

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

NOTICE OF APPLICATION

**Names of applicants: Trevali Mining Corporation and Trevali Mining (New Brunswick) Ltd.
(the "Applicants")**

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia via Microsoft Teams or as directed by this Court on September 14, 2022 at 10:00 a.m. for the orders set out in Part 1 below.

Capitalized terms not otherwise defined in this Notice of Application have the meanings ascribed to them in Affidavit #1 of Brendan Creaney, affirmed on August 19, 2022, Affidavit #2 of Brendan Creaney, affirmed on September 11, 2022, and Affidavit #1 of Russell Ball affirmed on September 11, 2022, as applicable.

Part 1: ORDERS SOUGHT

1. The Applicants seek:

- (a) a "**SISP Order**", substantially in the form attached hereto as **Schedule "A"** hereto, among other things:

- (i) approving a sales and investment solicitation process for the Applicants' interests in the Rosh Pinah Mine and Caribou Mine (the "**SISP**");
 - (ii) approving the engagement by Trevali Mining Corp. of National Bank Financial Inc. ("**NBF**") to act as "**Sales Agent**" to the Applicants for purposes of the SISP pursuant to a "**Sales Agent Agreement**"; and
 - (iii) granting a charge (the "**Sales Agent Charge**") over the Applicants' Property (as defined in the Amended and Restated Initial Order granted August 29, 2022 (the "**ARIO**")) to secure the Applicants' obligations to NBF under the Sales Agent Agreement with the priority and protections set forth in the SISP Order;
- (b) a "**KERP Order**", substantially in the form attached as **Schedule "B"** hereto, among other things:
- (i) approving a key employee retention program (the "**KERP**");
 - (ii) granting a charge (the "**KERP Charge**") over the Applicants' Property (as defined in the ARIO) to secure the Applicants' obligations under the KERP with the priority and protections set forth in the KERP Order;
- (c) an order sealing Confidential Affidavit #2 of Russell Ball, made September 11, 2022 (the "**Confidential Ball Affidavit**"); and
- (d) an order sealing the Confidential Affidavit of Brendan Creaney, to be filed (the "**Confidential Creaney Affidavit**").

2. The Applicants further seek such other orders as counsel for the Applicants may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

The Proposed SISP

3. The proposed SISP, which was developed in consultation with the Sales Agent and the Monitor, and with an opportunity for input from the RCF Administrative Agent and Glencore, is intended to solicit interest in, and opportunities for:

- (a) one or more asset purchase transactions (an "**Asset Bid**"); or
- (b) some other restructuring, recapitalization, or other form of reorganization of the business, property, or affairs of the Applicants, including but not limited to the debt, share or other capital structure of the Applicants (a "**Restructuring Bid**"); or
- (c) some combination of one or more Asset and Restructuring Bids,

with respect to the Applicants' interests in the Caribou and Rosh Pinah Mines.

4. The SISP does not contain a bidding procedure or timelines with respect to the Applicants' interest in the Perkoa Mine and is not intended to solicit offers for that asset.

5. The SISP will be implemented by the Applicants in consultation with the Monitor and with the assistance of the Sales Agent.

6. The timelines described in the SISP for each of the Rosh Pinah and Caribou Mines are as follows:

Event	Caribou Mine	Rosh Pinah Mine
Commencement of Phase I of the SISP	September 14, 2022	September 14, 2022
LOI Deadline	October 7, 2022	October 21, 2022
Commencement of Phase II of the SISP	October 11, 2022	October 24, 2022
Final Bid Deadline	November 4, 2022	November 21, 2022
Final Agreement Deadline	November 14, 2022	December 9, 2022
Outside Closing Date	November 21, 2022	December 30, 2022

7. The timelines for the SISP were developed in consultation with the proposed Sales Agent and the Monitor and involved consideration of several factors, including that the pool of potential purchasers with sufficient resources and expertise to acquire and operate Caribou Mine or Rosh Pinah Mine, or both, is relatively limited and the fact that, given the public nature of these CCAA proceedings, viable potential purchasers of either the Rosh Pinah Mine or Caribou Mine (or both) likely knew of the potential transaction opportunity with respect to these assets since at least the commencement of these proceedings, if not earlier (including as a result of the Applicants' pre-CCAA Strategic Review Process).

8. There is flexibility in the SISP in that the proposed SISP timelines and criteria may be amended, extended, or waived by the Applicants, with the consent of the Monitor, or by further order of the Court.

9. The Applicants will review all Qualified Final Bids generated through the SISP, with the assistance of the Sale Agent, and in consultation with the Monitor, to determine the highest or otherwise best Qualified Final Bid (a "**Winning Bid**"). The SISP affords flexibility to the Applicants to select a Winning Bid that is not only the bid that provides the most cash consideration, but to also consider other factors as well, such as levels of conditionality and the timeline to closing of any bid.

10. Absent consent of the RCF Administrative Agent, the agent for the Applicants' first ranking secured lenders, any Winning Bid must result in the payment in full of the amounts owing to the RCF Lenders on closing (and, similarly, absent consent of the RCF Administrative Agent, any Potential Bidder may only be deemed a Qualified Bidder if the LOI submitted by such Potential Bidder is reasonably expected to result in the payment in full of the amounts owing to the RCF Lenders on closing).

11. In the circumstances, after consulting with the Sales Agent and the Monitor, it is the Applicants' view that:

- (a) the SISP will ensure the Applicants' assets are adequately exposed to the market;
- (b) the SISP will allow for the assessment of the viability of Potential Bidders and their ability to ultimately close on a transaction;
- (c) the timelines set out in the SISP provide a reasonable opportunity for all interested parties to submit competing offers, and the process for determining Winning and Backup Bids (as defined in the SISP), including consultation with the Monitor, is fair and transparent; and
- (d) the consultation rights granted to the RCF Administrative Agent and Glencore are reasonable and appropriate given their respective status.

12. The SISP will automatically terminate upon the occurrence of certain events, including the failure to receive any Qualified LOIs, Final Bids or Qualified Final Bids by the applicable deadlines.

The Engagement of the Sales Agent

13. The Applicants also seek approval of the Sales Agent Agreement with NBF and a corresponding Sales Agent Charge in favour of NBF as Sales Agent.

14. The Applicants require a sales agent with requisite expertise and knowledge as they implement the SISP and pursue their restructuring efforts more broadly. It would be almost impossible for a company of Trevali's size and with its assets to implement a successful sales process without retaining a sales advisor.

15. Having been previously engaged by the Applicants in their pre-CCAA Strategic Review Process, NBF is familiar with the Applicants' business and their assets. The Applicants view this experience as beneficial to running an efficient and effective SISP, particularly given the timelines set out above and the need to address their financial challenges and liquidity needs

16. The Applicants consider the engagement of NBF pursuant to the Sales Agent Agreement to be in the best interests of the Applicants and their stakeholders.

17. The terms of the Sales Agent Agreement, which are being negotiated in consultation with the Monitor, currently contemplate a payment structure comprised of an "**Asset Sale Transaction Fee**" based on the sale price and payable in the event of a sale at Rosh Pinah, a "**Restructuring Transaction Fee**" based on the amount of financing proceeds realized, and a monthly "**Engagement Fee**" (together, the "**Sales Agent Compensation**").

18. The proposed Sales Agent Charge is intended to provide the Sales Agent with a reasonable level of assurance that the Sales Agent Compensation will be paid. It is proposed to rank in priority only after the Administration Charge, the D&O Charge, the Intercompany Advances Charge (each as defined in the ARIO), and the KERP Charge.

The Proposed KERP

19. In the weeks since the Applicants obtained CCAA protection, their employees and officers have been working tirelessly to stabilize their business.

20. The circumstances facing the Applicants, including their financial challenges, work demands, and restructuring objectives, have emphasized the importance of the Applicants retaining certain key employees. To this end, the Applicants have developed the KERP in consultation with the Monitor.

21. Considering these circumstances, the Applicants, in consultation with the Monitor, have determined that it is in the Applicants' and their stakeholders' best interests that steps be taken to ensure the continued retention of the KERP Employees and their ongoing commitment to the Applicants' business as they pursue restructuring efforts and, ultimately, the opportunity to maximize value for stakeholders.

22. Given their roles within the Applicants' business operations, the continued employment of the KERP Employees is critical to ensuring the operational integrity at each of the Applicants' current mining sites. Any potential losses of the KERP Employees would have a significant and detrimental effect on the Applicants' business operations.

23. The payments made to the KERP Employees under the KERP will be in the form of lump sum "**Retention Bonuses**". Most of these Retention Bonuses will be paid based on milestones in the SISP and will be paid out as of March 31, 2023.

24. The proposed KERP Charge (in the maximum amount of US \$800,000) is intended to provide the KERP Employees with a reasonable level of assurance that the Retention Bonuses will be paid. It is proposed to rank in priority only after the Administration Charge, the D&O Charge, the Intercompany Advances Charge (each as defined in the ARIO).

Part 3: LEGAL BASIS

The SISP is Necessary and Appropriate

25. Section 36 of the CCAA sets out the factors that this Court must consider on an application to approve a sale of a debtors' assets or business but does not codify the factors that are to be considered on an application to approve a sales process.

26. Canadian courts have, however, regularly granted orders approving sales processes in CCAA proceedings, recognizing that such approvals are consistent with the remedial nature of the CCAA, which confers broad powers to approve sales in relation to a CCAA debtor's business and assets either prior to or in the absence of a plan of arrangement and compromise.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at para. 59

27. In *Walter Energy*, this Court set out the following three factors for determining whether to approve a sales process, which the Applicants submit are the appropriate factors to consider on this application:

- (a) the fairness, transparency, and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the applicant debtors; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

***Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107 at paras. 20-21 [*Walter Energy*]; *PCAS Patient Care Automation Services Inc. (Re)*, 2012 ONSC 2840 at paras. 17-19 [*PCAS Patient Care*]. See also *Nortel Networks Corp. (Re)*, 2009 CanLII 39492; 55 C.B.R. (5th) 229 (Ont. S.C.J) at para. 49.**

28. While the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of a proposed sales process may also be assessed with reference to the non-exhaustive factors set out in section 36 of the CCAA. These factors include whether the process leading to the proposed sale or disposition was reasonable in the circumstances, whether the monitor approved the process leading to the proposed sale or disposition, and the extent to which creditors were consulted.

***PCAS Patient Care* at para. 17; CCAA, s. 36(3).**

29. The SISP, which was developed with the assistance of the Sales Agent, in consultation with the Monitor, and with an opportunity for input from the Applicants' key stakeholders, is a fair and transparent process that will provide the Applicants with an opportunity to attempt to maximize value for their assets in the interest of stakeholders.

30. In particular:

- (a) a sale process with respect to the Applicants and/or their assets at this time is necessary given the Applicants' ongoing financial challenges and liquidity needs;
- (b) the marketing and advertisement contemplated in the SISP will ensure the Applicants' assets are adequately exposed to the market;
- (c) the SISP will allow for the assessment of the legitimacy of the bidders and their ability to ultimately close on a transaction;
- (d) the timelines set out in the SISP will provide a reasonable opportunity for all interested parties to submit competing offers, and the process for determining the Winning Bid (as defined in the SISP), including consultation with the Monitor, is fair and transparent; and
- (e) the consultation rights granted to the Applicants key stakeholders in connection with the conduct of the SISP are reasonable and appropriate.

31. Accordingly, the Applicants respectfully submit that the SISP ought to be approved and that granting the SISP Approval Order is both appropriate and necessary in the circumstances.

32. Any Winning Bid arising from the SISP will be subject to further application to this Court for approval under section 36 of the CCAA.

The Engagement of the Sales Agent is Necessary and Appropriate

33. CCAA courts have recognized that financial advisors can play a vital role in assisting existing management and bring experience and expertise to the restructuring, including during a sales process.

See, for example, *Walter Energy* at paras. 25-48; *Canwest Publishing Inc.*, 2010 ONSC 222 at paras. 52-55 [*Canwest*]. See also *Danier Leather*, 2016 ONSC 1044

34. As stated herein, the Applicants require a sales agent with requisite expertise and knowledge as they implement the SISP, as it would be almost impossible for a company of the Applicants' size and operating complex and unique assets located in multiple jurisdictions to implement a successful sales process without retaining a sales advisor.

35. This Court has jurisdiction to approve the Sales Agent Charge to provide the Sales Agent with a reasonable level of assurance that the Sales Agent will be paid the Sales Agent Compensation being approved by this Court pursuant to section 11.52(1).

***US Steel Canada Inc. (Re)* 2014 ONSC 6145 at para. 22.**

36. In *Canwest*, Justice Pepall set out several non-exhaustive factors to consider when granting a charge under 11.52(1):

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

***Canwest* at para. 54.**

37. The Applicants submit that the Sales Agent Charge is necessary and appropriate having regard to, among other things, the size and complexity of the Applicants' business and the proposed role of NBF in the SISP. There would not be any unwarranted duplication of role arising from the appointment of the Sales Agent.

The KERP and KERP Charge Are Necessary and Appropriate

38. Courts regularly approve key employee restructuring plans in furtherance of a debtor company's restructuring on the grounds that the possibility that key employees will seek alternative employment due to the uncertainty associated with a CCAA restructuring is detrimental to the debtor company and its ability to restructure.

Walter Energy at paras. 49-61; 1057863 B.C. Ltd. (Re), 2020 BCSC 1359 at paras. 99-112 [Northern Pulp]; Mountain Equipment Co-Operative (Re), 2020 BCSC 1586 at paras. 62-71 [MEC].

39. This court's authority to approve the KERP and the KERP charge is found in s. 11 of the CCAA to grant relief it deems "appropriate".

MEC at para. 66

40. Factors to be considered by the Court in approving a KERP will vary from case to case, but previous considerations have included the following:

- (a) Is this employee important to the restructuring process?
- (b) Does the employee have specialized knowledge that cannot be easily replaced?
- (c) Will the employee consider other employment options if the KERP is not approved?
- (d) Was the KERP developed through a consultative process involving the Monitor and other professionals?; and
- (e) Does the Monitor support the KERP and a charge?

Walter Energy at para. 59, citing Grant Forest Products (2009), 57 C.B.R. (5th) 128 (Ont. S.C.J.).

41. Three criteria underlie the consideration of the appropriateness of employee retention programs in insolvency proceedings: (a) arm's length safeguards, (b) necessity and (c) reasonableness of design.

Northern Pulp at para. 105, citing Aralez Pharmaceuticals Inc. (Re), 2018 ONSC 6980 at para. 30.

42. In the present case, the evidence supports each of the factors and criteria for approving a KERP. The KERP Employees are required to run and administer the Applicants' complex and multi-jurisdictional business and the SISF. They have historical knowledge of, and familiarity with, the Applicants' business and operations, and significant experience and expertise. Due to their experience and expertise, the KERP Employees will likely have other, more certain employment opportunities. The KERP was developed in consultation with the Monitor.

43. The factors that support the approval of the KERP equally support the grating of the KERP Charge to provide the KERP Employees with a reasonable level of assurance that the Retention Bonuses will be paid.

44. In the above circumstances, the Applicants believe that the KERP and the KERP Charge are necessary and appropriate in the circumstances.

Confidential Affidavits Should Be Sealed

45. In the leading case of *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada held that a sealing order may be granted where (1) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and (2) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible court proceedings.

***Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53 [Sierra Club].**

46. The SCC had occasion to recently reaffirm its decision in *Sierra Club* in *Sherman Estates v. Donovan*, 2021 SCC 25. In that decision, the Court confirmed that the “test laid out in *Sierra Club* continues to be an appropriate guide for judicial discretion” and that the structure provided by *Sierra Club* “remains appropriate and should be affirmed.”

***Sherman Estates v. Donovan*, 2021 SCC 25 at para. 43 [Sherman Estates].**

47. The Court in *Sherman Estates* did, however, break down the two-part test from *Sierra Club* into three parts to help clarify the prerequisites “without altering its essence”. As clarified, the applicant must establish that (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sherman Estates* at para. 38.**

48. Both before and after *Sherman Estates*, Canadian courts continue to grant sealing orders in CCAA proceedings including with respect to key employee retention plans such as the KERP.

***Walter Energy* at para. 51; *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at para. 24; *Just Energy (Re)*, Amended and Restated Initial Order dated March 9, 2021**

49. In the present case, a sealing order with respect to the Confidential Ball Affidavit is necessary and appropriate as its disclosure could be prejudicial to the Applicants, the KERP Employees, and others. Among other issues, disclosure of the information the Confidential Ball Affidavit could (a) create morale and other issues as between employees who are either not subject to the KERP or are receiving different entitlements under the KERP; (b) allow the

Applicants' business competitors and others to attempt to induce the KERP Employees to depart from their employment for more lucrative opportunities; and (c) make it more difficult for the Applicants to negotiate employment terms for replacement employees if required.

50. These issues and disruptions would be prejudicial to the Applicants at a time that they are most in need of stability and continuity. Additionally, salary and compensation levels for employees is a particularly personal and private matter to employees. As the information found in the Confidential Ball Affidavit is not of a nature that would normally be made public, prejudice (if any) arising from it being sealed from public view would be outweighed by its disclosure.

51. The Confidential Creaney Affidavit (to be filed) similarly contains highly sensitive information with respect to options that the Applicants are considering for the Perkoa Mine as well as an update with respect to the ongoing detention of two individuals in Burkina Faso.

52. Disclosure of the information contained in the Confidential Creaney Affidavit would be prejudicial to the Applicants' commercial interests, particularly their ability to properly, and safely, take steps with respect to that asset. More importantly, however, disclosure of this information could also have implications for Trevali's employees or contractors located in Burkina Faso. The Applicants therefore believe that a sealing order is necessary and appropriate in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

53. Affidavit #1 of Brendan Creaney, made August 19, 2022;
54. Affidavit #2 of Brendan Creaney, made September 11, 2022;
55. Confidential Affidavit of Brendan Creaney, to be filed;
56. Affidavit #1 of Russell Ball, made September 11, 2022;
57. Confidential Affidavit #2 of Russell Ball, made September 11, 2022;
58. Second Report of the Monitor, to be filed; and
59. Such further and other material as counsel for the Petitioners may advise.

The applicants estimate that the application will take one day.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: September 11, 2022

For: Peter L. Rubin

Signature of Peter L. Rubin
Lawyer for Trevali Mining Corporation and
Trevali Mining (New Brunswick) Ltd.

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To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE “A” TO NOTICE OF APPLICATION

#No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

O R D E R MADE AFTER APPLICATION
(SISP AND SALES AGENT APPROVAL)

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) September 14, 2022
)

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 14th day of September, 2022 (the “**Order Date**”); AND ON HEARING Peter L. Rubin and Claire Hildebrand, counsel for the Petitioners, and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including Affidavit #2 of Brendan Creaney, affirmed September 11, 2022 (the “**Second Creaney Affidavit**”), Affidavit # [] of Brendan Creaney made September [], 2022, and the Second Report of FTI Consulting Inc. (in its capacity as court-appointed monitor of the Petitioners, the “**Monitor**”) dated September [], 2022; AND pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “**CCAA**”),

the British Columbia *Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The Sales and Investment Solicitation Process attached as **Schedule “B”** to this Order (the “**SISP**”) is hereby approved. Capitalized terms not defined herein shall have the meanings given to them in the SISP.
2. The Petitioners, the Monitor, National Bank Financial Inc. (the “**Sales Agent**”) and their respective advisors (if applicable) are hereby authorized and directed to carry out the SISP and to take such steps and execute such documentation as may be necessary or incidental to the SISP.
3. The agreement dated as of September [REDACTED], 2022 between the Sales Agent and Trevali Mining Corporation attached as **Exhibit “A”** to the Affidavit # [REDACTED] of Brendan Creaney made September [REDACTED], 2022 (the “**Sales Agent Agreement**”) is hereby approved, including, without limitation, the payment of the fees set out therein (collectively, the “**Sales Agent Compensation**”) and the Petitioners are authorized to continue the engagement of the Sales Agent on the terms set out in the Sales Agent Agreement.
4. The Sales Agent shall be entitled to the benefit of and is hereby granted a charge (the “**Sales Agent Charge**”) on the Property (as defined in the Amended and Restated Initial Order dated August 29, 2022 (the “**ARIO**”)) as security for the Sales Agent Compensation.
5. The Sales Agent Charge shall rank in priority only subordinate to the Administration Charge, D&O Charge, the Intercompany Advances Charge (each as defined in the ARIO) and the KERP Charge (as defined in the First Affidavit of Russell Ball made September 11, 2022), and shall have, *mutatis mutandis*, the same protections and restrictions under the ARIO as the Administration Charge, the D&O Charge, and the Intercompany Advances Charge, including those set out in paragraphs 35-39 of the ARIO.
6. Each of the Petitioners, the Monitor and the Sales Agent and their respective affiliates, partners, directors, employees, advisors, agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any

person in connection with or as a result of the SISP or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP (as determined by this Court).

7. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c.63, and any regulations promulgated under the authority of either Act or any equivalent enactments of the Province of New Brunswick, the Petitioners, the Sales Agent and the Monitor may disclose personal information of identifiable individuals to Potential Bidders and their advisors in connection with the SISP, but only to the extent desirable or required to carry out the SISP. Each Potential Bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Petitioners and the Property, and if it does not complete such a transaction, shall return all such information to the Petitioners, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Petitioners, and shall return all other personal information to the Petitioners, or ensure that all other personal information is destroyed.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Peter L. Rubin
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A" to SISP Order

COUNSEL NAME	PARTY REPRESENTED
John Sandrelli Valerie Cross	FTI Consulting Canada Inc., the proposed Monitor
Kibben Jackson	Bank of Nova Scotia, in its capacity as RCF Administrative Agent
Lance Williams	Glencore Canada Corporation, Glencore International AG and Glencore AG
Eli Karp Sage Nematollahi	Ad Hoc Committee of Trevali Mining Corporation Shareholders
Mary I.A. Buttery, Q.C.	Directors of Trevali Mining Corporation
Denis Thériault	Province of New Brunswick

Schedule “B” to SISP Order

TREVALI MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD. CCAA SALES AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

1. Trevali Mining Corporation and Trevali Mining (New Brunswick) Ltd. (collectively, the “**Debtors**”) obtained protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to an Order issued by the British Columbia Supreme Court (the “**Court**”) on August 19, 2022, as amended and extended by an Amended and Restated Initial Order dated August 29, 2022 (the “**ARIO**”). FTI Consulting Canada Inc. (“**FTI**”) was appointed as monitor (the “**Monitor**”) in respect of all the assets, undertakings, and properties (collectively, the “**Property**”) of the Debtors. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the ARIO.
2. On September 14, 2022, the Court issued an Order (the “**SISP Approval Order**”) which, among other things, approved this Sales and Investment Solicitation Process (the “**SISP**”) involving the Debtors and the Property, including without limitation the interests of the Debtors in the entities which directly or indirectly own and operate the Rosh Pinah Mine and Caribou Mine, being mining properties located in Namibia and Canada, respectively. The objective of the SISP is to maximize the recovery to the lenders and other creditors of the Debtors. The Property available for sale in the SISP does not include assets comprising the Rosh Pinah Mine or the Debtors’ interest in the entities which directly or indirectly own and operate the Perkoa Mine.
3. This SISP describes the way the Debtors, on the terms set out herein, will advance this SISP and how interested parties may gain access to due diligence materials concerning the Debtors and the Property, how bids involving the Property or Debtors, or any part or parts thereof, will be submitted and dealt with, and how required Court approval will be sought in respect of any transaction or transactions involving the Property or Debtors.
4. The timelines described later in this SISP are different in respect of bids for the Debtors’ interests in the Rosh Pinah Mine as compared to the Caribou Mine. Any party wishing to submit a bid in respect of both mines should submit each LOI (as defined herein) by the applicable LOI deadline and indicate that their bid with respect to the Caribou Mine is conditional on their anticipated bid with respect to the Rosh Pinah Mine being a Winning Bid (as defined below).
5. The terms of this SISP, including the requirements, criteria and timelines set out herein may be amended, extended, or waived by the Debtors with the consent of the Monitor or by further order of this Court. Prior to providing its consent, the Monitor shall consult with the RCF Administrative Agent, in its capacity as the Debtors’ first lien lender, and shall, subject to receipt of the Glencore Confirmation (as defined below) and provided the Monitor deems it appropriate and reasonable, consult with Glencore Canada Corporation, in its capacity as the Debtors’ second lien lender.
6. The Debtors have selected National Bank Financial Inc. (the “**Sales Agent**”) to assist the Debtors in carrying out this SISP.

“AS IS, WHERE IS” BASIS

7. Any transaction involving the Property or the Debtors will be subject only to such representations, warranties, covenants, or indemnities as are expressly included in a Final Agreement (as defined herein), but will otherwise be on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Debtors, or any of their agents, estates, advisors, professionals or otherwise, and in the event of a sale, all of the right, title and interest of the Debtors in and to the Property to be acquired will be, subject to the Court granting approval and any other required orders in the form contemplated by the relevant transaction, sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests therein and thereon, except those assumed pursuant to a Final Agreement.

TIMELINE

8. The following table sets out the target dates under the SISP in respect of the Debtors’ interest in the entities which directly or indirectly own and operate the **Rosh Pinah Mine**:

PHASES	TARGET DATES
SISP to commence	September 14, 2022
LOI Deadline	October 21, 2022
Final Bid Process commences	October 24, 2022
Final Bid Deadline	November 21, 2022
Final Agreement Deadline	December 9, 2022
Outside Closing Date	December 30, 2022

9. The following table sets out the target dates under the SISP in respect of the **Caribou Mine**:

PHASES	TARGET DATES
SISP to commence	September 14, 2022
LOI Deadline	October 7, 2022
Final Bid Process commences	October 11, 2022
Final Bid Deadline	November 4, 2022
Final Agreement Deadline	November 14, 2022

Outside Closing Date	November 21, 2022
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PHASE 1 OF THE SISP PROCESS

A. Initial Solicitation of Interest

10. The Debtors and Sales Agent, in consultation with the Monitor, may, but are not required to, cause a notice regarding this SISP to be published in any publication that the Debtors or Sales Agent determine notice of this SISP should be published in.
11. The Debtors and Sales Agent, in consultation with the Monitor, will prepare a list of potential bidders (the “**Known Potential Bidders**”) who may have interest in a transaction involving the Property or the Debtors, including without limitation the indirect interests of the Debtors in the Rosh Pinah Mine and the Caribou Mine. Such list will include parties who, in the Debtor’s and Sales Agent’s reasonable judgment, may be interested in acquiring an interest in the Property or the Debtors, or any part or parts thereof, whether pursuant to an asset purchase transaction (an “**Asset Bid**”) or some other investment, restructuring, recapitalization or other form of reorganization of the business, property or affairs of the Debtors, including but not limited to the debt, share, or capital structure of the Debtors and their direct and indirect subsidiaries (a “**Restructuring Bid**”).
12. The Debtors and Sales Agent will prepare an initial marketing or offering summary (a “**Teaser Letter**”) and distribute it to the Known Potential Bidders together with any additional marketing materials the Debtors and Sales Agent consider appropriate, as well as a draft form of confidentiality agreement (the “**Confidentiality Agreement**”).
13. Any Known Potential Bidder or other person wishing to submit an Asset Bid and/or a Restructuring Bid who (a) executes a Confidentiality Agreement in form and substance satisfactory to the Debtors, (b) in the judgment of the Debtors and Sales Agent, in consultation with the Monitor, appears to have a bona fide interest in submitting an Asset Bid and/or Restructuring Bid, and (c) in the judgment of the Debtors and Sales Agent, in consultation with the Monitor, appears to have the financial capabilities and the technical, managerial, and operational expertise and capabilities to make a viable Asset Bid or Restructuring Bid, shall be deemed to be a potential bidder (each such person so deemed, a “**Potential Bidder**”).

B. Initial Due Diligence

14. The Debtors and Sales Agent may prepare such marketing or other materials in addition to the Teaser Letter as they deem appropriate describing the opportunity to make an Asset Bid or a Restructuring Bid for distribution to Known Potential Bidders and/or Potential Bidders.
15. The Debtors and Sales Agent shall provide Potential Bidders with access to an electronic data room that will contain information in the possession or control of the

Debtors that in their reasonable business judgment will allow Potential Bidders to evaluate their interest in submitting an Asset Bid or a Restructuring Bid.

C. Qualified LOI Process

16. Any Potential Bidder who wishes to submit an Asset Bid or a Restructuring Bid must deliver a written, non-binding letter of intent in respect of the Property or the Debtors (each, an “LOI”) to the Sales Agent and to the Monitor in the manner and at the addresses specified in **Schedule “A”** so as to be received by the Sales Agent and the Monitor not later than 5:00 p.m. (Pacific time) on **October 7, 2022** in respect of the Caribou Mine and **October 21, 2022** in respect of the Rosh Pinah Mine (each, an “LOI **Deadline**”). An LOI shall be a qualified LOI (each, a “**Qualified LOI**”), provided that it contains:
 - (a) an acknowledgment of receipt of a copy of this SISP, the SISP Approval Order, and agreement to accept and be bound by the provisions contained therein;
 - (b) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, and full disclosure of the direct and indirect owners of the Potential Bidder and their principals (without needing to disclose non-controlling interests, in the case of public companies only);
 - (c) an indication of whether the Potential Bidder wishes to tender (i) an Asset Bid; (ii) a Restructuring Bid; or (iii) both;
 - (d) a specific indication of the anticipated sources of capital for such Potential Bidder and information regarding the Potential Bidder’s financial, managerial, operational, technical, and other capabilities to consummate an Asset Bid or a Restructuring Bid, as applicable, and such additional information as may be requested by the Debtors, the Sales Agent, or the Monitor;
 - (e) in the case of an Asset Bid, it identifies:
 - (i) the form of consideration for the proposed sale including the purchase price or price range in United States dollars and details of any liabilities to be assumed;
 - (ii) the Property included as part of the Asset Bid, any of the Property expected to be excluded, and/or any additional assets desired to be included in the transaction;
 - (iii) the structure and financing of the transaction including, but not limited to, the sources of financing to fund the acquisition, preliminary evidence of the availability of such financing or such other form of financial disclosure and credit-quality support or enhancement that will allow the Debtors, the Sales Agent, and the Monitor to make a reasonable business or professional judgment as to the Potential Bidder’s financial or other capabilities to consummate the transaction and to perform all obligations to be assumed in such transaction and the steps necessary

- and associated timing to obtain financing and any related contingencies, as applicable;
- (iv) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (v) additional due diligence required or desired to be conducted by the Potential Bidder, if any;
 - (vi) any conditions to closing that the Potential Bidder may wish to impose; and
 - (vii) any other terms or conditions of the Asset Bid which the Potential Bidder believes are material to the transaction;
- (f) in the case of a Restructuring Bid, it identifies:
- (i) an outline of the type of transaction or structure of the bid including with respect to any proposed restructuring, recapitalization, or other form of reorganization of the business, property, or affairs of the Debtors, including but not limited to the debt, share, or capital structure of the Debtors, as applicable;
 - (ii) the aggregate amount of the equity and debt investment, including liabilities to be assumed by the Potential Bidder, to be made in the Debtors, if applicable;
 - (iii) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights, or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);
 - (iv) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of the Debtors;
 - (v) the financing of the transaction including, but not limited to, the sources of financing to fund the acquisition, preliminary evidence of the availability of such financing or such other form of financial disclosure and credit-quality support or enhancement that will allow the Debtors, the Sales Agent, and the Monitor to make a reasonable business or professional judgment as to the Potential Bidder's financial or other capabilities to consummate the transaction and to perform all obligations to be assumed in such transaction and the steps necessary and associated timing to obtain financing and any related contingencies, as applicable;

- (vi) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (vii) anticipated tax planning, if any;
 - (viii) additional due diligence required or desired to be conducted by the Potential Bidder, if any;
 - (ix) any conditions to closing that the Potential Bidder may wish to impose; and
 - (x) any other terms or conditions of the Restructuring Bid which the Potential Bidder believes are material to the transaction; and
- (g) such other information reasonably requested by the Debtor, Sales Agent, or the Monitor.
17. The Debtors, Sales Agent and Monitor shall retain full discretion and authority to discuss any LOIs received, and their terms, with the applicable Potential Bidders.
18. Following the LOI Deadline, the Debtors, and the Sales Agent, in consultation with the Monitor, will assess the Qualified LOIs. If it is determined by the Debtors and the Sales Agent, in consultation and with the approval of the Monitor, that a Potential Bidder that has submitted a Qualified LOI: (a) has a bona fide interest in consummating an Asset Bid or a Restructuring Bid, as applicable; and (b) has the financial, managerial, operational, technical, and other capabilities to consummate an Asset Bid or a Restructuring Bid, as applicable, then such Potential Bidder will be deemed a “**Qualified Bidder**”, provided that the Debtors and the Sales Agent may, in their reasonable business judgment and after consultation and with the approval of the Monitor (following consultation with the RCF Administrative Agent and, subject to receipt of the Glencore Confirmation, Glencore Canada Corporation), limit the number of Qualified Bidders (and thereby eliminate some Potential Bidders who have submitted Qualified LOIs from this SISP) taking into account the factors identified in paragraph 29 of this SISP. For greater certainty, no Potential Bidder who has submitted a Qualified LOI by the LOI Deadline will be deemed not to be a Qualified Bidder without the approval of the Monitor.
19. Subject to the immediately following paragraph, the Debtors, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified above and deem non-compliant Potential Bidders to be Qualified Bidders.
20. Notwithstanding anything to the contrary in this SISP, the Debtors and the Monitor shall not, without the prior consent of the RCF Administrative Agent, determine that a Potential Bidder is a Qualified Bidder if the LOI submitted by such Potential Bidder is not reasonably expected to result in the payment in full of the amounts owing to the RCF Lenders on closing.

PHASE 2 OF THE SISP PROCESS

A. Due Diligence

21. The Debtors and the Sales Agent, in consultation with the Monitor, will in their reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to additional due diligence materials and information relating to the Property and the Debtors as they or the Monitor deem appropriate. Due diligence access may include management presentations, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Debtors and the Sales Agent, in their reasonable business judgment and after consulting with the Monitor, may agree. For avoidance of doubt, and without limiting the terms of applicable Confidentiality Agreements, selected due diligence materials may be withheld from certain Qualified Bidders if the Debtors and the Sales Agent, in consultation and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information.
22. All Qualified Bidders will be provided with a form of draft asset purchase agreement (the "**Draft APA**") that will serve as the basis for the submission of a Final Bid (as defined below) that is an Asset Bid.

B. Final Bid Process

23. Any Qualified Bidder may submit an Asset Bid or a Restructuring Bid (each, a "**Final Bid**") to the Sales Agent and to the Monitor at the address specified in **Schedule "A"** hereto on or before 5:00 pm (Pacific Time) on **November 4, 2022** in respect of the Caribou Mine and **November 21, 2022** in respect of the Debtors' interest in the entities which directly or indirectly own and operate the Rosh Pinah Mine (each, a "**Final Bid Deadline**").
24. A Final Bid submitted as an Asset Bid shall be a "**Qualified Asset Bid**" if:
 - (a) it includes a duly authorized and executed purchase and sale agreement specifying all consideration payable, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto, together with a blackline to the Draft APA provided to all Qualified Bidders;
 - (b) it includes a letter stating that the Asset Bid is irrevocable until the earlier of (i) the approval by the Court, and (ii) thirty (30) days following the Final Bid Deadline; provided, however, that if such Asset Bid is selected as a Winning Bid (as defined below) or a Backup Bid (as defined below), it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
 - (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;

- (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction that will allow the Debtors and the Sales Agent and the Monitor to make a determination as to the Qualified Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Qualified Asset Bid;
 - (e) it includes an acknowledgement and representation that the bidder (i) has had an opportunity to conduct any and all required due diligence prior to making its Asset Bid; (ii) has relied solely on its own independent review, investigation and inspection of any documents, the assets to be acquired and the liabilities to be assumed; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied, except as expressly stated in the purchase and sale agreement; and (iv) unless prior written consent of the Monitor has been obtained, has not coordinated its Final Bid or any aspect of its participation in this SISP with any Potential Bidder, Qualified Bidder, or any party with an existing contractual relationship with the Debtors or their affiliates, has kept and will continue to keep its Final Bid confidential, and has not entered into any agreement or arrangement with any Potential Bidder, Qualified Bidder, or any party with an existing contractual relationship with the Debtors or their affiliates which has affected or may, directly or indirectly, affect the bidder's Final Bid or the Final Bid of any other bidder and/or the SISP process generally.
 - (f) it fully discloses the identity of each person that is bidding or otherwise that will be sponsoring or participating in the Asset Bid, including the identification of the bidder's direct and indirect owners and their principals (without needing to disclose non-controlling interests, in the case of public companies only), and the complete terms of any such participation;
 - (g) it provides for closing of the proposed transaction by no later than **November 21, 2022** in respect of the Caribou Mine and **December 30, 2022** in respect of the Rosh Pinah Mine (each, a "**Outside Closing Date**");
 - (h) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to five percent (5%) of the total value of all cash and non-cash consideration to be paid in respect of the Asset Bid, to be held and dealt with in accordance with this SISP;
 - (i) it contains other information reasonably requested by the Debtors or Sales Agent or the Monitor; and
 - (j) it is received by no later than the applicable Final Bid Deadline.
25. A Final Bid submitted as a Restructuring Bid shall be a "**Qualified Restructuring Bid**" if:
- (a) it includes definitive documentation, duly authorized, and executed by the Qualified Bidder, setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and debt investment, assumption of

debt, if any, and details regarding the proposed equity and debt structure of the Debtors following completion of the proposed transaction;

- (b) it includes a letter stating that the Restructuring Bid is irrevocable until the earlier of (i) the approval by the Court, and (ii) thirty (30) days following the applicable Final Bid Deadline; provided, however, that if such Restructuring Bid is selected as a Winning Bid or a Backup Bid, it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
- (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
- (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction that will allow the Debtors and the Sales Agent and the Monitor to make a determination as to the Qualified Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Restructuring Bid;
- (e) it includes an acknowledgement and representation that the bidder (i) has had an opportunity to conduct any and all required due diligence prior to making its Restructuring Bid; (ii) has relied solely on its own independent review, investigation and inspection of any documents, the assets to be acquired and the liabilities to be assumed; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied, except as expressly stated in the definitive documentation; and (iv) unless prior written consent of the Monitor has been obtained, has not coordinated its Final Bid or any aspect of its participation in this SISP with any Potential Bidder, Qualified Bidder, or any party with an existing contractual relationship with the Debtors or their affiliates, has kept and will continue to keep its Final Bid confidential, and has not entered into any agreement or arrangement with any Potential Bidder, Qualified Bidder, or any party with an existing contractual relationship with the Debtors or their affiliates which has affected or may, directly or indirectly, affect the bidder's Final Bid or the Final Bid of any other bidder and/or the SISP process generally.
- (f) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Restructuring Bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals (without needing to disclose non-controlling interests, in the case of public companies only), and the complete terms of any such participation;
- (g) it provides for closing of the proposed transaction by no later than the applicable Outside Closing Date (being **November 21, 2022** in respect of the Caribou Mine and **December 30, 2022** in respect of Rosh Pinah Mine);
- (h) it is accompanied by a refundable Deposit in the form of a wire transfer (payable to a trust account specified by the Monitor) in an amount equal to five percent (5%) of the total value of all cash and non-cash consideration to be paid or provided

pursuant to the Restructuring Bid, to be held and dealt with in accordance with this SISP;

- (i) it contains other information reasonably requested by the Debtors or Sales Agent or the Monitor; and
 - (j) it is received by no later than the applicable Final Bid Deadline.
26. All Qualified Asset Bids and Qualified Restructuring Bids shall constitute “**Qualified Final Bids**”.
27. The Debtors, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified above and deem non-compliant Final Bids to be Qualified Final Bids.

C. Selection of Winning Bid

28. In reviewing the Qualified Final Bids and before determining a Winning Bid or Backup Bid (both as defined below), the Debtors, Sales Agent and Monitor shall retain full discretion and authority to discuss the bids received, and their terms, with the applicable Qualified Bidders.
29. The Debtors shall review all Qualified Final Bids, in consultation with the Monitor, to determine the highest or otherwise best Asset Bid or Restructuring Bid. Evaluation criteria will include, but are not limited to, matters such as: (a) the purchase price or net value being provided by such bid; (b) the conditionality of any bid; (c) the firm, irrevocable commitment for any required financing; (d) the timeline to closing of any bid; (e) the identity, circumstances and ability of the proponents of the Qualified Final Bids to successfully complete the transaction; (f) the costs associated with the bid and its consummation; and (g) the terms of the proposed transaction documents.
30. The Debtors shall, in consultation with the Monitor, the RCF Administrative Agent, and, subject to receipt of the Glencore Confirmation (as defined below), Glencore Canada Corporation, identify the highest or otherwise best Qualified Final Bid received for the Property, or part or parts thereof, as applicable (each, a “**Winning Bid**”) and the next highest or otherwise best Qualified Final Bid received for the Property, or part or parts thereof, as applicable (each, a “**Backup Bid**”). A person or persons who make a Winning Bid shall be a “**Successful Bidder**” and a person or person who makes a Backup Bid shall be a “**Backup Bidder**”.
31. The Debtors or Sales Agent, after consulting with the Monitor, shall notify a Successful Bidder, if any, a Backup Bidder, if any, and any other bidders of their respective status as soon as a reasonably practicable in the circumstances.
32. The Debtors or Sales Agent will notify a Backup Bidder, if any, that their bid is a successful Backup Bid and the Backup Bid shall remain open and capable of acceptance by the Debtors until the earlier of (i) the consummation of the transaction contemplated by a Winning Bid; and (ii) the date that is 30 days after the applicable Final Agreement Deadline, as defined below, (the “**Backup Bid Release Date**”). For greater

certainty, the Monitor shall be entitled to continue to hold the Deposit in respect of a Backup Bid until the Backup Bid Release Date.

33. The Debtors may, but shall have no obligation to, enter into an agreement or agreements with a Successful Bidder (a "**Final Agreement**"). Any Final Agreement entered into with a Successful Bidder shall be executed on or before **November 14, 2022**, if the Final Agreement is in respect of the Caribou Mine only, or **December 9, 2022** (each, a "**Final Agreement Deadline**").
34. The Debtors have the right not to accept any Qualified Final Bid. The Debtors further have the right to deal with one or more Qualified Bidders to the exclusion of other Persons, to accept a Qualified Final Bid or Qualified Final Bids for some or all of the Property or in relation to some or all of the Debtors, to accept multiple Qualified Final Bids and enter into multiple Final Agreements.
35. Notwithstanding anything to the contrary in this SISP, the Debtors and the Monitor shall not, without the prior consent of the RCF Administrative Agent, identify a Qualified Final Bid as a Winning Bid or a Backup Bid if such Qualified Final Bid would not result in the payment in full of the amounts owing to the RCF Lenders on closing.

COURT APPROVAL ORDER

36. If the Debtors enter into a Final Agreement in respect of a Winning Bid, a Backup Bid, or any other bid, the Debtors shall apply for an order from the Court approving the transaction contemplated by that bid and any necessary or appropriately related relief required to consummate the transaction contemplated by that bid. Court approval shall be a condition precedent to the consummation of any transaction or transactions contemplated by a Final Agreement. The Debtors may also (i) concurrently obtain relief approving the transaction contemplated by a Backup Bid and any necessary related relief required to consummate the transaction contemplated by a Backup Bid and (ii) if deemed necessary or advisable, seek approval of or other relief in respect of the Winning Bid and/or Backup Bid from the courts or governmental bodies in other relevant jurisdictions.

DEPOSITS

37. All Deposits paid pursuant to this SISP shall be held in trust by the Monitor in a non-interest-bearing account. The Monitor shall hold Deposits paid by each Winning Bidder and Backup Bidder in accordance with the terms of the Final Agreement with the Successful Bidder and the Backup Bidder, or as may be ordered by the Court.
38. If a Deposit is paid pursuant to this SISP, and the Debtors elect not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the person that paid such deposit, the Monitor shall return the Deposit to that Person.
39. If (a) a Successful Bidder or Backup Bidder breaches any of its obligations under its Qualified Final Bid, any Final Agreement or the terms of this SISP (including the Confidentiality Agreement), or (b) a Qualified Bidder breaches its obligations under the terms of this SISP (including the Confidentiality Agreement) or under the terms of its Qualified Final Bid if required by the Debtors to complete such transaction contemplated by its Qualified Final Bid, then, in each case, such Qualified Bidder's Deposit will be forfeited as liquidated damages and not as a penalty.

SUPERVISION AND CONDUCT OF THE SISP

40. The Debtors, in consultation with the Monitor, may engage such other consultants, agents or experts and such other persons from time to time as may be reasonably necessary to assist the Debtors in carrying out this SISP.
41. The Monitor will oversee, in all respects, the conduct of the SISP by the Debtors and the Sales Agent and, without limitation to that supervisory role, the Monitor:
 - (a) will consult with the RCF Administrative Agent throughout the SISP and provide the RCF Administrative Agent, on a confidential basis, with full access to copies of all bidder and sales information, including but not limited to bidder solicitation materials, LOIs, Final Bids and any definitive agreements and drafts in connection therewith, together with regular updates from the Debtors during the SISP; provided, however, that if any of the RCF Lenders is participating in the assessment, preparation, or submission of any bid pursuant to this SISP, whether by providing financing in connection with a bid by a prospective bidder or otherwise, then such RCF Lender shall advise the RCF Administrative Agent who shall advise the Monitor and Debtors of such RCF Lender's participation in this SISP, and the Monitor shall be able to restrict its consultation with the RCF Administrative Agent required pursuant to this paragraph in such manner as the Monitor in its professional judgment considers to be reasonable to preserve the integrity of this SISP until such time as the RCF Administrative Agent provides the Monitor with assurances, acceptable to the Monitor, that measures have been taken by the RCF Administrative Agent to ensure that the consultation required hereunder would not in the professional judgment of the Monitor be likely to negatively impact the integrity of the SISP; and
 - (b) may, subject to receipt by the Monitor of satisfactory written confirmation that they and their affiliates will not participate, directly or indirectly, as a bidder in the SISP (the "**Glencore Confirmation**") and if in its professional judgment such consultation is appropriate and would not be likely to negatively impact the integrity of this SISP, consult with Glencore Canada Corporation, the Debtors' second ranking secured lender, and its affiliates, Glencore International AG, and Glencore AG (collectively, "**Glencore**"), with respect to the status and conduct of this SISP as the Monitor considers appropriate.
42. To the extent that any Potential Bidders wish to engage, discuss or communicate with any party with an existing contractual relationship with the Debtors or their affiliates in relation to this SISP or the business or assets of the Debtors and their affiliates, such Potential Bidder may only do so after advising the Monitor and obtaining the Monitor's consent. In considering any specific request, the Monitor shall impose such restrictions, if any, or participation by the Monitor, as the Monitor deems appropriate.
43. The Debtors and Sales Agent shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations under this SISP and provide the Monitor with the assistance, information and documentation that is reasonably necessary to enable the Monitor to adequately carry out the Monitor's functions herein.
44. The Debtors, the Sales Agent, the Monitor and any of their agents, estates, advisors, and professionals are not responsible for, and will have no liability with respect to, any information provided to or obtained by any Potential Bidder in connection with the Debtors or their Property.

45. The Debtors, Sales Agent, Monitor, RCF Administrative Agent, and Glencore shall keep confidential the names, details, and all other non-public information related to Potential Bidders, LOIs, Qualified Bidders, Final Bids, Qualified Final Bids, the Successful Bidder, the Winning Bid, the Backup Bidder, the Backup Bid, and the Final Agreement, and any other information provided to them and marked as confidential, and shall only use such information to conduct this SISP, or as is reasonably necessary to seek directions from or make submissions to the Court, or to obtain, oppose, or otherwise make submissions regarding the approval of any Winning Bid or Back Up Bid (and, in the case of the RCF Administrative Agent, and subject to paragraph 41(a), to obtain instructions from the RCF Lenders), all while taking such steps as may be reasonably necessary so as to preserve the confidentiality of such information and protect the integrity of the SISP.

TERMINATION OF THE SISP

46. If, with respect to either the Caribou Mine or the Debtors' interest in the entities which directly or indirectly own and operate Rosh Pinah Mine,
- (a) there are no Qualified LOI(s) by the applicable LOI Deadline, or no LOIs are deemed commercially reasonable; or
 - (b) there are no Final Bid(s) by the applicable Final Bid Deadline; or
 - (c) there is no Qualified Asset Bid or Qualified Restructuring Bid by the applicable Final Bid Deadline, or the Debtors determine that no Qualified Final Bids should be accepted; or
 - (d) there is no Winning Bid; or
 - (e) a Final Agreement is not executed by the applicable Final Agreement Deadline; or
 - (f) a transaction contemplated by the Final Agreement does not close by the applicable Outside Closing Date; or
 - (g) the Debtors, in consultation with the Sales Agent, and with the approval of the Monitor, decide to terminate this SISP,

then this SISP shall, subject to any amendments, extensions or waivers granted in accordance with this SISP, terminate with respect to the Caribou Mine or Debtors' interest in the entities which directly or indirectly own and operate Rosh Pinah Mine, as applicable, but otherwise continue.

SCHEDULE "A"

Addresses for Deliveries

Any delivery made to the Sales Agent pursuant to this SISP shall be made to:

National Bank Financial Inc.
475 Howe Street, Suite 3000
Vancouver, BC V6C 2B3

Attention: Morten Eisenhardt, Managing Director, Global Investment Banking
Email: morten.eisenhardt@nbc.ca

Attention : Andrew Armstrong, Managing Director, Mergers & Acquisitions
Email : andrew.armstrong@nbc.ca

Any delivery made to the Monitor pursuant to this SISP shall be made to:

FTI Consulting Canada Inc.
Suite 1450, 701 West Georgia Street
Vancouver, BC V7Y 1B6

Attention: Tom Powell
Email: tom.powell@fticonsulting.com

Deliveries pursuant to this SISP by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SISP shall be deemed to be received when delivered to the address as identified above.

SCHEDULE “B” TO NOTICE OF APPLICATION

No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

O R D E R MADE AFTER APPLICATION

(KEY EMPLOYEE RETENTION PLAN APPROVAL)

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) September 14, 2022
)

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 14th day of September, 2022 (the “**Order Date**”); AND ON HEARING Peter L. Rubin and Claire Hildebrand, counsel for the Petitioners, and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including Affidavit #1 Russell Ball made September 11, 2022 (the “**First Ball Affidavit**”), Confidential Affidavit #2 of Russell Ball made September 11, 2022 (the “**Confidential Second Ball Affidavit**”), 2022; the Second Report of FTI Consulting Inc. (in its capacity as court-appointed monitor of the Petitioners, the “**Monitor**”) dated September [] 2022; AND pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as

amended (the “**CCAA**”), the British Columbia *Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

GENERAL

1. References to the “**SISP**” in this Order shall be in reference to the Petitioners’ Sales and Investment Solicitation Process approved by this Court on **September 14, 2022**. Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the SISP.

APPROVAL OF THE KERP

2. The Key Employee Retention Plan (the “**KERP**”) as described in the First Ball Affidavit and the Confidential Second Ball Affidavit is hereby approved.

3. The Petitioners are hereby authorized to enter into the KERP with those employees (the “**KERP Employees**”) listed in Exhibit “A” to the Confidential Second Ball Affidavit.

4. Subject to paragraph 5, the Petitioners are hereby authorized to pay three lump sum payments (the “**Retention Bonuses**”) to the KERP Employees in the amount set out in the Confidential Second Ball Affidavit, payable upon the occurrence of the following events:

- (a) 33.3% of the total Retention Bonus will be paid on the earlier of:
 - (i) the execution of an LOI for the sale of the Rosh Pinah Mine pursuant to the SISP; or
 - (ii) November 30, 2022;
- (b) 33.3% of the total Retention Bonus will be paid on the earlier of:
 - (i) the completion of a transaction for the sale of the Rosh Pinah Mine pursuant to the SISP; or
 - (ii) January 31, 2023; and
- (c) 33.4% of the total Retention Bonus will be paid on the earlier of:

- (i) the completion of a transaction for the sale of the Rosh Pinah Mine pursuant to the SISP; or
- (ii) March 31, 2023.

5. Notwithstanding paragraph 4, the three KERP Employees identified in Exhibit A to the Confidential Second Ball Affidavit as the “**Alternative Timeline KERP Employees**” will be paid their Retention Bonus as a single lump sum payment as set forth in Exhibit “A” of the Confidential Second Ball Affidavit. The Petitioners are hereby authorized to pay these Alternative Timeline KERP Employees their Retention Bonuses in a single lump sum and on the timelines set forth in Exhibit “A” of the Confidential Second Ball Affidavit.

6. Payments to the KERP Employees under the KERP will only be made if, at the date the relevant payment of the Retention Bonus is due, as described in paragraphs 4 and 5, the KERP Employee has fulfilled his or her employment obligations and has not resigned or been terminated for cause. If a KERP Employee is terminated without cause, the full amount of their Retention Bonus (to the extent not already paid) will be payable to them on termination.

7. The KERP Employees shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on the Property (as defined in the Amended and Restated Initial Order of this Court made August 29, 2022 (the “**ARIO**”)) as security for the amounts payable to the KERP Employees pursuant to the KERP, which charge shall not exceed an aggregate amount of US \$800,000.

8. The KERP Charge shall rank in priority only subordinate to the Administration Charge, the D&O Charge, and the Intercompany Advances Charge (each as defined in the ARIO).

9. The KERP Charge shall have, *mutatis mutandis*, the same protections and restrictions under the ARIO as the Administration Charge, the D&O Charge, and the Intercompany Advances Charge, including those set out in paragraphs 35-39 of the ARIO.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Peter L. Rubin
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

COUNSEL NAME	PARTY REPRESENTED
John Sandrelli Valerie Cross	FTI Consulting Canada Inc., the proposed Monitor
Kibben Jackson	Bank of Nova Scotia, in its capacity as RCF Administrative Agent
Lance Williams	Glencore Canada Corporation, Glencore International AG and Glencore AG
Eli Karp Sage Nematollahi	Ad Hoc Committee of Trevali Mining Corporation Shareholders
Mary I.A. Buttery, Q.C.	Directors of Trevali Mining Corporation
Denis Thériault	Province of New Brunswick