Adjustment Notification) shall, unless agreed by the Administrative Agent, affect the rights, indemnities or obligations of the Administrative Agent. The Administrative Agent may select information sources or services to ascertain any Interest Rate, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Senior Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

### 5.3 Default Interest.

- (a) If any Event of Default has occurred and is continuing, the principal amount of the Loans (whether or not accelerated) and all other Obligations that are due and unpaid shall automatically bear interest at a rate per annum that is the rate that would otherwise be applicable thereto plus two percent (2%) per annum, in each case, from the date of written demand from the Administrative Agent (acting at the direction of the Majority Lenders) following the occurrence of such Event of Default to the date on which such Event of Default ceases to exist or is otherwise cured. Any interest accruing under this Section 5.3 (*Default Interest*) shall be immediately payable by the Borrower on demand by the relevant Agent or Senior Lender;
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan;
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two (2) percent per annum higher than the rate which would have applied if the overdue amount had not become due; and
- (c) default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (d) No accrued interest shall become due and payable other than in accordance with the provisions of Section 5.1 (*Payment of Interest and Interest Payment Dates*) or this Section 5.3 (*Default Interest*).

#### 5.4 Limitation on Interest.

If at any time the interest rate applicable to any Loan, together with all other amounts that are treated as interest on such Loan under Applicable Law, exceeds the maximum lawful rate under the laws of New York, the interest payable in respect of such Loan, together with all other amounts treated as interest on such Loan, shall be limited to interest calculated at the maximum lawful rate under the laws of New York.

#### 5.5 Determination of Interest Periods.

- (a) Subject to paragraph (b) below, each Interest Period for any Loan shall be of a duration of one (1) month.
- (b) Each Interest Period for a Loan shall start on an Interest Payment Date (except in the case of the first Interest Period applicable to the Loan, which shall start on its Utilization Date) and end on the day immediately before the Interest Payment Date that corresponds to the last day of the Interest Period or, if earlier, the Maturity Date.

#### 5.6 Non-Business Days.

If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall instead end on the next Business Day in that calendar month (if there is one) or the immediately preceding Business Day (if there is not).

#### 5.7 Market Disruption.

If the Administrative Agent notifies the Borrower prior to the end of an Interest Period (the “**Affected Interest Period**”) that:

- (a) the Administrative Agent determines that the interest rate for such Loan in relation to the Affected Interest Period cannot be determined by the Administrative Agent in accordance with Section 5.2 (*Interest Rate*); or
- (b) the Administrative Agent has received notifications from a Senior Lender or Senior Lenders (whose participations in such Loan exceed thirty percent (30%) of that Loan) that the difference between
  - (i) the interest rate determined in accordance with Section 5.2 (*Interest Rate*); minus
  - (ii) the Funding Rate of such Senior Lender or Senior Lenders in relation to such Affected Interest Period
 is below the Applicable Margin,

(each of (a) and (b) above, a “**Market Disruption Event**”),

then the Borrower shall pay interest on the respective Loan for the Affected Interest Period with respect to each participation of an affected Lender at a rate equal to the aggregate of:

- (i) the Funding Rate of such Lender in relation to the Affected Interest Period, as determined by such Lender and notified by such Lender to the Administrative Agent (provided that if any such rate is less than zero, the Funding Rate shall be deemed to be zero); and
- (ii) the Applicable Margin.

In the notification to the Borrower that a Market Disruption Event has occurred, the Administrative Agent will also notify the Borrower about the Interest Rate determined in accordance with this Section 5.7 (*Market Disruption*) and the interest amount payable by the Borrower in respect of the Affected Interest Period.

If this Section 5.7 (*Market Disruption*) applies and the Majority Lenders or the Borrower so requires, the Majority Lenders and the Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest. Any alternative basis thus agreed shall, with the prior consent of all the Senior Lenders and the Borrower, be binding on all parties hereto.

If within such period of thirty (30) days the parties to this Agreement do not reach any agreement, the Interest Rate notified to the Borrower in accordance with this Section 5.7 (*Market Disruption*) will continue to apply for the Affected Interest Period.

## 5.8 Break Costs.

The Borrower shall indemnify, compensate and reimburse each Senior Lender for all Break Costs which such Senior Lender may sustain:

- (a) if the Borrower withdraws or reduces the amount specified for a utilization in a Utilization Request or fails to satisfy any of the conditions precedent specified in Article 12 (*Conditions Precedent*) after delivering a Utilization Request and as a result a Utilization of a Loan does not occur on the Utilization Date; provided, that if the Borrower withdraws or reduces the amount specified for any Utilization Request, then the Applicable Margin shall be included in the calculation of Break Costs but in all other cases (including clauses (b) and (c) of this Section 5.8 (*Break Costs*), the Applicable Margin should not be included in the calculation of Break Costs).
- (b) if the Borrower fails to pay any amount of principal of the Loans due and payable under a Finance Document on its due date; or
- (c) if any repayment or prepayment (whether mandatory or voluntary) of its Loan occurs on a date that is not an Interest Payment Date for the Loan, in accordance with Article 4 (*Repayment, Prepayment and Cancellation*) of this Agreement.

Each Senior Lender shall furnish to the Borrower a certificate setting forth the basis and amount of each request by such Senior Lender for compensation under this Section 5.8 (*Break Costs*) which certificate shall be conclusive and binding on the Borrower in the absence of manifest error. The Borrower shall pay such Senior Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

## 5.9 Fees.

- (a) **Unused Commitment Fee.** The Borrower shall pay to the Administrative Agent (for the account of each Senior Lender) an unused commitment fee (the “**Unused Commitment Fee**”) on the average daily Unused Commitment of such Senior Lender for the period from and including the Entry Date to the Maturity Date, in each case at a rate per annum equal to 1.00%. Accrued Unused Commitment Fees shall be payable monthly, in arrears and in cash, on each Interest Payment Date or, in the case of the last installment of the Unused Commitment Fee payable hereunder, on the date of termination or cancellation of the Unused Commitment.

- (b) **Upfront Fee.** The Borrower shall pay an upfront fee (the “**Upfront Fee**”) to each Senior Lender (for its own account) in an amount equal to 5.00% multiplied by the aggregate principal amount of each Senior Lender’s Commitment under this Agreement, which shall be payable in cash (x) on the Utilization Date of the Interim Loan with respect to the portion of the Upfront Fee allocable to the Interim Loan that, at the option of the Borrower, may be net funded in whole or in part from the proceeds of the Interim Loan borrowing on the Utilization Date of the Interim Loan and (y) on the Utilization Date of the Final Loan with respect to the portion of the Upfront Fee allocable to the Final Loan that, at the option of the Borrower, may be net funded in whole or in part from the proceeds of the Final Loan on the Utilization Date of the Final Loan.
- (c) **Exit Fee.** Upon any prepayment or repayment of any portion or all of the Loans, whether at maturity, as a prepayment, repayment, acceleration or termination of the Loans (including, but not limited to, any prepayment or repayment after the occurrence of an Event of Default or after acceleration of the Loans) or upon the occurrence of the Maturity Date or upon the acceleration of the Loans (the occurrence of any such events, an “**Exit Fee Event**”), the Borrower shall pay to the Administrative Agent (for the account of each Senior Lender) an exit fee (the “**Exit Fee**”) in cash equal to (a) the principal amount of the Loans being prepaid, repaid or accelerated multiplied by (b) 1.00%. The Exit Fee shall be fully earned, due and payable on the date such Exit Fee Event occurs and non-refundable when made. The parties acknowledge and agree that (i) the Senior Lenders forwent receiving additional compensation, fees and pricing on the Entry Date in return for the parties agreeing to the Exit Fee, (ii) the Agents and the Senior Lenders would not have entered into this Agreement and the Senior Lenders would not have provided the Loans without the Obligor agreeing to pay the Exit Fee in the aforementioned instances and (iii) the Exit Fee set forth in this Section 5.9(c) (*Fees*) is not intended to act as a penalty or to punish the Borrower or any other Obligor for any such payment, repayment, redemption, prepayment or termination.
- (d) **Agent’s Fee.** The Borrower shall pay to the Agent (for its own account) agency fees in the amounts and manner agreed in the Agency Fee Letter.

## Article 6 TAXES

### 6.1 Taxes.

- (a) **Defined Terms.** For purposes of this section, the term “Applicable Law” includes FATCA.
- (b) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower under any Finance Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Body in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 6.1. (Taxes)), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made. The Administrative Agent shall act as a Withholding Agent under this Agreement with respect to U.S. withholding only.

- (c) **Payment of Other Taxes by Borrower.** The Borrower shall timely pay to the relevant Governmental Body in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.
- (d) **Indemnification by Borrower.** The Borrower shall indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 6.1 (*Taxes*)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, other than any penalties and interest resulting from the willful misconduct or gross negligence (as determined in the final and non-appealable judgment of a court of competent jurisdiction) of the Administrative Agent or such Senior Lender, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to the Borrower by a Senior Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Senior Lender, shall be conclusive absent manifest error.
- (e) **Indemnification by the Senior Lenders.** Each Senior Lender shall severally indemnify the Administrative Agent within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Senior Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Senior Lender's failure to comply with the provisions of Section 14.1(i) (*Assignment by Senior Lenders*) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Senior Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Finance Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to any Senior Lender by the Administrative Agent shall be conclusive absent manifest error. Each Senior Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Senior Lender under any Finance Document or otherwise payable by the Administrative Agent to the Senior Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).
- (f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by the Borrower to a Governmental Body pursuant to this section, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.
- (g) **Status of Senior Lenders.** (i) Any Senior Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Finance Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Senior Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Senior Lender is subject to backup withholding or information reporting

requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (g)(ii)(A), (ii)(B) and (ii)(D) of this section) shall not be required if in the Senior Lender's reasonable judgment such completion, execution or submission would subject such Senior Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Senior Lender.

- (ii) Without limiting the generality of the foregoing,
  - (A) any Senior Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or about the date on which such Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Senior Lender is exempt from U.S. federal backup withholding tax;
  - (B) any Foreign Senior Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:
    - (1) in the case of a Foreign Senior Lender claiming the benefits of an income tax treaty to which the United States of America is a party (x) with respect to payments of interest under any Finance Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Finance Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
    - (2) executed copies of IRS Form W-8ECI;
    - (3) in the case of a Foreign Senior Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) a certificate substantially in the form of Exhibit A-1 to the effect that such Foreign Senior Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the IRC, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the IRC (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or
    - (4) to the extent a Foreign Senior Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit A-2 or Exhibit A-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as



applicable; provided, that if the Foreign Senior Lender is a partnership and one or more direct or indirect partners of such Foreign Senior Lender are claiming the portfolio interest exemption, such Foreign Senior Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit A-4 on behalf of each such direct and indirect partner;

- (C) any Foreign Senior Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Senior Lender becomes a Senior Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and
- (D) each Senior Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Senior Lender has complied with such Senior Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Senior Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

- (h) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes (including any tax credit in lieu of a refund) as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section 6.1 (*Taxes*)) and which is immediately allocable to the Taxes, it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Body) in the event that such indemnified party is required to repay such refund to such Governmental Body. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (h) shall not be construed to require any

indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

- (i) **Survival.** Each party's obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Senior Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Finance Document.

## Article 7

### OTHER PROVISIONS RELATING TO THE LOANS

#### 7.1 Payments Generally.

- (a) The Borrower shall make each payment required to be made by it under this Agreement on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim not later than a time determined by the Administrative Agent in its sole discretion and communicated to the Borrower.
- (b) Any amounts received after such time on any date may, in the discretion of the Majority Lenders, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon.
- (c) All such payments shall be made to the account designated by the Administrative Agent from time to time, except that payments pursuant to Sections 7.3 (*Change in Circumstances*), 7.4 (Payment of Costs and Expenses) and 7.5 (*Indemnities*) shall be made directly to the Persons entitled thereto.
- (d) The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof.
- (e) All payments under this Agreement shall be made in Dollars.

#### 7.2 Illegality.

If any Applicable Law comes into force after the Entry Date, or if any change in any existing Applicable Law or in the interpretation or application thereof by any court or Governmental Body now or hereafter makes it unlawful for a Senior Lender to have advanced or acquired an interest in any of the Loans or to fund or otherwise maintain any of the Loans or to give effect to its obligations in respect thereof, such Senior Lender may, by written notice thereof to the Borrower, declare its obligations under this Agreement to be terminated, and the Borrower shall immediately cancel any available Commitments of such Senior Lender and prepay, within the time required by such law, the Loans and any other amounts owing under this Agreement (including accrued and unpaid interest) as may be applicable to the date of such payment. If any such event shall, in the opinion of such Senior Lender, only affect part of its obligations under this Agreement, the remainder of this Agreement shall be unaffected and the obligations of the Borrower and the other Obligor under the Finance Documents shall continue. Each Senior Lender agrees to use commercially reasonable efforts to designate a different lending office if such designation will avoid the need for such notice and will not, in the judgment of such Senior Lender, acting reasonably, otherwise be materially disadvantageous to such Senior Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Senior Lender in connection with any such designation or assignment.



### 7.3 Change in Circumstances.

- (a) If the introduction of or any change in any Applicable Law relating to a Senior Lender or any change in the interpretation or application thereof by any Governmental Body or compliance by a Senior Lender with any request or direction of any Governmental Body:
  - (i) subjects such Senior Lender to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;
  - (ii) imposes, modifies or deems applicable any reserve, liquidity, cash margin, capital, special deposit, deposit insurance or assessment, or any other regulatory or similar requirement against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds for loans by, such Senior Lender or any direct or indirect holding company of such Senior Lender;
  - (iii) imposes on such Senior Lender or any direct or indirect holding company of such Senior Lender or requires there to be maintained by such Senior Lender any capital adequacy, liquidity or additional liquidity capital requirement (including, without limitation, a requirement which affects such Senior Lender's or such holding company's allocation of capital resources to its obligations) in respect of such Senior Lender's obligations hereunder; or
  - (iv) imposes on such Senior Lender any other condition or requirement with respect to this Agreement (other than Excluded Taxes);
- (b) and subject to paragraph (c) below, such occurrence has the effect of:
  - (i) increasing the cost to such Senior Lender of agreeing to make or making, maintaining or funding the Loan or any portion thereof;
  - (ii) reducing the amount of the Obligations owing to such Senior Lender;
  - (iii) directly or indirectly reducing the effective return to such Senior Lender under this Agreement or on its overall capital as a result of entering into this Agreement or as a result of any of the transactions or obligations contemplated by this Agreement; or
  - (iv) causing such Senior Lender to make any payment or to forgo any interest, fees or other return on or calculated by reference to any sum received or receivable by such Senior Lender under this Agreement;

then, upon written request of such Senior Lender, the Borrower will pay to such Senior Lender such additional amount or amounts as will compensate such Senior Lender for such additional costs incurred or reduction suffered. A certificate of a Senior Lender setting forth the amount or amounts necessary to compensate such Senior Lender and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Senior Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

For purposes of the foregoing, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, regulations,

guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed a “change in Applicable Law” regardless of the date enacted, adopted, applied or issued.

#### 7.4 Payment of Costs and Expenses.

The Borrower shall pay to the Agents and the Senior Lenders on demand all reasonable costs and expenses (other than in the case of Section 7.4(f) (*Payment of Costs and Expenses*) below, in which case, subject to the terms of the DIP Order and DIP Recognition Order, the Borrower shall pay the Agents and the Senior Lenders on demand all costs and expenses) of the Agents and the Senior Lenders and their agents, counsel, advisors (including a technical advisor) and any receiver or receiver-manager appointed by them or by a court (including, without limitation, all reasonable fees, properly invoiced and documented expenses and disbursements of legal counsel) in connection with this Agreement and the other Finance Documents, the Chapter 11 Cases and the Recognition Proceedings, including, without limitation:

- (a) the preparation, negotiation, and completion of the Finance Documents, or any actual or proposed amendment or modification thereof or any waiver thereunder and all instruments supplemental or ancillary thereto, and, in the case of the Agents, the administration of the Finance Documents;
- (b) [reserved];
- (c) the reasonable and properly invoiced and documented fees and expenses of the Senior Lenders incurred as part of the Senior Lenders’ due diligence or, subject to Section 11.1(d) (*Affirmative Covenants*), for the ongoing monitoring, investigation or information gathering in respect of the Borrower and the Project;
- (d) the registration, maintenance and/or discharge of any of the Security in any public record office;
- (e) obtaining advice as any Agent’s or the Senior Lenders’ rights and responsibilities under this Agreement or the other Finance Documents; and
- (f) the defense, establishment, protection or enforcement of any of the rights or remedies of the Agents or the Senior Lenders under this Agreement or any of the other Finance Documents, including all costs and expenses of establishing the validity and enforceability of, or of collection of amounts owing under, any of the Finance Documents or any enforcement of the Security, or otherwise due from the Borrower or any Guarantor under this Agreement.

#### 7.5 Indemnities.

- (a) The Borrower shall indemnify and hold harmless each Agent, each Senior Lender and their Affiliates, officers, directors and employees (each, an “**Indemnified Party**”) from all Claims (including the reasonable and properly invoiced and documented fees, expenses and disbursements of outside legal counsel to the Senior Lenders and outside legal counsel to the Agents in each applicable jurisdiction), which may be incurred by any Indemnified Party as a consequence of or in respect of:
  - (i) default by the Borrower in the payment when due of any Obligation or any other Default or Event of Default hereunder which is continuing;

- (ii) the entering into by the relevant Agents and the Senior Lenders of the Finance Documents and any amendment, waiver or consent relating thereto, and the performance by such Agents and the Senior Lenders of their obligations under this Agreement and the other Finance Documents;
  - (iii) failure of the Borrower to comply with any Applicable Law, including, without limitation, any Environmental Law or applicable Anti-Corruption Laws, AML Laws or Sanctions, with respect to the Project;
  - (iv) any E&S Event, Environmental or Social Matter and Environmental Claim with respect to the Project;
  - (v) the application by the Borrower of the proceeds of the Loan; or
  - (vi) any material Claim arising in connection with the development, construction, procurement, engineering and operation of the Project, except for any such Claim that a court of competent jurisdiction determined in a final and non-appealable order arose primarily on account of the relevant Indemnified Party's gross negligence or willful misconduct.
- (b) In connection with any Claim described in Section 7.5(a) (*Indemnities*) above, the applicable Indemnified Party shall deliver a certificate of an officer of the Administrative Agent or the applicable Senior Lender as to:
- (i) any such Claim; and
  - (ii) reasonable details of the calculation of the amount of such Claim (which calculation shall be, absent manifest error, *prima facie* evidence of the calculation of the amount of such Claim).

## Article 8 REPRESENTATIONS AND WARRANTIES

### 8.1 Representations and Warranties of the Borrower.

To induce each Senior Lender to enter into this Agreement and the other Finance Documents to which each such Senior Lender is a party, and to induce each Senior Lender to make available the Loans under this Agreement and the other Finance Documents to which it is a party, the Borrower makes the representations and warranties set forth below to each Senior Lender as of the Entry Date and each Utilization Date.

- (a) **Organization and Powers.** Subject to any restriction arising on account of the Borrower's and its Subsidiaries' status as a "debtor" under the Bankruptcy Code and entry of the DIP Order or any restriction on the Borrower and its Subsidiaries as a result of the Recognition Proceedings and any required approvals of the Bankruptcy Court, the Borrower and each of its Subsidiaries:
- (i) has been duly incorporated or formed and is validly existing under the laws of its incorporation or formation, as applicable;
  - (ii) has all requisite corporate power and authority to own and lease its property and assets and to carry on its business;

- (iii) has all requisite corporate power and authority to enter into and deliver each of the Finance Documents, and the transactions contemplated thereby, to which it is or will become a party, and to take all necessary action to perform its obligations thereunder (including the power and authority to grant the Security pursuant to the Finance Documents and to perform the obligations set forth therein); and
  - (iv) is duly qualified, licensed or registered to do business in each jurisdiction in which the nature of its business or the property or assets owned or leased by it make such qualification, licensing or registration necessary. No proceeding has been instituted or, to the knowledge of the Borrower, threatened in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, limit or curtail, such power and authority or qualification, licensing or registration. The Borrower is up-to-date in all of its corporate filings in all material respects and is (if applicable) in good standing under Applicable Laws.
- (b) **Authorization; No Conflict.** Subject to the entry of the DIP Order and the DIP Recognition Order, the execution and delivery by the Borrower and each of its Subsidiaries of the Finance Documents to which each is a party, and the performance by it of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate or other action on its part and do not and will not:
  - (i) contravene any provision of its constitutional documents (or the constitutional documents of any of its Subsidiaries), including, without limitation, any shareholder agreements or declarations, as applicable, or any resolution of its shareholders, partners or directors (or any committee thereof);
  - (ii) conflict with, result in a breach of, or constitute a default or an event creating rights of acceleration, termination, modification or cancellation or a loss of rights under (with or without the giving of notice or lapse of time or both), the Streaming Agreement or any material contract to which any of its Subsidiaries is a party, in each case, to the extent not subject to the automatic stay under the Chapter 11 Cases or executed after the Petition Date;
  - (iii) violate any Applicable Law; or
  - (iv) other than as contemplated by the Finance Documents, result in, or require, the creation or imposition of any Encumbrance on any property or assets of the Borrower.
- (c) **Execution; Binding Obligation.** Subject to entry of the DIP Order and the DIP Recognition Order, each Finance Document to which the Borrower is or will become a party:
  - (i) has been, or when delivered under or in connection with this Agreement will be, duly executed and delivered by the Borrower; and
  - (ii) constitutes, or when delivered under or in connection with this Agreement will constitute, a legal, valid and binding agreement of the Borrower, in full force and effect and enforceable against the Borrower in accordance with its terms and admissible into evidence in the courts of New York, except to the extent enforcement may be affected by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity.

- (d) **Consents.** The Borrower and its Subsidiaries are not required to give any notice to, make any filing with or obtain any Authorization, Order or other consent or approval of any Person in connection with the execution or delivery of or performance of its obligations under any Finance Document to which they are a party, or the consummation of the transactions contemplated herein and therein, other than:
- (i) the entry of the DIP Order and the DIP Recognition Order;
  - (ii) consents and approvals required under contracts or other agreements stayed by the Automatic Stay;
  - (iii) with respect to the grant of the priming lien, Trisura Guarantee Insurance Company; and
  - (iv) those that have already been obtained and copies of which have been provided to the Senior Lenders or those consents that are reflected in the DIP Order.
- (e) **Corporate Structure; Subsidiaries.**
- (i) Part A of Schedule Q (*Corporate Organization Chart*) sets forth the true and complete list of all Subsidiaries of the Borrower, including the type and number of issued and outstanding shares or other equity interests of each such Subsidiary and the Person in whose name such shares or equity interests are registered.
  - (ii) Except as set out in Part A of Schedule Q (*Corporate Organization Chart*) no Person has any option, warrant, right (pre-emptive, contractual or otherwise) or other security or conversion privilege of any kind that is exercisable or convertible into, or exchangeable for, or otherwise carries the right of the holder to purchase or otherwise acquire (whether or not subject to conditions) common shares or other equity interests of the Borrower or its Subsidiaries.
  - (iii) The Borrower is not engaged in any joint purchasing arrangement, joint venture, partnership and other joint enterprise with any other Person.
  - (iv) No Person has a direct or indirect ownership interest in the Borrower, except as set out in Part A of Schedule Q (*Corporate Organization Chart*), or the Project Property or is otherwise involved in any manner in the operation of the Project.
  - (v) To the Borrower's knowledge and belief, no funds invested in the shares of the Borrower are of illicit origin.
- (f) **Principal Place of Business and Other Locations.** The jurisdiction of incorporation, principal place of business, location of corporate records, and location of tangible assets (except for inventory which is in transit) of the Borrower as of the date hereof is Nevada.
- (g) **Residence for Tax Purposes.** For tax purposes, the Borrower is resident of Nevada and the United States of America (and no other state or non-U.S. jurisdiction).
- (h) **[Reserved].**
- (i) **No Expropriation.** No Expropriation Event has occurred nor has any notice been given or proceeding commenced by a Governmental Body or Person in respect thereof nor, to the knowledge

of the Borrower, is there any intent or proposal to give any such notice or commence with respect to an Expropriation Event.

- (j) **[Reserved].**
- (k) **Title to Project Real Property.** Schedule J (*Project Real Property*) (or if such Schedule is replaced in accordance with this Agreement, such replacement Schedule) sets out a complete and accurate list of the Project Real Property in which the Borrower and its Subsidiaries have a right, title or interest. The Borrower, subject to Permitted Encumbrances:
  - (i) has valid and subsisting leasehold title to all leases of real property and mineral interests included within the Project Real Property;
  - (ii) has valid possessory and record title to all mineral interests included within the Project Real Property, except such mineral interests that are leased to the Borrower and are covered under paragraph (k)(i) above; and
  - (iii) has good and marketable title to such other real property interests included within the Project Real Property and not otherwise included under paragraphs (k)(i) and (k)(ii).

Such Project Real Property is free and clear of all Encumbrances other than Permitted Encumbrances. The Borrower and its Subsidiaries do not hold any other freehold, leasehold or other real property interests or rights (including licenses from landholders permitting the use of land, leases, rights of way, occupancy rights, surface rights and easements).
- (l) **Other Collateral.** The Borrower has good and valid title to, or leasehold interest in, all other Collateral that is not Project Real Property, free and clear of all Encumbrances other than Permitted Encumbrances.
- (m) **Project Property.** Without limiting the generality of Section 8.1(j) (*Representations and Warranties of the Borrower*) and Section 8.1(k) (*Representations and Warranties of the Borrower*):
  - (i) the Borrower owns or otherwise has valid rights to use all of, and does not own any material properties or assets other than, the Project Property, and no Person other than the Borrower has any rights to participate in the Project Real Property or operate the Project;
  - (ii) the Borrower's Subsidiaries do not own or otherwise have valid rights to use any of the Project Property;
  - (iii) the Project Real Property constitutes all real property, unpatented mining claims, mineral, surface interests and ancillary rights (including rights of access) necessary for the development and mining operations of the Project;
  - (iv) other than the Royalties, the Offtake Agreements, the Working Capital Facility, the Streaming Agreement, the First Lien Facility and this Agreement, none of the Project Real Property or any Minerals produced therefrom are subject to an option, right of first refusal or right, title, interest, reservation, claim, rent, royalty, or payment in the nature of rent or royalty, or right capable of becoming an agreement, option, right of first refusal or right, title, interest, reservation, claim, rent, royalty, or payment in the nature of rent or royalty; and

- (v) other than pursuant to Applicable Laws, there are no restrictions on the ability of the Borrower to exploit the Project Real Property.
- (n) **Maintenance of Project Property.** All mining concession, maintenance fees, recording fees, preservation patents and Taxes (other than the Tax Encumbrances) and all other amounts have been paid when due and payable and all other actions and all other obligations as are required to maintain the Project Property in good standing, have been taken and complied with in all material respects. All water permits and certificates have been perfected and maintained in good standing and all proofs of beneficial use have been duly and properly filed in compliance with all applicable regulations of the State of Nevada, Division of Water Resources.
- (o) **Insurance.** The Collateral and the businesses and operations of the Borrower are insured in accordance with Section 11.1(e) (*Affirmative Covenants*). The Borrower has not breached the terms and conditions of any insurance policies it is required to obtain and maintain in accordance with Section 11.1(e) (*Affirmative Covenants*) in any material respect nor failed to promptly give any notice or present any material claim thereunder. There are no material claims under any such policy as to which any insurer is denying liability or defending under a reservation of rights clause.
- (p) **Status of Authorizations.** The Borrower has the Authorizations needed for the care and maintenance of the Project. Except the non-validity of which would not reasonably be expected to have a Material Adverse Effect, each Material Project Authorization necessary for the current stage of the Project is valid and in full force and effect.
- (q) **Project Documents.** Other than to the extent affected by the filing of the Chapter 11 Cases, the Recognition Proceedings, the entry of the DIP Order or the Automatic Stay or as would not reasonably be expected to have a Material Adverse Effect, each Material Project Document and each other Project Document necessary for the current stage of the Project is valid and in full force and effect.
- (r) **Applicable Laws; Conduct of Operations.** Each of the Borrower and its Subsidiaries, including in the conduct of operations at the Project, is in compliance in all material respects with all Applicable Laws and, without limiting the generality of the foregoing, all exploration, development and mining operations in respect of the Project Real Property have been conducted in accordance with Good Industry Practice and all material workers' compensation and health and safety regulations have been complied with. There is no pending or, to the knowledge of the Borrower, proposed changes to Applicable Laws that would render illegal or materially restrict the development of the Project or the conduct of operations at the Project, or that could otherwise reasonably be expected to result in a Material Adverse Effect.
- (s) **Sanctions.**
  - (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) is a Sanctions Target; (B) has engaged in the past five (5) years, or intends to engage in the future in any dealings, with, involving or for the benefit of a Sanctions Target; or (C) is or has been, in the past five (5) years, subject to any action, litigation, claim, investigation or proceeding with regard to any actual or alleged violation of Sanctions;
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable Sanctions; and



- (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans (A) to fund or facilitate any activities or business of, with or involving any Sanctions Target or (B) in any manner that would constitute or give rise to a violation of Sanctions by any Person, including any Senior Lender.
- (t) **Anti-Corruption Laws.**
- (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) have, in the past five (5) years, taken any action, directly or indirectly, that would constitute or give rise to a violation of applicable Anti-Corruption Laws; or (B) is or has been, in the past five (5) years, subject to any action, litigation, claim, investigation or proceeding with regard to any actual or alleged violation of Anti-Corruption Laws.
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable Anti-Corruption Laws; and
  - (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value to any Person in a manner that would constitute or give to a violation of applicable Anti-Corruption Laws.
- (u) **AML Laws; FinCen Regulations.**
- (i) None of the Obligors nor any of their respective directors or officers or, to the knowledge of the Borrower, employees, agents or Affiliates: (A) has, in the past five (5) years, taken any action, directly or indirectly, that would constitute or give rise to a violation of applicable AML Laws;
  - (ii) The Obligors have implemented and maintain policies and procedures designed to promote and achieve compliance with applicable AML Laws;
  - (iii) The Borrower will not, directly or indirectly, use any part of any proceeds of the Loans for any activity that would constitute or give rise to violation of applicable AML Laws; and
  - (iv) The information included in the Beneficial Ownership Certification is true and correct in all respects.
- (v) **Environmental Compliance.** Without limiting the generality of Sections 8.1(p) (*Representations and Warranties of the Borrower*) and 8.1(r) (*Representations and Warranties of the Borrower*):
- (i) the Borrower and its Subsidiaries, and, to the knowledge of the Borrower and its Subsidiaries, the conduct of the care and maintenance of the Project, is in compliance with all Environmental and Social Requirements in each case and, as applicable, in accordance with the actions and time schedules established in any Corrective Action Plan;
  - (ii) the Borrower and its Subsidiaries have obtained, and maintained in full force and effect, all material Environmental Licenses any of them are currently required to hold and that are necessary to maintain and operate the Project;



- (iii) no Hazardous Substances have been generated, used, treated, recycled, stored on or transported to or from, or Released on, or to the knowledge of the Borrower, are migrating from or are present on all or any portion of the Project Real Property or the Project, except to the extent any such Hazardous Substance would not reasonably be expected to result in a material Environmental Claim (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)) against the Borrower, any of its Subsidiaries or with respect to the Project; and
- (iv) none of the Borrower, its Subsidiaries nor the Project is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)), (and, to the knowledge of the Borrower or its Subsidiaries, there is no basis for any such Environmental Claim), (save where any Environmental Claim has been notified in accordance with Sections 11.3(a) (*Notifications to the Senior Lenders*) and 11.3(b) (*Notifications to the Senior Lenders*)).
- (w) **Community Matters.** Neither the Borrower nor its Subsidiaries have received notice that the Project Real Property or the Project is subject to any material actions, suits and proceedings (including arbitral and administrative proceedings) by indigenous peoples that are individually, or in the aggregate, material, and, to the knowledge of the Borrower or its Subsidiaries, there are no such current, pending or threatened (in writing) actions, suits or proceedings materially affecting the Project Real Property or the Project. Neither the Borrower nor its Subsidiaries have received notice of any claim or assertion, written or oral, whether proven or unproven, from any other such affected persons or groups, or Persons acting on their behalf, with respect to any title (including collective title), rights or other interests which could reasonably be expected to conflict with the Project if such claim or assertion were valid.
- (x) **Employee and Labor Matters.** The Borrower, and each of its Subsidiaries, is in material compliance with all Applicable Laws and Performance Standards in respect of employment and employment practices, terms and conditions of employment, pay equity and wages; there is not currently any labor disruption or conflict involving the Borrower, its Subsidiaries or directly affecting the Project. Neither the Borrower nor its Subsidiaries are a party to a collective bargaining agreement. None of the Borrower's Subsidiaries have any employees.
- (y) **Security.** The Borrower has implemented security practices and procedures at the Project in accordance with Applicable Laws and consistent with the Good Industry Practice.
- (z) **Employee Benefit Plans.** Each Employee Benefit Plan mandated by a Governmental Body that is intended to qualify for special tax treatment meets all of the requirements for such treatment and has obtained all necessary approvals of all relevant Governmental Bodies. No Employee Benefit Plan has any unfunded liabilities, determined in accordance with IFRS, that have not been fully accrued on the Financial Statements or that will not be fully offset by insurance. All Employee Benefit Plans are registered where required by, and are in good standing under, all Applicable Laws. For purposes of this Section 8.1(z) (*Representations and Warranties of the Borrower*), "**Employee Benefit Plan**" means any employee benefit plan, pension plan, program, policy or arrangement sponsored, maintained or contributed to by the Borrower or with respect to which the Borrower has any liability or obligation. No event has occurred and no condition exists that could subject Borrower or its Subsidiaries, either directly or by reason of its affiliation with any member of their Controlled Group, to any liability imposed by Title IV of ERISA, or to any lien imposed

by Section 430 of the IRC or Section 303 or Title IV of ERISA. “Controlled Group” means any trade or business (whether or not incorporated) (i) which is or has at any relevant time been under common control within the meaning of Section 4001(b)(1) of ERISA with Borrower or its Subsidiaries or (ii) which together with Borrower or its Subsidiaries is or was at any relevant time treated as a single employer under Section 414(b), (c), (m) or (o) of the IRC.

- (aa) **Taxes.** The Borrower and its Subsidiaries have filed all material federal, state and other tax returns and reports required to be filed, have paid all material federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (i) to the extent prohibited by the automatic stay of the Bankruptcy Code (or the applicable provision of the CCAA), (ii) for the Tax Encumbrances, and (iii) for Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with IFRS.
- (bb) **Intellectual Property.** The Borrower owns, licenses or otherwise has the right to use all material licenses, Authorizations, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, franchises, authorizations and other intellectual property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto (other than any intellectual property the absence of which or any such infringement upon or conflict with respect to which would not have a material impact on the Borrower’s ability to maintain or operate the Project and carry on the Business).
- (cc) **Books and Records.** The minute books and corporate records of the Borrower and each of its Subsidiaries are true and correct in all material respects and contain all minutes of all meetings and all resolutions of the shareholders or directors (or any committee thereof), as applicable, of the Borrower.
- (dd) **Financial Statements.**
  - (i) The Borrower’s Financial Statements have been prepared in accordance with IFRS applied on a consistent basis throughout and complied, as of their date of filing, and such Financial Statements present fairly, in all material respects, the financial condition of the Borrower and its Subsidiaries (on a consolidated basis), as at the date specified therein and for the period then ended. The Borrower does not intend to correct or restate, nor, to the knowledge of the Borrower, is there any basis for any correction or restatement of, any aspect of its Financial Statements.
  - (ii) There are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of the Borrower or any of its Subsidiaries with unconsolidated entities or other Persons.
  - (iii) PricewaterhouseCoopers (PwC) has been the auditor of the Borrower since April 10, 2018.
- (ee) **Absence of Change.** Except for the Chapter 11 Cases and the Recognition Proceedings and the facts disclosed in the filings made in connection therewith (including any filing with the SEC prior to the Petition Date) and for the transition of the operations of the Project to care and maintenance, since the Petition Date, there has been no event, change or effect which, individually or in the aggregate, has had a Material Adverse Effect.

- (ff) **Related-Party Transactions.** Except as disclosed on Schedule T (*Related-Party Transactions*) or as permitted by this Agreement after the date hereof, neither Borrower nor any of its Subsidiaries have: (i) made any payment or loan to, or borrowed any moneys from or otherwise been indebted to, any Related Party thereof; or (ii) been a party to any contract with any Related Party thereof, other than independent contractor or indemnification agreements entered into with officers or directors of the Borrower which, in the case of clause (i) or (ii) hereof, remains in effect on the date hereof.
- (gg) **Other Contracts.** No Obligor has entered in any material contracts relating to the Project (other than the Project Documents, Finance Documents, the First Lien Facility, the WCF Capital Facility and the Fourth Lien Facility) that have not been disclosed in writing to the Finance Parties.
- (hh) **No Liabilities.** Neither the Borrower nor any of its Subsidiaries has any material liabilities, contingent or otherwise, that would be required to be reflected in the Borrower's Financial Statements in accordance with IFRS, other than those (i) reflected in the most recently delivered Financial Statements and the Finance Documents or (ii) arising in the ordinary course of business since the date of the most recently delivered Financial Statements.
- (ii) **Litigation.** Subject to any restrictions arising on account of the Borrower's status as a "debtor" under the Bankruptcy Code and other than the Chapter 11 Cases, the right of the relevant parties to investigate and challenge this Agreement and the facilities provided hereunder during the applicable Challenge Periods (as provided and defined in the DIP Order), and as disclosed in Schedule W (*Litigation Disclosure*), there are no Orders which remain unsatisfied against the Borrower or its Subsidiaries or consent decrees or injunctions to which the Borrower or its Subsidiaries are subject which would have a Material Adverse Effect on the Borrower and its Subsidiaries taken as a whole. There are no material investigations, actions, suits or proceedings at law or in equity or by any Person by or before any Governmental Body pending or, to the knowledge of the Borrower, threatened against or directly affecting the Borrower (or any of its properties or assets) or otherwise having a material impact on the ability of the Borrower to develop or operate the Project and, to the knowledge of the Borrower, there is no ground on which any such action, suit or proceeding might be commenced.
- (jj) **Debt Instruments.** The Borrower and its Subsidiaries do not have any Debt other than Permitted Debt.
- (kk) **No Subordination.** There is no contract to which the Borrower is a party or by which it or any of its properties or assets may be bound that requires the subordination in right of payment of any of the Obligations under the Finance Documents to any other obligation of it.
- (ll) **[Reserved].**
- (mm) **No Default.** No Default or Event of Default has occurred and is continuing.
- (nn) **Disclosure.** All information which has been prepared by or on behalf of the Borrower relating to the Obligors and their Subsidiaries and/or in connection with the Project or its financing (including in connection with the Streaming Agreement) and disclosed in writing to the Finance Parties or any one of them, is, as of the date of such information, true, complete and accurate in all material respects.
- (oo) **[Reserved].**

(pp) **[Reserved].**

(qq) **Senior Obligations.** After the entry of the DIP Order, and pursuant to and to the extent permitted in the DIP Order, as provided in Section 364(c)(1) of the Bankruptcy Code, the Obligations of the Obligors constitute allowed senior administrative expenses against each of the Obligors in the Chapter 11 Cases (without the need to file any proof of claim or request for payment of administrative expense), with priority, subject only to the Carve-Out, the Administration Charge and as otherwise set forth in the DIP Order or the DIP Recognition Order, over any and all other administrative expenses, adequate protection claims, diminution claims and all other claims against the Obligors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expense claims arising under Sections 105, 326, 328, 330, 331, 361, 362, 363, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other nonconsensual Lien, levy or attachment, which allowed claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which shall be payable from and have recourse to all pre- and post-petition property of the Obligors and their estates and all proceeds thereof, including, without limitation, and subject to entry of the Final Order, any proceeds of Avoidance Actions.

(rr) **Valid Security Interests.** This Agreement and the other Finance Documents, upon execution and delivery thereof by the parties thereto and entry of the DIP Order and the DIP Recognition Order (and subject to the terms therein), will create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described herein and therein and the proceeds thereof, which security interest shall be deemed valid and perfected upon entry of the DIP Order and the DIP Recognition Order with respect to each Obligor and which shall constitute continuing Encumbrances on the Collateral having priority on the Collateral as set forth in the DIP Order, securing all the Obligations. The Senior Lenders shall not be required to file or record (but shall have the option and authority to file or record) any financing statements, mortgages, notices of Lien or similar instruments, in any jurisdiction or filing office or to take any other action in order to validate, perfect or establish the priority of the Encumbrances and security interest granted by or pursuant to this Agreement, any other Finance Document, the DIP Order and the DIP Recognition Order.

(ss) **Investment Company Act of 1940.** The Borrower is not, and after giving effect to the transactions contemplated hereby, will not be, subject to registration as an “investment company” or “controlled” by a company subject to registration as an “investment company,” within the meaning of the United States Investment Company Act of 1940, as amended.

(tt) **Margin Regulations.** The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for such purpose and no part of the proceeds of any Loan will be used for the purpose whether immediate, incidental or ultimate, of buying or carrying any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for such purpose. No part of the proceeds of any Loan will be used, whether directly or indirectly and whether immediately, incidentally or ultimately, for any purpose which entails a violation of or which is inconsistent with Regulation G, T, U or X promulgated by the Board of Governors of the

Federal Reserve System of the United States (12 C.F.R. Sections 207, 220, 221 and 224, respectively).

- (uu) **Use of Proceeds.** The proceeds of all Utilizations have been and will be used in accordance with the terms and conditions of this Agreement and all applicable Finance Documents.
- (vv) **Streaming Agreement.** Except as a result of the Chapter 11 Cases or the Recognition Proceedings or to the extent arising prior to the Petition Date, no event has occurred or circumstance exists that (with or without the giving of notice or lapse of time or both) has contravened, conflicted with or resulted in or given any Person the right to declare a default and exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, the Streaming Documents and, to the knowledge of the Borrower, each other Person that is party thereto is in compliance in all material respects with the terms and requirements thereof. Without limiting the generality of the foregoing, except as a result of the Chapter 11 Cases or the Recognition Proceedings or arising prior to the Petition Date:
  - (i) neither the Borrower, nor, to the knowledge of the Borrower, any other Person, is in default or breach in the observance or performance of any material term, covenant or obligation to be performed by the Borrower or such Person under the Streaming Documents and the Streaming Documents are in good standing, constitutes a valid and binding agreement of each of the parties thereto, is in full force and effect and is enforceable in accordance with its terms, except to the extent enforcement may be affected by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity; and
  - (ii) the Borrower has no knowledge of the invalidity of or grounds for rescission, avoidance or repudiation of any such Streaming Document and the Borrower has not received notice of any sanctioning procedure by a Governmental Body or notice of any intention to terminate any such Streaming Document or repudiate or disclaim any transaction contemplated thereby.

## **8.2 Survival of Representations and Warranties.**

- (a) The representations and warranties made in this Agreement are made by the Borrower as of the date hereof.
- (b) The representations and warranties made in this Agreement are deemed to be made to each Finance Party by reference to the fact and circumstances then existing on each applicable date on which the representations and warranties are made notwithstanding any investigation made at any time by or on behalf of the Administrative Agent or the Senior Lenders.

## **Article 9 SECURITY**

### **9.1 Grant of Security Interest.**

Each of the Obligors, to secure the timely payment (whether at stated maturity, by acceleration or otherwise) of the Obligations, hereby assigns, grants and pledges to the Collateral Agent for the equal and ratable benefit of the Secured Parties a first priority perfected lien (subject to the Carve-Out and Administration Charge and as otherwise set forth in the DIP Order or DIP Recognition Order) on and continuing security interest in and to the following (in each case, as to each type of property described

below, whether now owned or hereafter acquired by the Obligors, and whether now or hereafter existing or arising) (collectively, the “**Collateral**”):

(a) all mine inventory including any coarse ore in stockpile, crushed ore in stockpile, ore in process, or copper in inventory from time to time (other than any WCF Collateral);

(b) all right, title and interest of the Borrower and the Subsidiaries to any proceeds arising from, in connection with or under any Expropriation Event, together with, if an Event of Default has occurred and is continuing, full power and authority, in its name or otherwise, to institute proceedings (whether before a court or judge or by way of arbitration or otherwise) to enforce such claims, execute judgments or awards made pursuant thereto and collect and receive all proceeds arising from, in connection with or under any Expropriation Event;

(c) all equipment in all of its forms, including all machinery, tools, motor vehicles, vessels, aircraft, furniture and fixtures, and all parts thereof and all accessions thereto, including computer programs and supporting information that constitute equipment within the meaning of the UCC;

(d) all accounts, chattel paper (including, without limitation, tangible chattel paper and electronic chattel paper), instruments (including, without limitation, promissory notes), letter-of-credit rights, general intangibles and other obligations of any kind, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services and whether or not earned by performance, and all rights now or hereafter existing in and to all supporting obligations and in and to all security agreements, mortgages, liens, leases, letters of credit and other contracts securing or otherwise relating to the foregoing property (any and all of such accounts, chattel paper, instruments, letter-of-credit rights, general intangibles and other obligations, to the extent not referred to in clause (e) or (f) below, being the “**Receivables**”, and any and all such supporting obligations, security agreements, mortgages, liens, leases, letters of credit and other contracts being the “**Related Contracts**”);

(e) the following (the “**Account and Investment Property**”):

(i) all indebtedness from time to time owed to the Obligors, including Subordinated Intercompany Debt and other intercompany debt permitted by the Cash Management Order and all promissory notes, checks or other instruments, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness;

(ii) the Capital Stock held by the Obligors and identified on Schedule C (*Pledged Interests*) hereto, including the Obligor’s Capital Stock in each of the Issuers, and (A) the Obligor’s status as an equity holder of each Issuer and the Obligor’s right to vote, nominate members of the board or otherwise participate in the management of the business and affairs of such Issuer and any other right of the Obligor as an equity holder of such Issuer (the “**Initial Pledged Interests**”) and the certificates, if any, representing the Initial Pledged Interests, and all equity dividends, cash dividends, cash, instruments, chattel paper and other rights, property or proceeds and products (including all other payments due or to become due to the Obligor as an equity holder in respect of the Initial Pledged Interests, including all rights of the Obligor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Initial Pledged Interests), from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Initial Pledged Interests and (B) all claims of the Obligor for damages arising out of or for breach of or default under any right of the Obligor as an equity holder;



(iii) all additional Capital Stock of each Issuer at any time acquired by the Obligor in any manner, and (A) the certificates representing such additional Capital Stock (and any such additional Capital Stock, along with the Initial Pledged Interests shall constitute “**Pledged Interests**”), and all equity dividends, cash dividends, distributions, cash, instruments, chattel paper and other rights, property or proceeds and products from time to time received, receivable or otherwise distributed in respect of or in exchange for any additional Pledged Interests, (B) all other payments due or to become due to the Obligor as an equity holder in respect of the additional Pledged Interests, including all rights of the Obligor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to additional Pledged Interests, (C) all claims of the Obligor for damages arising out of or for breach of or default under any right of the Obligor as an equity holder of additional Pledged Interests and (D) all the Obligor’s ownership interests as an equity holder in respect of the additional Pledged Interests in the property of each Issuer;

(iv) all deposit accounts and all funds from time to time credited thereto and all certificates and instruments, if any, from time to time, representing or evidencing such deposit accounts;

(v) all other investment property (including, without limitation, all (A) securities, whether certificated or uncertificated; (B) security entitlements; (C) securities accounts; (D) commodity contracts; (E) financial assets; and (F) commodity accounts) from time to time in which the Obligors have now, or acquire from time to time hereafter, any right, title or interest in any manner, and the certificates or instruments, if any, representing or evidencing such investment property; and

(vi) all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the types of property referred to in clauses (i) through (v) above and all warrants, rights or options issued thereon or with respect thereto;

(f) all of the Obligors’ rights, title and interest in and to the Contract Rights and all other Contractual Obligations to which any of the Obligors are now or may hereafter become a party, in each case as such Contractual Obligations may be amended, amended and restated, supplemented or otherwise modified from time to time (collectively, the “**Assigned Agreements**”), including (i) all rights of the Obligors to receive monies due and to become due under or pursuant to the Assigned Agreements, (ii) all rights of the Obligors to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements or any other instrument, agreement or other document delivered pursuant thereto, (iii) claims of the Obligors for damages arising out of or for breach of or default under the Assigned Agreements, and (iv) the right of the Obligors to terminate the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder (all such Collateral referred to in this clause (f) being the “**Agreement Collateral**”);

(g) the following:

(i) all patents, patent applications, utility models and statutory invention registrations, all inventions claimed or disclosed therein and all improvements thereto;

(ii) all trademarks, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, whether registered or unregistered (provided, that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark

applications under applicable federal law), together, in each case, with the goodwill symbolized thereby;

(iii) all copyrights, including copyrights in Computer Software (as hereinafter defined), internet web sites and the content thereof, whether registered or unregistered;

(iv) all computer software, programs and databases (including source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights, hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing (“**Computer Software**”);

(v) all confidential and proprietary information, including, without limitation, know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and all other intellectual, industrial and intangible property of any type, including, without limitation, industrial designs and mask works, and all tangible embodiments of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of the Obligors accruing thereunder or pertaining thereto;

(vi) all registrations and applications for registration for any of the foregoing;

(vii) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

(h) any tort, indemnity, warranty or guarantee claims under commercial contracts (the “**Commercial Tort Claims Collateral**”);

(i) any and all of the Obligors’ interest under any and all policies of insurance (including any substitutions therefor or conversions thereof, and any supplementary contracts issued in connection therewith on certain property of the Obligors’, collectively the “**Assigned Insurance Policies**”), including, without limitation, (i) all rights of the Obligors to receive monies due and to become due under or pursuant to the Assigned Insurance Policies, including, without limitation, all insurance proceeds paid or payable upon the occurrence of an Event of Loss together with all dividends, benefits and advantages at any time appertaining thereto or derived therefrom, (ii) all claims of the Obligors for damages arising out of or for breach of or default under the Assigned Insurance Policies and (iii) all other rights, remedies, options, benefits and privileges of the Obligors under the Assigned Insurance Policies, including, without limitation, all title and interest in and to the Assigned Insurance Policies and all rights to terminate, amend, supplement, modify or waive performance under the Assigned Insurance Policies and to compel performance and otherwise to exercise all rights and remedies thereunder;

(j) all claims in respect of intercompany transfers of proceeds of the Loans or of cash and cash equivalents from any Debtor to Parent;

(k) all books and records (including, without limitation, customer lists, credit files, printouts and other computer output materials and records) of the Obligors pertaining to any of the Collateral;



(l) all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the Collateral (including, without limitation, proceeds, collateral and supporting obligations that constitute property of the types described in clauses (a) through (h) of this Section 9.1 (*Grant of Security Interest*)) and, to the extent not otherwise included, all (i) payments under insurance (whether or not the Collateral Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral, and (ii) cash; and

(m) all other tangible and intangible personal property whatsoever.

Upon the repayment in full and discharge of all obligations under the Working Capital Facility, each of the Obligors, to secure the timely payment (whether at stated maturity, by acceleration or otherwise) of the Obligations, shall automatically, without further action from any party, assign, grant and pledge to the Collateral Agent for the equal and ratable benefit of the Secured Parties in accordance with the DIP Order and DIP Recognition Order, a first priority perfected lien (subject to the Carve-Out and Administration Charge and as otherwise set forth in the DIP Order or DIP Recognition Order) on and continuing security interest in and to the WCF Collateral.

## **9.2 Security for Obligations.**

The grant of security interests under Section 9.1 (*Grant of Security Interest*) secures the payment of all Obligations now or hereafter existing under the Finance Documents, and with respect to the WCF Collateral in accordance with the DIP Order and DIP Recognition Order, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, fees, premiums, penalties, indemnifications, contract causes of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, the grant of security interests under Section 9.1 (*Grant of Security Interest*) secures the payment of all amounts that constitute part of the Obligations and would be owed by the Obligors to any Secured Party under the Finance Documents, and with respect to the WCF Collateral in accordance with the DIP Order and DIP Recognition Order, but for the fact that they are unenforceable or not allowable due to the existence of any bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject to generally applicable principles of equity involving the Obligors.

## **9.3 Obligors Remain Liable.**

Anything herein to the contrary notwithstanding, (a) the applicable Obligor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by any Secured Party of any of its respective rights hereunder shall not release the applicable Obligor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) no Secured Party shall have any obligation or liability under the contracts and agreements included in the Security solely by reason of this Agreement or any other Finance Document, except as set forth in section 9-207 of the UCC or the receipt by the Collateral Agent of any payment relating to any Collateral, nor shall any Secured Party be obligated to perform any of the obligations or duties of the applicable Obligor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

## **9.4 Delivery and Control of Account and Investment Property.**

(a) Upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), the Obligors shall ensure that all certificates or instruments representing

or evidencing Account and Investment Property shall be delivered to and held by or on behalf of the Collateral Agent pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Collateral Agent. The Collateral Agent (acting at the direction of the Majority Lenders) shall have the right at any time after an Event of Default has occurred and is continuing to (i) exchange certificates or instruments representing or evidencing Account and Investment Property for certificates or instruments of smaller or larger denominations and (ii) to exercise the voting rights attributable to the Account and Investment Property. The Obligor hereby make, constitute, and appoint the Collateral Agent and its officers as the proxies and attorneys-in-fact of and for the Obligor, with full power to exercise or to refrain from exercising any and all voting rights attributable to the Account and Investment Property upon the occurrence and during the continuance of any Event of Default. Upon the occurrence and during the continuance of an Event of Default, all rights of the Obligor to receive and retain cash dividends and other distributions upon the Account and Investment Property shall cease and shall thereupon be vested in the Collateral Agent, and the Obligor shall promptly deliver, or shall cause to be promptly delivered, all such cash dividends and other distributions with respect to the Account and Investment Property to the Collateral Agent (together with all necessary endorsements and negotiable documents or instruments so distributed) to be held as additional collateral or applied to the Obligations.

- (b) With respect to any Account and Investment Property that constitutes an uncertificated security, upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), the Obligor will cause the issuer thereof either (i) to register the Collateral Agent as the registered owner of such security or (ii) to agree with the Borrower and the Collateral Agent that such issuer will comply with instructions with respect to such security originated by the Collateral Agent without further consent of the Obligor, such agreement to be in form and substance reasonably satisfactory to the Collateral Agent (acting at the direction of the Majority Lenders).
- (c) With respect to any Account and Investment Property that is located in the United States and constitutes a security entitlement, upon request of the Collateral Agent (acting at the direction of the Majority Lenders) and subject to any order of the Bankruptcy Court (including the DIP Order), the Obligor will cause such financial institution with respect to such security entitlement either to (i) identify in its records the Collateral Agent as the entitlement holder thereof or (ii) agree with the Borrower and the Collateral Agent that such financial institution will comply with entitlement orders originated by the Collateral Agent without further consent of the Borrower, such agreement to be in form and substance reasonably satisfactory to the Collateral Agent (acting at the direction of the Majority Lenders).
- (d) Upon the request of the Collateral Agent (acting at the direction of the Majority Lenders), and subject to any order of the Bankruptcy Court (including the DIP Order) or Canadian Court (including the DIP Recognition Order), at any time after the occurrence of and during the continuance of an Event of Default, the Obligor will notify each issuer of Account and Investment Property granted by them hereunder that such Account and Investment Property is subject to the security interest granted hereunder.

## **9.5 Further Assurances – Security.**

At any time and from time to time, the Obligor shall give, execute, file and/or record any notice, financing statement, continuation statement, public deed, instrument, document or agreement and shall take, or cause

to be taken, such action, in each case as is necessary or as any Senior Lender may consider necessary or reasonably desirable to create, preserve, continue, perfect or validate any security interest granted hereunder or pursuant hereto or to enable the Collateral Agent to exercise or enforce its rights hereunder with respect to such security interest. Without limiting the generality of the foregoing, the Majority Lenders, on behalf of the Collateral Agent, shall be authorized (a) to file or cause the filing under the laws of the State of New York or other applicable law financing statements, continuation statements or other documents in connection with such security interest, and (b) to execute and file or cause the execution and filing of public deeds or other instruments or documents under the laws of Canada necessary to preserve such security interest, in each case without the signature of the Obligor (to the extent permitted by law).

## 9.6 Remedies.

- (a) Each Obligor recognizes that the Collateral Agent may be unable to effect a public sale of any or all of the Collateral that constitutes securities to be sold by reason of certain prohibitions contained in the laws of any jurisdiction outside the United States or in applicable federal, provincial, territorial or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Obligor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by law, be deemed to have been made in a commercially reasonable manner. Unless required by applicable law, the Collateral Agent shall not be under any obligation to delay a sale of any of such Collateral to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable federal, provincial, territorial or state securities laws, even if such issuer would agree to do so. Each Obligor further agrees to do or cause to be done, to the extent that such Obligor may do so under applicable law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of such Collateral or other property to be sold valid and binding and in compliance with any and all applicable laws at the Obligors' expense. Each Obligor further agrees that a breach of any of the covenants contained in this Section 9.6(a) (*Remedies*) will cause irreparable injury to the Secured Parties for which there is no adequate remedy at law and, as a consequence, agrees that each covenant contained in this Section 9.6(a) (*Remedies*) shall be specifically enforceable against such Obligor, and each Obligor hereby waives and agrees, to the fullest extent permitted by law, not to assert as a defense against an action for specific performance of such covenants that (i) such Obligor's failure to perform such covenants will not cause irreparable injury to the Secured Parties or (ii) the Secured Parties have an adequate remedy at law in respect of such breach. Each Obligor further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by the Secured Parties by reason of a breach of any of the covenants contained in this Section 9.6(a) (*Remedies*) and, consequently, agrees that, if such Obligor shall breach any of such covenants and the Secured Parties shall sue for damages for such breach, such Obligor shall pay to the Collateral Agent, for the benefit of the Secured Parties, as liquidated damages and not as a penalty, an aggregate amount equal to the value of the Collateral or other property to be sold on the date the Collateral Agent shall demand compliance with this Section 9.6(a) (*Remedies*).
- (b) Subject to the terms of the DIP Order and the DIP Recognition Order and the passing of the Remedies Notice Period, if an Event of Default has occurred and is continuing, the Collateral Agent shall have for the benefit of the Secured Parties, in addition to all other rights of the Secured Parties, the rights and remedies of a secured party under the UCC and the PPSA, and without limiting the generality of the foregoing, the Collateral Agent (acting at the direction of the Majority Lenders)

shall be empowered and entitled to: (i) take possession of, foreclose on and/or request a receiver of the Collateral and keep it on any Obligor's premises at any time, at no cost to the Secured Parties, or remove any part of it to such other place or places as the Collateral Agent may determine, or the Obligors shall, upon the Majority Lender's demand, at the Obligors' cost, assemble the Collateral and make it available to the Collateral Agent at a place reasonably convenient to the Collateral Agent; (ii) exercise of set-off rights on cash collateral or deposits; (iii) sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Majority Lenders deem advisable, in their sole discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale; (iv) hold, lease, develop, manage, operate, control and otherwise use the Collateral upon such terms and conditions as may be reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as may be reasonably necessary or desirable), exercise all such rights and powers of each Obligor with respect to the Collateral, whether in the name of such Obligor or otherwise, including without limitation the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents, in each case, in accordance with the standards applicable to the Collateral Agent under the Finance Documents, and (v) take any other reasonable actions, as may be reasonably necessary or desirable, in connection with the Collateral (including preparing for the disposition thereof), and all actual, reasonable, out-of-pocket fees and expenses incurred in connection therewith shall be borne by the Obligors. Promptly following written demand from the Collateral Agent (acting at the direction of the Majority Lenders), the applicable Obligor shall direct the grantor or licensor of, or the contracting party to, any property agreement with respect to any property to recognize and accept the Collateral Agent, for the benefit of and on behalf of the Secured Parties, as the party to such agreement for any and all purposes as fully as it would recognize and accept such Obligor and the performance of such Obligor thereunder and, in such event, without further notice or demand and at such Obligor's sole cost and expense, the Collateral Agent, for the benefit of and on behalf of the Secured Parties, may exercise all rights of such Obligor arising under such agreements. Without in any way requiring notice to be given in the following manner, each Obligor agrees that any notice by the Collateral Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC and the PPSA or otherwise, shall constitute reasonable notice to such Obligor if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least five (5) Business Days prior to such action to the Obligors' address specified in or pursuant to Article 24 (*Notices*). If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent or the Senior Lenders receive payment, and if the buyer defaults in payment, the Collateral Agent may resell the Collateral. In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Obligor irrevocably waives (to the extent permitted by applicable law): (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Collateral Agent retain possession and not dispose of any Collateral until after trial or final judgment. Each Obligor agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Collateral Agent is hereby granted a license or other right to use, without charge, each Obligor's labels, patents, copyrights, name, trade secrets, trade names, trademarks and advertising matter, or any similar property, in completing production of, advertising or selling any Collateral, and each such Obligor's rights under all licenses and all franchise agreements shall inure to the Collateral Agent's benefit for such purpose. The Collateral Agent will return any excess to the applicable Obligor and the Obligors shall remain liable for any deficiency. The proceeds of sale shall be applied as required pursuant to Section 13.4 (*Application of Proceeds*) hereof.

### 9.7 Security Effective Notwithstanding Date of the Loans.

The Security shall be effective and the undertakings in this Agreement and the other Finance Documents with respect thereto shall be continuing, whether the monies hereby or thereby secured or any part thereof shall be advanced before or after or at the same time as the creation of any such Security or before or after or upon the date of execution of this Agreement. The Security shall not be affected by any payments under this Agreement or any of the other Finance Documents but shall constitute continuing security interests to and in favor of the Collateral Agent for the benefit of the Secured Parties for the Obligations from time to time.

### 9.8 No Merger.

The Security shall not merge in any other security interests. No judgment obtained by or on behalf of the Senior Lenders shall in any way affect any of the provisions of this Agreement, the other Finance Documents or the Security. For greater certainty, no judgment obtained by or on behalf of the Senior Lenders shall in any way affect the obligation of the Borrower to pay interest or to pay other amounts at the rates, times and in the manner provided in this Agreement.

### 9.9 Stockpiling.

If the Borrower intends to stockpile, store, warehouse or otherwise place Minerals or other minerals forming part of the Collateral with a value in excess of \$10,000,000 of the Project Real Property, before doing so, the Borrower shall obtain from the property owner, operator or both, as applicable, where such stockpiling, storage, warehousing or other placement occurs, to provide in favor of the Collateral Agent a written acknowledgment in form and substance satisfactory to the Majority Lenders, acting reasonably, which provides that the Borrower's and/or its Affiliates', as applicable, rights to the Minerals or other minerals forming part of the Collateral shall be preserved and which acknowledges the Senior Lenders' Encumbrances thereon and provides the Collateral Agent with a right of access in the event of enforcement by the Collateral Agent of the Security.

## Article 10 GUARANTY

### 10.1 Guaranty; Limitation of Liability.

- (a) Each Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the performance and punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Obligor now or hereafter existing under or in respect of the Finance Documents, whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise (such Obligations being the "**Guaranteed Obligations**"), and agrees to pay any and all reasonable out-of-pocket expenses (including reasonable out-of-pocket fees and expenses of counsel to the extent reimbursable pursuant to Sections 7.4 (*Payment of Costs and Expenses*) and 7.5 (*Indemnities*) but excluding allocated costs of in-house counsel) incurred by the Agents in enforcing any rights under the guarantee provided under this Article 10 (*Guaranty*) (the "**Guaranty**") or any other Finance Document. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Obligor to any Agent or any Senior Lender under or in respect of the Finance Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization, winding-up or similar proceeding involving such other Obligor.

- (b) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to any Agent or any Senior Lender under this Guaranty, such Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Agents and the Senior Lenders under or in respect of the Finance Documents.

**10.2 Guaranty Absolute.** Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Finance Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Collateral Agent or any Senior Lender with respect thereto. The Obligations of each Guarantor under or in respect of this Guaranty are independent of the Guaranteed Obligations or any other Obligations of any other Obligor under or in respect of the Finance Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against the Borrower or any other Obligor or whether the Borrower or any other Obligor is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

- (a) any lack of validity or enforceability of any provision under this Agreement, any Finance Document or any agreement or instrument relating thereto;
- (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any other Obligor under or in respect of the Finance Documents, or any other amendment or waiver of or any consent to departure from any Finance Document, including any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Obligor or otherwise;
- (c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the Guaranteed Obligations;
- (d) any manner of application of Collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Guaranteed Obligations or any other Obligations of any Obligor under the Finance Documents or any other assets of any Obligor;
- (e) any change, restructuring or termination of the corporate structure or existence of any Obligor;
- (f) any failure of the Agents or any Senior Lender to disclose to any Obligor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Obligor now or hereafter known to the Agents or such Senior Lender, as the case may be (each Guarantor waiving any duty on the part of the Agents and the Senior Lenders to disclose such information);
- (g) the failure of any other Person to execute or deliver this Guaranty or the release or reduction of liability of any Guarantor or surety with respect to the Guaranteed Obligations; or
- (h) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation by the Agents or any Senior Lender that might otherwise constitute a defense



available to, or a discharge of, any Obligor or any other guarantor or surety, in its capacity as a guarantor or surety (other than payment or performance).

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Collateral Agent or any Senior Lender or any other Person, for whatever reason, all as though such payment had not been made.

### **10.3 Waivers and Acknowledgments**

- (a) Each Guarantor hereby unconditionally and irrevocably waives (to the extent permitted by applicable law) any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.
- (b) Each Guarantor hereby unconditionally and irrevocably waives (to the extent permitted by applicable law) (i) any defense arising by reason of any claim or defense based upon an election of remedies by any Agent or any Senior Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Obligors, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the Obligations of such Guarantor hereunder.
- (c) Each Guarantor acknowledges that the Collateral Agent may, to the extent permitted by applicable law and the DIP Order and the DIP Recognition Order, without notice to or demand upon such Guarantor and without affecting the liability of such Guarantor under this Guaranty, foreclose under any Finance Document by non-judicial sale, and each Guarantor hereby waives (to the extent permitted by applicable law) any defense to the recovery by the Collateral Agent and the Senior Lenders against such Guarantor of any deficiency after such non-judicial sale and any defense or benefits that may be afforded by applicable law.
- (d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of any Agent or any Senior Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Obligor or any of its Subsidiaries now or hereafter known by such Agent or such Senior Lender, as the case may be.
- (e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Finance Documents and that the waivers set forth in Section 10.2 (*Guaranty Absolute*) and this Section 10.3 (*Waivers and Acknowledgments*) are knowingly made in contemplation of such benefits.

### **10.4 Subrogation**

Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Borrower or any other Obligor that arise from the existence, payment, performance or enforcement of such Guarantor's Obligations under or in respect of this Guaranty or any other Finance Document, including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Collateral Agent or any Senior Lender against the Borrower or any other Obligor, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from the Borrower or any other Obligor, directly or indirectly, in cash or other property or by set-off or in any other manner,

payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) shall have been paid in full in cash and the Commitments shall have expired or been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of (a) the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and (b) the Maturity Date, such amount shall be received and held in trust for the benefit of the Collateral Agent and the Senior Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Finance Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) any Guarantor shall make payment to the Administrative Agent of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) shall have been paid in full in cash and (iii) the Maturity Date shall have occurred, the Collateral Agent and the Senior Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

### **10.5 Continuing Guaranty; Assignments**

This Guaranty is a continuing guaranty and shall (a) remain in full force and effect until the payment in full in cash of the Guaranteed Obligations (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and all other amounts payable under this Guaranty (other than inchoate indemnity obligations and similar obligations that survive the termination of this Agreement) and the termination or expiration of all Commitments, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Administrative Agent and the Senior Lenders and their respective successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Permitted Transferee that has been assigned or transferred all or any portion of a Senior Lender's Loans, Commitments or rights and obligations under this Agreement in accordance with Section 14.1 (*Assignment by Senior Lenders*), shall thereupon become vested with all the benefits granted to such transferring Senior Lender under this Guaranty. No Guarantor shall have the right to assign its rights hereunder or any interest herein or delegate any of its duties, liabilities or obligations hereunder or under any other Finance Document without the prior written consent of the Majority Lenders, except as otherwise permitted hereby.

### **10.6 Release**

- (a) An Obligor shall automatically be released from its obligations hereunder and the security interest in the Collateral of such Obligor shall be automatically released as it relates to the Obligations, upon the consummation of any transaction permitted under this Agreement as a result of which such Obligor ceases to be an Obligor.
- (b) The security interest granted hereby in any Collateral shall automatically and without further action be released upon the effectiveness of any written consent to the release of the security interest granted hereby in such Collateral pursuant to this Agreement. Any such release in connection with



any sale, transfer or other disposition of such Collateral shall result in such Collateral being sold, transferred or disposed of, as applicable, free and clear of the Lien and security interest created hereby.

- (c) In connection with any termination or release pursuant to paragraph (a) or (b) above, so long as the Borrower shall have provided the Agents and Senior Lenders such certifications or documents as the Majority Lenders shall reasonably request, the Administrative Agent or the Collateral Agent (in each case, acting at the direction of the Majority Lenders) shall execute and deliver to any Obligor, at such Obligor's expense, all documents that such Obligor shall reasonably request to evidence such termination or release.

## **Article 11 COVENANTS**

### **11.1 Affirmative Covenants.**

The Borrower shall:

- (a) duly and punctually pay the Obligations at the times and places and in the manner required by the terms of the Finance Documents;
- (b) except to the extent excused by the Automatic Stay, applicable provision of the Bankruptcy Code or order of the Bankruptcy Court, maintain its corporate existence; keep proper books of account and records; maintain its good standing status (if applicable) at all times in all jurisdictions where it carries on business; and operate its business and maintain and operate the Project in accordance with Good Industry Practice, Applicable Law, Project Authorizations, Other Rights, Material Project Documents and solely with respect to Applicable Law, comply with Applicable Law in all material respects unless the Borrower has Contested the applicability of any Applicable Law or the Borrower's necessity to comply with it;
- (c) except as otherwise permitted by this Agreement or otherwise stayed by the Automatic Stay, maintain the Project Real Property in good standing, performing or causing to be performed all required assessment work thereon, paying or causing to be paid all concession, permit and license maintenances fees in respect thereof, paying or causing to be paid all rents and other payments in respect of leased properties forming a part thereof, paying all fees in connection with the unpatented mining claims (including fees payable to the United States Bureau of Land Management) and otherwise maintaining the Project Real Property in compliance, in all material respects, with Applicable Law and Good Industry Practice, except where the failure to make such payment (or cause such payment to be made) or to so own or maintain such Project Real Property would not reasonably be expected to materially and adversely affect the ownership, operation or safety of the Project;
- (d) subject to applicable health and safety procedures maintained by the Borrower in accordance with Applicable Law, Good Industry Practice and the Environmental and Social Requirements:
  - (i) the Borrower shall permit a monthly visit by two persons designated by the Senior Lenders at the cost and expense of the Borrower; and
  - (ii) at all times if an Event of Default shall have occurred and be continuing,

permit representatives from among the Administrative Agent, the Collateral Agent and, the Senior Lenders (including their consultants and/or the assignees) to enter into or onto its property to conduct inspections and testing, to inspect any of the Collateral and to examine its financial books, accounts and records and to discuss its financial condition with its senior officers and its auditors at the cost and expense of the Borrower (x) in the case of paragraph (d)(i), at a time agreed with the Borrower and (y) in the case of paragraph (d)(ii), at any time and upon reasonable advance notice in writing; provided, that in all cases (x) visits should be during normal business hours, in a manner that does not unreasonably disrupt the operation of the Project, and (y) the Administrative Agent, the Collateral Agent and the Senior Lenders, shall coordinate their visits to the Project site to the extent reasonably practicable to do so;

- (e) keep insured with Acceptable Insurers all of its Collateral (including the Project Property) in amounts and against losses or damages on a basis consistent with Good Industry Practice and Applicable Law;
- (f) provide the Administrative Agent as soon as reasonably practicable with such evidence of insurance as the Administrative Agent (acting at the direction of the Majority Lenders) may from time to time reasonably require;
- (g) subject to Section 11.1(s) (*Affirmative Covenants*), obtain, as and when required, and preserve, maintain, and comply with, all Material Project Authorizations which are required to permit the Borrower to maintain and care for the Project as contemplated by the Approved Budget and the DIP Order, it being understood that the Borrower will maintain minimal operations for the purpose of preserving its assets and nothing herein shall obligate the Borrower to maintain or operate its Business or assets or perform any obligations under any agreement (other than this Agreement) in a manner that requires funding that is not provided for in the Approved Budget;
- (h) except to the extent such payment is excused by, or is otherwise prohibited by, the provisions of the Bankruptcy Code or order of the Bankruptcy Court, timely file, or cause to be timely filed, all Tax Returns required to be filed by it and pay, or cause to be paid (other than the Tax Encumbrances), all Taxes due and payable by it, whether shown to be due and payable on such Tax Returns or on any assessment received by it or otherwise, except to the extent any such Taxes are being Contested;
- (i) conduct any environmental remedial activities required of it pursuant to any Environmental and Social Requirement, any Governmental Body and Good Industry Practice;
- (j) promptly conduct any action required pursuant to, and comply with any Corrective Action Plan required in accordance with Section 11.9(d) (*Corporate Policies*);
- (k) maintain in effect environmental and social monitoring arrangements, including arrangements to provide reasonable access to any material documents related to the development and operation of the Project that are in the Borrower's custody or control;
- (l) (i) ensure that the only mining activities taking place on the Project Real Property are those under the control and direction of the Borrower and (ii) maintain and operate the Project in material compliance with the requirements of any Environmental License, Order or other Authorization in respect of the Project;
- (m) warrant and defend the right, title and interest of the Borrower in and to any of the Collateral, and every part thereof, against the claims of any Person, subject only to Permitted Encumbrances;

- (n) cause the care and maintenance of the Project (including any work not currently contemplated by the Approved Budget but approved in accordance with this Agreement) to be carried out and completed with diligence and continuity and in all material respects in accordance with Applicable Law, the Environmental and Social Requirements and Good Industry Practice;
- (o) maintain at all times the necessary power supply required for the Project;
- (p) perform all such acts and execute all such documents as are reasonably required by the Senior Lenders to perfect and maintain the Security in the Collateral created pursuant to the Finance Documents;
- (q) maintain all of its and its Subsidiaries' ownership, lease, use, license and other interests in the Project assets as are necessary for it to be able to operate the Project in accordance with Good Industry Practice;
- (r) comply with all applicable Sanctions, Anti-Corruption Laws, and AML Laws, and maintain and enforce policies and procedures designed to promote and achieve compliance with applicable Sanctions, Anti-Corruption Laws and AML Laws;
- (s) use the proceeds of the Loans solely in accordance with Section 2.3 (*Purpose and Use of Proceeds*);
- (t) [reserved];
- (u) refrain from amending, suspending, waiving or repudiating any portion of, an Environmental License or a Material Project Authorization that would result in a Material Adverse Effect, without prior written consent of the Majority Lenders;
- (v) (i) cooperate, consult with, and provide to the Administrative Agent and the Senior Lenders all such information as required or as reasonably requested by the Administrative Agent and the Senior Lenders and (ii) participate in meetings (which shall be telephonic or virtual unless otherwise agreed and for which two (2) days' prior notice will be provided) with the Senior Lenders and their respective management teams and advisors, on not less than a weekly basis, at which the Borrower shall provide to the Senior Lenders access to all information reasonably requested upon prior reasonable notice;
- (w) maintain the Environmental Bonds in full force and effect other than to the extent unable to do so as a result of the Chapter 11 Cases;
- (x) comply with the Approved Budget (subject to the Permitted Variances) and with the provisions of the DIP Order;
- (y) take or cause to be taken all reasonably appropriate action to do or cause to be done all things necessary proper or advisable under applicable law, and to execute and deliver such documents as may be required or reasonably requested by the Senior Lenders to carry out the provisions of this Agreement and the DIP Order;
- (z) [reserved];
- (aa) take or cause to be taken all appropriate action to remain the sole owner of the Collateral, free of Encumbrances other than Permitted Encumbrances;

- (bb) except to the extent excused by the Automatic Stay, applicable provision of the Bankruptcy Code or order of the Bankruptcy Court, take or cause to be taken all appropriate action to comply with all material applicable laws applicable to the Obligors or the Collateral unless failure to comply could not reasonably be expected to result in a Material Adverse Effect;
- (cc) subject to the Approved Budget and the Tax Encumbrances, pay when due all taxes prior to the date on which penalties attach, except where such tax is being contested in good faith and adequate reserves have been established in accordance with GAAP or to the extent payment and/or enforcement thereof is stayed as a result of the Chapter 11 Cases;
- (dd) provide copies of all pleadings, motions applications, judicial information, financial information and other documents intended to be filed by or on behalf of any Obligor with the Bankruptcy Court in the Chapter 11 Cases or the Canadian Court in the Recognition Proceedings to the Administrative Agent and the Senior Lenders (and their advisors) at least two (2) calendar days in advance of such filing or as promptly as reasonably practicable;
- (ee) promptly provide such additional information concerning the Obligors or the Collateral as the Administrative Agent or any Senior Lender may reasonably request;
- (ff) maintain its cash management system in a manner acceptable to the Majority Lenders (which shall be deemed satisfied if the cash management system is substantially the same as the cash management system in existence on the Petition Date, with such modifications as permitted under the Cash Management Order, as entered);
- (gg) deposit all distributions, dividends and other payments (other than payments of intercompany trade payables in the ordinary course of business) made by or on account of non-Debtor subsidiaries of the Obligors in a segregated account established by the Obligors (or in another account after receiving the prior written consent of the Administrative Agent (acting at the direction of the Majority Lenders, in their sole discretion)) at or prior to the time of receipt thereof, and maintain all such funds in such account unless otherwise approved in writing by the Administrative Agent (acting at the direction of the Majority Lenders, in their sole discretion) unless such distributions, dividends and other payments are remitted directly to the Administrative Agent for application to the Loans;
- (hh) within fourteen (14) calendar days of the entry Interim Order by the Bankruptcy Court, obtain the Initial Recognition Order and Interim DIP Recognition Order;
- (ii) within fourteen (14) calendar days of the entry of the Final Order by the Bankruptcy Court, obtain the Final DIP Recognition Order;
- (jj) to the extent practicable under the circumstances, provide each Senior Lender (and their respective advisors) with advance notice (verbal notice or notice by email is sufficient) prior to any transfer of \$100,000 or more on account of a prepetition critical vendor claim in accordance with the prepetition critical vendor order(s) in form and substance acceptable to the Senior Lenders and approved by the Bankruptcy Court;
- (kk) on each Weekly Reporting Date, provide each Senior Lender (and their respective advisors) with a report scheduling the payments made by the Obligors to their critical vendors during the previous calendar week; and

- (II) deliver or cause to be delivered to the Senior Lenders, copies of all monthly reports or projections in respect of each of the Obligors' business or financial condition as well as all pleadings, motions, applications and judicial information filed by or on behalf of the Borrower with the Bankruptcy Court or the Canadian Court or any Creditors' Committee or the Information Officer in the Recognition Proceedings, in each case, at the time such document is filed with the Bankruptcy Court, the Canadian Court or provided by or to the Information Officer, as applicable. The parties hereto agree that filing such papers through PACER shall satisfy the foregoing requirement to deliver such as filed in the Bankruptcy Court.

Notwithstanding anything to the contrary in this Section 11.1 (*Affirmative Covenants*), the Borrower shall not be required to comply with any provision of this Section 11.1 (*Affirmative Covenants*) to the extent it would conflict with or cause a breach of Section 11.12(u) (*Negative Covenants*).

## 11.2 Approved Budget and Variance Reporting .

The Borrower shall:

- (a) *Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a Proposed Budget for the next thirteen weeks, commencing with the calendar week in which such Proposed Budget is delivered (such period, the “**Budgeted Period**”); provided that, (i) in no event shall the Budgeted Period extend past four weeks after the Maturity Date and (ii) if the Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts, disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for all weeks following the Maturity Date shall assume that the Debtors continue to operate in the ordinary course consistent with prior postpetition practices and that no sale of the Debtors' business will occur during such portion of the Budgeted Period. The Proposed Budget shall become the Approved Budget for the Budget Period covered thereby unless the Obligors receive a written objection from the Majority Lenders (with e-mail from professionals acting on behalf of the Majority Lenders to the Obligors' counsel being sufficient) prior to 5:00 p.m. (Pacific Time) on the fifth Business Day following delivery of the Proposed Budget to the Administrative Agent and the Senior Lenders. If the Majority Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or modification to the Approved Budget or Approved Variance Report by 5:00 p.m. (Pacific Time) on the fifth Business Day following delivery of the Proposed Budget to the Administrative Agent and Senior Lenders, then such Proposed Budget, amendment, supplement or modification shall be deemed acceptable to and approved by the Majority Lenders and shall become the Approved Budget. In the event the Majority Lenders timely object to a Proposed Budget, the prior Approved Budget shall remain in full force and effect until any such Proposed Budget is approved by the Majority Lenders (with e-mail from the advisors acting on behalf of the Majority Lenders to the Debtors' counsel being sufficient). Until any Proposed Budget, or any amendment, supplement or modification to the Approved Budget has been approved (or is deemed approved in accordance with this paragraph (a)) by the Majority Lenders, the Debtors shall be subject to and be governed by the terms of the Approved Budget then in effect.
- (b) *Weekly Variance Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second Thursday after the Petition Date (the “**First Reporting Date**”, which, for the avoidance of doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday thereafter (together with the First Reporting Date, each a “**Weekly Reporting Date**”), the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a variance report (each, a “**Weekly Variance**”).

**Report**”) setting forth, in reasonable detail, (i) the actual receipts of the Obligors on a line-by-line and aggregate basis; (ii) the actual disbursements of the Obligors on a line-by-line and aggregate basis; and (iii) the aggregate actual intercompany transfers from Debtor entities to Parent on a Debtor-by-Debtor basis, in each case, during the applicable week ending on the Sunday preceding each such Weekly Reporting Date (each such week, a “**Reporting Week**”) and (iv) a comparison (whether positive or negative, expressed as a percentage) for the Reporting Week between (A) the actual receipts in clause (i) above (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected receipts (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the actual disbursements in clause (ii) above (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected disbursements (and each line item thereof) set forth in the Approved Budget for such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to Parent to the amount of each such Debtor’s aggregate projected intercompany transfers to Parent set forth in the Approved Budget for such Reporting Week.

- (c) *Monthly Variance Reporting.* By no later than 12:00 p.m. (Pacific Time) on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First Reporting Date (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling Four-Week Testing Date shall be July 11, 2024) and each such subsequent four-week period ending on the Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing Period**”), the Obligors shall deliver to the Administrative Agent and the Senior Lenders, a report reasonably detailing (i) the aggregate actual receipts and aggregate actual disbursements of the Obligors and aggregate intercompany transfers from Debtor entities to Parent, in each case, during the applicable Rolling Four-Week Testing Period; and (ii) any variance (whether positive or negative, expressed as a percentage) between (A) the aggregate actual receipts received by the Obligors during such Rolling Four-Week Testing Period against the projected receipts for such Rolling Four-Week Testing Period as set forth in the Approved Budget, (B) the aggregate actual disbursements made by the Obligors during such Rolling Four-Week Testing Period against the aggregate projected disbursements for such Rolling Four-Week Testing Period as set forth in the applicable Approved Budget and (C) the aggregate actual intercompany transfers from Debtor entities to Parent made by such Debtors during such Rolling Four-Week Testing Period against the aggregate projected intercompany transfers from Debtor entities to Parent for such Rolling Four-Week Testing Period as set forth in the applicable Approved Budget (a “**Rolling Four-Week Variance Report**,” together with the Weekly Variance Report, the “**Approved Variance Reports**”), in each case, broken down by each line item.

### 11.3 Notifications to the Senior Lenders.

The Borrower shall:

- (a) Promptly notify the Administrative Agent of any of the following (but in any event no later than (x) solely with respect to clause (a)(i), two (2) Business Days from the Borrower’s discovery thereof and (y) otherwise, five (5) days from the Borrower’s discovery thereof), and only to the extent:
- (i) any Default or Event of Default upon becoming aware of its occurrence;
  - (ii) any Change of Control upon becoming aware of its occurrence;
  - (iii) any material damage to the Project, and whether the Borrower has made, or plans to make, any insurance claims with respect thereto with respect to such damage;



- (iv) any material disputes or disturbances pertaining to the Project involving local communities, including, without limitation and any indigenous peoples;
- (v) other than to the extent subject to the Automatic Stay or otherwise stayed by an applicable provision of the Bankruptcy Code, or order of the Bankruptcy Court:
  - (A) any material default by any party under or termination or threatened termination or termination right arising under any Material Project Document, of which it becomes aware;
  - (B) the loss of or material non-compliance with the terms of, or any threat (whether or not in writing) by a Governmental Body to revoke or suspend or modify, any Material Project Authorization, including, without limitation, any enforcement action brought by the Nevada Division of Environmental Protection, any code enforcement action by the county in which the Project Real Property is located affecting construction or alteration of any work of construction, and any notice of deficiency in the payment of Nevada Net Proceeds of Minerals Tax;
  - (C) all material actions, suits and proceedings (including arbitral and administrative proceedings) for damages in excess of in aggregate \$2,000,000, or which, if adversely determined, would be likely to have a Material Adverse Effect, before any Governmental Body or arbitrator pending, or to the knowledge of the Borrower, threatened, against or directly affecting the Borrower, the Project or any Material Project Documents, including any actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower or in any material respect, in relation to the ownership, development, construction, use, maintenance and operation of the Project;
  - (D) any violation of any Applicable Law by the Borrower or any of its Subsidiaries in any material respect;
- (vi) [Reserved];
- (vii) [Reserved];
- (viii) any material labor disruption involving the workforce at the Project;
- (ix) other than any “Default” or “Event of Default” under and as defined in the Streaming Agreement or a default under the First Lien Facility, the Working Capital Facility or any Offtake Agreements arising solely arising from the entry of the DIP Order, the commencement of the Chapter 11 Case and the application of the Automatic Stay (A) any event, circumstance or fact that could reasonably be expected to give rise to a “Default” or an “Event of Default” under and as defined in, the Streaming Agreement or a default under the Working Capital Facility or any Offtake Agreement, or (B) any event or condition which, upon notice, lapse of time, or both, would constitute a “Default” or an “Event of Default” as defined under the Streaming Agreement or a default under the Working Capital Facility or any Offtake Agreement, or (C) a “Default” or an “Event of Default” as defined in any other agreement in respect of Debt of the Borrower in a principal amount of \$5,000,000 or more without giving effect to any amendments or waivers from the creditor party thereunder;

- (x) any material change in operational planning that requires additional Authorizations (and all relevant information related thereto) pursuant to any Applicable Law or Good Industry Practice; and
- (xi) any rejection or request for additional information from any public registry or Governmental Body in respect of the actions being taken to perfect the security interest in the Collateral pursuant to Article 9 (*Security*),

in each case, accompanied by an Officer's Certificate of the Borrower setting forth details of the occurrence referred to therein.

- (b) Promptly notify the Administrative Agent, including in the notification the intended action to be taken by them, upon:
  - (i) any written threat of any action or public announcement of any intended action or series of actions that would reasonably be construed or expected to result in an Expropriation Event or a Material Adverse Effect;
  - (ii) any notice of cancellation of any of the Borrower's water rights and any diminution of the rights available for lease from the City of Yerington;
  - (iii) any material claim, complaint, notice or order under, or any violations of, any Environmental Laws, Sanctions, Anti-Corruption Laws, labor organizing activity, or AML Laws, affecting any of the Borrower, its Subsidiaries or the Project;
  - (iv) becoming aware of the presence of any Hazardous Substances located on, above or below the surface of any land which the Borrower occupies or controls, except those being stored, used or otherwise handled in compliance with Environmental Laws, in each case which could reasonably be expected to have a material cost or material impact on the Borrower's ability to carry on the Business and to develop or operate the Project;
  - (v) the occurrence of any Release of Hazardous Substances that has occurred on or from such land or otherwise with respect to the Project which could reasonably be expected to have a material cost or material impact on the Borrower's ability to carry on the Business and to develop or operate the Project or which could reasonably be expected to have a Material Adverse Environmental and Social Effect;
  - (vi) any E&S Event;
  - (vii) any proposed change in the use or occupation of the Project Real Property which may have a material cost or material impact on the Borrower's ability to carry on the Business or develop and operate the Project; and
  - (viii) any other notice given or received by the Borrower with respect to the occurrence of any force majeure or delay event (howsoever described) under any Project Document;

provided, that, in the event any action set forth in Section 11.3(b)(i) (*Notifications to the Senior Lenders*) is notified to the Senior Lenders, the Borrower shall promptly consult with the Senior Lenders to determine appropriate steps to mitigate against or otherwise negotiate the resolution of the action or series of actions that may otherwise result in an Expropriation Event.



- (c) Promptly (but in any event no less than thirty (30) days prior to such change) notify the Senior Lenders upon becoming aware of any proposed change or change in name or jurisdiction of incorporation or principal place of business of the Borrower or any of its Subsidiaries.
- (d) The Borrower shall promptly notify the Senior Lenders of (and shall provide a true and complete copy, where applicable):
  - (i) the acquisition by the Borrower or its Subsidiaries of any Project Real Property (including mineral rights) with a value, individually or in the aggregate, of more than \$5,000,000 or which is material to the Project, whether owned or leased;
  - (ii) any new locations of tangible assets of the Borrower or its Subsidiaries (other than inventory in transit);
  - (iii) any new Material Project Document or any amendment or revision to any existing Material Project Document (provided, that any amendment or revision to any existing Material Project Document and any new Material Project Document shall be subject to Section 11.12(j) (*Negative Covenants*));
  - (iv) any amendment or revision to the Working Capital Facility or Streaming Documents (provided, that any amendment or revision the Working Capital Facility shall be subject to Section 11.12(j) (*Negative Covenants*)); and
  - (v) any new Material Project Authorization or any amendment, revision, reissuance or replacement of any existing Material Project Authorization.
- (e) [Reserved].
- (f) On the first Business Day of each calendar quarter, the Borrower shall notify the Administrative Agent of:
  - (i) the acquisition by the Borrower and its Subsidiaries of all real property (including mineral rights) during the immediately prior calendar quarter (or a certification that no such acquisition was made);
  - (ii) evidence, satisfactory to the Administrative Agent (acting at the direction of the Majority Lenders), that a valid and fully perfected Encumbrance granting a security interest over such after-acquired real property has been created in accordance with Section 9.1(b) (*Grant of Security Interest*); and
  - (iii) the proposed amended and restated Schedule J (*Project Real Property*) to reflect the acquisition of such real property which, upon to the approval of the Administrative Agent (acting at the direction of the Majority Lenders), shall be and shall be deemed to constitute Schedule J (*Project Real Property*) hereunder.
- (g) [Reserved].
- (h) The Borrower shall provide details of any other information reasonably requested with reasonable notice by the Majority Lenders in respect of the financial condition, business and/or operations of the Borrower or the Project.

#### 11.4 Other Reports.

The Borrower shall promptly deliver or furnish, or cause to be delivered or furnished, to the Senior Lenders a copy of any material reports, certificates and notices relating to the Project which are delivered by or to the Borrower under the Material Project Documents, the First Lien Facility, the Working Capital Facility and the Streaming Agreement to the extent not already delivered to the Senior Lenders under the Finance Documents.

#### 11.5 Project Reporting.

The Borrower shall promptly deliver or furnish, or cause to be delivered or furnished, to the Administrative Agent, for prompt delivery to each Senior Lender, a copy or copies of:

- (a) **[Reserved].**
- (b) **[Reserved].**
- (c) **Monthly Operations Reports.** Monthly Operations Reports on or before 5th calendar day after each calendar month (including material variations from the prior month) in a form reasonably satisfactory to the Majority Lenders.
- (d) **Emissions Report.** If disclosure is required under Annex A of the Equator Principles due to the amount of emissions from the Project, the Borrower will publish and maintain on its website at [www.nevadacopper.com](http://www.nevadacopper.com) all times information with respect to greenhouse gas emissions in the substance and form required by Annex A of the Equator Principles. The Senior Lenders will have the right to publish information required under Annex B of the Equator Principles and Borrower hereby consents to the publishing thereof.

#### 11.6 [Reserved].

#### 11.7 Quarterly Financial Reporting.

- (a) The Borrower shall provide to the Administrative Agent, for prompt delivery to each Senior Lender, for each bank account of the Borrower copies of the relevant bank statements.
- (b) As soon as available and in any event within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the Borrower shall deliver to the Administrative Agent, for prompt delivery to each Senior Lender, a copy of each Obligors' quarterly unaudited financial statements for such Fiscal Quarter.

#### 11.8 [Reserved].

#### 11.9 Corporate Policies.

The Borrower shall:

- (a) **[Reserved];**
- (b) ensure that all operations in respect of the Project comply in all material respects with Environmental Law;

- (c) keep, or cause its Subsidiaries to keep, all relevant documentation in order for the Senior Lenders to verify such compliance;
- (d) If an E&S Event occurs or is identified by the Borrower:
  - (i) the Borrower shall promptly notify the Senior Lenders in accordance with Section 11.3(a) (*Notifications to the Senior Lenders*); and
  - (ii) the Borrower shall, and shall cause its Subsidiaries to, (A) prepare, and provide the Administrative Agent with a copy of, a Corrective Action Plan to set forth the proposed actions to correct or to remedy any damage and adverse consequences that has been or would reasonably be expected to be caused by such E&S Event, including timeframes for the implementation of such actions, (B) conduct all such actions within such timeframes and (C) where relevant, upon the request of the Administrative Agent (acting at the direction of the Majority Lenders, acting reasonably), provide the Administrative Agent with any information relating to measures or monitoring undertaken by or on behalf of its Subsidiary consistent with the Environmental and Social Requirements or under any Corrective Action Plan; and
- (e) If an E&S Event occurs that has had or could potentially have a Material Adverse Environmental and Social Effect, the Borrower and its Subsidiaries shall take such immediate action as is necessary to rectify such E&S Event prior to the development and implementation of any Corrective Action Plan.

#### **11.10 Changes to Accounting Policies.**

If there is any material change in a period to the accounting policies, practices and calculation methods used by the Borrower in preparing its Financial Statements or components thereof as compared to any previous period, the Borrower shall provide the Senior Lenders reasonable advance notice of the proposed material change including with it, all information which the Senior Lenders may reasonably require relating to the impact of any such material change on the comparability of the reports provided to the Senior Lenders after any such material change to previous reports. Until the Administrative Agent has approved such material change in writing, the Borrower shall continue to prepare and provide any reports to the Senior Lenders hereunder in accordance with the accounting policies, practices and calculation methods in effect prior to such material change.

#### **11.11 Know Your Customer Documentation; Beneficial Ownership Certification.**

- (a) The Borrower shall promptly, upon the request of any Senior Lender, supply to such Senior Lender any documentation or evidence that is reasonably required by such Senior Lender (whether for itself or on behalf of any person to whom such Senior Lender may, or may intend to, transfer any of its rights or obligations under this Agreement) to enable such Senior Lender to carry out and be satisfied that it has complied with all necessary “know your customer” requirements that such Senior Lender is obliged to carry out under applicable AML Laws.
- (b) The Borrower shall promptly notify the Administrative Agent and each Senior Lender of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification.
- (c) The Borrower shall promptly notify the relevant Senior Lenders of any changes in any information supplied by it relating to any matter referred to in paragraph (a) above of such as:

- (i) a change in the Borrower's board of directors;
- (ii) a change in the legal or beneficial ownership of 25% or more of the Borrower's issued share capital, as well as information about a Person acquiring a legal or beneficial interest in 25% or more of the Borrower's issued share capital; and
- (iii) a change in the nature of the Borrower's business from the Entry Date, as well as information about the Borrower starting or ceasing business operations in a state of the United States other than Nevada or a country other than the United States.

#### **11.12 Negative Covenants.**

- (a) Neither the Borrower nor its Subsidiaries shall:
  - (i) use, directly or indirectly, any part of the proceeds of the Loans (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value to any Person in a manner that would constitute or give rise to a violation of applicable Anti-Corruption Laws (B) to fund or facilitate any activities or business of, with or involving any Sanctions Target or in any manner that would constitute or give rise to a violation of Sanctions by any Person, including any Senior Lender; or (C) in any manner that would constitute or give rise to a violation of applicable AML Laws;
  - (ii) other than in connection with the Sale Transaction, sell, transfer or otherwise dispose of all or any part of the (A) Borrower or its Subsidiaries', as applicable, present or future assets except on arm's-length terms in the ordinary course of trade or the Project Property including any portion of any mining concessions (or other mineral interest) or the Collateral, except pursuant to a Permitted Asset Disposition or (B) Borrower's present or future assets to its Subsidiaries;
  - (iii) make any payment of royalties in respect of Minerals from the Project Real Property other than the amounts required by the Royalties, or enter into any royalty, stream financing or similar agreement with any other Person in relation to the Project Real Property other than the Royalties, the Streaming Agreement, any Offtake Agreement and the RGGGS Lease and the Royalty Agreements;
  - (iv) create, incur, assume or suffer to exist any Encumbrance upon all or any part of the Collateral, whether now owned or hereafter acquired, other than Permitted Encumbrances;
  - (v) permit to occur any event or condition that could subject Borrower or its Subsidiaries, either directly or by reason of its affiliation with any member of their Controlled Group, to any liability imposed by Title IV of ERISA, or to any lien imposed by Section 430 of the IRC or Section 303 or Title IV of ERISA;
- (b) The Borrower shall not be entitled to incur or make any expenditure, Restricted Payment, Investment, loan or other payment without the prior written consent of the Majority Lenders other than in accordance with the Approved Budget, subject to the Permitted Variances; provided that any distributions made by the Obligors' foreign non-Debtor affiliates to the Obligors shall be placed in a segregated account to be established by the Obligors, and no funds shall be withdrawn from such account without the prior written consent of the Majority Lenders, unless such distributions are remitted directly to the Administrative Agent for application to the Loans;

- (c) Neither the Borrower nor its Subsidiaries, other than as resulting from the commencement of the Chapter 11 Cases or as provided in the DIP Order, shall (i) except for the Finance Documents, the First Lien Facility, Working Capital Facility, the Fourth Lien Facility and the Streaming Agreement, enter into any agreement or arrangement or take any action which restricts or purports to restrict the ability of the Borrower, its Subsidiaries, the Borrower's shareholders or any of their Affiliates to pay dividends, or make any other distributions to, or repay Debt, in each case, owing to the Borrower, its Subsidiaries, the Borrower's shareholders or any of their Affiliates, or (ii) enter into any agreement or arrangement or take any action which restricts or purports to restrict the ability of the Borrower or any of its Affiliates to deliver Minerals or perform its other obligations under the Finance Documents, Working Capital Facility, the First Lien Facility, the Fourth Lien Facility, the Aurubis Offtake Agreements or the Streaming Agreement;
- (d) Neither the Borrower nor its Subsidiaries shall create, incur, assume, or otherwise become directly or indirectly liable upon or in respect of, or suffer to exist, any Debt other than Permitted Debt;
- (e) Neither the Borrower nor its Subsidiaries shall enter into any hedge instrument or incur any hedge obligations;
- (f) Neither the Borrower nor its Subsidiaries shall change its jurisdiction of incorporation or any material respect of the nature of its business or operations from the Business, or engage directly or indirectly in any material business activity, or purchase or otherwise acquire any material property, in either case, not related to or in furtherance of the conduct of the Business, or as reasonably required to perform its obligations under the Finance Documents;
- (g) Neither the Borrower nor its Subsidiaries shall have any material liabilities, contingent or otherwise, that would be required to be reflected in the Borrower's Financial Statements in accordance with IFRS, other than those (i) reflected in the most recently delivered Financial Statements and the Finance Documents or (ii) arising in the ordinary course of business since the date of the most recently delivered Financial Statements.
- (h) Neither the Borrower nor its Subsidiaries shall issue any guarantees or indemnities, other than to the extent permitted in the Finance Documents, including by the endorsement of negotiable instruments for deposit or collection (or similar) in the ordinary course of business, guarantees of obligations of employees, guarantees of obligations of suppliers in the ordinary course of business and guarantees provided in connection with the granting of performance bonds in favor of contractors/Governmental Bodies in the ordinary course of business.
- (i) Neither the Borrower nor its Subsidiaries shall make any Accretive Investment, except, in respect of the Borrower:
  - (i) Short-term Investments in money market instruments with remaining maturities of twelve (12) months or less at the date of purchase including securities issued by government agencies, and term deposits and bank accounts with financial institutions; provided, that such short-term Investments are readily convertible to cash; and
  - (ii) Accretive Investment with a value up to \$5,000,000 in the aggregate.
- (j) The Borrower shall not:
  - (i) enter into any Additional Material Project Documents without the approval of the Majority Lenders; or

- (ii) amend in any material respect or waive any material provision of or suspend, terminate or assign or transfer or give notice of suspension, termination or assignment or transfer of:
  - (A) any Material Project Document or the Working Capital Facility without Majority Lender consent;
  - (B) [Reserved];
  - (C) the Aurubis Offtake Agreement without Majority Lender consent; or
  - (D) any other Offtake Agreement that constitutes a Material Project Document without Majority Lender consent;
- (iii) settle any dispute or claim under a Material Project Document or compromise or settle any liability, in either case that results in payments in excess of \$10,000,000 becoming due from the Borrower;
- (iv) [reserved]; or
- (v) permit its Subsidiaries to enter into any material contract.
- (k) Neither the Borrower nor its Subsidiaries shall make any Capital Expenditures other than Permitted Capital Expenditures;
- (l) The Borrower shall not, subject to Section 11.12(j) (*Negative Covenants*), directly or indirectly, enter into, or amend, any transaction or agreement with or for the benefit of any Affiliate of the Borrower (other than as listed on Schedule T (*Related-Party Transactions*) or to the extent constituting a Permitted Asset Disposition) except in the ordinary course of business and upon terms and conditions at least as favorable to the Borrower as would be obtainable by the Borrower at the time in a comparable arm's-length transaction with a Person that is not an Affiliate of the Borrower;
- (m) The Borrower shall not transfer or assign any Debt owed to it or consent to the assignment of any Debt owed by it to any Obligor;
- (n) [Reserved];
- (o) Neither the Borrower nor its Subsidiaries shall, other than as permitted under the Finance Documents, directly or indirectly purchase, acquire or lease any property from, or sell, transfer or otherwise Dispose of any property to, or otherwise deal or enter into any agreement with, any Related Party, unless such transaction is undertaken on fair and commercially reasonable terms and conditions no less favorable to the Borrower than would have been obtained in a comparable fair market transaction with a person who is not an Affiliate of the Borrower;
- (p) Except as otherwise contemplated by the DIP Order and the Chapter 11 Cases, neither the Borrower nor its Subsidiaries shall enter into any transaction to change or reorganize its capital structure or amend its articles, by laws or any other corporate documents;
- (q) Except in connection with the Sale Transaction or as otherwise contemplated by the DIP Order, neither the Borrower nor its Subsidiaries shall undertake or permit any merger, spin-off, consolidation, reorganization or other fundamental corporate transaction;

- (r) Neither the Borrower nor its Subsidiaries shall establish or acquire any subsidiary, other than the Borrower's Subsidiaries disclosed to the Senior Lenders prior to the Petition Date, without the prior consent of the Senior Lenders (such consent not to be unreasonably withheld or delayed);
- (s) Except as required by order of the Bankruptcy Court, neither the Borrower nor any of its Subsidiaries shall maintain any deposit or security accounts other than the accounts listed on Schedule R (*Bank Accounts*);
- (t) [Reserved];
- (u) Neither the Borrower nor its Subsidiaries shall conduct activities, or incur any costs, in relation to the Project other than activities (and incurred costs) related to (i) health and safety measures for persons and property at or affected by the Project, (ii) security measures for persons and property at the Project, (iii) actions necessary or advisable to protect persons and property in the event of emergency conditions at the Project, (iv) actions and activities necessary or advisable to comply with all applicable laws and permitting requirements and any inspections of the Project, (v) actions and activities necessary or advisable to (x) preserve the value of the Project and its assets and (y) transition the Project to a state appropriate for care and maintenance (including maintaining appropriate ventilation systems, pumping systems, access to the Project and any inventory mined prior to the Petition Date), (vi) maintaining and caring for the Project in accordance with Good Industry Practice and (vii) actions, activities or other measures permitted by the Approved Budget. Other than as may be incidental to their transition to care and maintenance mode, in no circumstances shall the Borrower or its Subsidiaries conduct, or incur costs, in connection with development and mining and processing activities designed to produce additional inventory after the Petition Date; it being understood that the Debtors may process and sell inventory mined prior to the Petition Date or in the transition to care and maintenance of the Project;
- (v) Neither the Borrower nor its Subsidiaries shall create or permit to exist any other superpriority claim which is *pari passu* with or senior to the Obligations, except for claims in respect of the Carve-Out or the Administration Charge;
- (w) Unless authorized by the Administrative Agent in writing, no materials, fixtures, or articles of personal property incorporated into the Project may be installed under any security agreement or other agreement whereby the seller reserves or purports to reserve (i) title or the right of removal or repossession, (ii) the right to consider such items as personal property after their incorporation into the Project, or (iii) a security interest, in each case after such material, fixture or article of personal property is incorporated into the Project;
- (x) The Obligors shall not transfer any cash or cash equivalents that constitute Collateral to a Subsidiary of Parent that is not an Obligor without the prior written approval of the Majority Lenders;
- (y) The Borrower and its Subsidiaries shall not make any payment or prepayment or redemption or acquisition for value or any cancellation or other retirement of any Prepetition Indebtedness or other obligations arising prior to the Petition Date, except the obligations in respect of the Working Capital Facility, solely to the extent paid from proceeds of WCF Collateral and obligations paid pursuant to authority granted under a First Day Order; provided that the Obligors shall be permitted to make adequate protection payments in respect of certain interest, professional fees and expenses incurred by the Prepetition Secured Parties, as set forth in the DIP Order; and



- (z) During any Rolling Four-Week Testing Period, the Obligors shall not allow the (1) total aggregate disbursements, minus (2) disbursements in respect of (i) interest, fees and expenses in relation to this Agreement and any of the Obligors' other funded debt obligations; (ii) Adequate Protection Obligations; (iii) DIP Professional Fees (as defined in the Interim Order); and (iv) professional fees paid by the Obligors on behalf of themselves or any other parties (the "**Total Tested Disbursements**") to exceed 120% of such Total Tested Disbursements set forth in the Approved Budget for such Rolling Four-Week Testing Period. Additional disbursement variances, if any, from an Approved Budget, and any proposed amendments, supplements or modifications to an Approved Budget, shall be subject to the prior written approval of the Majority Lenders (the foregoing, collectively, the "**Permitted Variances**").

### 11.13 Milestones.

The Borrower shall, and shall cause each of its Subsidiaries and any other Obligor to comply with the following milestones (each of which may be extended or waived with the prior written consent of the Majority Lenders in their sole discretion, without further order of the Bankruptcy Court or the Canadian Court):

- (a) No later than one (1) calendar day following the Petition Date, the Debtors shall have filed a motion in the Bankruptcy Court seeking approval of this Agreement and the Loans, in form and substance acceptable to the Majority Lenders.
- (b) No later than five (5) Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim Order.
- (c) No later than fourteen (14) calendar days following the entry of the Interim Order by the Bankruptcy Court, the Canadian Court shall have granted the Initial Recognition Order and Interim DIP Recognition Order.
- (d) No later than fourteen (14) calendar days following entry of the Final DIP Order by the Bankruptcy Court, the Canadian Court shall have entered the Final DIP Recognition Order.
- (e) No later than fourteen (14) calendar days following entry of the Sale Approval Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance satisfactory to the Administrative Agent and Senior Lenders in their sole discretion, recognizing and enforcing the Sale Approval Order in Canada.
- (f) No later than fourteen (14) calendar days following the entry of the Bidding Procedures Order by the Bankruptcy Court, the Canadian Court shall have granted an order, in form and substance satisfactory to the Administrative Agent and Senior Lenders in their sole discretion, recognizing and enforcing the Bidding Procedures Order in Canada.
- (g) No later than ten (10) calendar days following the Petition Date, the Debtors shall have filed a motion (the "**Bidding Procedures Motion**") in form and substance acceptable to the Majority Lenders, for entry of an order (the "**Bidding Procedures Order**") (i) approving the procedures to be used and bid protections to be provided in connection with the Sale Transaction (as may be amended from time to time in accordance with their terms, the "**Bidding Procedures**"), (ii) setting the dates for the submission of bids, the auction (if any) and the hearing on the approval of the Sale Transaction and approving all notices related thereto and (iii) authorizing certain procedures related to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale Transaction.



- (h) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered a Bidding Procedures Order approving the Bidding Procedures Motion, which shall be in form and substance acceptable to the Majority Lenders.
- (i) No later than forty-five (45) calendar days following the Petition Date, the Bankruptcy Court shall have entered the Final Order.
- (j) No later than one hundred eight (108) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order (the “**Sale Approval Order**”) approving a sale (or sales) of all or substantially all of the business of the Debtors (the “**Sale Transaction**”), in form and substance acceptable to the Majority Lenders.
- (k) No later than one hundred twenty (120) calendar days following the Petition Date, the Sale Transaction shall be consummated.

## Article 12

### CONDITIONS PRECEDENT

Notwithstanding the following requirements in Sections 12.1, 12.2 and 12.3 of this Agreement, each Senior Lender’s commitment to lend (subject to the terms and conditions of this Agreement, including, without limitation, Article 12 of this Agreement) shall be effective upon the Senior Lenders’ receipt of the Obligors’ duly executed signatures pages to this Agreement and the Senior Lenders’ deliver of duly executed signature pages to the Obligors.

#### 12.1 Conditions Precedent to the Interim Loan.

No Senior Lender will be obligated to make available the Interim Loan (or any part thereof) or make the first Utilization under the Interim Loan unless each of the following conditions has been fulfilled, in each case in form and substance satisfactory to each Senior Lender (unless waived in accordance with Section 25.4 (*Amendment and Waiver*)).

- (a) **[Reserved].**
- (b) **Corporate Documentation.**

The Administrative Agent and the Senior Lenders shall have received all of the following (in each case in form and substance satisfactory to each Senior Lender):

- (i) Certified copies of the constitutional documents (including, without limitation, any shareholder agreements or declarations, as applicable) of each Obligor, attached in each case to an Officer’s Certificate of each Obligor, as applicable;
- (ii) A copy of the resolutions of the board of directors and shareholders meeting (as applicable) of each Obligor approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party and authorizing a specified person or persons to execute the Finance Documents to which it is a party on its behalf, attached in each case to the Officer’s Certificate of such Obligor;
- (iii) Specimen signatures of each person from each Obligor authorized by the resolutions to sign the Finance Documents to which it is a party, a copy of the duly registered powers of

attorney and any other notices or documents under or in connection with the Finance Documents to which it is a party, attached in each case to the Officer's Certificate of such Obligor;

- (iv) A certificate of each of the Obligors (signed by an authorized representative) confirming that (i) borrowing or guaranteeing or securing, as appropriate, the total commitments would not cause any borrowing, guarantee, security or similar limit binding on such Obligor to be exceeded; (ii) each copy document relating to it specified in this section is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement; and (iii) all representations and warranties contained in Article 8 (*Representations and Warranties*) are true, accurate and complete; and (iv) other than the Chapter 11 Cases, no event has occurred and is continuing or would result from the Finance Documents as at the date of this Agreement which constitutes an Event of Default; and
- (v) A certificate of status, compliance, good standing or like certificate with respect to each Obligor issued by the appropriate government official in the jurisdiction of its incorporation.

(c) **Finance Documents.**

The Administrative Agent and the Senior Lenders shall have received a copy of each Finance Document (other than any Note and any Transfer Certificate).

(d) **Fees.**

All invoiced and documented fees, premiums, expenses (including reasonable fees and expenses of counsel to the Agents and the Senior Lenders) and other out-of-pocket transaction costs incurred in connection with the transactions contemplated hereby and fees and expenses required to be paid under the Agency Fee Letter on the Entry Date to the Agents shall have been paid in full in accordance with the terms of the Interim Order.

(e) **Know Your Customer Information.**

Each of the Obligors shall have provided all information necessary to comply with any AML Laws, know your customer checks and other out-of-pocket identification procedures as may be requested by the Administrative Agent. If the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, each Senior Lender shall have received, or had access to, at least one (1) Business Days prior to the date hereof, a Beneficial Ownership Certification in relation to the Borrower.

(f) **Interim Order.**

The Administrative Agent and the Senior Lenders shall have received a copy of the Interim Order which Interim Order (x) shall have been entered on the docket of the Bankruptcy Court no later than five (5) Business Days after the Petition Date and (y) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Senior Lenders.

(g) **First Day Orders.**

The “first day” orders (including, without limitation, any motions related to the Finance Documents, cash management and any critical vendor or supplier motions), in form, scope and substance satisfactory to the Senior Lenders and their counsel shall have been entered in the Chapter 11 Cases (the “**First Day Orders**”).

(h) **Security.**

(i) All Obligations shall be secured by a perfected lien and security interest on the Collateral of the Obligors, and such Lien and security interests shall have the priorities set forth in the Interim Order, subject only to the Permitted Encumbrances and the Carve-Out and all filings and recordings as reasonably required by the Senior Lenders in respect thereof shall have been made and filing and recording fees and taxes with respect to such Encumbrances and security interests that are due and payable as of the Entry Date shall have been duly paid.

(ii) [Reserved].

(iii) The Senior Lenders shall have received evidence that no liens or encumbrances are recorded or registered against the Obligors (other than Permitted Encumbrances).

(i) [Reserved].

(j) **Approved Budget.**

The Senior Lenders shall have received a copy of the Initial Approved Budget.

(k) **Officer’s Certificate.**

The Administrative Agent and the Senior Lenders shall have received an Officer’s Certificate substantially in the form of Schedule F hereto.

**12.2 Conditions Precedent to the Final Loans.**

No Senior Lender will be obligated to make available the Final Loan (or any part thereof) or make the first Utilization under the Final Loan unless each of the following conditions has been fulfilled, in each case in form and substance satisfactory to each Senior Lender (unless waived in accordance with Section 25.4 (*Amendment and Waiver*)):

(a) [Reserved].

(b) **Officer’s Certificate.**

The Administrative Agent and the Senior Lenders shall have received an Officer’s Certificate substantially in the form of Schedule G hereto.

(c) **Approved Budget.**

The Senior Lenders shall have received a copy of the Approved Budget.

(d) **Security.**

The Encumbrances in favor of the Collateral Agent for the benefit of the Secured Parties have been perfected by the Final Order, and without the necessity of the execution of mortgages, security agreements, pledge agreement, financing statements or other agreements, and shall constitute first priority Encumbrances (subject only to the Carve-Out, the Administration Charge, the Lien securing the Working Capital Facility (solely with respect to WCF Collateral) and Encumbrances senior by operation of law, and otherwise as set forth in the Final Order).

(e) **Fees.**

All fees, premiums, expenses (including reasonable fees and expenses of counsel to the Agents and the Senior Lenders) and other out-of-pocket transaction costs incurred in connection with the transactions contemplated hereby shall have been paid in full in accordance with the terms of the Final Order.

(f) **Final Order.**

The Final Order (x) shall have been entered on the docket of the Bankruptcy Court no later than forty-five (45) days after the Petition Date and (y) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Senior Lenders.

### **12.3 Conditions Precedent to All Utilizations.**

No Senior Lender will be obligated to make available any Loan, including the Interim Loans and the Final Loans, (or any part thereof) unless each of the conditions applicable to the proposed Utilization under the Loan and each of the following conditions has been fulfilled, in each case in form and substance satisfactory to the Majority Lenders (or have been waived in accordance with Section 25.4 (*Amendment and Waiver*)):

(a) **No Default.**

An Officer's Certificate of the Borrower confirming that no Default or Event of Default shall have occurred and be continuing or would result from the making of the proposed Loan.

(b) **Representations.**

An Officer's Certificate of the Borrower shall have been delivered to the Administrative Agent and the Senior Lenders confirming that the representations and warranties in the Finance Documents to be made by each Obligor are true, accurate and complete in all material respects.

(c) **No Change of Control.**

No Change of Control shall have occurred.

(d) **Purpose.**

The Administrative Agent and the Senior Lenders shall have received an Officer's Certificate of the Borrower confirming that the proposed loan will be used for the purpose specified in Section 2.3 (*Use of Proceeds*).

(e) **No MAE.**

The Administrative Agent and the Senior Lenders shall have received an Officer's Certificate of the Borrower confirming that since the Petition Date, no Material Adverse Effect has occurred and is continuing.

(f) **Payment of Fees.**

To the extent invoiced and documented at least two (2) days prior to the requested Utilizations, all fees payable in accordance with the Finance Documents, and all costs and expenses due at such time have been paid, or irrevocable instructions, satisfactory to the Senior Lenders, shall be in place to pay such amounts and fees simultaneously with such requested Utilization.

(g) **Utilization Request.**

The Borrower shall have delivered a Utilization Request to the Administrative Agent no later than 12:00 noon New York time (x) one (1) Business Day prior to the proposed Utilization Date for the Interim Loans and (y) two (2) Business Days prior to the proposed Utilization Date for the Final Loans (in each case, or such later date approved by the Majority Lenders at their reasonable discretion).

### Article 13 EVENTS OF DEFAULT AND REMEDIES

#### 13.1 Events of Default.

Subject to the provisions of Section 362 of the Bankruptcy Code to the extent provided in the DIP Order, with respect to the Debtor and without notice, application or motion, hearing before, or order of the Bankruptcy Court or any notice to any Debtor, the occurrence of any of the following events, following the lapse of the applicable cure period (if any) set forth below, or the issuance of notice (if any) in respect thereof, shall constitute an “**Event of Default**”:

- (a) If the Borrower fails to pay on or before the due date, (x) any principal amount due to the Senior Lenders or (y) any other amount payable by it to any Finance Party (unless the failure to pay is remedied within two (2) Business Days);
- (b) [reserved];
- (c) Any Obligor shall default in the due performance or observance of any term, condition or provision of a Finance Document to which they are a party, not otherwise specified in this Section 13.1 (*Events of Default*) and, other than in the case of any breach of Section 11.2 (*DIP Budget and Variance Reporting*), Section 11.12 (*Negative Covenants*), Section 11.13 (*Milestones*) and Section 11.3(a)(i) (*Notifications to the Senior Lenders*) (in each case for which no cure period shall apply), such breach remains unremedied for a period of ten (10) Business Days after the earlier of: (i) written notice by the Administrative Agent to the Borrower (acting at the direction of the Majority Lenders), and (ii) any Obligor becoming aware of such breach;
- (d) the Borrower makes any representation or warranty under any Finance Document to which it is a party, or in any certificate, Financial Statement or other document furnished by it to any Secured Party, which is incorrect or incomplete when made or deemed to be made (except to the extent any such representation or warranty expressly relates to an earlier date, and in such case, shall be true and correct on and as of such earlier date) and, to the extent such representation or warranty is not already qualified by materiality, such representation or warranty is incorrect or incomplete in a material respect when made or deemed to be made and in each case the circumstances so misrepresented are (i) susceptible to cure and (ii) not corrected within ten (10) Business Days after

the earlier of (A) written notice by the Administrative Agent to the Borrower (acting at the direction of the Majority Lenders), and (B) any Obligor becoming aware of such breach;

- (e) [reserved];
- (f) the Borrower (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt (other than Debt subject to the Automatic Stay) having a principal amount in excess of \$1,000,000, and any applicable grace period in relation thereto as provided for under the applicable instrument or agreement evidencing such Debt has expired; (ii) defaults in the observance or performance of any other agreement or condition in relation to any such Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs or condition exists, the effect of which is to cause, or to permit the holder of such Debt to declare such Debt to become due prior to its stated maturity date, in each case to the extent not subject to the Automatic Stay; or (iii) fails to pay any Adequate Protection Obligations when due and payable in accordance with the DIP Order;
- (g) [reserved];
- (h) [reserved];
- (i) an order is made or a resolution is passed for the winding up, liquidation or dissolution of the Borrower;
- (j) [reserved];
- (k) any Finance Document is repudiated, contested or disaffirmed by any Obligor in whole or in part, ceases to be in full force and effect, or is invalidated, becomes unlawful, or rendered unenforceable by any act, regulation or governmental action or is determined to be invalid or unenforceable by a court or other judicial entity or if any Obligor has ceased to perform its obligations under any Finance Document;
- (l) security interests intended to be granted by or pursuant to this Agreement or any other Finance Document over the Collateral, shall not be valid, perfected, first priority security interests (subject, in the case of the Collateral, to the existence of any Permitted Encumbrances) in favor of the Collateral Agent for the benefit of the Secured Parties and enforceable thereby;
- (m) an adverse final judgment, order, writ of execution, garnishment, attachment, arbitral award or similar process that is not capable of further appeal, for an amount in excess of \$1,500,000, is issued or levied against the Borrower, the Collateral, in each case, to the extent not subject to the automatic stay under the Chapter 11 Cases; provided that, to the extent that any such action or process is appealable or contestable, such judgment, order, writ of execution, garnishment, attachment, arbitral award or similar process remains unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of thirty (30) days after the right of appeal or contest arises;
- (n) all or any material portion of the Collateral is attached, sold, transferred, Encumbered or assigned by a Person other than the Secured Parties or without the consent of the Senior Lenders (other than pursuant to a Permitted Asset Disposition or Permitted Encumbrance, as applicable) and in the case of such attachment shall remain unlifted, unstayed or undischarged for a period of thirty (30) days;
- (o) an Encumbrancer, or any other Person, other than the Secured Parties, legally takes possession of (i) any Collateral Account (other than by the collateral agent under the First Lien Facility), or (ii)

any portion of the Collateral with a value in excess of \$1,500,000 by appointment of a receiver, receiver and manager, or otherwise but excluding the legal possession of any cash collateral held as security by third parties;

- (p) the Borrower abandons all or any material portion of the Collateral other than in regard to its transition into care and maintenance operations;
- (q) [Reserved];
- (r) the Borrower fails to obtain, or loses the right to, or benefit of, a Material Project Authorization, or any Material Project Authorization in respect of the transactions contemplated by the Finance Documents is modified in a manner that has a Material Adverse Effect; provided, that the foregoing shall not constitute the occurrence of an Event of Default if such circumstance is capable of being remedied and the Borrower is diligently pursuing and obtains a replacement of such Material Project Authorization within forty-five (45) days after failing to obtain or losing the right to, or benefit of, a Material Project Authorization;
- (s) a Change of Control occurs;
- (t) any Material Project Document is terminated (other than at scheduled maturity, with the prior written consent of the Majority Lenders) or otherwise becomes invalid, illegal or otherwise ceases to be in full force and effect; provided, that the foregoing shall not constitute the occurrence of an Event of Default in the case of the NV Energy Power Supply Contract, if the Majority Lenders have, acting reasonably, determined that the NV Energy Power Supply Contract is capable of replacement;
- (u) (i) the Borrower or any director or officer thereof has violated, any AML Laws, Anti-Corruption Laws or Sanctions, or (ii) any employee or agent of the Borrower has violated any AML Laws, Anti-Corruption Laws or Sanctions, unless such Obligor takes action to remedy such violation as may be reasonably acceptable to the Administrative Agent within ten (10) days of acquiring actual knowledge of such violation and thereafter continues to take such action as may be reasonably acceptable to the Administrative Agent;
- (v) the occurrence of an Expropriation Event which is continuing for thirty (30) days or more; provided, that such cure period shall apply only if the Obligors are actively and diligently pursuing a resolution to regain ownership and control over the Project substantially as held prior to such event;
- (w) failure by any Obligor to be in compliance in all material respects with the applicable provisions of any Finance Document, the DIP Order or DIP Recognition Order, after giving effect to applicable cure periods set forth herein or therein;
- (x) any request made by any Obligor for, or the reversal, modification, amendment, stay, reconsideration or vacatur of any DIP Order, as entered by the Bankruptcy Court, or any DIP Recognition Order, as granted by the Canadian Court, in each case, without the prior written consent of the Majority Lenders;
- (y) the filing of any application by any Obligor (other than the application for financing provided by a third party which seeks authority to pay all of the Obligations in full in cash upon the closing of such financing) for the approval of (or an order is entered by the Bankruptcy Court approving) any claim arising under section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy



Code or any security, mortgage, collateral interest or other Encumbrance in any of the Chapter 11 Cases which is *pari passu* with or senior to the Encumbrances securing the Obligations, excluding (i) the Carve-Out, (ii) the Administration Charge, (iii) solely with respect to the WCF Collateral, the Encumbrances securing the Working Capital Facility, (iv) prior to the entry of the Final Order, any Prepetition Trisura Lien, (v) Encumbrances arising under the DIP Order or pursuant to any other financing agreement made with the prior written consent of the Majority Lenders or (vi) as provided in the First Day Orders with the prior written consent of the Majority Lenders;

- (z) any Obligor (or any direct or indirect non-Debtor affiliate or Subsidiary of an Obligor) commences (or supports) any action (other than an action permitted by the DIP Order and the DIP Recognition Order) seeking or consenting to, or any order is entered granting, (i) the invalidation, subordination or other challenge to the Prepetition Secured Obligations, the Prepetition Funded Debt Liens, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, the Encumbrances securing the Obligations or the DIP Superpriority Claims (as defined in the DIP Order) or (ii) any relief under sections 506(c) or 552(b) of the Bankruptcy Code with respect to any Prepetition Collateral (as defined in the DIP Order) (including cash collateral), any Collateral or against any of the Prepetition Secured Parties, the Agent or the Senior Lenders;
- (aa) (i) any Obligor files a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify any Finance Document or any DIP Order or DIP Recognition Order, or to disallow any Obligations, in whole or in part, or (ii) any material provision of any Finance Document, the DIP Order, any DIP Recognition Order or any other order of the Bankruptcy Court or Canadian Court approving the Obligors' use of Cash Collateral (as defined in the DIP Order), shall for any reason cease to be valid and binding (without the prior written consent of the Majority Lenders);
- (bb) the entry of an order by the Bankruptcy Court in favor of the Creditors' Committee (if any), any ad hoc committee or any other party in interest, (i) granting such party standing to pursue any claims against the Senior Lenders or the Prepetition Secured Parties, (ii) sustaining an objection to claims of the Senior Lenders or the Prepetition Secured Parties or (iii) avoiding any liens held by the Senior Lenders or the Prepetition Secured Parties, *provided*, that the foregoing shall not be deemed to prohibit the investigation by any such committee of any such claims or liens in respect of the Prepetition Secured Obligations in accordance with the terms of the DIP Order;
- (cc) without the prior written consent of the Majority Lenders, the filing with the Bankruptcy Court of a motion seeking approval of a sale under section 363 of the Bankruptcy Code or a plan of reorganization or liquidation in any of the Chapter 11 Cases that, in either case, does not provide for indefeasible payment in full in cash of all Obligations upon closing of such sale or the effective date of such plan;
- (dd) the appointment in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code);
- (ee) without the prior written consent of the Majority Lenders, the granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the Collateral with an aggregate value of at least \$1,500,000;
- (ff) the conversion of any Chapter 11 Case into a case pursuant to Chapter 7 of the Bankruptcy Code;



- (gg) the termination of any of the Debtors' exclusive right to propose a plan of reorganization under Chapter 11 of the Bankruptcy Code;
- (hh) a dismissal of any of the Chapter 11 Cases or Recognition Proceedings;
- (ii) without the prior written consent of the Majority Lenders, a request by the Debtors to use cash collateral or to obtain financing under section 364 of the Bankruptcy Code (other than pursuant to this Agreement), unless such financing would repay in full in cash all Obligations upon consummation thereof;
- (jj) without the consent of the Majority Lenders, the filing of any motion seeking approval of a sale of any Collateral;
- (kk) a Material Adverse Effect has arisen after the Petition Date and is continuing;
- (ll) the failure to meet any Milestone; or
- (mm) the entry of an Interim Order or Final Order in form or substance that is not acceptable to the Majority Lenders in their sole discretion.

### 13.2 Remedies Upon Default.

- (a) Upon the occurrence, and during the continuance, of any Event of Default, subject to the terms of the DIP Order and the Remedies Notice Period, the Majority Lenders or the Administrative Agent as directed by the Majority Lenders may, by notice given to the Borrower, take any of the following actions:
  - (i) declare all Obligations to be immediately due and payable; and/or
  - (ii) terminate this Agreement and any other Finance Documents as to any future liability or obligation of the Agent and the Senior Lenders, but without affecting any of the Encumbrances securing the Obligations, the Loans or any other Obligation;
  - (iii) terminate, reduce or restrict the ability of the Obligors to use any cash collateral and the proceeds of the Loans (other than during the Remedies Notice Period referenced below, cash collateral for payroll and other expenses critical to keep operating the business of the Obligors, subject to the Approved Budget) (any such declaration made by the Administrative Agent (acting at the direction of the Majority Lenders) to the Obligors, a "**Termination Declaration**" and the date which is the earliest to occur of any such Termination Declaration and the Maturity Date being herein referred to as the "**Termination Declaration Date**"); provided that, (i) the Termination Declaration shall not be effective until notice has been provided by electronic mail to counsel to the Debtors, counsel to the Creditors' Committee (if any), and the U.S. Trustee (the "**Termination Declaration Notice**") and (ii) four (4) Business Days following the receipt of the Termination Declaration Notice by the parties listed in clause (i) of this proviso (the "**Remedies Notice Period**"), the Agent shall have relief from the automatic stay without any further action in the Chapter 11 Cases or the Recognition Proceedings and may set off against deposits and financial assets of the Obligors and foreclose on all or any portion of the Collateral other than the WCF Collateral, and during the Remedies Notice Period, the Obligors and the Creditors' Committee (if any) shall be entitled to seek an emergency hearing before the Bankruptcy Court for the sole purpose of contesting whether an Event

of Default has occurred; and, unless during such period the Bankruptcy Court determines that an Event of Default has not occurred and/or is not continuing or the Bankruptcy Court orders otherwise, the automatic stay, as to all of the Senior Lenders and the Agents, shall automatically be terminated at the end of the Remedies Notice Period and without further notice or order;

- (iv) to the extent permitted by Applicable Law and by the DIP Order:
  - (A) direct the Collateral Agent to realize upon all or any part of the Security;
  - (B) take such actions and commence such proceedings (or direct the Collateral Agent to take such actions or commence such proceedings) as may be permitted at law or in equity (whether or not provided for herein or in the Finance Documents) including, but not limited to, delaying, postponing or waiving any such proceedings, as the Majority Lenders may determine is admissible, in their sole and absolute discretion at such times and in such manner as the Majority Lenders, in their sole discretion, may consider expedient;
  - (C) take possession of the Project; and
  - (D) cancel any or all Unused Commitments,

and all of the foregoing without any additional notice, presentment, demand, protest, notice of protest, dishonor or any other action except as required by law. The rights and remedies of the Administrative Agent, the Senior Lenders and the Collateral Agent hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Applicable Law or by any of the other Finance Documents.

- (b) It is understood and agreed that if the Loans are accelerated or otherwise become due prior to the Maturity Date (including the acceleration of claims by operation of law), the Exit Fee will also automatically be due and payable and shall constitute part of the Obligations with respect to the Loans, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Senior Lender's lost profits as a result thereof. Any such Exit Fee payable shall be presumed to be the liquidated damages sustained by each Senior Lender as the result of the early prepayment and each of the Obligors agrees that it is reasonable under the circumstances currently existing. Each of the Obligors expressly waives (to the fullest extent it may lawfully do so) the provisions of any present or future statute or law that prohibits or may prohibit the collection of the foregoing amounts in connection with any such acceleration, any rescission of such acceleration. Each of the Obligors expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Exit Fee is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Exit Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Senior Lenders and the Obligors giving specific consideration in this transaction for such agreement to pay the Exit Fee; and (D) the Obligors shall be estopped hereafter from claiming differently than as agreed to in this paragraph.
- (c) The Administrative Agent (acting at the direction of the Majority Lenders) shall promptly notify the Borrower, the Collateral Agent and each Senior Lender upon the cessation of an Event of Default.

### 13.3 Set-Off upon Event of Default.

Upon the occurrence and during the continuance of an Event of Default, the Senior Lenders may, without notice to the Borrower or to any other Person, and subject to the terms of the DIP Order, combine, consolidate and merge all or any of the Borrower's accounts with, and liabilities to, the Senior Lenders and set off, any indebtedness and liability of the Senior Lenders to the Borrower, matured or unmatured, against and on account of the Obligations when due.

### 13.4 Application of Proceeds.

The proceeds received by any Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Agents of their remedies, and any other funds realized by any Agent during the continuance of an Event of Default, shall be applied, subject in all respects to the terms of the DIP Order and to Applicable Law, in full or in part, together with any other sums then held by the Agents pursuant to this Agreement, promptly by the Administrative Agent as follows:

- (a) *first*, (x) to the payment of all fees, expenses, losses, indemnities and other amounts payable to the Agents under the Finance Documents and then (y) to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Agents (acting on behalf of the Senior Lenders) and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Agents in connection therewith and all amounts for which the relevant Agent is entitled to indemnification pursuant to the provisions of any Finance Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;
- (b) *second*, to the payment in full in cash of all amounts owing in respect of interest and fees (including, but not limited to, the Exit Fee) under this Agreement;
- (c) *third*, to the payment in full in cash, *pro rata*, of the principal and other remaining obligations hereunder and all other Obligations, in each case equally and ratably in accordance with the respective amounts thereof then due and owing; and
- (d) *fourth*, the balance, if any, to the Person lawfully entitled thereto (including the Obligors) or as a final and non-appealable judgment of a court may direct.

## Article 14 CHANGES TO PARTIES

### 14.1 Assignment by Senior Lenders.

- (a) This Agreement and the other Finance Documents shall enure to the benefit of and be binding upon the parties hereto and thereto, their respective successors and any permitted assignee of some or all of the parties' rights or obligations under this Agreement and the other Finance Documents as permitted under this Section 14.1 (*Assignment by Senior Lenders*).
- (b) A Senior Lender (the "**Existing Lender**") may assign or transfer all or any part of its rights in respect of the Obligations, this Agreement and the other Finance Documents to or in favor of any Permitted Transferee without the consent of the Borrower and have its corresponding obligations hereunder and thereunder assumed by such Person; provided, that:

- (i) except with respect to an assignment or transfer to any Senior Lender or Affiliate of any Senior Lender, no Senior Lender shall be permitted to make a partial assignment or transfer of Loans in a principal amount of less than \$5,000,000;
  - (ii) the Borrower's consent to assignment shall be required (which consent shall not be unreasonably withheld, delayed or conditioned) for any assignment to a Person other than an existing Senior Lender or an Affiliate thereof, unless an Event of Default has occurred and is continuing and in such case a Senior Lender may make an assignment or transfer to any Person and such transfer or assignment shall not require the consent of the Borrower and shall not be subject to any restriction (including those set forth in this Section 14.1 (*Assignment by Senior Lenders*)); and
  - (iii) a Note, if applicable, and all or any part of the Senior Lenders' rights in respect of the Obligations, this Agreement and any of the other Finance Documents shall be assigned or transferred together.
- (c) Any assignment made hereunder shall become effective when the Borrower has been notified thereof by the Administrative Agent and the Administrative Agent receives:
- (i) a duly completed and executed Transfer Certificate which is delivered by the Existing Lender and the Permitted Transferee; and
  - (ii) any documents required by local counsel and requested by the Majority Lender to ensure the assignee Senior Lender receives the benefit of the Security, and

any such assignee shall be treated as a party to this Agreement for all purposes of this Agreement and the other Finance Documents and shall be entitled to the full benefit hereof and thereof and shall be subject to the obligations of the Senior Lenders to the same extent as if it were an initial party in respect of the rights assigned to it and obligations assumed by it and the Senior Lender making such assignment shall be released and discharged accordingly.

- (d) If the consent of the Borrower is required for any assignment, the Administrative Agent shall not be obligated to accept a Transfer Certificate if the Borrower withholds its consent.
- (e) The Senior Lenders may provide to any permitted assignee or transferee such information, including Confidential Information, concerning this Agreement, the other Finance Documents, and the financial position and the operations of the Obligors as, in the reasonable opinion of the Senior Lenders, may be relevant or useful in connection with this Agreement, the other Finance Documents or any portion thereof proposed to be acquired by such assignee or transferee; provided, that each recipient of such information agrees not to disclose such information to any other Person except as permitted pursuant to Section 23.1(d) (*Confidential Information*).
- (f) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a copy of each assignment delivered to it and a register for the recordation of the names and addresses of the Senior Lenders, and the Commitments of, and principal amounts of (and stated interest on) the Loans owing to, each Senior Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Senior Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Senior Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Senior Lender, at any reasonable time and from time to time upon reasonable prior notice.

- (g) [Reserved].
- (h) Any Senior Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Obligors or any of the Obligors' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Senior Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided, that (i) such Senior Lender's obligations under this Agreement shall remain unchanged, (ii) such Senior Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrower, the Administrative Agent and Senior Lenders shall continue to deal solely and directly with such Senior Lender in connection with such Senior Lender's rights and obligations under this Agreement.
- (i) Any agreement or instrument pursuant to which a Senior Lender sells such a participation shall provide that such Senior Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Senior Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver of Section 25.4 (*Amendment and Waiver*) that affects such Participant and that requires the consent of each Senior Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.3 (*Set-Off upon Event of Default*) as though it were a Senior Lender; provided, that such Participant agrees to be subject to Section 15.25 (*Payments*) as though it were a Senior Lender. Each Senior Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Finance Documents (the "**Participant Register**"); provided, that no Senior Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Finance Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the proposed United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Senior Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.
- (j) Any Senior Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Senior Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; provided, that no such pledge or assignment shall release such Senior Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Senior Lender as a party hereto.
- (k) The Borrower agrees that each Participant shall be entitled to the benefits of Sections 6.1 and 7.3 (subject to the requirements and limitations therein, including the requirements under Section 6.1(g) (it being understood that the documentation required under Section 6.1(g) shall be delivered to the participating Senior Lender)) to the same extent as if it were a Senior Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant shall not be entitled to receive any greater payment under Section 6.1 or 7.3, with respect to any

participation, than its participating Senior Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Applicable Law that occurs after the Participant acquired the applicable participation.

- (l) In connection with any assignment, participation or pledge made pursuant to this Section 14.1 (*Assignment by Senior Lenders*), the Borrower agrees to enter into such documents as may reasonably be required by a Senior Lender to evidence such assignment, participation or pledge.

#### **14.2 Assignment by Borrower.**

The Borrower shall not assign all or any part of its rights, benefits or obligations under this Agreement or any of the other Finance Documents to which it is a party without the prior written consent of the Senior Lenders.

### **Article 15 ADMINISTRATIVE PARTIES**

#### **15.1 Appointment of the Administrative Agent and the Collateral Agent.**

- (a) Each Senior Lender hereby irrevocably appoints and authorizes each of the Administrative Agent and the Collateral Agent to act on its behalf as its agent under and in connection with the Finance Documents. By its signature below, each of the Administrative Agent and the Collateral Agent (or any successor thereto pursuant to this Article 15) accepts such appointment.
- (b) Each Senior Lender irrevocably authorizes each of the Administrative Agent and the Collateral Agent in such respective capacity to:
  - (i) take such actions, perform the duties and to exercise the rights, powers and authorities that are specifically delegated to the Administrative Agent or the Collateral Agent, as applicable, under the Finance Documents, together with any other incidental rights, powers and authorities as are reasonably incidental thereto; and
  - (ii) enter into, deliver and perform each Finance Document expressed to be entered into by the Administrative Agent or the Collateral Agent, as applicable.
- (c) The provisions of this Article 15 (*Administrative Parties*) are solely for the benefit of the Finance Parties and the Borrower shall not have rights as a third-party beneficiary of any such provision. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under pursuant to, the Finance Documents, each Agent shall have all of the rights, immunities, indemnities and other protections granted to it under this Agreement (in addition to those that may be granted to it under the terms of such other agreement or agreements).

#### **15.2 Instructions to the Agents.**

- (a) Notwithstanding any provision of this Agreement or the other Finance Documents to the contrary, before taking or omitting any action to be taken or omitted by any Agent under the terms of this Agreement and the other Finance Documents, such Agent may seek the written direction of the Majority Lenders (which written direction may be in the form of an email), and such Agent is entitled to rely (and is fully protected in so relying) upon such direction. No Agent shall be liable with respect to any action taken or omitted to be taken by it in accordance with such direction. If any Agent requests such direction with respect to any action, such Agent is entitled to refrain from



such action unless and until such Agent has received such direction, and such Agent does not incur liability to any Person by reason of so refraining. In the absence of an express statement in the Finance Documents regarding which Senior Lenders shall direct in any circumstance, the direction of the Majority Lenders shall apply and be sufficient for all purposes. The instructions of the Majority Lenders shall be binding on all Senior Lenders.

- (b) Notwithstanding anything else to the contrary herein or in the other Finance Documents, whenever reference is made in this Agreement or any other Finance Document to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by any Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by any Agent, it is understood that such Agent shall be acting at the direction of the Majority Lenders and shall be fully protected in acting pursuant to such directions.

### **15.3 Duties of the Agents.**

- (a) The Agents' duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Administrative Agent shall forward promptly to the Senior Lenders any document which it receives under this Agreement and the other Finance Documents, including notices, certificates, reports, opinions and agreements, which are delivered to the Administrative Agent for the Senior Lenders.
- (c) No Agent shall have any responsibility for the accuracy or completeness of any information supplied by any Person in connection with the Project or the Finance Documents or for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other document referred to herein or therein or provided for herein or therein or for any recitals, statements, representations or warranties made by the Borrower or any other Person contained in this Agreement or any other Finance Document or in any certificate or other document referred to or provided for in or received by such Agent, hereunder or thereunder. No Agent shall be liable as a result of any failure by the Borrower or its Affiliates or any Person party hereto or to any other Finance Document to perform their respective obligations hereunder or under any other Finance Document or any document referred to or provided for herein or therein or as a result of taking or omitting to take any action hereunder or thereunder or in relation to any Finance Document, except to the extent set forth in this Agreement. No Agent shall be liable for the satisfaction of any condition set forth in this Agreement, other than to confirm receipt of items expressly required to be delivered to such Agent.
- (d) No Agent shall be obligated to monitor or enquire whether a Default or Event of Default has occurred. No Agent shall be deemed to have knowledge of or notice of the occurrence of a Default or Event of Default unless such Agent has received a written notice from a Senior Lender or the Borrower, referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "Notice of Default." If any Agent has received such a "Notice of Default," such Agent shall deliver a copy thereof to each Senior Lender. Each Agent shall take such action with respect to such Default or Event of Default as is provided in Article 13 (*Events of Default and Remedies*).
- (e) No Agent shall be bound to inquire as to (A) whether or not any representation made by any other Person in connection with any Finance Document is true, (B) the occurrence or otherwise of any

Default or Event of Default, (C) the performance by any other Person of its obligations under any of the Finance Documents or (D) any breach or default by any other Person of its obligations under any of the Finance Documents.

- (f) Each Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is a party (and no others shall be implied).
- (g) It is understood and agreed by each Senior Lender (for itself and any Person claiming through it) that it has itself been and will continue to be, solely responsible for making its own independent appraisal of and investigations into, the financial condition, creditworthiness, condition, affairs, status and nature of each Person and, accordingly, each such Senior Lender warrants to the Agents that such Senior Lender has not relied on and will not hereafter rely on any Agent:
  - (i) in making its decision to enter into this Agreement, any other Finance Document or any amendment, waiver or other modification hereto or thereto;
  - (ii) to check or inquire on its behalf into the adequacy, accuracy or completeness or any information provided by any Person in connection with any of the Finance Documents or the transactions therein contemplated (whether or not such information has been or is hereafter circulated to such Person by any Agent);
  - (iii) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of any Person.
- (h) No Agent shall be responsible for or have any obligation whatsoever to assure (i) that the Collateral exists or is owned (whether in fee or by leasehold) by the Person purporting to own it, or is cared for, protected, or insured or has been encumbered, (ii) the genuineness or value of any Collateral or the validity or sufficiency of any agreement contained therein or the validity of the title of any Obligor to the Collateral, or (iii) that the liens granted to the Collateral Agent have been properly or sufficiently or lawfully created, perfected, protected, or enforced, or are entitled to any particular priority. Notwithstanding anything contained in the Finance Documents or otherwise to the contrary, no Agent shall have any duty to (i) file or prepare any financing or continuation statements or record any documents or instruments in any public office for purposes of creating, perfecting or maintaining any lien or security interest created under the Finance Documents or otherwise; (ii) take any steps to preserve rights against any Person with respect to any Collateral; (iii) insure, monitor or maintain the Collateral; (iv) pay any taxes, charges, assessments or liens upon the Collateral; or (v) take any action to protect against any diminution in value of the Collateral.

#### **15.4 Rights of the Agents.**

- (a) Notwithstanding any other provision of the Finance Documents, no Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request, instruction or direction of the Majority Lenders (or such other number or percentage of the Senior Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment.
- (b) No Agent shall have any duty to take any discretionary actions or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Finance Documents to which it is a party that such Agent is required to exercise at the direction of the Majority Lenders (or such other number or percentage of Senior Lenders as shall be expressly provided for herein or



in the other Finance Document); provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Finance Document, the DIP Order or Applicable Law. No direction given to any Agent (whether given by the Senior Lenders or the Borrower, as the case may be, or otherwise by any other Person) which imposes, or purports to impose, upon such Agent any obligation not set forth in or arising under any Finance Document shall be binding upon such Agent unless such Agent elects, at its sole option, to accept such direction.

- (c) Notwithstanding anything to the contrary in any Finance Document, no Agent shall be required to exercise any rights or remedies under any Finance Document or give any consent under any Finance Document or enter into any agreement amending, modifying, supplementing or waiving any provision of any Finance Document, including this Agreement.
- (d) No provision of this Agreement or any Finance Document shall require any Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or under any Finance Document or in the exercise of any of its rights or powers.

#### **15.5 No Fiduciary Duties.**

- (a) Nothing in the Finance Documents makes an Agent a trustee or fiduciary of any other Person;
- (b) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing; and
- (c) no Agent shall be bound to account to any Senior Lender for any sum or the profit element of any sum received by it for its own account.

#### **15.6 Business with the Borrower.**

- (a) Each Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower.
- (b) If it is also a Senior Lender, each Agent has the same rights and powers under the Finance Documents, as applicable, as any other Senior Lender and may exercise those rights and powers as though it were not an Agent.
- (c) Each Agent may carry on any business with the Borrower or its related entities (including acting as an agent or a trustee in connection with any other financing).

#### **15.7 Responsibility for Documentation.**

No Agent is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any statement or information (whether oral or written) made, given or supplied by any Person in or in connection with any Finance Document, as applicable;
- (b) the legality, validity, effectiveness, adequacy, completeness or enforceability of any Finance Document or the Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Security; or

- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

No Agent shall, except as expressly set forth herein and in the other Finance Documents to which such Agent is a party, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

### **15.8 Exclusion of Liability.**

- (a) Nothing in this Agreement shall obligate any Agent to carry out:
  - (i) any “know your customer” or other checks in relation to any Person; or
  - (ii) any check on the extent to which any transaction contemplated by the Finance Documents might be unlawful for any Senior Lender,

on behalf of any Senior Lender and each Senior Lender confirms to each Agent that such Senior Lender is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by any Agent.

- (b) Without prejudice to any provision of any Finance Document excluding or limiting an Agent’s liability, any liability of an Agent arising under or in connection with any Finance Document or the Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered but without reference to any special conditions or circumstances known to such Agent at any time which increase the amount of such loss. In no event shall any Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not foreseeable, whether or not such Agent has been advised of the possibility of such loss or damages and regardless of whether the claim for loss or damage is made in negligence, breach of contract, duty or otherwise.
- (c) No Agent shall be responsible for delays or failures to perform any act or fulfill any duty, obligation or responsibility as a result of any occurrence beyond its control. Such acts shall include, but not be limited to, any act of God, riots, wars, fires, earthquakes or other natural disasters, terrorism, provision of any present or future law or regulation or act of any governmental authority, civil unrest, labor dispute, disease, epidemic or pandemic, quarantine, national emergency, utility failure, computer hardware or software failure, malware or ransomware attack, communications system failure, unavailability of the Federal Reserve Bank wire or telex system or other applicable wire or funds transfer system, or unavailability of any securities clearing system.

### **15.9 Senior Lender’s Indemnity.**

- (a) Without limiting the liability of the Borrower under the Finance Documents, each Senior Lender shall indemnify (in proportion to such Senior Lender’s share of total outstanding Loans or, if no Loans are then outstanding, its share of the Total Commitments), each Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by such Agent, except to the extent that the cost, loss or liability is caused by such Agent’s gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Each Senior Lender’s obligations under this Section 15.9 shall survive the termination of this Agreement, payment of the

obligations hereunder, the resignation or removal of any Agent or any assignment of rights by, or the replacement of, a Senior Lender.

- (b) The Borrower shall immediately on demand reimburse any Senior Lender for any payment such Senior Lender makes to an Agent under this Section 15.9 (*Senior Lender's Indemnity*).

#### **15.10 Reliance by Agents.**

The Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agents also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Senior Lender, the Agents may presume that such condition is satisfactory to such Senior Lender unless such Agent shall have received notice to the contrary from such Senior Lender prior to the making of such Loan. The Agents may consult with legal counsel (who may be counsel for the Borrower or any Senior Lender), independent accountants and other experts selected by any such Agent, and shall not be liable for any action taken or not taken by the Agents in accordance with the advice of any such counsel, accountants or experts.

#### **15.11 Delegation of Duties.**

Each Agent may perform any and all of its respective duties and exercise its rights and powers hereunder or under any other Finance Document by or through any one or more sub agents appointed by such Agent. The exculpatory provisions of this Article shall apply to any such sub agent of any Agent. The Agents shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agents acted with gross negligence or willful misconduct in the selection of such sub agents.

#### **15.12 Resignation and Replacement of the Agents.**

- (a) Any Agent may resign by giving thirty (30) days' written notice to the Senior Lenders and the Borrower, in which case the Majority Lenders (with the consent of the Borrower so long as no Event of Default has occurred and is continuing) may appoint a successor Agent.
- (b) The Majority Lenders may remove any Agent from its appointment hereunder with or without cause by giving thirty (30) days' prior written notice to that effect to such Agent and the Borrower.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation or removal was given, the retiring e Agent (with the consent of the Borrower so long as no Event of Default has occurred and is continuing) may (but shall not be obligated to) appoint a successor Agent. If no successor Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the notice of resignation or removal was given (or such earlier day as shall be agreed by the Majority Lenders) (the "Resignation Effective Date"), then whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

- (d) Any successor Agent that has accepted such appointment shall succeed to the position of the applicable Agent and the term “**Administrative Agent**” or “**Collateral Agent**”, as applicable, shall mean the successor Agent.
- (e) Upon its resignation or removal becoming effective, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Article 15 and Section 7.5 of this Agreement. The provisions of this Agreement shall inure to the retiring Agent’s benefit as to any actions taken or omitted to be taken by it under this Agreement and the other Finance Documents while it was such Agent. Any successor and each of the other Finance Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an initial Finance Party.

**15.13 [Reserved].**

**15.14 [Reserved].**

**15.15 General Provisions Relating to the Collateral Agent.**

- (a) Except for the safe custody of any Collateral in its possession and the accounting for monies actually received by it hereunder, the Collateral Agent shall not have any duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not any Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. The Collateral Agent will be deemed to have exercised reasonable care in the custody of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords similar property of other customers in similar transactions, and the Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Agent in good faith.
- (b) In the event that the Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto which in the Collateral Agent’s sole discretion may cause the Collateral Agent to be considered an “owner or operator” under any Environmental Laws or otherwise cause the Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Collateral Agent reserves the right, instead of taking such action, either to resign as Collateral Agent or to arrange for the transfer of the title or control of the asset to the Senior Lenders or, if the Majority Lenders so direct, to a court appointed receiver. The Collateral Agent shall not be liable to any Person for any environmental liability or any environmental claims or contribution actions under any Federal, state or local law, rule or regulation by reason of the Collateral Agent’s actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.
- (c) In the event of any conflict between any terms and provisions set forth in this Agreement and those set forth in any other Finance Document with respect to the matters addressed in this Agreement, the terms and provisions of this Agreement shall supersede and control the terms and provisions of such other Finance Document. In the event there is any bona fide, good faith disagreement between the other parties to this Agreement or any of the other Finance Documents resulting in adverse claims being made in connection with Collateral held by the Collateral Agent and the terms of this Agreement or any of the other Finance Documents do not unambiguously mandate the action the Collateral Agent is to take or not to take in connection therewith under the circumstances then

existing, or the Collateral Agent is in doubt as to what action it is required to take or not to take hereunder or under the other Finance Documents, the Collateral Agent will be entitled to refrain from taking any action (and will incur no liability for doing so) until directed otherwise in writing by order of a court of competent jurisdiction.

#### **15.16 Agents Appointed Attorneys-in-Fact.**

Each Obligor hereby irrevocably appoints each of the Agents as such Obligor's attorney in fact, with full authority in the place and stead of such Obligor and in the name of such Obligor or otherwise, from time to time after the occurrence and during the continuance of an Event of Default, in each Agent's determination (in each case acting at the direction of the Majority Lenders), to take any action and to execute any instrument that the Majority Lenders may deem necessary under Applicable Law to accomplish the purposes of this Agreement, including, without limitation:

- (a) to obtain and adjust insurance required to be paid to the Agents pursuant to the terms of the Finance Documents;
- (b) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for monies due and to become due under or in respect of any of the Collateral;
- (c) to receive, indorse and collect any drafts or other instruments, documents and chattel paper;
- (d) to file any claims or take any action or institute any proceedings that the Majority Lenders may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any Assigned Agreement or the rights of the Agents with respect to any of the Collateral;
- (e) to sell, transfer, assign or otherwise deal in or with the Collateral or any part thereof pursuant to the terms and conditions hereunder and under the other Finance Documents;
- (f) to defend, settle, compromise or adjust any suit, action or proceeding relating to the Collateral and, in connection therewith, to give such discharges or releases as the Majority Lenders may reasonably deem appropriate;
- (g) to pay or discharge adverse claims levied or placed on or threatened against the Collateral;
- (h) to direct any parties liable for any payment under the Collateral to make payment of any and all monies due and to become due thereunder directly to the Agents or as the Agents shall direct;
- (i) to sign and indorse any drafts, assignments, proxies, verifications, notices and other documents relating to the Collateral;
- (j) to execute and deliver all assignments, conveyances, statements, affidavits, notices and other agreements, instruments and documents that the Majority Lenders may determine necessary in order to perfect and maintain the security interests and liens granted in this Agreement and in order to fully consummate all of the transactions contemplated herein; and
- (k) to sign any instrument sanctioning the transfer of any or all of the Collateral into the name of any transferee to whom the Agents or any part thereof may be sold pursuant to this Agreement.

#### **15.17 [Reserved].**

**15.18 [Reserved].**

**15.19 [Reserved].**

**15.20 [Reserved].**

**15.21 Agent's Confidentiality.**

- (a) In acting as an agent for the Senior Lenders, each Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions and departments.
- (b) If information is received by another division or department of any Agent, it may be treated as confidential to such division or department and such Agent shall not be deemed to have notice of it.

**15.22 [Reserved].**

**15.23 Credit Appraisal by the Senior Lenders.**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Senior Lender confirms to each Agent that it has been, and shall continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document, including but not limited to:

- (a) the financial condition, creditworthiness, status and nature of the Borrower;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security;
- (c) whether such Senior Lender has recourse, and the nature and extent of such recourse, against any Finance Party or any of its respective assets under or in connection with any Finance Document, the Security, the transactions contemplated by the Finance Documents, or any other agreement, arrangement or document entered into made or executed in anticipation of, under or in connection with any Finance Document or the Security;
- (d) the adequacy, accuracy and/or completeness of any reports and any other information provided by any Agent, by any Finance Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of, the Security, the priority of any of the Security or the existence of any security interest affecting the Collateral.

**15.24 Deduction from Amounts Payable by Agents.**

If any Senior Lender owes an amount to any Agent under the Finance Documents, such Agent may, after giving notice to such Senior Lender, deduct an amount not exceeding such amount from any payment to such Senior Lender which such Agent would otherwise be obligated to make under the Finance Documents,

and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents, such Senior Lender shall be regarded as having received the amount so deducted.

#### **15.25 Notice Period.**

Where a Finance Document specifies a minimum period of notice to be given to any Agent, such Agent may, at its discretion, accept a shorter notice period.

#### **15.26 [Reserved].**

#### **15.27 Payments.**

- (a) While no Event of Default is continuing, the Borrower shall make all payments in accordance with Article 19 (*Payment Mechanics*).
- (b) Following an Event of Default that is continuing, provided the Administrative Agent has declared all Obligations immediately due and payable, all payments shall be made to the Administrative Agent for distribution to the Senior Lenders in accordance with Section 13.4 of this Agreement, such that the benefit of all such payments shall be shared by the Senior Lenders ratably in accordance with the Applicable Percentage owing to them; provided, that the provisions of this Section 15.27 (*Payments*) shall not be construed to apply to:
  - (i) any payment made in respect of an obligation that is secured by a Permitted Encumbrance or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Finance Documents;
  - (ii) any payment to which such Senior Lender is entitled as a result of any form of credit protection obtained by such Senior Lender; or
  - (iii) any payment to which such Senior Lender is entitled in its capacity as a party to any Finance Document separate than in its capacity as a Senior Lender.

#### **15.28 Agents as Senior Lender.**

With respect to its Commitment and the Loans made by it, any Person serving as an Agent hereunder shall have the same rights and powers under the Finance Documents as any other Senior Lender and may exercise the same as though it were not such Agent. The term "Senior Lender", "Finance Party" or "Secured Party", when used with respect to each Agent, shall unless otherwise expressly indicated, include such Agent in its individual capacity (if applicable). Each Agent and its Affiliates may accept deposits from, lend money to, act as trustee under, act as financial advisor or in any other advisory capacity for and generally engage in any kind of business with, any Person as if such Agent were not the applicable Agent hereunder, without any duty to account therefor to any other Person.

#### **15.29 Erroneous Payments.**

- (a) If an Agent notifies a Senior Lender or any Person who has received funds on behalf of a Senior Lender (any such Senior Lender (and each of their respective successors and assigns) a "**Payment Recipient**") that the such Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from such Agent) received by such Payment Recipient from such Agent of any of its Affiliates were erroneously or mistakenly transmitted, to, or otherwise erroneously or mistakenly received



by, such Payment Recipient (whether or not known to such Senior Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**” and (y) demands in writing the return of such Erroneous Payment (or a portion thereof) (provided that, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within fifteen (15) calendar days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of such Agent pending its return or repayment as contemplated below in this Section 15.29 (*Erroneous Payments*) and held in trust for the benefit of such Agent, and such Senior Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as such Agent may, in its sole discretion, specify in writing), return to such Agent the amount of any such Erroneous Payment (or portion thereof) as to which such demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the such Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to such Agent in same day funds at the rate determined by such Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of such Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

- (b) Without limiting immediately preceding clause (a), each Senior Lender or any Person who has received funds on behalf of a Senior Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the such Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by such Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment sent by such Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by such Agent (or any of its Affiliates), or (z) that such Senior Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case.
  - (i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from such Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and
  - (ii) such Senior Lender shall cause promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify such Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that is so notifying such Agent pursuant to this Section 15.29(b) (*Erroneous Payments*).

For the avoidance of doubt, the failure to deliver a notice to such Agent pursuant to this Section 15.29(b) (*Erroneous Payments*) shall not have any effect on a Payment Recipient’s obligations pursuant to Section 15.29(a) (*Erroneous Payments*) or on whether or not an Erroneous Payment has been made.



- (c) Each Senior Lender hereby authorizes such Agent to set off, net and apply any and all amounts at any time owing to such Senior Lender under any Finance Document, or otherwise payable or distributable by such Agent to such Senior Lender under any Finance Document with respect to any payment of principal, interest, fees or other amounts, against any amount that such Agent has demanded to be returned under immediately preceding clause (a).
- (d) The parties hereto agree that (x) irrespective of whether such Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not received from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason such Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Senior Lender, to the rights and interests of such Senior Lender, as the case may be) under the Finance Documents with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower; provided that this Section 15.29 (*Erroneous Payments*) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by such Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by such Agent from, or on behalf of (including through the exercise of remedies under any Finance Document), the Borrower for the purpose of a payment on the Obligations.
- (e) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by such Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

Each party’s obligations, agreements and waivers under this Section 15.29 (*Erroneous Payments*) shall survive the resignation or replacement of any Agent, any transfer of rights or obligations by, or the replacement of a Senior Lender, the termination of the applicable Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Finance Document.

## Article 16 [RESERVED]

## Article 17 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

### 17.1 Conduct of Business by the Finance Parties.

No provision of any Finance Document will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it deems appropriate;
- (b) obligate any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

- (c) obligate any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## Article 18

### SHARING AMONG THE FINANCE PARTIES

#### 18.1 Payments to Senior Lenders.

If a Senior Lender (a “**Recovering Finance Party**”) receives or recovers any amount from the Borrower other than in accordance with Article 19 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under a Finance Document then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Administrative Agent;
- (b) the Administrative Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Administrative Agent and distributed in accordance with Article 19 (*Payment Mechanics*) without taking account of any Tax which would be imposed on the Administrative Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Administrative Agent, pay to the Administrative Agent an amount (the “**Sharing Payment**”) equal to that receipt or recovery less any amount which the Administrative Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made under this Agreement.

#### 18.2 Redistribution of Payments.

The Administrative Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it to the Senior Lenders (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with this Agreement towards the obligations of the Borrower to the Sharing Finance Parties.

#### 18.3 Recovering Finance Party’s Rights.

On a distribution by the Administrative Agent under Section 18.2 (*Redistribution of Payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

#### 18.4 Reversal of Redistribution.

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, on request of the Administrative Agent, pay to the Administrative Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (the “**Redistributed Amount**”); and

- (b) as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

#### **18.5 Exceptions.**

- (a) This Article 18 will not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Article 18, have a valid and enforceable claim against the Borrower.
- (b) A Recovering Finance Party is not obligated to share with any other Senior Lender any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that Senior Lender of the legal or arbitration proceedings; and
  - (ii) that Senior Lender had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

### **Article 19 PAYMENT MECHANICS**

#### **19.1 Payments to the Agents.**

- (a) On each date on which the Borrower or a Senior Lender is required to make a payment under a Finance Document, the Borrower or such Senior Lender shall make the same available to the Administrative Agent in Dollars.
- (b) Payment shall be made to such account as the Administrative Agent specifies.

#### **19.2 Distributions by the Agents.**

Each payment received by an Agent under the Finance Documents for the Borrower or a Senior Lender shall, subject to Section 19.3 (*Distributions to the Borrower*) and Section 19.4 (*Clawback*), be made available by that Agent as soon as practicable after receipt to the Person entitled to receive payment in accordance with the Finance Documents, and:

- (a) in the case of payment for the Borrower, to an account of the Borrower designated by the Borrower; and
- (b) in the case of payment for a Senior Lender, for the account of its lending office as designated by such Senior Lender.

#### **19.3 Distributions to the Borrower.**

Each Agent may (with the consent of the Borrower or in accordance with Section 20.1 (*Set-Off*)) apply any amount received by it for the Borrower in or towards payment (as soon as practicable after receipt) of any amount due from the Borrower under the Finance Documents.

**19.4 Clawback.**

- (a) Where a sum is to be paid to an Agent under the Finance Documents for another party, such Agent is not obligated to pay that sum to that other party until such Agent has been able to establish to its satisfaction that it has actually received that sum.
- (b) If an Agent pays an amount to another party and it proves to be the case that such Agent has not actually received such amount, then the party to whom such amount was paid by such Agent shall on demand refund such amount to such Agent.

**19.5 [Reserved].****19.6 [Reserved].****19.7 No Set-Off by the Borrower.**

- (a) All payments to be made by the Borrower under the Finance Documents will be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (b) Paragraph (a) above does not apply to any payment netting provision contained in a Hedge Agreement entered into in accordance with this Agreement.

**19.8 Business Days.**

- (a) Any payment which is due to be made on a day that is not a Business Day will be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum approved by the Finance Parties under a Finance Document, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

**19.9 Currency of Account.**

- (a) Subject to paragraph (b) below, Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

**19.10 Change of Currency.**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country will be translated into, or paid in, the currency or currency unit of that country designated by the Administrative Agent (after consultation with the Borrower); and

- (ii) any translation from one currency or currency unit to another will be at the official rate of exchange recognized by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Administrative Agent (acting reasonably).
- (b) If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognized at the same time as the lawful currency of a country), the Finance Documents will, to the extent the Administrative Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant interbank market and otherwise reflect the change in currency.

## **Article 20**

### **SET-OFF**

#### **20.1 Set-Off.**

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **Article 21**

### **BAIL-IN PROVISIONS**

#### **21.1 Contractual Recognition of Bail-In.**

Notwithstanding anything to the contrary in any Finance Document or in any other agreement, arrangement or understanding among any such Finance Parties, each Finance Party hereto acknowledges and accepts that any liability of any Finance Party to any other Finance Party under or in connection with the Finance Documents, to the extent such liability is unsecured, may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) The application of any Bail-In Action to any such liabilities arising hereunder which may be payable to it by any Finance Party hereto; and
- (b) The effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction, in full or in part, or cancellation in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability; and
  - (ii) a conversion of all, or a portion of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
- (c) The variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

## Article 22 CALCULATIONS AND CERTIFICATES

### 22.1 Day Count Conventions.

Except as otherwise expressly provided in a Finance Document, any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred sixty (360) days or, in any case where the practice in the relevant interbank market differs, in accordance with that market practice.

### 22.2 Financial Calculations.

All financial calculations to be made under, or for the purposes of, this Agreement and any other Finance Document shall be made in accordance with IFRS and, except as otherwise required to conform to any provision of this Agreement, shall be calculated from the then-most-recently issued quarterly financial statements which the Borrower is obligated to furnish to the Finance Parties under Section 11.7 (*Quarterly Financial Reporting*).

## Article 23 CONFIDENTIAL INFORMATION

### 23.1 Confidential Information.

The Borrower and the Finance Parties each agree that it shall maintain as confidential and, without the prior written consent of the relevant party(ies), shall not disclose the terms of this Agreement and any non-public information concerning the other party or its business and operations (the “**Confidential Information**”); provided, that a party may disclose such information:

- (a) where such information becomes publicly available or widely known by the public other than by a breach of this Agreement, or is known by the receiving party prior to the entry of this Agreement or obtained independently of this Agreement, and the disclosure of such information would not breach any other confidentiality obligations;
- (b) if required by Applicable Law, or the Bankruptcy Court as part of the Chapter 11 Cases or requested by any Governmental Body having jurisdiction over such party;
- (c) to its Affiliates and those of its and its Affiliates’ directors, officers, employees, advisors, insurers, insurance brokers and representatives who need to have knowledge of such information;
- (d) to any Person to whom such party, in good faith, anticipates assigning an interest in this Agreement as contemplated by Section 14.1 (*Assignment by Senior Lenders*) and such Person’s Affiliates and the representatives, consultants and advisors of such Person or its Affiliates who have a legitimate need to know such information; and
- (e) in connection with the exercise of any duties or remedies hereunder or any suit, action or proceeding relating to this Agreement.

In the case of disclosure pursuant to paragraph (c), (d) or (e) above, the disclosing party shall be responsible to ensure that the recipient of such Confidential Information does not disclose such information to the same extent as if it were bound by the same non-disclosure obligations of the disclosing party under this

Agreement, and shall be liable to the disclosing party for any improper use or disclosure of such information by such recipient.

### **23.2 Entire Agreement Regarding Confidentiality.**

- (a) This Article 23 (*Confidential Information*) constitutes the entire agreement between the Borrower and the Finance Parties in relation to the obligations under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) No Finance Party will be liable for any loss, cost, liability or other claim in connection with the Confidential Information beyond reasonably foreseeable losses and will not be liable for lost profits or consequential or punitive damages.

### **23.3 Inside Information.**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

### **23.4 [Reserved].**

### **23.5 Continuing Obligations.**

The obligations in this Section 23.5 (*Continuing Obligations*) are continuing and, in particular, will survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

### **23.6 Equator Principles.**

Each of the Finance Parties and the Borrower consent to the reporting of the Project name pursuant to Annex B of the Equator Principles on any publicly available Internet website maintained by any Finance Party. The Borrower shall publish and maintain a non-technical summary of the Underground Project on its website at <https://nevadacopper.com> in the substance and form required by Principle 10 of the Equator Principles.

## **Article 24 NOTICES**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the day of sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below. Notices of change of address shall

also be governed by this Article 24 (*Notices*). Notices and other communications shall be addressed as follows:

- (a) if to the Borrower:

Nevada Copper, Inc.  
61 E. Pursel Lane  
P.O. Box 1640  
Yerington, Nevada, USA  
89447  
Attention: Greg Martin  
Email: gmartin@nevadacopper.com

Copy to:  
Attention: Matthew Anderson  
Email: manderson@nevadacopper.com

or at such other address, facsimile number or email address as the Borrower from time to time directs in writing to the other parties hereto.

- (b) if to the Administrative Agent:

U.S. Bank Trust Company, National Association, as Administrative Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com  
Telephone number: 302-545-9778

or at such other address, facsimile number or email address as the Administrative Agent from time to time directs in writing to the other parties hereto.

- (c) if to the Collateral Agent:

U.S. Bank Trust Company, National Association, as Collateral Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com  
Telephone number: 302-545-9778

or at such other address, facsimile number or email address as the Collateral Agent from time to time directs in writing to the other parties hereto.

- (d) if to the Senior Lenders, at the addresses noted on Schedule A (*Commitments*) or at such other address, facsimile number or email address as a Senior Lender from time to time directs in writing to the other parties hereto or as set forth in connection with any Transfer Certificate; and
- (e) in accordance with Section 25.5 (*English Language*), any notices and communications given in respect of this Agreement shall be given in the English language, or if given in any other language,



that notice or communication shall be accompanied by an English translation of it, which shall be certified as being a true and correct translation of the notice or communication.

#### **24.2 Notification of Address and Fax Number.**

Each party shall promptly notify the other parties of a change of address pursuant to this Article 24 (*Notices*).

#### **24.3 Electronic Communication.**

- (a) Any communication to be made between any of the parties under or in connection with the Finance Documents, may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the relevant parties:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their electronic mail address or any other such information supplied by them by not less than five (5) Business Days' notice.

Each Senior Lender hereby agrees that any communication to be made to the Senior Lenders under or in connection with the Finance Documents may be made by electronic mail or other electronic means.

- (b) Any such electronic communication as specified in paragraph (a) above made between any two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by party to any Agent only if it is addressed in such a manner as such Agent may specify for this purpose.
- (c) Any electronic communication which would otherwise become effective on a non-working day or after business hours in the place of receipt will be deemed only to become effective on the next working day in that place.
- (d) Any reference in a Finance Document to a communication being sent or received will be construed to include that communication being made available in accordance with this Section 24.3 (*Electronic Communication*).

#### **24.4 Communications to the Agents.**

If pursuant to this Article 24 (*Notices*) any Agent is to act on instructions or directions delivered by fax, electronic mail, other electronic means or any other unsecured method of communication, such Agent shall have:

- (a) no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of any Person, and
- (b) no liability for any losses, liabilities, costs or expenses incurred or sustained by any Person as a result of such reliance upon or compliance with such instructions or directions.

## **Article 25 GENERAL**

### **25.1 Partial Invalidity.**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Finance Documents; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other provision of the Finance Documents.

### **25.2 Reliance and Non-Merger.**

All covenants, agreements, representations and warranties of the Borrower made herein or in any other Finance Document or in any certificate or other document signed by any of its directors or officers and delivered by or on behalf of the Borrower pursuant hereto or thereto are material, shall be deemed to have been relied upon by the Administrative Agent and each Senior Lender notwithstanding any investigation heretofore or hereafter made by the Administrative Agent, the Senior Lenders or Senior Lenders' counsel or any employee or other representative of any of them and shall survive the execution and delivery of this Agreement and the other Finance Documents until all Obligations owed to the Administrative Agent or the Senior Lenders under this Agreement and the other Finance Documents shall have been satisfied and performed and the Senior Lenders shall have no further obligation to make the Loan hereunder.

### **25.3 Remedies and Waivers.**

- (a) No investigation by or on behalf of any Finance Party, into the affairs of the Borrower will prejudice any rights or remedies held by or on behalf of a Finance Party under the Finance Documents.
- (b) No failure to exercise, nor any delay in exercising, on the part of or on behalf of any Finance Party, any right or remedy under a Finance Document will operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of or on behalf of any Finance Party will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

### **25.4 Amendment and Waiver.**

- (a) Required Consents.
  - (i) Except as otherwise expressly provided in this Agreement and subject to paragraph (a)(ii) and paragraph (b) below, any term of the Finance Documents may be amended, modified, waived or supplemented only with the consent of the Majority Lenders, the Borrower, to the extent they are a party, the Obligors and the Administrative Agent (acting at the direction of the Majority Lenders), and any such amendment, waiver, modification or supplement shall be binding on all parties.

- (ii) Except as otherwise expressly provided in the relevant agreement or document, no waiver, consent, annulment, modification or supplement of any term or condition of any Finance Document may be given or granted by the Borrower or the Senior Lenders except in accordance with the DIP Order.
- (b) Notwithstanding paragraph (a) above, an amendment, modification, supplement or waiver which relates to the rights, duties, protections or obligations of the Agents (each in their capacity as such) may not be effected without the consent of the Agents (as the case may be).
- (c) Notwithstanding paragraph (a) above, each Senior Lender shall be required to consent to any amendment, modification, supplement or waiver of:
  - (i) the definitions of “Majority Lenders” or any other provision in the Finance Documents specifying the number or percentage of Senior Lenders required to waive, amend or modify any rights thereunder or make any determination or grant thereunder;
  - (ii) the definition of “Permitted Transferee”;
  - (iii) Sections 12.1 (*Conditions Precedent to the Interim Loan*) and 12.2 (*Conditions Precedent to the Final Loans*);
  - (iv) a reduction in the Applicable Margin, or a reduction in the amount of any payment of principal, interest, fees or other amounts payable to a Senior Lender under the Finance Documents;
  - (v) an increase in, or an extension of, a Commitment or the Total Commitments;
  - (vi) a release of the Borrower, any other Obligor or any other party (other than a Secured Party) from a Finance Document (other than pursuant to the terms of such Finance Document), or the release of all or a material part of the Collateral from the Encumbrance of the Finance Documents;
  - (vii) a change to the order of application of any reduction in the Commitments or any prepayment of Loans from the application thereof set forth in the applicable provisions of Section 4.2 (*Mandatory Prepayments*), Section 4.5 (*Voluntary Cancellation*), and Section 4.6 (*Voluntary Prepayment*);
  - (viii) a term or provision of a Finance Document that expressly requires the consent, approval or instructions of each Senior Lender;
  - (ix) the right of a Senior Lender to assign or transfer its rights or obligations under the Finance Documents in accordance with Section 14.1 (*Assignment by Senior Lenders*);
    - (A) this Section 25.4 (*Amendment and Waiver*);
    - (B) Section 25.9 (*Remedies Cumulative*);
  - (x) the DIP Order; or

- (xi) change the order of priority of payments set forth in Section 13.4 (Application of Proceeds) or any provision in the Finance Documents relating to the pro rata nature of the Utilizations or any amount.

provided, however, that notwithstanding anything in this paragraph (c) or in any other Section or paragraph of this Agreement or any other Finance Document to the contrary, any amendment, waiver or other modification required to permit the Borrower or any other Obligor to enter into any Hedge Agreement secured by any or all of the Collateral (including to modify the application of payments or proceeds of Collateral and the granting of a Lien on the Collateral) shall require only Majority Lenders approval.

## **25.5 English Language.**

- (a) Any communication made under or in connection with any Finance Document shall be in English.
- (b) All other documents provided under or in connection with any Finance Document shall be:
  - (i) in English; or
  - (ii) if not in English, accompanied by an English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **25.6 Further Assurances.**

Whether before or after the happening of an Event of Default, the Borrower shall at its own expense do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, things, agreements, documents and instruments in connection with this Agreement, the other Finance Documents as the Administrative Agent (acting at the direction of the Majority Lenders) may reasonably request from time to time for the purpose of giving effect to the terms of this Agreement, the other Finance Documents including, for the purpose of facilitating the enforcement of the Security, all promptly upon the request of the Administrative Agent.

## **25.7 [Reserved].**

## **25.8 Judgment Currency.**

If for the purpose of obtaining or enforcing judgment in any court it is necessary to convert a sum due hereunder or under any other Finance Document in Dollars into another currency (the “**Judgment Currency**”), the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures a Secured Party, as applicable, could purchase such Dollars in the United States of America with the Judgment Currency on the Business Day next preceding the day on which such judgment is rendered. The obligation of the Borrower in respect of any such sum due from it to such Secured Party hereunder or under any other Finance Document (an “**Entitled Person**”) shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following the receipt by such Entitled Person of any sum adjudged to be due hereunder or under any other Finance Document in the Judgment Currency, such Entitled Person may in accordance with normal banking procedures purchase and transfer Dollars to the United States of America with the amount of the Judgment Currency so adjudged to be due; and the Borrower hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify such Entitled Person on demand, in Dollars, for

the amount (if any) by which the sum originally due to such Entitled Person in Dollars hereunder or under any other Finance Document exceeds the amount of the Dollars so purchased and transferred.

#### **25.9 Remedies Cumulative.**

Subject to Applicable Law, no failure or delay on the part of any Secured Party in exercising any right, power or privilege hereunder or under any other Finance Document and no course of dealing between the Borrower or any its Affiliates, on the one hand and any Secured Party, on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Finance Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Finance Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which any party thereto would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Secured Party to any other or further action in any circumstances without notice or demand.

#### **25.10 Entire Agreement.**

This Agreement and the other Finance Documents constitute the entire agreement between the parties pertaining to the subject matter described herein and therein. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with such subject matter except as specifically set forth or referred to in this Agreement and the other Finance Documents. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made either prior to, contemporaneously with, or after the entering into of this Agreement, the other Finance Documents, or any amendment or supplement thereto, by any party to this Agreement or any of the other Finance Documents or its directors, officers, partners, employees or agents, where applicable, to any other party to this Agreement or any of the other Finance Documents or its directors, officers, partners, employees or agents, where applicable, except to the extent that the same has been reduced to writing and included as a term of this Agreement or any of the other Finance Documents.

#### **25.11 Governing Law; Jurisdiction.**

- (a) THIS AGREEMENT AND EACH OF THE OTHER FINANCE DOCUMENTS (UNLESS SUCH DOCUMENT EXPRESSLY STATES OTHERWISE THEREIN), THE RELATIONSHIP BETWEEN THE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS AGREEMENT OR SUCH OTHER FINANCE DOCUMENT OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (EXCEPT AS GOVERNED BY THE BANKRUPTCY CODE).
- (b) Any legal action or proceeding with respect to this Agreement or any other Finance Document shall, except as provided below, be brought in the Bankruptcy Court and/or, solely with respect to the Parent's assets in Canada, the Canadian Court and if the Bankruptcy Court and/or Canadian Court does not have (or abstain from) jurisdiction, courts of the State of New York in the County of New York or of the United States for the Southern District of New York and any appellate court from any thereof and, by execution and delivery of this Agreement, each party hereto hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each party hereto agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it, and

may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

- (c) Each party hereto hereby irrevocably waives any objection that it may now have or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Finance Document brought in the Bankruptcy Court and/or, solely with respect to the Parent's assets in Canada, the Canadian Court, and if the Bankruptcy Court and/or Canadian Court does not have (or abstain from) jurisdiction, the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (d) Nothing in this Section 25.11 (*Governing Law; Jurisdiction*) shall limit the right of the Secured Parties to refer any claim against the Borrower to any court of competent jurisdiction outside of the State of New York, nor shall the taking of proceedings by any Secured Party before the courts in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

#### **25.12 Service of Process.**

- (a) The Borrower irrevocably acknowledges and agree that service of process in any such action or proceeding may be effected by mailing a copy thereof by first class mail, postage prepaid, together with two copies of a statement of service by mail and acknowledgment of receipt, with a postage-prepaid return envelope addressed to the sender, to the Borrower at their address set forth in Article 24 (*Notices*) or at such other address of which the Administrative Agent shall have been notified pursuant to Article 24 (*Notices*).
- (b) This Section 25.12 (*Service of Process*) does not affect any other method of service allowed by Applicable Law.
- (c) To the extent that the Borrower may, in any action or proceeding arising out of or relating to any of the Finance Documents, be entitled under any Applicable Law to require or claim that any Secured Party post security for costs or take similar action, the Borrower hereby irrevocably waives and agrees not to claim the benefit of such entitlement.

#### **25.13 Waiver of Jury Trial.**

EACH OF THE PARTIES HERETO HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER FINANCE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

#### **25.14 USA PATRIOT Act.**

To the extent that it is subject to the requirements of the USA PATRIOT ACT or any other anti- money laundering rules and regulations applicable to such Secured Party, each Secured Party hereby notifies the Borrower that, pursuant to the requirements of the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party and the customer due diligence requirements for

financial institutions of the Financial Crimes Enforcement Network (as published at 81 FR 29397, 31 CFR 1010, 1020, 1023, 1024, and 1026), it is required to obtain, verify and record information that identifies the Borrower and its direct and indirect beneficial owners, which information includes the name and address of such Persons and other information that will allow such Secured Party, as the case may be, to identify the Borrower and its direct and indirect beneficial owners in accordance with the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party and the customer due diligence requirements for financial institutions of the Financial Crimes Enforcement Network. The Borrower agrees that it will promptly provide each Secured Party with such information as it may request in order for such Secured Party, respectively, to satisfy the requirements of the USA PATRIOT ACT or any other anti-money laundering rules and regulations applicable to such Secured Party.

#### **25.15 Counterparts.**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts (including facsimile), with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

#### **25.16 No Third-Party Beneficiaries.**

The agreement of the Senior Lenders to make the Loans to the Borrower, on the terms and conditions set forth in this Agreement, is solely for the benefit of the Borrower and the Secured Parties, and no other Person (including any contractor, subcontractor, supplier, workman, carrier, warehouseman or materialman furnishing labor, supplies, goods or services to or for the benefit of the Project) shall have any rights under this Agreement or under any other Finance Document or with respect to any extension of credit contemplated by this Agreement.

#### **25.17 Severability.**

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated in this Agreement are fulfilled to the extent possible.

#### **25.18 Survival.**

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans. The provisions of Sections 7.3 (*Change in Circumstances*), 7.4 (*Payment of Costs and Expenses*) and 7.5 (*Indemnities*) and Article 15 (*Administrative Parties*) and Article 23 (*Confidential Information*) shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the resignation or removal of any Agent, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.



**25.19 Reinstatement.**

The obligations of the Borrower under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Obligations is rescinded or shall be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower agrees that it will indemnify each Secured Party on demand for all reasonable and documented costs and expenses (including fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such reasonable and documented costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

**25.20 Incorporation of DIP Order by Reference.**


Each of the Obligors, the Administrative Agent, the Collateral Agent and the Senior Lenders agrees that any reference contained herein to (i) the Interim Order and the Interim DIP Recognition Order shall include all terms, conditions and provisions of such Interim Order and Interim DIP Recognition Order and that the Interim Order and Interim DIP Recognition Order are incorporated herein for all purposes and (ii) the Final Order and the Final DIP Recognition Order shall include all terms, conditions and provisions of such Final Order and the Final DIP Recognition Order and that the Final Order and the Final DIP Recognition Order are incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement and the terms of either the Interim Order, the Final Order, the Interim DIP Recognition Order or the Final DIP Recognition Order, the terms of the Interim Order, the Final Order, the Interim DIP Recognition Order or the Final DIP Recognition Order, as applicable, shall govern.

*[signature pages to follow]*



IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first written above.

**NEVADA COPPER, INC.,**  
as Borrower

By:   
Name: Gregory J. Martin  
Title: Chief Financial Officer

**NEVADA COPPER CORP.,**  
as Guarantor



By: \_\_\_\_\_

Name: Gregory J. Martin  
Title: Chief Financial Officer

**0607792 B.C. LTD.,**


as Guarantor

By: 

Name: Gregory J. Martin

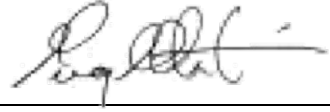
Title: Chief Financial Officer

**NC DITCH COMPANY LLC,**  
as Guarantor

By:   
Name: Gregory J. Martin  
Title: Chief Financial Officer


**NC FARMS LLC,**  
as Guarantor

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Greg J. Martin", written over a horizontal line.

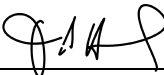
Name: Gregory J. Martin  
Title: Chief Financial Officer

**LION IRON CORP.,**  
as Guarantor

By:   
Name: Gregory J. Martin  
Title: Chief Financial Officer

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,**

as Administrative Agent and Collateral Agent

By:   
Name: James A. Hanley  
Title: Senior Vice President

**MANCHESTER SECURITIES CORP.,**  
as Senior Lender

By: 

Name: **Elliot Greenberg**  
Title: **Vice President**

**ZIWA INVESTMENTS LIMITED,**  
as Senior Lender

By: 

Name: **Elliot Greenberg**  
Title: **Vice President**



**SCHEDULE A**  
**COMMITMENTS**

<b>Lender</b>	<b>Interim Commitment</b>	<b>Final Commitment</b>	<b>Total</b>	<b>Address for Notices</b>
Manchester Securities Corp.	\$6,400,000	\$12,800,000	\$19,200,000	Elliott Investment Management L.P. 360 S. Rosemary Ave, 18th Floor West Palm Beach FL 33401
Ziwa Investments Limited	\$13,600,000	\$27,200,000	\$40,800,000	Elliott Investment Management L.P. 360 S. Rosemary Ave, 18th Floor West Palm Beach FL 33401

**SCHEDULE B**  
**PREPETITION ENCUMBRANCES**

<b><u>Name</u></b>	<b><u>Category</u></b>	<b><u>Potential Lienholder</u></b>	<b><u>A/P 6.7.34 ('000s)</u></b>	<b><u>Total ('000s)</u></b>
Catepillar Financial SARL	Equipment Leases	Potential exposure to repossess equipment	\$1,132.9	\$1,132.9
Epiroc Financial Solutions USA LLC	Equipment Leases	Potential exposure to repossess equipment	\$816.5	\$816.5

**SCHEDULE C**  
**PLEDGED INTERESTS**

Name, Jurisdiction of Formation and Type of Entity	Class or Type of Pledged Interest	Total Amount of Class or Type of Collateral Authorized	Total Amount of Class or Type Outstanding	Total Amount Pledged	Number of Securities	Certificated (Y/N)	Certificate Number
Nevada Copper, Inc., a Nevada corporation	Common Stock	100%	100%	100%	100	Y	2
0607792 B.C. Ltd, A British Columbia limited company	Common Stock	100%	100%	100%	21,980,000	Y	38
Lion Iron Corp., a Nevada corporation	Common Stock	100%	100%	100%	100	Y	1
NC Farms LLC, a Nevada limited liability company	Membership Interests	100%	100%	100%	0	N	N/A
NC Ditch Company LLC, a Nevada limited liability company	Membership Interests	100%	100%	100%	0	N	N/A

**SCHEDULE D****[RESERVED]**

**SCHEDULE E**  
**INTERIM ORDER**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: [BK-24-\_\_\_\_ - \_\_\_\_]  
Chapter 11

Jointly Administered with:

Case No. [BK-24-\_\_\_\_ - \_\_\_\_]  
Case No. [BK-24-\_\_\_\_ - \_\_\_\_]  
Case No. [BK-24-\_\_\_\_ - \_\_\_\_]  
Case No. [BK-24-\_\_\_\_ - \_\_\_\_]  
Case No. [BK-24-\_\_\_\_ - \_\_\_\_]

**INTERIM ORDER (I) AUTHORIZING THE  
DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B) GRANT LIENS,  
INCLUDING SENIOR SECURED PRIMING LIENS AND SUPERPRIORITY  
ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH COLLATERAL;  
(II) GRANTING ADEQUATE PROTECTION TO CERTAIN  
PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY;  
(IV) SCHEDULING FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”),<sup>2</sup> of the Debtors for entry of an interim order (this “*Interim Order*”) and Final Order (defined below) pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 of, and Local Rules 4001 and 9006 seeking, among other things:

- (a) authorization for Nevada Copper, Inc. (the “*Borrower*”) to obtain a senior secured postpetition financing on terms and conditions consistent with the terms and conditions set forth in the Senior Secured Superpriority Term Loan Debtor in Possession Credit Agreement by and among the Borrower, each of the Debtors other than the Borrower, (collectively, the “*Guarantors*,” and together with

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized term used but not defined herein have the meanings ascribed to such terms in the Motion.

Borrower, the "**DIP Loan Parties**"), U.S Bank Trust Company, National Association, as administrative agent and collateral agent (the "**DIP Agent**"), one or more affiliates of Elliott Investment Management L.P., as lenders (collectively, the "**DIP Lenders**") and, together with the DIP Agent, the "**DIP Secured Parties**") (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**DIP Credit Agreement**") attached to this Interim Order at **Exhibit A**, and for the Guarantors to unconditionally guaranty, on a joint and several basis, the Borrower's obligations in connection with such postpetition financing, consisting of: (i) a new money term loan in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$20,000,000 (the "**Interim DIP Loan**"), which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.1 and 12.3 of the DIP Credit Agreement have been satisfied (the "**Interim Closing Date**"); (ii) subject to entry of the Final Order, a new money delayed-draw term loan to be made in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$40,000,000 (the "**Final DIP Loan**" and, together with the Interim DIP Loan, the "**DIP Facility**"), which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.2 and 12.3 of the DIP Credit Agreement have been satisfied;

- (b) authorization for the DIP Loan Parties to enter into any agreements, documents and instruments in connection with the DIP Facility, including the DIP Credit Agreement and all notices, guarantees, security agreements, ancillary documents and agreements executed in connection therewith, (collectively, the "**DIP Documents**") on terms and conditions consistent with the DIP Credit Agreement and this Interim Order, and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate or desirable in connection with the DIP Documents;
- (c) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, and authorizing the Debtors to incur, the DIP Liens (as defined below) in all DIP Collateral (as defined below), to secure the DIP Obligations (as defined below), which liens and security interests shall be automatically perfected and be subject to the lien priorities set forth in the DIP Credit Agreement, on the terms and conditions set forth herein, in the DIP Credit Agreement and in the DIP Documents;
- (d) authorization for the Debtors to grant to the DIP Agent, for the benefit of itself and the DIP Lenders, allowed superpriority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations (as defined below), with priority over any and all administrative expenses of any kind or nature, subject and subordinate only to the Carve-Out and the Administration Charge (as defined below), on the terms and conditions set forth herein and in the DIP Documents;
- (e) authorization for the Debtors to use the proceeds of the DIP Facility and the Prepetition Collateral (as defined below), including Cash Collateral (as defined below), in accordance with the terms hereof, including pursuant to the Approved Budget (as defined below) as further described herein, to: (i) pay fees and interest under the DIP Facility; (ii) provide working capital for, and for other general corporate purposes of, the Debtors, including for funding the Carve-Out (as defined below); (iii) pay for bankruptcy-related costs and expenses, including costs and expenses incurred in connection with the Recognition Proceedings (as defined below); and (iv) pay Adequate Protection Payments (as defined below);

- (f) authorization for the Debtors to pay, on a final and irrevocable basis, the principal, interest, expenses, fees, premiums and other amounts payable under the DIP Documents as such become earned, due and payable, including, without limitation, (i) the Upfront Fee, (ii) the Unused Commitment Fee, (iii) the Exit Fee, (iv) the Agency Fee (each as defined in the DIP Credit Agreement), and (iv) the reasonable fees and disbursements of the DIP Secured Parties' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with the DIP Documents (collectively, the "**DIP Obligations**");
- (g) authorization to grant adequate protection to the Prepetition Secured Parties (as defined below) on the terms set forth in the DIP Documents and this Interim Order on account of any Diminution in Value (as defined below) of the Prepetition Secured Parties' interests in the Prepetition Collateral, including Cash Collateral;
- (h) waivers of (i) the Debtors' and the estates' rights to surcharge against the DIP Collateral or the Prepetition Collateral pursuant to the Bankruptcy Code section 506(c), (ii) the "equities of the case" exception under Bankruptcy Code section 552(b) and (iii) the equitable doctrine of marshalling with respect to the DIP Collateral, including all Prepetition Collateral, in each case, subject to entry of the Final Order (but retroactive to the Petition Date);
- (i) subject to the terms of this Interim Order, authorization for the DIP Secured Parties to exercise remedies under the DIP Documents on the terms described herein upon the occurrence and during the continuance of a Termination Event (as defined below);
- (j) the modification of the automatic stay imposed pursuant to Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of this Interim Order; and
- (k) that this Court schedule a final hearing (the "**Final Hearing**") to consider entry of a final order (the "**Final Order**") authorizing and approving, on a final basis, among other things, the Debtors' entry into the DIP Facility, the borrowings under the DIP Facility, the continued use of Cash Collateral and the granting of adequate protection, in each case, as described in the Motion and as set forth in the DIP Documents.

The Court having held a hearing to consider entry of this Interim Order (the "**Interim Hearing**"); and the Court having considered the Motion and the exhibits thereto, the *Declaration of Zul Jamal in support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* (the "**DIP Declaration**"), the evidence submitted or proffered and the arguments of counsel made at the Interim Hearing; and proper and sufficient notice of the Motion and the Interim Hearing having been given in



1 accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and all objections, if any,  
2 to the relief requested in the Motion and to the entry of this Interim Order having been withdrawn,  
3 resolved or overruled by the Court; and it appearing to the Court that granting the relief requested  
4 in necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the  
5 Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their  
6 estates, creditors and parties in interest; and after due deliberation and consideration, and for good  
7 and sufficient cause appearing therefor; IT IS FOUND AND DETERMINED THAT:<sup>3</sup>

8       A.     **Petition Date.** On June 9, 2024 (the “*Petition Date*”), each of the Debtors filed a  
9 voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

10       B.     **Debtors in Possession.** The Debtors have continued in the management and  
11 operation of their business and properties as debtors in possession pursuant to sections 1107 and  
12 1108 of the Bankruptcy Code.

13       C.     **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases  
14 commenced on the Petition Date, the Motion and the parties and property affected hereby pursuant  
15 to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408  
16 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

17       D.     **Committee Formation.** As of the date hereof, the United States Trustee for Region  
18 17 (the “*U.S. Trustee*”) has not yet appointed an official committee of unsecured creditors in these  
19 Chapter 11 Cases (a “*Creditors’ Committee*”) pursuant to section 1102 of the Bankruptcy Code.

20       E.     **Notice.** Under the circumstances, the notice given by the Debtors of, and described  
21 in the Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient  
22 notice thereof and complies with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules,  
23 and no further notice of the relief sought at the Interim Hearing and the relief granted herein is  
24 necessary or required.

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25       <sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law  
26 pursuant to Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent that any  
27 of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the  
28 following conclusions of law constitute findings of fact, they are adopted as such.

F. **Debtors' Stipulations.** Without prejudice to the rights of any other party, but subject to the limitations thereon contained in paragraphs 21 and 22 of this Interim Order, the Debtors represent, admit, stipulate and agree as follows:

1. **Prepetition Senior Secured Term Loan Facility.**

(a) Under that certain Second Amended and Restated Credit Agreement, dated as of October 28, 2022 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the "***Prepetition Senior Secured Term Loan Credit Agreement***") and together with all related security agreements, collateral agreements, pledge agreements, control agreements, guarantees and other documents delivered or executed in connection therewith, the "***Prepetition Senior Secured Term Loan Documents***") by and among Borrower, as borrower, the financial institutions party thereto from time to time, as lenders (the "***Prepetition Senior Secured Term Loan Lenders***"), KfW IPEX-Bank GmbH ("***KfW***"), as sole lead arranger, UFK agent, as administrative agent and collateral agent (in such capacities, the "***Prepetition Senior Secured Term Loan Agent***") and together with the Prepetition Senior Secured Term Loan Lenders, the "***Prepetition Senior Secured Term Loan Parties***") the Borrower was provided with a first-lien secured term loan facility (the loans borrowed thereunder, the "***Prepetition First Lien Loans***") consisting of:

- (a) Tranche A Loans (as defined in the Prepetition Senior Secured Term Loan Credit Agreement) provided by KfW, which, as of the Petition Date, amount to an aggregate principal amount of approximately \$129,191,475.89 million (together with all accrued interest, premiums (if any), costs, fees, expenses and other obligations in respect thereof, the "***Prepetition Senior Secured Term Loan A Obligations***");
- (b) Tranche A-2 Loans (as defined in the Prepetition Senior Secured Term Loan Credit Agreement) provided by Pala Investments Limited ("***Pala***"), Mercuria Investments US, Inc. ("***Mercuria***") and TF R&S Canada Ltd. ("***TF Canada***," and collectively with Pala and Mercuria, the "***Prepetition Senior Secured Term Loan A-2 Parties***"), which, as of the Petition Date, amount to an aggregate principal amount of approximately \$40,919,608.57 million (together with all accrued interest, premiums (if any), costs, fees, expenses and other obligations in respect thereof, the "***Prepetition Senior Secured Term Loan A-2 Obligations***"); and
- (c) Tranche B Loans (as defined in the Prepetition Senior Secured Term Loan Credit Agreement) provided by KfW, which, as of the Petition Date, amount to an aggregate principal amount of approximately \$17,973,301.40 million (together

1 with all accrued interest, premiums (if any), costs, fees, expenses and other  
2 obligations in respect thereof, the “**Prepetition Senior Secured Term Loan B  
Obligations**” and, together with the Prepetition Senior Secured Term Loan A  
3 Obligations, the “**Prepetition Senior Secured KfW Term Loan Obligations**”).

4 (b) *Prepetition Senior Secured Term Loan Obligations.* As of the  
5 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
6 severally indebted and liable to the Prepetition Senior Secured Term Loan Parties under the  
7 Prepetition Senior Secured Term Loan Documents in the principal aggregate amount of not less  
8 than \$188,084,385.86 million, *plus* accrued and unpaid interest thereon as of the Petition Date,  
9 plus all other fees, costs, expenses, indemnification obligations, reimbursement obligations,  
10 charges, premiums, if any, additional interest, any other “Obligations” (as defined in the  
11 Prepetition Senior Secured Term Loan Documents) and all other obligations of whatever nature  
12 owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable  
13 under the Prepetition Senior Secured Term Loan Documents (collectively, the “**Prepetition Senior  
Secured Term Loan Obligations**”). The Prepetition Senior Secured Term Loan Obligations  
14 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
15 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
16 subordination, other claims, cause of action or other challenge of any kind under the Bankruptcy  
17 Code, under applicable non-bankruptcy law or otherwise. No payments or transfer made to or for  
18 the benefit of (or obligations incurred to or for the benefit of) the Prepetition Senior Secured Term  
19 Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection  
20 with any of the Prepetition Senior Secured Term Loan Documents are subject to avoidance,  
21 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
22 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
23 bankruptcy law or otherwise.

24 (c) *Prepetition Senior Secured Term Loan Liens.* Pursuant to the  
25 Prepetition Senior Secured Term Loan Documents, the Prepetition Senior Secured Term Loan  
26 Obligations are secured by valid, binding, perfected and enforceable liens on and security interests  
27 in (the “**Prepetition Senior Secured Term Loan Liens**”) the “Collateral” (as defined in the  
28

Prepetition Senior Secured Term Loan Documents) (the “**Prepetition Collateral**”), subject to certain permitted liens as permitted under the Prepetition Senior Secured Term Loan Documents. The Prepetition Senior Secured Term Loan Liens are (i) senior to all other Prepetition Funded Debt Liens (as defined below) with respect to Prepetition Collateral constituting “Project Collateral” (as defined in the WCF Intercreditor Agreement (as defined below)) (the “**Non-WCF Collateral**”), and (ii) subject to the Prepetition Working Capital Lien (as defined below) with respect to Prepetition Collateral constituting “APA Collateral” (as defined in the WCF Intercreditor Agreement) (the “**WCF Collateral**”), in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Senior Secured Term Loan Liens: (i) are valid, binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with the priority set forth in the Prepetition Senior Secured Term Loan Documents and the Prepetition Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are subject and/or subordinate only to Prepetition Prior Liens (defined below), and solely with respect to the WCF Collateral, the Prepetition Working Capital Lien. In this Interim Order the term “**Prepetition Prior Liens**” shall mean, in relation to any Prepetition Funded Debt Facility (defined below), liens that are senior in relation to the liens securing such facility and are (1) valid, enforceable, perfected, non-avoidable and in existence immediately prior to the Petition Date or (2) valid, enforceable, non-avoidable and in existence immediately prior to the Petition Date, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the liens described in items (1) and (2), the “**Petition Date Perfected Liens**”), and in relation to the DIP Facility, shall mean, the Petition Date Perfected Liens not to exceed a total aggregate amount of \$12 million.

1                   2.       **Prepetition Working Capital Facility.**

2                   (a)       Under that certain Advance Payment Agreement, dated as of May 6,  
3 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time  
4 to time prior to the date hereof, the “***Prepetition Working Capital Agreement***” and, together with  
5 all related security agreements, collateral agreements, pledge agreements, control agreements,  
6 guarantees and other documents, the “***Prepetition Working Capital Documents***”) by and among  
7 the Borrower, as seller, and Concord Resources Limited (“***Concord***”), as purchaser (the  
8 “***Prepetition Working Capital Purchaser***”) the Borrower received certain Advance Payments (as  
9 defined in the Prepetition Working Capital Agreement) from the Prepetition Working Capital  
10 Purchaser in exchange for the sale and delivery of certain Material (as defined in the Prepetition  
11 Working Capital Documents).

12                   (b)       *Prepetition Working Capital Obligations.* As of the Petition Date,  
13 the Borrower, without defense, counterclaim or offset of any kind, was indebted and liable to the  
14 Prepetition Working Capital Purchaser under the Prepetition Working Capital Documents in the  
15 aggregate principal amount of not less than \$3.0 million under the Prepetition Working Capital  
16 Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
17 costs, expenses, charges, additional interest, any other “Advance Payment Obligations” as defined  
18 in the WCF Intercreditor Agreement and all other obligations of whatever nature owing, whether  
19 or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the  
20 Prepetition Working Capital Documents (collectively, the “***Prepetition Working Capital***  
21 ***Obligations***”). The Prepetition Working Capital Obligations constitute legal, valid, binding and  
22 non-avoidable obligations against the Borrower and are not subject to any avoidance,  
23 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
24 or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law  
25 or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or  
26 for the benefit of) the Prepetition Working Capital Purchaser by or on behalf of any of the Debtors  
27 prior to the Petition Date under or in connection with any of the Prepetition Working Capital  
28

Documents are subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(c) *Prepetition Working Capital Lien.* Pursuant to the Prepetition Working Capital Documents, the Prepetition Working Capital Obligations are secured by a valid, binding, perfected and enforceable lien on and security interest in (the “***Prepetition Working Capital Lien***”) the Prepetition Collateral, subject to certain permitted liens as permitted under the Prepetition Working Capital Agreement. The Prepetition Working Capital Lien is (i) subject to the Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien (as defined below) with respect to all Prepetition Collateral constituting Non-WCF Collateral and (ii) senior to all other Prepetition Funded Debt Liens with respect to Prepetition Collateral constituting WCF Collateral, in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition Working Capital Lien: (i) is a valid, binding, perfected and enforceable lien and security interest in the Prepetition Collateral, with the priorities set forth in the Prepetition Working Capital Documents; (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date, is subject and/or subordinate only to (1) the Prepetition Prior Liens, in relation to the Working Capital Facility, and, (2) solely with respect to the Non-WCF Collateral, the Prepetition Senior Secured Term Loan Liens and the Prepetition TF Stream Lien.

3. **Prepetition TF Stream Obligations.**

(a) Under that certain Metals Purchase and Sale Agreement, dated as of December 21, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “***Prepetition TF Stream Agreement***” and, together with all related security agreements, collateral agreements, pledge agreements, control

1 agreements, guarantees and other documents, the “**Prepetition TF Stream Documents**”) by and  
2 among Borrower, as seller, NCU and its subsidiaries, as guarantor and Triple Flag International  
3 Ltd. (“**Triple Flag**”) (as successor by name change to Triple Flag Mining Finance Bermuda Ltd.),  
4 as purchaser (the “**Prepetition TF Stream Purchaser**”), the Prepetition TF Stream Purchaser paid  
5 certain deposits to the Borrower and Borrower committed to make specified deliveries of Refined  
6 Gold and Refined Silver (each as defined in the Prepetition TF Stream Agreement) to the  
7 Prepetition TF Stream Purchaser.

8 (b) *Prepetition TF Stream Obligations.* As of the Petition Date, the  
9 Debtors, without defense, counterclaim or offset of any kind, were jointly and severally indebted  
10 and liable to the Prepetition TF Stream Purchaser under the Prepetition TF Stream Documents in  
11 the aggregate principal amount of not less than \$78,269,229.75 under the Prepetition TF Stream  
12 Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
13 costs, expenses, charges, additional interest, any other “Obligations” (as defined in the Prepetition  
14 TF Stream Agreement) and all other obligations of whatever nature owing, whether or not  
15 contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition  
16 TF Stream Documents (collectively, the “**Prepetition TF Stream Obligations**”). The Prepetition  
17 TF Stream Obligations constitute legal, valid, binding and non-avoidable obligations against each  
18 of the Debtors and are not subject to any avoidance, recharacterization, effect, counterclaim,  
19 defense, offset, subordination, other claim, cause of action or other challenge of any kind under  
20 the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or  
21 transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the  
22 Prepetition TF Stream Purchaser by or on behalf of any of the Debtors prior to the Petition Date  
23 under or in connection with any of the Prepetition TF Stream Documents are subject to avoidance,  
24 recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action  
25 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-  
26 bankruptcy law or otherwise.

(c) *Prepetition TF Stream Lien.* Pursuant to the Prepetition TF Stream Documents, the Prepetition TF Stream Obligations is secured by a valid, binding, perfected and enforceable lien on and security interest in (the “***Prepetition TF Stream Lien***”) the Prepetition Collateral, subject to certain permitted liens as permitted under the Prepetition TF Stream Agreement. The Prepetition TF Stream Lien is (i) subject to the Prepetition Senior Secured Term Loan Liens with respect to all Prepetition Collateral constituting Non-WCF Collateral, (ii) subject to the Prepetition Working Capital Lien and Prepetition Senior Secured Term Loan Liens with respect to Prepetition Collateral constituting WCF Collateral, and (iii) senior to the Prepetition Junior Secured Term Loan Liens, in each case, in accordance with the terms and conditions of the WCF Intercreditor Agreement, the TF Intercreditor Agreement and the Fourth Lien Intercreditor Agreement. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date, the Prepetition TF Stream Lien: (i) is a valid, binding, perfected and enforceable lien and security interest in the Prepetition Collateral, with the priority set forth in the Prepetition TF Stream Documents and the Prepetition Intercreditor Agreements; (ii) is not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date is subject and/or subordinate only to (1) the Prepetition Prior Liens, in relation to the Prepetition TF Stream Obligations, (2) with respect to the Non-WCF Collateral, the Prepetition Senior Secured Term Loan Liens and (3) with respect to the WCF Collateral, the Prepetition Working Capital Lien and the Prepetition Senior Secured Term Loan Liens.

4. **Prepetition Junior Secured Term Loan Obligations.**

(a) Under that certain Third Amended and Restated Loan Agreement, dated as of December 21, 2023 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “***Prepetition Junior Secured Term Loan Agreement***,” together with all related security agreements, collateral agreements, pledge agreements, control agreements, guarantees and other documents, the “***Prepetition Junior***



1 *Secured Term Loan Documents*,” and, together with the Prepetition Senior Secured Term Loan  
 2 Documents, the Prepetition Working Capital Documents and the Prepetition TF Stream  
 3 Documents, the “*Prepetition Debt Documents*”), by and among NCU, as borrower, Borrower,  
 4 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC, as guarantors,  
 5 the lenders party thereto from time to time (the “*Prepetition Junior Secured Term Loan*  
 6 *Lenders*”), and Pala, as lead arranger and collateral agent (the “*Prepetition Junior Secured Term*  
 7 *Loan Agent*,” together with the Prepetition Junior Secured Term Loan Lenders, the “*Prepetition*  
 8 *Junior Secured Term Loan Parties*” and, together with the Prepetition Senior Secured Term Loan  
 9 Parties, the Prepetition Working Capital Purchaser and the Prepetition TF Stream Purchaser the  
 10 “*Prepetition Secured Parties*”), NCU was provided with a junior secured term loan facility.

11 (b) *Prepetition Junior Secured Term Loan Obligations.* As of the  
 12 Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
 13 severally indebted and liable to the Prepetition Junior Secured Term Loan Parties under the  
 14 Prepetition Junior Secured Term Loan Documents in the aggregate principal amount of not less  
 15 than \$10 million under the Prepetition Junior Secured Term Loan Agreement, *plus* accrued and  
 16 unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, charges,  
 17 additional interest, any other “Obligations” (as defined in the Prepetition Junior Secured Term  
 18 Loan Agreement) and all other obligations of whatever nature owing, whether or not contingent,  
 19 whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Junior  
 20 Secured Term Loan Documents (collectively, the “*Prepetition Junior Secured Term Loan*  
 21 *Obligations*” and, together with the Prepetition Senior Secured Term Loan Obligations, the  
 22 Prepetition Working Capital Obligations and the Prepetition TF Stream Obligations, the  
 23 “*Prepetition Secured Obligations*”). The Prepetition Junior Secured Term Loan Obligations  
 24 constitute legal, valid, binding and non-avoidable obligations against each of the Debtors and are  
 25 not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset,  
 26 subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy  
 27 Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or  
 28

1 for the benefit of (or obligations incurred to or for the benefit of) the Prepetition Junior Secured  
2 Term Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in  
3 connection with any of the Prepetition Junior Secured Term Loan Documents are subject to  
4 avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim,  
5 cause of action or other challenge of any kind or nature under the Bankruptcy Code, under  
6 applicable non-bankruptcy law or otherwise.

7 (c) *Prepetition Junior Secured Term Loan Liens.* Pursuant to the  
8 Prepetition Junior Secured Term Loan Documents, the Prepetition Junior Secured Term Loan  
9 Obligations are secured by valid, binding, perfected and enforceable liens on and security interests  
10 in (the “***Prepetition Junior Secured Term Loan Liens***” and, together with the Prepetition Senior  
11 Secured Term Loan Liens, the Prepetition Working Capital Lien and the Prepetition TF Stream  
12 Lien, the “***Prepetition Funded Debt Liens***”) the Prepetition Collateral, subject to certain permitted  
13 liens as permitted under the Prepetition Junior Secured Term Loan Agreement. The Prepetition  
14 Junior Secured Term Loan Liens are subject to the Prepetition Senior Secured Term Loan Liens,  
15 the Prepetition Working Capital Lien and the Prepetition TF Stream Lien with respect to all  
16 Prepetition Collateral, in each case, in accordance with the terms and conditions of the Fourth Lien  
17 Intercreditor Agreement (as defined below). Each of the Debtors acknowledges and agrees that,  
18 in each case as of the Petition Date, the Prepetition Junior Secured Term Loan Liens: (i) are valid,  
19 binding, perfected and enforceable liens and security interests in the Prepetition Collateral, with  
20 the priority set forth in the Prepetition Junior Secured Term Loan Documents and the Prepetition  
21 Intercreditor Agreements; (ii) are not subject, pursuant to the Bankruptcy Code or other applicable  
22 law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense  
23 or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) as of the Petition Date are  
24 subject and/or subordinate only to the (1) Prepetition Prior Liens, in relation to the Prepetition  
25 Junior Secured Term Loan Obligations, (2) the Prepetition Senior Secured Term Loan Liens, (3)  
26 the Prepetition Working Capital Lien, and (4) the Prepetition TF Stream Lien.

1                   5.       **Prepetition Intercreditor Agreements.**

2                   (a)       *WCF Intercreditor Agreement.* KfW, Triple Flag, Concord and the  
3 Borrower are parties to that certain Working Capital Facility Intercreditor Agreement, dated as of  
4 May 22, 2019, (as amended, restated, amended and restated, supplemented, or otherwise modified  
5 from time to time prior to the date hereof, the “*WCF Intercreditor Agreement*”), which governs,  
6 among other things, the rights, interests, obligations, priority and positions of the Prepetition  
7 Senior Secured Term Loan Parties, the Prepetition Working Capital Purchaser and the Prepetition  
8 TF Stream Purchaser.

9                   (b)       *TF Intercreditor Agreement.* KfW, Triple Flag, the Borrower, NCU  
10 and NCU’s subsidiaries are party to that certain Intercreditor Agreement, dated as of May 22, 2019,  
11 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to  
12 time prior to the date hereof, the “*TF Intercreditor Agreement*”), which governs the rights,  
13 interests, obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties  
14 and the Prepetition TF Stream Purchaser.

15                   (c)       *Fourth Lien Intercreditor Agreement.* KfW, Triple Flag, Concord,  
16 Pala, the Borrower, NCU and NCU’s subsidiaries are party to that certain Intercreditor Agreement,  
17 dated as of October 28, 2022 (as amended, restated, amended and restated, supplemented, or  
18 otherwise modified from time to time prior to the date hereof, the “*Fourth Lien Intercreditor*  
19 *Agreement*” and, together with the WCF Intercreditor Agreement and the TF Intercreditor  
20 Agreement, the “*Prepetition Intercreditor Agreements*”), which governs the rights, interests,  
21 obligations, priority and positions of the Prepetition Senior Secured Term Loan Parties, the  
22 Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
23 Junior Secured Term Loan Parties.

24                   (d)       Each of the Debtors either is party to or otherwise acknowledged  
25 and agreed to, and are bound by, the Prepetition Intercreditor Agreements. Pursuant to Bankruptcy  
26 Code section 510, the Prepetition Intercreditor Agreements, and any other applicable intercreditor  
27 or subordination provisions contained in any of the Prepetition Debt Documents shall (i) remain  
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1 in full force and effect, (ii) continue to govern the relative obligations, priorities, rights, and  
2 remedies of the applicable Prepetition Secured Parties, and (iii) not be deemed to be amended,  
3 altered or modified by the terms of this Interim Order unless expressly set forth herein or therein.

4 6. **Cash Collateral.** Any and all of the Debtors' cash, including any amounts  
5 generated by the collection of accounts receivable, all cash proceeds of the Prepetition Collateral,  
6 and the cash in the Debtors' banking, checking or other deposit accounts with financial institutions  
7 as of the Petition Date (excluding cash deposits that secure any outstanding letters of credit) or  
8 deposited into the Debtors' banking, checking or other deposit accounts with financial institutions  
9 after the Petition Date constitutes cash collateral of the Prepetition Secured Parties within the  
10 meaning of Bankruptcy Code section 363(a) (the "***Cash Collateral***").

11 7. **Adequate Protection.** Pursuant to Bankruptcy Code sections 105, 361, 362  
12 and 363(e), the Prepetition Secured Parties are entitled to adequate protection of their interests in  
13 the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition  
14 diminution in value of their interests in the Prepetition Collateral resulting from, among other  
15 things, and without limitation, (i) subordination of the Prepetition Secured Parties' interests in the  
16 Prepetition Collateral, (ii) the use of Cash Collateral during the Chapter 11 Cases, (iii) the use, sale  
17 or lease of any of the Prepetition Collateral, (iv) the imposition of the automatic stay pursuant to  
18 Bankruptcy Code section 362(a), and/or (v) for any other reason for which adequate protection  
19 may be granted under the Bankruptcy Code ("***Diminution in Value***"). Based on the Motion, the  
20 DIP Declaration, and the record presented to the Court at the Interim Hearing, the terms of the  
21 proposed adequate protection arrangements and of the use of the Prepetition Collateral, including  
22 the Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

23 G. **Findings Regarding the DIP Facility and Use of Cash Collateral.** Based on the  
24 record established and evidence presented at the Interim Hearing, including the DIP Declaration,  
25 and the representations of the parties, the Court makes the following findings:

26 1. **Need for Postpetition Financing and Use of Cash Collateral.** The  
27 Debtors have a need to use Cash Collateral on an interim basis and obtain credit in the form of the  
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Interim DIP Loans pursuant to the DIP Facility in order to, among other things, (a) permit the orderly continuation of their business, (b) maintain business relationships with their vendors, suppliers, customers and other parties, (c) make payroll, (d) pay Adequate Protection Payments and (e) pay the costs of administering the Chapter 11 Cases, in each case, in compliance with, and subject in all respects to, the Approved Budget, the terms hereof and the DIP Documents. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which, on an interim basis as contemplated hereunder, would immediately and irreparably harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their business, maintain their properties in the ordinary course of business, and fund the Chapter 11 Cases without the authorization to use Cash Collateral and to borrow the Interim Amount. Without the ability to access the DIP Facility and the authority to use Cash Collateral, the Debtors' chances for a successful chapter 11 restructuring would be jeopardized.

2. **Priming of Prepetition Liens.** The priming of the Prepetition Funded Debt Liens on the Prepetition Collateral, to the extent set forth herein, under Bankruptcy Code section 364(d)(1), as contemplated by this Interim Order and the DIP Facility, and as further described below, will enable the Debtors to obtain the DIP Facility and, among other benefits, to continue to operate their businesses for the benefit of their estates and stakeholders.

3. **No Credit Available on More Favorable Terms.** As set forth in the DIP Declaration, the Debtors have been unable to obtain financing from sources other than the DIP Lenders on terms more favorable than those provided under the DIP Facility, as set forth in the DIP Documents. The Debtors have been unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also have been unable to obtain sufficient credit (i) on an unsecured basis having priority over all other administrative expenses, (ii) secured solely by a lien on property of the Debtors and their estates

that is not otherwise subject to a lien or (iii) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Postpetition financing is not otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (x) the DIP Liens (as defined below) on all DIP Collateral (as defined below), as set forth herein, (y) the DIP Superpriority Claims (as defined below) and (z) the other protections set forth in this Interim Order. The terms of the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of sound and prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration and are in the best interest of the Debtors' estates and stakeholders.

4. **Good Faith.** The DIP Facility and the Adequate Protection Obligations have been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Documents including, without limitation, all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents, and all other DIP Obligations shall be deemed to have been extended by the DIP Agent and the DIP Lenders in good faith as that term is used in Bankruptcy Code section 364(e) and in express reliance upon the protections offered by Bankruptcy Code section 364(e). The DIP Obligations and the DIP Liens shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise, and any liens or claims granted to the DIP Agent or the DIP Lenders hereunder arising prior to the effective date of any such vacatur, reversal or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

H. **Consent of the Prepetition Secured Parties.** The Prepetition Secured Parties have consented to or are deemed to consent under the applicable Prepetition Intercreditor Agreements to the priming of the Prepetition Funded Debt Liens, as applicable, to the extent set forth herein, and the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions

provided for in this Interim Order; *provided* that nothing in this Interim Order shall constitute the consent of the Prepetition Senior Secured Term Loan Agent to priming of the Prepetition Senior Secured Term Loan Liens by DIP Liens securing DIP Obligations in an amount greater than \$51.4 million, and KfW reserves its rights with respect to the Final Order in all respects.

I. **Sections 506(c) and 552(b)**. As a material inducement to the DIP Lenders to agree to provide the DIP Facility and the Prepetition Secured Parties to agree to the use of Cash Collateral, and in exchange for (i) the DIP Agent's and DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve-Out to the extent set forth herein and (ii) the Prepetition Secured Parties' agreement to (a) subordinate their Prepetition Funded Debt Liens and the Adequate Protection Liens to the Carve-Out and the DIP Liens, each to the extent provided herein, and (b) consent to the use of Cash Collateral in accordance with and subject to the Approved Budget (subject to the Permitted Variances (as defined below)), the DIP Documents and the terms of this Interim Order, each of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties is entitled to receive (1) a waiver of any "equities of the case" exceptions or claims under Bankruptcy Code section 552(b), (2) a waiver of the provisions of Bankruptcy Code section 506(c), and (3) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable).

J. **Immediate Entry**. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2), (c) and (d) and Local Rules 4001(c)(2) and 9006. Absent granting the interim relief sought by this Interim Order, the Debtors' estates could be immediately and irreparably harmed. Thus, sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2), (c), and (d) and Local Rules 4001(c)(2) and 9006.

Based upon the foregoing findings and conclusions, the Motion, the DIP Declaration, and the record before the Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor,

1 IT IS HEREBY ORDERED THAT:

2 1. **Motion Granted.** The relief sought by the Motion is granted, and the DIP Facility  
3 and the use of Cash Collateral are hereby authorized and approved, in each case, upon the terms  
4 and conditions of this Interim Order and the DIP Documents.

5 2. **Objections Overruled.** Any objections to the Motion that have not been  
6 withdrawn, waived or settled, and all reservations of rights or other statements inconsistent with  
7 this Interim Order, are hereby denied and overruled. This Interim Order shall become effective  
8 and enforceable immediately upon its entry.

9 3. **Approval and Authorization of DIP Facility.**

10 (a) *Authorization of DIP Facility and DIP Documents.* The DIP Facility is  
11 hereby approved on an interim basis on the terms and conditions set forth herein. The DIP Loan  
12 Parties are expressly and immediately authorized and empowered to: (i) (A) enter into and perform  
13 all of their obligations, (B) as required by the DIP Lenders, execute, deliver and perform under the  
14 DIP Documents and (C) pay all fees, costs, expenses, indemnities and other amounts contemplated  
15 under this Interim Order and the applicable DIP Documents; and (ii) perform all acts, to make,  
16 execute, deliver, enter into and perform under any and all other agreements, instruments,  
17 certificates and other documents (including, without limitation, the execution and/or recordation  
18 of any collateral, pledge and security documents, mortgages, deeds of trust, control agreements,  
19 financing statements or other documents), and to perform all such other and further acts, that may  
20 be necessary, required or desirable for the DIP Agent or the DIP Lenders to perform their  
21 obligations under the DIP Facility, this Interim Order and any applicable DIP Document and to  
22 implement the transactions contemplated thereunder and hereunder.

23 (b) **Authorization to Borrow.** The Debtors are hereby authorized to borrow  
24 under the DIP Facility, from the period between the date of entry of this Interim Order and the  
25 Final Hearing (the “*Interim Period*”), a principal amount of up to \$20,000,000, subject to the terms  
26 and conditions (including any conditions precedent to such borrowing) set forth in this Interim  
27 Order and the DIP Documents. The DIP Lenders shall have no obligation to make any loan or  
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1 advance under the DIP Documents, unless all of the conditions precedent to the making of such  
2 extension of credit under the DIP Documents and this Interim Order have been satisfied in full or  
3 waived in accordance with the DIP Documents and this Interim Order.

4 (c) *Use of DIP Proceeds and Cash Collateral.* The Debtors are hereby  
5 authorized to use the proceeds of the DIP Facility and all Cash Collateral solely in the manner and  
6 for the purposes expressly permitted in the Approved Budget (subject to the Permitted Variances),  
7 this Interim Order and the DIP Documents.

8 (d) *DIP Interest, Fees and Expenses.* The Debtors are authorized and directed  
9 to pay any and all (i) interest, fees, premiums or other amounts payable under the DIP Documents,  
10 including, without limitation, the Upfront Fee, the Unused Commitment Fee, the Exit Fee, the  
11 Agency Fee, (ii) amounts due (or that may become due) to any Indemnified Person (as defined  
12 below) in respect of the indemnification obligations under this Interim Order and the DIP  
13 Documents and (iii) any other amounts payable in connection with the DIP Facility, including all  
14 reasonable and documented pre- and postpetition fees, expenses and disbursements in connection  
15 with the DIP Facility and these Chapter 11 Cases of (A) Akin Gump Strauss Hauer & Feld LLP  
16 (“*Akin*”), as counsel to the DIP Lenders, (B) Blake, Cassels & Graydon LLP, as Canadian counsel  
17 to the DIP Lenders, (C) Shea Larson PC, as Nevada local counsel to the DIP Lenders, (D) Kelley  
18 Drye & Warren, LLP, as counsel to the DIP Agent (“*DIP Agent Counsel*”), and (E) any other  
19 attorneys, financial advisors, consultants or other professionals retained by the DIP Secured Parties  
20 (the professionals set forth in clauses (A) through (E), collectively, the “*DIP Professionals*”), in  
21 each case whether or not such payments, premiums, fees, costs, expenses and disbursements arose  
22 before or after the Interim Closing Date. The payment of the fees, costs, expenses and  
23 disbursements of the DIP Professionals other than DIP Agent Counsel (the “*DIP Professional*  
24 *Fees*”) shall be subject to the notice and review procedures set forth in paragraph 19 of this Interim  
25 Order. For the avoidance of doubt, the Debtors shall be jointly and severally liable for the  
26 obligations to pay the DIP Professional Fees in accordance with this Interim Order.

(e) *Indemnification.* As set forth in the DIP Documents, the Debtors will jointly and severally indemnify the DIP Agent, the DIP Lenders, the DIP Professionals and their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each an “**Indemnified Person**”), and hold them harmless from and against any and all losses, claims, damages, costs, expenses (including, but not limited to reasonable and documented legal fees and expenses) and liabilities arising out of or relating to the execution or delivery of the DIP Documents, transactions contemplated hereby and thereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility in accordance with the terms of the DIP Credit Agreement and the other DIP Documents; *provided* that no such Indemnified Person will be indemnified for costs, expenses or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the actual gross negligence or willful misconduct of such person (or their related persons). No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person’s gross negligence or willful misconduct, and in no event shall any Indemnified Person be liable on any theory for any special indirect, consequential or punitive damages.

(f) *Modification of DIP Documents.* The DIP Agent (acting at the direction of the Required DIP Lenders)<sup>4</sup> and the Required DIP Lenders are hereby authorized to execute, deliver and perform under one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in accordance with the provisions of any applicable DIP Documents governing amendments thereto, each without further application to or order of the Court; *provided, however*, that any amendments, waivers, consents or other modifications to and

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<sup>4</sup> The term “**Required DIP Lenders**” as used in this Interim Order, shall have the same meaning ascribed to the term “Majority Lenders” in the DIP Credit Agreement.

under the DIP Documents that (i) modify the original stated maturity of the DIP Facility, (ii) increase the aggregate commitments thereunder or (iii) increase the rate of interest or fees payable with respect thereto shall require further Court approval; *provided further*, that any amendment that may affect the rights, obligations, protections, immunities or indemnities of the DIP Agent shall require the consent of the DIP Agent.

4. **DIP Obligations**

(a) Upon entry of this Interim Order, the obligations under any applicable DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each Debtor, and shall be fully enforceable against each of the Debtors, their estates and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of these Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the foregoing, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the “*Successor Cases*”), in each case, in accordance with the terms of the DIP Documents and this Interim Order.

(b) Upon entry of this Interim Order, the Debtors shall be jointly and severally liable for all DIP Obligations, including, without limitation, all loans, advances, indebtedness, obligations, extensions of credit, financial accommodations, principal, interest, payments or similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other amounts, whether or not such obligations arose before or after the Petition Date, whenever the same shall become due and payable, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the DIP Lenders under the DIP Documents or this Interim Order.

(c) All obligations incurred, payments made and transfers or grants of liens and security interests set forth in this Interim Order and/or the DIP Documents by the Debtors are granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and

commitments and other financial accommodations secured thereby. No obligation, payment, transfer or grant of liens or security interests under this Interim Order or the DIP Documents to the DIP Secured Parties shall be limited, stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law, or subject to any challenge, objection, defense or claim, including, without limitation, avoidance (whether under chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge, recovery or other cause of action of any kind or nature whatsoever, whether arising under the Bankruptcy Code, applicable non-bankruptcy law or otherwise (subject, solely in the case of the DIP Professional Fees, only to the procedures set forth in paragraph 19 of this Interim Order).

5. **DIP Superpriority Claims**. Pursuant to Bankruptcy Code section 364(c)(1), all of the DIP Obligations shall constitute allowed senior administrative expense claims of the DIP Secured Parties, against each of the Debtors' estates (the "***DIP Superpriority Claims***"), without the need to file any proof of claim or request for payment of administrative expenses, with priority over any and all administrative expenses, adequate protection claims, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 726, 1113 or 1114 or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for the purposes of Bankruptcy Code section 1129(a)(9)(A) be considered administrative expenses allowed under Bankruptcy Code section 503(b) and 507(b), and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including actions to recover property transferred pursuant to

Bankruptcy Code section 549, and subject to the entry of the Final Order, the proceeds of, and property that is recovered from or becomes unencumbered as a result of (whether by judgment, settlement or otherwise), all claims and causes of action arising under chapter 5 of the Bankruptcy Code or under any applicable state law of a similar nature (such claims and causes of action, “**Avoidance Actions**” and the proceeds thereof, “**Avoidance Action Proceeds**”), subordinate only to the Carve-Out and the administrative charge granted by the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) in the proceedings (the “**Recognition Proceedings**”) under Part IV of the Companies’ Creditors Arrangement Act (Canada) (the “**CCAA**”) commenced by the Debtors in Canada in respect of certain Canadian-related professional fees, in an aggregate amount not to exceed CAD\$500,000 (the “**Administration Charge**”). Except as set forth in, or permitted by, this Interim Order, or otherwise permitted pursuant to an order of this Court, no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

6. **DIP Liens.**

(a) As security for the DIP Obligations, effective and automatically perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted by the DIP Loan Parties continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the “**DIP Liens**”) upon all DIP Collateral as security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of all of the DIP Obligations.

(b) The term “**DIP Collateral**” means all assets and properties of each of the Debtors and their estates, of any kind or nature whatsoever, wherever located, whether tangible or intangible, real, personal or mixed, whether now owned or consigned by or to, or leased from or to, or hereafter acquired by, or arising in favor of, each of the Debtors (including under any trade

names, styles or derivations thereof), whether prior to or after the Petition Date, including, without limitation: (i) all Prepetition Collateral (including Cash Collateral); (ii) all intercompany claims, including, but not limited to, all Intercompany Superpriority Claims (as defined below); (iii) all money, cash and cash equivalents; (iii) all funds in any deposit accounts (excluding cash deposits that secure any outstanding letters of credit), securities accounts, commodities accounts, or other accounts (together with and all money, cash and cash equivalents, instruments and other property deposited therein or credited thereto from time to time); (iv) all accounts and other receivables (including those generated by intercompany transactions); (v) all contracts and contract rights; (vi) all instruments, documents and chattel paper; (vii) all securities (whether or not marketable); (viii) all goods, as-extracted collateral, furniture, machinery, equipment, inventory and fixtures; (ix) all real property interests; (x) all interests in leaseholds; (xi) all franchise rights; (xii) all patents, tradenames, trademarks, copyrights, licenses and all other intellectual property; (xiii) all general intangibles, tax or other refunds or insurance proceeds; (xiv) all equity interests, capital stock, limited liability company interests, partnership interests and financial assets; (xv) all investment property; (xvi) all supporting obligations; (xvii) all letters of credit and letter of credit rights; (xviii) all commercial tort claims; (xix) subject to the entry of the Final Order, all Avoidance Action Proceeds (but not avoidance actions themselves), (xx) all books and records (including, without limitation, customers lists, credit files, computer programs, printouts and other computer materials, and records); (xxi) to the extent not covered by the foregoing, all other goods, assets or properties of the Debtors, whether tangible, intangible, real, personal or mixed; and (xxii) all products, offspring, profits and proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, including any and all proceeds of any insurance (including any business interruption and property insurance), indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing.

(c) Subject in all cases to the terms of this Interim Order and the DIP Documents, the DIP Secured Parties shall be granted the following DIP Liens in respect of the DIP Facility:

- (1) *First Priority Lien on Unencumbered Property.* Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable and fully-perfected first priority senior security interest in and lien upon all DIP Collateral that, as of the Petition Date, is unencumbered and not subject to any liens (including Petition Date Perfected Liens), which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, and (B) the Administration Charge.
- (2) *Priming Lien on WCF Collateral.* Upon the payment in full of the obligations under the Prepetition Working Capital Facility, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes WCF Collateral, which security interest and lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (3) *Priming Lien on Non-WCF Collateral.* Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority security interest in and lien upon all DIP Collateral that constitutes Non-WCF Collateral, *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge and (C) Petition Date Perfected Liens, and (D) prior to entry of the Final Order, any security interest in or lien on the assets of NCU that are in favor of Trisura Guarantee Insurance Company.
- (4) *Lien on Intercompany Superpriority Claims.* Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable and fully-perfected first priority priming security interest in and lien on all claims in respect of intercompany transfers of proceeds from the DIP Facility or of Cash Collateral from any Debtor to NCU (the “*Intercompany Superpriority Claims*”), *provided* that such lien shall be junior and subordinate only to (A) the Carve-Out, (B) the Administration Charge, and (C) Petition Date Perfected Liens (excluding any Prepetition Trisura Lien).

(d) To the fullest extent permitted by the Bankruptcy Code or applicable law, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other instrument or agreement that requires the consent or the payment of any fees or obligations to any governmental entity or non-governmental entity for the Debtors to pledge, grant, mortgage, sell, assign or otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral, shall have no force or effect with respect to the DIP Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Documents and this Interim Order.

## 7. **Use of DIP Collateral and Cash Collateral**

1 (a) The Debtors are hereby authorized to use the proceeds of DIP Facility and  
2 all Cash Collateral solely to the extent expressly permitted under the Approved Budget (subject to  
3 the Permitted Variances) and subject to the terms and conditions set forth in this Interim Order and  
4 any applicable DIP Documents. Except on the terms and conditions of this Interim Order, the  
5 Debtors shall be enjoined and prohibited from at any time using the Cash Collateral absent further  
6 order of the Court.

7 (b) Without the prior written consent of the Required DIP Lenders, the Debtors  
8 shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral  
9 (or enter into any binding agreement to do so), except as may be expressly permitted by this Interim  
10 Order and any applicable DIP Documents. All proceeds of DIP Collateral, whether from ordinary  
11 course collections, asset sales, debt or equity issuances, insurance recoveries, condemnation or  
12 otherwise, will be deposited and applied as required by this Interim Order and any applicable DIP  
13 Documents. The Debtors shall not transfer any cash, assets, properties or other DIP Collateral to  
14 any affiliate of the Debtors that is not a Debtor in these Chapter 11 Cases without the prior written  
15 consent of the Required DIP Lenders, in their sole discretion.

16 (c) Proceeds of the DIP Facility constitute postpetition assets of the Debtors,  
17 subject only to the Carve Out, Administrative Charge, DIP Liens, and adequate protection liens of  
18 the Prepetition Secured Parties, with the priorities set forth herein, and shall, for the avoidance of  
19 doubt, not be subject to any liens arising from prepetition claims against any of the Debtors,  
20 whether perfected prior to the Petition Date, after the Petition Date pursuant to section 546(b) of  
21 the Bankruptcy Code, or otherwise, regardless of where or how held. The Debtors may deposit  
22 proceeds of the DIP Facility into their existing bank accounts, and such proceeds shall not be  
23 subject to any liens or claims arising prepetition, including pursuant to chapter 108 of the Nevada  
24 Revised Statutes, whether or not eligible for perfection after the Petition Date, except for junior  
25 liens or claims of the Prepetition Secured Parties, as set forth herein. For the avoidance of doubt,  
26 to the extent of any proceeds of the DIP Facility deposited therein, no bank account of the Debtors  
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1 may be a “construction disbursement account” for purposes of chapter 108 of the Nevada Revised  
2 Statutes.

3 8. **Budget**

4 (a) *Initial Budget.* The Debtors have prepared and delivered to the DIP Lenders  
5 and the DIP Professionals an itemized thirteen-week cash flow forecast attached hereto as **Exhibit**  
6 **B** (the “*Initial Budget*,” as amended, replaced, supplemented or otherwise modified from time to  
7 time in accordance with the terms of this Interim Order and the DIP Documents, the “*Approved*  
8 *Budget*”). Except as otherwise provided herein or in the DIP Documents, the Debtors may only  
9 use Cash Collateral and the proceeds of the DIP Facility to fund payments benefitted by the Carve-  
10 Out and otherwise in accordance with the Approved Budget (subject to the Permitted Variances).

11 (b) *Proposed Budget; Budget Transition.* By no later than 12:00 p.m. (Pacific  
12 Time) on the third Thursday after the Petition Date (commencing from June 27, 2024), and  
13 continuing at 12:00 p.m. (Pacific Time) on the Thursday of every second week thereafter, the  
14 Debtors shall deliver to the DIP Lenders, DIP Professionals, and KfW an updated and  
15 supplemented forecast (a “*Proposed Budget*”) for the thirteen-week period commencing with the  
16 calendar week in which such Proposed Budget is delivered (the “*Budgeted Period*”); *provided,*  
17 *however,* that in no event shall the Budgeted Period extend past four weeks after the Maturity Date  
18 (as defined in the DIP Credit Agreement) of the DIP Facility. For the avoidance of doubt, if the  
19 Budgeted Period is anticipated to extend beyond the Maturity Date, the projected receipts,  
20 disbursements, intercompany transfers and all other line items set forth in the Proposed Budget for  
21 all weeks following the Maturity Date shall assume that the Debtors continue to operate in the  
22 ordinary course consistent with prior postpetition practices and that no sale of the Debtors’  
23 business will occur during such portion of the Budgeted Period. The Proposed Budget (including  
24 any subsequent revisions to any such Proposed Budget) shall become the Approved Budget  
25 effective five (5) business days after such submission (such date, the “*Budget Transition Date*”)  
26 unless the Debtors receive a written objection from the Required DIP Lenders (with e-mail from  
27 professionals acting on behalf of the Required DIP Lenders to the Debtors’ counsel being  
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1 sufficient) prior to 5:00 p.m. (Pacific Time) on the Budget Transition Date. If the Required DIP  
2 Lenders do not object, in writing, to a Proposed Budget, or an amendment, supplement or  
3 modification to the Approved Budget or Approved Variance Report (defined below) within five  
4 (5) business days after the Required DIP Lenders' receipt thereof, then such Proposed Budget,  
5 amendment, supplement or modification shall be deemed acceptable to and approved by the DIP  
6 Lenders. In the event the Required DIP Lenders timely object to a Proposed Budget, the prior  
7 Approved Budget shall remain in full force and effect until any such Proposed Budget is approved  
8 by the Required DIP Lenders (with e-mail from the advisors acting on behalf of the Required DIP  
9 Lenders to the Debtors' counsel being sufficient). The consent of the Required DIP Lenders to  
10 any Proposed Budget or any Approved Budget shall not be construed as consent to the use of any  
11 Cash Collateral or proceeds of the DIP Facility after the occurrence of a Termination Event  
12 regardless of whether the aggregate funds shown on the Approved Budget have been  
13 expended. Until any Proposed Budget, amendment, supplement or modification has been  
14 approved (or is deemed approved in accordance with this paragraph) by the Required DIP Lenders,  
15 the Debtors shall be subject to and be governed by the terms of the Approved DIP Budget then in  
16 effect.

17 (c) *Budget Reporting.* By no later than 12:00 p.m. (Pacific Time) on the second  
18 Thursday following the Petition Date (the "**First Reporting Date**", which, for the avoidance of  
19 doubt, shall be June 20, 2024), and no later than 12:00 p.m. (Pacific Time) on each Thursday  
20 thereafter (together with the First Reporting Date, each a "**Weekly Reporting Date**"), the Debtors  
21 shall provide to the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form  
22 and substance reasonably acceptable to the DIP Lenders (the "**Weekly Variance Report**"), setting  
23 forth in reasonable detail: (i) the intercompany transfers from Debtor entities to NCU on a Debtor-  
24 by-Debtor and an aggregate basis; (ii) the actual receipts of the Debtors on a line-by-line and  
25 aggregate basis (the "**Actual Receipts**") and the actual disbursements of the Debtors on a line-by-  
26 line and aggregate basis (such aggregate actual disbursements, the "**Actual Disbursements**"), in  
27 each case, during the applicable week ending on the Sunday preceding each such Weekly  
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Reporting Date (each such week, the “**Reporting Week**”); (iii) a comparison (whether positive or negative, expressed as a percentage) for the Reporting Week between (A) the Actual Receipts (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected receipts (and each line item thereof) set forth in the Approved Budget for such Reporting Week, (B) the Actual Disbursements (and each line item thereof) for such Reporting Week to the amount of the Debtors’ projected disbursements (and each line item thereof) set forth in the Approved Budget for such Reporting Week and (C) the actual intercompany transfers from each Debtor entity to NCU to the amount of each such Debtor’s projected intercompany transfers to NCU set forth in the Approved Budget for such Reporting Week. In addition, by no later than 12:00 p.m. (Pacific Time) on each Weekly Reporting Date that occurs on and after the three-week anniversary of the First Reporting Date, (each such date, a “**Rolling Four-Week Testing Date**” (which such initial Rolling Four-Week Testing Date shall be July 11, 2024) and each subsequent four-week period commencing from the beginning of the week in which the Petition Date occurs and ending on the Sunday preceding each such Rolling Four-Week Testing Date, a “**Rolling Four-Week Testing Period**”) the Debtors shall provide the DIP Lenders (and their advisors) and KfW (and its counsel) a report, in form and substance reasonably acceptable to the DIP Lenders (a “**Rolling Four-Week Variance Report**” and, together with the Weekly Variance Report, the “**Approved Variance Reports**”), setting forth in reasonable detail: (x) the aggregate Actual Receipts of the Debtors, aggregate Actual Disbursements of the Debtors, and aggregate intercompany transfers from each Debtor entity to NCU, in each case, during the applicable Rolling Four-Week Testing Period; and (y) a comparison (whether positive or negative, expressed as a percentage) detailing (1) the aggregate Actual Receipts (and each line item thereof) for such Rolling Four-Week Testing Period compared to the projected receipts (and each line item thereof) for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period; (2) the aggregate Actual Disbursements (and each line item thereof) for such Rolling Four-Week Testing Period compared to the projected disbursements (and each line item thereof) for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period;

and (3) the aggregate intercompany transfers from each Debtor entity to NCU made by each such Debtor during such Rolling Four-Week Testing Period compared to the aggregate projected intercompany transfers from each such Debtor entity to NCU for such Rolling Four-Week Testing Period set forth in the Approved Budget for such Rolling Four-Week Testing Period.

(d) *Budget Testing; Permitted Variances.* During any Rolling Four-Week Testing Period, the Debtors shall not permit (1) total disbursements, minus (2) disbursements in respect of (i) interest, fees, and expenses in relation to the DIP Facility; (ii) Adequate Protection Obligations; (iii) DIP Professional Fees; and (iv) professional fees paid by the Debtors on behalf of themselves or any other party (the disbursements remaining after such subtractions, the “**Total Tested Disbursements**”) to be more than 120% of such Total Tested Disbursements set forth in the Approved Budget for such Rolling Four-Week Testing Period (collectively, the “**Permitted Variances**”). Additional disbursement variances, if any, from an Approved Budget, and any proposed amendments, supplements or modifications to an Approved Budget, shall be subject to the prior written approval of the Required DIP Lenders. For the avoidance of doubt, any reference to “written consent” or “written approval” hereunder shall include consent or approval granted by e-mail, including email from counsel to the DIP Lenders on behalf of the DIP Lenders.

9. **Reporting Requirements; Access to Records.** The Debtors shall provide (i) Akin, as counsel to the DIP Lenders, (ii) Milbank LLP (“**Milbank**”), as counsel to KfW, (iii) White & Case LLP, as counsel to Concord, (iv) Davis, Graham & Stubbs LLP, as counsel to Triple Flag (v) Cleary, Gottlieb, Steen & Hamilton LLP, as counsel to Pala, (vi) Bennett Jones LLP, as counsel to Mercuria, and (vii) Alvarez & Marsal Canada Inc., in its capacity as the Information Officer in the Recognition Proceedings, with all reporting and other information required to be provided to the DIP Agent under the DIP Documents. In addition to, and without limitation, whatever rights to access the DIP Secured Parties or KfW have under the DIP Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents and employees of the DIP Secured Parties and KfW to (x) have access to and inspect the Debtors’

assets, (y) examine the Debtors' books and records and (z) discuss the Debtors' affairs, finances and condition with the Debtors' officers and financial advisors.

10. **Adequate Protection for the Prepetition Secured Parties.** Pursuant to Bankruptcy Code sections 361, 363, and 364, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition Diminution in Value of such interests, the Prepetition Secured Parties are hereby granted the following (collectively, the "***Adequate Protection Obligations***"):

(a) ***Adequate Protection Liens.*** As security for and solely to the extent of any Diminution in Value, the Prepetition Secured Parties are hereby granted additional and replacement valid, binding, enforceable, non-avoidable and effective and automatically perfected postpetition security interests in, and liens on, as of the date of this Interim Order (the "***Adequate Protection Liens***"), subject in all cases to the priorities set forth on **Exhibit C** hereto, without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, all DIP Collateral.

(b) ***Adequate Protection Superpriority Claims.*** As further adequate protection, and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), the Prepetition Secured Parties are hereby granted allowed administrative expense claims in the Chapter 11 Cases against each of the Debtors to the extent of any Diminution in Value (the "***Adequate Protection Superpriority Claims***"). The Adequate Protection Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Action Proceeds). Subject to the terms of this Interim Order, the Adequate Protection Superpriority Claims shall have the same relative priorities as the Adequate Protection Liens (as set forth on **Exhibit C** hereto) and be subject to (i) the Carve-Out, (ii) the Administration Charge and (iii) the DIP Superpriority Claims. Except as set forth in this Interim Order, the Adequate Protection

1 Superpriority Claims shall not be junior to any other claims and shall have priority over all  
2 administrative expense claims against each of the Debtors, now existing or hereafter arising, of  
3 any kind or nature whatsoever, including, without limitation, administrative expense claims of the  
4 kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365,  
5 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and  
6 1114.

7 (c) *Fees and Expenses of the Prepetition Secured Parties.* As further adequate  
8 protection, the Debtors are authorized and directed to pay, without further Court order, reasonable  
9 and documented fees and expenses (the “**Adequate Protection Fees**”), whether incurred before or  
10 after the Petition Date, of the Prepetition Senior Secured Term Loan Agent, consisting of the  
11 following: (i) Milbank, as counsel to KfW; (ii) one Canadian counsel to KfW; (iii) one Nevada  
12 counsel to KfW; and (iv) one technical advisor to KfW; (collectively, the “**Prepetition Secured**  
13 **Parties’ Professionals**”) in accordance with the notice and review procedures set forth in  
14 paragraph 19 of this Interim Order.

15 (d) *Monthly Payments.* The Prepetition Senior Secured Term Loan Agent shall  
16 during the pendency of the Chapter 11 Cases, receive indefeasible payments in amounts equal to  
17 100% of the accrued and unpaid interest, whether accruing prior to, on or after the Petition Date,  
18 due to the Prepetition Senior Secured Term Loan Agent under the Prepetition Senior Secured Term  
19 Loan Documents (calculated at the applicable non-default rates) (the “**Adequate Protection**  
20 **Monthly Payments**” and, together with the Adequate Protection Fees, the “**Adequate Protection**  
21 **Payments**”), which shall be payable (i) in respect of payments relating to the Prepetition Senior  
22 Secured KfW Term Loan Obligations, in cash and (ii) in respect of payments relating to the  
23 Prepetition Senior Secured Term Loan A-2 Obligations, in kind; *provided* that in the event of a  
24 final determination that the Prepetition Senior Secured Term Loan Lenders are undersecured as of  
25 the Petition Date, payments received by the applicable undersecured Prepetition Senior Secured  
26 Term Loan Lender pursuant to this paragraph 10(d) may be recharacterized and applied as  
27 payments of principal.  
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1           (e) *Information Rights.* The Debtors shall contemporaneously provide the  
2 Prepetition Secured Parties with all reporting and information that is required to be provided to the  
3 DIP Lenders under the DIP Documents (as currently in effect, or pursuant to any additional  
4 requirements that may be added after the date hereof). The Debtors shall (a) provide the Prepetition  
5 Senior Secured Term Loan Agent and its advisors with copies of any material proposal, offer,  
6 indication of interest, or bid within two (2) business days of receipt, and (b) at the Prepetition  
7 Senior Secured Term Loan Agent's request, host a weekly call with the Prepetition Senior Secured  
8 Term Loan Agent and its advisors regarding the status of the Debtors' sale process. The Debtors  
9 shall provide the Prepetition Senior Secured Term Loan Agent and its advisors with any  
10 information reasonably requested by the Prepetition Senior Secured Term Loan Agent or its  
11 advisors in connection with any Proposed Budget, Approved Budget, or Weekly Variance Report  
12 within three (3) business days of such request. The Debtors shall conduct weekly status calls with  
13 KfW (and their technical advisor) on the status of the Underground Mine and shall respond timely  
14 to any reasonable request of KfW's technical advisor to provide information with respect to the  
15 status of the Underground Mine.

16           11. **Perfection of DIP Liens and Adequate Protection Liens.**

17           (a) This Interim Order shall be sufficient and conclusive evidence of the  
18 attachment, validity, perfection and priority of all liens and security interests granted under this  
19 Interim Order and the DIP Documents, including, without limitation, the DIP Liens and the  
20 Adequate Protection Liens, without the necessity of the execution, recordation or filing of any  
21 pledge, collateral or security agreements, mortgages, deeds of trust, lockbox or control agreements,  
22 financing statements, notations of certificates of title for titled goods, or any other document or  
23 instrument, or the taking of any other action (including, without limitation, entering into any  
24 deposit account control agreement or other act to take possession or control of any DIP Collateral,  
25 including Cash Collateral), to attach, validate, perfect or prioritize such liens and security interests,  
26 or to entitle the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition  
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1 Secured Parties to the priorities provided hereby and set forth on Exhibit C hereto (a “*Perfection*  
2 *Act*”).

3 (b) Without in any way limiting the automatically effective perfection of the  
4 liens granted under this Interim Order and the DIP Documents (including, without limitation, the  
5 DIP Liens and the Adequate Protection Liens), each of the Required DIP Lenders, the Prepetition  
6 Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the Prepetition TF  
7 Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, without any further  
8 consent of any party, is hereby authorized on a final basis, to execute, file or record, and such  
9 parties, as applicable, may require the execution, filing or recording, as each, in its sole discretion  
10 deems necessary, of such financing statements, mortgages, notices of lien and other similar  
11 documents to enable the Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
12 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
13 Junior Secured Term Loan Agent, as applicable, to further validate, perfect, preserve and enforce  
14 the DIP Liens or Adequate Protection Liens granted hereunder, as applicable, perfect in accordance  
15 with applicable law or to otherwise evidence the DIP Liens and/or the Adequate Protection Liens,  
16 as applicable, and all such financing statements, mortgages, notices and other documents shall be  
17 deemed to have been executed, filed or recorded as of the Petition Date; *provided, however*, that,  
18 notwithstanding any otherwise applicable law or regulation to the contrary, whether or not the  
19 Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent, the Prepetition Working  
20 Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition Junior Secured Term  
21 Loan Agent, as applicable, determine, in their sole discretion, to execute, file, record or otherwise  
22 effectuate any Perfection Act with respect to any liens or security interests granted under this  
23 Interim Order and the DIP Documents, such liens and security interests shall be deemed valid,  
24 perfected, allowed, enforceable, non-avoidable and not subject to objection, challenge, dispute,  
25 avoidance, recharacterization or subordination. The Debtors are hereby authorized and directed  
26 on a final basis to execute and deliver promptly upon demand to the Required DIP Lenders, the  
27 Prepetition Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the  
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1 Prepetition TF Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, as  
2 applicable, all such financing statements, notices and other documents as such parties may  
3 reasonably request. The Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent,  
4 the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser or the Prepetition  
5 Junior Secured Term Loan Agent, as applicable, each in its discretion, may file a copy of this  
6 Interim Order as a financing statement with any filing or recording office or with any registry of  
7 deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or  
8 similar instruments, and in such event, the filing or recording office shall be authorized to file or  
9 record such copy of this Interim Order.

10 12. **Modification of Automatic Stay.** The automatic stay imposed by Bankruptcy  
11 Code section 362(a) is hereby modified, without application to or further order of this Court, to  
12 permit: (i) the Debtors to grant the DIP Liens and the DIP Superpriority Claims, and to perform  
13 such acts as the DIP Agent (acting at the direction of the Required DIP Lenders) and/or the  
14 Required DIP Lenders may request to assure the perfection and priority of the DIP Liens; (ii) the  
15 Debtors to incur all liabilities and obligations to the DIP Secured Parties as contemplated under  
16 this Interim Order and the DIP Documents; (iii) the Debtors to grant the Adequate Protection Liens  
17 and Adequate Protection Superpriority Claims and to perform such acts as the Prepetition Secured  
18 Parties may request to assure the perfection and priority of the Adequate Protection Liens; (iv) the  
19 Debtors to incur all liabilities and obligations to the Prepetition Secured Parties, including all  
20 Adequate Protection Superpriority Claims and other Adequate Protection Obligations, as  
21 contemplated under this Interim Order and the DIP Documents; (v) the Debtors to pay all amounts  
22 required under this Interim Order and the DIP Documents; (vi) the DIP Secured Parties and the  
23 Prepetition Secured Parties to retain and apply payments made in accordance with the terms of this  
24 Interim Order and the DIP Documents; (vii) subject in all respects to paragraph 18 of this Interim  
25 Order, the DIP Agent (acting at the direction of the Required DIP Lenders) and the applicable  
26 Prepetition Secured Parties to exercise, upon the occurrence of any Termination Event (as defined  
27 below), all rights and remedies provided for in this Interim Order, the DIP Documents or applicable  
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law; (viii) the Debtors to perform under this Interim Order and the DIP Documents and to take any and all other actions that may be necessary, required or desirable for the performance by the Debtors under this Interim Order and the DIP Documents and the implementation of the transactions contemplated hereunder and thereunder; and (ix) the implementation of all of the terms, rights, benefits, privileges, remedies and provisions of this Interim Order and the DIP Documents.

13. **Carve-Out.**

(a) *Carve-Out.* As used in this Interim Order, the “***Carve-Out***” means the sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, together with interest, if any, under section 3717 of title 31 of the United States Code (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under Bankruptcy Code section 726(b) (without regard to the notice set forth in (iii) below); (iii) to the extent allowed, whether by interim order, procedural order or otherwise, all unpaid fees and expenses (the “***Allowed Professional Fees***”) incurred by persons or firms retained by the Debtors pursuant to Bankruptcy Code sections 327, 328 or 363 (the “***Debtor Professionals***”) and the Creditors’ Committee pursuant to Bankruptcy Code sections 328 or 1103 (the “***Committee Professionals***” and, together with the Debtor Professionals, the “***Estate-Retained Professionals***”) at any time before or on the first calendar day following delivery of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Estate-Retained Professionals, in an aggregate amount not to exceed \$750,000 incurred after the first calendar day following delivery of the Carve-Out Trigger Notice, to the extent allowed, whether by interim order, procedural order or otherwise (the amounts set forth in this clause (iv) being the “***Post-Carve-Out Trigger Notice Cap***”). For purposes of the foregoing, the “***Carve-Out Trigger Notice***” shall mean a written notice delivered by e-mail by the DIP Agent (acting at the direction of the Required DIP Lenders and in accordance with the terms of this Interim Order), to the Debtors’ proposed bankruptcy counsel Allen Overy Shearman & Sterling

1 US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick and Sara Coelho),  
2 the U.S. Trustee, the Creditors' Committee, if any, and the Prepetition Secured Parties, which  
3 notice may be delivered following the occurrence and during the continuation of an Event of  
4 Default (as defined in the DIP Credit Agreement) and acceleration of the obligations under the DIP  
5 Facility or the occurrence of a Maturity Date (as defined in the DIP Credit Agreement), stating that  
6 the Post-Carve-Out Trigger Notice Cap has been invoked.

7 (b) *Carve-Out Reserves*. On the day on which a Carve-Out Trigger Notice is  
8 delivered (the "***Carve-Out Trigger Date***"), the Carve-Out Trigger Notice shall constitute a demand  
9 to the Debtors to utilize all cash on hand as of such date to fund a reserve in an amount equal to  
10 the then unpaid amounts of (i) the Allowed Professional Fees of Estate-Retained Professionals and  
11 (ii) the obligations accrued as of the Carve-Out Trigger Date with respect to clauses (i) and (ii) of  
12 the definition of Carve-Out set forth in paragraph 13(a) (the "***Additional Carve-Out Obligations***").  
13 The Debtors shall deposit and hold such amounts in a segregated account in a manner reasonably  
14 acceptable to the DIP Agent (acting at the direction of the Required DIP Lenders) or the Required  
15 DIP Lenders, and, following the Discharge of DIP Obligations, the Prepetition Senior Secured  
16 Term Loan Agent, in trust to pay such unpaid Allowed Professional Fees of Estate-Retained  
17 Professionals and Additional Carve-Out Obligations (the "***Pre-Carve-Out Trigger Notice***  
18 ***Reserve***") prior to the use of such reserve to pay any other claims. On the Carve-Out Trigger Date,  
19 after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining  
20 cash on hand as of such date to fund a reserve in an amount equal to the Post-Carve-Out Trigger  
21 Notice Cap (the "***Post-Carve-Out Trigger Notice Reserve***" and, together with the Pre-Carve-Out  
22 Trigger Notice Reserve, the "***Carve-Out Reserves***") prior to the use of such reserve to pay any  
23 other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the  
24 obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth in paragraph  
25 13(a) (the "***Pre-Carve-Out Amounts***"), but not, for the avoidance of doubt, the Post-Carve-Out  
26 Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice  
27 Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay any other  
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amounts (if owing) benefitted by the Carve-Out and then to the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) have been indefeasibly paid in full, in cash, and all commitments under the DIP Facility have been terminated (the “**Discharge of DIP Obligations**”), in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents and this Interim Order. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the “**Post-Carve-Out Amounts**”), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to the terms of this Interim Order, to pay the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents and this Interim Order. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, if either of the Carve-Out Reserves are not funded in full in the amounts set forth in this paragraph 13(b), then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 13(b), prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent (in accordance with the terms of this Interim Order and the DIP Documents) shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a valid and perfected security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for the benefit of itself and the DIP Lenders in accordance with the terms of this Interim Order and the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case

any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition Debt Documents. Further, notwithstanding anything to the contrary in this Interim Order, (x) disbursements by the Debtors from the Carve-Out Reserves shall not increase or reduce the DIP Obligations or constitute additional loans under the DIP Facility and (y) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out in respect of DIP Collateral or any recoveries thereon. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Documents or in any Prepetition Debt Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Obligations and the Prepetition Secured Obligations, and any and all other forms of adequate protection, liens or claims securing the DIP Obligations or the Prepetition Secured Obligations.

(c) *Payment of Allowed Professional Fees Prior to the Carve-Out Trigger Date.* Any payment or reimbursement made prior to the occurrence of the Carve-Out Trigger Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

(d) *No Direct Obligation to Pay Allowed Professional Fees.* None of the DIP Secured Parties or Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Estate-Retained Professional incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Estate-Retained Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) *Payment of Carve-Out on or After the Carve-Out Trigger Date.* Any payment or reimbursement made on or after the occurrence of the Carve-Out Trigger Date in respect of any Allowed Professional Fees incurred after the first business day following delivery by the DIP Agent (acting at the direction of the Required DIP Lenders) of the Carve-Out Trigger Notice shall permanently reduce the Post-Carve-Out Trigger Notice Cap on a dollar-for-dollar basis. Any funding of the Carve-Out under the DIP Facility shall be added to, and made a part of,

the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code and applicable law.

14. **Limitation on Charging Expenses Against Collateral.** Subject to entry of the Final Order (but retroactive to the Petition Date), and subject to the Carve-Out and the Administration Charge, no costs or expenses of administration of the Chapter 11 Cases, the Recognition Proceedings or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code or the CCAA, shall be charged against or recovered from the DIP Collateral or the Prepetition Collateral, the DIP Secured Parties or the Prepetition Secured Parties pursuant to Bankruptcy Code sections 506(c) and 105(a), or any similar principle of law or equity, without the prior written consent of the DIP Secured Parties and the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties.

15. **No Marshaling/Application of Proceeds.** Subject to entry of the Final Order, the DIP Agent and the Prepetition Secured Parties shall be entitled to apply the payments or proceeds of the DIP Collateral and the Prepetition Collateral, as applicable, in accordance with the provisions of the Interim Order or the Final Order, as applicable, the DIP Documents and the Prepetition Debt Documents, as applicable, and in no event shall the DIP Secured Parties or any of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral.

16. **Equities of the Case.** Subject to entry of the Final Order (but retroactive to the Petition Date), (i) the Prepetition Secured Parties shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b) and (ii) the Debtors shall not invoke the “equities of the case” exception under Bankruptcy Code section 552(b) with respect to the proceeds, products, offspring or profits of any of the Prepetition Collateral.

17. **Termination Events.** The occurrence of any of the following shall constitute a “*Termination Event*”: (i) the occurrence of an Event of Default (as defined in the DIP Documents) to the extent not waived by the Required DIP Lenders or subject to a forbearance or similar

1 agreement with the Required DIP Lenders; (ii) the Debtors' failure to comply in any material  
2 respect with any provision of this Interim Order unless waived by the applicable lenders; or (iii)  
3 the occurrence of the Maturity Date (as defined in the DIP Documents).

4 18. **Remedies Upon a Termination Event.**

5 (a) Upon the occurrence of the Termination Event, the DIP Agent (acting at the  
6 direction of the Required DIP Lenders) shall be entitled to declare (A) all DIP Obligations due and  
7 payable without presentment, demand or protest or other notice of any kind, all of which are  
8 expressly waived by the Debtors, (B) the termination, reduction or restriction of all future  
9 commitments to the Borrower under the DIP Facility to the extent any such commitment remains  
10 (including, for the avoidance of doubt, any commitment to fund the DIP Facility) but without  
11 affecting the DIP Liens and DIP Obligations, (C) the termination of the DIP Facility and any DIP  
12 Documents as to any future obligation of the DIP Secured Parties, but without affecting any of the  
13 DIP Liens or any DIP Obligation, (D) the termination, reduction or restriction on the ability of the  
14 Debtors to use any Cash Collateral and the proceeds of the DIP Facility (any such declaration made  
15 by the DIP Agent to counsel to the Debtors, counsel to the applicable Prepetition Secured Parties,  
16 the U.S. Trustee and counsel to the Creditors' Committee, if any, (which may be made by e-mail),  
17 a "***Termination Declaration***," and the date which is the earliest to occur of any such Termination  
18 Declaration and the Maturity Date being herein referred to as the "***Termination Declaration***  
19 ***Date***"). The DIP Agent shall provide any Termination Declaration to the Debtors' lead  
20 restructuring counsel, the Creditors' Committee, if any, the U.S. Trustee, and Milbank, as counsel  
21 to KfW.

22 (b) The Debtors, the Committee (if appointed), and/or any party in interest shall  
23 be entitled to seek an emergency hearing before the Court within four (4) business days after the  
24 delivery of a Termination Declaration (such period being the "***Remedies Notice Period***"), for the  
25 sole purpose of contesting whether a Termination Event (other than with respect to the Maturity  
26 Date) has occurred or is continuing or for the contested use of Cash Collateral (a "***Stay***  
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1 ***Enforcement Motion***”).<sup>5</sup> The Debtors shall be entitled to continue to use Cash Collateral in  
2 accordance with the terms of this Interim Order and the DIP Documents during any Remedies  
3 Notice Period only to make payroll and fund critical expenses necessary to preserve the Prepetition  
4 Collateral, in each case, in accordance with the terms of the Approved Budget and this Interim  
5 Order, but shall not be permitted to use Cash Collateral following any Remedies Notice Period  
6 absent further order of the Court approving such use (and only to the extent so approved). Unless  
7 the Court has determined that a Termination Event has not occurred and/or is not continuing, or  
8 the Court orders otherwise, the automatic stay, as to the DIP Secured Parties shall automatically  
9 be terminated at the end of the Remedies Notice Period without further notice, order, or any further  
10 action in the Chapter 11 Cases or the Recognition Proceedings and the DIP Agent (acting at the  
11 direction of the Required DIP Lenders) shall be permitted to exercise any rights and remedies  
12 against the DIP Collateral available to the DIP Secured Parties under this Interim Order, the DIP  
13 Documents and applicable non-bankruptcy law without any further order of or application or  
14 motion to the Court, including, but not limited to, any rights to setoff against deposits and financial  
15 assets of the Debtors and to foreclose on all or any portion of the DIP Collateral, in each case,  
16 subject to the Carve-Out, the Administration Charge and any Prepetition Permitted Liens;  
17 *provided, however*, that the Required DIP Lenders shall consult with the Prepetition Secured Term  
18 Loan Agent in advance of exercising any remedies or taking action in connection with any of the  
19 DIP Collateral and shall provide the Prepetition Senior Secured Term Loan Agent with five (5)  
20 Business Days’ notice in advance of taking such actions; which period may be waived by the  
21 Prepetition Senior Secured Term Loan Agent, in its reasonable discretion.

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26 <sup>5</sup> If a hearing to consider a Stay Enforcement Motion is requested to be heard before the end of the Remedies Notice  
27 Period but is scheduled for a later date by the Court, the Remedies Notice Period shall automatically be extended  
28 to the date of such hearing, but in no event later than ten (10) business days after delivery of the Termination  
Declaration or at such other date that may be agreed to by the parties after good faith negotiations.



1           19.     **Fees and Expenses of DIP Professionals and Prepetition Secured Parties'**  
 2     **Professionals.**

3           (a)     The payment of all DIP Professional Fees and Adequate Protection Fees  
 4 hereunder shall not be subject to (i) further application to or approval of the Court, (ii) allowance  
 5 or review by the Court or (iii) the U.S. Trustee's fee guidelines, and no attorney or advisor to the  
 6 DIP Secured Parties or the Prepetition Secured Parties shall be required to file an application  
 7 seeking compensation for services or reimbursement of expenses with the Court; *provided,*  
 8 *however,* that any time the DIP Professionals (other than DIP Agent Counsel) seek payment of  
 9 fees and expenses from the Debtors from and after the Petition Date but prior to the effective date  
 10 of any chapter 11 plan,<sup>6</sup> each such party or professional shall provide summary copies of its  
 11 invoices (which shall not be required to contain time entries, and which may be redacted or  
 12 modified to the extent necessary to delete any information subject to the attorney-client privilege,  
 13 any information constituting attorney work product or any other confidential information, and the  
 14 provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any  
 15 benefits of the attorney work product doctrine) to the Debtors' counsel, the U.S. Trustee, and lead  
 16 counsel to the Creditors' Committee, if any (collectively, the "***Invoice Review Parties***"). Any  
 17 objections raised by any Invoice Review Party with respect to such invoices must (x) be in writing  
 18 (email from such party or their counsel being sufficient) (y) state with particularity the grounds for  
 19 such objection and (z) be submitted to the affected professional(s) within ten (10) calendar days  
 20 after delivery of such invoices to the Invoice Review Parties (such ten (10) calendar day period,  
 21 the "***Invoice Review Period***"). If no written objection is received prior to the expiration of the  
 22 Invoice Review Period from the Invoice Review Parties, the Debtors shall pay such invoices within  
 23 two (2) calendar days following the expiration of the Invoice Review Period. If an objection is  
 24 received within the Invoice Review Period from the Invoice Review Parties, the Debtors shall

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 26     <sup>6</sup> For the avoidance of doubt, nothing contained in this paragraph 19 shall prevent the DIP Secured Parties or KfW  
 27 from seeking payment from the Debtors of professional fees and expenses incurred prior to the Petition Date in  
 28 accordance with the terms of this Interim Order and the DIP Documents.

promptly pay the undisputed amount of the invoice, and the disputed portion of such invoice shall not be paid until such dispute is resolved by agreement between the affected party or professional(s) and the objecting party or by order of this Court. Any hearing to consider such an objection to the payment of any fees, costs or expenses set forth in a professional fee invoice hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject of such objection.

(b) Notwithstanding anything contained in this Interim Order to the contrary, any and all payments, fees, costs, expenses and other amounts paid at any time by any of the Debtors to the DIP Secured Parties or the Prepetition Secured Parties (including such parties' respective professionals), as applicable, pursuant to the requirements of this Interim Order or the DIP Documents, whether prior to, on or after the Petition Date, shall be non-refundable and irrevocable, are hereby approved (and to the extent paid prior to entry of the Interim Order, ratified in full), and shall not be subject to any challenge, objection, defense, claim or cause of action of any kind or nature whatsoever, including, without limitation, avoidance (whether under Chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling, surcharge or recovery or any other cause of action, whether arising under the Bankruptcy Code, applicable non-bankruptcy law or otherwise, by any person or entity.

20. **Limitation on Use of DIP Facility Proceeds, DIP Collateral and Cash Collateral.**

(a) Notwithstanding anything to the contrary set forth in this Interim Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral or the proceeds thereof, including Cash Collateral, or the Carve-Out may be used: (i) to investigate (except as expressly provided herein), initiate, prosecute, join or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense or other

1 litigation of any type (A) against any of the DIP Secured Parties or the Prepetition Secured Parties  
2 (in each case, in their capacities as such) and each of their respective affiliates, officers, directors,  
3 employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or  
4 successors, with respect to any transaction, occurrence, omission, action, or other matter (including  
5 formal discovery proceedings in anticipation thereof), including, without limitation, any so-called  
6 “lender liability” claims and causes of action, or seeking relief that would impair the rights and  
7 remedies of the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their  
8 capacities as such) under this Interim Order, the DIP Documents or the Prepetition Debt  
9 Documents, as applicable, to the extent permitted or provided hereunder, including, without  
10 limitation, for the payment of any services rendered by any Estate-Retained Professional in  
11 connection with the assertion of or joinder in any claim, counterclaim, action, proceeding,  
12 application, motion, objection, defense or other contested matter, the purpose of which is to seek,  
13 or the result of which would be to obtain, any order, judgment, determination, declaration or similar  
14 relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured  
15 Parties to recover on the DIP Collateral or the Prepetition Collateral (as applicable), as provided  
16 for herein, or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition  
17 Secured Parties related to the DIP Obligations or the Prepetition Secured Obligations, as  
18 applicable, (B) seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the DIP  
19 Liens, DIP Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens or the  
20 Prepetition Secured Obligations or (C) for monetary, injunctive or other affirmative relief against  
21 the DIP Secured Parties or the Prepetition Secured Parties (in each case, in their capacities as such)  
22 that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties  
23 to assert or enforce any lien, claim, right or security interest or to realize or recover on the DIP  
24 Obligations or the Prepetition Secured Obligations to the extent permitted or provided hereunder;  
25 (ii) for objecting to or challenging in any way the legality, validity, priority, perfection or  
26 enforceability of the claims, liens or interests (including the Prepetition Liens) held by or on behalf  
27 of each of the Prepetition Secured Parties related to the Prepetition Secured Obligations, or by or  
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on behalf of the DIP Secured Parties related to the DIP Obligations; (iii) for asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Liens, the DIP Superpriority Claims, the DIP Obligations, the Prepetition Liens or the Prepetition Secured Obligations; or (iv) for prosecuting an objection to, contesting in any manner or raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of (A) any of the DIP Liens, the DIP Superpriority Claims, or any other rights or interests of the DIP Secured Parties related to the DIP Obligations or the DIP Liens or (B) any of the Prepetition Liens, Prepetition Secured Obligations or any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Secured Obligations; *provided* that no more than \$50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by the Creditors' Committee (if any) solely to investigate (but not seek formal discovery or commence any challenge, objection or prosecute any claim or cause of action relating to) the foregoing matters with respect to the Prepetition Liens or the Prepetition Secured Obligations within the Challenge Period (as defined below) (the "***Investigation Budget***").

(b) Any fees and expenses of the Committee Professionals in connection with the investigation of the matters described in paragraph 20(a) of this Interim Order in excess of the Investigation Budget shall not be entitled to administrative expense priority pursuant to section 503(b) of the Bankruptcy Code or otherwise.

21. **Effect of Stipulations on Third Parties.**

(a) The Debtors' acknowledgments, stipulations, admissions, agreements, waivers and releases set forth in this Interim Order shall be binding on the Debtors, their respective estates, representatives, successors and assigns upon entry of this Interim Order and the Debtors shall be deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date.

(b) The acknowledgments, stipulations, admissions, agreements, waivers and releases contained in this Interim Order shall also be binding upon all other parties in interest,

including the Creditors' Committee or non-statutory committees appointed or formed in these Chapter 11 Cases (if any) and any other person or entity seeking to act on behalf of the Debtors' estates, including any chapter 7, chapter 11 trustee or examiner appointed or elected for any of the Debtors in these Chapter 11 Cases or any Successor Cases, and each of their respective successors and assigns, in all circumstances and for all purposes, unless: (i) any such party, having obtained requisite standing, timely and properly commences and serves an adversary proceeding or contested matter (subject to the limitations contained herein) (A) objecting to or challenging the validity, perfection, priority, scope, extent or enforceability of the Prepetition Funded Debt Liens or the Prepetition Secured Obligations, (B) objecting to or alleging any basis to impair, restrict, deny or otherwise challenge the right of any of the Prepetition Secured Parties to credit bid, in whole or in part, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations under Bankruptcy Code section 363(k) or otherwise or (C) otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**") against the Prepetition Secured Parties in connection with any matter related to the Prepetition Collateral, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations by no later than (1) with respect to any Creditors' Committee, the date that is 45 days after the later of (a) its appointment in the Chapter 11 Cases and (b) entry of the Final Order and (2) with respect to all other parties in interest, no later than the date that is 45 days after the entry of this Interim Order (the time period established by the foregoing clauses (1) and (2) the "**Challenge Period**"); *provided* that in the event that, prior to the expiration of the Challenge Period, (x) these Chapter 11 Cases are converted to chapter 7 or (y) a chapter 11 trustee is appointed in these Chapter 11 Cases, then, in each such case, the Challenge Period shall be extended for a period of 10 days solely with respect to any Trustee, commencing on the occurrence of either of the events described in the foregoing clauses (x) and (y); and (ii) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge in any such duly filed adversary proceeding or contested matter.

1 (c) If no such adversary proceeding or contested matter is timely filed prior to  
2 the expiration of the Challenge Period, without further order of this Court: (i) the Prepetition  
3 Secured Obligations shall constitute allowed claims, not subject to any Claims and Defenses  
4 (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense,  
5 avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance,  
6 recovery, disgorgement, attachment, “claim” (as defined by Bankruptcy Code section 101(5)),  
7 impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any  
8 kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these  
9 Chapter 11 Cases and any Successor Cases, if any; (ii) the Prepetition Funded Debt Liens shall be  
10 deemed to have been, as of the Petition Date, legal, valid, binding, perfected and of the priority  
11 specified in paragraphs F.1(c), F.2(c), F.3(c), and F.4(c), not subject to setoff, subordination,  
12 defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment or  
13 recovery; and (iii) the Prepetition Secured Obligations, the Prepetition Funded Debt Liens on the  
14 Prepetition Collateral and the Prepetition Secured Parties (solely in their capacities as such) shall  
15 not be subject to any other or further challenge and all parties in interest shall be forever enjoined  
16 and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action,  
17 including any successor thereto (including any estate representative or a Trustee, whether such  
18 Trustee is appointed or elected prior to or following the expiration of the Challenge Period).

19 (d) If any such adversary proceeding or contested matter is timely filed prior to  
20 the expiration of the Challenge Period, (i) the stipulations, admissions, agreements, waivers and  
21 releases contained in this Interim Order shall nonetheless remain binding and preclusive on the  
22 Creditors’ Committee (if any) and any other party in these Chapter 11 Cases, including any Trustee,  
23 except as to the party (or parties) that timely initiated such adversary proceeding or contested  
24 matter and, with respect to such party (or parties), solely as to any stipulations, admissions,  
25 agreements, waivers and releases that are specifically and expressly challenged in such adversary  
26 proceeding or contested matter and (ii) any Claims and Defenses not brought in such adversary  
27 proceeding or contested matter shall be forever barred; *provided* that, if and to the extent any  
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1 challenges to a particular stipulation, admission, agreement, waiver or release are withdrawn,  
2 denied or overruled by a final non-appealable order, such stipulation, admission, agreement,  
3 waiver and/or release also shall be binding on the Debtors' estates and all parties in interest.

4 (e) Nothing in this Interim Order vests or confers on any person (as defined in  
5 the Bankruptcy Code), including any Creditors' Committee (if any), standing or authority to pursue  
6 any cause of action belonging to the Debtors or their estates, including, without limitation, any  
7 challenge with respect to the Prepetition Debt Documents, the Prepetition Funded Debt Liens or  
8 the Prepetition Secured Obligations.

9 22. **Release.** Subject to the rights and limitations set forth in paragraphs 20 and 21 of  
10 this Interim Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf  
11 of each of their predecessors, their successors and assigns shall, to the maximum extent permitted  
12 by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish,  
13 irrevocably waive and discharge each of the DIP Secured Parties, and subject to the entry of the  
14 Final Order, the Prepetition Secured Parties (in each case, in their capacities as such) and each of  
15 their respective former, current or future officers, employees, directors, agents, representatives,  
16 owners, members, partners, affiliated investment funds or investment vehicles, managed, advised  
17 or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers,  
18 financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys,  
19 affiliates and predecessors in interest, each in their capacity as such, of and from any and all claims,  
20 demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and  
21 obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses,  
22 damages, injuries, attorneys' fees, costs, expenses or judgments of every type, whether known,  
23 unknown, asserted, unasserted, suspected unsuspected, accrued, unaccrued, fixed, contingent,  
24 pending or threatened including, without limitation, all legal and equitable theories of recovery,  
25 arising under common law, statute or regulation or by contract, of every nature and description  
26 that exist on the date hereof solely with respect to or relating to the DIP Liens, the DIP  
27 Superpriority Claims, the DIP Obligations, the Prepetition Funded Debt Liens and the Prepetition  
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Secured Obligations, as applicable, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties.

23. **Credit Bidding.**

(a) Consistent with Bankruptcy Code section 363(k) and applicable law, the DIP Agent (acting at the direction of the Required DIP Lenders) and each DIP Lender (in any case, either directly or through one or more acquisition vehicles), shall have the right to credit bid for all or any portion of the DIP Collateral, as applicable, up to the full amount of any DIP Superpriority Claims, as part of any sale of Debtors’ assets (in whole or in part), including without limitation, sales occurring pursuant to (i) Bankruptcy Code section 363, (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129 or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725 (each, a “***Sale Transaction***”), *provided*, that, until payment in full of the obligations under the Prepetition Working Capital Facility, the rights of the DIP Agent and each DIP Lender to credit bid on any DIP Collateral that constitutes WCF Collateral shall be subject to the right of the Prepetition Working Capital Purchaser to credit bid for all or any portion of the WCF Collateral, as applicable, up to the full amount of any Prepetition Working Capital Obligations as part of any Sale Transaction. The DIP Agent shall have the absolute right to assign, sell or otherwise dispose of its right to credit bid in connection with any credit bid by or on behalf of the DIP Lenders to any acquisition entity or joint venture formed in connection with such bid.

(b) The Prepetition Secured Parties’ rights to credit bid for all or a portion of the Prepetition Collateral as part of any Sale Transaction are fully preserved, subject in all respects to (i) payment in full in cash of all DIP Obligations and (ii) the terms and conditions of this Interim Order and the applicable Prepetition Debt Documents, including the lien and claim priorities set forth herein and therein.



1           24.     **Interim Order Governs.** In the event of any inconsistency between the provisions  
2 of this Interim Order and any DIP Documents, the provisions of this Interim Order shall govern.

3           25.     **Binding Effect; Successors and Assigns.** The DIP Documents and the provisions  
4 of this Interim Order, including all findings herein, shall be binding upon all parties in interest in  
5 these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition  
6 Secured Parties, the Creditors' Committee (if any), the Debtors and their respective successors and  
7 assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate  
8 of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104 or any  
9 other fiduciary appointed as a legal representative of any of the Debtors or with respect to the  
10 property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured  
11 Parties and the Prepetition Secured Parties; *provided*, that, except to the extent expressly set forth  
12 in this Interim Order, the Prepetition Secured Parties shall have no obligation to permit the use of  
13 Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person  
14 appointed for the estates of the Debtors.

15           26.     **Limitation of Liability.** In determining to make any loan under the DIP  
16 Documents, permitting the use of Cash Collateral or exercising any rights or remedies as and when  
17 permitted pursuant to this Interim Order, the DIP Documents or the Prepetition Debt Documents,  
18 the DIP Secured Parties and the Prepetition Secured Parties (in each case, solely in their capacities  
19 as such) shall not be deemed to be in control of the operations of the Debtors or to be acting as a  
20 "responsible person" or "owner or operator" with respect to the operation or management of the  
21 Debtors or their respective business (as such terms, or any similar terms, are used in the United  
22 States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§  
23 9601 *et seq.* as amended, or any similar federal or state statute), nor shall they owe any fiduciary  
24 duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint  
25 venture or partnership with any of the Debtors. Furthermore, nothing in this Interim Order, the  
26 DIP Documents or the Prepetition Debt Documents shall in any way be construed or interpreted  
27 to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties  
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1 of any liability for any claims arising from the prepetition or postpetition activities of any of the  
2 Debtors and their direct or indirect subsidiaries.

3 27. **Proofs of Claim.** Notwithstanding anything to the contrary contained in any prior  
4 or subsequent order of the Court, including, without limitation, any order establishing a deadline  
5 for the filing of proofs of claim or requests for payment of administrative expenses under  
6 Bankruptcy Code section 503(b), (i) the Prepetition Secured Parties shall not be required to file  
7 any proof of claim or request for payment of administrative expenses with respect to any of the  
8 Prepetition Secured Obligations or the Adequate Protection Obligations and (ii) the DIP Secured  
9 Parties shall not be required to file any proof of claim or request for payment of administrative  
10 expenses with respect to any DIP Obligations. The failure to file any such proof of claim or request  
11 for payment of administrative expenses shall not affect the validity, priority or enforceability of  
12 any of the Prepetition Debt Documents, the DIP Documents or of any other indebtedness, liabilities  
13 or obligations arising at any time thereunder or under this Interim Order, or prejudice or otherwise  
14 adversely affect the Prepetition Secured Parties' or the DIP Secured Parties' rights, remedies,  
15 powers or privileges under any of the Prepetition Debt Documents, the DIP Documents, this  
16 Interim Order or applicable law. The applicable Prepetition Secured Parties and DIP Secured  
17 Parties may (but are not required to) in their discretion file (and amend and/or supplement)  
18 applicable proofs of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or any  
19 successor cases for any claim allowed herein, and any such proof of claim may (but is not required  
20 to) be filed in the Debtors' lead Chapter 11 Case *In re* [ ], Case No. [ ] ([ ]) as one  
21 consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim  
22 against each Debtor. The provisions set forth in this paragraph 27 are intended solely for the  
23 purpose of administrative convenience and shall not affect the substantive rights of any party-in-  
24 interest or their respective successors-in-interest.

25 28. **Insurance.** The Debtors shall continue to maintain all property, operational and  
26 other insurance as required and as specified in the DIP Documents (which shall be deemed satisfied  
27 if such insurance as required under the Prepetition Secured Term Loan Credit Agreement remains  
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in place). The Debtors shall provide the DIP Agent (for distribution to the DIP Lenders) with commercially reasonable evidence of such insurance upon a request to counsel for the Debtors from the DIP Agent (acting at the direction of the Required DIP Lenders). Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of itself and the DIP Lenders) is, and is deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral (including all property damage and business interruption insurance policies of the Debtors, whether expired, currently in place or to be put in place in the future), and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies.

29. **Protection of Lenders' Rights.**

(a) Except as expressly permitted in this Interim Order or the DIP Documents, in the event any person or entity that holds a lien on or security interest in DIP Collateral that is junior or otherwise subordinate to the DIP Liens receives any DIP Collateral or proceeds of DIP Collateral, in each case, that is subject to such junior lien, or receives any payment on account of such junior lien or security interest in the DIP Collateral on account of such junior lien (whether in connection with the exercise of any right or remedy (including setoff), any payment or distribution from the Debtors, mistake or otherwise) prior to the Payment in Full<sup>7</sup> of all DIP Obligations, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Secured Parties, and shall immediately turn over all such proceeds to the DIP Agent, for the benefit of itself and the DIP Lenders, in the same form as received, with any necessary endorsements, for application in accordance with this Interim Order and the DIP Documents; *provided, however*, that until the

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<sup>7</sup> For purposes hereof, the term "Paid in Full" or "Payment in Full" means, with respect to the DIP Obligations or any Prepetition Secured Obligations (as the case may be), the irrevocable and indefeasible payment in full in cash of all DIP Obligations or such Prepetition Secured Obligations (as the case may be), other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

1 Payment in Full of the Prepetition Working Capital Obligations, upon receipt by the DIP Agent or  
2 any DIP Lender of any such payment or proceeds from DIP Collateral that constitutes WCF  
3 Collateral, the DIP Agent or the applicable DIP Lender shall segregate and hold in trust such  
4 payment or proceeds for the benefit of, and turn over all such payments and proceeds to, the  
5 Prepetition Working Capital Purchaser in the same form as received, with any necessary  
6 endorsements, for application in accordance with this Interim Order, the DIP Documents and the  
7 Prepetition Debt Documents.

8 (b) Other than with respect to the Carve Out, the Administration Charge and  
9 Petition Date Perfected Liens, and as otherwise expressly provided in this Interim Order and/or  
10 the DIP Documents (including Exhibit C hereto), no claim or lien having a priority senior to or  
11 *pari passu* with those granted to any of the DIP Secured Parties or the Prepetition Secured Parties  
12 by this Interim Order shall be granted or permitted while any of the DIP Obligations or the  
13 Prepetition Secured Obligations, respectively, remains outstanding. Except as expressly provided  
14 in this Interim Order and the DIP Documents (including Exhibit C hereto), each of the DIP Liens,  
15 the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection  
16 Superpriority Claims, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations:  
17 (i) shall not be made junior or subordinated to or *pari passu* with (A) any lien, security interest or  
18 claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases,  
19 whether under Bankruptcy Code section 364(d) or otherwise, (B) any lien that is avoided and  
20 preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 or  
21 otherwise, (C) any lien arising after the Petition Date including, without limitation, any lien or  
22 security interests granted in favor of any federal, state, municipal or other domestic or foreign  
23 governmental unit (including any regulatory body), commission, board or court for any liability of  
24 the Debtors or (D) any intercompany or affiliate lien or claim; and (ii) shall not be subject to  
25 Bankruptcy Code sections 510, 549, 550 or 551 and, subject to entry of the Final Order,  
26 Bankruptcy Code section 506(c).

1 (c) In the event this Interim Order or any provision hereof is vacated, reversed  
2 or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or  
3 Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur,  
4 reversal or modification of this Interim Order shall be governed in all respects by the original  
5 provisions of this Interim Order, including entitlement to all rights, remedies, privileges and  
6 benefits granted herein, and the DIP Secured Parties and the Prepetition Secured Parties shall be  
7 entitled to the protections afforded in Bankruptcy Code sections 363(m) and 364(e), as applicable,  
8 with respect to all uses of the DIP Collateral (including all Cash Collateral and all Prepetition  
9 Collateral), all DIP Obligations and all Adequate Protection Obligations.

10 (d) Subject to the Carve-Out, the Administration Charge and Petition Date  
11 Perfected Liens, unless and until all DIP Obligations and Prepetition Secured Obligations are Paid  
12 in Full and all commitments to extend credit under the DIP Facility are terminated, the Debtors  
13 irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (i) except  
14 as permitted under the DIP Documents, and with the prior written consent of the Required DIP  
15 Lenders and the Prepetition Senior Secured Term Loan Agent, (A) any modification, stay, vacatur  
16 or amendment of this Interim Order, (B) a priority claim for any administrative expense, secured  
17 claim or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind  
18 or nature whatsoever, without limitation, any administrative expense of the kind specified in  
19 Bankruptcy Code sections 503(b), 507(a) or 507(b)) in any of the Chapter 11 Cases, equal or  
20 superior to the DIP Superpriority Claims and the Adequate Protection Superpriority Claims or (C)  
21 any other order allowing the use of DIP Collateral; (ii) except as permitted under the DIP  
22 Documents, any lien on any of the DIP Collateral (including all Prepetition Collateral) with priority  
23 equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Funded Debt  
24 Liens; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents  
25 and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant  
26 to Bankruptcy Code section 546(h) (or other return of goods on account of any prepetition  
27 indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the  
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Chapter 11 Cases without the consent of the Required DIP Lenders; (vi) an order appointing a chapter 11 trustee in any of the Chapter 11 Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Chapter 11 Cases.

(e) Notwithstanding any order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise entered at any time, (i) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and any other administrative claims granted pursuant to this Interim Order, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order and the DIP Documents until such time as all DIP Obligations and Adequate Protection Obligations are Paid in Full; and (ii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (i) above.

(f) Except as expressly provided in this Interim Order and the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, shall maintain their priority as provided in this Interim Order, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission, or (ii) the entry of an order approving the sale of any DIP Collateral (including any Prepetition Collateral) pursuant to Bankruptcy Code section 363(b), except to the extent that such order provides for the attachment of DIP Liens or prepetition liens to the proceeds of such sale) or (iii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases and any Successor Cases.

30. **Reservation of Rights of the DIP Secured Parties and Prepetition Secured Parties.** Except as otherwise expressly set forth in this Interim Order, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, as applicable: (i) any of the rights of any of the Prepetition Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection; (ii) any of the rights of the DIP Secured Parties or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the DIP Secured Parties or the Prepetition Secured Parties to (A) request modification of the automatic stay of Bankruptcy Code section 362, (B) request dismissal of any of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7 or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Chapter 11 Cases or (C) seek to propose, subject to the provisions of Bankruptcy Code section 1121, a chapter 11 plan or plans; or (iii) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Secured Parties or the Prepetition Secured Parties. The delay in or failure of the DIP Secured Parties and/or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights and remedies under this Interim Order, the DIP Documents, the Prepetition Debt Documents or applicable law, as applicable.

31. **Effectiveness.** Subject to the terms hereof, this Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rules 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

32. **Final Hearing.** The final hearing (the "***Final Hearing***") on the Motion shall be held on \_\_\_\_\_, 2024, at \_\_:\_\_.m. (Prevailing Pacific Time). Any party in interest objecting to the relief sought at the Final Hearing or in the Final Order shall file and serve a written objection,

1 which objection shall be served upon: (i) proposed counsel for the Debtors, (a) Allen Overy  
 2 Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, Attn: Fredric Sosnick  
 3 and Sara Coelho; (b) McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas,  
 4 Nevada 89102, Attn: Ryan J. Works; and (c) Torys LLP, 79 Wellington St. W., 30th Floor, Box  
 5 270, TD South Tower Toronto, Ontario M5K 1N2 Canada, Attn: Tony DeMarinis, Mike Noel,  
 6 Hanna Singer and Jeremy Opolsky; (ii) the Office of the United States Trustee for Region 17, C.  
 7 Clifton Young Federal Building, 300 Booth Street, Room 3009, Reno, Nevada 85909; (iii) counsel  
 8 to the DIP Lenders, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY  
 9 10036, Attn: Brad Kahn.; 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley and (b)  
 10 Shea Larsen PC, 1731 Village Center Circle, Suite 150, Las Vegas, Nevada 89134, Attn: James  
 11 Patrick Shea and Bart Larsen; (iv) Milbank LLP, as counsel to KfW IPEX-Bank GmbH as  
 12 administrative agent under the Debtors' prepetition credit agreement, 55 Hudson Yards, New York,  
 13 NY 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments  
 14 US, Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada,  
 15 Attn: Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer  
 16 under the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York,  
 17 NY 10020, Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag  
 18 Mining Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale  
 19 agreement; 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary  
 20 Gottlieb Steen & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2  
 21 London Wall Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty  
 22 Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; (ix) Alvarez & Marsal Canada Inc., in its  
 23 capacity as the Information Officer in the Recognition Proceedings, Royal Bank Plaza,  
 24 South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, Attn: Al Hutchens; (x)  
 25 Kelley Drye & Warren, LLP, as counsel to the DIP Agent, 3 World Trade Center, 175 Greenwich  
 26 Street, New York, NY 10007, Attn: James S. Carr, Esq.; and (xi) counsel to any statutory committee  
 27 appointed in these Chapter 11 Cases, in each case so as to be received no later than  
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\_\_\_\_\_, 2024, at 11:59 p.m. (Prevailing Pacific Time). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

33. **Headings.** Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

34. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Interim Order.

Dated: \_\_, 2024

\_\_\_\_\_  
THE HONORABLE [\_\_\_\_]  
UNITED STATES BANKRUPTCY JUDGE

Prepared and submitted by:

/s/ Ryan Works

**McDONALD CARANO LLP**

Ryan J. Works (Nevada Bar No. 9224)

Amanda M. Perach (Nevada Bar No. 12399)

2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

**ALLEN OVERY SHEARMAN STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488) (*pro hac vice pending*)

Sara Coelho (New York Bar No. 4530267) (*pro hac vice pending*)

599 Lexington Avenue

New York, New York 10022

*Proposed Counsel to the Debtors and  
Debtors in Possession*

APPROVED/DISAPPROVED

**EXHIBIT A****DIP Credit Agreement**

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**EXHIBIT B**  
**Initial Budget**

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## EXHIBIT C

### DIP / Adequate Protection Lien Priorities<sup>8</sup>

Non-WCF Collateral	WCF Collateral Prior to Repayment of WCF Obligations	WCF Collateral After Repayment of WCF Obligations
DIP Liens	Working Capital Facility Adequate Protection Liens <sup>9</sup>	DIP Liens
Senior Secured Term Loan Adequate Protection Liens <sup>10</sup>	Senior Secured Term Loan Adequate Protection Liens	Senior Secured Term Loan Adequate Protection Liens
TF Adequate Protection Liens <sup>11</sup>	TF Adequate Protection Liens	TF Adequate Protection Liens
Working Capital Facility Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens	Junior Secured Term Loan Adequate Protection Liens
Junior Secured Term Loan Adequate Protection Liens <sup>12</sup>		

<sup>8</sup> For the avoidance of doubt, all DIP Liens and Adequate Protection Liens shall be subject to (i) the Carve-Out, (ii) the Administration Charge, (iii) the Prepetition Permitted Liens and (iv) the Prepetition Trisura Lien.

<sup>9</sup> “**Working Capital Facility Adequate Protection Liens**” means the Adequate Protection Liens granted to the Working Capital Facility Lender in accordance with the terms hereof.

<sup>10</sup> “**Senior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to KfW and the Prepetition Senior Secured Term Loan A-2 Parties in accordance with the terms hereof.

<sup>11</sup> “**TF Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition TF Stream Lender in accordance with the terms hereof.

<sup>12</sup> “**Junior Secured Term Loan Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition Junior Secured Term Loan Parties in accordance with the terms hereof.

**SCHEDULE F**  
**[FORM OF] OFFICER’S CERTIFICATE**

June \_\_, 2024

This Officer’s Certificate (this “Certificate”) is being executed and delivered pursuant to Sections 12.1(k) and 12.3(a), 12.3(b), 12.3(d) and 12.3(e) of that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of June \_\_, 2024 (as amended, restated, amended and restated, extended, supplemented and/or otherwise modified from time to time, the “Credit Agreement”), among Nevada Copper, Inc., a Nevada corporation (the “Borrower”), the Guarantors party thereto from time to time, U.S. Bank Trust Company, National Association as Administrative Agent (the “Administrative Agent”) and each Senior Lender from time to time party thereto. Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings specified in the Credit Agreement.

I, Gregory J. Martin, the duly appointed, qualified and acting Chief Financial Officer of the Borrower, solely in such capacity and not in my individual capacity (and without personal liability), as of the date of this Certificate, hereby certify on behalf of the Borrower that:

1. No Default or Event of Default has occurred and is continuing as of the date hereof, and no Default or Event of Default would result from the borrowing of the Interim Loan.
2. The representations and warranties contained in Article 8 of the Credit Agreement are true, accurate and complete in all material respects as of the date hereof.
3. Since the Petition Date, no Material Adverse Effect has occurred and is continuing.
4. The Interim Loan will be used for the purpose specified in Section 2.3.
5. True, correct and complete copies (where applicable) of the documents required to be delivered pursuant to Sections 12.1(b), 12.1(c), 12.1(f), 12.1(j), 12.1(k), and 12.3(g) of the Credit Agreement have been delivered to the Administrative Agent and/or Senior Lenders, as applicable.

*[signature page follows]*

IN WITNESS WHEREOF, I have executed this Certificate on behalf of Borrower on the date first written above.

**NEVADA COPPER, INC.**

By: \_\_\_\_\_

Name: Gregory J. Martin

Title: Chief Financial Officer

**SCHEDULE G****[FORM OF] OFFICER’S CERTIFICATE**

[ ], 2024

This Officer’s Certificate (this “Certificate”) is being executed and delivered pursuant to Sections 12.2(b) and 12.3(a), 12.3(b), 12.3(d) and 12.3(e) of that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of June \_\_, 2024 (as amended, restated, amended and restated, extended, supplemented and/or otherwise modified from time to time, the “Credit Agreement”), among Nevada Copper, Inc., a Nevada corporation (the “Borrower”), the Guarantors party thereto from time to time, U.S. Bank Trust Company, National Association as Administrative Agent (the “Administrative Agent”) and each Senior Lender from time to time party thereto. Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings specified in the Credit Agreement.

I, Gregory J. Martin, the duly appointed, qualified and acting Chief Financial Officer of the Borrower, solely in such capacity and not in my individual capacity (and without personal liability), as of the date of this Certificate, hereby certify on behalf of the Borrower that:

1. No Default or Event of Default has occurred and is continuing as of the date hereof, and no Default or Event of Default would result from the borrowing of the Final Loan.
2. The representations and warranties contained in Article 8 of the Credit Agreement are true, accurate and complete in all material respects as of the date hereof.
3. Since the Petition Date, no Material Adverse Effect has occurred and is continuing.
4. The Final Loan will be used for the purpose specified in Section 2.3.
5. True, correct and complete copies (where applicable) of the documents required to be delivered pursuant to Sections 12.2(b), 12.2(c), 12.2(f), and 12.3(g) of the Credit Agreement have been delivered to the Administrative Agent and/or Senior Lenders, as applicable.

*[signature page follows]*

IN WITNESS WHEREOF, I have executed this Certificate on behalf of Borrower on the date first written above.

**NEVADA COPPER, INC.**

By: \_\_\_\_\_

Name: Gregory J. Martin

Title: Chief Financial Officer



**SCHEDULE H****[RESERVED]**

**SCHEDULE I**  
**[RESERVED]**

**SCHEDULE J****PROJECT REAL PROPERTY****A. RGGGS Patented Mining Claims and Fee Lands**

A Leasehold Interest in and to the following patented mining claims and fee lands pursuant to that certain Mining Lease, dated May 4, 2006, as amended (the "Mining Lease"), by and between RGGGS Land & Minerals Ltd., L.P. (the "Landlord") and Nevada Copper, Inc. A Memorandum of that Mining Lease is of record in Lyon County, Nevada, recorded May 11, 2006, at Document No. 381887.

**Those certain Patented Mining Claims described as follows:**

**Land Patent Number 27-70-0037**, BLM Serial No. NVN000105, granted October 14, 1969, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1964), for the lands embraced within the Lyon lode mining claims, Nos. 16, 17, 20, 21, 34, 35, 38, 52, 53, 56, 57, 70, 71, 72, 73, 74, 75, 85, 86, 87, 88, 89, 90, 91, 92, 101, 102, 145, 146, designated and described as:

Mineral Survey No. 4879, located within surveyed Sections 3, 4, 9, 10, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 585.308 acres;

**Land Patent Number 27-82-0003**, BLM Serial No. NVN005012, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 1, 2, 3, 4, 15, 18, 19 and 93, designated and described as:

Mineral Survey No. 4892, excepting the Lyon No. 22, 36, and 37 lode mining claims, located within surveyed Sections 3, 4, 10, and 11, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 161.037 acres.

**Land Patent Number 27-82-0004**, BLM Serial No. NVN006395, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 60, 62, 65, 66, 67, 79, 80, 82, 94, 95, 99, and 110, designated and described as:

Mineral Survey No. 4898, excepting the Lyon No. 78, 81, 83, 96, 97, 98, 100, 109, 111, 112, 113, 114, 123, 124, 166, 169, 170, and 171, lode mining claims, located within surveyed Sections 2 and 11, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 242.392 acres;

**Land Patent Number 27-82-0005**, BLM Serial No. NVN005011, granted November 24, 1981, granted pursuant to the general mining laws, R. S. 2325; as amended, 30 U. S. C. 29 (1970), for the lands embraced within the Lyon lode mining claims, Nos. 6, 7, 8, 11, 12, 13, 24, 25, 26, 29, 30, 31, 42, 43, 44, 47, 48, 61, 135, and 136, designated and described as:

Mineral Survey No. 4893, excepting the Lyon No. 10, 27, 49 and 137, lode mining claims, located within surveyed Sections 1 and 2, T. 12 N., R. 26 E., and Section 35, T.13 N., R. 26 E Mount Diablo Meridian, Lyon County, Nevada, the said claims being more particularly described in the official field notes and depicted on the official plat which is expressly made a part of said patent, containing 401.203 acres;

**Those certain Fee lands described as follows:**

**Tract 1:** 159.57 acres more or less, being the same land as described in a deed from Robert L. Biedebach and Aleta L. Biedebach, his wife, to United States Steel Corporation, dated January 5, 1970, and recorded as instrument No. 00117, in the Official Records of Lyon County, Nevada more particularly described as, Lot 3 or (NE/4 of the NW/4), Lot 4 or (NW/4 of the NW/4), SW/4 of the NW/4, and NW/4 of the SW/4, all in Section 4, T. 12 N., R. 26 E., Mount Diablo Meridian, Lyon County, Nevada, sometimes identified as United States Patent Number 1221146, BLM Serial Number NVN 0051617;

4.

**Unpatented Mining Claims**

The following 616 unpatented lode mining claims situated in Sections 1, 2, 10-13, 15-18, 24, 35 and 36, T. 12 N., R. 26 E., MDBM, Sections 6, 7, 18, and 19, T. 12 N., R. 27 E., MDBM, Sections 16, 19, 20, 21 and 26-30, T. 13 N., R. 26 E., MDBM, and Sections 17-23, 26-35, T. 13 N., R. 27 E., MDBM, in Lyon and Mineral Counties, Nevada:

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	67	924374	380258	
PMK	68	924375	380259	
PMK	85	924392	380276	
PMK	86	924393	380277	
PMK	95	924402	380286	
PMK	96	924403	380287	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	98	924405	380289	
PMK	110	924417	380218	
PMK	111	924418	380219	
PMK	112	924419	380220	
PMK	113	924420	380221	
PMK	114	924421	380222	
PMK	115	924422	380223	
PMK	116	924423	380224	
PMK	117	924424	380225	
PMK	118	924425	380226	
PMK	119	924426	380227	
PMK	120	924427	380228	
PMK	121	924428	380229	
PMK	123	924429	380230	
PMK	125	924430	380231	
PMK	127	924431	380232	
PMK	129	924432	380233	
PMK	131	924433	380195	
PMK	132	924434	380196	
PMK	133	924435	380197	
PMK	134	924436	380198	
PMK	135	924437	380199	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	137	924438	380200	
PMK	170	933023	389088	
PMK	172	933025	389090	
PMK	174	933027	389092	
PMK	176	933029	389094	
PMK	178	933031	389096	
PMK	179	933032	389097	
PMK	180	933033	389098	
PMK	181	933034	389099	
PMK	182	933035	389100	
PMK	183	933036	389101	
PMK	184	933037	389102	
PMK	185	933038	389103	
PMK	186	933039	389104	
PMK	194	933047	389112	
PMK	195	933048	389113	
PMK	196	933049	389114	
PMK	197	933050	389115	
PMK	198	933051	389116	
PMK	199	933052	389117	
PMK	200	933053	389118	
PMK	235	933079	389144	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	236	933080	389145	
PMK	237	933081	389146	
PMK	238	933082	389147	
PMK	239	933083	389148	
PMK	240	933084	389149	
PMK	261	935753	393008	
PMK	262	935754	393009	
PMK	263	935755	393010	
PMK	280	956443	407822	
PMK	285	956448	407827	
PMK	286	956449	407828	
PMK	287	956450	407829	
PMK	288	956451	407830	
PMK	289	956452	407831	
PMK	290	956453	407832	
PMK	291	956454	407833	
PMK	292	956455	407834	
PMK	293	956456	407835	
PMK	294	956457	407836	
PMK	295	956458	407837	
PMK	296	956459	407838	
PMK	297	956460	407839	



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	298	956461	407840	
PMK	299	956462	407841	
PMK	300	956463	407842	
PMK	301	956464	407843	
PMK	302	956465	407844	
PMK	303	956466	407845	
PMK	304	956467	407846	
PMK	305	956468	407847	
PMK	306	956469	407848	
PMK	307	956470	407849	
PMK	344	981797	421834	
PMK	345	981798	421835	
PMK	346	981799	421836	
PMK	387	981840	421877	
PMK	388	981841	421878	
PMK	389	981842	421879	
PMK	390	981843	421880	
PMK	391	981844	421881	
PMK	392	981845	421882	
PMK	393	981846	421883	
PMK	394	981847	421884	
PMK	397	981850	421887	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	398	981851	421888	
PMK	399	981852	421889	
PMK	400	981853	421890	
PMK	401	981854	421891	
PMK	402	981855	421892	
PMK	403	981856	421893	
PMK	404	981857	421894	
PMK	405	981858	421895	
PMK	406	981859	421896	
PMK	407	981860	421897	
PMK	408	981861	421898	
PMK	409	981862	421899	
PMK	410	981863	421900	
PMK	411	981864	421901	
PMK	412	981865	421902	
PMK	413	981866	421903	
PMK	414	981867	421904	
PMK	415	981868	421905	
PMK	417	981870	421907	
PMK	418	981871	421908	
PMK	419	981872	421909	
PMK	420	981873	421910	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	421	981874	421911	
PMK	422	981875	421912	
PMK	423	981876	421913	
PMK	424	981877	421914	
PMK	425	981878	421915	
PMK	426	981879	421916	
PMK	427	981880	421917	
PMK	428	981881	421918	
PMK	429	981882	421919	
PMK	430	981883	421920	
PMK	431	981884	421921	
PMK	432	981885	421922	
PMK	433	981886	421923	
PMK	434	981887	421924	
PMK	435	981888	421925	
PMK	436	981889	421926	
PMK	437	981890	421927	
PMK	438	981891	421928	
PMK	449	981902	421939	
PMK	450	981903	421940	
PMK	451	981904	421941	
PMK	452	981905	421942	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	453	981906	421943	
PMK	454	981907	421944	
PMK	455	981908	421945	
PMK	456	981909	421946	
PMK	457	981910	421947	
PMK	458	981911	421948	
PMK	459	981912	421949	
PMK	460	981913	421950	
PMK	461	981914	421951	
PMK	462	981915	421952	
PMK	463	981916	421953	
PMK	464	981917	421954	
PMK	465	981918	421955	
PMK	466	981919	421956	
PMK	467	981920	421957	
PMK	468	981921	421958	
PMK	469	981922	421959	
PMK	470	981923	421960	145035
PMK	471	981924	421961	145036
PMK	472	981925	421962	145037
PMK	473	981926	421963	145038
PMK	474	981927		145039

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	475	981928	421964	145040
PMK	476	981929		145041
PMK	477	981930	421965	145042
PMK	478	981931		145043
PMK	479	981932	421966	145044
PMK	480	981933		145045
PMK	481	981934	421967	145046
PMK	482	981935		145047
PMK	483	981936	421968	145048
PMK	484	981937	421969	145049
PMK	485	981938	421970	145050
PMK	486	981939	421971	145051
PMK	487	981940	421972	145052
PMK	488	981941		145053
PMK	489	981942	421973	145054
PMK	490	981943		145055
PMK	491	981944	421974	145056
PMK	492	981945		145057
PMK	493	981946	421975	145058
PMK	494	981947		145059
PMK	495	981948	421976	145060
PMK	496	981949		145061

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	497	981950	421977	145062
PMK	498	981951		145063
PMK	499	981952	421978	145064
PMK	500	981953		145065
PMK	501	981954	421979	145066
PMK	502	981955		145067
PMK	503	981956	421980	145068
PMK	504	981957		145069
PMK	505	981958	421981	145070
PMK	506	981959		145071
PMK	507	981960	421982	145072
PMK	508	981961		145073
PMK	509	981962	421983	145074
PMK	510	981963		145075
PMK	511	981964	421984	145076
PMK	512	981965		145077
PMK	513	981966	421985	145078
PMK	514	981967		145079
PMK	515	981968	421986	145080
PMK	516	981969		145081
PMK	517	981970	421987	145082
PMK	518	981971		145083

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	519	981972	421988	145084
PMK	520	981973		145085
PMK	521	981974	421989	145086
PMK	522	981975		145087
PMK	523	981976	421990	145088
PMK	524	981977		145089
PMK	525	981978	421991	145090
PMK	526	981979		145091
PMK	527	981980	421992	145092
PMK	528	981981		145093
PMK	529	981982	421993	145094
PMK	530	981983		145095
PMK	531	981984		145096
PMK	532	981985		145097
PMK	533	981986		145098
PMK	534	981987		145099
PMK	535	981988		145100
PMK	536	981989		145101
PMK	537	981990		145102
PMK	538	981991		145103
PMK	539	981992		145104
PMK	540	981993		145105

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	541	981994		145106
PMK	542	981995		145107
PMK	543	981996		145108
PMK	544	981997		145109
PMK	545	981998		145110
PMK	546	981999		145111
PMK	547	982000		145112
PMK	548	982001		145113
PMK	549	982002		145114
PMK	550	982003		145115
PMK	551	982004		145116
PMK	552	982005		145117
PMK	553	982006		145118
PMK	554	982007		145119
PMK	555	982008		145120
PMK	556	982009		145121
PMK	557	982010		145122
PMK	558	982011		145123
PMK	559	982012		145124
PMK	560	982013		145125
PMK	561	982014		145126
PMK	562	982015		145127



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	563	982016		145128
PMK	564	982017		145129
PMK	565	982018		145130
PMK	566	982019		145131
PMK	567	982020		145132
PMK	568	982021		145133
PMK	569	982022		145134
PMK	570	982023		145135
PMK	571	982024		145136
PMK	572	982025		145137
PMK	573	982026		145138
PMK	574	982027		145139
PMK	575	982028		145140
PMK	576	982029		145141
PMK	577	982030		145142
PMK	578	982031		145143
PMK	579	982032	421994	
PMK	587	982040	422002	
PMK	588	982041	422003	
PMK	590	982043	422005	
PMK	592	982045	422007	
PMK	594	982047	422009	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	596	982049	422011	
PMK	598	982051	422013	
PMK	603	982056	422018	
PMK	604	982057	422019	
PMK	605	982058	422020	
PMK	606	982059	422021	
PMK	632	1059602	484747	
PMK	634	1059604	484749	
PMK	636	1059606	484751	
PMK	638	1059608	484753	
PMK	640	1059610	484755	
PMK	642	1059612	484757	
PMK	698	1068478	488906	155617
PMK	699	1068479		155618
PMK	700	1068480	488907	155619
PMK	701	1068481		155620
PMK	702	1068482	488908	155621
PMK	703	1068483		155622
PMK	704	1068484		155623
PMK	705	1068485		155624
PMK	706	1068486		155625
PMK	707	1068487		155626

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	708	1068488		155627
PMK	709	1068489		155628
PMK	710	1068490		155629
PMK	711	1068491		155630
PMK	712	1068492		155631
PMK	713	1068493		155632
PMK	714	1068494		155633
PMK	715	1068495		155634
PMK	716	1068496		155635
PMK	717	1068497		155636
PMK	718	1068498		155637
PMK	719	1068499		155638
PMK	720	1068500		155639
PMK	721	1068501		155640
PMK	722	1068502		155641
PMK	723	1068503		155642
PMK	724	1068504		155643
PMK	725	1068505		155644
PMK	726	1068506		155645
PMK	727	1068507		155646
PMK	728	1068508		155647
PMK	742	1186807	592261	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	743	1186808	592262	
PMK	744	1186809	592263	
PMK	745	1186810	592264	
PMK	746	1186811	592265	
PMK	747	1186812	592266	
PMK	748	1186813	592267	
PMK	749	1186814	592268	
PMK	750	1186815	592269	
PMK	751	1186816	592270	
PMK	752	1186817	592271	
PMK	753	1186818	592272	
PMK	754	1186819	592273	
PMK	755	1186820	592274	
PMK	756	1186821	592275	
PMK	757	1186822	592276	
PMK	758	1186823	592277	
PMK	759	1186824	592278	170110
PMK	760	1186825	592279	170111
PMK	761	1186826	592280	170112
PMK	762	1186827	592281	
PMK	763	1186828	592282	
PMK	764	1186829	592283	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	765	1186830	592284	170113
PMK	766	1186831	592285	
PMK	767	1186832	592286	170114
PMK	768	1186833	592287	
PMK	769	1186834	592288	170115
PMK	770	1186835	592289	
PMK	771	1186836	592290	170116
PMK	772	1186837	592291	
PMK	773	1186838	592292	170117
PMK	774	1186839	592293	170118
PMK	775	1186840	592294	170119
PMK	776	1186841	592295	170120
PMK	777	1186842		170121
PMK	778	1186843	592296	170122
PMK	779	1186844		170123
PMK	780	1186845	592297	170124
PMK	781	1186846		170125
PMK	782	1186847	592298	170126
PMK	783	1186848		170127
PMK	784	1186849	592299	170128
PMK	785	1186850		170129
PMK	786	1186851		170130

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	787	1186852		170131
PMK	788	1186853		170132
PMK	789	1186854		170133
PMK	790	1186855	592300	170134
PMK	791	1186856		170135
PMK	792	1186857	592301	170136
PMK	793	1186858		170137
PMK	794	1186859		170138
PMK	795	1186860		170139
PMK	796	1186861		170140
PMK	797	1186862		170141
PMK	798	1186863		170142
PMK	799	1186864		170143
PMK	800	1186865		170144
PMK	801	1186866		170145
PMK	802	1186867		170146
PMK	803	1186868		170147
PMK	804	1186869		170148
PMK	805	1186870		170149
PMK	806	1186871		170150
PMK	807	1186872		170151
PMK	808	1186873		170152

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	809	1186874		170153
PMK	810	1186875		170154
PMK	811	1186876		170155
PMK	812	1186877		170156
PMK	813	1186878		170157
PMK	814	1186879		170158
PMK	815	1186880		170159
PMK	816	1186881		170160
PMK	817	1186882		170161
PMK	818	1186883		170162
PMK	819	1186884		170163
PMK	820	1186885		170164
PMK	821	1186886		170165
PMK	822	1186887		170166
PMK	823	1186888		170167
PMK	824	1186889		170168
PMK	825	1186890		170169
PMK	826	1186891		170170
PMK	827	1186892		170171
PMK	828	1186893		170172
PMK	829	1186894		170173
PMK	830	1186895		170174

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	831	1186896		170175
PMK	832	1186897		170176
PMK	833	1186898		170177
PMK	834	1186899		170178
PMK	835	1186900		170179
PMK	836	1186901		170180
PMK	837	1186902		170181
PMK	838	1186903		170182
PMK	839	1186904		170183
PMK	840	1186905		170184
PMK	841	1186906		170185
PMK	842	1186907		170186
PMK	843	1186908		170187
PMK	844	1186909		170188
PMK	845	1186910		170189
PMK	846	1186911		170190
PMK	847	1186912		170191
PMK	848	1186913		170192
PMK	849	1186914		170193
PMK	850	1186915		170194
PMK	851	1186916		170195
PMK	852	1186917		170196



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	853	1186918		170197
PMK	854	1186919		170198
PMK	855	1186920		170199
PMK	856	1186921		170200
PMK	857	1186922		170201
PMK	858	1186923		170202
PMK	859	1186924		170203
PMK	860	1186925		170204
PMK	861	1186926		170205
PMK	862	1186927		170206
PMK	863	1186928		170207
PMK	864	1186929		170208
PMK	865	1186930		170209
PMK	866	1186931		170210
PMK	867	1186932		170211
PMK	868	1186933		170212
PMK	869	1186934		170213
PMK	870	1186935		170214
PMK	871	1186936		170215
PMK	872	1186937		170216
PMK	873	1186938		170217
PMK	874	1186939		170218

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	875	1186940		170219
PMK	876	1186941		170220
PMK	877	1186942		170221
PMK	878	1186943		170222
PMK	879	1186944		170223
PMK	880	1186945		170224
PMK	881	1186946		170225
PMK	882	1186947		170226
PMK	883	1186948		170227
PMK	884	1186949		170228
PMK	885	1186950		170229
PMK	886	1186951		170230
PMK	887	1186952		170231
PMK	888	1186953		170232
PMK	889	1186954		170233
PMK	890	1186955		170234
PMK	891	1186956		170235
PMK	892	1186957		170236
PMK	893	1186958		170237
PMK	894	1186959		170238
PMK	895	1186960		170239
PMK	896	1186961		170240

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	897	1186962		170241
PMK	898	1186963		170242
PMK	899	1186964		170243
PMK	900	1186965		170244
PMK	901	1186966		170245
PMK	902	1186967		170246
PMK	903	1186968		170247
PMK	904	1186969		170248
PMK	905	1186970		170249
PMK	906	1186971		170250
PMK	907	1186972		170251
PMK	908	1186973		170252
PMK	909	1186974		170253
PMK	910	1186975		170254
PMK	911	1186976		170255
PMK	912	1186977		170256
PMK	913	1186978		170257
PMK	914	1186979		170258
PMK	915	1186980		170259
PMK	916	1186981		170260
PMK	917	1186982		170261
PMK	918	1186983		170262

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	919	1186984		170263
PMK	920	1186985		170264
PMK	921	1186986		170265
PMK	922	1186987		170266
PMK	923	1186988		170267
PMK	924	1186989		170268
PMK	925	1186990		170269
PMK	926	1186991		170270
PMK	927	1186992		170271
PMK	928	1186993		170272
PMK	929	1186994		170273
PMK	930	1186995		170274
PMK	931	1186996		170275
PMK	932	1186997		170276
PMK	933	1186998		170277
PMK	934	1186999		170278
PMK	935	1187000		170279
PMK	936	1187001		170280
PMK	937	1187002		170281
PMK	938	1187003		170282
PMK	939	1187004		170283
PMK	940	1187005		170284

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	941	1187006		170285
PMK	942	1187007		170286
PMK	943	1187008		170287
PMK	944	1187009		170288
PMK	945	1187010		170289
PMK	946	1187011		170290
PMK	947	1187012		170291
PMK	948	1187013		170292
PMK	949	1187014		170293
PMK	950	1187015		170294
PMK	951	1187016		170295
PMK	952	1187017		170296
PMK	953	1187018		170297
PMK	954	1187019		170298
PMK	955	1187020		170299
PMK	956	1187021		170300
PMK	957	1187022		170301
PMK	958	1187023		170302
PMK	959	1187024		170303
PMK	960	1187025		170304
PMK	961	1187026		170305
PMK	962	1187027		170306

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	963	1187028		170307
PMK	964	1187029		170308
PMK	965	1187030		170309
PMK	966	1187031		170310
PMK	967	1187032		170311
PMK	968	1187033		170312
PMK	969	1187034		170313
PMK	970	1187035		170314
PMK	971	1187036		170315
PMK	972	1187037		170316
PMK	973	1187038		170317
PMK	974	1187039		170318
PMK	975	1187040		170319
PMK	976	1187041		170320
PMK	977	1187042		170321
PMK	978	1187043		170322
PMK	979	1187044		170323
PMK	980	1187045		170324
PMK	981	1187046		170325
PMK	982	1187047		170326
PMK	983	1187048		170327
PMK	984	1187049		170328

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	985	1187050		170329
PMK	986	1187051		170330
PMK	987	1187052		170331
PMK	988	1187053		170332
PMK	989	1187054		170333
PMK	990	1187055		170334
PMK	991	1187056		170335
PMK	992	1187057		170336
PMK	993	1187058		170337
PMK	994	1187059		170338
PMK	995	1187060		170339
PMK	996	1187061		170340
PMK	997	1187062		170341
PMK	998	1187063		170342
PMK	999	1187064		170343
PMK	1000	1187065		170344
PMK	1001	1187066		170345
PMK	1002	1187067		170346
PMK	1003	1187068		170347
PMK	1004	1187069		170348
PMK	1005	1187070		170349
PMK	1006	1187071		170350

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1007	1187072		170351
PMK	1008	1187073		170352
PMK	1009	1187074		170353
PMK	1010	1187075	592302	
PMK	1011	1187076	592303	
PMK	1012	1187077	592304	
PMK	1013	1187078	592305	
PMK	1014	1187079	592306	
PMK	1015	1187080	592307	
PMK	1016	1187081	592308	
PMK	1017	1187082	592309	
PMK	1018	1187083	592310	
PMK	1019	1187084	592311	
PMK	1023	1187088	592315	
PMK	1024	1187089	592316	
PMK	1025	1187090	592317	170354
PMK	1026	1187091	592318	
PMK	1027	1187092	592319	170355
PMK	1023	1187088	592315	
PMK	1024	1187089	592316	
PMK	1025	1187090	592317	170354
PMK	1026	1187091	592318	



Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1027	1187092	592319	170355
PMK	1028	1187093		170356
PMK	1072	1197066		172146
PMK	1073	1197067		172147
PMK	1074	1197068		172148
PMK	1075	1197069		172149
PMK	1076	1197070		172150
PMK	1077	1197071		172151
PMK	1078	1197072		172152
PMK	1079	1197073		172153
PMK	1080	1197074		172154
PMK	1081	1197075		172155
PMK	1082	1197076		172156
PMK	1083	1197077		172157
PMK	1084	1197078		172158
PMK	1085	1197079		172159
PMK	1086	1197080		172160
PMK	1091	1204490		173249
PMK	1092	1204491		173250
PMK	1093	1204492		173251
PMK	1094	1204493		173252
PMK	1095	1204494		173253

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1096	1204495		173254
PMK	1097	1204496		173255
PMK	1098	1204497		173256
PMK	1099	1204498		173257
PMK	1100	1204499		173258
PMK	1101	1204500		173259
PMK	1102	1204501		173260
PMK	1103	1204502		173261
PMK	1104	1204503		173262
PMK	1105	1204504		173263
PMK	1106	1204505		173264
PMK	1107	1204506		173265
PMK	1108	1204507		173266
PMK	1109	1204508		173267
PMK	1110	1204509		173268
PMK	1111	1204510		173269
PMK	1112	1204511		173270
PMK	1113	1204512		173271
PMK	1114	1204513		173272
PMK	1115	1204514		173273
PMK	1116	1204515		173274
PMK	1117	1204516		173275

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc. No.	Mineral County Doc No.
PMK	1118	1204517		173276
PMK	1119	1204518		173277
PMK	1120	1204519		173278
PMK	1121	1204520		173279
PMK	1122	1204521		173280
PMK	1123	1204522		173281
PMK	1124	1204523		173282

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc No.	Mineral County Doc No.
P	32	933116	389064	
P	33	933117	389065	
P	34	933118	389066	
P	35	933119	389067	
P	36	933120	389068	
P	45	933129	389077	
P	46	933130	389078	
P	51	933135	389083	

Claim Name	Claim No.	BLM NMC No.	Lyon County Doc No.	Mineral County Doc No.
BJ	1	953951	406304	
BJ	2	953952	406305	

BJ	3	953953	406306
BJ	4	953954	406307
BJ	5	953955	406308
BJ	6	953956	406309
BJ	7	953957	406310
BJ	8	953958	406311

### 3. Nevada Copper New Fee Land

Lyon County, Nevada

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF LYON, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

T. 12 N., R 25 E:

SEC. 12: SE 1/4 SE 1/4

SEC. 13: E 1/2 NE 1/4

T. 12 N., R 26 E:

SEC. 1: W 1/2 NW 1/4 SW 1/4 NW 1/4; W 1/2 SW 1/4 SW 1/4 NW 1/4; NW 1/4 NW 1/4 SW 1/4; SW 1/4 NW 1/4 SW 1/4; W 1/2 SE 1/4 NW 1/4 SW 1/4; W 1/2 NE 1/4 SW 1/4 SW 1/4; NW 1/4 SW 1/4 SW 1/4 AND S 1/2 SW 1/4 SW 1/4

SEC. 2: LOTS 5 THRU 14

SEC. 3: LOTS 5 THRU 13; SE 1/4 NE 1/4 AND NE 1/4 SE 1/4

SEC. 4: LOTS 5 THRU 12; SE 1/4 NW 1/4; NE 1/4 SW 1/4; SW 1/4 SW 1/4 AND NW 1/4 SE 1/4

SEC. 5: LOTS 1 AND 2; S 1/2 NE 1/4; S 1/2 NW 1/4 AND S 1/2

SEC. 6: SE 1/4 NE 1/4, NE 1/4 SE 1/4 AND S 1/2 SE 1/4

SEC. 7: LOT 4; E 1/2; SE 1/4 NW 1/4; NE 1/4 SW 1/4 AND SE 1/4 SW 1/4

SEC. 8: ALL

SEC. 9: LOTS 1 AND 2; SW 1/4 NE 1/4; NW 1/4 AND S 1/2

SEC. 10: LOTS 1 THRU 5; SW 1/4; N 1/2 SE 1/4; N 1/2 SW 1/4 SE 1/4; AND N 1/2 SE 1/4 SE 1/4

SEC. 11: LOTS 1 THRU 6; S 1/2 NE 1/4; N 1/2 SW 1/4; N 1/2 SW 1/4 SW 1/4; N 1/2 SE 1/4 SW 1/4; N 1/2 SE 1/4; N 1/2 SW 1/4 SE 1/4 AND N 1/2 SE 1/4 SE 1/4

SEC. 12: W 1/2 SW 1/4 NE 1/4 NW 1/4, W 1/2 NW 1/4; W 1/2 SE 1/4 NW 1/4; W 1/2 NE 1/4 NE 1/4 SW 1/4; W 1/2 SE 1/4 NE 1/4 SW 1/4; W 1/2 NE 1/4 SW 1/4; NW 1/4 SW 1/4; N 1/2 SW 1/4 SW 1/4 AND N 1/2 SE 1/4 SW 1/4

SEC. 15: NW 1/4

SEC. 16: N 1/2

SEC. 17: N 1/2

SEC. 18: LOTS 1 AND 2; NE 1/4 AND E 1/2 NW 1/4

T. 13 N., R 26 E.:

SEC. 19: W 1/2 SE 1/4; W 1/2 NE 1/4 SE 1/4; W 1/2 SE 1/4 SE 1/4; W 1/2 NE 1/4 NE 1/4 SE 1/4; W 1/2 SE 1/4 NE 1/4 SE 1/4; W 1/2 NE 1/4 SE 1/4 SE 1/4 AND W 1/2 SE 1/4 SE 1/4 SE 1/4

SEC. 29: S 1/2 NW 1/4 NE 1/4; SW 1/4 NE 1/4; S 1/2 NE 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4; SW 1/4; S 1/2 SE 1/4 NE 1/4 SE 1/4; S 1/2 SW 1/4 NE 1/4 SE 1/4; W 1/2 SE 1/4 AND SE 1/4 SE 1/4

SEC. 30: W 1/2 NE 1/4 NE 1/4 NE 1/4; NW 1/4 NE 1/4 NE 1/4; S 1/2 NE 1/4 NE 1/4; NW 1/4 NE 1/4; S 1/2 NE 1/4 AND SE 1/4

SEC. 31: NE 1/4 AND SE 1/4 NW 1/4

SEC. 32: N 1/2; NE 1/4 SW 1/4 AND SE 1/4

SEC. 33: LOTS 1 AND 2; S 1/2 NE 1/4 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4 NE 1/4; S 1/2 NE 1/4 NW 1/4 NE 1/4; S 1/2 NW 1/4 NW 1/4 NE 1/4; S 1/2 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4; S 1/2 NE 1/4; S 1/2 NE 1/4 NE 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4; NW 1/4 NE 1/4 NW 1/4; NW 1/4 NW 1/4; S 1/2 NW 1/4; SW 1/4 AND N 1/2 SE 1/4

SEC. 34: S 1/2 NE 1/4 NE 1/4; S 1/2 NW 1/4 NE 1/4; S 1/2 NE 1/4; S 1/2 NE 1/4 NE 1/4 NW 1/4; S 1/2 NW 1/4 NE 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4 NW 1/4; S 1/2 NE 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4 AND S 1/2

SEC. 35: LOTS 2, 3, 6, 9 THRU 13; NE 1/4 NW 1/4; E 1/2 NE 1/4 NW 1/4 NW 1/4; S 1/2 NW 1/4 NW 1/4; S 1/2 NW 1/4;  
N 1/2 SW 1/4 AND NW 1/4 SE 1/4

SEC. 36: LOTS 5, 6 AND 12

T. 13 N., R 27 E.:

SEC. 31: ALL THAT PORTION OF LOT 6 IN LYON COUNTY SAID PARCEL AS FURTHER DELINEATED ON LYON COUNTY RECORD OF SURVEY MAP, RECORDED ON OCTOBER 12, 2015 AS DOCUMENT NO. 542177.

Mineral County, Nevada

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF MINERAL, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

T. 13 N., R 27 E.,

SEC. 28, LOT 2;

EXCLUDING that portion of Government Lot 2 of Section 28, T. 13 N., R. 27 E., MDM, more particularly described as Parcel 3B as shown on the Record of Survey for Nevada Copper, recorded June 24, 2019, in the Office of the County Recorder of Mineral County, Nevada, as File No. 170881, Mineral County, Nevada, records. (ASSESSOR'S PARCEL NUMBER FOR 2019-2020: 005-110-05).

SEC. 29, LOTS 2, 6 AND 10;

SEC. 30, LOT 6;

SEC. 31, LOTS 2 AND 6.

#### 4. Leased Fee Land (Walker River)

A leasehold interest in and to the following fee lands pursuant subject to that certain Lease dated effective December 1, 2018, by and between Walker River Irrigation District, as landlord, and Nevada Copper, Inc., as lessee, situated in Lyon County, Nevada:

All that certain real property situated in the County of Lyon, State of Nevada, described as follows:

Township 15 North, Range 25 East, M.D.B.&M.

Section 21: SW1/4 of SE1/4

EXCEPTING THEREFROM that certain real property described as commencing at a point on the West boundary of the SE1/4 of the SE1/4 of Section 21, T. 15 N., R. 25 E., M.D.B.&M., from which corner common to Sections 21, 22, 27, and 28 of said Township and Range bears S. 67° 31' E. 1424.81 feet; and running thence N. 0° 16' E. 140 feet to the intersection with the South line of the S.P.R.R. right-of-way; thence along said South line of right-of-way N. 72° 31' W. 168 feet; thence S. 39° 58' E. 248.44 feet to the point of beginning.

Legal Description appeared previously in Document recorded on December 18, 1956, in Book 40 of Deeds, Page 430 Records of Lyon County, Nevada.

ALSO EXCEPTING THEREFROM everything North of the South line of the right-of-way of the Southern Pacific Railway Company.

## B. Water Rights

The “Tibbals Water Rights” made subject to the Mining Lease by the First Amendment to Lease dated April 10, 2008, by and between Landlord and Nevada Copper Corp. The Tibbals Water Rights are located in Lyon County, Nevada, and are more particularly described as follows:

Base Water Right State of Nevada, Division of Water Resources, Water Rights Application No. 15425 filed on December 3, 1953, Certificate No. 4398 granted on August 2, 1954, as modified or supplemented by Water Rights Permit No. 77103 dated October 21, 2008, as abrogated by Water Rights permit Nos. 83450, 89451, 83452, and 88204 T. The permit was originally issued to Anaconda Copper Mining Company.

Consumptive – Water Rights Permits Nos. 77104 and 77105, on file with the State of Nevada, Division of Water Resources, and any subsequent amendments, supplements, or successor rights to said Permits.

Non-Consumptive – Water Rights Permit Nos. 83090, 83454, 83455, 83552 and 83705, on file with the State of Nevada, Division of Water Resources, and any subsequent amendments, supplements, or successor rights to said Permits.

City of Yerington and Nevada Copper Inc., Water Service Agreement dated August 10, 2009, as amended.



Property acquired from Tahoe-Reno Industrial Center, LLC

**PARCEL 1:**

**LOT 99-25 OF PARCEL MAP FOR DP OPERATING PARTNERSHIP, L.P., FILED IN THE OFFICE OF THE COUNTY RECORDER OF STOREY COUNTY, STATE OF NEVADA ON JUNE 29, 1999 AS FILE NO. 85481 OF OFFICIAL RECORDS AND CERTIFICATE OF AMENDMENT RECORDED JANUARY 23, 2001 IN BOOK 140, PAGE 256 AS DOCUMENT NO. 88850 OF OFFICIAL RECORDS.**

**PARCEL 2:**

**AN EASEMENT FOR DRIVEWAY AND UTILITIES AS SET FORTH IN THAT CERTAIN ACCESS AND UTILITY EASEMENT RECORDED JUNE 22, 2001 IN BOOK 143, PAGE 207 AS DOCUMENT NO. 89655 OF OFFICIAL RECORDS; AN AMENDMENT TO ACCESS AND UTILITY EASEMENT RECORDED OCTOBER 15, 2019 AS INSTRUMENT NO. 130593 OF OFFICIAL RECORDS.**

Patented Mining Claims (Copper Ridge)

The following patented mining claims situated in Sections 20, 21, and 29, T. 13 N., R. 26 E., MDM, in Lyon County, Nevada (the "Property):

Claim Name	Mineral Survey No.	Patent No.
Copper Ridge No. 1	3989 (Amended)	338120
Copper Ridge No. 2	3989	338120
Copper Ridge No. 3	3989	338120
Copper Ridge No. 4	3989	338120
Copper Ridge No. 5	3989	338120
Copper Ridge No. 6	3989	338120
Copper Ridge No. 8	3989	338120
Copper Ridge No. 9	3989 (Amended)	338120

The Property is identified by the Lyon County Assessor's Office as APN 014-661-05.

**SCHEDULE K**  
**[RESERVED]**

## SCHEDULE L

### TERMS OF SUBORDINATION

1. General: Payment of the principal of and interest on Subordinated Intercompany Debt and other amounts payable on or in respect thereof shall be subordinated and subject in right of payment to the prior payment in full in cash in Dollars of all Obligations. Each Obligor that is a holder of Subordinated Intercompany Debt (each, a “Subordinated Lender”) agrees that it will not ask, demand, sue for, take or receive from any other Obligor, by set off or in any other manner, or retain, payment (in whole or in part) of the Subordinated Intercompany Debt, or any security therefor, other than Restricted Payments permitted under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, unless and until all of the Obligations have been paid in full. Each Subordinated Lender directs each Obligor to make, and each Obligor agrees to make, such prior payment of the Obligations. Each Obligor undertakes to satisfy any requirements under applicable law that may be necessary for the effectiveness of the Subordination Terms.

2. Payment Upon Dissolution, Etc.: In the event of (a) any insolvency or bankruptcy case or proceeding in connection therewith, relative to an Obligor or to its creditors as such, or to its assets, or (b) any liquidation, dissolution or other winding up of an Obligor, whether partial or complete and whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (c) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of an Obligor, then and in any such event the Secured Parties shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Obligations before any of the Subordinated Lenders shall be entitled to receive any payment on account of the Subordinated Intercompany Debt (whether in respect of principal, interest premium, fees, indemnities, commissions or otherwise) and to that end, any payment or distribution of any kind or character, whether in cash, property or securities which may be payable or deliverable in respect of the Subordinated Intercompany Debt in any such case, proceeding, dissolution, liquidation or other winding up or event shall instead be paid or delivered to the Secured Parties for application to Obligations, whether or not due, until the Obligations shall have first been fully paid and satisfied in cash in Dollars.

3. No Payment During Default: In the event and during the continuation of any Default or Event of Default, unless and until such Default or Event of Default shall have been remedied or waived, no payment (including any Restricted Payment) shall be made by any Obligor on or in respect of any Subordinated Intercompany Debt.

4. Proceeding Against Obligor; No Collateral: Whether or not any default in payment shall exist under any Finance Document, no Subordinated Lenders shall, without the prior consent of the Majority Lenders, (a) commence any proceeding against any Obligor in bankruptcy, insolvency or receivership law or (b) take any collateral security for any Subordinated Intercompany Debt.

5. Payment to the Secured Parties of Certain Amounts Received by Subordinated Lenders: In the event that any Subordinated Lender receives on account or in respect of the Subordinated Intercompany Debt any distribution of assets by any Obligor or payment by or on behalf of an

Obligor of any kind or character, whether in cash, securities or other property, other than Restricted Payments permitted under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, the Subordinated Lender shall hold in trust (as property of the Secured Parties) for the benefit of, and immediately upon receipt thereof, shall pay over or deliver to the Secured Parties, such distribution or payment in precisely the form received (except for the endorsement or assignment by such Subordinated Lender where necessary) for application in accordance with the Credit Agreement. In the event of failure of any Subordinated Lender to make any such endorsement or assignment, the Secured Parties irrevocably are authorized and empowered by and on behalf of each Subordinated Lender to make the same.

6. Authorizations to the Secured Parties: Each Subordinated Lender (a) irrevocably authorizes and empowers (without imposing any obligation on) the Secured Parties and the Collateral Agent to demand, sue for, collect and receive all payments and distributions on or in respect of its Subordinated Intercompany Debt which are required to be paid or delivered to the Secured Parties, as provided herein, and to file and prove all claims therefor and take all such other action, in the name of a Subordinated Lender or otherwise, as the Secured Parties may determine to be necessary or appropriate for the enforcement of these subordination provisions, all in such manner as the Majority Lenders shall instruct or otherwise in accordance with the Credit Agreement, (b) irrevocably authorizes and empowers (without imposing any obligation) the Secured Parties and the Collateral Agent to vote the Subordinated Intercompany Debt (including, without limitation, voting the Subordinated Intercompany Debt in favor of or in opposition to any matter which may come before any meeting of creditors of an Obligor generally or in connection with, or in anticipation of, any insolvency or bankruptcy case or proceeding, or any proceeding under any laws relating to the relief of debtors, readjustment of indebtedness, arrangements, reorganizations, compositions or extensions relative to an Obligor) in such manner as the Majority Lenders shall instruct or otherwise in accordance with the Credit Agreement and (c) agrees to execute and deliver to the Secured Parties all such further instruments confirming the above authorization, and all such powers of attorney, proofs of claim, assignments of claim and other instruments, and to take all such other action, as may be requested by the Secured Parties in order to enable the Secured Parties to enforce all claims upon or in respect of the Subordinated Intercompany Debt.

7. Notice: Each Subordinated Lender agrees, for the benefit of the Secured Parties, that it will give the Secured Parties prompt notice of any default by any Obligor in respect of the Subordinated Intercompany Debt.

8. No Waiver; Modification to Senior Debt: No failure on the part of the Secured Parties, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof by the Secured Parties, nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or future exercise by the Secured Parties of any other right, remedy or power. Each and every right, remedy and power granted to the Secured Parties, or allowed to the Secured Parties by law or other agreement shall be cumulative and not exclusive, and may be exercised by the Secured Parties from time to time.

At any time, without the consent of or notice to the Subordinated Lenders, without incurring responsibility or liability to the Subordinated Lenders and without impairing or releasing the subordination provided herein or the obligations hereunder of the Subordinated Lenders, the

Secured Parties may do any one or more of the following: (a) change the manner, place or terms of payment of or extend the time of payment of, or renew or alter, Obligations or any collateral security or guarantee therefor, or otherwise amend or supplement in any manner Obligations or any instruments evidencing the same or any agreement under which Obligations are outstanding or the Finance Documents; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise secured by Obligations; (c) release any Person liable in any manner for the Obligations; and (d) exercise or refrain from exercising any rights against an Obligor and any other Person. Each Subordinated Lender unconditionally waives notice of the incurring of Obligations or any part thereof.

9. Subrogation: Subject to the payment in full in cash in Dollars of all Obligations, the Subordinated Lenders shall be subrogated to the rights of the Secured Parties to receive distribution of assets of any Obligor, or payments by or on behalf of any Obligor, made on the Obligations, until the Subordinated Intercompany Debt shall be paid in full. For purposes of such subrogation, no payments over, including no payments or distributions to the Secured Parties of any cash, property or securities to which the Subordinated Lenders would be entitled except for the provisions hereof, pursuant to the provisions hereof, to the Secured Parties by the Subordinated Lenders shall, as among an Obligor, its creditors other than the Secured Parties and the Subordinated Lenders, be deemed to be a payment or distribution by an Obligor on account of the Obligations.

10. Benefit of Subordination Provisions: Nothing contained herein shall (a) impair, as among an Obligor, its creditors other than the Secured Parties and the Subordinated Lenders, the obligation of an Obligor, which is absolute and unconditional (and which, subject to the rights hereunder of the Secured Parties, is intended to rank equally with all other unsecured obligations of any Obligor), to pay the principal of and interest on the Subordinated Intercompany Debt as and when the same shall become due and payable in accordance with the terms thereof or (b) affect the relative rights against an Obligor of the Subordinated Lender and creditors of the Obligor other than the Secured Parties.

11. Further Assurances: The Subordinated Lender, at its own cost, shall take any further action as the Secured Parties may reasonably request in order to carry out more fully the intent and purpose of these subordination provisions [(including delivery of any evidence of Subordinated Intercompany Debt to the Administrative Agent or the Collateral Agent)].

12. Governing Law: These subordination provisions shall be governed by and construed in accordance with the laws of New York.

13. Amendment: These subordination provisions may not be amended or modified without the prior consent of each of the Secured Parties.

14. Transfers: Each Subordinated Lender acknowledges and agrees that Subordinated Intercompany Debt may not be transferred, assigned or encumbered in any manner except as expressly permitted by the terms and conditions of the Finance Documents as in effect from time to time.

15. Successors and Assigns: The Agreement shall be binding and inure to the benefit of the Subordinated Lenders, the Secured Parties and their respective successors and permitted assigns.
16. Ranking: All Subordinated Intercompany Debt shall be unsecured, rank junior to the Obligations in respect of payment and pledged as security for the Obligations.

## SCHEDULE M

### FORM OF TRANSFER CERTIFICATE

(Delivered pursuant to Section 14.1(c) (*Assignment by Senior Lenders*) of the Credit Agreement)

Date of this Transfer Certificate: \_\_\_\_\_, \_\_\_\_

For Transfer Date: \_\_\_\_\_, \_\_\_\_

U.S. Bank Trust Company, National Association,  
as Administrative Agent  
214 N. Tryon Street  
Charlotte, NC 28202  
Attention: James Hanley  
Email: James.hanley1@usbank.com, Loan.Agency@usbank.com

Nevada Copper, Inc.,  
as Borrower  
61 E. Pursel Lane  
P.O. Box 1640  
Yerington, Nevada, USA  
89447  
Attention: Greg Martin  
Email: gjmartin@nevadacopper.com

Copy to:  
Attention: Matthew Anderson  
Email: manderson@nevadacopper.com

Ladies and Gentlemen:

#### **Nevada Copper Project – Credit Agreement**

1. [Permitted Transferee] (the “**Transferee**”) delivers this Transfer Certificate to you pursuant to that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of [•], by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in, or incorporated by reference in, the Credit Agreement.

2. [\_\_\_\_\_] (the “**Lender**”) confirms that the Lender’s participation set forth on Schedule I (“**Schedule**”) hereto is an accurate summary of its participation in the Commitments and requests the Transferee to accept and procure the transfer to the Transferee of the Percentage Transferred (set forth in Schedule I) of the Lender’s participation specified in the Schedule hereto by counter-signing and delivering this Transfer Certificate to the Administrative Agent and the



Borrower at their respective addresses for the service of notices specified in the Credit Agreement or as otherwise notified by them pursuant to the terms thereof.

3. The Transferee hereby requests, subject to Section 14.1 of the Credit Agreement, the Administrative Agent and the Borrower to accept this Transfer Certificate as being delivered to the Administrative Agent and the Borrower pursuant to and for the purposes of Section 14.1 of the Credit Agreement so as to take effect in accordance with the terms thereof on the Transfer Date stated above or on such later date as may be determined in accordance with the terms thereof.

4. The Transferee confirms that it has received a copy of each of the Finance Documents together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Lender or any Agent to check or inquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and will not rely on the Lender or any Agent to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Borrower or any other party to any of the Transaction Documents.

5. The Lender makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy, accuracy or enforceability of any of the Transaction Documents or any document relating thereto and assumes no responsibility for the financial condition of any party thereto or for the performance and observance by such party of any of its obligations under any of the Transaction Documents or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.

6. The Lender hereby gives notice that nothing herein or in the Finance Documents (or any document relating thereto) shall oblige it to (i) accept a re-transfer from the Transferee of the whole or any part of its rights, benefits and/or obligations under the Credit Agreement transferred pursuant hereto or (ii) support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever including, without limitation, the non-performance by the Borrower or any other party to any of the Transaction Documents (or any document relating thereto) of its obligations under any such document. The Transferee hereby acknowledges the absence of any such obligation as is referred to in clause (i) or (ii) above.

7. This Transfer Certificate shall be governed by the law of the State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the law of such state; provided, however, that to the extent any terms of this Transfer Certificate are incorporated in and made part of any other Finance Documents, any such term so incorporated shall for all purposes of such Finance Documents be governed by and construed in accordance with the law governing the Finance Documents into which such term is so incorporated.

[8. This Transfer Certificate becomes effective upon acceptance by the Borrower.]<sup>1</sup>

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<sup>1</sup> Include if the Borrower's consent is required pursuant to Section 14.1 of the Credit Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Certificate as of the respective dates set forth below.

[Transferee]

By \_\_\_\_\_  
 Name:  
 Title:  
 Date:

[Existing Lender]

By \_\_\_\_\_  
 Name:  
 Title:  
 Date:

[Accepted and Agreed:

Nevada Copper, Inc.,  
 as the Borrower

By \_\_\_\_\_  
 Name:  
 Title:  
 Date:]<sup>1</sup>

---

<sup>1</sup> Include if the Borrower's consent is required pursuant to Section 14.1 of the Credit Agreement.

## SCHEDULE I

1. Lender:
2. Transferee:
3. Transfer Date:
4. Lender's Participation:
5. Lender's Portion of the Outstanding Commitment:
6. Percentage Transferred:
7. Administrative Details of Transferee

Address:

Contact Department and Name:

Account for Payments:

Facsimile:

Telephone:

**SCHEDULE N**  
**UTILIZATION REQUEST**

[DATE]

TO: U.S. Bank Trust Company, National Association, as Administrative Agent

FROM: Nevada Copper, Inc. as Borrower

RE: Utilization Request Pursuant to Section 3.1 of the Senior Secured Superpriority Debtor-in-Possession Credit Agreement (as amended from time to time, the “**Credit Agreement**”)

The Borrower hereby requests disbursement of Loans on [DATE]<sup>1</sup> to the accounts and in the amounts set forth in the funds flow attached hereto.

1. The Borrower hereby represents and warrants to the Administrative Agent and each Senior Lender that, as of the date of the Utilization:
  - (a) The disbursements requested hereby are scheduled to be utilized in accordance with Section 2.3 of the Credit Agreement.
  - (b) The disbursements of Loans made to date (if any) have been or are being utilized in accordance with Section 2.3 of the Credit Agreement.
2. The Borrower hereby certifies to the Administrative Agent and each Senior Lender as of the date of the Utilization pursuant to Sections 12.3 (a), (b), (c), (d), and (e) of the Credit Agreement:<sup>2</sup>
  - (a) no Default or Event of Default shall have occurred and be continuing or would result from the making of the proposed Loan;
  - (b) no Change of Control has occurred;
  - (c) the proposed loan will be used for the purpose specified in “Use of Proceeds” in accordance with Section 2.3 of the Credit Agreement;
  - (d) no Material Adverse Effect has occurred and is continuing; and
  - (e) the representations and warranties contained in Section 8.1 of the Credit Agreement are true, accurate and complete as of the date of the Utilization in all material respects.

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<sup>1</sup> The proposed Utilization Date must be a Business Day.

<sup>2</sup> All other factual or evidentiary CPs to be delivered separately.

3. The Borrower agrees that, if prior to its receipt of the disbursement requested hereby it determines that any matter certified by it herein will not be true and correct as of the time of such receipt, it will promptly so notify the Administrative Agent.
4. All defined terms used herein and not defined herein have the meanings assigned to them in the Credit Agreement.

*[Signature Page Follows]*

**NEVADA COPPER, INC.,**  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE O

### FORM OF NOTE

\$[ ]

[ ], 20\_\_

FOR VALUE RECEIVED, the undersigned (the “**Borrower**”), hereby promises to pay to [ ] (the “**Lender**”), to the account designated by the Administrative Agent as provided for by the Credit Agreement referred to below, for the account of the Lender, the principal sum of US \$[ ] (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to the Borrower under the Credit Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof; *provided*, that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Loans made by the Lender.

This Note evidences Loans made by the Lender under the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•] (as amended, modified or supplemented and in effect from time to time, the “**Credit Agreement**”), among Nevada Copper, Inc. as Borrower, the Guarantors from time to time party thereto, the Senior Lenders from time to time party thereto, and U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent. Terms used but not defined in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

Except as permitted by Section Article 14 (*Changes to Parties*) of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York.

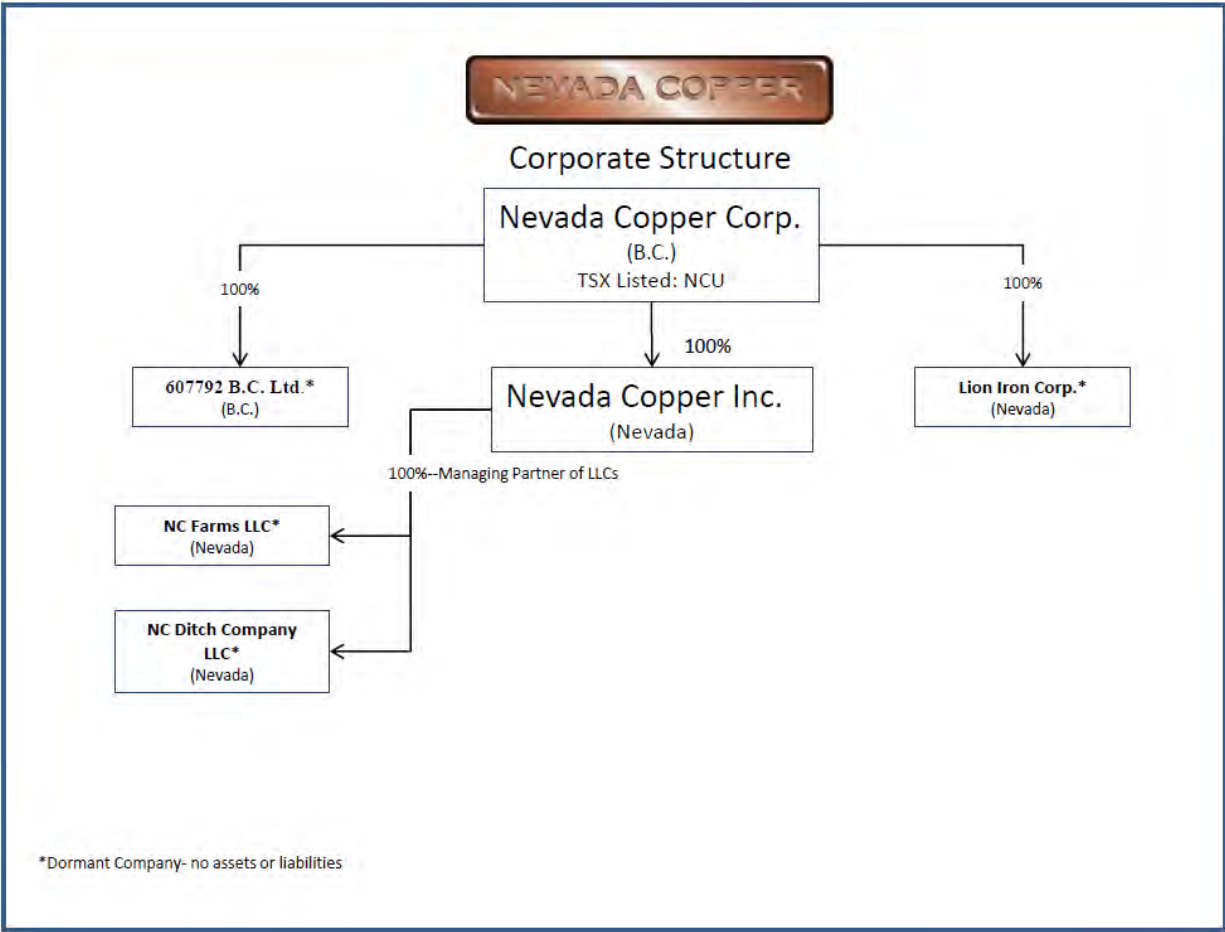


**NEVADA COPPER, INC.,**  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE P****[RESERVED]**

**SCHEDULE Q**  
**CORPORATE ORGANIZATION CHART**



**SCHEDULE R  
BANK ACCOUNTS**

**Nevada Copper, Inc. Bank Accounts**

<b>Bank</b>	<b>Account Type</b>	<b>Last 4 Digits of Account Number</b>	<b>Description</b>	<b>Bank Address</b>
BMO Harris Bank, N.A.	DDA – payroll and FSA/HSA	5804	Disbursement Account (Payroll Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – operations; vendor payments	5812	Disbursement Account (Operating Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – proceeds; fundings/payments per customers	6629	Proceeds Account	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – debt service reserve account	6637	Inactive Account (Debt Service Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – loss proceeds account	6645	Inactive Account (Loss Proceeds Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – approved open pit account	6652	Inactive Account (Approved Open Pit Account)	11 W. Monroe St., Chicago, IL 60603
BMO Harris Bank, N.A.	DDA – restricted payment account	6702	Inactive Account (Restricted Payment Account)	11 W. Monroe St., Chicago, IL 60603

**Nevada Copper Corp. Bank Accounts**

<b>Bank</b>	<b>Bank Account Type</b>	<b>Last 4 Digits of Account Number</b>	<b>Description</b>	<b>Bank Address</b>
Bank of Montreal	DDA – payroll	6175	Disbursement Account (Payroll Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – Canada checking	6458	Disbursement Account (Operating Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – US checking (loan proceeds account)	0506	NCU Concentration Account	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7
Bank of Montreal	DDA – payroll	6728	Inactive Account (Cost Overrun Reserve Account)	595 Burrard Street, Concourse Level  Vancouver, BC V7X 1L7

**SCHEDULE S****[RESERVED]**

## SCHEDULE T

### RELATED-PARTY TRANSACTIONS

(Excluding the transactions in respect of Subordinated Intercompany Debt, including the Equity Contribution Agreement, transactions referenced in Section 12.5(i) and Section 12.5(l), the ownership of equity, the Working Capital Facility Documents, any Material Project Document in effect on the Closing Date and as permitted in Section 11.12(l))

1. Fourth Lien Intercreditor Agreement, dated as of October 28, 2022, among Nevada Copper Corp., Nevada Copper Inc., KfW IPEX-Bank GmbH, in its capacity as Administrative Agent, Triple Flag International Ltd., Concord Resources Limited and Pala Investments Limited.
2. Pala/Tranche B Letter Agreement, dated as of October 28, 2022, among Pala Investments Limited, Nevada Copper Inc., KfW IPEX-Bank GmbH, as Administrative Agent and KfW IPEX-Bank GmbH, as Tranche B Senior Lender.
3. Pala Corporate Guaranty Affirmation Letter, dated as of October 28, 2022, among Pala Investments Limited, Nevada Copper Inc., KfW IPEX-Bank GmbH, as Administrative Agent and KfW IPEX-Bank GmbH, as Tranche B Senior Lender.
4. Amended and Restated Pala Credit Facility, dated as of October 28, 2022, among Nevada Copper Inc., Nevada Copper Corp. and Pala Investments Limited.
5. Fourth Lien Security Agreement, dated as of October 28, 2022, among Nevada Copper Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC, NC Ditch Company LLC and Pala Investments Limited.
6. Fourth Lien Pledge Agreement, dated as of October 28, 2022, between Nevada Copper Corp. and Pala Investments Limited.
7. Lyon County Deed of Trust dated as of October 28, 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
8. Mineral County Deed of Trust dated as of October 28, 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
9. Storey County Deed of Trust dated as of October 28 2022, entered into among the Nevada Copper, Inc., Pala Investments Limited and First American Title Insurance Company.
10. Second Amended and Restated Credit Agreement, entered into as of October 28, 2022, among the Borrower, the Guarantors, Pala Investments Limited, as a senior lender, Mercuria Investments US, Inc., as a senior lender, the other senior lenders party thereto and KfW IPEX-Bank as administrative agent (as amended, amended and restated, supplemented or otherwise modified from time to time).

11. Promissory Note dated as of March 27, 2024, by Nevada Copper Corp. to the order of Pala Investments Limited.
12. Promissory Note dated as of April 15, 2024, by Nevada Copper Corp. to the order of Pala Investments Limited.



**SCHEDULE U****[RESERVED]**

**SCHEDULE V****[RESERVED]**

**SCHEDULE W**  
**LITIGATION DISCLOSURE**

None.

**EXHIBIT A-1**

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lender Parties That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)**

**U.S. TAX COMPLIANCE CERTIFICATE**

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (ii) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF SENIOR LENDER]

By \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A-2

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)**

U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF PARTICIPANT]

By \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A-3**

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Partnerships  
For U.S. Federal Income Tax Purposes)**

U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners or members is a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners or members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners or members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s or member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (A) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (B) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.



In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF PARTICIPANT]

By \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A-4**

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lender Parties That Are Partnerships  
For U.S. Federal Income Tax Purposes)**

U.S. TAX COMPLIANCE CERTIFICATE

Date: \_\_\_\_\_, 202\_\_

Reference is hereby made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of [•], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), by and among Nevada Copper, Inc., as Borrower, U.S. Bank Trust Company, National Association, as Administrative Agent and Collateral Agent, the Guarantors from time to time party thereto and the Senior Lenders party thereto from time to time.

Pursuant to the provisions of Section 6.1 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan (s)) in respect of which it is providing this certificate, (b) its direct or indirect partners or members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners or members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners or members is a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners or members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

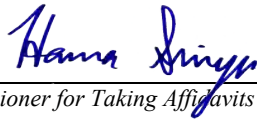
The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners or members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W- 8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W- 8BEN-E from each of such partner’s or member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (A) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (B) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF SENIOR LENDER]

By \_\_\_\_\_  
 Name:  
 Title:

This is **Exhibit "X"** referred to in the Affidavit of Gregory J. Martin sworn remotely by Gregory J. Martin at the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on June 19, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**HANNA SINGER**

LSO #: 81994W

ALLEN OVERY SHEARMAN STERLING US LLP  
Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)  
Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)  
599 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 848-4000  
[fsosnick@aoshearman.com](mailto:fsosnick@aoshearman.com)  
[sara.coelho@aoshearman.com](mailto:sara.coelho@aoshearman.com)

McDONALD CARANO LLP  
Ryan J. Works (NSBN 9224)  
Amanda M. Perach (NSBN 12399)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102  
Telephone: (702) 873-4100  
[rworks@mcdonaldcarano.com](mailto:rworks@mcdonaldcarano.com)  
[aperach@mcdonaldcarano.com](mailto:aperach@mcdonaldcarano.com)

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

NEVADA COPPER, INC.,<sup>1</sup>

Debtor.

*Joint Administration Requested*

Case No. 24-50566  
Chapter 11

**Hearing Date: *OST REQUESTED***  
**Hearing Time: *OST REQUESTED***

**DECLARATION OF ZUL JAMAL IN SUPPORT OF  
DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING,  
(B) GRANT LIENS, INCLUDING SENIOR SECURED PRIMING LIENS, AND  
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH  
COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO CERTAIN  
PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY;  
(IV) SCHEDULING FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

1 I, Zul Jamal, hereby declare as follows under penalty of perjury that the following is true  
2 and correct to the best of my knowledge, information, and belief:

3 1. I submit this declaration (this “**Declaration**”) in support of the *Debtors’ Motion for*  
4 *Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition*  
5 *Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority*  
6 *Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate*  
7 *Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV)*  
8 *Scheduling Final Hearing; and (V) Granting Related Relief* (the “**Motion**”),<sup>2</sup> which seeks approval  
9 of a debtor-in-possession financing facility, which, in addition to the consensual use of Prepetition  
10 Collateral, including Cash Collateral, consists of a \$60 million senior secured superpriority,  
11 priming term loan facility, with (i) \$20 million available upon entry of the Interim Order and (ii)  
12 \$40 million available within one business day of entry of the Final Order (collectively, the “**DIP**  
13 **Facility**” and the commitments thereunder, the “**DIP Commitments**”).<sup>3</sup>

14 2. In particular, I submit this Declaration in support of my view that that: (i) under  
15 the circumstances, the Debtors currently are unable to borrow funds on an unsecured or junior  
16 basis, or solely secured by the Debtors’ unencumbered assets, in sufficient amounts to fund their  
17 business and these Chapter 11 Cases; (ii) the DIP Facility (a) is the product of an arm’s-length,  
18 good faith negotiation process and (b) is currently the only available postpetition financing option  
19 for the Debtors; and (iii) the terms and conditions of the DIP Facility, when taken as a whole, are  
20 reasonable under the circumstances.

21 3. Except where specifically noted, the statements in this Declaration are based upon:  
22 my personal knowledge, belief, or opinion; information that I have received from the Debtors’  
23 employees or advisors and employees of Moelis & Company LLC (together with its affiliates,  
24 “**Moelis**”) working directly with me or under my supervision, direction, or control; or from the

26 <sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the Motion, as applicable.

27 <sup>3</sup> A summary of the material terms of the DIP Facility are set forth in detail in the Motion. Any description of the  
28 DIP Facility or DIP Commitments herein is qualified in its entirety by reference to the Motion.

Debtors' records maintained in the ordinary course of their business. As a professional proposed to be retained by the Debtors, Moelis is charging for services provided in this matter, including a fee for raising debtor-in-possession financing, but I am not being compensated separately for providing this Declaration or testimony. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am over the age of 18 years and am authorized to submit this Declaration on behalf of the Debtors.

**Professional Background and Qualifications**

4. I am a Managing Director of Moelis in Moelis' New York office, located at 399 Park Avenue, 4th floor, New York, NY 10022. Moelis is a leading international investment banking and financial advisory firm (NYSE: MC) with approximately 1,000 employees in locations around the world. Moelis provides a broad range of financial advisory services including (a) mergers and acquisitions, (b) recapitalization & restructuring, (c) capital markets advisory, and (d) private funds advisory.

5. I have over 23 years of experience in investment banking, providing in-court and out-of-court recapitalization and restructuring advisory services to companies, creditors, sponsors, and other interested parties. Furthermore, I have specific expertise in chapter 11 bankruptcies, exchange offers, consent solicitations, lender negotiations, and distressed financings. Prior to joining Moelis, I worked at Jefferies Group LLC where I advised clients on a variety of restructuring, leveraged finance, and international financial sponsor transactions in New York and London. I graduated *magna cum laude* with a Bachelor of Science in Economics from the Wharton School at the University of Pennsylvania.

6. Since I began my career, my experience includes numerous notable restructuring assignments, such as Advanced Glassfiber Yarns, Advanced Lighting Technologies, Aleris International Inc., Alpha Media, American Media, Inc., AMR Corporation, Aston Martin, Cone Mills Corp, Core Digital Media, Inc., Crown Cork & Seal Co., Dex Media, Inc., Diamond Sports Group, LLC, Energy Future Holdings, Genesis Global Holdco, LLC, Hexion Topco, LLC, Holley Performance Products, Inc., Innkeepers USA Trust, Jason Industries, Lyondell Chemical

1 Company, Momentive Performance Materials, Inc., RentPath, Sorenson Communications, Inc.,  
2 TPC Group Inc., Tribune Company, and Russell-Stanley Holdings, Inc.

3 **The Debtors' Need for Postpetition Financing**

4 7. Moelis was retained by the Debtors to provide financial advisory and investment  
5 banking services to the Debtors, including assisting the Debtors with their strategic evaluation of  
6 postpetition financing alternatives. In connection with those services, my colleagues at Moelis and  
7 I have participated in numerous discussions and meetings with the Debtors' management team and  
8 advisors concerning potential postpetition financing and continued access to Cash Collateral. I  
9 generally am familiar with the Debtors' current liquidity and liquidity forecast. Specifically, I  
10 believe that the DIP Facility and continued access to Cash Collateral will provide the Debtors with  
11 sufficient liquidity to continue the operation of their businesses postpetition and preserve the  
12 Company as a going concern; maintain business relationships with vendors, suppliers, and  
13 marketing partners; make payroll; and continue to satisfy working capital and operational needs.

14 8. Based upon my discussion with the Debtors and their other advisors, my  
15 understanding of the Debtors' business, and the *Omnibus Declaration of Gregory J. Martin in*  
16 *Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "**First Day**  
17 **Declaration**"), I believe that access to the DIP Facility and Cash Collateral is essential for at least  
18 three reasons. *First*, the Debtors' have limited available cash to support their limited operations  
19 and the Debtors' use of Cash Collateral alone would likely be insufficient to cover both their  
20 operational needs and the costs of continuing to pursue a sale process in chapter 11. *Second*, if the  
21 Debtors are unable to quickly obtain access to the DIP Facility and Cash Collateral, the Debtors  
22 would likely be unable to maintain even their limited business operations that are designed to  
23 maintain the health and safety of their assets, which would cause immediate and irreparable harm  
24 to the value of the Debtors' estates to the detriment of all stakeholders. *Third*, the incremental  
25 liquidity provided by the DIP Facility should allow the Debtors to continue to pursue their sale  
26 process to maximize the value of their estate. Based upon these reasons, and in conjunction with  
27 my experience in restructuring and my general familiarity with the Debtors, I believe that the DIP  
28



Facility is key to the Debtors' path forward and will be critical to allowing the Debtors to conduct a viable sale process and fund their continued care and maintenance operations.

9. As further described in the First Day Declaration, beginning in the fourth quarter of 2023, the Debtors pursued an out-of-court sale process, but ran out of time due to acute liquidity constraints. The Debtors are now focused on maintaining limited operations to preserve and maintain their assets as they continue to pursue a sale of their business. However, with insufficient cash on hand on the Petition Date, I believe that the Debtors require additional funding to prosecute these Chapter 11 Cases, and without such funding the Debtors will likely be forced to cease operations, jeopardizing their entire reorganization. Indeed, as illustrated in the budget attached as Schedule 1 to the Interim Order (the "***DIP Budget***"), absent the DIP Facility, the Debtors' current cash balance as currently projected, would be insufficient to fund ongoing operations and expenses, including costs associated with these Chapter 11 Cases.

#### **Efforts to Obtain Postpetition Financing**

10. The Debtors need an immediate capital infusion, yet substantially all of the Debtors' assets are encumbered under their existing capital structure. In light of their current capital structure, with its multiple layers of secured indebtedness, the Debtors have been unsuccessful in identifying any party willing to provide debtor-in-possession financing on a junior basis. The Debtors, in consultation with their advisors, including Moelis, concluded that the success of these cases hinges on whether any DIP Financing had the support of, or could be provided by, the Debtors' existing senior secured lenders.

11. The Debtors' capital structure contains significant amounts of multitiered secured indebtedness, which I believe inhibits the Debtors' ability to obtain debtor in possession financing. With the amount and scope of secured indebtedness, in my experience it would be highly unlikely that the Debtors could obtain debtor in possession financing on a non-priming basis. Obtaining debtor in possession financing on a priming basis either would require consent, or a priming fight at the outset of the case, which would be destructive of value as the Debtors are in the process of attempting to sell substantially all of their assets. In certain instances, such consents were pre-

1 authorized in the various documents governing the Debtor's indebtedness, which is why the initial  
2 focus for obtaining financing was from parties for whom consent had been obtained – which  
3 primarily was from existing lenders or their affiliates.

4 12. As explained in greater detail in the First Day Declaration, the Debtors are obligors  
5 under the Prepetition Senior Secured Term Loan Credit Agreement in an aggregate principal  
6 amount of approximately \$188 million divided among three senior secured tranches of debt:  
7 Tranche A, Tranche B, and Tranche A-2. KfW IPEX-Bank GmbH ("**KfW**") is the administrative  
8 agent and collateral agent (the "**Prepetition Senior Secured Term Loan Agent**") under the  
9 Prepetition Senior Secured Term Loan Credit Agreement and is the lender under Tranche A and  
10 Tranche B comprised of an aggregate principal amount of approximately \$147 million. Tranche  
11 A-2 is divided among three lenders: Pala Investments Limited ("**Pala**") in an aggregate principal  
12 amount of approximately \$14.3 million, TF R&S Canada Ltd., an affiliate of Triple Flag (defined  
13 below) ("**TF Canada**") in an aggregate principal amount of approximately \$15 million, and  
14 Mercuria Investments US, Inc. ("**Mercuria**", together with KfW, Pala, TF Canada, the "**Senior**  
15 "**Secured Lenders**") in an aggregate principal amount of approximately \$11.5 million. The  
16 obligations under the Prepetition Senior Secured Term Loan Credit Agreement are secured by a  
17 first priority lien in substantially all of the Debtors' property, other than certain marketable metal-  
18 bearing material that is extracted or otherwise recovered from the Project (the "**WCF Collateral**").

19 13. The Debtors are also party to the Prepetition Working Capital Agreement with  
20 Concord Resources Limited ("**Concord**"), pursuant to which Concord has a first lien security  
21 interest in property that constitutes WCF Collateral. In addition, the Debtors are party to the  
22 Prepetition TF Stream Agreement with Triple Flag International Ltd. ("**Triple Flag**"), pursuant to  
23 which Triple Flag was granted a second lien security interest in all of the Debtors' assets and a  
24 third lien security interest in WCF Collateral. Lastly, the Debtors are party to the Prepetition Junior  
25 Secured Term Loan Agreement with Pala, pursuant to which Pala loaned the Debtors a junior  
26 secured facility which is secured by a fourth lien on substantially all of the Debtors' assets.

1           14. It is my understanding, as further described in the First Day Declaration, that  
2 Concord, as buyer under the Prepetition Working Capital Agreement, Triple Flag, as purchaser  
3 under the Prepetition TF Stream Agreement, and Pala, as lender under the Prepetition Junior  
4 Secured Term Loan Agreement are all parties to intercreditor agreements with the Debtors  
5 (collectively, the “**Intercreditor Agreements**”). It also is my understanding that in the Intercreditor  
6 Agreements, each of Triple Flag, Pala, and Concord (to the extent of all collateral other than WCF  
7 Collateral) have consented in advance to the Debtors obtaining DIP Financing from a Senior  
8 Secured Lender or an affiliate of a Senior Secured Lender. I further understand that TF Canada  
9 is a Senior Secured Lender.

10           15. Ultimately, the Debtors identified Elliott Investment Management L.P. (“**Elliott**”),  
11 an affiliate of Triple Flag and TF Canada, as the best source of DIP Financing. Following several  
12 rounds of negotiations involving Moelis, the Debtors and two affiliates of Elliott, Manchester  
13 Securities Corp. and Ziwa Investments Limited (collectively, the “**DIP Lenders**”) agreed on the  
14 principal terms and conditions of the DIP Facility. With Elliott already having the consent of  
15 Triple Flag, Concord, and Pala, pursuant to the intercreditor agreements, it was crucial to obtain  
16 the consent of the Prepetition Senior Secured Term Loan Agent. This consent was eventually  
17 given on the condition that KfW receive adequate protection as outlined in the Interim Order.  
18 However, to date that consent is only for a financing of up to \$51.4 million, which is well in excess  
19 of the Interim DIP Loans. The Debtors will pursue the Prepetition Senior Secured Term Loan  
20 Agent’s consent for the full size of the DIP Facility prior to entry of the Final Order.

21           16. With the principal terms of a viable DIP Facility in hand, Moelis contacted 13 third  
22 parties to explore alternative postpetition financing options on similar or better terms. However,  
23 Moelis has not received any actionable proposals to date. Therefore, the proposed DIP Facility  
24 currently remains the only viable solution for securing financing on reasonable terms given the  
25 circumstances. I believe this DIP Facility is not only the sole financing option currently available  
26 to the Debtors, but also the best financing option currently available under the circumstances.

### **The Proposed DIP Facility**

17. Based on my knowledge of the Debtors' financial position and the market for DIP financings, I believe that the economic terms of the proposed DIP Facility, taken as a whole, are reasonable under the circumstances and reflect the market's current lack of interest in providing the Debtors with alternative postpetition financing. A summary of the key economic terms of the DIP Facility are set forth below.

<b>Material Economic Terms</b>	
<b>Facility Size</b>	Aggregate principal amount of \$60 million consisting of: (i) subject to the entry of the Interim Order, a new money term loan in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$20 million, which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.1 and 12.3 of the DIP Credit Agreement have been satisfied; (ii) subject to entry of the Final Order, a new money delayed-draw term loan to be made in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$40 million, which will be funded as a single disbursement on the date upon which all conditions set forth in Sections 12.2 and 12.3 of the DIP Credit Agreement have been satisfied.
<b>Interest Rate</b>	Interest will be payable on the unpaid principal amount of all Loans (as defined in the DIP Credit Agreement) and all accrued and unpaid interest thereon at a rate per annum equal to the aggregate of (a) Term SOFR (as defined in the DIP Credit Agreement) for an Interest Period (as defined in the DIP Credit Agreement) of one month, (b) the Credit Spread Adjustment (as defined in the DIP Credit Agreement) and (c) 9.00%, payable monthly in cash on the first (1st) business day of each month in arrears.  The Term SOFR applicable to each Loan for the initial one-month period beginning on the date on which such Loan is funded and each succeeding one-month thereafter shall be determined in accordance with the provisions of the DIP Credit Agreement for determining the Term SOFR for an Interest Period of one month thereunder; provided, that in no event shall the Term SOFR be less than 0.00%.
<b>Upfront Fee</b>	5.0% of the total DIP Commitments, earned upon entry of the Interim Order, with the portion of the Upfront Fee allocable to (x) the Interim DIP Loan becoming due and payable in cash upon the entry of the Interim Order and the funding of the Interim DIP Loan and (y) the Final DIP Loan becoming due and payable in cash upon the entry of the Final Order and the funding of the Final DIP Loan.
<b>Unused Commitment Fee</b>	1.00% per annum on the average daily portion of all DIP Commitments that from time to time shall not yet have been drawn after the date of entry of the Interim Order, payable monthly.
<b>Exit Fee</b>	1.00% fee that is due and payable upon prepayment or repayment of any portion of the DIP Facility in accordance with the DIP Credit Agreement.
<b>Agency Fee</b>	an agency fee as set forth in the letter agreement between the DIP Agent and the borrower under the DIP Facility.

1           18. I believe that the fees and rates to be paid under the proposed DIP Facility (i) were  
2 the subject of arm's-length negotiation between the Debtors and the DIP Lenders, (ii) are an  
3 integral component of the overall terms of the proposed DIP Facility, and (iii) were required by  
4 the DIP Lenders as consideration for the extension of postpetition financing. From my perspective,  
5 I believe that the process for negotiating the DIP Financing economics was rigorous and marked  
6 by hard bargaining. The parties exchanged numerous term sheets and mark-ups, each with  
7 significant changes to the material terms of the proposed DIP Facility. During those negotiations,  
8 my team and I evaluated the economic terms of the DIP Facility, including the amounts of fees  
9 provided thereunder, in comparison to other postpetition financings provided to similarly situated  
10 debtors in the current market. Under the current circumstances, I believe that the fees, rates, and  
11 other economics provided for in the DIP Facility, are reasonable and in the Debtors' best interests.

12                           **The Need for Interim Relief**

13           19. Based upon my discussions with the Debtors and their other advisors, and my  
14 review of the Debtors' projected cash flows, I believe that, due to their current limited liquidity,  
15 the Debtors require access to postpetition financing and use of Cash Collateral to operate their  
16 businesses on a limited basis to preserve their assets while pursuing a sale transaction, preserve  
17 value in the interim period, in an effort to avoid irreparable harm pending a final hearing. As set  
18 forth in the DIP Budget, the Debtors anticipate drawing on the DIP Facility prior to the final  
19 hearing and will need immediate access to Cash Collateral in order to continue operations. The  
20 interim liquidity available under the DIP Facility is needed to maintain limited operations to  
21 preserve assets, pay the amounts sought as part of the Debtors' first day relief, and fund the  
22 administration of these Chapter 11 Cases. Absent the liquidity available from the DIP Facility and  
23 use of Cash Collateral pursuant to the Interim Order, the Debtors would likely be forced to further  
24 curtail maintenance operations, which would threaten their ability to implement the sale process  
25 contemplated by their Chapter 11 Cases. Accordingly, for the reasons set forth herein and in the  
26 First Day Declaration, I believe it is appropriate and necessary for the Court to approve the DIP  
27 Facility on an interim basis pursuant to the terms of the Interim Order.

**Conclusion**

20. In sum, it is my opinion that, absent the interim relief requested by the DIP Motion, the Debtors will suffer significant, and potentially permanent, impairment to their business operations to the material detriment of their stakeholders, and the relief requested in the DIP Motion is in the best interests of the Debtors and their estates.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: June 10, 2024

/s/ Zul Jamal

Zul Jamal

Managing Director

Moelis & Company LLC

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

Court File No.: CV-24-00722252-00CL

AND IN THE MATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD.,  
LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF GREGORY J. MARTIN  
(SWORN JUNE 19, 2024)**

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Lawyers for Nevada Copper, Inc., Nevada  
Copper Corp., 0607792 B.C. Ltd., Lion Iron  
Corp., NC Farms LLC and NC Ditch Company  
LLC

Court File No. CV-24-00722252-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE	)	[■], THE [■]
	)	
JUSTICE MICHAEL A. PENNY	)	DAY OF [■], 2024

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

AND IN THE MATTER OF NEVADA COPPER, INC.,  
NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP.,  
NC FARMS LLC AND NC DITCH COMPANY LLC (the "**Debtors**")

APPLICATION OF NEVADA COPPER, INC.  
UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**INITIAL RECOGNITION ORDER**  
**(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION**, made by Nevada Copper, Inc., in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day by judicial video conference via Zoom in Toronto, Ontario.

**ON READING** the Notice of Application, the affidavit of Gregory J. Martin sworn June 18, 2024 and the Exhibits thereto, the factum of the Foreign Representative dated [■], 2024, the consent of Alvarez & Marsal Canada Inc. ("**A&M**") to act as the proposed Court-appointed information officer (in such capacity, the "**Proposed Information Officer**"), the pre-filing report of the Proposed Information Officer dated [■], 2024, each filed, and upon being provided with copies of the documents required by section 46 of the CCAA,



**AND UPON BEING ADVISED** by counsel for the Foreign Representative that in addition to this Initial Recognition Order, the Foreign Representative seeks a Supplemental Order (Foreign Main Proceeding) (the “**Supplemental Order**”),

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, counsel for [■], and such other counsel and parties as listed on the Participant Information Form, with no one else appearing although duly served as appears from the affidavit of service of Melissa Losco sworn [■], 2024, filed:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **FOREIGN REPRESENTATIVE**

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the “foreign representative” as defined in section 45 of the CCAA of the Debtors in respect of the cases commenced by the Debtors in the United States Bankruptcy Court for the District of Nevada pursuant to Chapter 11 of the United States Bankruptcy Code (the “**Foreign Proceeding**”).

#### **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. **THIS COURT DECLARES** that the centre of its main interests for each of the Debtors is the United States of America, and that the Foreign Proceeding is hereby recognized as a “foreign main proceeding” as defined in section 45 of the CCAA.

#### **STAY OF PROCEEDINGS**

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against any Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;

- (b) further proceedings in any action, suit or proceeding against any Debtor are restrained; and
- (c) the commencement of any action, suit or proceeding against any Debtor is prohibited.

#### **NO SALE OF PROPERTY**

5. **THIS COURT ORDERS** that, except with leave of this Court, each of the Debtors is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

#### **GENERAL**

6. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Foreign Representative, with the assistance of the Proposed Information Officer, if appointed as information officer pursuant to the Supplemental Order, shall cause to be published a notice substantially in the form attached to this Order as **Schedule A**, once a week for two consecutive weeks, in the *Globe and Mail (National Edition)* and *Le Devoir*.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors and the Foreign Representative the Proposed Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

9. **THIS COURT ORDERS AND DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without the need for entry and/or filing.

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**Schedule A**

Order Authorizing Nevada Copper, Inc., to Act as Foreign Representative of the Debtors

**Schedule B**

Order Authorizing Joint Administration of Chapter 11 Cases

**Schedule C**

Interim Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions and (IV) Use Their Existing Business Forms

**Schedule D**

Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief

**Schedule E**

Interim Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts That Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing



**Schedule F**

Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief

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

Court File No. CV-24-00722252-00CL

AND IN THE MATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD., LION  
IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

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Corp., NC Farms LLC and NC Ditch Company  
LLC

Court File No. — CV-24-00722252-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

WEEKDAY [ ], THE # [ ]  
 DAY OF MONTH [ ],  
 20YR 2024

THE HONOURABLE )  
 )  
 )  
 JUSTICE — MICHAEL A. PENNY

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

AND IN THE MATTER OF ~~THE [LIST DEBTOR NAMES]~~ NEVADA COPPER, INC.,  
NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP.,  
NC FARMS LLC AND NC DITCH COMPANY LLC (the "Debtors")

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~ NEVADA COPPER,  
INC.

UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**INITIAL RECOGNITION ORDER**  
**(FOREIGN MAIN<sup>1</sup> PROCEEDING)**

THIS APPLICATION,<sup>2</sup> made by ~~[NAME — OF — FOREIGN~~  
~~REPRESENTATIVE]~~ Nevada Copper, Inc., in its capacity as the foreign representative (the  
 "Foreign Representative") of the Debtors, pursuant to the *Companies' Creditors*  
*Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order

<sup>1</sup> Under section 47 the Canadian Court must be satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, and then determine if the foreign proceeding is a foreign "main" or a foreign "non-main" proceeding. If the Canadian Court recognizes a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of this model Order are minimal, and based on the mandatory relief set out in section 48 of the CCAA with respect to a foreign main proceeding. As noted below, supplemental and other relief is set out in the model Supplemental Order (Foreign Main Proceeding).

<sup>2</sup> Part IV of the CCAA governs cross-border insolvencies.

substantially in the form enclosed in the Application Record, was heard this day ~~at 330 University Avenue,~~by judicial video conference via Zoom in Toronto, Ontario.

ON READING the Notice of Application, the affidavit of ~~[NAME]~~Gregory J. Martin sworn ~~[DATE]~~June 18, [2024 and the ~~preliminary report of~~Exhibits thereto, the factum of the Foreign Representative dated [NAME], in its capacity2024, the consent of Alvarez & Marsal Canada Inc. ("A&M") to act as the proposed Court-appointed information officer (in such capacity, the "Proposed Information Officer"), the pre-filing report of the Proposed Information Officer dated ~~[DATE]~~[DATE], 2024, each filed, and upon being provided with copies of the documents required by ~~s.~~section 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, the Foreign Representative seeks a Supplemental Order (Foreign Main Proceeding) ~~[will be/is being] sought~~(the "Supplemental Order"),<sup>3</sup>

AND UPON HEARING the submissions of counsel for the Foreign Representative, ~~[counsel for the Proposed Information Officer,]~~ counsel for ~~[OTHER PARTIES]~~, and ~~upon being advised that no~~such other ~~persons were~~counsel and parties as listed on the Participant Information Form, with no one else appearing although duly served ~~with~~as appears from the ~~Notice~~affidavit of ~~Application~~service of Melissa Losco sworn [ ], 2024, filed:<sup>4</sup>

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>5</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

<sup>3</sup> In addition to the mandatory relief contained in this Order pursuant to section 48 of the CCAA, certain discretionary relief may be granted by the Court pursuant to section 49 of the CCAA. Examples of such discretionary relief are contained in a model Supplemental Order (Foreign Main Proceeding), also available on the Commercial List website.

<sup>4</sup> Revise to be consistent with the service recital in the Supplemental Order, if it is being sought concurrently.

<sup>5</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in the appropriate circumstances.

## FOREIGN REPRESENTATIVE

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA of the Debtors in respect of ~~[DESCRIBE FOREIGN PROCEEDING]~~ the cases commenced by the Debtors in the United States Bankruptcy Court for the District of Nevada pursuant to Chapter 11 of the United States Bankruptcy Code (the "Foreign Proceeding").

## CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. **THIS COURT DECLARES** that the centre of its main interests for each of the Debtors is ~~[FILING JURISDICTION FOR FOREIGN PROCEEDING]~~ the United States of America,<sup>6</sup> and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding"<sup>7</sup> as defined in section 45 of the CCAA.

## STAY OF PROCEEDINGS<sup>8</sup>

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against any Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
- (b) further proceedings in any action, suit or proceeding against any Debtor are restrained; and
- (c) the commencement of any action, suit or proceeding against any Debtor is prohibited.

## NO SALE OF PROPERTY<sup>9</sup>

5. **THIS COURT ORDERS** that, except with leave of this Court, each of the Debtors is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

<sup>6</sup> A "foreign main proceeding" as defined in section 45 of the CCAA is "a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests". Accordingly, the Court must make this determination in concluding that the proceeding being recognized is a foreign main proceeding. This determination should be made for each individual Debtor.

<sup>7</sup> A separate model order is being developed with respect to foreign non-main proceedings.

<sup>8</sup> The provisions of this paragraph 4 are based on section 48 of the CCAA. More comprehensive stay provisions are found in the model Supplemental Order (Foreign Main Proceeding).

<sup>9</sup> Based on section 48(d) of the CCAA.

## GENERAL

6. **THIS COURT ORDERS** that ~~[without delay]~~[within ~~[NUMBER]~~five (5) business days from the date of this Order, or as soon as practicable thereafter]<sup>10</sup>, the Foreign Representative, with the assistance of the Proposed Information Officer, if appointed as information officer pursuant to the Supplemental Order, shall cause to be published a notice substantially in the form attached to this Order as **Schedule** ~~[\*]~~A,<sup>11</sup> once a week for two consecutive weeks, in ~~[NAME OF NEWSPAPER(S)]~~the *Globe and Mail (National Edition)* and *Le Devoir*.<sup>12</sup>

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

<sup>10</sup> -Section 53 of the CCAA requires publication "without delay after the order is made". The alternative language, above, may provide more certainty as to when that publication must take place.

<sup>11</sup> -The notice must contain information prescribed under the CCAA (section 53(b)).

<sup>12</sup> -Section 53(b) of the CCAA requires that the Foreign Representative publish, unless otherwise directed by the Court, notice of the Recognition Order once a week for two consecutive weeks, in one or more newspapers in Canada specified by the Court. In addition, the Foreign Representative has ongoing reporting obligations pursuant to section 53(a) of the CCAA.

~~8. THIS COURT ORDERS AND DECLARES that [the Interim Initial Order made on [DATE] shall be of no further force and effect once this Order becomes effective, and that] this Order shall be effective as of [TIME]<sup>13</sup> on the date of this Order[, provided that nothing herein shall invalidate any action taken in compliance with such Interim Initial Order prior to the effective time of this Order.]<sup>14</sup>~~

8. ~~9.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors and the Foreign Representative the Proposed Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

9. **THIS COURT ORDERS AND DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without the need for entry and/or filing.

<sup>13</sup> This time should be after the effective time that the Foreign Representative was appointed in the Foreign Proceeding.

<sup>14</sup> If an Interim Initial Order was not made, references to an Interim Initial Order should be removed from this paragraph.



Schedule A  
Order Authorizing Nevada Copper, Inc., to Act as Foreign Representative of the  
Debtors

Schedule B  
Order Authorizing Joint Administration of Chapter 11 Cases

Schedule C

Interim Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions and (IV) Use Their Existing Business Forms

Schedule D

Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief

Schedule E

Interim Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts That Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing

Schedule F

Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief

ER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
C-36, AS AMENDED

Court File No.  
CV-24-00722252-00CL

ATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD.,  
RP., NC FARMS LLC AND NC DITCH COMPANY LLC

OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE COMPANIES'  
RRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at TORONTO

INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)

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|

~~{ATTACH APPROPRIATE SCHEDULE(S)}~~



Document comparison by Workshare Compare on Wednesday, June 19, 2024 5:47:46 PM

Input:	
Document 1 ID	file:///C:/Users/mlosco/Downloads/order-initial-recognition-order-foreign-main-proceeding-EN.doc
Description	order-initial-recognition-order-foreign-main-proceeding-EN
Document 2 ID	iManage:///torys.cloudimanager.com/TORYSATWORK/42332988/9
Description	#42332988v9<torys.cloudimanager.com> - Nevada Copper - Initial Recognition Order - ANCILLARY PROCEEDING
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Legend:	
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<del>Moved deletion</del>	
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Deleted cell	
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Split/Merged cell	
Padding cell	

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Deletions	111
Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	219

Court File No. CV-24-00722252-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE	)	[■], THE [■]
	)	
JUSTICE MICHAEL A. PENNY	)	DAY OF [■], 2024

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

AND IN THE MATTER OF NEVADA COPPER, INC.,  
NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP.,  
NC FARMS LLC AND NC DITCH COMPANY LLC (the "**Debtors**")

APPLICATION OF NEVADA COPPER, INC.  
UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**SUPPLEMENTAL ORDER**  
**(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION**, made by Nevada Copper, Inc., in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day by judicial video conference via Zoom in Toronto, Ontario.

**ON READING** the Notice of Application, the affidavit of Gregory J. Martin sworn June 19, 2024 and the Exhibits thereto (the "**Martin Affidavit**"), the factum of the Foreign Representative dated [■], 2024, the consent of Alvarez & Marsal Canada Inc. ("**A&M**") to act as the proposed Court-appointed information officer (in such capacity, the "**Proposed Information Officer**"), the pre-filing report of the Proposed Information Officer dated [■],

2024, each filed, and upon being provided with copies of the documents required by section 46 of the CCAA,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, counsel for [■], and such other counsel and parties as listed on the Participant Information Form, with no one else appearing although duly served as appears from the affidavit of service of Melissa Losco sworn [■], 2024, filed:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **INITIAL RECOGNITION ORDER**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated [■], 2024 (the “**Recognition Order**”) and the Martin Affidavit, as applicable.

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

#### **RECOGNITION OF FOREIGN ORDERS**

4. **THIS COURT ORDERS** that the following orders (collectively, the “**Foreign Orders**”) of the United States Bankruptcy Court for the District of Nevada (the “**U.S. Court**”) made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) Order Authorizing Nevada Copper Inc., to Act as Foreign Representative of the Debtors;

- (b) Order Directing Joint Administration of Debtors' Related Chapter 11 Cases Under Federal Rule of Bankruptcy Procedure 1015(b) and Local Rule of Bankruptcy Practice 1015;
- (c) Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions, (IV) Use Their Existing Business Forms, and (V) Granting Related Relief;
- (d) Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief;
- (e) Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Bene-fits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts that Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing; and
- (f) Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief (the "**U.S. Interim DIP Order**").

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

## **APPOINTMENT OF INFORMATION OFFICER**

5. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is hereby appointed as an officer of this Court (in such capacity, the “**Information Officer**”), with the powers and duties set out herein.

## **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

6. **THIS COURT ORDERS** that until such date as this Court may order (the “**Stay Period**”) no proceeding or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Debtors or affecting their business (the “**Business**”) or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), except the written consent of the applicable Debtor and the Information Office or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

7. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities or person (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall: (i) prevent the assertion of or the exercise of rights and remedies outside of Canada; (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on; (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; (iv) prevent the filing of any registration to preserve or perfect a security interest; or (v) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right,

renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors and affecting the Business or Property in Canada, except with the written consent of the applicable Debtor and the Information Office, or with leave of this Court.

#### **ADDITIONAL PROTECTIONS**

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, email addresses, internet addresses and domain names.

10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

## **OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at such times and intervals that the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to perform its duties arising under this Order; and
- (d) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. **THIS COURT ORDERS** that the Debtors and the Foreign Representative shall: (i) advise the Information Officer of all material steps taken by the Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings; (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations; and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.



15. **THIS COURT ORDERS** that the Information Officer: (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time; and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Debtor with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Debtors may agree.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a weekly basis or such other frequency as the parties may agree, and, in addition, the Debtors are hereby authorized to pay to the Information Officer and counsel to the Information Officer, reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that the Information Officer, counsel to the Information Officer and Canadian counsel to the Debtors, Torys LLP, shall be entitled to the benefit of

and are hereby granted a charge (the “**Administration Charge**”) on the Property in Canada, which charge shall not exceed an aggregate amount of C\$500,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 21 and 23 hereof.

#### **INTERIM FINANCING**

20. **THIS COURT ORDERS** that the DIP Agent (as defined in the U.S. Interim DIP Order), for the benefit of itself and the DIP Lenders (as defined in the U.S. Interim DIP Order), shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property in Canada, which DIP Lender's Charge shall be consistent with the liens and charges created by the U.S. Interim DIP Order (including with respect to conditions applicable to Avoidance Actions and WCF Collateral, as those terms are defined in the U.S. Interim DIP Order), provided however that the DIP Lender's Charge (i) shall not secure an obligation that exists before the Petition Date, and (ii) with respect to the Property in Canada, shall have the priority set out in paragraphs 21 and 23 hereof, and further provided that the DIP Lender’s Charge shall not be enforced except with leave of this Court.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

21. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender’s Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000); and

Second – DIP Lender’s Charge.

22. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lender’s Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

23. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person provided, however, that the DIP Lender's Charge and the ranking thereof shall be subject to the Carve-Out (as defined in the U.S. Interim DIP Order) and the other priorities and provisions set out in the U.S. Interim DIP Order.

24. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lender's Charge, subject to the Carve-Out (as defined in the U.S. Interim DIP Order), and the other priorities and provisions set out in the U.S. Interim DIP Order unless the Debtors also obtain the prior written consent of the Information Officer and the DIP Lenders, in their capacity as such.

25. **THIS COURT ORDERS** that the Administration Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

26. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Debtor's interest in such real property leases.

#### **SERVICE AND NOTICE**

27. **THIS COURT ORDERS** that that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that the Information Officer shall establish a Case Website in accordance with the Protocol with the following URL: [■].

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative and the Information Officer and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed

to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. **THIS COURT ORDERS** that the Information Officer shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Information Officer shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Information Officer shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

## **GENERAL**

30. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Business or the Property.

32. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

35. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without the need for entry and/or filing.

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**Schedule A**

Order Authorizing Nevada Copper, Inc., to Act as Foreign Representative of the Debtors

**Schedule B**

Order Authorizing Joint Administration of Chapter 11 Cases



**Schedule C**

Interim Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions and (IV) Use Their Existing Business Forms

**Schedule D**

Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief

**Schedule E**

Interim Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts That Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing

**Schedule F**

Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief

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

Court File No. CV-24-00722252-00CL

AND IN THE MATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD., LION  
IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SUPPELEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**Torys LLP**

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Lawyers for Nevada Copper, Inc., Nevada  
Copper Corp., 0607792 B.C. Ltd., Lion Iron  
Corp., NC Farms LLC and NC Ditch Company  
LLC

Revised: January 21, 2014

Court File No. ~~\_\_\_\_\_~~ CV-24-00722252-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE  JUSTICE <del>_____</del> <u>MICHAEL A. PENNY</u>	) ) )	<del>WEEKDAY</del> <u>[ ]</u> , THE # <u>[ ]</u>  DAY OF <del>MONTH</del> <u>[ ]</u> , <del>20YR</del> <u>2024</u>
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
 R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF ~~THE [LIST DEBTOR NAMES]~~ NEVADA COPPER, INC.,  
NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP.,  
NC FARMS LLC AND NC DITCH COMPANY LLC (the "~~Debtors~~")

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~ NEVADA COPPER,  
INC.

UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**SUPPLEMENTAL ORDER<sup>1</sup>**  
**(FOREIGN MAIN<sup>2</sup> PROCEEDING)**

<sup>1</sup> As noted in several footnotes in this model order, practice under Part IV of the CCAA is still developing, and as certain issues are determined by Canadian courts, this model order will be amended to reflect the development of the law in this area.

<sup>2</sup> If the Canadian Court has recognized a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of the model Initial Recognition Order (Foreign Main Proceeding) fulfill the mandatory requirements of section 48 with respect to a foreign main proceeding. Section 49 of the CCAA also allows the Court to make any order that it considers appropriate for the protection of the debtor company's property or the interests of a creditor or creditors. This Supplemental Order contains discretionary relief that might be granted by the Court in the appropriate circumstances. The Model Order Subcommittee has attempted to make the provisions of this model Order consistent with similar provisions in other model Orders. Supplemental relief (whether contained in this Order or in subsequent Orders) may also include provisions dealing with the sale of assets, the recognition of critical vendors, a claims process, or any number of other matters, or may recognize foreign orders or laws granting such relief.

THIS APPLICATION, made by ~~[NAME OF FOREIGN REPRESENTATIVE]~~ Nevada Copper, Inc., in its capacity as the foreign representative (the "Foreign Representative") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order substantially in the form enclosed in the Application Record, was heard this day ~~at 330 University Avenue,~~ by judicial video conference via Zoom in Toronto, Ontario.

ON READING the Notice of Application, the affidavit of ~~[NAME]~~ Gregory J. Martin sworn ~~[DATE], [the preliminary report of June 19, 2024 and the Exhibits thereto (the "Martin Affidavit"), the factum of the Foreign Representative dated [NAME], 2024, the consent of Alvarez & Marsal Canada Inc. ("A&M") to act as the proposed Court-appointed information officer (in its such capacity as proposed information officer, the "Proposed Information Officer"), the pre-filing report of the Proposed Information Officer dated [DATE], 2024, each filed, and on upon being advised that the secured creditors who are likely to be affected provided with copies of the documents required by section 46 of the charges created herein were given notice, and on hearing CCAA,~~

AND UPON HEARING the submissions of counsel for the Foreign Representative, ~~{counsel for the proposed information officer Proposed Information Officer,}~~ counsel for ~~[OTHER PARTIES], and such other counsel and parties as listed on the Participant Information Form, with~~ no one else appearing ~~for [NAME]<sup>3</sup>~~ although duly served as appears from the affidavit of service of ~~[NAME]~~ Melissa Losco sworn ~~[DATE], and on reading the consent of [NAME OF PROPOSED INFORMATION OFFICER] to act as the information officer~~ 2024, filed:

## SERVICE

<sup>3</sup> Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1) and 11.52(1).

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>4</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **INITIAL RECOGNITION ORDER**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated [~~DATE~~], 2024 (the ~~"Recognition Order"~~) and the Martin Affidavit, as applicable.

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

## **RECOGNITION OF FOREIGN ORDERS<sup>5</sup>**

4. **THIS COURT ORDERS** that the following orders (collectively, the ~~"Foreign Orders"~~) of ~~[NAME OF FOREIGN COURT]~~ the United States Bankruptcy Court for the District of Nevada (the "U.S. Court") made in the Foreign Proceeding are hereby

<sup>4</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in the appropriate circumstances.~~

<sup>5</sup> ~~This model Order adopts an approach that might be applicable to some foreign proceedings, but not others. For example, U.S. proceedings will typically generate court orders that will be brought to the Canadian Courts for recognition. Other jurisdictions may have statutory or regulatory rights (rather than court orders) that need to be recognized in Canada.~~



recognized and given full force and effect<sup>6</sup> in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) ~~[List Foreign Orders, or portions of Foreign Orders, copies of which should be attached as schedules to this Order], attached as Schedule A to this Order,~~ Order Authorizing Nevada Copper Inc., to Act as Foreign Representative of the Debtors;
- (b) Order Directing Joint Administration of Debtors' Related Chapter 11 Cases Under Federal Rule of Bankruptcy Procedure 1015(b) and Local Rule of Bankruptcy Practice 1015;
- (c) Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions, (IV) Use Their Existing Business Forms, and (V) Granting Related Relief;
- (d) Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief;
- (e) Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Bene-fits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been

<sup>6</sup> ~~Section 50 of the CCAA provides that an order made under Part IV of the CCAA may be made on any terms and conditions that the Court considers appropriate in the circumstances. Such terms and conditions would presumably need to be consistent with the orders or laws applicable to the foreign proceeding, subject to (i) the limitations imposed by section 48(2) (an order made under section 48(1) must be consistent with any order made under the CCAA), and (ii) the limitations imposed in section 61 (which provides that the Court may apply legal or equitable rules that are not inconsistent with the CCAA, and further that the Court may refuse to do something that would be contrary to public policy). All of the Foreign Orders should be reviewed by counsel with these issues in mind, and the Court may require confirmation from counsel that there is nothing in the Foreign Orders that is inconsistent with the CCAA or that would raise the public policy exception referenced in section 61 of the CCAA.~~

Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts that Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing; and

(f) Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief (the "U.S. Interim DIP Order").

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER<sup>7</sup>**

5. **THIS COURT ORDERS** that ~~[NAME OF INFORMATION OFFICER]~~ (the ~~"Information Officer"~~) Alvarez & Marsal Canada Inc. is hereby appointed as an officer of this Court (in such capacity, the "Information Officer"), with the powers and duties set out herein.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY<sup>8</sup>**

<sup>7</sup>The appointment of an Information Officer is not required by the CCAA, and is in the discretion of the Court. Information Officers are normally trustees licensed under the *Bankruptcy and Insolvency Act*.

<sup>8</sup>The Model Order Subcommittee notes that a "Non-Derogation of Rights" section (found, for example, in the Model Initial CCAA Order) has not been included in this model Order. In a 'full' CCAA proceeding, which would typically include a stay of proceedings made under section 11.02 of the CCAA, a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, and 11.1(2). However, in a Part IV proceeding, section 48 of the CCAA (rather than section 11.02 of the CCAA) is being relied upon when a stay of proceedings is being sought, and despite the wording of section 48(2) and section 61, it is not clear if the restrictions applicable to a section 11.02 stay of proceedings are also applicable to a section 48 stay of proceedings, or would restrict the recognition of foreign proceedings or foreign orders that include a stay of proceedings broader than permitted in a section 11.02 stay of proceedings. These issues remain open for determination by Canadian courts.

6. **THIS COURT ORDERS** that until such date as this Court may order (the "Stay Period") no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding") shall be commenced or continued against or in respect of the Debtors or affecting their business (the "Business") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), except the written consent of the applicable Debtor and the Information Office or with leave of this Court,<sup>9</sup> and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

7. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities or person (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Debtors ~~[or the Foreign Representative]~~, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall: (i) prevent the assertion of or the exercise of rights and remedies outside of Canada; (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on; (iii) ~~ffect~~ affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; (iv) prevent the filing of any registration to preserve or perfect a security interest; or (v) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the

<sup>9</sup> ~~Where the Court considers it to be appropriate, it may authorize other Persons, including a Court appointed Information Officer, to provide consent to any Proceeding. This same comment applies in paragraphs 6 through 11 of this Order.~~

Debtors and affecting the Business or Property in Canada, except with the written consent of the applicable Debtor and the Information Office, or with leave of this Court.

## ADDITIONAL PROTECTIONS

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, email addresses, internet addresses and domain names.<sup>10</sup>

10. ~~{~~**THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.~~}~~<sup>11</sup>

11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections

<sup>10</sup> ~~Section 11.01 of the CCAA provides that no order made under section 11 or 11.02 has the effect of (a) prohibiting a person from requiring immediate payment for good, services, etc. provided after the order is made, or (b) requiring the further advance of money or credit. It is unclear whether these provisions also apply to an order made pursuant to section 48 of the CCAA. Please see the discussion in footnote 8 above.~~

<sup>11</sup> ~~Counsel should specifically address with the Court whether this provision is appropriate in the context of this Order.~~

afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

## OTHER PROVISIONS RELATING TO INFORMATION OFFICER

12. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at ~~least once every [three] months~~such times and intervals that the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- ~~(c) — in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;~~
- (c) ~~(d)~~ shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to perform its duties arising under this Order; and
- (d) ~~(e)~~ shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. **THIS COURT ORDERS** that the Debtors and the Foreign Representative shall: (i) advise the Information Officer of all material steps taken by the Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings; (ii) co-operate fully with

the Information Officer in the exercise of its powers and discharge of its obligations; and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. **THIS COURT ORDERS** that the Information Officer: (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time; and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Debtor with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Debtors may agree.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a ~~TIME~~ INTERVAL weekly basis or such other frequency as the parties may agree, and, in addition, the Debtors are hereby authorized to pay to the Information Officer and counsel to

the Information Officer, reasonable retainers ~~in the amount[s] of \$[AMOUNT OR AMOUNTS] [, respectively,]~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that the Information Officer ~~and,~~ counsel to the Information Officer and Canadian counsel to the Debtors, if any Torlys LLP, shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property in Canada, which charge shall not exceed an aggregate amount of C\$[AMOUNT]500,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs ~~{21}~~ and ~~{23}~~ hereof.

#### **INTERIM FINANCING<sup>12</sup>**

20. **THIS COURT ORDERS** that the DIP ~~Lender~~ Agent (as defined in the U.S. Interim DIP Order), for the benefit of itself and the DIP Lenders (as defined in the U.S. Interim DIP Order), shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property in Canada, which DIP Lender's Charge shall be consistent with the liens and charges created by the ~~{DESCRIBE U.S. Interim DIP LOAN ORDER MADE IN THE FOREIGN PROCEEDING}~~ Order (including with respect to conditions applicable to Avoidance Actions and WCF Collateral, as those terms are defined in the U.S. Interim DIP Order), provided however that the DIP Lender's Charge (i) shall not secure an obligation that exists before ~~this Order is made~~ the Petition Date,<sup>13</sup> and

<sup>12</sup> Optional— if there is a DIP Lender which takes security over assets in Canada or in respect of Canadian Debtors. If more comprehensive interim financing provisions are required, please refer to the model CCAA Initial Order for sample provisions.

<sup>13</sup> This restriction appears in the interim financing provisions found in section 11.2(1) of the CCAA. It is unclear if this prohibits the recognition of a foreign order that creates a DIP Lender's Charge securing pre-filing obligations.

(ii) with respect to the Property in Canada, shall have the priority set out in paragraphs {21} and {23} hereof, and further provided that the DIP Lender's Charge shall not be enforced except with leave of this Court.

## VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

21. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:<sup>14</sup>

First – Administration Charge (to the maximum amount of \$~~{AMOUNT}~~500,000); and

Second – DIP Lender's Charge.

22. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

23. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person provided, however, that the DIP Lender's Charge and the ranking thereof shall be subject to the Carve-Out (as defined in the U.S. Interim DIP Order) and the other priorities and provisions set out in the U.S. Interim DIP Order.

<sup>14</sup> ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~



24. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lender's Charge, subject to the Carve-Out (as defined in the U.S. Interim DIP Order), and the other priorities and provisions set out in the U.S Interim DIP Order unless the Debtors also obtain the prior written consent of the Information Officer and the DIP ~~Lender~~Lenders, in their capacity as such.

25. **THIS COURT ORDERS** that the Administration Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

26. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Debtor's interest in such real property leases.

## **SERVICE AND NOTICE**

27. **THIS COURT ORDERS** that that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that the Information Officer shall establish a Case Website ~~shall be established~~ in accordance with the Protocol with the following URL: ~~<@>~~ [■].

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative and the Information Officer and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. **THIS COURT ORDERS** that the Information Officer shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "Service List"). The Information Officer shall post the Service List, as

may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Information Officer shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

## GENERAL

30. ~~29.~~ **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. ~~30.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Business or the Property.

32. ~~31.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the ~~[JURISDICTION OF THE FOREIGN PROCEEDING]~~ United States of America, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

33. ~~32.~~ **THIS COURT ORDERS** that each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

33. ~~THIS COURT ORDERS that the Guidelines for Court to Court Communications in Cross-Border Cases developed by the American Law Institute and attached as Schedule [\*] hereto is adopted by this Court for the purposes of these recognition proceedings.~~

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

35. **THIS COURT ORDERS** that this Order ~~shall be~~ and all of its provisions are effective as of ~~[TIME]~~ 12:01 a.m. Eastern Standard Time on the date of this Order without the need for entry and/or filing.<sup>15</sup>

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~~{ATTACH APPROPRIATE SCHEDULES}~~

<sup>15</sup> The time referenced in this Order should be the same time as the time referenced in the Recognition Order, if the two Orders are made on the same date. In the absence of such a provision, Rule 59.01 of the Ontario *Rules of Civil Procedure* appears to indicate that an Order is effective as of 12:01 a.m. on the date of the Order (Rule 59.01 provides that "An order is effective from the date on which it is made, unless it provides otherwise").

Schedule A  
Order Authorizing Nevada Copper, Inc., to Act as Foreign Representative of the  
Debtors

Schedule B

Order Authorizing Joint Administration of Chapter 11 Cases

Schedule C

Interim Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions and (IV) Use Their Existing Business Forms

Schedule D

Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief



Schedule E

Interim Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts That Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing

Schedule F

Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief

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

Court File No.  
CV-24-00722252-00CL

AND IN THE MATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD.,  
LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at TORONTO

SUPPELEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF NEVADA COPPER CORP., NEVADA COPPER, INC., 0607792 B.C.  
LTD., LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC  
APPLICATION OF NEVADA COPPER CORP. UNDER SECTION 46 OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Commercial List Court File No.: CV-24-00722252-00CL

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

Proceeding commenced at TORONTO

**APPLICATION RECORD**

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