

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

THE HONOURABLE	)	WEDNESDAY, THE 24th
	)	
JUSTICE CAVANAGH	)	DAY OF JULY, 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

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

**RECOGNITION ORDER**  
**(RECOGNITION OF FINAL ORDERS AND BIDDING PROCEDURES ORDER)**

THIS MOTION, made by Nevada Copper, Inc., in its capacity as the foreign representative (the “**Foreign Representative**”) of itself and Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC (collectively, 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 set out in the Foreign Representative’s Motion Record, was heard by judicial videoconference via Zoom at Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Melissa Losco sworn July 18, 2024 (the “**Losco Affidavit**”), the supplemental affidavit of Jovana Pajovic sworn July 22, 2024, the factum of the Foreign Representative and the First Report of the Information Officer, and upon hearing submissions of counsel for the Foreign Representative, the Information Officer, and those other parties present, no one appearing for any other person on

the service list, although properly served as appears from the Affidavit of Service of Melissa Losco affirmed July 18, 2024, and the Lawyer's Certificate of Service of Mike Noel dated July 23, 2024, each filed, and upon being advised that no other persons were served with the aforementioned materials.

## **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Losco Affidavit.

## **RECOGNITION OF FINAL ORDERS AND BIDDING PROCEDURES ORDER**

3. THIS COURT ORDERS that the following orders (the "**Foreign Orders**") of the United States Bankruptcy Court for the District of Nevada made in the Chapter 11 Cases are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA

- (a) Final 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; and (iv) Granting Related Relief, attached as **Schedule "A"** to this Order (the "**Final DIP Order**");
- (b) 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, attached as **Schedule "B"** to this Order;
- (c) Final 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, attached as **Schedule "C"** to this Order;

- (d) 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, attached as **Schedule "D"** to this Order; and
- (e) Order (i) (a) Approving The Auction And Bidding Procedures, (b) Approving Stalking Horse Bid Protections, (c) Scheduling Certain Dates And Deadlines With Respect Thereto And An Auction, (d) Approving The Form And Manner Of Notice Thereof, (e) Approving The Form APA, And (ii) (a) Establishing Notice And Procedures For The Assumption And Assignment Of Contracts And Leases, (b) Authorizing The Assumption And Assignment Of Assumed Contracts, (c) Authorizing The Sale Of Assets And (iii) Granting Related Relief, attached as **Schedule "E"** to this 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 the Property (as defined in this Court's Supplemental Order (Foreign Main Proceedings) dated June 21, 2024 (the "**Supplemental Order**")) in Canada.

- 4. THIS COURT ORDERS that the references to the U.S. Interim DIP Order in paragraphs 20, 23 and 24 of the Supplemental Order are hereby amended to refer to the Final DIP Order.

## **GENERAL**

5. 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 counsel and 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 counsel and agents in carrying out the terms of this Order.

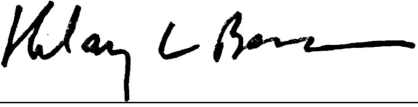
6. THIS COURT ORDERS that each of the Debtors, the Foreign Representative, and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

7. THIS COURT ORDERS that this Order and all of its provisions are effective from the date it is made without any need for entry and filing.

8. THIS COURT ORDERS that this Order shall be effective as of 12:01 a.m. Eastern on the date of this Order.

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**Schedule A**  
**Final DIP Order**

  
Honorab! Hilary L. Barnes  
United States Bankruptcy Judge



Entered on Docket  
July 15, 2024

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.: 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

Hearing Date: July 12, 2024  
Hearing Time: 10:30 a.m.

**FINAL 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; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”),<sup>2</sup> of the Debtors for entry of a final order (this “*Final Order*”) 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:

<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.

- (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 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 Final 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 was 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 were satisfied; (ii) subject to entry of this 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 Final 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 Final 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, retroactive to the Petition Date;
- (i) subject to the terms of this Final 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); and
- (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 Final Order.

The Court having held a hearing on June 13, 2024 (the "***Interim Hearing***"); and the Court having entered an order, dated as of June 14, 2024, granting the relief requested in the Motion on an interim basis [Docket No. 83] (the "***Interim Order***"); and the Court have held a hearing to consider the relief requested in the Motion on a final basis (the "***Final 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*



1 *Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* (the “**DIP Declaration**”),  
 2 the evidence submitted or proffered and the arguments of counsel made at the Interim Hearing;  
 3 and proper and sufficient notice of the Motion and the Interim Hearing having been given in  
 4 accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and all objections, if any,  
 5 to the relief requested in the Motion and to the entry of this Final Order having been withdrawn,  
 6 resolved or overruled by the Court; and it appearing to the Court that granting the relief requested  
 7 is fair and reasonable and in the best interests of the Debtors, their estates, creditors and parties in  
 8 interest; and after due deliberation and consideration, and for good and sufficient cause appearing  
 9 therefor; IT IS FOUND AND DETERMINED THAT:<sup>3</sup>

10 A. **Petition Date.** On June 10, 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.** On June 27, 2024, the United States Trustee for Region  
 20 17 (the “**U.S. Trustee**”) appointed the official committee of unsecured creditors in these Chapter  
 21 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 Final 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 Final 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 Final Order, the Debtors  
5 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  
obligations in respect thereof, the "***Prepetition Senior Secured Term Loan A***  
***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 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***”).

(b) *Prepetition Senior Secured Term Loan 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 Senior Secured Term Loan Parties under the Prepetition Senior Secured Term Loan Documents in the principal aggregate amount of not less than \$188,084,385.86 million, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, indemnification obligations, reimbursement obligations, charges, premiums, if any, additional interest, any other “Obligations” (as defined in the Prepetition Senior Secured Term Loan Documents) and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Senior Secured Term Loan Documents (collectively, the “***Prepetition Senior Secured Term Loan Obligations***”). The Prepetition Senior Secured Term Loan 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 claims, cause of action or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or transfer made to or for the benefit of (or obligations incurred to or for the benefit of) the Prepetition Senior Secured Term Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection with any of the Prepetition Senior Secured Term Loan 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 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 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

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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 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 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.

1                   3.       **Prepetition TF Stream Obligations.**

2                   (a)       Under that certain Metals Purchase and Sale Agreement, dated as of  
3       December 21, 2017 (as amended, restated, amended and restated, supplemented, or otherwise  
4       modified from time to time prior to the date hereof, the “***Prepetition TF Stream Agreement***” and,  
5       together with all related security agreements, collateral agreements, pledge agreements, control  
6       agreements, guarantees and other documents, the “***Prepetition TF Stream Documents***”) by and  
7       among Borrower, as seller, NCU and its subsidiaries, as guarantor and Triple Flag International  
8       Ltd. (“***Triple Flag***”) (as successor by name change to Triple Flag Mining Finance Bermuda Ltd.),  
9       as purchaser (the “***Prepetition TF Stream Purchaser***”), the Prepetition TF Stream Purchaser paid  
10      certain deposits to the Borrower and Borrower committed to make specified deliveries of Refined  
11      Gold and Refined Silver (each as defined in the Prepetition TF Stream Agreement) to the  
12      Prepetition TF Stream Purchaser.

13                  (b)       *Prepetition TF Stream Obligations.* As of the Petition Date, the  
14      Debtors, without defense, counterclaim or offset of any kind, were jointly and severally indebted  
15      and liable to the Prepetition TF Stream Purchaser under the Prepetition TF Stream Documents in  
16      the aggregate principal amount of not less than \$78,269,229.75 under the Prepetition TF Stream  
17      Agreement, *plus* accrued and unpaid interest thereon as of the Petition Date, plus all other fees,  
18      costs, expenses, charges, additional interest, any other “Obligations” (as defined in the Prepetition  
19      TF Stream Agreement) and all other obligations of whatever nature owing, whether or not  
20      contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition  
21      TF Stream Documents (collectively, the “***Prepetition TF Stream Obligations***”). The Prepetition  
22      TF Stream Obligations constitute legal, valid, binding and non-avoidable obligations against each  
23      of the Debtors and are not subject to any avoidance, recharacterization, effect, counterclaim,  
24      defense, offset, subordination, other claim, cause of action or other challenge of any kind under  
25      the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or  
26      transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the  
27      Prepetition TF Stream Purchaser by or on behalf of any of the Debtors prior to the Petition Date  
28



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 or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-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.



1                   4.       **Prepetition Junior Secured Term Loan Obligations.**

2                   (a)       Under that certain Third Amended and Restated Loan Agreement,  
3       dated as of December 21, 2023 (as amended, restated, amended and restated, supplemented, or  
4       otherwise modified from time to time prior to the date hereof, the “*Prepetition Junior Secured*  
5       *Term Loan Agreement*,” together with all related security agreements, collateral agreements,  
6       pledge agreements, control agreements, guarantees and other documents, the “*Prepetition Junior*  
7       *Secured Term Loan Documents*,” and, together with the Prepetition Senior Secured Term Loan  
8       Documents, the Prepetition Working Capital Documents and the Prepetition TF Stream  
9       Documents, the “*Prepetition Debt Documents*”), by and among NCU, as borrower, Borrower,  
10      0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC, as guarantors,  
11      the lenders party thereto from time to time (the “*Prepetition Junior Secured Term Loan*  
12      *Lenders*”), and Pala, as lead arranger and collateral agent (the “*Prepetition Junior Secured Term*  
13      *Loan Agent*,” together with the Prepetition Junior Secured Term Loan Lenders, the “*Prepetition*  
14      *Junior Secured Term Loan Parties*” and, together with the Prepetition Senior Secured Term Loan  
15      Parties, the Prepetition Working Capital Purchaser and the Prepetition TF Stream Purchaser the  
16      “*Prepetition Secured Parties*”), NCU was provided with a junior secured term loan facility.

17                  (b)       *Prepetition Junior Secured Term Loan Obligations.* As of the  
18      Petition Date, the Debtors, without defense, counterclaim or offset of any kind, were jointly and  
19      severally indebted and liable to the Prepetition Junior Secured Term Loan Parties under the  
20      Prepetition Junior Secured Term Loan Documents in the aggregate principal amount of not less  
21      than \$10 million under the Prepetition Junior Secured Term Loan Agreement, *plus* accrued and  
22      unpaid interest thereon as of the Petition Date, plus all other fees, costs, expenses, charges,  
23      additional interest, any other “Obligations” (as defined in the Prepetition Junior Secured Term  
24      Loan Agreement) and all other obligations of whatever nature owing, whether or not contingent,  
25      whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Junior  
26      Secured Term Loan Documents (collectively, the “*Prepetition Junior Secured Term Loan*  
27      *Obligations*” and, together with the Prepetition Senior Secured Term Loan Obligations, the  
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Prepetition Working Capital Obligations and the Prepetition TF Stream Obligations, the “**Prepetition Secured Obligations**”). The Prepetition Junior Secured Term Loan 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 Junior Secured Term Loan Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection with any of the Prepetition Junior Secured Term Loan 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 Junior Secured Term Loan Liens.* Pursuant to the Prepetition Junior Secured Term Loan Documents, the Prepetition Junior Secured Term Loan Obligations are secured by valid, binding, perfected and enforceable liens on and security interests in (the “**Prepetition Junior Secured Term Loan Liens**” and, together with the Prepetition Senior Secured Term Loan Liens, the Prepetition Working Capital Lien and the Prepetition TF Stream Lien, the “**Prepetition Funded Debt Liens**”) the Prepetition Collateral, subject to certain permitted liens as permitted under the Prepetition Junior Secured Term Loan Agreement. The Prepetition Junior Secured Term Loan Liens are subject to the Prepetition Senior Secured Term Loan Liens, the Prepetition Working Capital Lien and the Prepetition TF Stream Lien with respect to all Prepetition Collateral, in each case, in accordance with the terms and conditions of 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 Junior 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 Junior 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 the (1) Prepetition Prior Liens, in relation to the Prepetition Junior Secured Term Loan Obligations, (2) the Prepetition Senior Secured Term Loan Liens, (3) the Prepetition Working Capital Lien, and (4) the Prepetition TF Stream Lien.

5. **Prepetition Intercreditor Agreements.**

(a) *WCF Intercreditor Agreement.* KfW, Triple Flag, Concord and the Borrower 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.

(b) *TF Intercreditor Agreement.* KfW, Triple Flag, the Borrower, NCU and NCU’s subsidiaries 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.

(c) *Fourth Lien Intercreditor Agreement.* KfW, Triple Flag, Concord, Pala, the Borrower, NCU and NCU’s subsidiaries 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.

(d) Each of the Debtors either is party to or otherwise acknowledged and agreed to, and are bound by, the Prepetition Intercreditor Agreements. Pursuant to Bankruptcy 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 and the Final Hearing, the terms of the proposed adequate protection arrangements and of the use of the

1 Prepetition Collateral, including the Cash Collateral, are fair and reasonable and reflect the  
2 Debtors' prudent business judgment.

3 G. **Findings Regarding the DIP Facility and Use of Cash Collateral.** Based on the  
4 record established and evidence presented at the Interim Hearing and the Final Hearing, including  
5 the DIP Declaration, and the representations of the parties, the Court makes the following findings:

6 1. **Need for Postpetition Financing and Use of Cash Collateral.** The  
7 Debtors have a need to use Cash Collateral on a final basis and obtain credit in the form of the  
8 Final DIP Loans pursuant to the DIP Facility in order to, among other things, (a) permit the orderly  
9 continuation of their business, (b) maintain business relationships with their vendors, suppliers,  
10 customers and other parties, (c) make payroll, (d) pay Adequate Protection Payments and (e) pay  
11 the costs of administering the Chapter 11 Cases, in each case, in compliance with, and subject in  
12 all respects to, the Approved Budget, the terms hereof and the DIP Documents. The ability of the  
13 Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay  
14 their employees, and otherwise finance their operations requires the availability of working capital  
15 from the DIP Facility and the use of Cash Collateral, the absence of either of which would  
16 jeopardize the Debtors' chances for a successful chapter 11 restructuring. The Debtors do not have  
17 sufficient available sources of working capital and financing to operate their business, maintain  
18 their properties in the ordinary course of business, and fund the Chapter 11 Cases without the  
19 authorization to use Cash Collateral and to borrow the Final DIP Loans. Good cause has been  
20 shown for the entry of this Final Order and for the Debtors to obtain postpetition financing pursuant  
21 to the terms hereof and the DIP Documents.

22 2. **Priming of Prepetition Liens.** The priming of the Prepetition Funded Debt  
23 Liens on the Prepetition Collateral, to the extent set forth herein, under Bankruptcy Code section  
24 364(d)(1), as contemplated by this Final Order and the DIP Facility, and as further described below,  
25 will enable the Debtors to obtain the DIP Facility and, among other benefits, to continue to operate  
26 their businesses for the benefit of their estates and stakeholders.

1                   3.     **No Credit Available on More Favorable Terms.** As set forth in the DIP  
2 Declaration, the Debtors have been unable to obtain financing from sources other than the DIP  
3 Lenders on terms more favorable than those provided under the DIP Facility, as set forth in the  
4 DIP Documents. The Debtors have been unable to obtain adequate unsecured credit allowable  
5 under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also have  
6 been unable to obtain sufficient credit (i) on an unsecured basis having priority over all other  
7 administrative expenses, (ii) secured solely by a lien on property of the Debtors and their estates  
8 that is not otherwise subject to a lien or (iii) secured solely by a junior lien on property of the  
9 Debtors and their estates that is subject to a lien. Postpetition financing is not otherwise available  
10 without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (x) the DIP Liens (as  
11 defined below) on all DIP Collateral (as defined below), as set forth herein, (y) the DIP  
12 Superpriority Claims (as defined below) and (z) the other protections set forth in this Final Order.  
13 The terms of the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the  
14 Debtors' exercise of sound and prudent business judgment consistent with their fiduciary duties,  
15 constitute reasonably equivalent value and fair consideration and are in the best interest of the  
16 Debtors' estates and stakeholders.

17                   4.     **Good Faith.** The DIP Facility and the Adequate Protection Obligations  
18 have been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the DIP  
19 Lenders, and the Prepetition Secured Parties and all of the Debtors' obligations and indebtedness  
20 arising under, in respect of or in connection with the DIP Documents including, without limitation,  
21 all loans made to and guarantees issued by the Debtors pursuant to this Final Order, and all other  
22 DIP Loans, including, without limitation, any and all fees and other amounts approved pursuant to  
23 this Final Order, shall be deemed to have been extended by the DIP Agent and the DIP Lenders in  
24 good faith as that term is used in Bankruptcy Code section 364(e) and in express reliance upon the  
25 protections offered by Bankruptcy Code section 364(e). The DIP Obligations, including, without  
26 limitation any and all fees and other amounts approved pursuant to the Interim Order and this Final  
27 Order, and the DIP Liens shall be entitled to the full protection of Bankruptcy Code section 364(e)  
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1 in the event that this Final Order or any provision hereof is vacated, reversed or modified on appeal  
2 or otherwise, and any liens or claims granted to the DIP Agent or the DIP Lenders hereunder arising  
3 prior to the effective date of any such vacatur, reversal or modification of this Final Order shall be  
4 governed in all respects by the original provisions of this Final Order, including entitlement to all  
5 rights, remedies, privileges and benefits granted herein.

6 H. **Consent of the Prepetition Secured Parties.** The Prepetition Secured Parties have  
7 consented to or are deemed to consent under the applicable Prepetition Intercreditor Agreements  
8 to the priming of the Prepetition Funded Debt Liens, as applicable, to the extent set forth herein,  
9 and the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions  
10 provided for in this Final Order.

11 I. **Sections 506(c) and 552(b).** As a material inducement to the DIP Lenders to agree  
12 to provide the DIP Facility and the Prepetition Secured Parties to agree to the use of Cash  
13 Collateral, and in exchange for (i) the DIP Agent's and DIP Lenders' agreement to subordinate  
14 their liens and superpriority claims to the Carve-Out to the extent set forth herein and (ii) the  
15 Prepetition Secured Parties' agreement to (a) subordinate their Prepetition Funded Debt Liens and  
16 the Adequate Protection Liens to the Carve-Out and the DIP Liens, each to the extent provided  
17 herein, and (b) consent to the use of Cash Collateral in accordance with and subject to the  
18 Approved Budget (subject to the Permitted Variances (as defined below)), the DIP Documents and  
19 the terms of this Final Order, each of the DIP Agent, the DIP Lenders and Prepetition Secured  
20 Parties is entitled, to the extent set forth herein, to receive (1) a waiver of any "equities of the case"  
21 exceptions or claims under Bankruptcy Code section 552(b), (2) a waiver of the provisions of  
22 Bankruptcy Code section 506(c), and (3) a waiver of the equitable doctrine of "marshaling" or any  
23 similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable).

24 Based upon the foregoing findings and conclusions, the Motion, the DIP Declaration, and  
25 the record before the Court with respect to the Motion, and after due consideration and good and  
26 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 Final 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 Final Order, are hereby denied and overruled. This Final Order shall become effective and  
8 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 a final basis on the terms and conditions set forth herein. The DIP Loan Parties  
12 are expressly and immediately authorized and empowered to: (i) (A) enter into and perform all of  
13 their obligations, (B) as required by the DIP Lenders, execute, deliver and perform under the DIP  
14 Documents and (C) pay all fees, costs, expenses, indemnities and other amounts contemplated  
15 under this Final 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, the Interim Order, this Final Order, and any applicable DIP  
22 Document and to implement the transactions contemplated thereunder and hereunder.

23 (b) **Authorization to Borrow.** The Debtors are hereby authorized to borrow  
24 under the DIP Facility, a principal amount of up to \$60,000,000 (inclusive of the amounts  
25 borrowed pursuant to the authority granted by the Interim Order), subject to the terms and  
26 conditions (including any conditions precedent to such borrowing) set forth in this Final Order and  
27 the DIP Documents. The DIP Lenders shall have no obligation to make any loan or advance under  
28



1 the DIP Documents, unless all of the conditions precedent to the making of such extension of credit  
 2 under the DIP Documents and this Final Order have been satisfied in full or waived in accordance  
 3 with the DIP Documents and this Final 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 the Interim Order, this Final 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 the Interim Order, this Final Order, and  
 13 the DIP Documents and (iii) any other amounts payable in connection with the DIP Facility,  
 14 including all reasonable and documented pre- and postpetition fees, expenses and disbursements  
 15 in connection with the DIP Facility and these Chapter 11 Cases of (A) Akin Gump Strauss Hauer  
 16 & Feld LLP (“**Akin**”), as counsel to the DIP Lenders, (B) Blake, Cassels & Graydon LLP, as  
 17 Canadian counsel to the DIP Lenders, (C) Shea Larson PC, as Nevada local counsel to the DIP  
 18 Lenders, (D) Kelley Drye & Warren, LLP, as counsel to the DIP Agent (“**DIP Agent Counsel**”),  
 19 and (E) any other attorneys, financial advisors, consultants or other professionals retained by the  
 20 DIP Secured Parties (the professionals set forth in clauses (A) through (E), collectively, the “**DIP**  
 21 **Professionals**”), in each case whether or not such payments, premiums, fees, costs, expenses and  
 22 disbursements arose before or after the Final Closing Date. The payment of the fees, costs,  
 23 expenses and disbursements of the DIP Professionals other than DIP Agent Counsel (the “**DIP**  
 24 **Professional Fees**”) shall be subject to the notice and review procedures set forth in paragraph 19  
 25 of this Final Order. For the avoidance of doubt, the Debtors shall be jointly and severally liable  
 26 for the obligations to pay the DIP Professional Fees in accordance with this Final Order.  
 27  
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(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 Debtors, the DIP Agent (acting at the direction of the Required DIP Lenders)<sup>5</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

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<sup>5</sup> The term “**Required DIP Lenders**” as used in this Final Order, shall have the same meaning ascribed to the term “Majority Lenders” in the DIP Credit Agreement.

1 modifications to and under the DIP Documents that (i) modify the original stated maturity of the  
2 DIP Facility, (ii) increase the aggregate commitments thereunder or (iii) increase the rate of interest  
3 or fees payable with respect thereto shall require further Court approval; *provided further*, that any  
4 amendment that may affect the rights, obligations, protections, immunities or indemnities of the  
5 DIP Agent shall require the consent of the DIP Agent.

6 4. **DIP Obligations**

7 (a) Upon entry of this Final Order, the obligations under any applicable DIP  
8 Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each  
9 Debtor, and shall be fully enforceable against each of the Debtors, their estates and any successors  
10 thereto, including, without limitation, any estate representative or trustee appointed in any of these  
11 Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of  
12 any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the  
13 foregoing, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases  
14 (collectively, the “*Successor Cases*”), in each case, in accordance with the terms of the DIP  
15 Documents and this Final Order.

16 (b) Upon entry of this Final Order, the Debtors shall be jointly and severally  
17 liable for all DIP Obligations, including, without limitation, all loans, advances, indebtedness,  
18 obligations, extensions of credit, financial accommodations, principal, interest, payments or  
19 similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations  
20 (whether contingent or absolute), and all other amounts, whether or not such obligations arose  
21 before or after the Petition Date, whenever the same shall become due and payable, whether at  
22 stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the  
23 DIP Lenders under the DIP Documents or the Interim Order, and this Final Order.

24 (c) All obligations incurred, payments made, and transfers or grants of liens  
25 and security interests set forth in the Interim Order, this Final Order, and/or the DIP Documents  
26 by the Debtors are granted to or for the benefit of the DIP Secured Parties for fair consideration  
27 and reasonably equivalent value and are granted contemporaneously with the making of the loans  
28

and commitments and other financial accommodations secured thereby. No obligation, payment, transfer or grant of liens or security interests under the Interim Order, this Final 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 Final 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), 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 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 administration 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 Final 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 Final 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) 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 Final 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) 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) 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 Final Order.

(e) With respect to priming liens provided on DIP Collateral in favor of the DIP Secured Parties pursuant to this Final Order, as set forth in sections 6(c)(2) and (3) above, such



liens shall be junior and subordinate to the \$3,926,398.29 million prepetition liens of RAM Enterprise, Inc. (“**RAM**” and RAM’s liens, the “**RAM Liens**”) that were valid, fully perfected, secured and enforceable as of the Petition Date; *provided* that, the Debtors’ right, and the right of other parties in interest, to contest the legality, validity, priority, secured status, perfection, or enforceability of the RAM Liens shall be preserved, RAM’s rights (if any) as to interest and attorneys’ fees and costs shall be preserved, and nothing in this Final Order shall impact any other relief sought by the Debtors, or other parties in interest, with respect to the RAM Liens, including priming such liens or demonstrating that such liens are adequately protected it being understood that the Debtors would have to file and serve a separate motion for any such relief, and RAM would have the opportunity to object; *provided further* that, the claims secured by the RAM Liens permitted pursuant to this paragraph (e) shall not exceed \$3,926,398.29. For the avoidance of doubt this Final Order: (i) shall not impact the priority of the RAM Liens relative to any creditor other than the DIP Secured Parties; (ii) the priming liens provided on DIP Collateral are junior to the RAM Liens and therefore, if the property securing the RAM Liens (the “**RAM Collateral**”) is sold or transferred, the DIP Secured Parties shall not recover from any proceeds resulting from the sale or transfer of the RAM Collateral unless and until the RAM Liens have been satisfied in full; and (iii) all of RAM’s rights to argue for adequate protection or assert any claim against the estate, including but not limited to a claim resulting from any diminution in value, are preserved.

(f) For the avoidance of doubt, the Debtors’ right and the rights of other parties in interest to contest the legality, validity, priority, perfection, or enforceability of any Petition Date Perfected Liens shall be preserved, and nothing in the Interim Order or this Final Order shall impact any relief sought by the Debtors with respect to the Petition Date Perfected Liens.

#### 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 Final Order and any applicable DIP Documents. Except on the terms and conditions of this Final 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 Final 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 Final 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, Administration 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 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 Final 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, the Creditors’ Committee (or its 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 Debtors shall consult with the Creditors’ Committee on each Proposed Budget and any subsequent revisions to any such Proposed Budget. 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**”) 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 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), KfW (and its counsel), and the Creditors' Committee (or their 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), KfW (and its counsel), and the Creditors' Committee (or their 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

1 forth in the Approved Budget for such Rolling Four-Week Testing Period.

2 (d) *Budget Testing; Permitted Variances.* During any Rolling Four-Week  
 3 Testing Period, the Debtors shall not permit (1) total disbursements, minus (2) disbursements in  
 4 respect of (i) interest, fees, and expenses in relation to the DIP Facility; (ii) Adequate Protection  
 5 Obligations; (iii) DIP Professional Fees; and (iv) professional fees paid by the Debtors on behalf  
 6 of themselves or any other party (the disbursements remaining after such subtractions, the “**Total**  
 7 **Tested Disbursements**”) to be more than 120% of such Total Tested Disbursements set forth in the  
 8 Approved Budget for such Rolling Four-Week Testing Period (collectively, the “**Permitted**  
 9 **Variances**”). Additional disbursement variances, if any, from an Approved Budget, and any  
 10 proposed amendments, supplements or modifications to an Approved Budget, shall be subject to  
 11 the prior written approval of the Required DIP Lenders. For the avoidance of doubt, any reference  
 12 to “written consent” or “written approval” hereunder shall include consent or approval granted by  
 13 e-mail, including email from counsel to the DIP Lenders on behalf of the DIP Lenders.

14 9. **Reporting Requirements; Access to Records.** The Debtors shall provide (i) Akin,  
 15 as counsel to the DIP Lenders, (ii) Milbank LLP (“**Milbank**”), as counsel to KfW, (iii) White &  
 16 Case LLP, as counsel to Concord, (iv) Davis, Graham & Stubbs LLP, as counsel to Triple Flag  
 17 (v) Cleary, Gottlieb, Steen & Hamilton LLP, as counsel to Pala, (vi) Bennett Jones LLP, as counsel  
 18 to Mercuria, (vii) Alvarez & Marsal Canada Inc., in its capacity as the Information Officer in the  
 19 Recognition Proceedings, and (viii) the Creditors’ Committee (or their counsel), with all reporting  
 20 and other information required to be provided to the DIP Agent under the DIP Documents. In  
 21 addition to, and without limitation, whatever rights to access the DIP Secured Parties or KfW have  
 22 under the DIP Documents, upon reasonable notice, at reasonable times during normal business  
 23 hours, the Debtors shall permit representatives, agents and employees of the DIP Secured Parties  
 24 and KfW to (x) have access to and inspect the Debtors’ assets, (y) examine the Debtors’ books and  
 25 records and (z) discuss the Debtors’ affairs, finances and condition with the Debtors’ officers and  
 26 financial advisors.

1           10.    **Adequate Protection for the Prepetition Secured Parties.** Pursuant to  
 2 Bankruptcy Code sections 361, 363, and 364, and in consideration of the stipulations and consents  
 3 set forth herein, as adequate protection of their interests in the Prepetition Collateral (including  
 4 Cash Collateral), for and equal in amount to the aggregate postpetition Diminution in Value of  
 5 such interests, the Prepetition Secured Parties are hereby granted the following (collectively, the  
 6 “***Adequate Protection Obligations***”):

7                   (a)    ***Adequate Protection Liens.*** As security for and solely to the extent of any  
 8 Diminution in Value, the Prepetition Secured Parties are hereby granted additional and replacement  
 9 valid, binding, enforceable, non-avoidable and effective and automatically perfected postpetition  
 10 security interests in, and liens on, as of the date of this Final Order (the “***Adequate Protection***  
 11 ***Liens***”), subject in all cases to the priorities set forth on **Exhibit C** hereto, without the necessity of  
 12 the execution by the Debtors (or recordation or other filing) of security agreements, control  
 13 agreements, pledge agreements, financing statements, mortgages or other similar documents, all  
 14 DIP Collateral.

15                   (b)    ***Adequate Protection Superpriority Claims.*** As further adequate protection,  
 16 and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), the Prepetition Secured  
 17 Parties are hereby granted allowed administrative expense claims in the Chapter 11 Cases against  
 18 each of the Debtors to the extent of any Diminution in Value (the “***Adequate Protection***  
 19 ***Superpriority Claims***”). The Adequate Protection Superpriority Claims shall be payable from and  
 20 have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof  
 21 (excluding Avoidance Actions but including Avoidance Action Proceeds). Subject to the terms of  
 22 this Final Order, the Adequate Protection Superpriority Claims shall have the same relative  
 23 priorities as the Adequate Protection Liens (as set forth on **Exhibit C** hereto) and be subject to (i)  
 24 the Carve-Out, (ii) the Administration Charge and (iii) the DIP Superpriority Claims. Except as  
 25 set forth in this Final Order, the Adequate Protection Superpriority Claims shall not be junior to  
 26 any other claims and shall have priority over all administrative expense claims against each of the  
 27 Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without  
 28

1 limitation, administrative expense claims of the kinds specified in or ordered pursuant to  
 2 Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b),  
 3 546(d), 726, 1113 and 1114.

4 (c) *Fees and Expenses of the Prepetition Secured Parties.* As further adequate  
 5 protection, the Debtors are authorized and directed to pay, without further Court order, reasonable  
 6 and documented fees and expenses (the “**Adequate Protection Fees**”), whether incurred before or  
 7 after the Petition Date, of the Prepetition Senior Secured Term Loan Agent, consisting of the  
 8 following: (i) Milbank, as counsel to KfW; (ii) one Canadian counsel to KfW; (iii) one Nevada  
 9 counsel to KfW; and (iv) one technical advisor to KfW; (collectively, the “**Prepetition Secured**  
 10 **Parties’ Professionals**”) in accordance with the notice and review procedures set forth in  
 11 paragraph 19 of this Final Order.

12 (d) *Monthly Payments.* The Prepetition Senior Secured Term Loan Agent shall  
 13 during the pendency of the Chapter 11 Cases, receive indefeasible payments in amounts equal to  
 14 100% of the accrued and unpaid interest, whether accruing prior to, on or after the Petition Date,  
 15 due to the Prepetition Senior Secured Term Loan Agent under the Prepetition Senior Secured Term  
 16 Loan Documents (calculated at the applicable non-default rates) (the “**Adequate Protection**  
 17 **Monthly Payments**” and, together with the Adequate Protection Fees, the “**Adequate Protection**  
 18 **Payments**”), which shall be payable (i) in respect of payments relating to the Prepetition Senior  
 19 Secured KfW Term Loan Obligations, in cash and (ii) in respect of payments relating to the  
 20 Prepetition Senior Secured Term Loan A-2 Obligations, in kind; *provided* that in the event of a  
 21 final determination that the Prepetition Senior Secured Term Loan Lenders are undersecured as of  
 22 the Petition Date, payments received by the applicable undersecured Prepetition Senior Secured  
 23 Term Loan Lender pursuant to this paragraph 10(d) may be recharacterized and applied as  
 24 payments of principal.

25 (e) *Information Rights.* The Debtors shall contemporaneously provide the  
 26 Prepetition Secured Parties with all reporting and information that is required to be provided to the  
 27 DIP Lenders under the DIP Documents (as currently in effect, or pursuant to any additional  
 28



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.

(f) Creditors' Committee Information Requests. Should the Creditors' Committee make a reasonable request for additional detail relating to any payments made by the Debtors pursuant to a final order of this Court, the Debtors shall provide such additional detail to the Creditors' Committee within five (5) business days of receiving such request or as soon as otherwise practicable.

11. **Perfection of DIP Liens and Adequate Protection Liens.**

(a) This Final Order shall be sufficient and conclusive evidence of the attachment, validity, perfection and priority of all liens and security interests granted under the Interim Order, this Final 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



1 security interests, or to entitle the DIP Agent (acting at the direction of the Required DIP Lenders)  
2 and the Prepetition Secured Parties to the priorities provided hereby and set forth on **Exhibit C**  
3 hereto (a “**Perfection Act**”).

4 (b) Without in any way limiting the automatically effective perfection of the  
5 liens granted under the Interim Order, this Final Order, and the DIP Documents (including, without  
6 limitation, the DIP Liens and the Adequate Protection Liens), each of the Required DIP Lenders,  
7 the Prepetition Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the  
8 Prepetition TF Stream Purchaser and the Prepetition Junior Secured Term Loan Agent, without  
9 any further consent of any party, is hereby authorized on a final basis, to execute, file or record,  
10 and such parties, as applicable, may require the execution, filing or recording, as each, in its sole  
11 discretion deems necessary, of such financing statements, mortgages, notices of lien and other  
12 similar documents to enable the Required DIP Lenders, the Prepetition Senior Secured Term Loan  
13 Agent, the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the  
14 Prepetition Junior Secured Term Loan Agent, as applicable, to further validate, perfect, preserve  
15 and enforce the DIP Liens or Adequate Protection Liens granted hereunder, as applicable, perfect  
16 in accordance with applicable law or to otherwise evidence the DIP Liens and/or the Adequate  
17 Protection Liens, as applicable, and all such financing statements, mortgages, notices and other  
18 documents shall be deemed to have been executed, filed or recorded as of the Petition Date;  
19 *provided, however,* that, notwithstanding any otherwise applicable law or regulation to the  
20 contrary, whether or not the Required DIP Lenders, the Prepetition Senior Secured Term Loan  
21 Agent, the Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser or the  
22 Prepetition Junior Secured Term Loan Agent, as applicable, determine, in their sole discretion, to  
23 execute, file, record or otherwise effectuate any Perfection Act with respect to any liens or security  
24 interests granted under the Interim Order, this Final Order, and the DIP Documents, such liens and  
25 security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not  
26 subject to objection, challenge, dispute, avoidance, recharacterization or subordination. The  
27 Debtors are hereby authorized and directed on a final basis to execute and deliver promptly upon  
28

1 demand to the Required DIP Lenders, the Prepetition Senior Secured Term Loan Agent, the  
2 Prepetition Working Capital Purchaser, the Prepetition TF Stream Purchaser and the Prepetition  
3 Junior Secured Term Loan Agent, as applicable, all such financing statements, notices and other  
4 documents as such parties may reasonably request. The Required DIP Lenders, the Prepetition  
5 Senior Secured Term Loan Agent, the Prepetition Working Capital Purchaser, the Prepetition TF  
6 Stream Purchaser or the Prepetition Junior Secured Term Loan Agent, as applicable, each in its  
7 discretion, may file a copy of this Final Order as a financing statement with any filing or recording  
8 office or with any registry of deeds or similar office, in addition to or in lieu of such financing  
9 statements, notices of lien or similar instruments, and in such event, the filing or recording office  
10 shall be authorized to file or record such copy of this Final 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 the Interim Order, this Final Order, and the DIP Documents; (iii) the Debtors to grant the Adequate  
18 Protection Liens and Adequate Protection Superpriority Claims and to perform such acts as the  
19 Prepetition Secured Parties may request to assure the perfection and priority of the Adequate  
20 Protection Liens; (iv) the Debtors to incur all liabilities and obligations to the Prepetition Secured  
21 Parties, including all Adequate Protection Superpriority Claims and other Adequate Protection  
22 Obligations, as contemplated under the Interim Order, this Final Order, and the DIP Documents;  
23 (v) the Debtors to pay all amounts required under the Interim Order, this Final Order, and the DIP  
24 Documents; (vi) the DIP Secured Parties and the Prepetition Secured Parties to retain and apply  
25 payments made in accordance with the terms of the Interim Order, this Final Order, and the DIP  
26 Documents; (vii) subject in all respects to paragraph 18 of this Final Order, the DIP Agent (acting  
27 at the direction of the Required DIP Lenders) and the applicable Prepetition Secured Parties to  
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exercise, upon the occurrence of any Termination Event (as defined below), all rights and remedies provided for in this Final Order, the DIP Documents or applicable law; (viii) the Debtors to perform under this Final 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 Final 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 Final Order and the DIP Documents.

13. **Carve-Out.**

(a) *Carve-Out.* As used in this Final 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 327 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 \$1,000,000 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 Final 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, 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 (as defined below), 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 Final 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 Final 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 Final Order. All funds in the Post-Carve-Out Trigger Notice Reserve shall be  
9 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 Final Order, to pay the DIP Agent  
12 for the benefit of itself and the DIP Lenders in accordance with the terms of this Final Order and  
13 the DIP Documents, unless the Discharge of DIP Obligations shall have occurred, in which case  
14 any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition  
15 Debt Documents and this Final Order. Notwithstanding anything to the contrary in the DIP  
16 Documents or this Final Order, if either of the Carve-Out Reserves are not funded in full in the  
17 amounts set forth in this paragraph 13(b), then, any excess funds in one of the Carve-Out Reserves  
18 following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively,  
19 shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this  
20 paragraph 13(b), prior to making any payments to the DIP Agent or the Prepetition Secured Parties,  
21 as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Final Order,  
22 following delivery of a Carve-Out Trigger Notice, the DIP Agent (in accordance with the terms of  
23 this Final Order and the DIP Documents) shall not sweep or foreclose on cash (including cash  
24 received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-  
25 Out Reserves have been fully funded, but shall have a valid and perfected security interest in any  
26 residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for the benefit  
27 of itself and the DIP Lenders in accordance with the terms of this Final Order and the DIP  
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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 Final 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 Final 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, any claims arising under section 507(b) of the Bankruptcy Code, 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.* 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. Following entry of this Final Order, amounts set forth in the Budget for the Estate Retained Professionals, plus an additional amount reflecting the 20% holdback for Estate Retained Professional fees,<sup>6</sup> shall be set aside weekly and held by the Debtors in a segregated account for the sole benefit of the Estate Retained Professionals (the “**Professional Fees Escrow**”). Upon closing of a Sale Transaction, the Debtors shall fund into the Professional Fees Escrow such additional amounts from the proceeds of such sale necessary to fund items (i) and (iii) of the definition of “Carve-Out” above, through date of such sale. Except as provided in this Final Order, no funds of the Debtors shall be transferred or otherwise deposited into the Professional Fees Escrow. The amount paid by the Debtors in any month for the fees and expenses of Estate Retained Professionals, whether with Cash Collateral or advances under the DIP Facility,

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<sup>6</sup> For the avoidance of doubt, the amount set forth in the Budget for the Estate Retained Professionals is equal to 80%, not 100%, of the total amounts to be incurred by the Estate Retained Professionals during the Budget period. The full amount of such fees shall be deposited into the Fee Escrow.

shall only be paid upon allowance or authorization by this Court. If, after paying all amounts set forth in the definition of Carve-Out, the Professional Fees Escrow has not been reduced to zero, the DIP Liens, the Adequate Protection Liens and the Prepetition Liens shall automatically attach to all remaining funds in the Professional Fees Escrow (which liens shall be deemed automatically perfected senior liens), with any excess paid to the DIP Lenders or the Prepetition Secured Parties, as applicable.

(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 the Interim Order, this Final 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 the Interim Order, this Final Order, the DIP Documents, the Bankruptcy Code and applicable law.

14. **Limitation on Charging Expenses Against Collateral.** Subject to the Carve-Out and the Administration Charge and retroactive to the Petition Date, 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



1 Bankruptcy Code or the CCAA, shall be charged against or recovered from the DIP Collateral or  
2 the Prepetition Collateral, the DIP Secured Parties or the Prepetition Secured Parties pursuant to  
3 Bankruptcy Code sections 506(c) and 105(a), or any similar principle of law or equity, without the  
4 prior written consent of the DIP Secured Parties and the Prepetition Secured Parties, as applicable,  
5 and no such consent shall be implied from any other action, inaction or acquiescence by the DIP  
6 Secured Parties or the Prepetition Secured Parties.

7 15. **Marshaling/Application of Proceeds.** The DIP Agent and the Prepetition Secured  
8 Parties shall be entitled to apply the payments or proceeds of the DIP Collateral and the Prepetition  
9 Collateral, as applicable, in accordance with the provisions of this Final Order, the DIP Documents  
10 and the Prepetition Debt Documents, as applicable, and in no event shall the DIP Secured Parties  
11 or any of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or  
12 any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral.  
13 Notwithstanding the foregoing or anything to the contrary contained in this Final Order, the DIP  
14 Secured Parties and the Prepetition Secured Parties will not recover any Avoidance Action  
15 Proceeds, or the proceeds of any commercial tort claims in satisfaction of any of the DIP  
16 Superpriority Claims or the Adequate Protection Obligations, as applicable, until all other forms  
17 of collateral securing those obligations have been exhausted.

18 16. **Equities of the Case.** (i) the Prepetition Secured Parties shall be entitled to all of  
19 the rights and benefits of Bankruptcy Code section 552(b) and (ii) the Debtors shall not invoke the  
20 “equities of the case” exception under Bankruptcy Code section 552(b) with respect to the  
21 proceeds, products, offspring or profits of any of the Prepetition Collateral, in each case retroactive  
22 to the Petition Date.

23 17. **Termination Events.** The occurrence of any of the following shall constitute a  
24 “***Termination Event***”: (i) the occurrence of an Event of Default (as defined in the DIP Documents)  
25 to the extent not waived by the Required DIP Lenders or subject to a forbearance or similar  
26 agreement with the Required DIP Lenders; (ii) the Debtors’ failure to comply in any material  
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respect with any provision of this Final Order unless waived by the applicable lenders; or (iii) the occurrence of the Maturity Date (as defined in the DIP Documents).

18. **Remedies Upon a Termination Event.**

(a) Upon the occurrence of the Termination Event, the DIP Agent (acting at the direction of the Required DIP Lenders) shall be entitled to declare (A) all DIP Obligations due and payable without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the Debtors, (B) the termination, reduction or restriction of all future commitments to the Borrower under the DIP Facility to the extent any such commitment remains (including, for the avoidance of doubt, any commitment to fund the DIP Facility) but without affecting the DIP Liens and DIP Obligations, (C) the termination of the DIP Facility and any DIP Documents as to any future obligation of the DIP Secured Parties, but without affecting any of the DIP Liens or any DIP Obligation, (D) the termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral and the proceeds of the DIP Facility (any such declaration made by the DIP Agent to counsel to the Debtors, counsel to the applicable Prepetition Secured Parties, the U.S. Trustee and counsel to the Creditors' Committee, (which may be made by e-mail), 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**"). The DIP Agent shall provide any Termination Declaration to the Debtors' lead restructuring counsel, the Creditors' Committee, the U.S. Trustee, and Milbank, as counsel to KfW.

(b) The Debtors, the Committee (if appointed), and/or any party in interest shall be entitled to seek an emergency hearing before the Court within four (4) business days after the delivery of a Termination Declaration (such period being the "**Remedies Notice Period**"), for the sole purpose of contesting whether a Termination Event (other than with respect to the Maturity Date) has occurred or is continuing or for the contested use of Cash Collateral (a "**Stay Enforcement Motion**").<sup>7</sup> The Debtors shall be entitled to continue to use Cash Collateral in

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<sup>7</sup> If a hearing to consider a Stay Enforcement Motion is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by the Court, the Remedies Notice Period shall automatically be extended

accordance with the terms of this Final Order and the DIP Documents during any Remedies Notice Period only to make payroll and fund critical expenses necessary to preserve the Prepetition Collateral, in each case, in accordance with the terms of the Approved Budget and this Final Order, but shall not be permitted to use Cash Collateral following any Remedies Notice Period absent further order of the Court approving such use (and only to the extent so approved). Unless the Court has determined that a Termination Event has not occurred and/or is not continuing, or the Court orders otherwise, the automatic stay, as to the DIP Secured Parties shall automatically be terminated at the end of the Remedies Notice Period without further notice, order, or any further action in the Chapter 11 Cases or the Recognition Proceedings and the DIP Agent (acting at the direction of the Required DIP Lenders) shall be permitted to exercise any rights and remedies against the DIP Collateral available to the DIP Secured Parties under this Final Order, the DIP Documents and applicable non-bankruptcy law without any further order of or application or motion to the Court, including, but not limited to, any rights to set off against deposits and financial assets of the Debtors and to foreclose on all or any portion of the DIP Collateral, in each case, subject to the Carve-Out, the Administration Charge and any Prepetition Permitted Liens; *provided, however*, that the Required DIP Lenders shall consult with the Prepetition Secured Term Loan Agent in advance of exercising any remedies or taking action in connection with any of the DIP Collateral and shall provide the Prepetition Senior Secured Term Loan Agent with five (5) Business Days' notice in advance of taking such actions; which period may be waived by the Prepetition Senior Secured Term Loan Agent, in its reasonable discretion.

19. **Fees and Expenses of DIP Professionals and Prepetition Secured Parties' Professionals.**

(a) The payment of all DIP Professional Fees and Adequate Protection Fees hereunder shall not be subject to (i) further application to or approval of the Court, (ii) allowance or review by the Court or (iii) the U.S. Trustee's fee guidelines, and no attorney or advisor to the

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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.

DIP Secured Parties or the Prepetition Secured Parties shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court; *provided, however*, that any time the DIP Professionals (other than DIP Agent Counsel) seek payment of fees and expenses from the Debtors from and after the Petition Date but prior to the effective date of any chapter 11 plan,<sup>8</sup> each such party or professional shall provide summary copies of its invoices (which shall not be required to contain time entries, and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to the Debtors' counsel, the U.S. Trustee, and lead counsel to the Creditors' Committee, (collectively, the "***Invoice Review Parties***"). Any objections raised by any Invoice Review Party with respect to such invoices must (x) be in writing (email from such party or their counsel being sufficient) (y) state with particularity the grounds for such objection and (z) be submitted to the affected professional(s) within ten (10) calendar days after delivery of such invoices to the Invoice Review Parties (such ten (10) calendar day period, the "***Invoice Review Period***"). If no written objection is received prior to the expiration of the Invoice Review Period from the Invoice Review Parties, the Debtors shall pay such invoices within two (2) calendar days following the expiration of the Invoice Review Period. If an objection is received within the Invoice Review Period from the Invoice Review Parties, the Debtors shall 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

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<sup>8</sup> For the avoidance of doubt, nothing contained in this paragraph 19 shall prevent the DIP Secured Parties or KfW from seeking payment from the Debtors of professional fees and expenses incurred prior to the Petition Date in accordance with the terms of this Final Order and the DIP Documents.

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 the Interim Order or this Final 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 the Interim Order, this Final Order or the DIP Documents, as applicable, 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 the Interim Order or this Final 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 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 the Interim Order, this Final 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 \$125,000 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 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 Final 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 Final Order shall be binding on the Debtors, their respective estates, representatives, successors and assigns upon entry of this Final 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 Final 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, September 6, 2024, and (2) with respect to all other parties in interest, no later than the date that is 45 days after the entry of the 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) the Creditors’ Committee properly files a contested matter, adversary proceeding, or other matter raising a Challenge, or a motion seeking standing to file a contested matter, adversary proceeding, or other matter raising a Challenge (a “**Standing Motion**”), (y) these Chapter 11 Cases are converted to chapter 7 or (z) a chapter 11 trustee is appointed in these Chapter 11 Cases, then, with respect to clause (x) of this paragraph, the Challenge Period shall be extended for the Creditors’ Committee until the date that is three business days after the Court issues a ruling on such Standing Motion, solely as to Challenges that are subject to such Standing Motion, and, with respect to clauses (y) and (z) of this paragraph, 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 (y) and (z); and (ii) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of



1 the plaintiff sustaining any such challenge in any such duly filed adversary proceeding or contested  
2 matter.

3 (c) If no such adversary proceeding or contested matter is timely filed prior to  
4 the expiration of the Challenge Period, without further order of this Court: (i) the Prepetition  
5 Secured Obligations shall constitute allowed claims, not subject to any Claims and Defenses  
6 (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense,  
7 avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance,  
8 recovery, disgorgement, attachment, “claim” (as defined by Bankruptcy Code section 101(5)),  
9 impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any  
10 kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these  
11 Chapter 11 Cases and any Successor Cases, if any; (ii) the Prepetition Funded Debt Liens shall be  
12 deemed to have been, as of the Petition Date, legal, valid, binding, perfected and of the priority  
13 specified in paragraphs F.1(c), F.2(c), F.3(c), and F.4(c), not subject to setoff, subordination,  
14 defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment or  
15 recovery; and (iii) the Prepetition Secured Obligations, the Prepetition Funded Debt Liens on the  
16 Prepetition Collateral and the Prepetition Secured Parties (solely in their capacities as such) shall  
17 not be subject to any other or further challenge and all parties in interest shall be forever enjoined  
18 and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action,  
19 including any successor thereto (including any estate representative or a Trustee, whether such  
20 Trustee is appointed or elected prior to or following the expiration of the Challenge Period).

21 (d) If any such adversary proceeding or contested matter is timely filed prior to  
22 the expiration of the Challenge Period, (i) the stipulations, admissions, agreements, waivers and  
23 releases contained in this Final Order shall nonetheless remain binding and preclusive on the  
24 Creditors’ Committee and any other party in these Chapter 11 Cases, including any Trustee, except  
25 as to the party (or parties) that timely initiated such adversary proceeding or contested matter and,  
26 with respect to such party (or parties), solely as to any stipulations, admissions, agreements,  
27 waivers and releases that are specifically and expressly challenged in such adversary proceeding  
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1 or contested matter and (ii) any Claims and Defenses not brought in such adversary proceeding or  
 2 contested matter shall be forever barred; *provided* that, if and to the extent any challenges to a  
 3 particular stipulation, admission, agreement, waiver or release are withdrawn, denied or overruled  
 4 by a final non-appealable order, such stipulation, admission, agreement, waiver and/or release also  
 5 shall be binding on the Debtors' estates and all parties in interest.

6 (e) Nothing in the Interim Order or this Final Order vests or confers on any  
 7 person (as defined in the Bankruptcy Code), including any Creditors' Committee, standing or  
 8 authority to pursue any cause of action belonging to the Debtors or their estates, including, without  
 9 limitation, any challenge with respect to the Prepetition Debt Documents, the Prepetition Funded  
 10 Debt Liens or the Prepetition Secured Obligations.

11 22. **Release.** Subject to the rights and limitations set forth in paragraphs 20 and 21 of  
 12 this Final Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of  
 13 each of their predecessors, their successors and assigns shall, to the maximum extent permitted by  
 14 applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish,  
 15 irrevocably waive and discharge each of the DIP Secured Parties, and the Prepetition Secured  
 16 Parties (in each case, in their capacities as such) and each of their respective former, current or  
 17 future officers, employees, directors, agents, representatives, owners, members, partners, affiliated  
 18 investment funds or investment vehicles, managed, advised or sub-advised accounts, funds or other  
 19 entities, investment advisors, sub-advisors or managers, financial advisors, legal advisors,  
 20 shareholders, managers, consultants, accountants, attorneys, affiliates and predecessors in interest,  
 21 each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities,  
 22 disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations,  
 23 actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses  
 24 or judgments of every type, whether known, unknown, asserted, unasserted, suspected  
 25 unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without  
 26 limitation, all legal and equitable theories of recovery, arising under common law, statute or  
 27 regulation or by contract, of every nature and description that exist on the date hereof solely with  
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1 respect to or relating to the DIP Liens, the DIP Superpriority Claims, the DIP Obligations, the  
2 Prepetition Funded Debt Liens and the Prepetition Secured Obligations, as applicable, including,  
3 without limitation, (i) any so-called “lender liability” or equitable subordination claims or  
4 defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code and  
5 (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability,  
6 perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition  
7 Secured Parties.

8 23. **Credit Bidding.**

9 (a) Consistent with Bankruptcy Code section 363(k) and applicable law, the  
10 DIP Agent (acting at the direction of the Required DIP Lenders) and each DIP Lender (in any case,  
11 either directly or through one or more acquisition vehicles), shall have the right to credit bid for  
12 all or any portion of the DIP Collateral, as applicable, up to the full amount of any DIP  
13 Superpriority Claims, as part of any sale of Debtors’ assets (in whole or in part), including without  
14 limitation, sales occurring pursuant to (i) Bankruptcy Code section 363, (ii) a plan of  
15 reorganization or a plan of liquidation under Bankruptcy Code section 1129 or (iii) a sale or  
16 disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725 (each, a “***Sale***  
17 ***Transaction***”), *provided*, that, until payment in full of the obligations under the Prepetition  
18 Working Capital Facility, the rights of the DIP Agent and each DIP Lender to credit bid on any  
19 DIP Collateral that constitutes WCF Collateral shall be subject to the right of the Prepetition  
20 Working Capital Purchaser to credit bid for all or any portion of the WCF Collateral, as applicable,  
21 up to the full amount of any Prepetition Working Capital Obligations as part of any Sale  
22 Transaction. The DIP Agent shall have the absolute right to assign, sell or otherwise dispose of its  
23 right to credit bid in connection with any credit bid by or on behalf of the DIP Lenders to any  
24 acquisition entity or joint venture formed in connection with such bid.

25 (b) The Prepetition Secured Parties’ rights to credit bid for all or a portion of  
26 the Prepetition Collateral as part of any Sale Transaction are fully preserved, subject in all respects  
27 to (i) payment in full in cash of all DIP Obligations, (ii) the terms and conditions of this Final  
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Order and the applicable Prepetition Debt Documents, including the lien and claim priorities set forth herein and therein, and (iii) any Challenges brought by the Creditors' Committee as provided in this Final Order. In the event of any successful Challenge to any liens or claims that were the subject of a credit bid by a Prepetition Secured Party, such Prepetition Secured Party shall, within five business days after the order granting the Challenge becoming a final order, (x) if such Sale Transaction has been consummated prior to the date of such order, pay cash equal to the amount of the claim or lien that was the subject of such successful Challenge or (y) if such Sale Transaction has not been consummated prior to the date of such order, notwithstanding anything to the contrary in the Bidding Procedures Order, be permitted to withdraw such credit bid or modify such credit bid to include cash equal to the amount of the claim or lien that was the subject of such successful Challenge. For the avoidance of doubt, the Prepetition Secured Parties shall have no right to credit bid on any assets other than the Prepetition Collateral (*i.e.*, against unencumbered assets). Any bid for such unencumbered assets must be paid in cash.

24. **Final Order Governs.** In the event of any inconsistency between the provisions of the Interim Order, any DIP Documents, and this Final Order, the provisions of this Final Order shall govern.

25. **Amendments to the DIP Credit Agreement.** The DIP Credit Agreement is hereby amended as follows, without the requirement for the execution of any amendment, waiver, consent or other modification to the DIP Credit Agreement:

(a) the following text shall be inserted at the end of section 13.1 of the DIP Credit Agreement: "Notwithstanding anything to the contrary in this section 13.1, no action taken in pursuit of a Sale Transaction in accordance with the Bidding Procedures Order shall constitute an Event of Default hereunder; *provided that* the Bidding Procedures Order shall be acceptable to the Senior Lenders."

(a) section 13.1(bb)(i) of the DIP Credit Agreement shall be amended and restated as follows: "granting such party standing to pursue a Challenge (as such term is defined in the DIP Order) against the Senior Lenders."; and

(b) section 13.1(dd) of the DIP Credit Agreement shall be amended and restated as follows: “the appointment in any of the Chapter 11 Cases of a trustee, receiver, or an 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);”.

26. **Binding Effect; Successors and Assigns.** The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, the Creditors’ Committee, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104 or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties and the Prepetition Secured Parties; *provided*, that, except to the extent expressly set forth in this Final Order, the Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

27. **Limitation of Liability.** In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral or exercising any rights or remedies as and when permitted pursuant to this Final Order, the DIP Documents or the Prepetition Debt Documents, the DIP Secured Parties and the Prepetition Secured Parties (in each case, solely in their capacities as such) shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors or their respective business (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* as amended, or any similar federal or state statute), nor shall they owe any fiduciary duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint venture or partnership with any of the Debtors. Furthermore, nothing in the Interim Order, this

1 Final Order, the DIP Documents or the Prepetition Debt Documents shall in any way be construed  
2 or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition  
3 Secured Parties of any liability for any claims arising from the prepetition or postpetition activities  
4 of any of the Debtors and their direct or indirect subsidiaries.

5 28. **Proofs of Claim.** Notwithstanding anything to the contrary contained in any prior  
6 or subsequent order of the Court, including, without limitation, any order establishing a deadline  
7 for the filing of proofs of claim or requests for payment of administrative expenses under  
8 Bankruptcy Code section 503(b), (i) the Prepetition Secured Parties shall not be required to file  
9 any proof of claim or request for payment of administrative expenses with respect to any of the  
10 Prepetition Secured Obligations or the Adequate Protection Obligations and (ii) the DIP Secured  
11 Parties shall not be required to file any proof of claim or request for payment of administrative  
12 expenses with respect to any DIP Obligations. The failure to file any such proof of claim or request  
13 for payment of administrative expenses shall not affect the validity, priority or enforceability of  
14 any of the Prepetition Debt Documents, the DIP Documents or of any other indebtedness, liabilities  
15 or obligations arising at any time thereunder, under the Interim Order, or under this Final Order,  
16 or prejudice or otherwise adversely affect the Prepetition Secured Parties' or the DIP Secured  
17 Parties' rights, remedies, powers or privileges under any of the Prepetition Debt Documents, the  
18 DIP Documents, the Interim Order, this Final Order, or applicable law. The applicable Prepetition  
19 Secured Parties and DIP Secured Parties may (but are not required to) in their discretion file (and  
20 amend and/or supplement) applicable proofs of claim and/or aggregate proofs of claim in each of  
21 the Chapter 11 Cases or any successor cases for any claim allowed herein, and any such proof of  
22 claim may (but is not required to) be filed in the Debtors' lead Chapter 11 Case *In re Nevada*  
23 *Copper, Inc.*, Case No. 24-50566 (HLB) as one consolidated proof of claim against all of the  
24 Debtors, rather than as separate proofs of claim against each Debtor. The provisions set forth in  
25 this paragraph are intended solely for the purpose of administrative convenience and shall not  
26 affect the substantive rights of any party-in-interest or their respective successors-in-interest.

29. **Insurance.** The Debtors shall continue to maintain all property, operational and other insurance as required and as specified in the DIP Documents (which shall be deemed satisfied if such insurance as required under the Prepetition Secured Term Loan Credit Agreement remains 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 Final 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.

30. **Protection of Lenders' Rights.**

(a) Except as expressly permitted in this Final 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>9</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

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<sup>9</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 immediately turn over all such proceeds to the DIP Agent, for the benefit of itself and the DIP  
2 Lenders, in the same form as received, with any necessary endorsements, for application in  
3 accordance with this Final Order and the DIP Documents; *provided, however*, that until the  
4 Payment in Full of the Prepetition Working Capital Obligations, upon receipt by the DIP Agent or  
5 any DIP Lender of any such payment or proceeds from DIP Collateral that constitutes WCF  
6 Collateral, the DIP Agent or the applicable DIP Lender shall segregate and hold in trust such  
7 payment or proceeds for the benefit of, and turn over all such payments and proceeds to, the  
8 Prepetition Working Capital Purchaser in the same form as received, with any necessary  
9 endorsements, for application in accordance with this Final Order, the DIP Documents and the  
10 Prepetition Debt Documents.

11 (b) Other than with respect to the Carve Out, the Administration Charge and  
12 Petition Date Perfected Liens, and as otherwise expressly provided in this Final Order and/or the  
13 DIP Documents (including Exhibit C hereto), no claim or lien having a priority senior to or *pari*  
14 *passu* with those granted to any of the DIP Secured Parties or the Prepetition Secured Parties by  
15 this Final Order shall be granted or permitted while any of the DIP Obligations or the Prepetition  
16 Secured Obligations, respectively, remains outstanding. Except as expressly provided in this Final  
17 Order and the DIP Documents (including Exhibit C hereto), each of the DIP Liens, the DIP  
18 Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority  
19 Claims, the Prepetition Funded Debt Liens or the Prepetition Secured Obligations: (i) shall not be  
20 made junior or subordinated to or *pari passu* with (A) any lien, security interest or claim heretofore  
21 or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases, whether under  
22 Bankruptcy Code section 364(d) or otherwise, (B) any lien that is avoided and preserved for the  
23 benefit of the Debtors and their estates under Bankruptcy Code section 551 or otherwise, (C) any  
24 lien arising after the Petition Date including, without limitation, any lien or security interests  
25 granted in favor of any federal, state, municipal or other domestic or foreign governmental unit  
26 (including any regulatory body), commission, board or court for any liability of the Debtors or  
27 (D) any intercompany or affiliate lien or claim; and (ii) shall not be subject to Bankruptcy Code  
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1 sections 506(c), 510, 549, 550, or 551.

2 (c) In the event this Final Order or any provision hereof is vacated, reversed or  
3 modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or  
4 Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur,  
5 reversal or modification of this Final Order shall be governed in all respects by the original  
6 provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits  
7 granted herein, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to  
8 the protections afforded in Bankruptcy Code sections 363(m) and 364(e), as applicable, with  
9 respect to all uses of the DIP Collateral (including all Cash Collateral and all Prepetition  
10 Collateral), all DIP Obligations and all Adequate Protection Obligations.

11 (d) Subject to the Carve-Out, the Administration Charge and Petition Date  
12 Perfected Liens, unless and until all DIP Obligations and Prepetition Secured Obligations are Paid  
13 in Full and all commitments to extend credit under the DIP Facility are terminated, the Debtors  
14 irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (i) except  
15 as permitted under the DIP Documents, and with the prior written consent of the Required DIP  
16 Lenders and the Prepetition Senior Secured Term Loan Agent, (A) any modification, stay, vacatur  
17 or amendment of this Final Order, (B) a priority claim for any administrative expense, secured  
18 claim or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind  
19 or nature whatsoever, without limitation, any administrative expense of the kind specified in  
20 Bankruptcy Code sections 503(b), 507(a) or 507(b)) in any of the Chapter 11 Cases, equal or  
21 superior to the DIP Superpriority Claims and the Adequate Protection Superpriority Claims or (C)  
22 any other order allowing the use of DIP Collateral; (ii) except as permitted under the DIP  
23 Documents, any lien on any of the DIP Collateral (including all Prepetition Collateral) with priority  
24 equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Funded Debt  
25 Liens; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents  
26 and this Final Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant  
27 to Bankruptcy Code section 546(h) (or other return of goods on account of any prepetition  
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1 indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the  
2 Chapter 11 Cases without the consent of the Required DIP Lenders; (vi) an order appointing a  
3 chapter 11 trustee in any of the Chapter 11 Cases; or (vii) an order appointing an examiner with  
4 enlarged powers in any of the Chapter 11 Cases.

5 (e) Notwithstanding any order dismissing any of the Chapter 11 Cases under  
6 Bankruptcy Code section 1112 or otherwise entered at any time, (i) the DIP Liens, the DIP  
7 Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority  
8 Claims and any other administrative claims granted pursuant to this Final Order, shall continue in  
9 full force and effect and shall maintain their priorities as provided in this Final Order and the DIP  
10 Documents until such time as all DIP Obligations and Adequate Protection Obligations are Paid  
11 in Full; and (ii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes  
12 of enforcing the claims, liens and security interests referred to in clause (i) above.

13 (f) Except as expressly provided in this Final Order and the DIP Documents,  
14 the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate  
15 Protection Superpriority Claims and all other rights and remedies of the DIP Secured Parties and  
16 the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP  
17 Documents shall survive, shall maintain their priority as provided in this Final Order, and shall not  
18 be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11  
19 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint  
20 administration of these Chapter 11 Cases or by any other act or omission, or (ii) the entry of an  
21 order approving the sale of any DIP Collateral (including any Prepetition Collateral) pursuant to  
22 Bankruptcy Code section 363(b), except to the extent that such order provides for the attachment  
23 of DIP Liens or prepetition liens to the proceeds of such sale) or (iii) the entry of an order  
24 confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy  
25 Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP  
26 Obligations or Adequate Protection Obligations. The terms and provisions of this Final Order and  
27 the DIP Documents shall continue in these Chapter 11 Cases and any Successor Cases.

31. **Reservation of Rights of the DIP Secured Parties and Prepetition Secured Parties.** Except as otherwise expressly set forth in this Final Order, the entry of this Final 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 Final Order, the DIP Documents, the Prepetition Debt Documents or applicable law, as applicable.

32. **Effectiveness.** Subject to the terms hereof, this Final 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 Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

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 Final Order.

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 Final Order.

3           **IT IS SO ORDERED.**  
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In accordance with LR 9021, counsel submitting this **FINAL 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; AND (IV) 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~~

MICHAEL PAPANDREA  
*Attorneys for the Official Committee of  
Unsecured Creditors*

**APPROVED** / ~~DISAPPROVED~~

REW R. GOODENOW  
*Attorneys for KfW IPEX-Bank GmbH*

**APPROVED** / ~~DISAPPROVED~~

KATE DOORLEY  
*Attorneys for DIP Lenders*

**APPROVED** / ~~DISAPPROVED~~

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

**APPROVED** / ~~DISAPPROVED~~

ROBERT J. BERENS  
*Attorneys for Trisura Guarantee  
Insurance Company*

**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.

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

Las Vegas, Nevada 89102

7 ALLEN OVERY SHEARMAN STERLING US LLP

8 Fredric Sosnick (New York Bar No. 2472488) (*pro hac* pending)

9 Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)

599 Lexington Avenue

New York, New York 10022

10 *Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**DIP Credit Agreement**

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**EXHIBIT B**

**Approved Budget**

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**EXHIBIT C****DIP / Adequate Protection Lien Priorities<sup>10</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>11</sup>	DIP Liens
Senior Secured Term Loan Adequate Protection Liens <sup>12</sup>	Senior Secured Term Loan Adequate Protection Liens	Senior Secured Term Loan Adequate Protection Liens
TF Adequate Protection Liens <sup>13</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>14</sup>		

<sup>10</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>11</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>12</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>13</sup> “**TF Adequate Protection Liens**” means the Adequate Protection Liens granted to the Prepetition TF Stream Lender in accordance with the terms hereof.

<sup>14</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 B**  
**Final Cash Management Order**

  
Honorably Hilary L. Barnes  
United States Bankruptcy Judge



Entered on Docket  
July 15, 2024

**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.: 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

Hearing Date: July 12, 2024  
Hearing Time: 10:30 a.m.

**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

<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 administrative expense status to claims resulting from Intercompany Transactions transferring  
2 proceeds of debtor-in-possession financing to NCU, (v) continue use of their existing business  
3 forms, (vi) granting related relief; and upon the First Day Declaration; and it appearing that this  
4 Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing  
5 that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a  
6 final order consistent with Article III of the United States Constitution; and proper and adequate  
7 notice of the Motion and the hearing thereon having been given; and it appearing that no other or  
8 further notice is necessary; and this Court having reviewed the Motion and having heard the  
9 statements in support of the relief requested therein at a hearing before this Court; and it appearing  
10 that the legal and factual bases set forth in the Motion establish just cause for the relief granted  
11 herein; and this Court having determined that the relief sought in the Motion is in the best interests  
12 of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation  
13 and sufficient cause appearing therefor;

14 IT IS HEREBY ORDERED THAT:

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

16 2. Cash Management System. The Debtors are authorized, but not directed, to  
17 continue to use the Cash Management System, including any intercompany transfers among Bank  
18 Accounts, in accordance with the ordinary course and historical practices of the Cash Management  
19 System and subject to compliance with the Approved Budget (as defined in the Financing Orders);  
20 *provided*, that the Debtors shall maintain detailed records reflecting all transfers of funds, so that  
21 all such transactions, including prepetition and postpetition transactions, readily may be  
22 ascertained, traced and recorded properly on applicable accounts.

23 3. The Debtors are further authorized to honor and pay all obligations related to the  
24 Cash Management System, including all undisputed prepetition Bank Fees (together, the “**Cash**  
25 **Management Expenses**”), as described in the Motion.

26 4. The existing agreements between the Debtors and the Banks shall continue to  
27 govern the postpetition cash management relationship between the Debtors and the Banks. Subject  
28

1 to applicable bankruptcy or other law, (i) all of the provisions of such agreements, including,  
2 without limitation, termination, fee provisions, rights, benefits, collateral and offset rights and  
3 remedies, shall remain in full force and effect, (including, for the avoidance of doubt, any rights  
4 of a Bank to use funds from the Bank Accounts to remedy any overdraft of another Bank Account  
5 or other cash management obligations, whether prepetition or postpetition, to the extent permitted  
6 under the applicable agreement) except as expressly limited by this Final Order (including by any  
7 consent or information rights granted to the DIP Lenders hereunder) or any subsequent order of  
8 the Court. Any other legal rights and remedies afforded to the Banks under applicable law shall  
9 be preserved, subject to applicable bankruptcy law. Except as otherwise set forth herein, the  
10 Debtors and the Banks may, without further order of the Court, agree to and implement changes  
11 to the Cash Management System and procedures in the ordinary course of business, including the  
12 opening and closing of Bank Accounts as permitted by this Final Order, in all cases subject to the  
13 consent and information rights granted to the DIP Lenders hereunder and/or in the applicable  
14 Financing Orders, for which the Banks can rely on the Debtors' representations; provided, that the  
15 Debtors shall give notice of any such changes to the Cash Management System to the official  
16 committee of unsecured creditors in these Chapter 11 Cases (the "**Committee**") as soon as  
17 reasonably practicable.

18 5. Proceeds of the DIP Facility constitute postpetition assets of the Debtors, subject  
19 only to the Carve Out (as defined in the Financing Orders), Administration Charge (as defined in  
20 the Financing Orders), DIP Lenders' superpriority Liens, the adequate protection liens of the  
21 Prepetition Secured Parties (each as defined in the applicable Financing Orders), each with the  
22 priorities set forth in the Financing Orders, and the liens of the Banks (to the extent of the Cash  
23 Management Expenses and only up to the amounts in the applicable Bank Accounts at any given  
24 time); *provided*, that the liens of the Banks on any proceeds of the DIP Facility, except for claims  
25 relating to obligations to reimburse the Bank for any deposited item that is returned for any reason  
26 unpaid, paid and later returned, or the subject of a breach of warranty claim, correction, or  
27 adjustment (and for any associated interest or earnings credit) along with any associated fees and  
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costs including but not limited to attorneys' fees ("**Chargebacks**"), shall be junior and subordinate to the Carve Out (as defined in the Financing Orders), Administration Charge (as defined in the Financing Orders), DIP Lenders' superpriority Liens and the adequate protection liens of the Prepetition Secured Parties. For the avoidance of doubt, the proceeds of the DIP Facility shall 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 pre-petition, 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 in the Financing Orders, and the liens of the Banks (to the extent of the Cash Management Expenses and only up to the amounts in the applicable Bank Accounts at any given time); *provided*, that the liens of the Banks on any proceeds of the DIP Facility shall be junior and subordinate to the Carve Out (as defined in the Financing Orders), Administration Charge (as defined in the , DIP Lenders' superpriority Liens and the adequate protection liens of the Prepetition Secured Parties, except for Chargebacks, for which the Banks' lien shall be senior. 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 the purposes of chapter 108 of the Nevada Revised Statutes. For the avoidance of doubt, nothing contained in this Final Order shall impair or subordinate in any way the Banks' perfected first priority lien on the account ending in 4097, which secures the Debtors' letter of credit obligation and shall remain senior to all other liens and claims.

6. Maintenance of Bank Accounts. Subject to the limitations of this Final Order and pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized and empowered to:

(i) designate, maintain and continue to use any and all of the bank accounts in existence as of the Petition Date, including, without limitation, the accounts identified in **Exhibit A** attached hereto (the "**Bank Accounts**"); *provided, however*, that the Debtors shall direct the financial institutions

1 where the Bank Accounts are maintained (collectively, the “**Banks**”) to code the Bank Accounts  
2 internally as debtor-in-possession accounts; (ii) subject to the consent of the DIP Lenders, open  
3 new accounts wherever they are needed; *provided, however*, that the Debtors shall give the United  
4 States Trustee and the Committee five calendar days’ advance notice (or such shorter notice as the  
5 United States Trustee and the Committee may agree to) of each such newly opened account, and  
6 any new account shall be opened at one of the Banks or a bank that has executed, or is willing to  
7 execute, a Uniform Depositary Agreement with the United States Trustee; (iii) treat the Bank  
8 Accounts for all purposes as accounts of the Debtors in their capacity as debtors in possession; (iv)  
9 deposit funds in and withdraw funds from the Bank Accounts by all usual forms and other  
10 documents means, including checks, wire transfers, and other debits; (v) pay any and all ordinary  
11 course bank fees and processing fees, including any undisputed prepetition and postpetition  
12 amounts, in connection with the Bank Accounts; (vi) reimburse the Banks for any claims arising  
13 before or after the Petition Date in connection with checks deposited with the Banks that have been  
14 dishonored or returned as a result of insufficient funds in the Bank Accounts in the ordinary course  
15 of business, to the same extent the Debtors were responsible for such items prior to the Petition  
16 Date; and (vii) close any Bank Account; *provided, however*, that the Debtors shall give the United  
17 States Trustee, the applicable Bank, the DIP Lenders and the Committee five calendar days’  
18 written notice following any such account closure.

19 7. For all purposes in this Order, any and all accounts opened by the Debtors on or  
20 after the Petition Date shall be deemed a Bank Account (as if it had been opened prior to the  
21 Petition Date and listed in **Exhibit A** attached hereto) and any and all Banks at which such accounts  
22 are opened shall similarly be subject to the rights and obligations of this Order. Any new bank  
23 account opened by either of the Debtors shall be a debtor-in-possession account at an authorized  
24 depository in compliance with section 345 of the Bankruptcy Code. For the avoidance of doubt,  
25 the current Bank Accounts of the Debtors that are maintained in Canada shall not be subject to the  
26 Bank’s obligations as an authorized depository, including reporting and collateral posting  
27 requirements, if any.  
28

1           8.       The Banks are authorized to continue to treat, service, and administer the Bank  
2       Accounts as accounts of the respective Debtor as a debtor-in-possession without interruption and  
3       in the usual and ordinary course, and to receive, process and honor and pay, to the extent of  
4       available funds, any and all checks, drafts, wires, or electronic fund or ACH payments, or transfers  
5       issued or drawn on the Bank Accounts by the holders or makers thereof, as the case may be. The  
6       Banks are authorized to debit the Debtors' accounts in the ordinary course of business without the  
7       need for further order of this Court for: (i) all checks drawn on the Debtors' accounts which are  
8       cashied at such Bank or exchanged for cashier's checks by the payees thereof prior to the Petition  
9       Date; (ii) all checks or other items deposited in one of the Debtors' accounts with such Bank prior  
10      to the Petition Date which have been dishonored or returned unpaid for any reason, including, but  
11      not limited to, dishonored checks, wire transfers, drafts, ACH Payments (credits or debits) or other  
12      electronic funds transfers or debits and any and all obligations, chargebacks, returns, or liabilities,  
13      together with any fees and costs in connection therewith, to the same extent the Debtor was  
14      responsible for such items prior to the Petition Date; and (iii) all undisputed prepetition and  
15      postpetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges  
16      for the maintenance of the Cash Management System. The Cash Management Expenses shall be  
17      paid by the Debtor and shall be accorded superpriority status with priority over any and all  
18      administrative expenses of the kind specified in sections 503(b), 507(a)(2) and 507(b) of the  
19      Bankruptcy Code; *provided*, however, that any claims in respect of Cash Management Expenses,  
20      except for claims relating to Chargebacks, shall be junior and subordinated to the DIP Lenders'  
21      first priority liens and claims and any adequate protection liens and claims granted to the DIP  
22      Lenders under the applicable Financing Orders.

23           9.       Compliance with section 345(b) of the Bankruptcy Code is hereby waived for cause  
24      with respect to the Debtors' bank accounts at Bank of Montreal.

25           10.      A Bank may rely on the representations of the Debtors with respect to whether any  
26      check, item, transfer or other payment order drawn or issued by the Debtors prior to the Petition  
27      Date (collectively, "***Payments***") should be honored pursuant to this or any other order of this Court.  
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1 The Banks have no duty to make an independent inquiry as to whether Payments are authorized  
2 by an order of this Court.

3 11. The Banks shall not be liable to any party on account of any Payment by (i)  
4 following the Debtors' instructions or relying on the Debtors' representations as to any order of  
5 this Court, (ii) honoring any Payment in a good faith belief that the Court has authorized such  
6 Payment to be honored, or (iii) for an innocent mistake made despite implementation of reasonable  
7 item-handling procedures.

8 12. Use of Business Forms. The Debtors are authorized, but not directed, to continue  
9 to use their Business Forms existing immediately prior to the Petition Date without alteration or  
10 change and without the designation "Debtor in Possession" or a Debtor in Possession case number  
11 imprinted upon them and are granted a waiver of the requirement that the legend "DIP" or "Debtor  
12 in Possession" be printed on their checks; *provided, however*, that the Debtors shall imprint the  
13 legend "DIP" or "Debtor in Possession" on their electronic Business Forms and shall note "DIP"  
14 or "Debtor in Possession" on electronically printed checks within 15 days of entry of the Interim  
15 Order.

16 13. Intercompany Transactions. Subject to the limitations of this Final Order, the  
17 Debtors are authorized to continue performing intercompany transactions arising from or related  
18 to the operation of their business in the ordinary course (the "***Intercompany Transactions***"). In  
19 connection with the Intercompany Transactions, the Debtors shall continue to maintain current  
20 records with respect to all transfers such that all Intercompany Transactions readily may be  
21 ascertained, traced and properly recorded.

22 14. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all valid  
23 postpetition payments on account of a postpetition Intercompany Transaction shall, in each case,  
24 be accorded administrative expense status, subject and junior to the claims, including adequate  
25 protection claims, granted in connection with a Financing Order; *provided* that claims arising from  
26 or related to Intercompany Transactions in which proceeds from the DIP Facility or Cash  
27 Collateral (each as defined in the Financing Orders), as applicable, are transferred from any Debtor  
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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 (as defined in the Financing Orders) and the Administration Charge (each as defined in the applicable Financing Orders).

15. All proceeds of the DIP Facility and all cash collateral of the DIP Lenders (other than amounts on deposit in accounts owned by NCU prior to any funding of the DIP Facility) shall be held at NCI and shall not be transferred or lent to any other Debtor absent the prior written consent of the DIP Lenders, except for amounts disbursed to NCU pursuant to the Approved Budget or otherwise agreed to by the DIP Lenders.

16. Notwithstanding anything to the contrary in this Final Order, any payment made or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any) imposed on the Debtors under any applicable 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 Final Order and any Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

18. All time periods set forth in this Final Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

19. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Final Order, and the Debtors may take, in their discretion and without

1 further delay, any action and perform any act necessary to implement the relief granted in this  
2 Final Order.

3 20. This Court shall retain jurisdiction over any and all matters arising from or related  
4 to the interpretation or implementation of this Final Order.

5 **IT IS SO ORDERED.**

In accordance with LR 9021, counsel submitting this **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** 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~~

MICHAEL PAPANDREA  
*Attorneys for the Official Committee of  
Unsecured Creditors*

**APPROVED** / ~~DISAPPROVED~~

REW R. GOODENOW  
*Attorneys for KfW IPEX-Bank GmbH*

**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)  
599 Lexington Avenue  
New York, New York 10022

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**List of Bank Accounts**

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**NCI Bank Accounts**

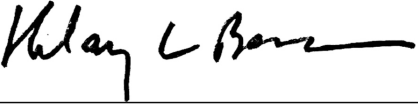
<b>Bank</b>	<b>Account Type</b>	<b>Last 4 Digits of Account Number</b>	<b>Description</b>	<b>Bank Address</b>
BMO Bank, N.A.	DDA – payroll and FSA/HSA	5804	Disbursement Account (Payroll Account)	320 S Canal St Chicago, IL 60606
BMO Bank, N.A.	DDA – operations; vendor payments	5812	Disbursement Account (Operating Account)	320 S Canal St Chicago, IL 60606
BMO Bank, N.A.	DDA – proceeds; fundings/payments per customers	6629	Proceeds Account	320 S Canal St Chicago, IL 60606
BMO Bank, N.A.	DDA – debt service reserve account	6637	Inactive Account (Debt Service Account)	320 S Canal St Chicago, IL 60606
BMO Bank, N.A.	DDA – loss proceeds account	6645	Inactive Account (Loss Proceeds Account)	320 S Canal St Chicago, IL 60606
BMO Bank, N.A.	DDA – approved open pit account	6652	Inactive Account (Approved Open Pit Account)	320 S Canal St Chicago, IL 60606
BMO Bank, N.A.	DDA – restricted payment account	6702	Restricted Payment Account	320 S Canal St Chicago, IL 60606
BMO Bank, N.A.	DDA – financing proceeds account	2693	DIP Proceeds Account – Utility Deposit	320 S Canal St Chicago, IL 60606
BMO Bank, N.A.	DDA – money market account	3558	DIP Proceeds Account	320 S Canal St Chicago, IL 60606

**NCU Bank Accounts<sup>3</sup>**

<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
BMO Bank, N.A.	DDA – payroll	6728	Inactive Account (Cost Overrun Reserve Account)	320 S Canal St Chicago, IL 60606

<sup>3</sup> Bank of Montreal holds a deposit of cash collateral in a bank account ending 4097 to secure certain Debtor obligations in connection with a letter of credit that Bank of Montreal issued to secure the Debtors' performance of obligations under a rail car lease. As the Debtors do not have control over or access to such funds, the Debtors have not treated it as part of their Cash Management System.

**Schedule C**  
**Final Prepetition Wages Order**

  
 Honorable Hilary L. Barnes  
 United States Bankruptcy Judge



Entered on Docket  
 July 15, 2024

**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.: 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

Hearing Date: July 12, 2024  
 Hearing Time: 10:30 a.m.

**FINAL 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 a final order (this "*Final 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

<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 employment-related taxes, (v) pay amounts that were awarded under the Debtors' 2023 short  
2 term incentive program, and (vi) pay all costs and expenses incident to the foregoing; and it  
3 appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334;  
4 and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b) and that this Court  
5 may enter a final order consistent with Article III of the United States Constitution; and venue  
6 being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and 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 4. The Debtors are authorized, but not directed, to honor and to pay all prepetition  
25 claims and obligations related to and including the following: (i) Unpaid Medical Plan  
26 Expenses; (ii) Unpaid Insurance Expenses; (iii) Unpaid Short-Term Disability Insurance  
27 Expenses; (iv) Unpaid Long-Term Disability Insurance Expenses; (v) Unpaid Workers'  
28 Compensation Insurance Expenses; (vi) Unpaid Contributions; (vii) U.S. Additional Benefits;

(viii) Unpaid Canadian Benefits; and (ix) Unpaid Canadian Workers' Compensation Insurance Expenses (collectively, the "***Prepetition Unpaid Employee Benefits***"); *provided, however*, that absent further order of this Court, the aggregate amount of such payments for Prepetition Unpaid Employee Benefits paid directly (and not *via* effecting an offset) shall not exceed \$633,500.

5. 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 Reimbursable Expenses; (ii) Unremitted Deductions; (iii) Unpaid Employment Taxes, including, in the case of Provincial Medical Taxes, though offsetting against tax overpayments owing to the Debtors; and (iv) Unpaid Third-Party Administrative Costs (collectively, the "***Prepetition Unpaid Employee Costs***"); *provided, however*, that absent further order of this Court, the aggregate amount of such payments for Prepetition Unpaid Employee Costs paid directly (and not *via* effecting an offset) shall not exceed \$288,500.

6. The Debtors are authorized, but not directed, to pay the prepetition amounts awarded under the 2023 STIP; *provided however*, that (i) the Debtors shall not make any payments on account of the 2023 STIP in excess of \$50,000 to any individual and (ii) absent further order of this Court, the amount of such payments for the 2023 STIP awards shall not exceed \$446,000 in the aggregate.

7. The Debtors are not authorized, and nothing in this Final Order shall be construed to authorize the Debtors to (i) pay any amounts to insiders (as defined in the Bankruptcy Code) on account of the 2023 STIP, the Hourly Employee Bonus Program or any other incentive compensation program currently or previously operated by the Debtors (collectively the "***Bonus Programs***") or (ii) continue and/or modify any of the Bonus Programs with respect to insiders, provided that, out of an abundance of caution, nothing herein limits the Debtors' authority to pay the insiders on account of their base salaries, including on account of prepetition amounts (if any).

8. Nothing in this Final Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

1           9. All banks, and other financial institutions are authorized to receive, process,  
2 honor and pay all checks presented for payment and to honor all electronic payment requests or  
3 credit card payments made by the Debtors related to the prepetition obligations described in the  
4 Motion.

5           10. The Debtors are authorized, but not directed, to continue and/or modify, change,  
6 or discontinue the Wages and Benefits on a post-petition basis, in the ordinary course of  
7 business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors'  
8 discretion, to pay and honor amounts related thereto, irrespective of whether such obligations  
9 arose prepetition or post-petition.

10           11. Notwithstanding anything to the contrary in this Final Order, any payment made  
11 or to be made hereunder, and any authorization herein, shall be subject to the requirements (if  
12 any) imposed on the debtors under any order(s) of this Court approving a postpetition debtor in  
13 possession financing facility and/or the use of cash collateral (any such order, a "**Financing**  
14 **Order**"), including any documentation with respect to such financing and any budget in  
15 connection with such Financing Order. In the event of any conflict between the terms of this  
16 Final Order and a Financing Order, the terms of the applicable Financing Order shall control  
17 (solely to the extent of such conflict).

18           12. Nothing in this Final Order should be read to constitute a prohibition on the  
19 Debtors' right to seek authority to pay any employee compensation or employee benefits for  
20 which relief is not sought by the Motion or to pay any amounts in the ordinary course of business  
21 consistent with the requirements of the Bankruptcy Code.

22           13. All banks, and other financial institutions are authorized to receive, process,  
23 honor and pay all checks presented for payment and to honor all electronic payment requests or  
24 credit card payments made by the Debtors related to the prepetition obligations described in the  
25 Motion.

26           14. The Debtors are authorized and empowered to take all actions necessary to  
27 implement the relief granted in this Final Order.  
28

1           15.     Notwithstanding the relief granted herein and any actions taken pursuant hereto,  
2 nothing herein shall prohibit the Debtors from continuing or modifying, changing, or otherwise  
3 discontinuing the Employee Benefits Programs and Employee Benefits or implementing new  
4 programs, policies, and benefits, in the ordinary course of business during these Chapter 11  
5 Cases, subject to applicable law, and nothing herein shall be deemed: (i) an admission as to the  
6 validity of any claim against the Debtors; (ii) a waiver of the Debtors' right to dispute any claim  
7 on any grounds and raise any available defenses; (iii) a promise or requirement to pay any claim;  
8 (iv) an admission that any particular claim is of a type specified or defined hereunder; (v) a  
9 request to assume any executory contract or unexpired lease or a postpetition assumption or  
10 adoption of any programs, policies, or agreements described herein; or (vi) a waiver of the  
11 Debtors' rights under the Bankruptcy Code or any other applicable law.

12           16.     Notwithstanding the relief granted herein and any actions taken pursuant to this  
13 Final Order, nothing herein is intended to create any rights in favor of, or enhance the status of,  
14 any claim held by any person.

15           17.     Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Final  
16 Order shall be immediately effective and enforceable upon its entry.

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

22           19.     This Court shall retain jurisdiction over any and all matters arising from or related  
23 to the interpretation or implementation of this Final Order.

24           **IT IS SO ORDERED.**

25  
26  
27  
28

In accordance with LR 9021, counsel submitting this **FINAL 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** 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~~

MICHAEL PAPANDREA  
*Attorneys for the Official Committee of  
Unsecured Creditors*

**APPROVED** / ~~DISAPPROVED~~

REW R. GOODENOW  
*Attorneys for KfW IPEX-Bank GmbH*

**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)

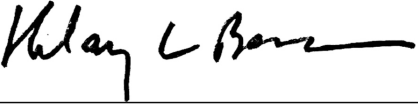
Sara Coelho (New York Bar No. 4530267) (*pro hac* pending)

599 Lexington Avenue

New York, New York 10022

*Proposed Counsel to the Debtors and Debtors in Possession*

**Schedule D**  
**Final Insurance Order**

  
Honorable Hilary L. Barnes  
United States Bankruptcy Judge



Entered on Docket  
July 15, 2024

**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.: 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

Hearing Date: July 12, 2024  
Hearing Time: 10:30 a.m.

**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

<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.



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 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 pay (i) all premiums, claims, deductibles, excess, retrospective adjustments, administrative fees, and all other obligations arising under or in relation to the Insurance Policies and Insurance Program, including any self-insured retention amounts (the “**Insurance Obligations**”) and (ii) all premiums, and any related miscellaneous fees or other costs associated therewith, for the Debtors’ surety bonds (the “**Surety Premiums**”), in each case, as they deem appropriate in the ordinary course of business without further application to this Court, including making all payments, and honoring and satisfying all obligations, whether relating to the period prior or subsequent to the Petition Date; *provided, however*, that the Debtors shall not be authorized to pay in excess of \$315,000.00 on account of such obligations that have accrued but that remain unpaid as of the Petition Date, absent further order of this Court.

3. The Debtors are authorized and empowered, but not directed, to continue their Insurance Program without interruption, on the same basis and in accordance with the same practices and procedures as were in effect prior to the Petition Date. The Debtors are authorized,

but not directed, to renew, amend, supplement, extend, terminate, replace, increase, decrease, or enter into new insurance coverage and change insurance carriers in the ordinary course of business.

4. The Debtors are authorized, but not directed, to continue their Surety Program without interruption, including renewing Surety Bonds or, with the prior written consent of the Required DIP Lenders<sup>3</sup> and the official committee of unsecured creditors in these Chapter 11 Cases (the “**Committee**”), obtaining new Surety Bonds, obtaining additional surety coverage, or changing carriers in connection with the Surety Program in the ordinary course of business.

5. The Debtors are authorized, but not directed, subject to the reasonable consent of the Required DIP Lenders and the Committee, to renew, amend, supplement, extend, terminate, replace, increase, decrease, or enter into new insurance premium financing agreements in the ordinary course of business.

6. The Debtors shall notify the Required DIP Lenders, the United States Trustee for Region 17, the Committee and any other statutory committee appointed in these Chapter 11 Cases as soon as reasonably practicable, but not later than five (5) business days prior to the Debtors choosing to renew, amend, supplement, extend, terminate, replace, increase, decrease or enter into new insurance premium financing agreements or obtain additional surety or insurance coverage or change insurance or surety carriers.

7. The Debtors are not authorized by this Final Order, absent the reasonable consent of the Required DIP Lenders, to take any action with respect to a Surety Bond that would have the effect of transforming a Surety Bond obligation into a postpetition or secured obligation in each case that is senior to any liens or claims granted in connection with any Financing Order(s) (as defined below). To the extent the Required DIP Lenders consent to any such action, such relief may be sought by a separate motion which may be heard on an expedited basis.

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<sup>3</sup> The term “**Required DIP Lenders**” has the meaning given to such term in 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 Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* [ECF No. 14].

1           8.       Nothing in the Motion or this Final Order, nor the Debtors' payment of claims  
2 pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity  
3 of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any  
4 grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular  
5 claim is an Insurance Obligation or Surety Obligation.

6           9.       All banks and other financial institutions are authorized to receive, process, honor,  
7 and pay all checks presented for payment of, and to honor all fund transfer requests made by the  
8 Debtors related to the Insurance Program and Surety Bonds, regardless of whether the checks were  
9 presented or fund transfer requests were submitted before or after the Petition Date; *provided that*  
10 funds are available in the Debtors' accounts to cover the checks and fund transfers. Banks and  
11 other financial institutions may rely on the representations of the Debtors with respect to whether  
12 any check, item or other payment order drawn or issued by the Debtors prior to the Petition Date  
13 should be honored pursuant to this or any other order of this Court, and such bank or financial  
14 institution shall not have any liability to any party for relying on such representations by the  
15 Debtors as provided for herein.

16           10.      The Debtors are authorized, but not directed, to issue postpetition checks or to effect  
17 postpetition fund transfer requests in replacement of any checks or fund transfer requests in respect  
18 of the Insurance Program or Surety Bonds that are or have been dishonored or rejected as a  
19 consequence of the commencement of the Chapter 11 Cases, and take all other steps reasonably  
20 necessary to implement and effectuate the relief sought in the Motion.

21           11.      Notwithstanding anything to the contrary in this Final Order, any payment made or  
22 to be made hereunder, and any authorization herein, shall be subject to the requirements (if any)  
23 imposed on the debtors under any order(s) of this Court approving a postpetition debtor in  
24 possession financing facility and/or the use of cash collateral (any such order, a "***Financing***  
25 ***Order***"), including any documentation with respect to such financing and any budget in connection  
26 with such Financing Order. In the event of any conflict between the terms of this Final Order and  
27  
28

1 a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent  
2 of such conflict).

3 12. All time periods set forth in this Order shall be calculated in accordance with  
4 Bankruptcy Rule 9006(a).

5 13. Notwithstanding Bankruptcy Rule 6004(h), the terms and provisions of this Final  
6 Order shall be immediately effective and enforceable upon its entry.

7 14. 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 Final Order, and the Debtors may, in their discretion and without further  
10 delay, take any action and perform any act necessary to implement the relief granted in this Final  
11 Order.

12 15. This Court shall retain jurisdiction over any and all matters arising from or related  
13 to the interpretation or implementation of this Final Order.

14 **IT IS SO ORDERED.**

In accordance with LR 9021, counsel submitting this **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** 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].

MICHAEL PAPANDREA  
*Attorneys for the Official Committee of  
Unsecured Creditors*

**APPROVED** / ~~DISAPPROVED~~

REW R. GOODENOW  
*Attorneys for KfW IPEX-Bank GmbH*

**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

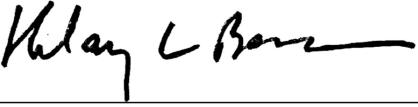
/s/ Ryan J. Works

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*

**Schedule E**  
**Bidding Procedures Order**

  
Honorably Hilary L. Barnes  
United States Bankruptcy Judge



Entered on Docket  
July 22, 2024

**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.: 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

Hearing Date: July 19, 2024  
Hearing Time: 10:30 a.m.

**ORDER (I) APPROVING AUCTION AND BIDDING, NOTICING, AND ASSUMPTION AND ASSIGNMENT PROCEDURES; (II) SCHEDULING CERTAIN DATES AND DEADLINES WITH RESPECT THERETO; (III) APPROVING FORM NOTICE TO BE PROVIDED TO INTERESTED PARTIES; AND (IV) GRANTING RELATED RELIEF**

Upon the Debtors' Motion for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures; (B) Approving Stalking Horse Bid Protections; (C) Scheduling Certain Dates and Deadlines with Respect Thereto and an Auction; (D) Approving the Form and Manner of Notice Thereof; (E) Approving the Form APA; and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases; (B) Authorizing the Assumption and Assignment of Assumed Contracts; (C) Authorizing the Sale of Assets; and (III) Granting Related Relief (the "**Motion**")<sup>2</sup> of the Debtors for entry of an order (this "**Order**"), (i) approving 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 proposed marketing, auction, and bidding procedures attached hereto as **Exhibit A** (the “**Bidding**  
2 **Procedures**”) by which the Debtors will solicit and select the highest or otherwise best offer(s) for  
3 the sale or sales (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”) of  
4 all, substantially all, or any portion of the Debtors’ assets (the “**Assets**”); (ii) establishing certain  
5 dates and deadlines related thereto and scheduling an auction or auctions, if any, for the Sale (the  
6 “**Auction**”); (iii) approving the manner of notice of the Auction and sale hearing (the “**Sale**  
7 **Hearing**”) as may be necessary; (iv) approving procedures for the assumption and assignment of  
8 certain Executory Contracts and Unexpired Leases (each as defined in the Bidding Procedures) in  
9 connection with the Sale Transaction, if any; (v) approving the break-up fee and expense  
10 reimbursements relating to potential stalking horse bidders if the Debtors determine to enter into  
11 such an arrangement with a bidder for the Assets (the “**Stalking Horse Bid Protections**”); and  
12 (vi) granting related relief; all as more fully set forth in the Motion; and upon the Sale Declaration,  
13 First Day Declaration, and *Supplemental Declaration of Zul Jamal in Support of Debtors’ Bidding*  
14 *Procedures Motion* [ECF No. 369]; and it appearing that this Court has jurisdiction over this matter  
15 pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to  
16 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of  
17 the United States Constitution; and venue being proper before the Court pursuant to 28 U.S.C.  
18 §§ 1408 and 1409; and, under the circumstances, proper and adequate notice of the Motion and  
19 the hearing thereon having been given; and it appearing that no other or further notice is necessary;  
20 and this Court having reviewed the Motion and having heard the statements in support of the relief  
21 requested therein at a hearing before this Court; and it appearing that the legal and factual bases  
22 set forth in the Motion establish just cause for the relief granted herein; and this Court having  
23 determined that the relief sought in the Motion is in the best interests of the Debtors, their estates,  
24 their creditors and other parties in interest; and after due deliberation and sufficient cause appearing  
25 therefor;

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1 **IT IS HEREBY FOUND AND DETERMINED THAT:**

2 1. Jurisdiction and Venue. Consideration of the Motion and the relief requested  
3 therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court  
4 pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has jurisdiction to consider the Motion and  
5 the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334.

6 2. Statutory and Legal Predicates. The statutory and legal predicates for the relief  
7 requested in the Motion are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code,  
8 Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 3017 and 6004.

9 3. Bidding Procedures. The Debtors have articulated good and sufficient business  
10 reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are fair,  
11 reasonable, and appropriate. The Bidding Procedures are reasonably designed to promote a  
12 competitive and robust bidding process to generate the greatest level of interest in the Debtors'  
13 business resulting in the highest or otherwise best offer. The Bidding Procedures comply with the  
14 requirements of Local Rule 6004.

15 4. Sale Notice. The Sale Notice attached hereto as **Exhibit B** and the procedures with  
16 respect to such Sale Notice contain the type of information required under Bankruptcy Rule 2002  
17 and Local Rule 6004 and comply in all respects with applicable provisions of the Bankruptcy  
18 Code, the Bankruptcy Rules, and the Local Rules.

19 5. Assumption and Assignment Procedures. The Debtors have articulated good and  
20 sufficient business reasons for the Court to approve the Assumption and Assignment Procedures.  
21 The Assumption and Assignment Procedures, including the Assumption and Assignment Notice  
22 attached hereto as **Exhibit C**, are fair, reasonable, and appropriate. The Assumption and  
23 Assignment Procedures provide an adequate opportunity for all Counterparties to raise any  
24 objections to the proposed assumption and assignment or to the proposed Cure Amounts. The  
25 Assumption and Assignment Procedures comply with the provisions of section 365 of the  
26 Bankruptcy Code and Bankruptcy Rule 6006.

27 6. Notice. All other notices to be provided pursuant to the procedures set forth in the  
28

1 Motion are good and sufficient notice to all parties in interest of all matters pertinent hereto. No  
2 further notice is required.

3 7. Relief is Warranted. The legal and factual bases set forth in the Motion establish  
4 just and sufficient cause to grant the relief requested therein.

5 8. Other Findings. The findings and conclusions set forth herein constitute the Court's  
6 findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this  
7 proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of  
8 fact constitute conclusions of law, they are adopted as such. To the extent any of the following  
9 conclusions of law constitute findings of fact, they are adopted as such.

10 **NOW, AND THEREFORE, IT IS HEREBY ORDERED THAT:**

11 9. The Motion is GRANTED as set forth herein.

12 **I. The Bidding Procedures**

13 10. The Bidding Procedures, substantially in the form attached to this Order as  
14 Exhibit A, are approved and incorporated into this Order by reference, as though fully set forth  
15 herein. Accordingly, the failure to recite or reference any particular provision of the Bidding  
16 Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court  
17 that the Bidding Procedures be authorized and approved in their entirety. The Debtors are  
18 authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

19 11. Any deposit (including any Good Faith Deposit) provided by a Qualified Bidder  
20 shall be held in escrow by the Debtors or their agent on terms acceptable to the Debtors (in  
21 consultation with the Consultation Parties), and shall not become property of the Debtors'  
22 bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of  
23 the applicable escrow agreement, the Bidding Procedures, or order of this Court after notice and a  
24 hearing, as applicable.

25 **II. Important Dates and Deadlines**

26 12. Sale Hearing. The Sale Hearing will commence on **Wednesday, September 25,**  
27 **2024, at 10:00 a.m.** (prevailing Pacific Time). Subject to the terms of the Bidding Procedures,  
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the Debtors may, in their reasonable business judgment, in consultation with the Consultation Parties and with the consent of the Successful Bidder(s), adjourn or reschedule any Sale Hearing, with notice to the Sale Notice Parties.

13. Sale Objection Deadline. Any objections to the Sale (a “*Sale Objection*”) by a Sale Notice Party must be made by **Friday, September 19, 2024, at 12:00 p.m.** (prevailing Pacific Time) (the “*Sale Objection Deadline*”).<sup>3</sup> The Sale Objection Deadline may be extended by the Debtors with the consent of the Court.

14. Competitive Bidding. The following dates and deadlines regarding competitive bidding are hereby established, in each case subject to extension in accordance with the Bidding Procedures:

- i. Bid Deadline: **Friday, September 6, 2024, at 12:00 p.m.** (prevailing Pacific Time), the deadline by which all Qualified Bids must be actually received in writing by the Bid Notice Parties (the “*Bid Deadline*”); and
- ii. Auction: **Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)**, is the date and time the Auction, if one is needed, will be held at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or at such other time and location (including via remote video) as designated by the Debtors, in consultation with the Consultation Parties and providing notice to the Sale Notice Parties, and subject to the terms of the Bidding Procedures.

15. Stalking Horse Bidders and Bid Protections. The Debtors, upon entry of this Order, shall be authorized, but are not obligated or directed, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to select one or more Stalking Horse Bidders with respect to some or all of the Debtors’ Assets by no later than **August 17, 2024, at 5:00 p.m., prevailing Pacific Time**, enter into a Stalking Horse Agreement that would provide such Stalking Horse Bidders with Stalking Horse Bid Protections; *provided, however*, that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually submitted, a

<sup>3</sup> In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business judgment to pursue a Sale Transaction pursuant to a chapter 11 plan, a separate deadline to object to such Sale Transaction shall be set by further order of this Court.

1 Bid for any Assets, it shall not have consent rights with respect to the selection of a Stalking Horse  
2 Bidder, if any, or any protections to be afforded to such Stalking Horse Bidder.

3 16. In the event that the Debtors enter into a Stalking Horse Agreement with one or  
4 more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and  
5 proposed form of order with the Court (the “***Stalking Horse Notice***”) and serve the Stalking Horse  
6 Notice on the Stalking Horse Bidder and the Office of the United States Trustee for Region 17.  
7 The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the  
8 Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company  
9 or sponsor); (ii) set forth the amount of the Stalking Horse Bid and what portion (if any) is cash;  
10 (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those  
11 that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the  
12 amount and calculation thereof); (v) specify the Assets included in the Stalking Horse Bid;  
13 (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments  
14 thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any  
15 Bid Protections. If there are no objections to the Stalking Horse Notice within five business days  
16 of filing with the Court, (the “***Notice Period***”), the Debtors may submit a revised proposed form  
17 of order to the Court that incorporates any comments received during the Notice Period that  
18 authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse  
19 Agreement, which may be entered by the Court without the need for further hearing. If a party  
20 timely files an objection to the Stalking Horse Notice in accordance with the Bidding Procedures,  
21 the Court shall hold a hearing after the expiration of the Notice Period and as soon thereafter as  
22 the Court is available. Upon entry of the order that authorizes the Debtors to designate a Stalking  
23 Horse Bidder and to enter into a Stalking Horse Agreement, as applicable, the Debtors are  
24 authorized, but not directed, to incur and pay the Stalking Horse Bid Protections to each Stalking  
25 Horse Bidder as set forth in the Stalking Horse Agreement, in an aggregate amount not to exceed  
26 three percent of the proposed Purchase Price.

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1           17. Except as otherwise set forth in the Bidding Procedures, no person or entity, other  
2 than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees,  
3 “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or  
4 entity is deemed to have waived their right to request or to file with this Court any request for  
5 expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section  
6 503(b) or otherwise.

7 **III. Sale Notice Procedures**

8           18. The Sale Notice procedures, substantially in the form set forth in the Sale Notice  
9 attached to this Order as **Exhibit B**, are approved. The Debtors are authorized to implement the  
10 Sale Notice procedures as set forth in the Bidding Procedures Motion, the Bidding Procedures,  
11 and the Sale Notice.

12 **IV. Assumption and Assignment Procedures**

13           19. The (i) Assumption and Assignment Procedures, as set forth in the Bidding  
14 Procedures, and (ii) the Assumption and Assignment Notice in the form attached to this Order as  
15 **Exhibit C**, are approved.

16           20. The Assumption and Assignment Procedures shall govern the assumption or  
17 assumption and assignment of all of the Debtors’ Executory Contracts and Unexpired Leases to  
18 be assumed or assumed and assigned in connection with the Sale, subject to the payment of any  
19 amounts necessary to cure any defaults arising under any such Executory Contract or Unexpired  
20 Lease.

21           21. Cigna Health and Life Insurance Company (“**Cigna**”) and the Debtors are parties  
22 to three Agreements (collectively, the “**Cigna Contracts**”) that facilitate the Debtors’ self-insured  
23 employee healthcare benefits plan. Notwithstanding anything in this Order to the contrary, unless  
24 Cigna and the Debtors agree otherwise, the Debtors shall, not later than 12:00 noon (prevailing  
25 Pacific Time) on the date that is two business days prior to any Sale Hearing, provide to Cigna,  
26 through its counsel, written notice of the Debtors’ irrevocable (subject to closing of the applicable  
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1 Sale Transaction(s)) decision as to whether or not they propose to assume and assign any or all of  
2 the Cigna Contracts to the Successful Bidder as part of the proposed Sale Transaction(s).

3 **V. Related Relief**

4 22. The Debtors shall file a form of asset purchase agreement on the docket of these  
5 Chapter 11 Cases by no later than July 25, 2024.

6 23. The Debtors are authorized to make non-substantive changes to the Bidding  
7 Procedures, the Assumption and Assignment Procedures, the Assumption and Assignment Notice,  
8 the Sale Notice, and any related documents without further order of the Court, including, without  
9 limitation, changes to correct typographical and grammatical errors.

10 24. All persons and entities (whether or not selected as a Qualified Bidder) that submit  
11 a bid for any of the Debtors' Assets during the Sale Process, including at any Auctions, shall be  
12 deemed to have knowingly and voluntarily: (i) submitted to the exclusive jurisdiction of this Court  
13 with respect to all matters related to the terms and conditions of the transfer of Assets, the Auctions  
14 (if any), and any Sale Transaction; (ii) consented to the entry of a final order by the Court in  
15 connection with the Motion or this Order (including any disputes relating to the Bidding  
16 Procedures, the Debtors' conduct in evaluating bids and conducting any Auction(s), the Sale  
17 Process, and/or any Sale Transactions) to the extent that it is later determined that the Court, absent  
18 consent of the parties, cannot enter final orders or judgments in connection herewith consistent  
19 with Article III of the United States Constitution; and (iii) waived any right to jury trial in  
20 connection with any disputes relating to any of the foregoing matters.

21 25. To the extent the Debtors are seeking to sell any assets in which other persons or  
22 entities have an interest or assume and assign any Executory Contracts with counterparties, such  
23 persons, entities, and counterparties' rights to object to such sale or such assumption and  
24 assignment are reserved until the applicable deadline set forth in the Bidding Procedures.

25 26. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d),  
26 7062, or 9014, or any applicable provisions of the Bankruptcy Rules or the Local Rules or  
27 otherwise stating the contrary, the terms and conditions of this Order shall be immediately effective  
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1 and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of  
2 this Order is hereby waived.

3 27. Prior to mailing and publishing the Sale Notice and the Assumption and  
4 Assignment Notice, as applicable, the Debtors may fill in any missing dates and other information,  
5 conform the provisions thereof to the provisions of this Order, and make such other non-material  
6 changes as the Debtors deem necessary or appropriate.

7 28. To the extent the provisions of this Order are inconsistent with the provisions of  
8 any exhibits referenced herein or with the Motion, the provisions of this Order shall control.

9 29. The Debtors are authorized to take all actions reasonably necessary or appropriate  
10 to effectuate the relief granted in this Order.

11 30. The Court shall retain exclusive jurisdiction with respect to all matters arising from  
12 or related to the implementation, interpretation, or enforcement of this Order.

13 **IT IS SO ORDERED.**  
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In accordance with LR 9021, counsel submitting this **ORDER (I) APPROVING AUCTION AND BIDDING, NOTICING, AND ASSUMPTION AND ASSIGNMENT PROCEDURES; (II) SCHEDULING CERTAIN DATES AND DEADLINES WITH RESPECT THERETO; (III) APPROVING FORM NOTICE TO BE PROVIDED TO INTERESTED PARTIES; AND (IV) 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].

ED McDONALD  
*United States Trustee*

**APPROVED** / ~~DISAPPROVED~~

ROBERT J. BERENS  
*Attorneys for Trisura Guarantee Insurance  
Company and Trisura Insurance Company*

**APPROVED** / ~~DISAPPROVED~~

REW R. GOODENOW  
*Attorneys for KfW IPEX-Bank GmbH*

**APPROVED** / ~~DISAPPROVED~~

KYLER K. BURGI  
*Attorneys for Triple Flag International, Ltd.*

**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*



**EXHIBIT A**

**Bidding Procedures**

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**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.: 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

**BIDDING PROCEDURES**

On June 10, 2024, Nevada Copper, Inc., and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “**Court**”) entered an order (ECF No. [ ]) (the “**Bidding Procedures Order**”).<sup>2</sup> In the Bidding Procedures Order, the Court approved the following procedures (the “**Bidding Procedures**”) setting forth the process by which the Debtors are authorized to solicit bids for and conduct auction(s) (each, an “**Auction**”) for sale(s) or disposition(s) of all or substantially all of the Debtors’ Assets (as defined herein) or any portion thereof, either as a going concern or as a liquidation (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”). On [July ], 2024, the Debtors filed a proposed form of asset purchase agreement (the “**Form APA**”) on the docket of the Chapter 11 Cases.

**Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors’ chapter 11 cases are available upon request, by calling the Debtors’ claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors’ restructuring website at <https://dm.epiq11.com/case/nevadacopper>.**

**Description of the Assets to Be Auctioned**

The Debtors are seeking to sell all of their assets as a going concern (or as a liquidation) pursuant to the terms of the Form APA. These assets include, but are not limited to, 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 terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the Bidding Procedures Order or the motion requesting the relief granted therein, as applicable.

going-concern business, real property, unexpired leases, executory contracts, equipment, inventory, supplies, intellectual property, insurance proceeds, prepaid expenses and deposits, ownership interests, and books and records (collectively, the “*Assets*”), in each case, free and clear of all liens, claims, interests, or other encumbrances, other than expressly assumed liabilities and obligations, to the fullest extent permitted by the Bankruptcy Code.

The ability to undertake and consummate any sale of the Assets shall be subject to competitive bidding as set forth herein and approval by the Court. The Debtors will consider bids that are made for all or substantially all of the Assets. In addition, the Debtors will consider bids for less than substantially all of the Assets, however, the value of such bids will be evaluated against the Debtors intention to sell all of their Assets, and the value and complexity of the sale of any Assets not included in a bid. The Debtors will also consider bids that take the form of a sale of stock of one or more subsidiaries.

Any party interested in submitting a bid for any of the Debtors’ Assets should contact the Debtors’ investment banker, Moelis & Company LLC (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

### **Important Dates and Deadlines**

<b>Date</b>	<b>Deadline</b>
<b>Monday, July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order</b>	Service of Sale Notice; Publication of Sale Notice
<b>Tuesday, July 30, 2024, or as soon as reasonably practicable thereafter</b>	Serve notice of potential assumption and assignment (the “ <i>Assumption and Assignment Notice</i> ”) to contract counterparties
<b>Tuesday, August 20, 2024 (or 21 days after service of an applicable notice of assumption and assignment)</b>	Deadline to object to proposed cure amounts and assumption and assignment (the “ <i>Assumption and Cure Objection Deadline</i> ”)
<b>Friday, September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)</b>	Bid Deadline
<b>Monday, September 9, 2024, at 9:00 a.m. (prevailing Pacific Time)</b>	Qualified Bid Designation Date
<b>Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)</b>	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
<b>Thursday September 12, 2024</b>	Serve Notice of Successful Bidder on Counterparties

Friday, September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)	Deadline to object to the proposed Sale (“ <b><i>Sale Objection Deadline</i></b> ”); deadline to object to adequate assurance (“ <b><i>Adequate Assurance Objection Deadline</i></b> ”).
Tuesday, September 24, 2024, at 12:00 p.m. (prevailing Pacific Time)	Deadline for responses to objections.
Wednesday, September 25, 2024, at 10:00 a.m. (prevailing Pacific Time) <sup>3</sup>	Sale Hearing
Thursday, September 26, 2024	Entry of Sale Order
On or before Monday, October 8, 2024	Closing

### Noticing

#### Consultation Parties

Subject to the terms of these Bidding Procedures, the Debtors shall consult in good faith with counsel to (each of the following parties, to the extent applicable, including such party’s advisors, a “***Consultation Party***”):

- i. the Official Committee of Unsecured Creditors (the “***Creditors’ Committee***”), c/o Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, Attn: Eric S. Chafetz and Jeffrey L. Cohen;
- ii. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley;
- iii. KfW IPEX-Bank GmbH, c/o Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow and Abigail Debold;
- iv. Pala Investments Limited, c/o Cleary Gottlieb Steen & Hamilton LLP, Attn: Solomon J. Noh (sjnoh@cgsh.com); One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer;
- v. Triple Flag Mining Finance Bermuda Ltd., c/o Davis, Graham & Stubbs LLP, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; and
- vi. only to the extent that any Assets situated in Canada are proposed to be sold, the information officer (“***Information Officer***”) appointed in the recognition proceedings in respect of the Debtors under the *Companies’ Creditors Arrangement Act*.

<sup>3</sup> Subject to the availability and convenience of the Court.

If any of the foregoing entities (including an individual member of the Creditors' Committee), or an affiliate of such an entity, indicates to the Debtor that it is considering submitting, or actually submits, a Bid in respect of all or a portion of the Assets, such entity shall cease being a Consultation Party (an "**Identified Party**"); *provided, however*, that (a) in the case of an Identified Party other than the Creditors' Committee and the members thereof, such Identified Party shall have the rights afforded to a Consultation Party hereunder only to the extent that such consultation reasonably can be performed without providing such Identified Party any additional confidential information not previously provided to such Identified Party in respect of Assets for which it is considering submitting or actually submits a Bid; and (b) in the case of a member of the Creditors' Committee that is an Identified Party, the other members of the Creditors' Committee shall continue to be Consultation Parties; *provided, further*, that the Identified Party shall be excluded from any discussions or deliberations regarding the sale of such Assets and shall not receive any confidential information regarding the sale of such Assets. In the event that an Identified Party (or, if applicable, the affiliate of an Identified Party) indicates that it is no longer interested in submitting a Bid or, if applicable, continuing to submit Bids, it may elect by written notice to the Debtors to cease being an Identified Party and return to being a Consultation Party; *provided*, that, notwithstanding anything to the contrary herein, such party shall no longer be able to submit further Bids; *provided, further*, that, if any DIP Lender were to become an Identified Party and such DIP Lender later were to elect to return to being a Consultation Party, then, only if the aggregate Bids are insufficient to repay the obligations under the DIP Facility in full in cash, such DIP Lender shall be permitted to submit Bids (to the extent that other Bids, in the aggregate, would not allow the obligations under the DIP Facility to be repaid in full in cash), with respect to the Assets on which, in its capacity as a Consultation Party, it had not actually received information or participated in discussions. Nothing in these Bidding Procedures shall affect any rights or obligations under the DIP Facility.

#### Bid Notice Parties

All Bids must be submitted in writing to the following parties (collectively, the "**Bid Notice Parties**");

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors' counsel, (a) Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com); and (b) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada (Attn: Tony DeMarinis (tdemarinis@torys.com) and Michael Amm (mamm@torys.com)); and
- iii. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

The Debtors shall promptly provide to the Consultation Parties copies of all Bids received by the Debtors, but in no event later than the next business day following receipt.

#### Sale Notice Parties

Information that must be provided to the “*Sale Notice Parties*” under these Bidding Procedures must be provided to the following parties:

- i. the Consultation Parties (as applicable);
- ii. all persons and entities, known by the Debtors and their advisors to have expressed an interest in a transaction with respect to any of the Debtors’ Assets during the past 12 months (for whom identifying information and addresses are available to the Debtors);
- iii. all persons and entities known by the Debtors to have asserted any lien, claim, encumbrance, or other interest in any Asset (for whom identifying information and addresses are available to the Debtors), including all known holders of claims and all creditors prior to the date of entry of the Bidding Procedures Order;
- iv. all parties to litigation with the Debtors that are known as of the date of entry of the Bidding Procedures Order, or their counsel of record;
- v. all Counterparties to Assigned Contracts and Leases under the proposed Sale;
- vi. any Governmental Authority known to have a claim in these Chapter 11 Cases;
- vii. the United States Attorney for the District of Nevada;
- viii. the Office of the Attorney General (or equivalent) in each state or province in which the Debtors operate;
- ix. the Office of the Secretary of State (or equivalent) in each state or province in which the Debtors operate or are organized;
- x. the Federal Trade Commission;
- xi. the United States Attorney General/Antitrust Division of Department of Justice;
- xii. the Information Officer c/o Alvarez & Marsal Canada Inc., Royal Bank Plaza, South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, (Attn: Al Hutchens (ahutchens@alvarezandmarsal.com));
- xiii. Counsel to the Information Officer, Cassels Brock & Blackwell LLP, Suite 3200, Bay Adelaide Centre – North Tower, 40 Temperance Street, Toronto, Ontario M5H 0B4 (Attn: Natalie E. Levine (nlevine@cassels.com));
- xiv. all of the Debtors’ known creditors (for whom identifying information and addresses are available to the Debtors);
- xv. the Master Service List maintained by the Debtors’ Notice and Claims Agent; and
- xvi. all other Persons directed by the Court (for whom identifying information and addresses are available to the Debtors).

#### Public Announcement of Sale and Auction

By July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors shall publish the Sale Notice, with any modifications necessary for ease of

publication, on one occasion in *The Wall Street Journal (National Edition)*, to provide notice to any other potential interested parties, and post the Sale Notice on their case website, <https://dm.epiq11.com/case/nevadacopper>.

### **Potential Bidder Requirements**

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence materials, a person or entity interested in purchasing the Assets or part of the Assets (a “**Potential Bidder**”) must deliver or have previously delivered to the Debtors the following preliminary documentation (collectively, the “**Preliminary Bid Documents**”):

- i. an executed confidentiality agreement (a “**Confidentiality Agreement**”) in form and substance acceptable to the Debtors;
- ii. sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the Debtors’ Assets, the adequacy of which must be acceptable to the Debtors, in consultation with the Consultation Parties;
- iii. a statement indicating whether the Potential Bidder is requesting consent from the Debtors to partner with or otherwise work with any other interested party in connection with the potential submission of a joint Bid, the identity and domicile of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable, which the Debtors may approve in their reasonable business judgment, in consultation with the Consultation Parties, on a case-by-case basis; and
- iv. any other information required (as determined by the Debtors in consultation with the Consultation Parties) to allow the Debtors, in consultation with the Consultation Parties, to determine that the Potential Bidder intends to receive due diligence information solely for purposes consistent with these Bidding Procedures.

The Debtors, in consultation with their advisors and the Consultation Parties, will determine and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a bid (such Potential Bidder, an “**Acceptable Bidder**”). The Debtors shall promptly inform the Consultation Parties of any entity that becomes an Acceptable Bidder. **For the avoidance of doubt, no Potential Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.**

Promptly following the entry of these Bidding Procedures, the Debtors shall provide copies of all materials (which may be anonymized or in summary form as the Debtors deem necessary to protect confidentiality and preserve the integrity of the Sale Process, but which shall include at a minimum an indication of whether a bidder is a strategic or financial bidder and such bidder’s country of domicile) delivered by any Potential Bidder prior to the entry of these Bidding Procedures to the Consultation Parties and their counsel.



### Qualified Bid Requirements

To participate in the Auction, an Acceptable Bidder (it being understood that the Stalking Horse Bidder, if any, may satisfy the items below via the Stalking Horse Bid) must deliver to the Debtors and their advisors an irrevocable offer for the purchase of some or all of the Assets (each, a “***Bid***”), and shall meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

- i. **Purchased Assets and Assumed Liabilities:** Each Bid must clearly state the following: (a) the particular Assets, or the portion thereof identified with reasonable specificity, to be purchased and (b) the liabilities and obligations to be assumed, including any debt and cure costs to be assumed;
- ii. **Good Faith Deposit:** Except with respect to any Credit Bid, the Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate purchase price of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “***Good Faith Deposit***”) on terms acceptable to the Debtors in consultation with the Consultation Parties. To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals 10% of the increased aggregate purchase price promptly and in no event later than one business day following the conclusion of the Auction;
- iii. **Purchase Price:** Each Bid must (a) clearly set forth the purchase price to be paid, assuming a purchase of the applicable Assets and any assumption of liabilities (the “***Purchase Price***”), (b) identify separately the cash and non-cash components of the Purchase Price, including a cash component sufficient to pay any Stalking Horse Bid Protections in full, in cash, at Closing, and (c) indicate the allocation of the Purchase Price among the applicable Assets; *provided that*, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation. The Purchase Price should be a single point value in U.S. Dollars for the applicable Assets on a cash-free, debt-free basis. Any Bid for substantially all of the Assets must also include a statement as to whether the Bid is conditioned on purchasing all Assets or whether the Qualified Bid should be viewed as a separate Bid for one or more sets of Assets. The Debtors will consider the value to the estate as a whole when evaluating bids for only certain of the Assets. The Debtors reserve the right, in consultation with the Consultation Parties, to ask any Acceptable Bidder to allocate the value ascribed to their Bid for any particular Asset and to inquire about any significant assumption on which such valuations are based;
- iv. **Same or Better Terms; Bid Documents:** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “***Bid Documents***”). The Bid Documents shall include: (a) the form of purchase agreement on which the Acceptable Bidder is prepared to transact, together with a redline of such agreement marked against the Form APA, (b) a schedule of contracts and leases to be assumed to the extent applicable to the Bid, (c) any other material documents integral to such Bid, and (d) a statement from the Acceptable Bidder that (1) it is prepared to enter into and consummate the transactions contemplated in the form purchase agreement, no later than ten days after the conclusion of the Auction, (or, if no Auction is held, the Bid Deadline (as defined below)), or if a later date is required, the reasons that such a later date is required; and (2) that the Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest



or otherwise best bid (the “**Back-Up Bid**”)) until the consummation of the Sale Transaction;

- v. **No Qualified Bidder Bid Protections:** Each Bid, other than a Bid that has been designated as a Stalking Horse Bid (as defined herein), must include a statement that the Bid does not entitle such bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the applicable Assets;
- vi. **Employee Obligations:** Each Bid must indicate whether the Acceptable Bidder intends to hire employees of the Debtor (or if applicable, employees that are primarily employed in connection with the applicable Assets included in such Bid). The employees must be explicitly identified in an accompanying Schedule;
- vii. **Sources of Financing:** To the extent that the Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Acceptable Bidder has received sufficient debt and equity funding commitments to satisfy the Acceptable Bidder’s obligations under the proposed Sale Transaction and other obligations under its Bid, including providing adequate assurance of future performance under all Contracts proposed to be assumed by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;
- viii. **Contingencies; No Financing or Diligence Outs:** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline.
- ix. **Identity:** Each Bid must fully disclose the identity and domicile of each entity and each entity’s shareholders, partners, investors, and ultimate controlling entities that will be bidding for or purchasing the applicable Assets or otherwise participating in connection with such Bid, and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered to complete the transactions on the terms contemplated by the parties. Each Bid must also include contact information for the specific person(s) whom Moelis and A&O Shearman should contact regarding such Bid;
- x. **As-Is, Where-Is:** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct any and all due diligence prior to making its offer; (b) has relied solely upon its own independent review, investigation, and inspection of any documents and the assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the Acceptable Bidder’s proposed purchase agreement;

- 1           xi.     **Authorization:** Each Bid must contain evidence that the Acceptable Bidder has  
2           obtained all necessary authorizations or approvals from its shareholders or its board  
3           of managers or directors, or any other internal and other approvals, as applicable,  
4           with respect to the submission of its Bid and the consummation of the transactions  
5           contemplated in such Bid;
- 6           xii.    **Joint Bids:** The Debtors will be authorized to approve joint Bids in their reasonable  
7           business judgment, in consultation with the Consultation Parties, on a case-by-case  
8           basis, provided that a joint bid meets the Qualified Bid Requirements and the  
9           applicable bidders otherwise comply with these Bidding Procedures;
- 10          xiii.   **Adequate Assurance of Future Performance:** Each Bid must (a) identify any  
11          executory contracts (the “*Executory Contracts*”) and any unexpired leases (the  
12          “*Unexpired Leases*”) to be assumed or assumed and assigned in connection with  
13          the proposed Sale Transaction, (b) provide for the payment of all cure amounts (the  
14          “*Cure Amounts*”) related to such Executory Contracts and Unexpired Leases by  
15          the Acceptable Bidder, (c) demonstrate, in the Debtors’ reasonable business  
16          judgment, in consultation with the Consultation Parties (as defined herein), that the  
17          Acceptable Bidder can provide adequate assurance of future performance under all  
18          such Executory Contracts and Unexpired Leases sufficient to satisfy the  
19          requirements of sections 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code, and  
20          (d) provide the following documentation: (1) the legal name of the proposed  
21          assignee of Unexpired Leases (the “*Proposed Assignee*”) and any guarantors, as  
22          applicable; and (2) financial statements for the calendar years ended 2022 and 2023  
23          for the Proposed Assignee and any guarantors, as applicable, and other financial  
24          information about the Proposed Assignee to demonstrate its ability to provide  
25          adequate assurance of future performance;
- 26          xiv.    **Acknowledgement of Compliance with Bidding Procedures, Bidding Order,  
27          Bankruptcy Code, and Non-Bankruptcy Law;** Each Bid must acknowledge its  
28          compliance in all respects with these Bidding Procedures, the Bidding Procedures  
Order, Bankruptcy Code and any applicable non-bankruptcy law;
- xv.     **No Collusion:** The Acceptable Bidder must acknowledge in writing (a) that it has  
not engaged in any collusion with respect to any Bids or the Sale Transaction,  
specifying that it did not agree with any Acceptable Bidders or Potential Bidders to  
control price; and (b) agree not to engage in any collusion with respect to any Bids,  
the Auction, or the Sale Transaction. For the avoidance of doubt, this requirement  
does not restrict Potential Bidder(s) from working with other Potential Bidder(s)  
with the Debtors’ prior written consent (email shall suffice) following the Debtors’  
consultation with the Consultation Parties;
- xvi.    **Good Faith Offer:** The Bid must constitute a good faith, *bona fide* offer to  
consummate the Sale Transaction;
- xvii.   **Irrevocable:** Each Bid must state that in the event such Bid is chosen as the Back-  
Up Bid (as defined below), it shall remain irrevocable until the Debtors and the  
Successful Bidder consummate the applicable Sale Transaction;
- xviii.   **Back-Up Bid:** Each Bid shall provide that the Acceptable Bidder will serve as a  
Back-Up Bidder (as defined below) if their Bid is the next highest or otherwise best  
bid;

- xix. **Regulatory Approvals and Covenants:** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the Sale Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval would not be expected in time to allow the closing of the Sale Transaction to occur by October 8, 2024, those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible);
- xx. **Time Frame for Closing:** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame for the Closing set forth above, or on such timeframe as may be acceptable to the Debtors, in consultation with the Consultation Parties; *provided*, that if the Acceptable Bidder expects to be unable to close on its Bid on or before October 7, 2024, its Bid should indicate the date on which it expects to be able to close;
- xxi. **No Fees:** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid, the Acceptable Bidder is agreeing to disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or other similar form of compensation; and that, for the avoidance of doubt, each Acceptable Bidder by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized in their reasonable business judgment, in consultation with the Consultation Parties, to provide the Stalking Horse Bid Protections (as defined below) to one or more stalking horse bidders (each, a “*Stalking Horse Bidder*”) in accordance with these Bidding Procedures;
- xxii. **Adherence to Bidding Procedures:** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction;
- xxiii. **Consent to Jurisdiction:** The Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtors’ qualification of Bids, to the Auction, the Sale, the Sale Transaction and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, and the Closing, as applicable;
- xxiv. **Conditions to Closing:** Each Bid must identify with particularity each and every condition to closing, including the Executory Contracts and Unexpired Leases for which assumption and assignment is required; and
- xxv. **Minimum Bid Requirement:** If there is a Stalking Horse Bid, in order to be a Qualified Bid, each Bid other than the Stalking Horse Bid must set forth a Purchase Price with a value, as determined by the Debtors in their reasonable business judgment, that exceeds in aggregate the sum of (a) the Purchase Price of such Stalking Horse Bid, (ii) the amount of the applicable Stalking Horse Bid Protections, and (iii) \$1,000,000 (collectively, the “*Minimum Bid Requirements*”).

Only Bids fulfilling all of the preceding requirements contained herein may be deemed to be Qualified Bids; *provided*, that a Bid not otherwise satisfying all of the preceding requirements may be designated a Qualified Bid, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties. Only those parties submitting Qualified Bids may be deemed to be Qualified Bidders.

For the avoidance of doubt, the Stalking Horse Bidder, if any, shall be deemed to be a Qualified Bidder and the Stalking Horse Bid, if any, shall be considered a Qualified Bid, such that any Stalking Horse Bidder shall be entitled to participate in the Auction.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Assets, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Assets with governmental laws, the truth, accuracy, or completeness of any documents related to the Assets, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Assets. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the applicable Assets, except to the extent expressly provided in the Bankruptcy Court's order approving the Sale Transaction. Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Assets or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Bankruptcy Court's order approving the Sale Transaction.

Within one business day after the Bid Deadline (the "***Qualified Bid Designation Date***"), the Debtors, in consultation with the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction.

### **Right to Credit Bid**

The DIP Lenders, and any other Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates, each (a "***Secured Creditor***") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim (a "***Credit Bid***") only with respect to the collateral by which such Secured Creditor is secured; *provided* that (i) any Credit Bid shall be conditioned on payment in full in cash of the DIP Facility, unless the DIP Lenders consent to a different treatment of such claims; (ii) the rights of any other Secured Creditor to challenge a Credit Bid that does not repay the secured claim of such Secured Creditor are fully preserved; and (iii) any Credit Bid must meet the above requirements for a Qualified Bid, including, if a Stalking Horse Bidder is approved, the Minimum Bid Requirements.

### **Obtaining Due Diligence Access**

Only Acceptable Bidders shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and additional non-public information regarding the Debtors. Beginning on the date the Debtors determine that a party is an Acceptable Bidder, or as soon as reasonably practicable thereafter, the Debtors will provide such Acceptable Bidder with access to

an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request. The Debtors shall promptly consult with the Consultation Parties (a) with respect to any due diligence disputes that arise concerning any Acceptable Bidder and (b) prior to revoking due diligence access to any such entity. The Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room for the benefit of all Acceptable Bidders.

Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The Debtors and their advisors, after consultation with the Consultation Parties, shall be permitted to coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline, after consultation with the Consultation Parties, to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale Transaction. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right, in consultation with the Consultation Parties, to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets (i) to any person or entity who is not an Acceptable Bidder and (ii) if and to the extent doing so would (a) violate any laws to which the Debtors are subject, including any privacy laws; (b) result in the disclosure of any trade secrets of third parties in breach of any contract with such third party; (c) violate any legally-binding obligation of any Debtor with respect to confidentiality, non-disclosure, or privacy; or (d) jeopardize protections afforded to any Debtor under the attorney-client privilege or the attorney work product doctrine (provided, the Debtors shall use commercially reasonable efforts to (1) provide such access as can be provided (or otherwise convey such information regarding the applicable matter as can be conveyed) without violating such privilege, doctrine, contract, obligation, or law; and (2) provide such information in a manner without violating such privilege, doctrine, contract, obligation or law).

The Debtors shall provide the Consultation Parties periodic updates regarding the activity of each Acceptable Bidder in the electronic data room in a form and frequency mutually acceptable to the Debtors and the Consultation Parties; provided that the Debtors shall cooperate in good faith to provide any such information reasonably requested by the Consultation Parties.

#### Communications with Acceptable Bidders (including Qualified Bidders)

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications, including any diligence requests, from Acceptable Bidders (including any Qualified Bidders) shall be through Moelis.



### Due Diligence and Indications of Interest from Acceptable Bidders (including Qualified Bidders)

Each Acceptable Bidder (including, as applicable, any Qualified Bidder) shall:

- i. Provide a preliminary indication of interest as requested by the Debtors or their advisors, together with any other information or materials requested in connection therewith (collectively, an “*Indication of Interest*”); and
- ii. Comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of such Acceptable Bidder (including any Qualified Bidder) to consummate its contemplated transaction.

Failure by an Acceptable Bidder (including, as applicable, any Qualified Bidder, other than the Stalking Horse Bidder, if any) to provide an acceptable Indication of Interest or comply with reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine that such bidder is no longer an Acceptable Bidder or that a Bid made by such bidder is not a Qualified Bid.

### Bid Deadline

An Acceptable Bidder that desires to make a bid on one or more of the Assets shall deliver Binding Bids to the Bid Notice Parties no later than **September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)** (the “*Bid Deadline*”); provided that the Debtors may, in consultation with the Consultation Parties, extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain Potential Bidders, without further order of the Court, subject to providing notice to all Potential Bidders and the Consultation Parties.

### Evaluation of Qualified Bids

The Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ business judgment, and in consultation with the Consultation Parties, the highest or otherwise best Qualified Bid or combination of Qualified Bids for any Assets (the “*Starting Bid*”). As stated above, the Debtors shall promptly provide to the Consultation Parties copies of all Bids received by the Debtors, including the Starting Bid, but in no event later than the next business day following receipt; *provided* that the Consultation Parties and the U.S. Trustee must treat such Bids and any related information as confidential and shall not publicly disclose such information without the prior written consent of the Debtors.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate: (i) the amount and nature of the total consideration; (ii) the Qualified Bidder’s ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors’ estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; and (v) the liabilities and obligations to be assumed pursuant to such Qualified Bid. Prior to commencing the Auction, the Debtors shall notify the Stalking Horse Bidder, if any, and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder, if any, and each Qualified Bidder.

### Stalking Horse Protections

At any time until 20 days prior to the Bid Deadline, the Debtors shall be authorized, but not obligated, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction for such assets, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder, and subject to the terms set forth below, (x) provide a break-up fee and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses the ("***Stalking Horse Bid Protections***") in an aggregate amount of break-up fee and reimbursement of expenses not to exceed three percent of the Purchase Price; *provided, however*, that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually submitted, a Bid for any Assets, it shall not have consent rights with respect to the selection of the Stalking Horse Bidder or any protections to be afforded to such Stalking Horse Bidder.

In the event that the Debtors enter into a Stalking Horse Agreement with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court (the "***Stalking Horse Notice***") and serve the Stalking Horse Notice on the Stalking Horse Bidder and the U.S. Trustee. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bidder's bid (the "***Stalking Horse Bid***") and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the amount and calculation thereof); (v) specify the Assets included in the Stalking Horse Bid; (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse Notice within five business days of filing with the Court, (the "***Notice Period***"), the Debtors may submit a revised proposed form of order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, which the Court may enter without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period or as soon thereafter as the Court is available.

Except as otherwise set forth herein, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

### No Qualified Bids

If no Qualified Bids other than the Stalking Horse Bid, if any, are received for the Assets included in the Stalking Horse Bid by the Bid Deadline, then the Debtors may cancel the Auction with respect to such Assets. If a Stalking Horse Bid is the only Qualified Bid received by the Bid Deadline, the Debtors may decide, in their reasonable business judgment, after consultation with the Consultation Parties, to designate the Stalking Horse Bid as the Successful Bid (as defined below) as to the applicable Assets and pursue entry of an order approving a Sale Transaction with respect to such Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement. The Debtors promptly shall file notice of any cancellation of the Auction with the Court.

### Auction

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for the Assets (or, if applicable, any portion of Assets) by the Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment, in consultation with the Consultation Parties, with respect to such Assets or portion of Assets in accordance with the Auction Procedures (as defined below). If the Debtors do not receive a Qualified Bid for any particular Asset by the Bid Deadline, the Debtors will not conduct the Auction with respect to such Asset.

The Auction shall commence on **September 10, 2024 at 12:00 p.m. (prevailing Eastern Time) at the New York offices of A&O Shearman** or such later time or other place as the Debtors determine in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the “**Auction Procedures**”):

- i. the Auction will be conducted openly; *provided* that, except as otherwise determined by the Debtors in consultation with the Consultation Parties, only (a) the Debtors, (b) the Consultation Parties, (c) representatives of the Office of the United States Trustee, (d) the Creditors’ Committee, (e) any other Qualified Bidders, and (f) the respective representatives and professionals of the foregoing parties shall be entitled to participate in the Auction, however, any party in interest may be permitted to attend the Auction;
- ii. except as otherwise provided herein, only Qualified Bidders shall be entitled to bid at the Auction;
- iii. the Qualified Bidders, including Stalking Horse Bidders, if any, must appear in person or through duly-authorized representatives at the Auction;
- iv. bidding shall begin with the Starting Bid;
- v. subsequent bids (each, an “**Overbid**”) may only be made at the Auction and shall be at least a 2% increase in cash, cash equivalents, or other such consideration that the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, deem equivalent over the previous bid (a “**Minimum Overbid**”), and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid. The Debtors may, in their reasonable business judgment, in consultation with the Consultation Parties, announce increases or reductions to the Minimum Overbid at any time during the Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder may submit at the Auction must contain a Purchase Price in cash, cash equivalents, or such other consideration that the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, deem equivalent that exceeds the then existing highest Bid by at least the amount of the Minimum Overbid
- vi. at the commencement of the Auction, the Debtors, in consultation with the Consultation Parties, may announce reasonable procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit successive bid(s);
- vii. each Qualified Bidder will be permitted a reasonable time to respond to previous bids at the Auction, as determined by the Debtors in consultation with the Consultation Parties;



- viii. during the course of the Auction, the Debtors shall, after submission of each Overbid and consultation with the Consultation Parties, promptly inform each Qualified Bidder of the terms of the previous bids and inform each Qualified Bidder which Overbid(s) reflect, in the Debtors' view, in consultation with the Consultation Parties, the highest or otherwise best bid(s) for the applicable Assets (the "***Prevailing Highest Bid***");
- ix. to remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder, except the Qualified Bidder(s) that submitted the Prevailing Highest Bid, must submit an Overbid with respect to such round of bidding. To the extent a Qualified Bidder that did not submit the Prevailing Highest Bid fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction; *provided, however*, that the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties (to the extent such Consultation Parties have not submitted a Qualified Bid), may permit any such bidder to (a) re-join the Auction after submitting an Overbid or (b) join another Qualified Bidder in the Auction as an additional purchaser party or debt or equity financing source;
- x. the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- xi. each Qualified Bidder will be required to confirm on the record that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Sale Transaction. For the avoidance of doubt, this requirement does not restrict Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors' prior written consent;
- xii. each Qualified Bidder will be required to confirm that its bid is a good faith, *bona fide* offer and it intends to consummate the Sale Transaction if selected as the Successful Bid in accordance with these Bidding Procedures (as may be modified in accordance herewith at the Auction);
- xiii. the Court and the Debtors will not consider bids made after the Auction has been closed;
- xiv. the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, may reject, at any time before entry of an order of the Court approving a Successful Bid, any Bid that the Debtors determine is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale Transaction, or (c) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders;
- xv. the Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any Bid made by a Qualified Bidder during the Auction;
- xvi. the Debtors reserve the right, in their reasonable business judgment, and in consultation with the Consultation Parties, to adjourn the Auction one or more times

to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, and in consultation with the Consultation Parties, may require in order to determine that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and equity funding commitments to consummate the proposed transaction at the prevailing amount; and

- xvii. notwithstanding anything herein to the contrary, the Debtors may, in consultation with the Consultation Parties, at any time choose to adjourn the Auction by announcement at the Auction; *provided*, that in the event of an adjournment of the Auction, the Debtors promptly shall file notice thereof with the Court.

Any Auction rules adopted by the Debtors will not modify any of the terms of the Stalking Horse purchase agreement, if any, or the rights of the Stalking Horse Bidder, if any, without the consent of the Stalking Horse Bidder, if any.

### **Acceptance of the Successful Bidder**

The Auction shall continue until (i) there is only one Qualified Bid or a combination of Qualified Bids that the Debtors determine, in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties and outlined below in further detail, and in consultation with the Consultation Parties, is the highest or otherwise best bid to purchase the applicable Assets (each, a “**Successful Bid**”), and (ii) the Debtors determine, in their reasonable business judgment, in consultation with the Consultation Parties, that further bidding is unlikely to result in a different Successful Bid or Successful Bids that would be reasonably acceptable to the Debtors, at which point, the Auction will be closed.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors, in consultation with the Consultation Parties, may consider the following factors in addition to any other factors that the Debtors deem appropriate: (i) the amount and nature of the total consideration, which includes but is not limited to, assumed liabilities (administrative liabilities, cure payments), and the amount of executory contracts and leased locations being assumed; (ii) the Qualified Bidder’s ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors’ estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; and (v) any other consideration that may impact the Debtors’ estates or stakeholders.

Any Qualified Bidder that submits a Successful Bid will be deemed a “Successful Bidder” with respect to the Assets contemplated for the purchase pursuant to such Successful Bid. The Debtors shall file notice of the Successful Bid and the Successful Bidder with the Court as soon as reasonably practicable after conclusion of the Auction. Following conclusion of the Auction and selection of a Successful Bidder, the Debtors shall present the results of the Auction at a hearing (the “**Sale Hearing**”) at which the Debtors shall seek Court approval to enter into a binding purchase agreement with the Successful Bidder on the terms of the Successful Bid (the order approving such entry, the “**Definitive Purchase Agreement Order**”). For the avoidance of doubt, the Definitive Purchase Agreement Order shall deem the Debtors’ selection of the Successful Bid final; *provided* that, notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any Debtor to take or refrain from taking any action that it determined in good faith, in consultation with counsel, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

1 Within one business day of the selection of the Successful Bidder, such Successful Bidder  
 2 (including both the Stalking Horse Bidder, if any, and Back-Up Bidder, if applicable) shall make  
 3 a cash deposit, in addition to its Good Faith Deposit, in an amount calculated on the basis of the  
 4 increased aggregate purchase price, submitted by wire transfer of immediately available funds to  
 5 an escrow account to be identified and established by the Debtors pursuant to a customary and  
 6 reasonable escrow agreement. Each Successful Bidder and the Debtors shall, as soon as  
 7 commercially reasonable and practicable, complete and sign all agreements, contracts,  
 8 instruments, or other documents evidencing and containing the terms upon which each such  
 9 Successful Bid was made.

#### 10 **Designation of Back-Up Bidder**

11 The Back-Up Bid to purchase any applicable Assets (the “**Back-Up Bidder**”) will be  
 12 determined by the Debtors at the conclusion of the Auction, in consultation with the Consultation  
 13 Parties, and will be announced at that time to all the Qualified Bidders participating in the Auction.  
 14 Following consultation with the Consultation Parties, the Debtors’ selection of a Back-Up Bid  
 15 shall be deemed final, and the Debtors shall not accept any further bids or offers to submit a bid  
 16 after such selection. The Debtors will be authorized, but not required, to consummate the  
 17 Transaction with the Backup Bidder without further order of the Bankruptcy Court, so long as such  
 18 Backup Bid shall have been approved in connection with the Bankruptcy Court’s approval of the  
 19 Successful Bid, or subject to Bankruptcy Court approval if not.

20 If for any reason a Successful Bidder fails to consummate the purchase of such assets  
 21 within the time permitted, then the Back-Up Bidder will automatically be deemed to have  
 22 submitted the Successful Bid for such assets, and the Back-Up Bidder shall be deemed a Successful  
 23 Bidder for such assets and shall be required to consummate any Sale Transaction with the Debtors  
 24 as soon as is reasonably practicable without further order of the Court in accordance with the terms  
 25 and conditions of such Back-Up Bidder’s Bid, following a notice being filed with the Court;  
 26 provided, however, that the Debtors shall first provide notice to Contract counterparties implicated  
 27 by any Back-Up Bidder’s Bid and an opportunity to object to the assignment to the Back-Up  
 28 Bidder within 5 days of receiving such notice. To the extent any objections are raised and remain  
 unresolved, the Court may schedule a hearing on an expedited basis to adjudicate such objection.

The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) 45 days  
 after completion of the Auction, (ii) consummation of a Sale Transaction with one or more  
 Successful Bidders at an Auction, and (iii) the release of such Back-Up Bid by the Debtors in  
 writing (the “Back-Up Termination Date”). The Debtors shall return the Back-Up Bidder’s deposit  
 owed within five business days of the Back-Up Termination Date.

#### 21 **Approval of the Sale Transaction**

22 A hearing to consider approval of each Sale Transaction (the “Sale Hearing”), currently is  
 23 scheduled to take place on **September 25, 2024, at 10:00 a.m.** (prevailing Pacific Time), before  
 24 the Honorable Hilary L. Barnes at the United States Bankruptcy Court for the District of Nevada,  
 25 C. Clifton Young Federal Building, 300 Booth Street, Reno, NV 89509 (Courtroom 2) and  
 26 telephonically.

27 At the Sale Hearing certain findings will be sought from the Court regarding the Auction,  
 28 including, among other things, that: (1) the Auction was conducted, and the Successful Bidder was  
 selected, in accordance with the Bidding Procedures; (2) the Auction was fair in substance and  
 procedure; (3) the Successful Bid was a Qualified Bid as defined in the Bidding Procedures; and  
 (4) consummation of any Sale Transaction as contemplated by the Successful Bid in the Auction  
 will provide the highest or otherwise best offer for the applicable Assets and is in the best interests

of the Debtors and their estates. **The Sale Hearing may be continued to a later date by the Debtors, in consultation with the Consultation Parties, by sending notice to creditors or other parties in interest prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder, if any).**

Objections to the Sale Transaction(s), and entry of any order approving the sale (the “***Sale Order***”) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Court; and (iii) be filed with the Court and served so as to be **actually received** by the Debtors, the Consultation Parties, the Bid Notice Parties, and the foregoing parties’ respective counsel by September 19, 2024, at 12:00 p.m. (prevailing Pacific Time).<sup>4</sup>

### **Return of Good Faith Deposit**

The Good Faith Deposit of the Successful Bidder or Successful Bidders, if any, will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’ estates and be credited to the portion of such Successful Bidder’s or Successful Bidders’ applicable Purchase Price.

If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable), if any, fails to consummate the Successful Bid (or Back-Up Bid, if applicable), then the Good Faith Deposit of such Successful Bidder (or Back-Up Bidder, if applicable) irrevocably will be forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders will be returned within five business days after consummation of the applicable Sale Transaction.

The return of any Good Faith Deposits of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders’ purchase agreement. All such deposits shall be held in escrow and at no time shall be deemed property of the Debtors’ estates absent further order of the Court.

### **Commissions**

Other than with respect to (i) any Stalking Horse Bid Protections that become payable pursuant to the terms of a Stalking Horse Agreement, if any, and (ii) any payment obligations with respect to the Debtors’ investment banker, Moelis & Company, (a) the Debtors shall be under no obligation to pay any commissions, fees, or expenses to any bidder’s agent, advisor or broker; (b) all commissions, fees, or expenses for any such agents, advisors, or brokers shall be paid by the applicable bidder at such bidder’s discretion; and (c) in no case shall any commissions, fees, or expenses for any bidder’s agent, advisor, or broker be deducted from any proceeds derived from any sale of the Assets.

### **Reservation of Rights**

The Debtors, in consultation with the Consultation Parties, reserve their rights to modify these Bidding Procedures in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties in any manner that will best promote the goals of the bidding

<sup>4</sup> In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business judgment to pursue a Sale Transaction pursuant to a Plan, a separate deadline to object to such Sale Transaction shall be set by order of the Court.

process, or impose, at or before the Auction, additional customary terms and conditions on the sale of the applicable Assets, including, without limitation: (1) extending the deadlines set forth in the Bidding Procedures; (2) adjourning the Auction without further notice; (3) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (4) canceling the Auction; (5) rejecting any or all Bids or Qualified Bids; and (6) adjusting the applicable minimum overbid increment; *provided, however*, that the Debtors may not amend these Bidding Procedures, the Bidding Procedures Order or the bidding process to reduce or otherwise modify their obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court. All such modifications and additional rules will be communicated in advance to each of the Consultation Parties and the U.S. Trustee, Acceptable Bidders and Qualified Bidders; *provided, further*, that, to the extent such modifications occur at the Auction, disclosure of such modifications shall be limited to those in attendance at the Auction. If any of the DIP Lenders, the Office of the U.S. Trustee or any official committee of unsecured creditors appointed in these cases determines in good faith that any modification to these Bidding Procedures or the Bidding Procedures Order, or any adoption of new rules, procedures or deadlines, would not be consistent with this paragraph or these Bidding Procedures or the Bidding Procedures Order, such DIP Lender, U.S. Trustee, or Committee may file an objection with the Bankruptcy Court, and no such modification or adoption shall become effective until such objection is resolved. The Debtors shall provide advance notice in writing of any such modification to the Consultation Parties and the U.S. Trustee and any Qualified Bidder, including the Stalking Horse Bidder, if any.

All parties expressly reserve all of their rights (and do not waive any such rights) to seek Court relief with regard to the Auction, the Bidding Procedures, the Sale Transaction, and any related items (including, if necessary, to seek an extension of the Bid Deadline).

Each reference in these Bidding Procedures and the Bidding Procedures Order to “consultation” (or similar phrase) with the Consultation Parties shall mean consultation in good faith. All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an expedited basis if they disagree with any actions or decisions made by the Debtors as part of these Bidding Procedures. The rights of all Consultation Parties with respect to the outcome of the Auction are reserved.

### **Consent to Jurisdiction**

All Qualified Bidders at the Auction will be deemed to have consented to the core jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale any Sale Transaction if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Court on an expedited basis.

### **Fiduciary Matters**

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor to take any action or to refrain

1 from taking any action related to any sale transaction or with respect to these Bidding Procedures,  
2 to the extent such Debtor, board of director, board of managers, or such similar governing body  
3 reasonably determines in good faith, in consultation with counsel, that taking or failing to take  
4 such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations  
5 under applicable law.  
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**EXHIBIT B**

**Form of Sale Notice**

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**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.: 24-50566-hlb  
Chapter 11Jointly 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-hlbHearing Date:  
Hearing Time:

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND  
SALE HEARING FOR THE SALE OF SUBSTANTIALLY ALL ASSETS**

**PLEASE TAKE NOTICE** that on [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [ *Order (I) Approving Auction and Bidding, Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to Be Provided to Interested Parties; and (IV) Granting Related Relief* [Docket No. [ ]]] (the “**Bidding Procedures Order**”)<sup>2</sup> in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”).

**PLEASE TAKE FURTHER NOTICE** that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “**Auction**”) of the Assets **on September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)** at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or such other location announced to the bidders and Consultation Parties.

**PLEASE TAKE FURTHER NOTICE** that only the Debtors, the Consultation Parties, Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine to include in their reasonable discretion, in consultation with the Consultation Parties, in each case, along with their representatives and advisors, shall be entitled to attend the Auction, and only Qualified Bidders will be entitled to make Overbids at the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.**

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek approval of the Sale Transaction(s) at a hearing scheduled to commence on or before **September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)** (the “**Sale Hearing**”) before the Honorable Judge Barnes, at the United States Bankruptcy Court for the District of Nevada, 300 Booth Street, 5th Floor, Courtroom 2, Reno, Nevada 89509, and telephonically.

<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 defined in this notice have the meanings given to them in the Bidding Procedures Order.



**PLEASE TAKE FURTHER NOTICE** that, except as otherwise set forth in the Bidding Procedures Order, objections to consummation or approval of the Sale and each Sale Transaction must (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received on or before September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)*** by the following parties:

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors' counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com));
- iii. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- iv. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- v. proposed counsel to the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Eric S. Chafetz (EChafetz@lowenstein.com) and Jeffrey L. Cohen (JCohen@lowenstein.com));
- vi. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- vii. counsel to the Stalking Horse Bidder, if any.

**PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors' chapter 11 cases are available upon request, by calling the Debtors' claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors' restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

#### **CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION**

**ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE OR A SALE TRANSACTION, AS APPLICABLE, ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE APPLICABLE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS MAY BE SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT OR THE PLAN, AS APPLICABLE.**

1 Dated: [●], 2024

Respectfully submitted,

2 /s/ DRAFT

3 **McDONALD CARANO LLP**

Ryan J. Works (Nevada Bar No. 9224)

4 Amanda M. Perach (Nevada Bar No. 12399)

2300 West Sahara Avenue, Suite 1200

5 Las Vegas, Nevada 89102

Telephone: (702) 873-4100

6 Email: rworks@mcdonaldcarano.com

aperach@mcdonaldcarano.com

7 -and-

8 **ALLEN OVERY SHEARMAN**

9 **STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488)

10 (admitted *pro hac vice*)

Sara Coelho (New York Bar No. 4530267)

11 (admitted *pro hac vice*)

599 Lexington Avenue

12 New York, New York 10022

Telephone: (212) 848-4000

13 Email: fsosnick@aoshearman.com

sara.coelho@aoshearman.com

14 *Proposed Counsel to the Debtors and Debtors*  
15 *in Possession*

**EXHIBIT C**

**Form of Assumption and Assignment Notice**

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**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.: 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

Hearing Date:  
Hearing Time:

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU  
OR ONE OF YOUR AFFILIATES ARE A COUNTERPARTY TO AN  
EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OR MORE  
OF THE DEBTORS AS SET FORTH ON **EXHIBIT A** ATTACHED HERETO.

**PLEASE TAKE NOTICE** that on [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [*Order (I) Approving Auction and Bidding, Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to Be Provided to Interested Parties; and (IV) Granting Related Relief*] [Docket No. [ ]]] (the “**Bidding Procedures Order**”) in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder the contract or agreement listed on **Exhibit A** to which you are a counterparty, upon approval of the Sale Transaction. The Debtors have conducted a review of their books and records and have determined that the Cure Payments for unpaid monetary obligations under the Debtors’ executory contracts and leases, which are set forth on **Exhibit A**. **You are receiving this Assumption and Assignment Notice (which has been filed on the docket of the above-captioned chapter 11 cases) because you may be a counterparty to a contract or lease (a “Counterparty”) that is proposed to be assumed and assigned to the Successful Bidder in connection with the Sale.**

**PLEASE TAKE FURTHER NOTICE** that if you disagree with the proposed Cure Payments, object to a proposed assignment to the Successful Bidder of any contract or lease, or dispute the ability of the Successful Bidder to provide adequate assurance of future performance with respect to any contract, your objection must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order governing the administration of these chapter 11 cases; (iii) state with specificity the nature of the objection 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 not otherwise defined herein shall have the meaning ascribed to such terms in the Motion or the Bidding Procedures.

if the objection pertains to the proposed Cure Payments, state the correct Cure Payments alleged to be owed to the objecting Counterparty, together with any applicable and appropriate documentation in support thereof; and (iv) **no later than [Tuesday, August 20, 2024, at 12:00 p.m. (prevailing Pacific Time)]** (the “**Assumption and Cure Objection Deadline**”), filed with the Court and served upon the following parties:

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors’ counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com));
- iii. the Debtors’ investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- iv. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- v. proposed counsel to the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Eric S. Chafetz (EChafetz@lowenstein.com) and Jeffrey L. Cohen (JCohen@lowenstein.com));
- vi. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- vii. counsel to the Stalking Horse Bidder, if any.

**PLEASE TAKE FURTHER NOTICE** that if no objection to (i) the Cure Payments, (ii) the proposed assignment and assumption of any Executory Contract or Unexpired Lease, or (iii) adequate assurance of the Successful Bidder’s ability to perform is filed by the Cure Objection Deadline, then (a) you will be deemed to have stipulated that the Cure Payments as determined by the Debtors are correct, (b) you will be forever barred, estopped, and enjoined from asserting any additional Cure Payments are due under the Executory Contract or Unexpired Lease, and (c) you will be forever barred, estopped, and enjoined from objecting to such proposed assignment to the Successful Bidder on the grounds that the Successful Bidder has not provided adequate assurance of future performance as of the closing date of the Sale Transaction.

**PLEASE TAKE FURTHER NOTICE** that any objection to the proposed assumption and assignment of an Executory Contract or Unexpired Lease or related Cure Payments in connection with the Successful Bid that otherwise complies with these procedures yet remains unresolved as of the commencement of the Sale Hearing, shall be heard at a later date as may be fixed by the Court.

**PLEASE THAT FURTHER NOTICE** that, notwithstanding anything herein, the mere listing of any contract or lease on the Contract Assumption Notice or any Supplemental Assumption Notice (i) does not require or guarantee that such contract or lease is an Executory Contract or Unexpired Lease, (ii) does not require that such contract or lease can or will be assumed by the Debtors at any time or assumed and assigned, and (iii) does not

1 constitute an admission that any stated Cure Amount constitutes a claim against the Debtors  
2 or a right against the Successful Bidder; and all rights of the Debtors and the Successful  
3 Bidder with respect to such agreements are reserved. Moreover, the Debtors explicitly reserve  
4 the right, in their reasonable discretion, to seek to reject or assume each Executory Contract or  
Unexpired Lease pursuant to section 365(a) of the Bankruptcy Code and in accordance with the  
procedures allowing the Debtors and/or the Successful Bidder, as applicable, to designate any  
Executory Contract or Unexpired Lease as either rejected or assumed on a post-closing basis.

5 **PLEASE TAKE FURTHER NOTICE** that, nothing herein (i) alters in any way the  
6 prepetition nature of the Executory Contracts or Unexpired Leases or the validity, priority, or  
7 amount of any claims of a counterparty to any Contract against the Debtors that may arise under  
8 such Executory Contract or Unexpired Lease, (ii) creates a postpetition contract or agreement, or  
9 (iii) elevates to administrative expense priority any claims of a counterparty to any Executory  
Contract or Unexpired Lease against the Debtors that may arise under such Executory Contract or  
Unexpired Lease.

10 **PLEASE TAKE FURTHER NOTICE** that if the Debtors (i) identify additional contracts  
11 or leases that may be assumed and assigned to any Successful Bidder, (ii) remove any contracts or  
12 leases from the list filed with the court, or (iii) modify the previously stated Cure Amount  
13 associated with any contract or lease, then the Debtors promptly will file and serve a supplemental  
notice of contract assumption (a "***Supplemental Assumption and Assignment Notice***") on each of  
the affected Counterparties. Each Supplemental Assumption Notice will include the same  
information with respect to the applicable contract or lease as was included herein. A Successful  
Bidder may designate additional contracts or leases to be assumed and assigned up to seven  
business days prior to closing and may remove contracts or leases from the list of Executory  
Contracts and Unexpired Leases up to two business days prior to closing.

14 **PLEASE TAKE FURTHER NOTICE** that in the event that the Debtors and a  
15 Counterparty cannot resolve an objection to a Cure Amount, the contract or lease at issue may be  
16 assumed by the Debtors and assigned to the applicable Successful Bidder, provided that the  
17 Debtors shall segregate the Cure Amount that the Counterparty asserts is required to be paid,  
18 pending a resolution of the dispute by the Court or mutual agreement by the parties. Any objection  
to the proposed assumption and assignment of a contract or lease or related Cure Amount proposed  
in connection with the Sale that remained unresolved as of the Sale Hearing, shall be heard at the  
Sale Hearing (or at a later date as fixed by the Court).

19 **PLEASE TAKE FURTHER NOTICE** that no contract or lease shall be deemed assumed  
20 and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court  
has entered an order assuming and assigning such contract or lease or (ii) the date the Sale has  
closed.

21 **PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion,  
22 Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents  
23 filed in the Debtors' chapter 11 cases are available upon request, by calling the Debtors'  
claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free  
24 at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors'  
restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

1 Dated: [●], 2024

Respectfully submitted,

2 /s/ DRAFT

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14 *Proposed Counsel to the Debtors and Debtors*  
15 *in Possession*

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

**RECOGNITION ORDER  
(RECOGNITION OF FINAL ORDERS  
AND BIDDING PROCEDURES ORDER)**

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