

This is the 1st Affidavit
of Ricci Cheung in this case
and was made on January 4, 2023

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

AFFIDAVIT


I, Ricci Cheung, of 2900 – 550 Burrard Street, Vancouver, British Columbia, SWEAR
THAT:

1. I am a legal assistant in the law firm of Fasken Martineau DuMoulin LLP, solicitors for The Bank of Nova Scotia (“BNS”), as agent for the revolving credit facility lenders in this proceeding, and as such have personal knowledge of the facts hereinafter deposed to except where stated to be on information and belief, in which case I verily believe them to be true.
2. Attached and marked as Exhibit “A” is as copy of a Fifth Amended and Restated Credit agreement between Trevali Mining Corporation, as borrower, BNS as Administrative Agent, and

BNS, HSBC Bank Canada, Société Générale, Bank of Montreal, The Toronto-Dominion Bank,
National Bank of Canada and ING Capital LLC as lenders, dated October 28, 2022.

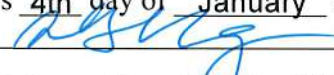
SWORN BEFORE ME at Vancouver,)
British Columbia, on January 4, 2023.)


_____)
A Commissioner for taking Affidavits for)
British Columbia)


_____)
RICCI CHEUNG)

REBECCA BARCLAY NGUINAMBAYE
Barrister & Solicitor
Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C 0A3
604 631 3245

This is Exhibit "A" referred to in
the affidavit of Ricci Cheung
sworn before me at Vancouver
this 4th day of January 2023


A Commissioner for taking Affidavits
for British Columbia

FIFTH AMENDING AGREEMENT

THIS AGREEMENT made as of the 28th day of October, 2022.

BETWEEN:

TREVALI MINING CORPORATION, a corporation existing under the laws of the Province of British Columbia

(herein called the “**Borrower**”)

- and -

THE BANK OF NOVA SCOTIA, a Canadian chartered bank

(herein called the “**Administrative Agent**”)

- and-

THE BANK OF NOVA SCOTIA, HSBC BANK CANADA, SOCIÉTÉ GÉNÉRALE, BANK OF MONTREAL, THE TORONTO-DOMINION BANK, NATIONAL BANK OF CANADA and ING CAPITAL LLC

(herein collectively called the “**Lenders**” and individually, a “**Lender**”)

WHEREAS the Borrower and the Administrative Agent entered into a second amended and restated credit agreement made as of August 6, 2020 (as amended by a first amending agreement dated December 29, 2020, a second amending agreement dated May 5, 2021, a third amending agreement dated September 28, 2021 and a fourth amending agreement dated November 19, 2021, the “**Existing Credit Agreement**”) pursuant to which the Lenders established a certain credit facility in favour of the Borrower;

AND WHEREAS on August 19, 2022, the Borrower and its wholly-owned subsidiary, Trevali Mining (New Brunswick) Ltd., commenced a proceeding under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA Proceeding**”) in the Supreme Court of British Columbia resulting in an Event of Default under the Existing Credit Agreement;

AND WHEREAS the parties hereto have agreed to amend the Existing Credit Agreement for the purposes and on the terms and conditions set out in this fifth amending agreement (this “**Fifth Amendment**”);

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements contained herein, the parties covenant and agree as follows:

ARTICLE 1 AMENDMENTS

1.1 Definitions. Words and expressions defined in the Credit Agreement (as herein defined) are used with the same respective defined meanings in this Fifth Amendment.

1.2 Reference to Agreements. Each reference in this Fifth Amendment to any agreement (including this Fifth Amendment and any other defined term that is an agreement) shall be construed so as to include such agreement (including any attached schedules, appendices and exhibits) and each change thereto made at or before the time in question.

1.3 Headings, etc. The division of this Fifth Amendment into Articles, Sections and Subsections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Fifth Amendment. The terms “**this fifth amending agreement**”, “**Fifth Amendment**”) “**hereof**”, “**hereunder**” and similar expressions refer to this Fifth Amendment and not to any particular Article, Section, Subsection, paragraph, subparagraph, clause or other portion of this Fifth Amendment.

1.4 Grammatical Variations. In this Fifth Amendment, unless the context otherwise requires, (i) words and expressions (including words and expressions (capitalized or not) defined, given extended meanings or incorporated by reference herein) in the singular include the plural and *vice versa* (the necessary changes being made to fit the context), (ii) words in one gender include all genders and (iii) grammatical variations of words and expressions (capitalized or not) which are defined, given extended meanings or incorporated by reference in this Fifth Amendment shall be construed in like manner.

1.5 References. Each of the Credit Parties confirms and agrees that each reference, if any, in its Credit Documents to the Existing Credit Agreement shall be construed as a reference to the Credit Agreement.

1.6 Credit Document. This Fifth Amendment shall constitute a Credit Document.

ARTICLE 2 AMENDMENTS

2.1 Amendments.

- (a) *General Rule.* Subject to Article 3 of this Fifth Amendment, the Existing Credit Agreement is hereby amended to the extent necessary to give effect to the provisions of this Fifth Amendment and to incorporate the provisions of this Fifth Amendment into the Existing Credit Agreement.
- (b) *Amendment of the Existing Credit Agreement.* Subject to the satisfaction (or waiver) of the conditions set forth in Article 3 hereof, the Existing Credit Agreement, effective as of the date hereof, is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold underlined text (indicated textually in the same manner in the following example: **underlined text**) as set forth on the pages of the Existing

Credit Agreement and all schedules thereto and attached hereto as Exhibit A (the “**Credit Agreement**”).

ARTICLE 3 CONDITIONS PRECEDENT TO AMENDMENTS

3.1 Conditions Precedent to Fifth Amendment. The Fifth Amendment shall not become effective until the fulfillment or waiver in writing by the Lenders of the following conditions precedent (the “**Fifth Amendment Effective Time**”):

- (a) the DIP Order shall have been issued by the Court substantially in form and substance to the draft order appended hereto as Exhibit B hereto and no appeal shall have been taken from such order and no motion shall have been brought to amend, vary or set aside such order;
- (b) the execution and delivery of a settlement agreement among the Administrative Agent (on behalf of itself and the Lenders), Glencore (on behalf of itself and its affiliates) and the Subject Entities in form and substance acceptable to each Lender (the “**Settlement Agreement**”), the satisfaction of all conditions in favour of the Lenders therein, and no material breach having occurred thereunder (except any breach by the Administrative Agent or a Lender);
- (c) all intercompany loans, debts and receivables from or owing to the Borrower and any of its Subsidiaries which directly or indirectly own Shares in RPZC (the Borrower, together with all such Subsidiaries, the “**RPZC Shareholders**”), whether prior to or subsequent to the date of the Initial Order, to RPZC and any RPZC Shareholder shall be documented in form and substance satisfactory to the Administrative Agent (ie: whether by grid promissory notes, instruments, loan agreement, Intercorporate Loan Agreement, Intercorporate Services Agreement etc.) and each RPZC Shareholder’s rights as a creditor thereunder shall be collaterally assigned to the Administrative Agent and subject to the Security;
- (d) the Borrower shall have sent a consent and acknowledgment to Cerro de Pasco Resources Inc. (“**Cerro**”) requesting that (i) Cerro consent to the Borrower’s collateral assignment of its deferred consideration payment rights under the purchase and sale agreement dated November 5, 2021 entered into between the Borrower and Cerro and (ii) Cerro agree in writing to make all such deferred consideration payments directly to the Administrative Agent for the purpose of applying such proceeds in respect of any Santander Deferred Consideration Prepayment Trigger Event;
- (e) each Obligor shall have duly executed and delivered to the Administrative Agent each of the Credit Documents (which, in the case of previously executed Credit Documents, shall be limited to a Confirmation delivered in respect thereof from each applicable Obligor and such other amendments deemed necessary or advisable by the Administrative Agent’s counsel, acting reasonably) to which it is a party in form and substance satisfactory to the Administrative Agent;

- (f) the Administrative Agent has received, in form and substance satisfactory to the Administrative Agent:
- (i) a Closing Certificate of each RPZC Shareholder;
 - (ii) a certificate of status or good standing for each RPZC Shareholder and RPZC issued by the appropriate governmental body or agency of the jurisdiction in which such RPZC Shareholder and RPZC is incorporated to the extent such is customarily issued by such party in the relevant jurisdiction;
 - (iii) updated insurance certificates noting the Administrative Agent as lender loss payee and additional insured in respect of all of the Borrower's direct and indirect ownership interest in the Subject Entities' assets;
 - (iv) opinions of counsel to each RPZC Shareholder addressed to, *inter alia*, the Administrative Agent and the Finance Parties and their counsel, relating to the status and capacity of such Obligor, the due authorization, execution and delivery and the validity and enforceability of this agreement and the other Credit Documents described in Section 3.1(e) to which such RPZC Shareholder is a party in the jurisdiction of incorporation of such Obligor, and such other matters as the Administrative Agent may reasonably request;
 - (v) certified true copies of (i) the Intercorporate Loan Agreement together with an amendment thereto pursuant to which, *inter alia*, the governing law is changed from Peru to Namibia and RPZC acknowledges and agrees that the Borrower's rights thereunder can be collaterally assigned to the Administrative Agent for and on behalf of the Finance Parties without the consent of RPZC, the Intercorporate Services Agreement and (iii) each other loan agreement, instrument or note pursuant to which an RPZC Shareholder is a creditor of RPZC or any other RPZC Shareholder;
 - (vi) certified true copy a resolution of the board of RPZC (i) approving the Intercorporate Loan Agreement, (ii) approving the RPZC consent and confirmation in respect of the Intercorporate Services Agreement, (iii) approving the RPZC acknowledgment and consent to the Cession in Security Agreement among Borrower and the Administrative Agent, with respect to intercorporate loans and intercorporate services receivables owing from RPZC and (iv) acknowledging the RPZC Set-Off Transaction.
- (g) except as otherwise provided in the relevant Security Documents, all documents and instruments shall have been properly filed for registration in all places which, searches shall have been conducted in all jurisdictions which, and deliveries of all consents, approvals, acknowledgments, undertakings, directions, negotiable documents of title, landlord waivers and other documents and instruments to the Administrative Agent shall have been made which, in the opinion of the Administrative Agent's counsel, are necessary to make effective the Security created or intended to be created by the RPZC Shareholders pursuant to the Security

Documents and to ensure the perfection and the intended first ranking priority (subject to Permitted Liens) of such Security;

- (h) the Administrative Agent shall have received the DIP Budgets which shall be in a form and substance satisfactory to the Majority Lenders in their sole discretion; and
- (i) the Borrower shall have paid all invoiced legal fees of the Administrative Agent's legal counsel and all invoiced advisory fees of its financial advisor.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties. The Borrower hereby represents and warrants to and in favour of the Finance Parties as follows:

- (a) *General Warranties.* The representations and warranties made by it to the Finance Parties and the under Section 10.1 of the Credit Agreement are true, accurate and complete in all material respects on the date of execution and delivery hereof, it being understood that to the extent such representations and warranties relate solely to a specifically identified earlier date they need only be true and correct as of such earlier date.
- (b) *Event of Default Warranty.* Subject to Article 5 hereof, no Default or Event of Default has occurred and is continuing or would result from this Fifth Amendment being entered into.

ARTICLE 5

5.1 Forbearance. Subject to compliance by the Obligors with the Credit Agreement and the other Finance Documents on and after the Fifth Amendment Effective Date and compliance by the CCAA Debtors with the Amended and Restated Initial Order, the DIP Order and the other Court Orders, in each case at all times prior to the earlier to occur of an Event of Default (other than those Events of Default referenced in (a) to (k) below which shall be hereinafter referenced as the "**Forbearance Events of Default**") and the DIP Maturity Date, the Administrative Agent, for and on behalf of the Finance Parties, shall agree to forbear from enforcing their rights and remedies against the CCAA Debtors under the Credit Agreement and the other Finance Documents resulting from (the "**Forbearance**"):

- (a) the admitted insolvency of the CCAA Debtors (Section 13.1(d) of the Existing Credit Agreement);
- (b) the commencement and continuation of the CCAA Proceeding by the CCAA Debtors (Section 13.1(d) of the Existing Credit Agreement);
- (c) the liquidation of Nantou Mining Burkina Faso S.A. (Section 13.1(c) of the Existing Credit Agreement);
- (d) the cessation of business at the Caribou Mine (Section 13.1(d) of the Existing Credit Agreement);

- (e) the failure of the Borrower to repay all outstanding credit under the Existing Credit Agreement on September 18, 2022, being the Maturity Date under, and as defined in, the Existing Credit Agreement (Section 13.1(a) of the Existing Credit Agreement);
- (f) the failure of the Borrower to make a mandatory prepayment required under Section 9.4 of the Existing Credit Agreement with respect to an Excess Cash Flow Prepayment Trigger Event that occurred on August 17, 2022 (Section 13.1(a) of the Existing Credit Agreement);
- (g) the failure of the Borrower to pay interest and standby fees under the Existing Credit Agreement (Section 13.1(b) of the Existing Credit Agreement);
- (h) the breach of the financial covenants set forth in Sections 11.1(m), (n), (o) and (p) of the Existing Credit Agreement (Section 13.1(g) of the Existing Credit Agreement);
- (i) the breach of the positive covenants set forth in Sections 11.1(j) and 11.1(t) of the Existing Credit Agreement pertaining to, inter alia, conduct of business and maintenance, preservation and protection of assets (Section 13.1(h) of the Existing Credit Agreement);
- (j) Event of Defaults under Section 13.1(l) of the Existing Credit Agreement arising as a result of the cessation of the Perkoa Mine for a period of 180 consecutive days (such 180th day being October 15, 2022); and
- (k) Event of Defaults under Section 13.1(r) arising as a result of the occurrence of Second Lien Events of Default provided Glencore has agreed to forbear from its enforcements rights under the Glenore Documents as a result of such Second Lien Events of Default.

For certainty, except in respect of and to permit the DIP Tranche and as contemplated in the Existing Credit Agreement, as amended by this Fifth Amendment, nothing in the Credit Agreement shall or shall be deemed to (i) reinstate the Credit Facility or, subject to Section 9.6 of the Credit Agreement, the right of the Borrower to obtain credit under the Pre-Filing Tranche or the obligations of the Lenders to extend credit thereunder, (ii) waive the Forbearance Events of Default or (iii) extend the September 18, 2022 Maturity Date (as defined in the Existing Credit Agreement) in respect of the Pre-Filing Tranche.

ARTICLE 6 GENERAL

6.1 Further Assurances. The Borrower shall, and shall cause each other Obligor to, from time to time and at all times hereafter, upon every reasonable request of the Administrative Agent, make, do, execute, and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be necessary in the opinion of the Administrative Agent, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of the Credit Documents or any agreement delivered pursuant hereto or thereto and such additional security, legal opinions, consents, approvals, acknowledgements, undertakings, non-

disturbance agreements, directions and negotiable documents of title in connection with the property and assets of the Obligors, in form and substance satisfactory to the Administrative Agent, as the Administrative Agent may from time to time request, to ensure (i) that all Secured Assets are subject to a Lien in favour of the Administrative Agent and (ii) the intended first ranking priority of such Liens (subject to Permitted Liens which by their nature would constitute prior ranking security).

6.2 Release. The Borrower, for itself and for and on behalf of each other Subject Entity, hereby releases and forever discharges the Administrative Agent and each Finance Party and their respective employees, officers, directors, agents, consultants and advisors and their representatives and successors (collectively, the “**Releasees**”) from any and all claims, demands, suits, actions of whatsoever nature or kind which any Subject Entity at any time had or may have, for any reason of any cause, matter or thing whatsoever existing up to the acceptance hereof, in respect of, or in connection with, or arising out of any action, conduct or omission of a Finance Party, excluding any claims, demands, suits, or other actions arising from any willful misconduct or gross negligence of a Releasee.

6.3 Benefit & Burden. This Fifth Amendment shall enure to the benefit of and be binding upon the parties hereto, their respective successors and each assignee of some or all of the rights or obligations of the parties under the Finance Documents permitted pursuant to the terms of the Credit Agreement.

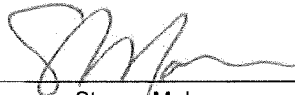
6.4 Counterparts. This Fifth Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same agreement, and it shall not be necessary in making proof of this Fifth Amendment to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Fifth Amendment by facsimile or e-mail in pdf format by one party hereto to each other party hereto, or posting a copy of an executed signature page of this Fifth Amendment on an internet website, shall be as effective as delivery of an original manually executed counterpart hereof to each other party hereto.

6.5 Governing Law. This Fifth Amendment shall be governed by, and construed and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein, but excluding choice of law rules. Such choice of law shall, however, be without prejudice to or limitation of any other rights available to the Finance Parties under the laws of any jurisdiction where the Borrower or its property may be located.

[REMAINDER OF PAGE INTENTIONALLY BLANK]


IN WITNESS WHEREOF the parties hereto have executed this agreement.

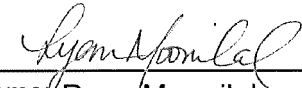
TREVALI MINING CORPORATION

By:  _____
Name: Steven Molnar
Title: Chief Legal Officer

By: _____
Name: _____
Title: _____


**THE BANK OF NOVA SCOTIA, as
Administrative Agent**

By: 
Name: Clement Yu
Title: Director


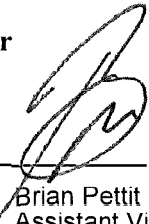
By: 
Name: Ryan Moonilal
Title: Associate

**THE BANK OF NOVA SCOTIA, as
Lender**

By: 
Name: Justin Mitges
Title: Director

By: 
Name: Rocco Fabiano
Title: Vice President

HSBC BANK CANADA, as Lender

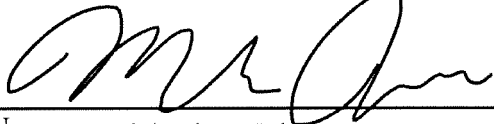
By:  
Name: John Borch Brian Pettit
Title: Assistant Vice-President Assistant Vice-President

SOCIÉTÉ GÉNÉRALE, as Lender

By: ^{DocuSigned by:} Alvaro BELEVAN
48A9D1B84BD8462...
Name: Alvaro BELEVAN
Title: DIRECTOR

By: _____
Name:
Title:

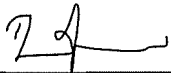
BANK OF MONTREAL, as Lender

By: 
Name: Michael M. Johnson
Title: Managing Director

By: _____
Name:
Title:

**THE TORONTO-DOMINION BANK, as
Lender**

By: 
Name: Liza Straker
Title: Managing Director

By: 
Name: Ryan Mrozek
Title: Director

**NATIONAL BANK OF CANADA, as
Lender**

By: DocuSigned by:
Erin Welte
Name: Erin welte
Title: Senior Manager

By: DocuSigned by:
Yang Zhao
Name: Yang Zhao
Title: Account Manager

ING CAPITAL LLC, as Lender

Remko van de Water

By: Remko van de Water (Oct 16, 2022 20:35 EDT)

Name: Remko van de Water
Title: Managing Director

Remco Meeuwis

By: Remco Meeuwis (Oct 16, 2022 13:58 EDT)

Name: Remco Meeuwis
Title: Director

**EXHIBIT A
AMENDED CREDIT AGREEMENT**

See attached.

~~CONFORMED COPY OF THE SECOND AMENDED AND RESTATED CREDIT AGREEMENT INCORPORATING THE FIRST AMENDING AGREEMENT OF DECEMBER 29, 2020, THE SECOND AMENDING AGREEMENT OF MAY 5, 2021, THE THIRD AMENDING AGREEMENT OF SEPTEMBER 28, 2021 AND THE FOURTH AMENDING AGREEMENT OF NOVEMBER 19, 2021~~

TREVALI MINING CORPORATION
as Borrower

and

THE BANK OF NOVA SCOTIA
and **HSBC BANK CANADA**
as Co-Lead Arrangers and Joint Bookrunners

and

THE BANK OF NOVA SCOTIA
as Administrative Agent

and

**THE BANK OF NOVA SCOTIA, HSBC BANK CANADA, SOCIÉTÉ GÉNÉRALE,
BANK OF MONTREAL, THE TORONTO-DOMINION BANK, NATIONAL BANK OF
CANADA and ING CAPITAL LLC**
as Lenders

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of August 6, 2020

FASKEN

Fasken Martineau DuMoulin LLP
Toronto, Ontario

~~This consolidated credit agreement is in no way to be construed as replacing or modifying the Credit Agreement, the above-noted amending agreements or any other Credit Document (each as defined herein). This consolidated credit agreement shall not be used as an interpretative tool with respect to any of the documents referred to herein. Readers with questions about their roles or responsibilities should always consult with the terms of the documents referred herein or their legal advisers for clarification, and should not rely on this consolidated agreement for any purposes whatsoever.~~

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SECOND AMENDED AND RESTATED CREDIT AGREEMENT dated as of August 6, 2020 between Trevali Mining Corporation, a corporation existing under the laws of British Columbia (together with its successors and permitted assigns, the “**Borrower**”), the lending institutions from time to time parties hereto as Lenders, The Bank of Nova Scotia, as Administrative Agent.

WHEREAS the Borrower, certain lenders and The Bank of Nova Scotia, as Administrative Agent, entered into an amended and restated credit agreement dated September 18, 2018 (as amended prior to the date hereof, the “**Existing Credit Agreement**”);

AND WHEREAS the parties hereto wish to amend and restate the Existing Credit Agreement on the terms and conditions contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms

The following defined terms shall for all purposes of this agreement, or any amendment, substitution, supplement, replacement, restatement or addition hereto, have the following respective meanings unless the context otherwise specifies or requires or unless otherwise defined herein:

“\$” denotes U.S. Dollars.

“**Accommodation**” means any extension of credit by a Credit Party to the Borrower under this agreement including, for greater certainty, the extension of credit by way of a Loan or Letter, under the Pre-Filing Tranche only, the Existing Letters (as defined in Section 3.9(j)).

“**Acquisition**” means:

- (a) if the acquisition is a share purchase, the Borrower acquires beneficial or legal control of Shares representing more than 50% of the ordinary voting power for the election of directors or other governing position (if no board of directors) or otherwise shall Control the entity being acquired immediately following the completion of such acquisition (but not before); or
- (b) if the acquisition is an asset purchase, all or substantially all of the assets of the vendor (or of a division or unit of the vendor) are being acquired.

“Administration Charge” has the meaning given to it in the Amended and Restated Initial Order.

“Administrative Agent” means The Bank of Nova Scotia, in its capacity as administrative agent of the Finance Parties, and any successor thereto pursuant to Section 14.12.

“Affected Lender” shall have the meaning ascribed thereto in Section 8.3.

“Affiliate” means an affiliated body corporate and, for the purposes of this agreement, (i) one body corporate is affiliated with another body corporate if one such body corporate is the Subsidiary of the other or both are Subsidiaries of the same body corporate or each of them is Controlled by the same Person and (ii) if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other; for greater certainty for the purposes of this definition, “body corporate” shall include a chartered bank.

“Agency Fee Letter” means the administrative fee letter dated September 18, 2018 between the Administrative Agent and the Borrower.

“Amended and Restated Initial Order” means the amended and restated initial order of the Court issued on August 29, 2022 in the CCAA Proceeding.

“Anti-Corruption Laws” means all laws, rules, and regulations having force of law of any jurisdiction applicable to the Companies from time to time concerning or relating to bribery or corruption, including without limitation the *Corruption of Foreign Public Officials Act* (Canada), the *U.S. Foreign Corrupt Practices Act*, and the *U.K. Bribery Act 2010*.

“Anti-Money Laundering Legislation” means (as the context requires) (i) Part II.1 of the *Criminal Code* (Canada) and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), including any guidelines or orders thereunder or (ii) any other applicable anti-money laundering, anti-terrorist financing and economic sanction laws of Canada or any other applicable jurisdiction, in each case having force of law.

“Anti-Terrorism Laws” means (i) US Executive order No. 13224, the USA Patriot Act, the laws comprising or implementing the “Bank Secrecy Act”, 31 U.S.C. §§ 5311 et seq., the laws administered by OFAC and any similar law enacted by the United States of America subsequent to the date of this Agreement, (ii) *Combating Terrorism Act* (Canada) and/or (iii) the Sanctions, as the context requires.

“Applicable Law” means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, request, guideline or

directive; or (d) consent or approval of any Official Body, in each case, having the force of law and binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person.

“Applicable Prepayment Amount” means, (i) with respect to any Asset Disposition Prepayment Trigger Event, an amount equal to the gross cash proceeds realized from any subject Disposition, (ii) with respect to any ~~Cash Flow~~ Budgeted Revenue Prepayment Trigger Event, an amount equal to ~~50~~ 100% of ~~CFAD~~ the Excess Budgeted Revenue for the relevant ~~Fiscal Quarter~~ period, (iii) with respect to any Insurance Prepayment Trigger Event, an amount equal to the gross cash proceeds ~~in excess of the amount stipulated therein~~ (net of deductibles) received by or on behalf of an ~~Obligor~~ Subject Entity in respect of such Prepayment Trigger Event ~~and~~, (iv) with respect to any ~~Change of Control~~ Santander Deferred Consideration Prepayment Trigger Event, an amount equal to ~~all Secured Obligations outstanding under the Credit Documents at the time of such Change of Control~~ 100% of the Santander Deferred Consideration received by the Borrower and (v) with respect to any Debt/Equity Prepayment Trigger Event, an amount equal to the gross cash proceeds therefrom received directly or indirectly by a Subject Entity, less, in the case of any ~~Asset Disposition Trigger Event or, any Excess Budgeted Revenue Prepayment Trigger Event, any Insurance Prepayment Trigger Event or any Debt/Equity Prepayment Trigger Event~~, the sum of:

- (a) the amount, if any of all Taxes paid or estimated to be payable by or on behalf of the relevant Company in connection with any such Prepayment Trigger Event; and
- (b) reasonable and customary fees, commissions, expenses, issuance costs, discounts and other costs paid by or on behalf of the relevant Company in connection with such Prepayment Trigger Event.

“Applicable Rate” means the aggregate of:

- (a) (i) ~~for a particular Tranche, the applicable interest rate margin or fee rate; as the case may be, for such Tranche~~ expressed as a percentage per annum as set forth in the table in Schedule H hereto plus,
- (b) (ii) ~~at all times during the continuance of an Event of Default; (whether or not subject to the Forbearance), 2% per annum (in order to compensate the Lenders for the additional risk), provided that (x) changes to the Applicable Rate on account of an Event of Default shall be effective immediately upon the occurrence of such Event of Default and for the duration thereof and (y) changes in the Applicable Rate shall apply, as at the effective dates of such changes, to Accommodations outstanding on such dates.~~

“Approvals” means all material authorizations, consents, orders and other approvals having force of law required to be obtained from any person, including

any Official Body, in connection with the completion of the transactions contemplated by this Agreement or for the construction, development, operation and reclamation of any Material Mine.

“Approved Fund” means any Person (other than a natural Person) that (a) is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business, (b) is administered or managed by a Lender, an Affiliate of a Lender or an entity or an affiliate of an entity that administers or manages a Lender and (c) which is acceptable to the Issuing Lenders, acting reasonably.

“Asset Disposition Prepayment Trigger Event” means any Disposition of ~~all or~~ a material portion of a Material Mine and/or the Shares of a Company that owns, directly or indirectly, in whole or in part, a Material Mine to the extent any such sale is permitted pursuant to this Agreement or is otherwise consented to by the Lenders in accordance with Section 14.14, any assets by a Subject Entity other than Dispositions of inventory, product or produced or unprocessed minerals, metals or other mineral or extracted materials Disposed of in the ordinary course of business.

“Available Credit” means, at any particular time with respect to

- (a) ~~“Available Credit”~~ means, at any particular time with respect to the Credit Facility, the amount, if any, by which the Credit Limit at such time exceeds the amount of credit outstanding under the Credit Facility (which credit outstanding includes, for the avoidance of doubt, the amount available to be drawn under any issued and outstanding Existing Letters) at such time; and
- (b) a particular Tranche of the Credit Facility, the amount, if any, by which the relevant Tranche Amount at such time exceeds the amount of credit outstanding under the corresponding Tranche (which credit outstanding includes, for the avoidance of doubt, the amount available to be drawn under any Existing Letters) at such time.

“Bail-In Action” means the exercise of any Write-down and Conversion Powers.

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“Banking Day” means any day of the year, other than a Saturday, Sunday or other day on which banks are required or authorized to close in Toronto, Ontario and where used in the context of (i) an advance in U.S. Dollars, is also a day on which banks are not required or authorized to close in New York, New York; and (ii) a LIBOR Loan, is also a day on which banks are not required or authorized to close in New York, New York and on which dealings are carried on in the London interbank market in respect of transactions in U.S. Dollars.

“Base Rate” means, at any particular time, the variable rate of interest per annum, calculated on the basis of a year of 365 or 366 days, as the case may be, which is equal to the greater of (a) the aggregate of (i) the Federal Funds Effective Rate at such time and (ii) ½ of 1% per annum and (b) the Base Rate Canada at such time. If at any time the Base Rate is less than zero, the Base Rate shall be deemed to be equal to zero.

“Base Rate Canada” means the variable rate of interest per annum determined by the Administrative Agent from time to time as its base rate for United States dollar loans made by the Administrative Agent in Canada from time to time, being a variable per annum reference rate of interest adjusted automatically upon change by the Administrative Agent, calculated on the basis of a year of 365 days (or 366 days in the case of a leap year). If at any time the Base Rate Canada is less than zero, the Base Rate Canada shall be deemed to be equal to zero.

~~“Base Rate Loan” means monies lent by the Lenders to the Borrower hereunder and upon which interest accrues at a rate referable to the Base Rate.~~

“Basel III” means the comprehensive set of voluntary reform measures, developed by the Basel Committee on Banking Supervision, which establishes a regulatory framework on bank capital adequacy, stress testing and market liquidity risk.

~~“Benchmark Replacement” means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the relevant Official Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for U.S. Dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.~~

~~“Benchmark Replacement Adjustment” means, with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower~~

~~giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the relevant Official Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement for U.S. Dollar-denominated syndicated credit facilities at such time.~~

~~“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).~~

~~“**Benchmark Replacement Date**” means the earlier to occur of the following events with respect to LIBOR:~~

~~(a) in the case of (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; or~~

~~(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.~~

~~“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to LIBOR:~~

~~(a) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR;~~

~~(b) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or~~

~~a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or~~

~~(c) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.~~

~~“**Benchmark Transition Start Date**” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt in Election, the date specified by the Administrative Agent or the Majority Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Majority Lenders) and the Lenders.~~

~~“**Benchmark Unavailability Period**” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder in accordance with Section 3.12 and (y) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder pursuant to Section 3.12.~~

~~“**Borrower**” shall have the meaning ascribed thereto in the first recital to this agreement.~~

~~“**Branch of Account**” means the Wholesale Banking Operations of the Administrative Agent located at 720150 King Street West, Toronto, Ontario, or such other branch of the Administrative Agent located in Canada as the Borrower and the Administrative Agent may agree upon.~~

~~“**Canadian Dollars**” means the lawful currency of Canada.~~

~~“**Canadian Pension Plan**” means a Plan established, maintained or contributed to by any Obligor for such Obligor’s Canadian employees or former employees and that is a “registered pension plan” as such term is defined in the Tax Act, other than a pension plan or arrangement administered by an Official Body.~~

~~“**Capital Lease**” means a lease that would, in accordance with GAAP, be treated as a balance sheet liability.~~

“Capital Reorganization” means any change in the capital structure of the issued and outstanding Shares of an Obligor and/or Subject Entity.

“Caribou Mine” means the zinc, lead, silver, copper and gold project located approximately 50-km west of Bathurst, New Brunswick involving the exploration and exploitation of a mining license and the operation of the Caribou mill.

“Cash” means cash and Cash Equivalents of the Borrower determined on a consolidated basis.

“Cash Equivalents” means (i) securities issued or directly and fully guaranteed or insured by the United States (or any state) or Canadian (or any provincial) governments or any agency or instrumentality thereof with maturities of 12 months or less from the date of acquisition, (ii) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank incorporated in the United States or Canada having capital and surplus in excess of \$500,000,000 (or the Exchange Equivalent thereof), (iii) repurchase obligations for underlying securities of the types described in clauses (i) and (ii) entered into with any financial institution meeting the qualifications specified in clause (ii) above, (iv) commercial paper rated A1 or the equivalent thereof by Moody’s or S&P and in each case maturing within one year after the date of acquisition, (v) investment funds investing at least 95% of their assets in securities of the types described in clauses (i) to (iv) above and (vi) readily marketable direct obligations issued by any state of the United States or province of Canada or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody’s or S&P with maturities of 12 months or less from the date of acquisition.

“Cash Flow Variance Report” shall have the meaning ascribed thereto in Section 11.1(b)(iv).

“Cash Management Agreements” means any cash management agreement (including any mirror netting agreement and any credit card agreement) which an Obligor enters into in the ordinary course of business with a Qualified Cash Management Lender.

“Cash Proceeds of Realization” means the aggregate of (i) all Proceeds of Realization in the form of cash and (ii) all cash proceeds of the sale or disposition of non-cash Proceeds of Realization, in each case expressed in United States dollars.

“CCAA” means the Companies’ Creditors Arrangement Act (Canada).

“CCAA Debtors” means the Borrower and Trevali NB.

“CCAA Proceeding” means the proceeding commenced by the Borrower and Trevali NB under the CCAA before the Court.

~~“CFADS”~~ means, for any particular Fiscal Quarter, an amount equal to the Borrower’s consolidated revenue (including, without limitation, from the sale of inventory, product or produced or unprocessed minerals, metals or other mineral or extracted materials) during such Fiscal Quarter (plus interest income and any amounts received from business interruption or comparable insurance policies):

~~(a) plus or minus, as applicable, payments made or received by the Borrower on a consolidated basis with respect to its hedging activities under Risk Management Agreements; and~~

~~(b) plus or minus, as applicable, changes in the Borrower’s consolidated working capital during such Fiscal Quarter; and~~

~~(c) minus:~~

~~(i) all Operating Expenditures during such Fiscal Quarter;~~

~~(ii) all Sustaining Capital expenditures during such Fiscal Quarter;~~

~~(iii) all Taxes paid in cash by the Obligor on a consolidated basis during such Fiscal Quarter;~~

~~(iv) royalties payable during such Fiscal Quarter;~~

~~(v) Interest Expenses and the aggregate of all scheduled principal payments on Permitted Indebtedness, in each case, during such Fiscal Quarter; and~~

~~(vi) restructuring expenses as set out in the Borrower’s financial statements.~~

“Change in Law” means the occurrence, after the date of this agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Official Body or (c) the making or issuance of any Applicable Law by any Official Body.

“Change of Control” means (a) one Person or more than one Person acting jointly and in concert (other than Glencore PLC and its Affiliates) acquires the power to, directly or indirectly, (i) vote more than 50% of the Shares in the Borrower; (ii) direct management, business or policies of the Borrower, whether through the ability to exercise voting power in accordance with the threshold set out in (i) or by contract the effect of which is substantially the same as the threshold set out in (i); or (iii) elect, or appoint, a majority of the directors of the

Borrower or (b) any of the Guarantors ceases to be a direct or indirect wholly-owned Subsidiary of the Borrower.

~~“Change of Control Prepayment Trigger Event” means and shall be deemed to occur if a Change of Control occurs and, after the receipt of prior written notice of such impending Change of Control from the Borrower to the Administrative Agent at least 30 days prior to the occurrence of the same, the Majority Lenders have confirmed in writing 15 days in advance of such proposed Change of Control that prepayment of all Secured Obligations is required in connection therewith.~~

“CIM Definition Standards” means definition standards on mineral resources and reserves established by the Canadian Institute of Mining, Metallurgy and Petroleum, as updated from time to time.

“Closing Certificate” of a particular Obligor means a certificate of a senior officer of such Obligor, without personal liability, addressed to the Administrative Agent, in form and substance satisfactory to the Administrative Agent, acting reasonably, and certifying (a) the truth and correctness of attached copies of the articles of incorporation and by-laws of such Obligor (or the equivalent in the jurisdiction of formation of the Obligor) and the resolution of the board of directors of such Obligor (or the equivalent in the jurisdiction of formation of the Obligor) authorizing it to execute, deliver and perform its obligations under the Credit Documents to which it is a party, (b) specimen signatures of the individuals signing the Credit Documents on behalf of each Obligor, (c) names and titles of the officers and directors of such Obligor and (d) ~~in the case of the Closing Certificate of the Borrower delivered on the Restatement Date, that that, with the exception of the Forbearance Events of Default, no Default or Event of Default has occurred and is continuing or would arise immediately after or as a result of the initial drawdown under this agreement and there exists no judgment or injunction which enjoins the entering into of this agreement.~~

“Co-Lead Arrangers” means The Bank of Nova Scotia and HSBC Bank Canada.

~~“Co-Lead Arrangers Fee Letter” means the co-lead arrangers fee letter dated August 6, 2020 entered into between the Co-Lead Arrangers and the Borrower.~~

“Commodity Exchange Act” means the *Commodity Exchange Act* (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Companies” means, collectively, the Borrower and all of its Subsidiaries and **“Company”** means any one of the Companies.

~~“Compliance Certificate” means a compliance certificate, in the form attached as Schedule B and signed by a senior financial officer of the Borrower without personal liability, evidencing compliance with the terms of this agreement.~~

“Confirmation” means the confirmation dated the date hereof, entered into by each Obligor in favour of the Administrative Agent and each other Finance Party.

“Contributing Lender” shall have the meaning ascribed thereto in Section 3.3.

“Control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of voting equity, by contract or otherwise (other than by way of security) and **“Controlled”** shall have a similar meaning.

~~“Conversion Notice” shall have the meaning ascribed thereto in Section 6.2.~~

“Corporate Reorganization” means any change in the legal existence of any Obligor or Subject Entity (other than a Capital Reorganization) by way of amalgamation, merger, winding up, dissolution, continuance or plan of arrangement, or similar proceeding or arrangement.

“Court” means the Supreme Court of British Columbia.

“Court Order” means any of the Initial Order, the Amended and Restated Initial Order, the SISP Order or the DIP Order, as amended, restated or otherwise varied from time to time and other orders made by the Court in the CCAA Proceedings.

“Credit Documents” means this agreement and all amendments hereto, the Confirmation, the Guarantees, the Agency Fee Letter, the Peruvian Collateral Agency DIP Tranche Upfront Fee Letter, the Co-Lead Arrangers Fee Letter, the Fronting Fee Letter, the Security Documents, the most recently delivered Perfection Certificates (or updated version thereof), the Intercorporate Postponement and Subordination Agreement, the Intercreditor Agreement and all instruments, confidentiality agreements and other agreements executed and delivered by any one or more of the Obligors in favour of the Credit Parties (or the Administrative Agent on behalf of such Credit Parties) from time to time in connection with this agreement or any other Credit Document, but specifically excluding Secured Risk Management Agreements and the Cash Management Agreements.

“Credit Excess” means, as at a particular date, the amount, if any, by which the aggregate amount of credit outstanding under a particular Tranche of the Credit Facility as at the close of business on such date exceeds the Credit Limit ~~corresponding~~ Tranche Amount as at the close of business on such date.

“Credit Facility” shall have the meaning ascribed thereto in Section 2.1.

“Credit Facility Termination Date” means the date on which all Secured Obligations of the Borrower under or in connection with the Credit Facility have been permanently paid in full and the Lenders have no commitment to provide credit to the Borrower under or in connection with the Credit Facility.

“Credit Limit” means, at any particular time, ~~\$119,500,000~~ the aggregate of the Pre-Filing Tranche Amount and the DIP Tranche Amount (as such amount may be reduced pursuant to Section 2.3).

~~“Credit Sub Limit” means \$119,500,000, as such amount may be reduced pursuant to Section 2.3.~~

“Credit Parties” means the Administrative Agent, the Lenders and the Issuing Lender.

“DB Pension Plan” means (a) a Canadian Pension Plan with a “defined benefit provision” as such term is defined in the Tax Act, or (b) a Non-Canadian Pension Plan under which any defined benefits are payable.

“Debt Guarantor Guarantee” means the guarantee, indemnity and undertaking by the Debt Guarantor in favour of the Finance Parties given in terms of the Guarantee and Indemnity Agreement.

“Debt Guarantor” means Guinea Fowl Investments Fifty Eight (Proprietary) Limited, company with limited liability registered in accordance with the laws of the Republic of Namibia, with registration number 2017/0521.

“Debt/Equity Prepayment Trigger Event” means (i) any issuance by any Subject Entity of any equity securities (other than (A) to another Obligor or (B) pursuant to the exercise of options or other equity-based compensation) or any issuance by any Subject Entity of bonds, debentures or other debt securities pursuant to a private placement or public offering of such securities and/or (ii) the establishment of, and drawdown by any Subject Entity under any credit facility after the date hereof in reliance upon paragraphs (j), (l) or (m) of the definition of Permitted Indebtedness and Section 11.2(g), the proceeds of which, in any of the foregoing cases, have been received by the relevant Subject Entity free from any escrow conditions.

“Default” means any event which is or which, with the passage of time, the giving of notice or both, would be an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed to fund any portion of any extension of credit required to be funded by it hereunder within three Banking Days of the date required to be funded by it hereunder unless such failure has been cured, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Banking Days of the date when due, unless the subject of a good faith dispute or unless such failure has been cured, (c) has notified the Administrative Agent that such Lender does not intend to fund its commitments hereunder except in connection with an assertion by such Lender that the conditions to funding are not met, (d) has been determined by a court of competent jurisdiction or regulator to be insolvent or is unable to meet its

obligations or admits in writing it is unable to pay its debts as they generally become due, (e) is, or has a direct or indirect parent that is, other than via an Undisclosed Administration, the subject of a bankruptcy or insolvency proceeding, (f) is, or has a direct or indirect parent that is, other than via an Undisclosed Administration, subject to or is seeking the appointment of an administrator, regulator, conservator, liquidator, receiver, trustee, custodian or other similar official over any portion of its assets or business, or (g) is, or has a direct or indirect parent that is, subject to any Bail-In Action.

“Derivative Exposure” in relation to any Person (the **“relevant party”**) and any counterparty of the relevant party at any time means the amount which would be payable by the relevant party to that counterparty, or by that counterparty to the relevant party, as the case may be, pursuant to all Risk Management Agreements entered into between them and in effect at that time if the transactions governed thereby were to be terminated as the result of the early termination thereof. If the Derivative Exposure would be payable by the relevant party to the counterparty of the relevant party at the relevant time of determination, it is referred to herein as **“Out-of-the-Money Derivative Exposure”**.

“Designated Accounts” means the Borrower's United States Dollar account maintained by the Administrative Agent at the Branch of Account for the purposes of transactions under the Credit Facility and **“Designated Account”** means any one of the Designated Accounts.

“DIP Budgets” means the 13-week period detailed cash flow forecasts dated October 5, 2022 for each of (i) the Borrower, (ii) Trevali NB and (iii) RPZC, each of which is in form and substance satisfactory to the Majority Lenders in their sole discretion and **“DIP Budget”** shall mean any one of the DIP Budgets as the context so requires.

“DIP Charge” the Court-ordered first-ranking super-priority charge in favour of the Administrative Agent, for and on behalf of the Lenders, on the assets, undertakings and properties of the CCAA Debtors which DIP Charge was established in the DIP Order on October 11, 2022.

“DIP Maturity Date” means the date which is the earlier of:

- (a) the 180th day after the date of issuance of the DIP Order or such later date as agreed to in writing by the Lenders in their sole and absolute discretion;
- (b) the date on which one of the following sale transactions has been completed: (i) a sale or sales of the equity of the Borrower and/or a sale of all or any substantial portion of the assets, property and undertaking of the Borrower and/or Trevali NB (including pursuant to a reverse vesting transaction, and on the understanding that a sale of the equity of any Subject Entity shall constitute a sale of a substantial portion of the assets, property and undertaking of the Borrower), as approved by the Majority Lenders in their sole and absolute discretion, the Monitor and, where

required, the Court provided in the case of any such sale involving Trevali NB the gross proceeds shall exceed \$16,500,000 or (ii) any other sale or other transaction pursuant to the SISF or otherwise involving any Subject Entity or Security for gross proceeds exceeding \$16,500,000;

- (c) the implementation of a plan of compromise or arrangement pursuant to the CCAA Proceeding acceptable to the Majority Lenders in their sole and absolute discretion and which has been approved by the requisite creditors of the Borrower and Trevali NB (as applicable) and the Court;
- (d) the date on which the stay in the Amended and Restated Initial Order expires without being extended or is lifted without the consent of the Administrative Agent (acting on the instructions of the Majority Lenders) or on which the CCAA Proceeding is terminated or dismissed; and
- (e) the occurrence of an Event of Default (other than a Forbearance Event of Default) in respect of which the Majority Lenders have elected, in their sole and absolute discretion, to accelerate the Secured Obligations.

“DIP Order” means the order of the Court dated October 11, 2022 and issued in the CCAA Proceedings, *inter alia*, (i) approving the Fifth Amendment and the DIP Tranche, (ii) establishing the DIP Charge, and (iii) authorizing the Borrower to borrow up to the amount of the DIP Tranche pursuant to the Credit Agreement, as amended by the Fifth Amendment.

“DIP Tranche” means the aggregate Individual Commitments of the Lenders from time to time referenced in Schedule A hereto under the column “DIP Tranche” which aggregate Individual Commitments shall not at any time exceed the DIP Tranche Amount.

“DIP Tranche Amount” means, at any particular time, the lesser of (A) \$16,500,000 and (B) the U.S. Dollar Equivalent of the sum of (i) the operating cash shortfall at RPZC as reflected in its latest DIP Budget and (ii) the aggregate amount of capitalized interest and standby fees under the DIP Tranche and the fee payable pursuant to the DIP Tranche Upfront Fee Letter which shall be capitalized pursuant to the terms thereof minus an amount equal to 90% of any SB Loan Amount at the relevant time.

“DIP Tranche Upfront Fee Letter” means the fee letter dated October 28, 2022 entered into between the Lenders and the Borrower.

“Disposition” shall mean any sale, Sale Leaseback, assignment, transfer, conveyance, lease, license or other disposition of any nature or kind whatsoever of any property or of any right, title or interest in or to any property, and the verb **“Dispose”** shall have a correlative meaning; for the avoidance of doubt, a return of capital by one Obligor to another Obligor shall not constitute a Disposition.

“Distribution” means:

- (a) the declaration, payment or setting aside for payment of any dividend or other distribution on or in respect of any shares in the capital of the Borrower or a Subject Entity, as the case may be, other than a dividend declared, paid or set aside for payment by the Borrower or a Subject Entity, as the case may be, which is payable in shares of such Borrower or Subject Entity;
- (b) the redemption, retraction, purchase, retirement or other acquisition, in whole or in part, of any shares in the capital of the Borrower or a Subject Entity, as the case may be, or any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for shares in the capital of the Borrower or a Subject Entity, as the case may be, including options, warrants, conversion or exchange privileges and similar rights; and
- (c) the payment of interest or the repayment of principal with respect to any Indebtedness of the Borrower which is subordinated and/or postponed to the Secured Obligations.

“**Draft**” means any draft, bill of exchange, receipt, acceptance, demand or other request for payment drawn or issued under or in respect of a Letter.

“**Drawdown Notice**” shall have the meaning ascribed thereto in Section 4.1.

~~“**Early Opt in Election**” means the occurrence of:~~

- ~~(a) (i) a determination by the Administrative Agent or (ii) a notification by the Majority Lenders to the Administrative Agent (with a copy to the Borrower) that the Majority Lenders have determined that U.S. Dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 3.12, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR, and~~
- ~~(b) (i) the election by the Administrative Agent or (ii) the election by the Majority Lenders to declare that an Early Opt in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Majority Lenders of written notice of such election to the Administrative Agent (with a copy to the Borrower).~~

~~“**EBITDA**” means, for any particular Fiscal Quarter, Net Income for such Fiscal Quarter:~~

- ~~(a) plus (to the extent otherwise deducted) income and mining tax expenses for such Fiscal Quarter;~~

- ~~(b) plus (to the extent otherwise deducted) Interest Expenses for such Fiscal Quarter;~~
- ~~(c) minus (to the extent otherwise included) Interest Income for such Fiscal Quarter;~~
- ~~(d) plus (to the extent otherwise deducted) any extraordinary or unusual losses and unrealized losses for such Fiscal Quarter;~~
- ~~(e) minus (to the extent otherwise included) any extraordinary or unusual gains and unrealized gains for such Fiscal Quarter;~~
- ~~(f) plus (to the extent otherwise deducted) any loss against book value or reserves incurred by a Company on the disposal or abandonment of any business or asset (not being a disposal made in the ordinary course of business) during such Fiscal Quarter or any discontinued operations;~~
- ~~(g) minus (to the extent otherwise included) any gain over book value or reserves incurred by a Company on the disposal or abandonment of any business or asset (not being a disposal made in the ordinary course of business) during such Fiscal Quarter or any discontinued operations;~~
- ~~(h) plus (to the extent otherwise deducted) depreciation of fixed assets and amortization of goodwill or intangible assets during such Fiscal Quarter;~~
- ~~(i) plus (to the extent otherwise deducted) depletion expense during such Fiscal Quarter;~~
- ~~(j) plus (to the extent otherwise deducted) the amount of capitalized expenditures during such Fiscal Quarter;~~
- ~~(k) plus (to the extent otherwise deducted) other non-cash expenses deducted in calculating Net Income, including non-cash stock expenses relating to stock-based compensation, and unrealized losses incurred in connection with Risk Management Agreements during such Fiscal Quarter;~~
- ~~(l) minus (to the extent otherwise included) any unrealized gains incurred in connection with Risk Management Agreements during such Fiscal Quarter;~~
- ~~(m) plus (to the extent otherwise deducted) any losses from operations held for sale and any foreign exchange losses during such Fiscal Quarter;~~
- ~~(n) minus (to the extent otherwise included) any gains from operations held for sale and any foreign exchange gains during such Fiscal Quarter;~~
- ~~(o) minus (to the extent otherwise included) any non-cash income and gains; and~~

~~(p) plus (to the extent otherwise deducted) any other non-cash expenses and losses.~~

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than a natural person), in each case, other than a Defaulting Lender, in respect of which the consent of any party whose consent is required by Section 16.5(c) has been obtained.

“Employee Benefit Plan” means any employee benefit plan maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Obligor that is not a Pension Plan, including any profit sharing, savings, supplemental retirement, retiring allowance, severance, deferred compensation, welfare, bonus, incentive compensation, phantom stock, supplementary unemployment benefit plan or arrangement and any life, health, dental and disability plan or arrangements in which the employees or former employees of any Obligor participate or are eligible to participate, in each case whether funded or unfunded, insured or self-insured, registered or unregistered, but excluding all stock option or stock purchase plans.

“Enforcement Date” means:

- (a) at all times prior to the Credit Facility Termination Date, the date on which the Administrative Agent notifies the Borrower, pursuant to Section 13.1, that all Indebtedness of the Borrower to the Lenders hereunder has become immediately due and payable or on which such indebtedness automatically becomes due and payable pursuant to Section 13.1, whichever occurs first; or
- (b) on and at all times after the Credit Facility Termination Date, the date on which a Finance Party notifies an Obligor that all indebtedness of such Obligor to such Finance Party under the relevant Finance Document has become immediately due and payable or on which such indebtedness automatically becomes due and payable, whichever occurs first.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

“Environmental and Social Laws” means any Applicable Law which relates to (A) the pollution or protection of the Environment, (B) the protection of occupational and public health and safety (C) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any

other, is capable of causing harm to the Environment including any Hazardous Materials, (D) the protection and empowerment of indigenous peoples, (E) the protection, restoration and promotion of cultural heritage or (F) resettlement or economic displacement of persons.

“**EPA**” means the *Environmental Protection Act* (Ontario), as amended from time to time, and any successor statute.

“**Equity**” means, at any particular time, the amount, expressed in U.S. Dollars, which would, in accordance with GAAP, be classified on the consolidated balance sheet of the Borrower at such time as shareholders’ equity of the Borrower.

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

“**Event of Default**” means the occurrence and continuance of any one of the events set forth in Section 13.1.

“**Excess Budgeted Revenue**” means, for any particular period, an amount equal to the Borrower’s consolidated revenue (including, without limitation, from extraordinary payments, the sale of inventory, product or produced or unprocessed minerals, metals or other mineral or extracted materials) and all dividends, returns of capital and/or repayments of intercompany loans paid by any Subject Entity to the Borrower during such period (plus interest income and any amounts received from business interruption or comparable insurance policies not otherwise captured by an Insurance Prepayment Trigger Event) which is in excess of the consolidated revenue forecasted to be received pursuant to the DIP Budgets during the corresponding period.

“**Excess Cash Flow Budgeted Revenue Prepayment Trigger Event**” ~~the 45th day after~~ means that there exists Excess Budgeted Revenue on the last day of a Fiscal Quarter in which the Borrower had positive CFADS ~~any period specified in the DIP Budgets.~~

“**Exchange Control Approval**” means the exchange control approval granted or to be granted, as the case may be, by the Bank of Namibia (A) initially on or before the Original Closing Date and annually thereafter on or before the anniversary of such initial grant)– in relation to the security in the form of guarantees and share pledges to be granted by, or in respect of, (i) Wilru, (ii) Rosh Pinah Base Metals and (iii) Rosh Pinah Mine Holdings; and (B) in relation to the loans to be made by the Borrower to RPZC pursuant to the Intercorporate Loan Agreement and the Borrower’s collateral assignment of rights in the Intercorporate Loan Agreement and the Intercorporate Services Agreement to the Administrative Agent.

“Exchange Equivalent” means, as of any date of determination, with reference to any amount expressed in one currency, the amount of another applicable currency required to purchase such amount in the first currency on such date either (i) in the case of any amount derived directly or indirectly from any financial statements of the Borrower, the exchange rate used to convert from one currency to another, as applicable, in the preparation of such financial statements, ~~or~~ (ii) in the case of Section 9.6(b), the rate of exchange at which the Administrative Agent is able, on the date of the relevant Existing Letter Reimbursement Loan (as defined in Section 9.6(b), to purchase Canadian Dollars with U.S. Dollars in accordance with its normal practice at its head office in Toronto, Ontario or (iii) in all other cases, rate of exchange quoted by the Bank of Canada on the Banking Day preceding the day as of which any determination of such rate is required to be made under the terms hereof, as (A) the 4:30 pm (Toronto time) spot rate for conversions of any currency into another currency or (B) if the Bank of Canada ceases to publish the rates referred in (A), any other exchange rate determined in good faith in the normal course of its business by the Administrative Agent and communicated to the Borrower and the Lenders from time to time.

“Excluded Assets” has the meaning ascribed to such term in Schedule RQ.

“Excluded Subsidiaries” means all Subsidiaries of the Borrower other than the Material Subsidiaries and the Subject Entities. As of the date of this Agreement, the Borrower’s Excluded Subsidiaries shall consist of Trevali Mining (Maritimes) Ltd., Trevali Renewable Energy Inc. and Nantou Exploration S.A.

“Excluded Taxes” means, with respect to any Finance Party or any other recipient of any payment to be made by or on account of any obligation of the Borrower under any Finance Document, (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), (A) by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or (B) by any jurisdiction as a result of a present or former connection between it and such jurisdiction other than a connection arising solely from any Finance Documents or any transaction contemplated thereby, or, in the case of any Finance Party, in which its applicable lending office is located, (b) any capital taxes and branch profits taxes or any similar tax imposed by any jurisdiction in which the Finance Party is located or conducts business, (c) in the case of a Foreign Lender (other than (i) an assignee pursuant to a request by the Borrower, (ii) an assignee pursuant to an assignment and assumption made pursuant to Section 16.5 or (iii) any other assignee to the extent that the Borrower has expressly agreed that any withholding tax shall be an Indemnified Tax), any withholding tax that is imposed under Part XIII of the Tax Act or any successor provision thereto because such Foreign Lender is not dealing at arm’s length with the Borrower within the meaning of the Tax Act or is a “specified shareholder” of the Borrower within the meaning of the Tax Act (A) is not imposed or assessed in respect of an extension of credit hereunder that was made on the premise that an exemption from such

withholding tax would be available where the exemption is subsequently determined, or alleged by a taxing authority, not to be available and (B) is required by Applicable Law to be withheld or paid in respect of any amount payable hereunder or under any Finance Document to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 8.6(f), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 8.6 and (c) any U.S. federal withholding taxes imposed under FATCA.

"Exposure" means, with respect to a particular Finance Party at a particular time, the amount of the Secured Obligations owing to such Finance Party at such time, determined by such Finance Party in good faith in accordance with Section 14.20.

"Factoring Facility" means, in respect of an Obligor or Subject Entity any transaction providing for the factoring, reverse factoring, sale, securitization or financing of receivables owing to or from such Obligor or Subject Entity.

"FATCA" shall mean (i) Sections 1471 through 1474 of the US Internal Revenue Code, (ii) any regulations promulgated thereunder, official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the US Internal Revenue Code, and (iii) any intergovernmental agreements (or related legislation or official administrative rules or practices) implementing the foregoing or any amended or successor version.

"Federal Funds Effective Rate" means, for any particular day, the variable rate of interest per annum, calculated on the basis of a year of 360 days and for the actual number of days elapsed, equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System as published for such day (or, if such day is not a Banking Day, for the next preceding Banking Day) by the Federal Reserve Bank of New York or, for any Banking Day on which such rate is not so published by the Federal Reserve Bank of New York, the average of the quotations for such day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent. If at any time the Federal Funds Effective Rate is less than zero, the Federal Funds Effective Rate shall be deemed to be equal to zero.

"Fifth Amendment" means the fifth amending agreement to dated October 28, 2022 to the Credit Agreement entered into by and among the Borrower, the Lenders and the Administrative Agent.

"Fifth Amendment Effective Time" means the time at which the Fifth Amendment becomes effective by the fulfillment of each condition precedent to the effectiveness thereof.

“**Finance Documents**” means, collectively, the Credit Documents, the Secured Risk Management Agreements and the Cash Management Agreements.

“**Finance Parties**” means, collectively, the Credit Parties, the Debt Guarantor, the Qualified Cash Management Lenders and the Qualified Risk Management Lenders.

“**Financial Letter**” means a standby letter of credit or guarantee in a form satisfactory to the Issuing Lender and issued by the Issuing Lender at the request of the Borrower in favour of a third party to secure the payment of an obligation owed to the third party.

“**Fiscal Quarter**” means any of the three-month periods ending on the last day of March, June, September and December in each Fiscal Year.

“**Fiscal Year**” means the twelve month period ending on the last day of December in each year.

“**Forbearance**” has the meaning ascribed thereto in the Fifth Amendment.

“**Forbearance Events of Default**” means those Events of Default described in Article 5 of the Fifth Amendment and which are subject to the Forbearance.

“**Foreign Lender**” means any Lender that is not organized under the laws of Canada and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any other Finance Document to be resident for income tax or withholding tax purposes in Canada by application of the laws of Canada.

“**Fronting Fee Letter**” means the letter of credit fronting fee letter dated August 29, 2017, entered into between The Bank of Nova Scotia, as Issuing Lender and the Borrower.

“**generally accepted accounting principles**” or “**GAAP**” means IFRS generally accepted accounting principles in effect in Canada from time to time consistently applied, as recommended by the Handbook of the Canadian Institute of Chartered Accountants.

“**GLCR Limited**” means GLCR Limited, company with limited liability registered in accordance with the laws of the United Kingdom, with registration number 09400628.

“**Glencore**” means Glencore Canada Corporation.

“**Glencore Documents**” means the Glencore Loan Agreement and all guarantees and security documents entered into from time to time in connection therewith.

“**Glencore Facility**” means the \$20,000,000 non-revolving subordinate term credit facility established by Glencore in favour of the Borrower.

“**Glencore Loan Agreement**” means the loan agreement dated August 6, 2020 entered into between Glencore, as lender, and the Borrower, as borrower pursuant to which the Glencore Facility was established.

“**Glencore Obligations**” means the indebtedness, obligations and liabilities, present or future, absolute or contingent, matured or not, at any time owing by an Obligor to Glencore, or remaining unpaid to Glencore, under or in connection with any Glencore Document.

“**Guarantees**” means, collectively, (x) the guarantee by the Borrower in Article 15 hereof and (y) the guarantee entered into or to be entered into by each Guarantor in favour of the Administrative Agent for the benefit of the Finance Parties, each in form and substance satisfactory to the Lenders, and pursuant to which such Obligor shall guarantee all of the Secured Obligations of each other Obligor and “**Guarantee**” means any one of the Guarantees.

“**Guarantee and Indemnity Agreement**” means the written agreement entitled “Debt Guarantor Guarantee and Counter-Indemnity Agreement” dated on or about the signature date between inter alia, the Pledgors, the Administrative Agent and the Debt Guarantor in terms of which, inter alia, the Debt Guarantor guarantees the obligations of the Pledgors and others to certain of the Finance Parties (other than the Debt Guarantor) and the Pledgors indemnify the Debt Guarantor from any loss arising out of such guarantee.

“**Guarantors**” means, collectively, all present and future Material Subsidiaries.

“**Hazardous Materials**” means any waste or other substance that is hazardous, radioactive, toxic, a pollutant or a contaminant, or that is regulated, listed, defined, designated, or classified, or otherwise determined to be, as such under or pursuant to any Environmental and Social Laws, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes thereof and asbestos or asbestos-containing materials.

“**IFRS**” means, at any given date, International Financial Reporting Standards, which include standards and interpretations adopted by the International Accounting Standards Board, applied on a consistent basis.

“**Indebtedness**” of any Person means, without duplication, (i) indebtedness of such Person for borrowed money or for the deferred purchase price of property and services, other than trade payables incurred in the ordinary course of business and payable in accordance with customary practices, (ii) other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (iii) obligations of such Person under any Capital Lease, (iv) reimbursement obligations of such Person under bankers’ acceptances and contingent obligations

of such Person in respect of any letter of credit, bank guarantee or surety bond, (v) to the extent accelerated, the Out-of-the-Money Derivative Exposure of such Person, and (vi) the contingent obligations of such Person under any guarantee or other agreement assuring payment of any obligations of any Person of the type described in the foregoing clauses (i) to (v) (for greater certainty, the contingent obligations assuring payment of any Out-of-the-Money Derivative Exposure will only be treated as Indebtedness if such Out-of-the-Money Derivative Exposure has in fact been accelerated). ~~Indebtedness for purposes of calculating the Net Senior Secured Leverage Ratio and the Total Net Leverage Ratio shall not include any Indebtedness under clause (iv) above (other than any Secured Obligations) that is cash collateralized.~~

“Indemnified Liabilities” has the meaning ascribed to such term in Section 8.5(a) or Section 8.5(b), as applicable.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Individual Commitment” means, with respect to a particular Lender, the amount set forth in Schedule A attached hereto, as reduced, increased or otherwise amended from time to time pursuant to, as applicable, Sections 2.3, 8.3, 14.14(b) and 16.5 as the individual commitment of such Lender, provided that, upon the termination of the Credit Facility pursuant to Section 2.4, the Individual Commitment of each Lender shall thereafter be equal to the Individual Commitment of such Lender immediately prior to the termination of the Credit Facility.

“Initial Order” means the initial order of the Court issued on August 19, 2022 in the CCAA Proceeding.

“Insurance Prepayment Trigger Event” means the receipt by any ~~Obligor~~ Subject Entity of any insurance proceeds ~~in excess of \$20,000,000 or the Exchange Equivalent thereof, where such proceeds or any portion thereof have not been used or committed (being, for the avoidance of doubt, the entering into of purchase contracts or similar instruments with respect to the replacement or repair of the relevant asset) by such Obligor to repair or replace the subject assets within 180 days of such Obligor’s receipt thereof providing that such repairs or replacement will generate materially the same performance as prior to such insurance claim, including but not limited to any insurance proceeds paid in respect of any claims for loss or property damage or business interruption at the Perkoa Mine.~~

“Intercorporate Loan Agreement” means the amended and restated loan agreement dated October 28, 2022 between the Borrower, as lender, and RPZC, as borrower.

“Intercorporate Postponement and Subordination Agreement” means the intercorporate postponement and subordination agreement dated as of or prior to the Original Closing Date entered into by each Company (other than the Subject

Entities) in favour of the Administrative Agent and as may be adhered to by companies in the future pursuant to Schedule A thereto.

“Intercorporate Services Agreement” means the services agreement dated January 1, 2020 between RPZC, as service recipient, and the Borrower, as service provider, as supplemented by a consent and confirmation dated October 28, 2022 entered into by RPZC in favour of the Administrative Agent and the Borrower.

“Intercreditor Agreement” means the amended and restated intercreditor agreement to be dated September 30, 2020 entered into among the Administrative Agent, for and on behalf of the Finance Parties, as first lien creditor, Glencore, as second lien creditor, the Peruvian Collateral Agent, the Debt Guarantor and the Obligors which intercreditor agreement shall provide for, *inter alia*, the subordination and postponement of the Glencore Obligations and attendant security to the Secured Obligations, all in accordance with the intercreditor principles commitment letter dated the date hereof among the Administrative Agent, the Lenders and Glencore.

“Interest Expense Coverage Ratio” means, for any Fiscal Quarter, the ratio of (i) Rolling EBITDA for such Fiscal Quarter to (ii) Rolling Interest Expense for such Fiscal Quarter.

“Interest Expenses” means, for any particular period, the amount which would in accordance with generally accepted accounting principles, be classified on the consolidated income statement of the Borrower for such period as gross interest expenses on Indebtedness (including, for the avoidance of doubt, issuance fees with respect to letters of credit).

“Interest Income” means, for any particular period, the amount which would, in accordance with generally accepted accounting principles, be classified on the consolidated income statement of the Borrower for such period as interest accrued due to the Borrower during such period.

“Interest Period” means, in the case of any LIBOR Loan, the applicable period for which interest on such LIBOR Loan shall be calculated pursuant to Article 7.

“Investment” shall mean any advance, loan, extension of credit or capital contribution to, purchase of Shares, bonds, notes, debentures or other securities of, or any other investment made in, any Person but shall exclude any Acquisition, any acquisition of tangible personal property and any capital or exploration expenditures.

“Issuing Lender” means The Bank of Nova Scotia or any other Lender selected by the Administrative Agent and acceptable to the Borrower who assumes in writing the obligation of issuing a Letter or Letters on behalf of the Lenders, as issuer of the Existing Letters.

“Judgment Conversion Date” shall have the meaning ascribed thereto in Section 16.7(a)(ii).

“Judgment Currency” shall have the meaning ascribed thereto in Section 16.7.

“Knowledge of the Borrower” means, at any particular time, the conscious knowledge of (i) the senior management of the Borrower, and (ii) the senior mine manager or operations manager (general manager) at each of the Material Mines.

“Lenders” means the individual financial institutions set out and described in Schedule A, as amended from time to time, and **“Lender”** means any of the Lenders. After the Credit Facility Termination Date, **“Lender”** shall mean each Person that was a Lender immediately prior to the Credit Facility Termination Date but only for so long as such Person is a Qualified Cash Management Lender or Qualified Risk Management Lender.

“Letter Cash Collateral Account” means a special purpose account to be established by the Borrower with the Administrative Agent for the purposes set out in Section 13.2.

“Letters” means Financial Letters or Non-Financial Letters issued by the Issuing Lender at the written request, and on the credit, of the Borrower, each being denominated in ~~United States~~Canadian dollars, having a term of not more than one year, being renewable in the sole discretion of the Issuing Lender, being issued to a named beneficiary acceptable to the Issuing Lender and being otherwise in a form satisfactory to the Issuing Lender. For the avoidance of doubt, the Existing Letters constitute “Letters” for the purposes hereof.

~~“LIBOR” means (i) the rate of interest per annum, calculated on the basis of a year of 360 days, determined by the Administrative Agent for a particular Interest Period to be the rate of interest per annum as determined by reference to the London interbank offered rate administered by ICE Benchmark Administration Limited for deposits in U.S. Dollars (as set forth by any service which has been nominated by ICE Benchmark Administration Limited as an authorized information vendor for the purpose of displaying such rates) at approximately 11:00 a.m. (London time) on the second Banking Day prior to the commencement of such Interest Period, (ii) if, for any reason at any time prior to a Benchmark Transition Start Date, such rate cannot be determined through such service the rate of interest per annum, calculated on the basis of a year of 360 days, determined by the Administrative Agent for a particular Interest Period to be the rate of interest per annum that appears as such on the Reuters Page LIBOR01 at approximately 11:00 a.m. (Toronto time) on the second Banking Day prior to the commencement of such Interest Period, or (iii) if, for any reason, such rate cannot be determined through such service or Reuters Pages, LIBOR shall mean the rate of interest per annum, calculated on the basis of a year of 360 days and rounded upwards if necessary to the nearest whole multiple of 1/16% determined by the Administrative Agent as being the rate of interest at which the Administrative~~

Agent (in its capacity as a Lender) in accordance with its normal practices would be prepared to offer to leading banks in the London Interbank Market for delivery on the first day of each relevant Interest Period for a period equal to the relevant Interest Period based on the number of days comprised therein, deposits in U.S. Dollars of comparable amounts to the amount of the relevant LIBOR Loan, to be outstanding during the Interest Period, at approximately 11:00 am (London time) on the second Banking Day prior to the commencement of such Interest Period. For the avoidance of doubt, if LIBOR is ever below zero, LIBOR for the purposes hereof shall be deemed to be zero.

~~“LIBOR Loan” means monies lent by the Lenders to the Borrower in U.S. Dollars and upon which interest accrues at a rate referable to LIBOR.~~

“Lien” means (i) any right of set-off intended to secure the payment or performance of an obligation, (ii) any interest in property created by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement, conditional sale agreement, title retention, Capital Lease, sale-lease-back transaction, or discount, factoring or securitization arrangement on recourse terms, (iii) any statutory deemed trust or lien, (iv) execution, seizure, attachment, garnishment or other encumbrance, in each case, which binds property (v) any agreement to grant any of the foregoing rights or interests described in clauses (i) to (iv) of this definition and (vi) any other similar arrangement, in each case of clauses (i) through (vi) of this definition, which secures the payment or performance of, any debt, liability or obligation.

“Life of Mine” means, for any particular Material Mine, the period during which all Reserves and Resources at such Material Mine as reported in the Borrower’s most recent reserve statement or mine plan or other project description filed from time to time with Official Bodies in respect of such Material Mine is projected to be extracted through planned mining activities at or in connection with such Material Mine.

~~“Loan” means monies lent by the Lenders to the Borrower hereunder and upon which interest accrues at a rate referable to the Base Rate.~~

~~“Limited Recourse Indebtedness” means Indebtedness incurred by a Company in respect of which the recourse of the creditor thereunder, whether on account of principal, interest or lease payments or guarantees thereof, is limited to Shares issued by, and assets owned or leased by, an Excluded Subsidiary without further recourse to any Obligor or its other assets.~~

~~“Liquidity” means, at any particular time, the aggregate of (i) the Unrestricted Cash at such time and (ii) Non-Restricted Credit Availability at such time.~~

~~“Loans” means Base Rate Loans and LIBOR Loans.~~

“Majority Lenders” means:

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- (a) at any particular time up to the Credit Facility Termination Date, such group of Lenders (and, if there is more than one Lender, at least two Lenders) whose Individual Commitments aggregate at least ~~two-thirds~~ 75% of the Total Commitment Amount at such time; and
- (b) at any particular time after the Credit Facility Termination Date, such group of Finance Parties which have aggregate Exposure in an amount at least ~~two-thirds~~ 75% of the aggregate Exposure of all of the Finance Parties at such time.

Notwithstanding the foregoing, the unfunded Individual Commitment of, and the outstanding extensions of credit held or deemed to be held by, any Defaulting Lender shall be excluded for purposes of making a determination of Majority Lenders.

“Material Adverse Change” means any change of circumstances or event (or any Lender becoming aware of any facts not previously disclosed or known) which is reasonably likely to have a Material Adverse Effect.

“Material Adverse Effect” means a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which, cumulatively, result in a material adverse effect) ~~or~~:

- (a) ~~on the~~ business, property, assets, liabilities, condition (financial or otherwise) or prospects of the Obligors ~~Subject Entities~~ taken as a whole;
- (b) ~~on the~~ ability of any Obligor taken as a whole to perform their material obligations under the Credit Documents ~~taken as a whole; or~~
- (c) resulting in the Monitor declaring that a material adverse change has occurred in the CCAA Proceeding; or
- (d) ~~(e) on the~~ ability of the Administrative Agent (including by instructing the Peruvian Collateral Agent), or any Lender to enforce its material rights and remedies under the any Credit Documents, taken as a whole ~~Document.~~

Notwithstanding the foregoing, ~~normal course adverse price fluctuations in the commodity markets~~ none of the following events shall not, in and of themselves, be deemed to constitute a Material Adverse Effect: (i) the cessation of operations and transition to care and maintenance by Trevali NB (or the Caribou Mine) or Nantou (or the Perkoa Mine), (ii) the initiation of liquidation or insolvency proceedings by Nantou and (iii) in the event that there are no acceptable bids involving Trevali NB through the SISF process, any abandonment involving Trevali NB or any of its assets provided such abandonment and the approach thereto does not increase any adverse effect and would not reasonably be expected to increase any adverse effect on the interests of the Administrative Agent or the Lenders.

“Material Agreements” means (i) those contracts of any Obligors involving aggregate consideration payable to or by any Obligors of US\$20,000,000 in any one year period, and (ii) any other contract to which an Obligor is a party, for which there is no readily available substitute, and the breach or termination of which would reasonably be expected to result in a Material Adverse Change and **“Material Agreement”** means any of the Material Agreements.

“Material Mines” means

~~(a) the Caribou Mine, the Santander Mine, the Rosh Pinah Mine and the Perkoa Mine; and,~~

~~(b) after the Restatement Date, each other operating mine (not on care and maintenance) owned by a Company if (i) the Rolling EBITDA of such Company attributable to such mine (such Rolling EBITDA, where not the Rolling EBITDA of the Borrower, to be calculated for such Company by substituting each reference to the Borrower in such definition and each constituent definition thereof with a reference to such Company mutatis mutandis, provided that such calculation shall not be on a consolidated basis) for a Fiscal Quarter constitutes at least 15% of the Rolling EBITDA of the Borrower on a consolidated basis for such Fiscal Quarter or (ii) the book value of such operating mine as at the last day of the most recently completed Fiscal Year of such Company constitutes at least 15% of the book value of the assets of the Borrower on a consolidated basis as at the last day of the most recently completed Fiscal Year; or~~

~~(c) such other mine or mining project designated as a “Material Mine” by the Borrower and notified to the Administrative Agent from time to time.~~

“Material Subsidiaries” means Trevali Holdings (Bermuda) Ltd., GLCR Limited, Trevali Mining (New Brunswick) Ltd., Boundary Ventures Limited, ~~Trevali Peru S.A.C.,~~ Wilru Investments One Hundred and Thirty Four (Proprietary) Limited, Rosh Pinah Base Metals (Proprietary) Limited and Rosh Pinah Mine Holdings (Proprietary) Limited and each other present or future wholly-owned Subsidiary which has a direct or indirect ownership interest in a Material Mine. For certainty, a direct or indirect Subsidiary of the Borrower which is a holding company of a Subsidiary which satisfies the foregoing criteria shall also constitute a **“Material Subsidiary”**.

~~“Maturity Date” means the date which is the earlier of (i) September 18, 2022 and (ii) the date on which the Glencore Obligations become due, whether by maturity, acceleration or otherwise.~~

“Mine Plan” means (i) in respect of each Material Mine, the updated individual mine plan in a format approved by the Borrower and the Majority Lenders prior to the Original Closing Date for such mine’s relevant Life of Mine and (ii) the consolidated annual budget of the Borrower which shall include projected

exploration and corporate expenses (including sales, general and administrative expenses), delivered by or on behalf of the Borrower to the Lenders.

“Mining Licenses” means, collectively, at any time, the mining or mineral concessions, mining claims and mining leases or mining lease agreements, whether owned or held under any other title, which are material to conduct of exploration, mining and processing activities on or in each of the ~~Material Mines~~ Rosh Pinah Mine and all extensions, renewals, replacements, conversions or substitutions thereof, ~~a complete and accurate inventory of which in respect of the Caribou Mine and the Santander Mine is set forth in the Perfection Certificates as updated from time to time in accordance with Section 11.1(b)(iii).~~

“Mining Operations” means, at any particular time, the exploration, development, mining, construction, processing and milling operations carried out at the ~~Material Mines~~ Rosh Pinah Mine at such time.

“Monitor” means FTI Consulting Canada Inc., as the Court-appointed Monitor of the Borrower and Trevali NB in the CCAA Proceeding.

“Moody’s” means Moody’s Investors Service, Inc. or any successor by merger or consolidation to its business.

“Nantou” means Nantou Mining Burkina Faso S.A., a company existing under the laws of Burkina Faso.

~~“Net Income” means, for any particular period, the amount which would, in accordance with generally accepted accounting principles, be classified on the consolidated income statement of the Borrower for such period as the net income of the Borrower excluding any extraordinary items provided; that during any point in time that any such income is earned but is subject to currency controls or other similar Applicable Laws which prohibit the transfer of Cash from the jurisdiction where such income was earned to any other jurisdiction in which one or more Obligors operate, are resident for tax purposes and/or are otherwise incorporated, such income shall not be considered Net Income notwithstanding generally accepted accounting principles.~~

~~“Net Indebtedness” means, at any particular time, Total Indebtedness at such time less an amount equal to all Unrestricted Cash at such time.~~

~~“Net Senior Secured Indebtedness” means, at any particular time and without duplication, the aggregate amount of the Companies’ Indebtedness referenced in paragraphs (a), (b), (h) and (l) of Permitted Indebtedness at such time (“Senior Secured Indebtedness”) less an amount equal to all Unrestricted Cash at such time.~~

~~“Net Senior Secured Leverage Ratio” means, for any Fiscal Quarter, the ratio of (i) Net Senior Secured Indebtedness at the last day of such Fiscal Quarter to (ii) Rolling EBITDA for such Fiscal Quarter.~~

“Non-Canadian Pension Plan” shall mean any Plan that (a) is established or maintained outside Canada by any of the Companies primarily for the benefit of employees of such Company residing outside Canada, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and (b) is not a Canadian Pension Plan.

“Non-Core Assets” means assets of the Obligors not deployed in connection with mining activities of the Material Mines for a period of 90 consecutive days but, for the avoidance of doubt, not including (i) the shares of any Guarantor or Subject Entity and (ii) any Material Mine.

“Non-Financial Letter” means a standby letter of credit or guarantee in a form satisfactory to the Issuing Lender and issued by the Issuing Lender at the request of the Borrower in favour of a third party to secure the non-financial performance of an obligation owed to the third party.

~~“Non-Restricted Credit Amount” means, at any particular time, the amount of the Credit Facility which is not subject to a restriction on its availability pursuant to Section 2.5 at any time no Default has occurred and is continuing.~~

~~“Non-Restricted Credit Availability” means, at any particular time, the amount, if any, by which the Non-Restricted Credit Amount at such time exceeds the amount of credit outstanding under the Credit Facility (which credit outstanding includes, for the avoidance of doubt, the amount available to be drawn under any issued and outstanding Letters) at such time.~~

“Obligors” means the Borrower and the Guarantors and **“Obligor”** means any one of the Obligors, and expressly excludes the Excluded Subsidiaries and any non-wholly owned Subsidiary.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Official Body” means any supra-national (such as the European Union and the European Central Bank), national, state, provincial or municipal government or government of any political subdivision thereof, or any agency, authority, board, central bank, monetary authority, commission, department or instrumentality thereof, or any court, tribunal, grand jury, mediator, arbitrator or referee, whether foreign or domestic.

~~“Operating Expenditures” shall mean, for any particular period and without duplication, those cash expenditures of the Borrower on a consolidated basis for mining for, and transportation and milling of, minerals, for off-site storage costs, treatment and refining charges under off-take agreements and for all consolidated general and administrative costs, all calculated in accordance with generally~~

~~accepted accounting principles and the Borrower's applicable financial statements.~~

"Order" means an order, judgment, injunction or other determination restricting payment by the Issuing Lender under or in accordance with a Letter or extending the Issuing Lender's liability beyond the expiration date stated therein.

"Original Closing Date" means August 31, 2017.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Finance Document or from the execution, delivery or enforcement of, or otherwise with respect to, this agreement or any other Finance Document and the transactions contemplated thereby.

"Out-of-the-Money Derivative Exposure" has the meaning given to it in the definition of "Derivative Exposure".

"Participant" shall have the meaning ascribed thereto pursuant to Section 16.5.

"Party" means a party to this agreement.

"Pension Event" means any of the following: (i) the termination or wind-up in whole or in part of a Canadian Pension Plan, (ii) the occurrence of any circumstance or event that would provide any basis for a governmental authority to take steps to cause the termination or wind-up, in whole or in part, of any Canadian Pension Plan, the issuance of a notice (or a notice of intent to issue such a notice) to terminate in whole or in part any Canadian Pension Plan or the receipt of a notice of intent from a governmental authority to require the termination in whole or in part of any Canadian Pension Plan, revoking the registration of same or appointing a new administrator of such a plan, (iii) the withdrawal of an Obligor from a Canadian Pension Plan or the receipt by an Obligor of notice requiring or threatening to require the withdrawal of an Obligor from a Canadian Pension Plan, (iv) the failure to make any required contribution or payment to a Canadian Pension Plan when due unless such failure is (A) promptly remedied and (B) cannot, after so being remedied, be reasonably be expected to have a Material Adverse Effect, or (v) the occurrence of any circumstance or event related to a Non-Canadian Pension Plan that could reasonably be expected to have a Material Adverse Effect.

"Pension Plan" means any Canadian Pension Plan or Non-Canadian Pension Plan.

"Perfection Certificate" means, in respect of each Obligor, the certificate of a senior officer of such Obligor, addressed to the Administrative Agent ~~or the Peruvian Collateral Agent~~, in form and substance satisfactory to the Lenders and pursuant to which certain factual matters relating to such Obligor and the Secured Assets of such Obligor are certified true and correct, together with all schedules

and exhibits attached thereto or referred to therein, as the same may be updated from time to time pursuant to Section 11.1(b).

“**Perkoa Mine**” means the zinc mine located in the Sanguie Province, Burkina Faso, approximately 120-km west of the capital city of Ouagadougou.

“**Permits**” means all material licenses, permits, Approvals of Official Bodies (including environmental Approvals), rights (including surface and access rights), privileges, concessions or franchises necessary for the construction, development, operation and reclamation of any ~~Material Mine~~ the Rosh Pinah Mine.

“~~Permitted Acquisition~~” means any ~~Acquisition~~ with respect to which:

- (a) ~~the business of the entity being acquired is, (in the case of an Acquisition of Shares) or the assets being acquired are used in or relate to, (in the case of an asset Acquisition) a business engaged in the exploration or mining of base or precious metals or such other line of business as is substantially similar, ancillary or related thereto or a reasonable extension thereof;~~
- (b) ~~no Default or Event of Default exists at the time of such proposed Acquisition and no Default or Event of Default would exist immediately after the implementation of any such proposed Acquisition;~~
- (c) ~~the financial covenants set out in Sections 11.1(m), (o) and (p) would be met, on a *pro forma* basis, immediately after giving effect to the implementation of any such Acquisition, and for the avoidance of doubt, such financial covenants are to be met notwithstanding any covenant waiver that may be in effect as at the time of such Acquisition;~~
- (d) ~~the Liquidity would be in an amount equal to or greater than \$20,000,000 after giving effect to the implementation of any such Acquisition;~~
- (e) ~~the assets acquired are situate in, or the entity acquired is incorporated or otherwise formed in, a Permitted Jurisdiction;~~
- (f) ~~no Cash consideration is offered or paid in connection with the subject Acquisition; and~~
- (g) ~~the Acquisition does not constitute a hostile takeover (being, for the avoidance of doubt, a takeover bid of the target company that the board of directors of such company does not support).~~

“**Permitted Capital Reorganization**” means any of (a) any change in the capital structure of the issued and outstanding Shares of the Borrower (other than a change in connection with an Acquisition that is not a Permitted Acquisition or a change that would result in an Event of Default); (b) any Capital Reorganization that does not result in (i) any decrease in the combined direct and indirect percentage ownership interest of the Borrower in any Obligor or Subject Entity or

~~(ii) a change in the shareholders of an Obligor; and (e) any other Capital Reorganization (i) that does not result in any decrease in the combined direct and indirect percentage ownership interest of the Borrower in any Obligor or Subject Entity and (ii) notice of which (and reasonable details thereof) has been provided by the Borrower to the Administrative Agent in writing not later than ten Banking Days before its proposed completion date, and which notice (A) includes a certification that the completion of the Capital Reorganization will not have a Material Adverse Effect and (B) includes the Borrower's covenant to deliver or cause to be delivered to the Administrative Agent or the Peruvian Collateral Agent, as applicable, contemporaneously with the completion of such Capital Reorganization (or such later date as may be agreed by the Administrative Agent on the instructions of the Majority Lenders), any Credit Documents and/or amendments thereto, certificates, opinions and other things as the Administrative Agent may reasonably request to ensure the completion of such Capital Reorganization shall not adversely affect any rights of any Finance Party under any Finance Document and (C) certifying that no Default or Event of Default has occurred and is outstanding at the time of the completion of the Capital Reorganization or would arise immediately upon giving effect thereto. Capital Reorganization undertaken upon the prior written consent of the Majority Lenders and otherwise with the approval of the Court pursuant to the CCAA Proceeding.~~

“Permitted Corporate Reorganization” means (i) ~~any Corporate Reorganization~~ resulting from a Permitted Disposition pursuant to paragraph (e) of such defined term and (ii) ~~any other Corporate Reorganization~~ notice of which (and reasonable details thereof) has been provided by the Borrower to the Administrative Agent in writing not later than ten Banking Days before its proposed completion date, and which notice (A) includes a certification that the completion of the Corporate Reorganization will not have a Material Adverse Effect and (B) includes the Borrower's covenant to deliver or cause to be delivered to the Administrative Agent or the Peruvian Collateral Agent, as applicable, contemporaneously with the completion of such Corporate Reorganization (or such later date as may be agreed by the Administrative Agent on the instructions of the Majority Lenders), any Credit Documents and/or amendments thereto, certificates, opinions and other things as the Administrative Agent may reasonably request to ensure the completion of such Corporate Reorganization shall not adversely affect any rights of any Finance Party under any Finance Document and (C) certifying that no Default or Event of Default has occurred and is outstanding at the time of the completion of the Corporate Reorganization or would arise immediately upon giving effect thereto; provided that, (x) with respect to any merger or amalgamation involving the Borrower, the continuing or surviving Person shall be the Borrower hereunder, (y) with respect to any merger or amalgamation involving any other Obligor, the continuing or surviving Person shall be an Obligor hereunder, and (z) no liquidation, winding up, dissolution, bankruptcy or insolvency proceeding or compromise of debts of any Obligor shall constitute a “Permitted Corporate Reorganization” unless (I) such Obligor is not an operating entity and has only nominal assets and nominal liabilities, or (II) all of the assets of such Obligor or Subject Entity (including any

~~interest in any Shares) are transferred to an Obligor or Subject Entity, as the case may be, that is not liquidating, winding up or dissolving, (i) undertaken upon the prior written consent of the Majority Lenders and (ii) with the approval of the Court pursuant to the CCAA Proceeding, and includes, for certainty, a bankruptcy in respect of Trevali NB.~~

“Permitted Dispositions” means and any one or more of the following:

- (a) Dispositions of inventory, product or produced or unprocessed minerals, metals or other mineral or extracted materials Disposed of in the ordinary course of business;
- (b) Dispositions of worn out, unserviceable, redundant, uneconomical or obsolete tangible assets;
- (c) ~~Dispositions of assets owned by one Obligor to another Obligor provided such disposition does not result in a Secured Asset no longer being subject to the Security;~~ approved in writing by the Administrative Agent, on the instructions of the Majority Lenders;
- ~~(d) Dispositions of publicly traded securities Disposed of for the fair market value thereof;~~
- ~~(e) Dispositions of assets owned by a Subject Entity to an Obligor pursuant to the RPZC Set-Off Transaction; and~~
- (e) Dispositions approved by the Court pursuant to the CCAA Proceeding with the support of the Administrative Agent.

“Permitted Fees and Expenses” means the fees and expenses described in Section 11.1(f).

- ~~(f) the Disposition of all or a material portion of the Caribou Mine or the Santander Mine provided (i) the economic terms of the subject purchase and sale agreement are satisfactory to the Majority Lenders (acting reasonably) and (ii) the proceeds of such Disposition are used to mandatorily prepay the Credit Facility pursuant to Section 9.4;~~

~~in each case of (b) through (e), further provided that a Disposition will be deemed not to be a Permitted Disposition if a Default or Event of Default has occurred and is continuing at the time of such Disposition or would arise immediately after such Disposition as a result thereof. For the avoidance of doubt, a Restricted Forward Sale Transaction shall not constitute a commodity sale transaction in the ordinary course of business for the purposes hereof.~~

“Permitted Indebtedness” means any one or more of the following:

- (a) the Secured Obligations;

- (b) Indebtedness of the Obligors arising under Capital Leases and Purchase Money Indebtedness which exists as of the Restatement Date plus, at any particular time, an additional aggregate amount of such Indebtedness of up to \$25,000,000 5,000,000 or the Exchange Equivalent thereof;
- (c) Indebtedness owed by an Obligor to another Obligor;
- (d) Indebtedness owed by RPZC to the Borrower pursuant to the Intercorporate Loan Agreement and the Intercorporate Services Agreement at any time that the Administrative Agent has valid first ranking perfected Security in the intangible rights (including receivables) under such Intercorporate Loan Agreement and Intercorporate Services Agreement;
- (e) ~~(d)~~ trade payables and other accrued liabilities incurred in the ordinary course of business and payable in accordance with customary practices;
- (f) ~~(e)~~ Indebtedness secured by a Permitted Lien;
- (g) ~~(f)~~ Indebtedness in respect of bonds, letters of credit (other than Letters) or bank guarantees in favour of a public utility or any other Official Body when required by such utility or other Official Body in connection with the operations of any Company (including for the reclamation or remediation of mining properties), all in the ordinary course of business, the aggregate amount of such Indebtedness not to exceed \$20,000,000 10,000,000 or the Exchange Equivalent thereof at any time;
- (h) ~~(g)~~ Guarantees by any Obligor of Permitted Indebtedness of another Obligor, provided, in the case of guarantees for the Indebtedness at paragraph (m), below, such guarantees are at all times subordinated and postponed to the Secured Obligations pursuant to the Intercreditor Agreement;
- (i) ~~(h)~~ ~~Intentionally Deleted~~ the Wilru Intercorporate Debt (as defined in Schedule U hereto);
- (j) ~~(i)~~ Indebtedness in an aggregate amount not exceeding at any particular time \$10,000,000 or the Exchange Equivalent thereof incurred or guaranteed by the Obligors and Subject Entities in respect of one or more Factoring Facilities, recourse for which is limited to the corresponding receivables financed thereunder;
- (k) ~~(j)~~ Indebtedness pursuant to Permitted Risk Management Agreements;
- (l) ~~(k)~~ unsecured Indebtedness of the Obligors on a consolidated basis not otherwise referenced in paragraphs (a) to (j) in an aggregate amount of

not more than ~~\$25,000,000~~5,000,000 or the Exchange Equivalent thereof at any particular time;

- (m) ~~(l)~~-Indebtedness in an aggregate amount not exceeding at any particular time \$25,000,000 or the Exchange Equivalent thereof incurred by Rosh Pinah Zinc Corporation (Proprietary) Limited under the SB Facility;
- (n) ~~(m)~~-Indebtedness in the maximum aggregate principal amount of ~~\$20,000,000~~13,200,000 incurred by the Borrower under the Glencore Facility, provided that such Indebtedness at all times are subordinated and postponed to the Secured Obligations pursuant to the Intercreditor Agreement;
- (o) ~~(n)~~-Indebtedness owed by an Obligor to any Subsidiary of the Borrower that is not an Obligor provided that such Indebtedness is subject to the Intercorporate Postponement and Subordination Agreement.

“Permitted Investments” means any one or more of the following:

- (a) Investments in Cash;
- (b) subject to paragraph (c), below, Investments in Obligors and Subject Entities made in accordance with the DIP Budgets;
- (c) loans extended by the Borrower to RPZC pursuant to the Intercorporate Loan Agreement at any time that the Administrative Agent has valid first ranking perfected Security in the intangible rights (including receivables) under such Intercorporate Loan Agreement; and
- (d) Investments approved by the Court pursuant to the CCAA Proceeding with the support of the Administrative Agent;
- (e) ~~Intentionally deleted.~~; and
- (d) ~~Intentionally deleted.~~;

provided that, in each case, no Default or Event of Default exists or would exist at the time of making any such Investment and immediately after making any such Investment.

“Permitted Jurisdictions” means Canada, the United States of America and any other country which is not subject to Sanctions from Canada or the United States of America at the time the subject Acquisition is consummated, and **“Permitted Jurisdiction”** means any of the Permitted Jurisdictions.

“Permitted Liens” means any one or more of the following with respect to the property and assets of the Obligors and Subject Entities:

- (a) the Security and any Lien permitted pursuant to the Finance Documents and the DIP Order;
- (b) Liens for Taxes, assessments or governmental charges or levies not at the time due or delinquent or the validity of which are being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles;
- (c) attachments, judgments and other similar Liens arising in connection with court proceedings; provided, however, that the Liens are in existence for less than 10 days after their creation or the execution or other enforcement of the Liens is effectively stayed or the claims so secured are being actively contested in good faith and by proper legal proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles;
- (d) Liens and charges incidental to construction or current operations, including carrier's, warehousemen's, mechanics', materialmen's, repairmen's, construction and other like Liens arising by operation of Applicable Law, ~~which have not at such time been filed pursuant to law or which relate to obligations not due or delinquent or the validity of which are being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles; which in aggregate do not exceed, at any particular time, \$10,000,000 or the Exchange Equivalent thereof;~~
- (e) restrictions, easements, rights-of-way, servitudes or other similar rights in land granted to or reserved by other persons which in the aggregate do not materially impair the usefulness, in the operation of the business of any Obligor or Subject Entity, of the property subject to such restrictions, easements, rights-of-way, servitudes or other similar rights in land granted to or reserved by other persons;
- (f) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by any Company or by any statutory provision, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (g) the Lien resulting from the deposit of cash or securities (i) in connection with contracts, tenders or expropriation proceedings, or (ii) to secure workers' compensation, costs of litigation when required by law and public and statutory obligations, or (iii) in connection with the discharge of Liens or claims incidental to construction and mechanics', warehouseman's, carriers' and other similar liens;

- (h) security given to a public utility or other Official Body (including for the reclamation or remediation of mining properties) in connection with the operations of any Obligor or Subject Entity, all in the ordinary course of business;
- (i) without duplication of the Liens referenced in paragraph (h), above, Liens on Cash in an amount not exceeding, at any particular time, \$10,000,000 or the Exchange Equivalent thereof, as collateral security for letters of credit, bonds or bank guarantees in favour of a public utility or other Official Body (including for the reclamation or remediation of mining properties) in connection with the operations of any Company, all in the ordinary course of business;
- (j) the reservations, limitations, provisos and conditions, if any, expressed in any original patents or grants from any Official Body;
- (k) title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use of the property for the purpose for which it is held;
- (l) servicing agreements, development agreements, site plan agreements, subdivision agreements and agreements with Official Bodies pertaining to the use or development of any of the assets of an Obligor or Subject Entity, provided same are complied with and do not materially reduce the value of the assets of an Obligor or Subject Entity or materially interfere with the use of such assets in the operation of the business of an Obligor or Subject Entity;
- (m) applicable municipal and other governmental restrictions affecting the use of land or the nature of any structures which may be erected thereon, provided such restrictions have been complied with and will not materially impair the use of the property for the purpose for which it is held;
- (n) Liens securing appeal bonds and other similar Liens arising in connection with court proceedings (including surety bonds, security for costs of litigation where required by Applicable Law and letters of credit) or any other instruments serving a similar purpose;
- (o) Liens securing Indebtedness under clause (b) of the definition of Permitted Indebtedness (for the avoidance of doubt such Liens shall only be permitted on the assets financed pursuant to such Capital Leases and/or Purchase Money Indebtedness, as the case may be), and the proceeds thereof and insurance proceeds related thereto);
- (p) landlords' Liens arising in the ordinary course of business;

- (q) Liens on minerals or the proceeds of sale of such minerals arising or granted pursuant to, or in respect of, a processing or refining arrangement entered into in the ordinary course and upon usual market terms, securing the payment of any Obligor's or Subject Entity's portion of the fees, costs and expenses attributable to the processing or refining of such minerals under any such processing or refining arrangement or other obligations of an Obligor under such arrangement, but only insofar as such Liens relate to obligations which are at such time not past due;
- (r) Liens securing Indebtedness under clause (l) of the definition of Permitted Indebtedness, provided that any such Lien is limited strictly to any inventory and receivables of Rosh Pinah Zinc Corporation (Proprietary) Limited (including any collection account into which such receivables are deposited) from time to time subject to a Lien in favour of Standard Bank Namibia Limited pursuant to the terms of the SB Facility, and the proceeds thereof and insurance proceeds related thereto;
- (s) any residential tenancy agreement in respect of residential properties;
- (t) Liens on assets acquired by any Obligor or Subject Entity which existed prior to, and not in connection with or in contemplation of, any Permitted Acquisition consummated prior to August 19, 2022;
- (u) Liens on any property or asset which existed prior to ~~the~~ an Acquisition thereof consummated prior to August 19, 2022 by any Obligor or Subject Entity provided that (i) such Lien ~~is~~ was not created in contemplation of or in connection with such Acquisition, (ii) such Lien shall not apply to any other property or assets of any Obligor or Subject Entity and (iii) such Lien ~~shall secure~~ secured only those obligations which it ~~secures~~ secured on the date of such Acquisition.
- (v) undetermined or inchoate Liens and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with Applicable Law or of which written notice has not been duly given in accordance with Applicable Law or which although filed or registered, relate to obligations not due or delinquent, including without limitation statutory Liens incurred, or pledges or deposits made, under worker's compensation, employment insurance and other social security legislation;
- (w) Liens consisting of royalties payable with respect to any asset or property of the Obligors or Subject Entities existing as of the Original Closing Date or otherwise acquired pursuant to a ~~Permitted~~ an Acquisition prior to August 19, 2022;
- (x) customary rights of set-off or combination of accounts with respect to deposits and/or accounts, in any case, arising or granted pursuant to an

arrangement entered into in the ordinary course of business that does not apply to Indebtedness;

- (y) Liens securing Indebtedness under clause (c) of the definition of Permitted Indebtedness provided that such Liens are subordinated to the Liens granted in respect of the Secured Obligations and the subject Liens and Indebtedness constitute Security; and
- (z) the extension, renewal or refinancing of any Permitted Lien, provided that the amount so secured does not exceed the original amount secured immediately prior to such extension, renewal or refinancing and the Lien is not extended to any additional property;
- (aa) Liens securing Indebtedness under clause (ij) of the definition of Permitted Indebtedness, provided that any such Lien is limited strictly to the corresponding receivables financed under that Factoring Facility;
- (bb) Liens granted to Glencore by the Obligors to secure the payment and performance of the Glencore Obligations provided such Liens at all times rank, pursuant to the Intercreditor Agreement, subordinate to the Liens granted to the Finance Parties ~~and Peruvian Collateral Agent~~ by the Obligors.

“Permitted Reorganizations” means Permitted Corporate Reorganizations and Permitted Capital Reorganizations.

“Permitted Risk Management Agreement” means (a) a Secured Risk Management Agreement or (b) a Risk Management Agreement entered into by an Obligor with any Person, in each case (i) that has not been entered into for speculative purposes nor on a margined basis, (ii) which does not constitute a Restricted Forward Sale Transaction and (iii) which requires settlement or delivery at the original maturity date thereof.

“Person” means any natural person, corporation, firm, partnership, joint venture, joint stock company, incorporated or unincorporated association, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

~~“Peruvian Collateral” means property of any Obligor, real or personal, or mixed, located in Peru as to which security is granted for the Secured Obligations, including any equity, shares or evidences of indebtedness issued by a Peruvian Obligor and any other property subject to the Liens created under any of the Peruvian Security Documents where the validity, effect and perfection of such Lien is, in accordance with the conflict of law rules of Peruvian Law, governed by Peruvian Law.~~

~~“Peruvian Collateral Agency Fee Letter” means the fee letter dated August 23, 2017 entered into between the Borrower and the Peruvian Collateral Agent.~~

~~“Peruvian Collateral Agent” means Scotiabank Peru S.A.A., in its capacity as Peruvian collateral agent appointed by the Administrative Agent and the Lenders pursuant to this agreement to hold for and on behalf of the Finanee Parties, the Peruvian Collateral pursuant to the Peruvian Security Documents.~~

~~“Peruvian Law” means Applicable Laws applicable and in force in Peru.~~

~~“Peruvian Security Documents” means the documents or instruments granting a Lien in favour of the Peruvian Collateral Agent on Peruvian Collateral and governed by Peruvian Law.~~

“Plan” means any plan, program or arrangement which is considered to be a pension plan for the purposes of any applicable pension benefits standards, or any applicable tax, statute and/or regulation thereof established, maintained or contributed to by, or to which there is or may be an obligation to contribute by, any relevant Person, its employees or former employees, in each case whether written or oral, funded or unfunded, insured or self-insured, reported or unreported.

“Pledgors” means GLCR Limited, Wilru, Rosh Pinah Base Metals and Rosh Pinah Mine Holdings;

“PPSA” means the *Personal Property Security Act* (Ontario), as amended.

“Pre-Filing Tranche” means the aggregate Individual Commitments of the Lenders referenced in Schedule A hereto under the column “Pre-Filing Tranche” which aggregate Individual Commitments shall not at any time exceed the Pre-Filing Tranche Amount.

“Pre-Filing Tranche Amount” means the aggregate amount of outstanding credit under the Credit Facility (as such term was defined prior to the Fifth Amendment) on the date of the Initial Order, such outstanding credit amount being calculated in accordance with Section 1.10 hereof and otherwise recorded in the Administrative Agent’s accounts in accordance with Section 3.8 hereof.

“Prepayment Notice” shall have the meaning ascribed thereto in Section 9.5.

“Prepayment Trigger Events” means any Asset Disposition Prepayment Trigger Event, any Excess Cash Flow ~~Budgeted Revenue~~ Prepayment Trigger Event, the ~~Change of Control~~ any Santander Deferred Consideration Prepayment Trigger Event, any Debt/Equity Prepayment Trigger Event and any Insurance Prepayment Trigger Event and **“Prepayment Trigger Event”** means any Prepayment Trigger Event.

“Priority Payables” means harmonized sales tax, sales Tax and any amount payable or accrued by the Borrower or Trevali NB which is secured by a Lien which ranks or is capable of ranking prior to or pari passu with the DIP Charge.

including the Administration Charge, the Intercompany Advance Charge, the D&O Charge, the KERP Charge and the relevant portion of the Sales Agent Charge (each as defined in the Court Orders), amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, Taxes, or employer pension contributions, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the DIP Charge.

“Pro Rata Share” means at any particular time, the ratio of the Individual Commitment of a particular Lender at such time to the aggregate of the Individual Commitments of all of the Lenders at such time.

“Proceeds of Realization” means all cash and non-cash proceeds derived from any sale, disposition or other realization of the Secured Assets or received from, directly or indirectly, any Obligor pursuant to the Credit Documents or from the ~~Administrative Agent, the Peruvian Collateral Agent,~~ the Debt Guarantor or Glencore pursuant to the Intercreditor Agreement, in each case (i) after any Enforcement Date, (ii) upon any dissolution, liquidation, winding-up, reorganization, bankruptcy, insolvency or receivership of any Obligor (or any other arrangement or marshalling of the Secured Assets that is similar thereto) or (iii) upon the enforcement of, or any action taken with respect to any Credit Document. For greater certainty, insurance proceeds derived as a result of the loss or destruction of any of the Secured Assets or cash or non-cash proceeds derived from any expropriation or other condemnation of any of the Secured Assets shall not constitute Proceeds of Realization prior to the Enforcement Date.

“Purchase Money Indebtedness” means Indebtedness assumed by any Obligor as part of, or issued or incurred by such Obligor to pay or provide funds to pay, all or a part of the purchase price of any equipment hereafter or previously acquired by such Obligor.

“Qualified Affiliate” means an Affiliate of a Lender who has executed and delivered to the Administrative Agent an instrument of adhesion in the form set forth in Schedule ~~K~~J.

“Qualified Cash Management Lender” means (x) any Person that enters into a Cash Management Agreement prior to the date on which it became a Lender or at a time when such Person is a Lender or (y) any Qualified Affiliate that entered into a Cash Management Agreement prior to the date on which the Lender with which such Qualified Affiliate is affiliated became a Lender or any Qualified Affiliate which enters into a Cash Management Agreement at a time when the Lender with which such Qualified Affiliate is affiliated is a Lender, even if, in each case, such Person subsequently ceases to be Lender or a Qualified Affiliate.

“Qualified Person” has the meaning given to it in the CIM Definition Standards.

“Qualified Risk Management Lender” means (x) any Person that enters into a Risk Management Agreement prior to the date on which it became a Lender or at

a time when such Person is a Lender or (y) any Qualified Affiliate that entered into a Risk Management Agreement prior to the date on which the Lender with which such Qualified Affiliate is affiliated became a Lender or any Qualified Affiliate which enters into a Risk Management Agreement at a time when the Lender with which such Qualified Affiliate is affiliated is a Lender, even if, in each such case, such Person subsequently ceases to be Lender or a Qualified Affiliate.

“Receiver” means a receiver, receiver and manager or other Person having similar powers or authority appointed by the Administrative Agent or by a court at the instance of the Administrative Agent in respect of the Secured Assets or any part thereof.

“Replacement Material Agreement” means any agreement replacing a Material Agreement which is substantially similar to the Material Agreement that it is replacing and otherwise in form and substance satisfactory to the Administrative Agent, acting reasonably.

“Release” means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping or other releasing into the Environment, whether intentional or unintentional.

“Reserves” means **“Proven Mineral Reserves”** and **“Probable Mineral Reserves”** as such terms are defined in the CIM Definition Standards.

“Resolution Authority” means any body which has authority to exercise any Write-down and Conversion Powers.

“Resources” means **“Measured Mineral Resources”** and **“Indicated Mineral Resources”** as such terms are defined in the CIM Definition Standards.

“Restatement Date” means the date on which the last condition precedent to the effectiveness of this agreement pursuant to Section 12.2 is satisfied or waived.

“Restricted Forward Sale Transaction” means a forward sale of a quantity of metal or other commodity (allocated or unallocated) at a fixed price where the purchase price (or any substantial part thereof) is paid prior to the date on which such metal or commodity (allocated or unallocated) is to be delivered.

“Risk Management Agreements” means any present or future swap, hedging, foreign exchange or other derivative transaction entered into by any Company which constitutes any silver, gold or other commodity hedging transaction (including any Restricted Forward Sale Transaction but excluding any commodity off-take agreement), spot or forward foreign exchange transaction, interest rate swap transaction, currency swap transaction, forward rate transaction, rate cap transaction, rate floor transaction, rate collar transaction, and any other exchange or rate protection transaction, any combination of such transactions or any option with respect to any such transaction entered into by any Company.

~~“Rolling EBITDA” means,~~

- ~~(a) for the Fiscal Quarter ending December 31, 2020, EBITDA for such Fiscal Quarter multiplied by four;~~
- ~~(b) for the Fiscal Quarter ending March 31, 2021, the aggregate amount of EBITDA for such Fiscal Quarter and for the immediately preceding Fiscal Quarter multiplied by two;~~
- ~~(c) for the Fiscal Quarter ending June 30, 2021, the aggregate amount of EBITDA for such Fiscal Quarter and for the two immediately preceding Fiscal Quarters multiplied by 4/3;~~
- ~~(d) for each Fiscal Quarter thereafter, the aggregate amount of EBITDA for such Fiscal Quarter and for the three immediately preceding Fiscal Quarters; and~~
- ~~(e) any Rolling Permitted Acquisition EBITDA for such Fiscal Quarter.~~

~~“Rolling Interest Expense” means:~~

- ~~(a) for the Fiscal Quarter ending December 31, 2020, Interest Expenses for such Fiscal Quarter multiplied by four but, for the avoidance of doubt, excluding any such Interest Expense related to Indebtedness repaid during such Fiscal Quarter;~~
- ~~(b) for the Fiscal Quarter ending March 31, 2021, the aggregate amount of Interest Expenses for such Fiscal Quarter and for the immediately preceding Fiscal Quarter multiplied by two;~~
- ~~(c) for the Fiscal Quarter ending June 30, 2021, the aggregate amount of Interest Expenses for such Fiscal Quarter and for the two immediately preceding Fiscal Quarters multiplied by 4/3; and~~
- ~~(d) for each Fiscal Quarter thereafter, the aggregate amount of Interest Expenses for such Fiscal Quarter and for the three immediately preceding Fiscal Quarters.~~

~~“Rolling Permitted Acquisition EBITDA” means, for any Fiscal Quarter as concerns any Permitted Acquisition or any other asset acquisition if such asset acquisition is accounted for in accordance with generally accepted accounting principles on a proportionate or consolidated accounting basis with respect to which four Fiscal Quarter ends or less have occurred since the date of the completion of such Permitted Acquisition or other asset acquisition,~~

- ~~(a) for the Fiscal Quarter during which such date occurs (the “Initial Fiscal Quarter”), EBITDA attributable to such Permitted Acquisition or other asset acquisition during such Fiscal Quarter multiplied by a fraction the~~

numerator of which is the number of days in the Initial Fiscal Quarter and the denominator of which is the number of days in the Initial Fiscal Quarter following the completion of such Permitted Acquisition or other asset acquisition (such product, the “~~Initial Fiscal Quarter EBITDA~~”) multiplied by four;

(b) ~~for the first Fiscal Quarter following the Initial Fiscal Quarter, the aggregate of EBITDA attributable to such Permitted Acquisition or other asset acquisition during such Fiscal Quarter and the Initial Fiscal Quarter EBITDA multiplied by two;~~

(c) ~~for the second Fiscal Quarter following the Initial Fiscal Quarter, the aggregate of EBITDA attributable to such Permitted Acquisition or other asset acquisition during such Fiscal Quarter and the immediately preceding Fiscal Quarter and the Initial Fiscal Quarter EBITDA multiplied by 4/3; and~~

(d) ~~for the third Fiscal Quarter following the Initial Fiscal Quarter, the aggregate of EBITDA attributable to such Permitted Acquisition or other asset acquisition during such Fiscal Quarter and the two immediately preceding Fiscal Quarters and the Initial Fiscal Quarter EBITDA.~~

~~“Rollover Notice” shall have the meaning ascribed thereto in Section 5.2.~~

“Rosh Pinah Base Metals” means Rosh Pinah Base Metals (Proprietary) Limited, company with limited liability registered in accordance with the laws of the Republic of Namibia, with registration number CY/2005/0679.

“Rosh Pinah Mine” means the zinc mine located in Rosh Pinah, Il Karas Region, Namibia 600-km south of Windhoek.

“Rosh Pinah Mine Holdings” means Rosh Pinah Mine Holdings (Proprietary) Limited, company with limited liability registered in accordance with the laws of the Republic of Namibia, with registration number CY/1999/0186.

“RPZC” means Rosh Pinah Zinc Corporation (Pty) Ltd., a company existing under the laws of Namibia.

“RPZC Set-Off Transaction” means series of transactions described in Section II of Schedule U hereto.

“RPZC Shareholders” has the meaning ascribed thereto in the Fifth Amendment.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw Hill Companies Inc. and its successors.

“Sale Leaseback” shall mean any transaction or series of related transactions pursuant to which an Obligor (a) sells, transfers or otherwise disposes of any

property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed.

“Sanctioned Person” means any Person who is a designated target of Sanctions or is otherwise a subject of Sanctions, including as a result of being:

- (a) owned or controlled directly or indirectly by any person which is a designated target of Sanctions; or
- (b) located or resident in or organized under the laws of any country that is subject to general or country-wide Sanctions;
- (c) a U.S. Blocked Person; or
- (d) any person that is a “designated person”, “politically exposed foreign person” or “terrorist group” as described in any Canadian Sanctions.

“Sanctions” means any legislation, regulations, orders, economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by OFAC (or any other part of the US Treasury Department), the US Department of State, the United Nations Security Council, the Parliament of Canada (including Global Affairs Canada), the European Union, and/or any present or future member state thereof and/or the United Kingdom’s Her Majesty’s Treasury; in each case, having the force of law and binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person.

~~“Santander Mine” means the zinc, lead and silver project located approximately 200 km northeast of Lima, Peru involving the exploration and exploitation of certain mining concessions and the operation of the Trevali plant in Peru.~~

“Santander Deferred Consideration” means any consideration, judgment or award accruing to the Borrower after the Fifth Amendment Effective Time resulting from the Borrower’s Disposition of 99.99% of the Shares of Trevali Peru S.A.C. to Cerro de Pasco Resources Inc. pursuant to the purchase and sale agreement dated November 5, 2021 entered into between the Borrower and Cerro de Pasco Resources Inc.

“Santander Deferred Consideration Prepayment Trigger Event” means the receipt by the Borrower of any Santander Deferred Consideration.

“SB Facility” means the borrowing base facility established by Standard Bank Namibia Limited for the benefit of Rosh Pinah Zinc Corporation (Proprietary) Limited to be used solely for working capital purposes.

“SB Loan Amount” means, at any particular time, the aggregate amount outstanding, if any, at the relevant time, under (i) the SB Facility, (ii) any Factoring Facility with Standard Bank Namibia Limited or its assignees or participants (collectively, the “SB Parties”) and (iii) any other credit or loan agreement (whether operating, overdraft or otherwise) established by a SB Party in favour of RPZC.

“Secured Assets” means, the present and future assets, property and undertaking of each Obligor, as set forth in Schedule RQ hereto, other than the Excluded Assets. For certainty, the Secured Assets shall cease to be Secured Assets to the extent such assets are sold or otherwise disposed of in a manner in which is permitted, or otherwise not prohibited, by any relevant Credit Document.

“Secured Obligations” shall mean all indebtedness, fees, interest, obligations and liabilities, present or future and whether incurred prior to or subsequent to the date of the Initial Order, absolute or contingent, capitalized or uncapitalized, matured or not, at any time owing by the Obligors to the Finance Parties ~~or the Peruvian Collateral Agent, or remaining unpaid to the Finance Parties or the Peruvian Collateral Agent,~~ under or in connection with the Finance Documents and Secured Obligations of a particular Obligor shall mean all indebtedness, obligations and liabilities, present or future, absolute or contingent, matured or not, at any time owing by such Obligor to any of the Finance Parties ~~or the Peruvian Collateral Agent, or remaining unpaid to any of the Finance Parties or the Peruvian Collateral Agent,~~ under or in connection with any of the Finance Documents to which such Obligor is a party. For certainty, **“Secured Obligations”** shall include fees and interest accruing subsequent to the filing of, or which would have accrued but for the filing of, a petition for bankruptcy, in accordance with and at the rate (including any rate applicable upon any Default or Event of Default to the extent lawful) specified herein, whether or not such fees or interest constitute an allowable claim in such bankruptcy proceeding.

“Secured Obligations Termination Date” means the date on which all Secured Obligations of the Obligors (other than those provisions which by their terms survive the termination of the Finance Documents) have been permanently paid in full and the Finance Parties have no commitments to provide credit to any Obligor under any Finance Document.

“Secured Risk Management Agreements” means any Risk Management Agreement between an Obligor and a Qualified Risk Management Lender.

“Security” means the collateral security constituted by the Security Documents and the DIP Charge.

“Security Documents” means the security documents which, in the reasonable opinion of the Administrative Agent are required to be entered into from time to time by each Obligor in favour of the Administrative Agent ~~or the Peruvian Collateral Agent, as applicable, in order to grant to the Administrative Agent or~~

the Peruvian Collateral Agent, as applicable, a Lien on the Secured Assets as continuing collateral security for the payment and performance of the Secured Obligations of such Obligor, such security documents to be in form and substance satisfactory to the Administrative Agent or the Peruvian Collateral Agent, as applicable, acting reasonably, and to include the security documents described in Schedule H hereto at the times stated therein.

~~“Senior Secured Indebtedness” shall have~~ Settlement Agreement” has the meaning ascribed thereto in the definition of “Net Senior Secured Indebtedness” Fifth Amendment.

“Shares”, as applied to the shares of any corporation or other entity, means the shares or other ownership interests of every class whether now or hereafter authorized, regardless of whether such shares or other ownership interests shall be limited to a fixed sum or percentage with respect to the rights of the holders thereof to participate in dividends and in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding-up of such corporation or other entity.

~~“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.~~

“SISP” means the sale and investment solicitation process approved by the Court in the SISP Order.

“SISP Order” means the order of the Court issued on September 14, 2022 in the CCAA Proceeding, *inter alia*: (i) approving the SISP, and (ii) approving the appointment of National Bank Financial to act as the sales agent to the Borrower in respect of the SISP at the cost of the Borrower.

~~“Subject Entities” means Rosh Pinah Zinc Corporation (Proprietary) Limited, Nantou Mining Burkina Faso S.A. and each other Person that is not a Subsidiary of the Borrower that maintains any direct or indirect ownership interest in a Material Mine from time to time., collectively, the Obligors and their respective affiliates and subsidiaries, RPZC and, at any time prior to a liquidation or bankruptcy proceeding under the Applicable Laws of Burkina Faso whereby Nantou is precluded from exercising management and control of its business, Nantou.~~

“Subsidiary” means, with respect to any Person, any corporation, company or other business entity (including, for greater certainty, a chartered bank) of which more than fifty per cent (50%) of the outstanding Shares or other equity interests (in the case of Persons other than corporations) having ordinary voting power to elect a majority of the board of directors or the equivalent thereof of such corporation, company or business entity (irrespective of whether at the time Shares of any other class or classes of the Shares of such corporation, company or

business entity shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person. For greater certainty, "Subsidiary" shall include, with respect to any Person, any partnership, the sole general partner or the managing general partner of which is such Person or one or more Subsidiaries of such Person.

~~"Sustaining Capital expenditures" means, for any particular period, Capital expenditures for such period that are incurred in connection with the sustaining (including care and maintenance costs) of the then-existing facilities and business of the Borrower on a consolidated basis, all calculated in accordance with the Borrower's applicable financial statements.~~

~~"Tangible Net Worth" means, at any particular time, the aggregate amount of Equity at such time less the aggregate of the amounts, at such time, which would, in accordance with generally accepted accounting principles, be classified upon the consolidated balance sheet of the Borrower as (i) minority interests and (ii) intangible assets (which intangible assets include, for the avoidance of doubt, goodwill).~~

"Tax Act" means the *Income Tax Act* (Canada).

"Taxes" means all taxes, assessments, fees, rates, levies, imposts, deductions, dues, duties and other charges of any nature of a tax, including any interest, fines, penalties or other liabilities with respect thereto, imposed, levied, collected, withheld or assessed by any applicable Official Body (including a federal, state, provincial, municipal or foreign Official Body) that is a taxing authority, and whether disputed or not.

~~"Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the relevant Official Body.~~

"Total Commitment Amount" means:

- (a) when used with reference to a particular Tranche at any particular time, the aggregate of the Individual Commitments of all of the Lenders under such Tranche at such time; and
- (b) when used without reference to a particular Tranche at any particular time, the aggregate of the Individual Commitments of all of the Lenders under both Tranches at such time.

"Tranche" means the Pre-Filing Tranche or the DIP Tranche, as the context so requires.

~~"Total Indebtedness Tranche Amount" means, at any particular time, and in respect of a particular Tranche, an amount equal to the aggregate indebtedness of~~

~~the Borrower on a consolidated basis~~ Individual Commitments of the Lenders at such time under such Tranche.

“Trevali NB” means Trevali Mining (New Brunswick) Ltd., a corporation existing under the laws of the Province of New Brunswick.

~~“Total Net Leverage Ratio” means, for any Fiscal Quarter, the ratio of (i) Net Indebtedness at the last day of such Fiscal Quarter to (ii) Rolling EBITDA for such Fiscal Quarter.~~

~~“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.~~

“Undisclosed Administration” means, in relation to a Lender or its direct or indirect parent company, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent company is subject to home jurisdiction, if applicable law requires that such appointment not be disclosed.

“Unrestricted Cash” means, at any particular time, the aggregate of all Cash of the Obligor at such time which (A) is not listed on the Borrower’s consolidated balance sheet as restricted cash (or other designation of similar effect) and (B) which is subject to a Lien pursuant to the Security Documents.

“Updated Cash Flows” shall have the meaning ascribed thereto in Section 11.1(b)(iv).

“U.S.” and **“United States”** means the United States of America.

“U.S. Blocked Person” means any person: (i) listed in the annex to, or is otherwise subject of the provisions of, US Executive order No. 13224, including the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to US Executive order No. 13224 and/or any other list of terrorists or other restricted persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable executive orders; (ii) a person determined by the Secretary of the Treasury to be owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, US Executive order No. 13224; (iii) a person with which any Finance Party is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law and who is identified to the Borrower; (iv) a person determined by the Secretary of the Treasury who commits, threatens or conspires to commit or supports “terrorism” as defined in US Executive order No. 13224; or (v) a person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

“U.S. Dollar Equivalent” means the relevant Exchange Equivalent in U.S. Dollars of any amount of another currency.

“U.S. Dollars” means the lawful currency of the United States of America.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended, and any regulations (including the regulations contained in 31 CFR 103.121) or guidelines promulgated thereunder.

“Voting Shares” means Shares of any class of the Borrower carrying voting rights generally under all circumstances.

“Waste” means any waste as defined by EPA.

“Wilru” means Wilru Investments One Hundred and Thirty Four (Proprietary) Limited, company with limited liability registered in accordance with the laws of the Republic of Namibia, with registration number 2011/0415.

“Write-down and Conversion Powers” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 Other Usages

References to “this agreement”, “the agreement”, “hereof”, “herein”, “hereto” and like references refer to this agreement and not to any particular Article, Section or other

subdivision of this agreement. Subject to the following sentence, any references herein to any agreements or documents shall mean, unless otherwise explicitly stated, such agreements or documents as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof and thereof.

1.3 Plural and Singular

Where the context so requires, words importing the singular number shall include the plural and vice versa.

1.4 Headings

The division of this agreement into Articles and Sections and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

1.5 Currency

Unless otherwise specified herein, all statements of or references to dollar amounts in this agreement shall mean lawful money of the United States of America.

1.6 Applicable Law

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any legal action or proceeding with respect to this agreement may be brought in the courts of the Province of Ontario and, by execution and delivery of this agreement, the parties hereby accept for themselves and in respect of their property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts. Each party irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party to the address prescribed by Section 16.1, such service to become effective seven Banking Days after such mailing. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

1.7 Time of the Essence

Time shall in all respects be of the essence of this agreement.

1.8 Non-Banking Days

Subject to Section 7.4(e), whenever ~~whenever~~ Whenever any payment to be made hereunder shall be stated to be due or any action to be taken hereunder shall be stated to be required to be taken on a day other than a Banking Day, such payment shall be made or such action shall be taken on the next succeeding Banking Day and, in the case of the payment of any amount, the extension of time shall be included for the purposes of computation of interest, if any, thereon.

1.9 Consents and Approvals

Whenever the consent or approval of a party hereto is required in a particular circumstance, unless otherwise expressly provided for therein, such consent or approval shall not be unreasonably withheld, conditioned or delayed by such party.

1.10 Amount of Credit

Any reference herein to the “amount of credit outstanding” or “outstanding amount of credit” or any similar phrase shall mean, at any particular time:

- (a) in the case of ~~a Base Rate Loan or a LIBOR Loan~~ Loans, the principal amount thereof ~~amounts thereof, together with, in the case of the DIP Tranche, all capitalized interest and fees thereunder, in each case as expressed in U.S. Dollars;~~ and
- (b) in the case of ~~an Existing Letter~~, the U.S. Dollar Equivalent of the contingent liability of the Issuing Lender thereunder at such time.

1.11 Schedules

Each and every one of the schedules which is referred to in this agreement and attached to this agreement shall form a part of this agreement.

1.12 Extension of Credit

For the purposes hereof, each drawdown, ~~rollover and conversion~~ shall be deemed to be an extension of credit to the Borrower hereunder.

1.13 Meaning of Include.

The words “include”, “includes” and “including”, when used in this agreement, shall be deemed to be followed by the phrase, “without limitation”.

1.14 Rule of Construction

The Credit Documents have been negotiated by each party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of the Credit Documents.

1.15 Accounting Terms – GAAP; Calculations, Computations, Changes in Accounting Policies

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. Whereas the Borrower may adopt new accounting policies from time to time (including with respect to IFRS), whereby such adoption is compelled by accounting or regulatory bodies having

jurisdiction or at its own discretion, and whereas these accounting changes may result in a material change in the calculation of the financial covenants or financial covenant thresholds or terms used in this agreement or any other Credit Document, then the Borrower, the Administrative Agent and the Lenders agree to enter into good faith negotiations in order to amend such provisions of this agreement or such other Credit Document, as applicable, so as to equitably reflect such accounting changes with the desired result that the criteria for evaluating the Borrower's or any of its Subsidiary's financial condition, financial covenants, financial covenant thresholds or terms used in this agreement or any other Credit Document shall be the same after such accounting changes as if such accounting changes had not been made; provided, however, that the agreement of the Majority Lenders to any required amendments of such provisions shall be sufficient to bind all Lenders. If the Borrower and the Majority Lenders cannot agree upon the required amendments, then all calculations of financial covenants, financial covenant thresholds or terms used in this agreement or any other Credit Document shall be prepared and delivered without reflecting the accounting policy change.

1.16 Paramountcy

In the event of any conflict or inconsistency between the provisions of this agreement and the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail and be paramount. In the event of any other conflict or inconsistency between the provisions of this agreement and the provisions of any other Finance Document, the provisions of this agreement shall prevail and be paramount. If any covenant, representation, warranty or event of default contained in any Finance Document is in conflict with or is inconsistent with a provision of this agreement relating to the same specific matter, such covenant, representation, warranty or event of default shall be deemed to be amended to the extent necessary to ensure that it is not in conflict with or inconsistent with the provision of this agreement relating to the same specific matter.

1.17 Permitted Liens

Any reference herein to a Permitted Lien shall not serve to subordinate or postpone any Lien created by any Security Document to such Permitted Lien.

1.18 Ordinary Course of Business

Any transaction herein qualified as to a Person's "ordinary course of business" means the ordinary course of such Person's business, as conducted by any such Person in accordance with generally accepted practice in the mining industry or with the past practice of such Person, in each case and undertaken by such Person for commercial reasons and not for purposes of evading any obligation or restriction contained in any Credit Document.

1.19 First Lien Loan Documents.

Each of the Lenders, the Administrative Agent and the Borrower hereby mutually confirm and agree that the Credit Documents and all other agreements and instruments entered into in connection with the Fifth Amendment shall constitute "First Lien Loan Documents" for the purpose of, and as defined in, the Intercreditor Agreement.

ARTICLE 2 CREDIT FACILITY

2.1 Establishment of Credit Facility

Subject to the terms and conditions hereof, the Lenders hereby establish in favour of the Borrower a ~~revolving~~non-revolving term credit facility (the “**Credit Facility**”) ~~in the~~consisting of the Pre-Filing Tranche and the DIP Tranche in the aggregate amount of the Credit Limit.

2.2 Lenders’ Commitments

Subject to the terms and conditions hereof, the Lenders severally agree to extend credit to the Borrower under the Credit Facility from time to time provided that the aggregate amount of credit extended by each Lender under the applicable Tranche of the Credit Facility shall not at any time exceed the Individual Commitment of such Lender with respect to such Tranche and further provided that the aggregate amount of credit outstanding under the Credit Facility shall not at any time exceed the aggregate amount of the Credit Limit. All credit requested (or deemed to be requested in the case of Section 9.6(b)) under the Credit Facility shall be made available to the Borrower (or in the case of Section 9.6(b), the Administrative Agent for and on behalf of the Issuing Lender) contemporaneously by all of the Lenders. Each Lender shall provide to the Borrower its Pro Rata Share of each credit, ~~whether such credit is extended by way of~~ under the DIP Tranche on the date of the relevant drawdown, rollover or conversion. No Lender shall be responsible for any default by any other Lender in its obligation to provide its Pro Rata Share of any credit nor shall the Individual Commitment of any Lender be increased as a result of any such default of another Lender in extending credit under the Credit Facility. The failure of any Lender to make available to the Borrower its Pro Rata Share of any credit shall not relieve any other Lender of its obligation hereunder to make available to the Borrower its Pro Rata Share of such credit under the relevant Tranche of the Credit Facility.

2.3 ~~Reduction of Credit Limit and Credit Sub-Limit~~DIP Tranche Amount

The Borrower may, from time to time and at any time, by notice in writing to the Administrative Agent, permanently reduce the ~~Credit Limit~~DIP Tranche Amount to the extent it is not being utilized at the time such notice is given, provided that (i) ~~the Credit Limit shall not at any time be less than the Credit Sub-Limit and~~ (ii) such reduction shall not become effective until three Banking Days after such notice has been given. ~~The respective amounts of the Credit Limit and the Credit Sub-Limit~~amount of a particular Tranche Amount will not be reduced by any prepayment or repayment under the Credit Facility of the corresponding Tranche pursuant to Section 9.3 but and each will be reduced by the amount of any prepayment or repayment under the Credit Facility pursuant to Sections 9.1 and 9.4 and the DIP Tranche will be reduced to zero on the DIP Maturity Date. Upon any reduction of the Credit Limit a Tranche Amount, the Individual Commitment of each Lender shall thereupon be reduced by an amount equal to such Lender's Pro Rata Share of such reduction of the Credit Limit such Tranche Amount.

2.4 Termination of Credit Facility

- (a) The Credit Facility shall terminate upon the earliest to occur of:
- (i) the termination of the Credit Facility in accordance with Section 13.1;
 - (ii) the date on which the Credit Limit has been permanently reduced to zero pursuant to Section 2.3; and
 - (iii) the DIP Maturity Date.
- (b) Upon the termination of the Credit Facility, the right of the Borrower to obtain any credit under the ~~Credit Facility~~ DIP Tranche and all of the obligations of the Lenders to extend credit thereunder shall automatically terminate.

2.5 Credit Restrictions

Subject to the terms and conditions hereof, the aggregate amount of credit outstanding under the Credit Facility shall not at any time exceed the Credit Limit. The Borrower shall not drawdown credit under the Credit Facility solely for the purpose of accumulating cash in excess of an aggregate \$20,000,000 in deposit or investment accounts outside the ordinary course of business. Notwithstanding the foregoing nor any other provision of this Agreement, (i) the Borrower and the Lenders hereby agree that Accommodations under the Credit Facility shall not at any time exceed the Credit Sub Limit and (ii) the Borrower covenants and agrees that it shall not submit any Drawdown Notice to the Administrative Agent which would cause Accommodations under the Credit Facility to exceed the Credit Sub Limit, in each case unless and until the Administrative Agent, acting on the instructions of all Lenders in their sole and absolute discretion, shall have advised otherwise in writing to the Borrower.

ARTICLE 3 GENERAL PROVISIONS RELATING TO CREDITS

3.1 Types of Credit Availments

Subject to the terms and conditions hereof:

- (a) the Borrower may obtain credit under the ~~Credit Facility~~ DIP Tranche from the Lenders through the Branch of Account by way of one or more Loans and Letters provided that the aggregate amount of credit outstanding by way of Letters shall not at any time exceed \$50,000,000; and
- (b) any extension of credit hereunder under the DIP Tranche by way of drawdown of ~~(x) Base Rate Loan~~ shall be in the amount of at least \$1,000,000 or ~~(y) LIBOR Loan~~ shall be in the amount of at least \$1,000,000 or, in each case, an integral multiple of \$100,000 in excess thereof, 500,000; and

- (c) the Existing Letters are the only remaining credit available to the Borrower under the Pre-Filing Tranche and, for the avoidance of doubt, no further Letters may be issued under the Credit Facility.

3.2 Funding of Loans

Each Lender shall make available to the Administrative Agent its Pro Rata Share of the principal amount of each Loan prior to 11:00 a.m. (Toronto time) on the date of the extension of credit. The Administrative Agent shall, upon fulfilment by the Borrower of the terms and conditions set forth in Article 12 and unless otherwise irrevocably authorized and directed in the Drawdown Notice, make such funds available to the Borrower on the date of the extension of credit by crediting the relevant Designated Account (or causing such account to be credited). Unless the Administrative Agent has been notified by a Lender at least one Banking Day prior to the date of the extension of credit that such Lender will not make available to the Administrative Agent its Pro Rata Share of such Loan, the Administrative Agent may assume that such Lender has made such portion of the Loan available to the Administrative Agent on the date of the extension of credit in accordance with the provisions hereof and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent has made such assumption, to the extent such Lender shall not have so made its Pro Rata Share of the Loan available to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand, such Lender's Pro Rata Share of the Loan and all reasonable costs and expenses incurred by the Administrative Agent in connection therewith together with interest thereon at the then prevailing interbank rate for each day from the date such amount is made available to the Borrower until the date such amount is paid or repaid to the Administrative Agent; provided, however, that notwithstanding such obligation, if such Lender fails so to pay, the Borrower shall, without prejudice to any rights that the Borrower might have against such Lender, repay such amount to the Administrative Agent forthwith after demand therefor by the Administrative Agent. The amount payable by each Lender to the Administrative Agent pursuant hereto shall be set forth in a certificate delivered by the Administrative Agent to such Lender and the Borrower (which certificate shall contain reasonable details of how the amount payable is calculated) and shall constitute *prima facie* evidence of such amount payable. If such Lender makes the payment to the Administrative Agent required herein, the amount so paid shall constitute such Lender's Pro Rata Share of the Loan for purposes of this agreement and shall entitle the Lender to all rights and remedies against the Borrower in respect of such Loan.

3.3 Failure of Lender to Fund Loan

If any Lender (a "**Non-Funding Lender**") fails to make available to the Administrative Agent its Pro Rata Share of any Loan as required and the Administrative Agent has not funded pursuant to Section 3.2, the Administrative Agent shall forthwith give notice of such failure by such Non-Funding Lender to the Borrower and the other Lenders and such notice shall state that any Lender may make available to the Administrative Agent all or any portion of the Non-Funding Lender's Pro Rata Share of such Loan (but in no way shall any other Lender or the Administrative Agent be obliged to do so) in the place and stead of the Non-Funding Lender. If more than one Lender gives notice that it is prepared to make funds available in the place and stead of a Non-Funding Lender in such circumstances and the aggregate of the funds which such

Lenders (herein collectively called the “**Contributing Lenders**” and individually called the “**Contributing Lender**”) are prepared to make available exceeds the amount of the advance which the Non-Funding Lender failed to make, then each Contributing Lender shall be deemed to have given notice that it is prepared to make available its pro rata share of such advance based on the Contributing Lenders’ relative commitments to advance in such circumstances. If any Contributing Lender makes funds available in the place and stead of a Non-Funding Lender in such circumstances, then the Non-Funding Lender shall pay to any Contributing Lender making the funds available in its place and stead, forthwith on demand, any amount advanced on its behalf together with interest thereon at the then prevailing interbank rate for each day from the date of advance to the date of payment, against payment by the Contributing Lender making the funds available of all interest received in respect of the Loan from the Borrower. In addition to interest as aforesaid, the Borrower shall pay all amounts owing by the Borrower to the Non-Funding Lender hereunder (with respect to the amounts advanced by the Contributing Lenders on behalf of the Non-Funding Lender) to the Contributing Lenders until such time as the Non-Funding Lender pays to the Administrative Agent for the Contributing Lenders all amounts advanced by the Contributing Lenders on behalf of the Non-Funding Lender.

3.4 ~~Timing of Credit Availments~~ [Intentionally Deleted.]

~~No LIBOR Loan under the Credit Facility may have a maturity date later than the Maturity Date.~~

3.5 **Inability to Fund U.S. Dollar Advances in Canada**

If a Lender determines in good faith, which determination shall be final, conclusive and binding on the Borrower, and the Administrative Agent notifies the Borrower that (i) by reason of circumstances affecting financial markets inside or outside Canada, deposits of United States dollars are unavailable to such Lender in Canada, (ii) adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided in the definition of ~~LIBOR or Base Rate, as the case may be,~~ (iii) the making or continuation of United States dollar advances in Canada has been made impracticable by the occurrence of a contingency (other than a mere increase in rates payable by such Lender to fund the advance) which materially and adversely affects the funding of the advances at any interest rate computed on the basis of the ~~LIBOR or the Base Rate, as the case may be,~~ or by reason of a change in any Applicable Law or government regulation, guideline or order (whether or not having the force of law but, if not having the force of law, one with which a responsible Canadian chartered bank would comply) or in the interpretation thereof by any Official Body affecting such Lender or any relevant financial market, which results in ~~LIBOR or the Base Rate, as the case may be,~~ no longer representing the effective cost to such Lender of deposits in such market ~~for a relevant Interest Period,~~ or (iv) any change to present law or any future law, regulation, order, treaty or official directive (whether or not having the force of law but, if not having the force of law, one with which a responsible Canadian chartered bank would comply) or any change therein or any interpretation or application thereof by any Official Body has made it unlawful for such Lender to make or maintain or give effect to its obligations in respect of United States dollar advances in Canada as contemplated herein, then:

- (a) the right of the Borrower to obtain any affected ~~Base Rate Loan or LIBOR Loan~~ from such Lender shall be suspended until such Lender determines, acting

reasonably, that the circumstances causing such suspension no longer exist and such Lender so notifies the Borrower; and

(b) if any affected ~~Base Rate Loan or LIBOR Loan~~ is not yet outstanding, any applicable Drawdown Notice shall be cancelled and the advance requested therein shall not be made; and

~~(c) if any LIBOR Loan is already outstanding at any time when the right of the Borrower to obtain credit by way of a LIBOR Loan is suspended, it shall, subject to the Borrower having the right to obtain credit by way of a Base Rate Loan at such time, be converted on the last day of the Interest Period applicable thereto (or on such earlier date as may be required to comply with any Applicable Law) to a Base Rate Loan in the principal amount equal to the principal amount of the LIBOR Loan or, if the Borrower does not have the right to obtain credit by way of a Base Rate Loan at such time, such LIBOR Loan shall be converted on the last day of the Interest Period applicable thereto (or on such earlier date as may be required to comply with any applicable law) to a loan in such other currency as may be mutually agreed upon in the principal amount equal to the Exchange Equivalent of such LIBOR Loan; and~~

~~(d) if any Base Rate Loan is already outstanding at any time when the right of the Borrower to obtain credit by way of a Base Rate Loan is suspended, it shall, subject to the Borrower having the right to obtain credit by way of a LIBOR Loan at such time, be immediately converted to a LIBOR Loan in the principal amount equal to the principal amount of the Base Rate Loan and having an Interest Period of one month or, if the Borrower does not have the right to obtain credit by way of a LIBOR Loan at such time, it shall be immediately converted to a loan in such other currency as may be mutually agreed upon in the principal amount equal to the Exchange Equivalent of the principal amount of the Base Rate Loan.~~

3.6 Time and Place of Payments

Unless otherwise expressly provided herein, the Borrower shall make all payments pursuant to this agreement or pursuant to any document, instrument or agreement delivered pursuant hereto by deposit to the relevant Designated Account before 12:00 noon (Toronto time) on the day specified for payment ~~and the Administrative Agent shall be entitled to withdraw the amount of any payment due to the Administrative Agent or the Lenders hereunder from such account on the day specified for payment. In addition to the foregoing, the Borrower authorizes and directs the Administrative Agent to debit automatically, by mechanical, electronic or manual means, any bank account of the Borrower maintained with the Administrative Agent for all amounts due and payable by the Borrower under this agreement, including the repayment of principal and the payment of interest, fees and all charges for the keeping of that bank account. The Administrative Agent shall notify the Borrower as to the particulars of those debits in the normal course.~~

3.7 Remittance of Payments

Forthwith after the withdrawal from the relevant Designated Account by the Administrative Agent of any payment of principal, interest, fees or other amounts for the benefit of the Lenders pursuant to Section 3.6, the Administrative Agent shall, subject to Section 8.3, remit to each Lender, in immediately available funds, such Lender's Pro Rata Share of such payment (except to the extent such payment results from a Loan with respect to which a Lender had failed, pursuant to Section 3.2, to make available to the Administrative Agent its Pro Rata Share and where any other Lender has made funds available in the place and stead of a Non-Funding Lender); provided that if the Administrative Agent, on the assumption that it will receive, on any particular date, a payment of principal (including a prepayment), interest, fees or other amount under the Credit Facility, remits to each Lender its Pro Rata Share of such payment and the Borrower fails to make such payment, each Lender agrees to repay to the Administrative Agent, forthwith on demand, to the extent that such amount is not recovered from the Borrower on demand and after reasonable efforts by the Administrative Agent to collect such amount (without in any way obligating the Administrative Agent to take any legal action with respect to such collection), such Lender's Pro Rata Share of the payment made to it pursuant hereto together with interest thereon at the then prevailing interbank rate for each day from the date such amount is remitted to the Lenders until the date such amount is paid or repaid to the Administrative Agent, the exact amount of the repayment required to be made by the Lenders pursuant hereto to be as set forth in a certificate delivered by the Administrative Agent to each Lender, which certificate shall constitute prima facie evidence of such amount of repayment.

3.8 Evidence of Indebtedness

The Administrative Agent shall open and maintain accounts wherein it shall record the amount and type of credit outstanding, each advance and each payment of principal and interest on account of each Loan, the amount of each Letter issued and drawn upon and all other amounts becoming due to and being paid to the Lenders (including the Issuing Lender) and the Administrative Agent hereunder. The Administrative Agent's accounts constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Lenders (including the Issuing Lender) and the Administrative Agent hereunder.

3.9 General Provisions Relating to All Letters

- (a) ~~Each request by the Borrower for the issuance or amendment of a Letter shall be deemed to be a representation by the Borrower that the extension of credit so requested complies with the conditions set forth in Section 12.1. The~~The Borrower hereby acknowledges and confirms to the Issuing Lender that the Issuing Lender shall not be obliged to make any inquiry or investigation as to the right of any beneficiary to make any claim or Draft under ~~aan Existing~~ Letter and payment by the Issuing Lender pursuant to ~~aan Existing~~ Letter shall not be withheld by the Issuing Lender by reason of any matters in dispute between the beneficiary thereof and the Borrower. The sole obligation of the Issuing Lender with respect to Existing Letters issued by it is to cause to be paid a Draft drawn or purporting to be drawn in accordance with the terms of the applicable Existing Letter and for such purpose the Issuing Lender is only obliged to determine that

the Draft purports to comply with the terms and conditions of the relevant Existing Letter.

- (b) The Issuing Lender shall not have any responsibility or liability for or any duty to inquire into the form, sufficiency (other than to the extent provided in the preceding paragraph), authorization, execution, signature, endorsement, correctness (other than to the extent provided in the preceding paragraph), genuineness or legal effect of any Draft, certificate or other document presented to it pursuant to an Existing Letter issued by the Issuing Lender and the Borrower unconditionally assumes all risks with respect to the same. The Borrower agrees that it assumes all risks of the acts or omissions of the beneficiary of any Existing Letter with respect to the use by such beneficiary of the relevant Existing Letter. The Borrower shall promptly examine a copy of each Existing Letter and each amendment thereto that is delivered to it and, in the event of any claim of non-compliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the Issuing Lender. The Borrower shall be conclusively deemed to have waived any such claim against the Issuing Lender and its correspondents unless such notice is given as aforesaid.
- (c) The obligations of the Borrower hereunder with respect to Existing Letters shall be absolute, unconditional and irrevocable and shall not be reduced by any event or occurrence including:
- (i) any lack of validity or enforceability of this agreement or any such Existing Letter;
 - (ii) any amendment or waiver of or any consent to departure from this agreement;
 - (iii) the existence of any claim, set-off, defense or other rights which the Borrower may have at any time against any beneficiary or any transferee of any such Existing Letter (or any person or entities for whom any such beneficiary or any such transferee may be acting), any Lender, the Issuing Lender or any other person or entity;
 - (iv) any Draft, statement or other document presented under any such Existing Letter proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;
 - (v) any non-application or misapplication by the beneficiary of such Existing Letter of the proceeds of any drawing under such Existing Letter;
 - (vi) the surrender or impairment of any Security;
 - (vii) any reduction or withdrawal of the Issuing Lender's credit rating by any rating agency; or

- (viii) the CCAA Proceeding; or
- (ix) ~~(viii)~~ any other circumstance or happening whatsoever, similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The obligations of the Borrower hereunder with respect to Existing Letters shall remain in full force and effect and shall apply to any amendment to or extension of the expiration date of any such Existing Letter, approved in writing by the Borrower. The Issuing Lender shall not be under any obligation to amend any Existing Letter if (A) the Issuing Lender would have no obligation at such time to issue such Existing Letter in its amended form under the terms hereof, or (B) the beneficiary of such Existing Letter does not accept the proposed amendment to such Existing Letter.

- (d) Any action, inaction or omission taken or suffered by the Issuing Lender or any of its correspondents under or in connection with ~~aan~~ Existing Letter or any Draft made thereunder, save and except for material non-compliance with the payment terms of the relevant Existing Letter, if in good faith and in conformity with foreign or domestic laws, regulations or customs applicable thereto, shall be binding upon the Borrower and shall not place the Issuing Lender or any of its correspondents under any resulting liability to the Borrower. Without limiting the generality of the foregoing, the Issuing Lender and its correspondents may receive, accept or pay as complying with the terms of ~~aan~~ Existing Letter, any Draft thereunder, otherwise in order and in material compliance with the payment terms thereof which may be signed by, or issued to, the administrator or any executor of, or the trustee in bankruptcy of, or the receiver for any property of, or other person or entity acting as the representative or in the place of, such beneficiary or its successors and assigns. The Borrower covenants that it will not take any steps, issue any instructions to the Issuing Lender or any of its correspondents or institute any proceedings intended to derogate from the right or ability of the Issuing Lender or its correspondents to honour and pay any Draft or Drafts.
- (e) The Borrower agrees that the Lenders, the Issuing Lender and the Administrative Agent shall have no liability to it for any reason in respect of or in connection with any Existing Letter, the issuance thereof, any payment thereunder, or any other action taken by the Lenders, the Issuing Lender or the Administrative Agent or any other Person in connection therewith, and in compliance with the terms of this Section 3.9, other than on account of the Issuing Lender's gross negligence or wilful misconduct.
- (f) Save to the extent expressly provided otherwise in this Section 3.9, the rights and obligations between the Issuing Lender and the Borrower with respect to each Existing Letter shall be determined in accordance with the applicable provisions of the (i) Uniform Customs and Practice for Documentary Credits, ICC

Publications 600 or (ii) the International Standby Practices - ISP98, ICC Publication No. 590, as applicable.

- (g) The Issuing Lender shall act on behalf of the Lenders with respect to any Existing Letters issued by it and the documents associated therewith, and the Issuing Lender shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article 14 with respect to any acts taken or omissions suffered by the Issuing Lender in connection with Existing Letters issued by it or proposed to be issued by it and any documentation pertaining to such Existing Letters as fully as if the term "Administrative Agent" as used in Article 14 included the Issuing Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Issuing Lender.
- (h) ~~Immediately upon the issuance of each Letter, each~~ Each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Lender a risk participation in ~~such~~ each Existing Letter in an amount equal to the product of such Lender's Pro Rate Share times the amount of each such Existing Letter.
- (i) None of the Issuing Lender, the Administrative Agent nor any correspondent, participant or assignee of the Issuing Lender shall be liable to any Lender for (i) any action of any of the Issuing Lender, the Administrative Agent or any correspondent, participant or assignee of the Issuing Lender taken or omitted in connection herewith at the request or with the approval of the Lenders or the Majority Lenders, as applicable, (ii) any action of any of the Issuing Lender, the Administrative Agent or any correspondent, participant or assignee of the Issuing Lender taken or omitted in the absence of such party's gross negligence or wilful misconduct; or (iii) any deficiency in the due execution, effectiveness, validity or enforceability of any document or instrument related to any Existing Letter.
- (j) The Lenders and the Borrower hereby acknowledge and agree that the Letters previously issued by the Issuing Lender under the Pre-Filing Tranche (for clarity being Letters issued prior to the Fifth Amendment Effective Time under the Credit Facility as it was then defined), and which remain outstanding thereunder, are described in Schedule T hereto (the "Existing Letters"). The Existing Letters remain as outstanding Accommodations under the Pre-Filing Tranche subject in all cases to the provisions of this Agreement.

3.10 Notice Periods

~~Each Drawdown Notice, Rollover Notice, Conversion Notice and Prepayment Notice shall be given to the Administrative Agent or the Issuing Lender, as the case may be:~~

- (a) ~~prior to 10:00 a.m. (Toronto time) on the third Banking Day prior to the issuance of a Letter;~~

~~(b) prior to 10:00 a.m. (Toronto time) on the third Banking Day prior to the date of a drawdown of, rollover of, conversion into or conversion of or voluntary prepayment of a LIBOR Loan; and~~

~~(e) Other than with respect to the initial drawdown under the DIP Tranche, each Drawdown Notice and Prepayment Notice shall be given to the Administrative Agent prior to 10:00 a.m. (Toronto time) on the third Banking Day prior to the date of any other drawdown, rollover or conversion of a Loan or voluntary prepayment.~~

3.11 Administrative Agent's Discretion to Allocate

Notwithstanding the provisions of Sections 3.2 and 9.6(a) with respect to the funding of Accommodations and reimbursing with respect to Existing Letters in accordance with each Lender's Pro Rata Share, the Administrative Agent shall be entitled to reallocate the funding or reimbursement obligations among the Lenders in order to ensure, to the greatest extent practicable, that after such funding the aggregate amount of credit extended hereunder by each Lender coincides with such Lender's Pro Rata Share of the aggregate amount of credit extended under the Credit Facility by all of the Lenders, provided that no such allocation shall result in the aggregate amount of credit extended hereunder by any Lender exceeding such Lender's Individual Commitment.

3.12 ~~Effect of Benchmark Discontinuance Event~~ Pre-Filing Tranche & Existing Letters

~~(a) Notwithstanding anything to the contrary herein or any other Credit Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Banking Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Majority Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Majority Lenders have delivered to the Administrative Agent written notice that such Majority Lenders accept such amendment. No replacement of LIBOR with a Benchmark Replacement pursuant to this Section 3.12 will occur prior to the applicable Benchmark Transition Start Date.~~

~~(b) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.~~

~~(c) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 3.12, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.12.~~

~~Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for, conversion to or continuation of LIBOR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for, or conversion to, Base Rate Loans.~~

Notwithstanding any other provision of this Agreement, the Borrower, the Lenders and the Administrative Agent hereby mutually confirm and agree as follows:

- (a) there is no Available Credit under the Pre-Filing Tranche and the Borrower has no right to make any drawdown thereunder other than the potential of, as concerns an un-reimbursed amount for an Existing Letter, a deemed drawdown pursuant to Section 9.6(b);
- (b) the Lenders shall not be obligated to fund any further Loans under the Pre-Filing Tranche other than as may arise pursuant to Section 9.6(b) hereof;
- (c) as of the Fifth Amendment Effective Time, the aggregate outstanding and unpaid Loans under the Pre-Filing Tranche is \$86,427,227.89, the entirety of which was due and payable by the Borrower on September 18, 2022. All such amounts remain due and payable by the Borrower as of the Fifth Amendment Effective Time;
- (d) as of the Fifth Amendment Effective Time, the Existing Letters remain outstanding as undrawn Accommodations under the Pre-Filing Tranche and the aggregate face value of such Existing Letters, as of the Fifth Amendment Effective Time, is the U.S. Dollar Equivalent of C\$3,194,750.00.

ARTICLE 4 DRAWDOWNS

4.1 Drawdown Notice

Subject to Sections 2.5, 3.1, ~~3.4 and 3.10~~ and 4.2 and provided that, subject to Section 3.12, all of the applicable conditions precedent set forth in Article 12 have been fulfilled by the Borrower or waived by the Lenders as provided in Section 14.14, the Borrower may, from time to time, obtain credit ~~hereunder~~ under the DIP Tranche in U.S. Dollars by giving to the Administrative Agent an irrevocable notice in substantially the form of Schedule ~~DC~~ hereto (“**Drawdown Notice**”) specifying, ~~as applicable~~:

- (a) ~~the Banking Day the credit~~ subject Loan is to be obtained;
- (b) ~~whether the credit is to be obtained by way of a Base Rate Loan, a LIBOR Loan or Letter~~ the amount of the subject Loan;
- (c) ~~in the case of any credit to be obtained by way of a Loan, the principal amount thereof~~ specific use for the proceeds of the Loan, together with a certification that such use is in accordance with the DIP Budgets;
- (d) ~~if the credit is to be obtained by way of a LIBOR Loan, the applicable Interest Period;~~ certification that the representations and warranties in the Credit Agreement are true and correct as of such date; and
- (e) ~~if the credit is to be obtained by way of Letter, the named beneficiary of the Letter and address of such beneficiary, the documents to be presented by such beneficiary in case of any drawing thereunder, the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder, the purpose and nature of the requested Letter, the maturity date and amount of the Letter and all other terms of the Letter (including the proposed form of the Letter and such other matters as the Issuing Lender may reasonably require); and~~
- (f) ~~the details of any irrevocable authorization and direction pursuant to Section 3.2.~~
- (e) certification that no Event of Default has occurred and is continuing (other than the Forbearance Events of Default) or will occur after giving effect to the Loan.

4.2 Drawdowns Restrictions

Subject to Section 12.1 hereof, (i) the initial drawdown under the DIP Tranche shall occur no earlier than October 28, 2022 in an amount not exceeding \$6,000,000 and (ii) the second drawdown under the DIP Tranche shall occur no earlier than November 29, 2022 in an amount not exceeding \$9,000,000.

4.3 ~~4.2~~ **Subsidiary Reimbursement Covenant**

If credit is to be obtained by way of Letter and if such Letter is to be issued on behalf of a Subsidiary of the Borrower as well as on behalf of the Borrower, the Borrower shall ensure that accompanying such Drawdown Notice is an instrument, substantially in the form of Schedule ~~HH~~ hereto, and pursuant to which such Subsidiary shall agree, without qualification, to reimburse the Issuing Lender on demand for the full amount of each and any Letter presented to and paid by the relevant Issuing Lender in accordance with such Letter.

ARTICLE 5 **ROLLOVERS**~~[INTENTIONALLY DELETED]~~

5.1 LIBOR Loans

~~Subject to the terms and conditions hereof and provided that the Borrower has, by giving notice to the Administrative Agent in accordance with Section 5.2 requested the Lenders to continue to extend credit by way of a LIBOR Loan to replace all or a portion of an outstanding LIBOR Loan as it matures, each Lender shall, on the maturity of such LIBOR Loan, continue to extend credit to the Borrower by way of a LIBOR Loan (without a further advance of funds to the Borrower) in the principal amount equal to such Lender's Pro Rata Share of the principal amount of the matured LIBOR Loan or the portion thereof to be replaced.~~

5.2 Rollover Notice

~~The notice to be given to the Administrative Agent pursuant to Section 5.1 ("Rollover Notice") shall be irrevocable, shall be given in accordance with Section 3.10, shall be in substantially the form of Schedule E hereto and shall specify:~~

- ~~(a) the expiry date of the Interest Period of the LIBOR Loan to be replaced;~~
- ~~(b) the principal amount of the LIBOR Loan to be replaced and the portion thereof to be replaced; and~~
- ~~(c) the principal amount of the new LIBOR Loans and the Interest Period or Interest Periods of the new LIBOR Loans.~~

5.3 Rollover by Lenders

~~Upon written notice to such effect to the Borrower at such time as a Default has occurred and is continuing, the Administrative Agent may, on the maturity date of a LIBOR Loan, rollover such LIBOR Loan into a LIBOR Loan having an Interest Period of one month or such other period as the Lenders may determine, as though a notice to such effect had been given in accordance with Section 5.2.~~

5.4 Absence of Notice

~~Subject to Section 3.4 and 3.5 in the absence of a Rollover Notice within the appropriate time periods referred to herein, a maturing LIBOR Loan shall be automatically~~

~~converted to a Base Rate Loan as though a notice to such effect had been given in accordance with Section 5.2.~~

ARTICLE 6

CONVERSIONS [INTENTIONALLY DELETED]

6.1 Converting Loan to Other Type of Loan

~~Subject to Sections 3.1 and 3.5 and provided that the Borrower has, by giving notice to the Administrative Agent in accordance with Section 6.2, requested the Lenders to convert all or a portion of an outstanding Loan into another type of Loan, each Lender shall, on the date of conversion (which, in the case of the conversion of all or a portion of an outstanding LIBOR Loan, shall be the date on which such Loan matures), continue to extend credit to the Borrower by way of the type of Loan into which the outstanding Loan or a portion thereof is converted (with a repayment and a subsequent advance of funds to the Borrower) in the aggregate principal amount equal to such Lender's Pro Rata Share of the principal amount of the outstanding Loan or the portion thereof which is being converted.~~

6.2 Conversion Notice

~~The notice to be given to the Administrative Agent pursuant to Section 6.1 ("Conversion Notice") shall be irrevocable, shall be given in accordance with Section 3.10, shall be in substantially the form of Schedule F hereto and shall specify:~~

- ~~(a) the type of Loan to be converted;~~
- ~~(b) the Banking Day on which the conversion is to take place;~~
- ~~(c) the principal amount of the Loan or the portion thereof which is to be converted;~~
- ~~(d) the type and amount of the Loan into which the outstanding Loan is to be converted;~~
~~and~~
- ~~(e) if an outstanding extension of credit is to be converted into a LIBOR Loan, the applicable Interest Period.~~

6.3 Absence of Notice

~~Subject to Section 3.4 and 3.5, in the absence of a Rollover Notice or Conversion Notice within the appropriate time periods referred to herein, a maturing LIBOR Loan shall be automatically converted to a Base Rate Loan as though a notice to such effect had been given in accordance with Section 6.2.~~

6.4 Conversion by Lenders

~~If a Default has occurred and is continuing at 10:00 a.m. (Toronto time) on the third Banking Day prior to the maturity date of a LIBOR Loan, the Administrative Agent may convert such LIBOR Loan to a Base Rate Loan on its maturity, as though a notice to such effect had been given in accordance with Section 6.2.~~

ARTICLE 7 INTEREST AND FEES

7.1 Interest Rates

The Borrower shall pay to the Lenders, ~~in accordance with Section 3.6,~~ interest on the outstanding principal amount from time to time of each Loan and on overdue interest thereon, at the rate per annum equal to:

~~(a) in the case of each Base Rate Loan, the Base Rate plus the Applicable Rate; and for the relevant Tranche under which the subject Loan was advanced. For the avoidance of doubt, the 2% Default interest referenced in paragraph (ii) of the definition of Applicable Rate shall apply to all Loans under the Pre-Filing Tranche notwithstanding the Forbearance.~~

~~(b) in the case of each LIBOR Loan, LIBOR plus the Applicable Rate.~~

7.2 Calculation and Payment of Interest

~~(a) Interest on the outstanding principal amount from time to time of each LIBOR Loan and on overdue interest thereon shall accrue from day to day from and including the date on which credit is obtained by way of such Loan or on which such overdue interest is due, as the case may be, to but excluding the date on which such Loan or overdue interest, as the case may be, is repaid in full (both before and after maturity and judgment) and shall be calculated on the basis of the actual number of days elapsed divided by 360.~~

~~(a) [Intentionally Deleted.]~~

(b) Interest on the outstanding principal amount from time to time of each Base Rate Loan and on overdue interest thereon shall accrue from day to day from and including the date on which credit is obtained by way of such Loan or on which such overdue interest is due, as the case may be, to but excluding the date on which such Loan or overdue interest, as the case may be, is repaid in full (both before and after maturity and judgment).

~~(c) Accrued interest shall be paid,~~

~~(c) (i) in the case of Accrued interest on Base Rate Loans, under the Pre-Filing Tranche shall, subject to the Court Orders, be paid monthly in arrears on the last day of each calendar month; and,~~

~~(ii) in the case of interest on LIBOR Loans, in arrears on the last day of the applicable Interest Period but, in any event, at least every 3 months.~~

(d) Accrued interest under the DIP Tranche shall be capitalized monthly in arrears on the last day of each calendar month and such capitalized interest shall be added to the principal amount of outstanding Indebtedness under the DIP Tranche. For the avoidance of doubt, interest shall accrue and be payable on such interest

capitalized hereunder in the same manner and form and at the same time as the Loans outstanding under the DIP Tranche.

7.3 General Interest Rules

- (a) For the purposes hereof, whenever interest is calculated on the basis of a year of 360, 365 or 366 days, each rate of interest determined pursuant to such calculation expressed as an annual rate for the purposes of the *Interest Act* (Canada) is equivalent to such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360, 365 or 366 days, respectively.
- (b) Interest on each Loan and on overdue interest thereon shall be payable in the currency in which such Loan is denominated during the relevant period.
- (c) If the Borrower fails to pay any fee or other amount (other than principal or interest) of any nature payable by it to the Administrative Agent or the Lenders hereunder or under any document, instrument or agreement delivered pursuant hereto on the due date therefor, the Borrower shall pay to the Administrative Agent or the Lenders, as the case may be, interest on such overdue amount in the same currency as such overdue amount is payable from and including such due date to but excluding the date of actual payment (as well before and after judgment) at the rate per annum, calculated and compounded monthly, which is equal to the Base Rate plus the Applicable Rate for the relevant Tranche then in effect at all times that an Event of Default has occurred and is continuing and regardless of the Forbearance. Such interest on overdue amounts shall become due and be paid on demand made by the Administrative Agent.
- (d) No interest or fee to be paid hereunder shall be paid at a rate exceeding the maximum rate permitted by Applicable Law. In the event that such interest or fee exceeds such maximum rate, such interest or fees shall be reduced or refunded, as the case may be, so as to be payable at the highest rate recoverable under Applicable Law.

7.4 ~~Selection of Interest Periods~~[Intentionally Deleted.]

~~With respect to each LIBOR Loan, the Borrower shall specify in the Drawdown Notice, Conversion Notice or Rollover Notice, the duration of the Interest Period provided that:~~

- ~~(a) Interest Periods shall have a duration of no more than one month unless the Lenders shall agree, in their sole discretion, to a longer period;~~
- ~~(b) the first Interest Period for a LIBOR Loan shall commence on and include the day on which credit is obtained by way of such Loan and each subsequent Interest Period applicable thereto shall commence on and include the date of the expiry of the immediately preceding Interest Period applicable thereto; and~~

~~(c) if any Interest Period would end on a day which is not a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day unless such next succeeding Banking Day falls in the next calendar month, in which case such Interest Period shall be shortened to end on the immediately preceding Banking Day.~~

7.5 Standby Fees

Upon the first Banking Day following the completion of each Fiscal Quarter and on the termination of the Credit Facility, the Borrower shall pay, in accordance with Section 3.6 but subject to the last two sentences of this Section 7.5, to the Lenders, in arrears, a standby fee calculated at the rate per annum, on the basis of a year of 365 days, equal to the Applicable Rate on the Available Credit under the DIP Tranche, such fee to accrue daily from the date of the execution and delivery of this agreement to and including the date of payment. Notwithstanding the foregoing, standby fees shall cease to accrue on the unfunded portion of the Individual Commitment of any Lender while it is a Defaulting Lender. Accrued but unpaid standby fees for Available Credit under the DIP Tranche shall be capitalized on the last day of each Fiscal Quarter and such capitalized standby fee shall be added to the principal amount of Indebtedness under the DIP Tranche. For the avoidance of doubt, interest shall accrue and be payable on the capitalized standby fees hereunder in the same manner and form as the Loans outstanding under the DIP Tranche.

7.6 Letter Fees

The Borrower shall, in accordance with Section 3.6, pay to the Administrative Agent for the benefit of the Lenders with respect to each Existing Letter, an issuance fee quarterly in arrears on the first Banking Day of each Fiscal Quarter, accruing daily and calculated at a rate per annum equal to the Applicable Rate on the basis of a year of 365 days and on the amount of the contingent liability of the Issuing Lender under such Existing Letter and for the type of such Existing Letter (i.e., whether a Financial Letter or a Non-Financial Letter), for a period of time equal to the number of days in the preceding Fiscal Quarter on which such Existing Letter was outstanding. In addition, with respect to all Existing Letters, the Borrower shall, from time to time, pay to the Issuing Lender, for its own account, (i) its usual and customary fees (at the then prevailing rates) for the amendment, delivery and administration of letters of credit such as the Existing Letters and (ii) the fronting fees, to the extent applicable, set forth in the Fronting Fee Letter. Each such payment is non-refundable and fully earned when due.

7.7 Interest Act Compliance

For the purposes of the *Interest Act* (Canada), any rate of interest made payable under the terms of this agreement at a rate or percentage (the “**Contract Rate**”) for any period that is less than a consecutive 12 month period, such as a 360 or 365 day basis (the “**Contract Rate Basis**”), is equivalent to the yearly rate or percentage of interest determined by multiplying the Contract Rate by a fraction, the numerator of which is the number of days in the consecutive 12 month period commencing on the date such equivalent rate or percentage is being determined and the denominator of which is the number of days in the Contract Rate Basis. The Borrower

confirms that it fully understands and is able to calculate the rates of interest and fees applicable to Accommodations based on the methodology for calculating per annum rates provided for in this agreement. The Lenders and Administrative Agent agree that if requested in writing by the Borrower it will calculate the nominal and effective per annum rate of interest or fees on any Accommodation outstanding at the time of such request and provide such information to the Borrower promptly following such request; provided that any error in any such calculation, or any failure to provide such information on request, shall not relieve the Borrower of any of its obligations under this agreement or any other Finance Document, nor result in any liability to the Lenders and Administrative Agent. To the extent permitted by law, the Borrower hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to any Finance Document, that the interest or fees payable under any Finance Document and the calculation thereof has not been adequately disclosed to the Borrower, whether pursuant to section 4 of the *Interest Act* (Canada) or any other Applicable Law or legal principle.

ARTICLE 8 RESERVE, CAPITAL, INDEMNITY AND TAX PROVISIONS

8.1 Conditions of Credit

The obtaining or maintaining of credit hereunder shall be subject to the terms and conditions contained in this Article 8.

8.2 Change of Circumstances

- (a) If, with respect to any type of credit, the introduction or adoption of any law, regulation, guideline, request or directive (whether or not having the force of law) of any governmental authority, central bank or comparable agency (“**Restraint**”) or any change therein or in the application thereof to the Borrower or to any Credit Party or in the interpretation or administration thereof or any compliance by any Credit Party therewith:
- (i) prohibits or restricts extending or maintaining such type of credit or the charging of interest or fees in connection therewith, the Borrower agrees that such Credit Party shall have the right to comply with such Restraint, shall have the right to refuse to permit the Borrower to obtain such type of credit and shall have the right to require, at the option of the Borrower, the conversion of such outstanding credit to another type of credit to permit compliance with the Restraint or repayment in full of such credit together with accrued interest thereon on the last day on which it is lawful for such Credit Party to continue to maintain and fund such credit or to charge interest or fees in connection therewith, as the case may be; or
 - (ii) shall impose or require any reserve, capital adequacy, liquidity, special deposit requirements or tax (excluding Taxes in respect of which amounts are payable by the Borrower to a Credit Party under Section 8.6 and Taxes described in paragraphs (a) and (b) of the definition of Excluded Taxes), shall establish an appropriate amount of capital to be maintained by such

Credit Party or in accordance with Dodd-Frank Wall Street Reform and Consumer Protection Act or Basel III (or other Applicable Law of similar purpose and effect binding on a Credit Party), shall impose any other requirement or condition which results in an increased cost to such Credit Party of extending or maintaining a credit or obligation hereunder or reduces the amount received or receivable by such Credit Party with respect to any credit under this agreement or reduces such Credit Party's effective return hereunder or on its capital or causes such Credit Party to make any payment or to forego any return based on any amount received or receivable hereunder, then, on notification to the Borrower by such Credit Party, the Borrower shall pay immediately to such Credit Party such amounts as shall fully compensate such Credit Party for all such increased costs, reductions, payments or foregone returns which accrue up to and including the date of receipt by the Borrower of such notice and thereafter, upon demand from time to time, the Borrower shall pay such additional amount as shall fully compensate such Credit Party for any such increased or imposed costs, reductions, payments or foregone returns. Such Credit Party shall notify the Borrower of any actual increased or imposed costs, reductions, payments or foregone returns forthwith on becoming aware of same and shall concurrently provide to the Borrower a certificate of an officer of such Credit Party setting forth the amount of compensation to be paid to such Credit Party and the basis for the calculation of such amount. Notwithstanding this Section 8.2(a)(ii), the Borrower shall not be liable to compensate such Credit Party for any such cost, reduction, payment or foregone return occurring more than 90 days before receipt by the Borrower of the aforementioned notification from such Credit Party; provided, however, that the aforementioned limitation shall not apply to any such cost, reduction, payment or foregone return of a retroactive nature.

For certainty, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* as well as Basel III and all requests, rules, guidelines or directives thereunder or issued in connection therewith and promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall be deemed to be a "Restraint", regardless of the date enacted, adopted, promulgated or issued.

- (b) Each Credit Party agrees that, as promptly as practicable after it becomes aware of the occurrence of an event or the existence of a condition that would cause it to seek additional amounts from the Borrower pursuant to Section 8.2(a), it will use reasonable efforts to make, fund or maintain the affected credit of such Credit Party through another lending office or take such other actions as it deems appropriate, in its sole discretion, if as a result thereof the additional monies which would otherwise be required to be paid in respect of such credit pursuant to Section 8.2(a), would be reduced and if, as determined by such Credit Party in its sole discretion, the making, funding or maintaining of such affected credit

through such other lending office or the taking of such other actions would not otherwise adversely affect such credit or such Credit Party and would not, in such Credit Party's sole discretion, be commercially unreasonable.

8.3 Replacement of a Lender

Notwithstanding anything contained herein to the contrary, if (i) any Lender, but not all of the Lenders, who has an Individual Commitment seeks additional compensation pursuant to Section 8.2 (the "**Affected Lender**"), or (ii) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions of this Agreement that requires the consent of all of the Lenders, the consent of the Majority Lenders shall have been obtained but the consent of one or more of such other Lenders (each, a "**Non-Consenting Lender**") whose consent is required shall not have been obtained, or (iii) any Lender becomes a Defaulting Lender, then, in the case of each such Affected Lender, Non-Consenting Lender or Defaulting Lender (each, a "**Terminated Lender**") the Borrower may, by giving written notice to the Administrative Agent and such Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Accommodations and Individual Commitments, if any, in full to one or more Eligible Assignees (each, a "**Replacement Lender**") in accordance with the provisions of this Section 8.3 provided, however, that incumbent Lenders shall have the right to assume any such Accommodations and Individual Commitments in accordance with their Pro Rata Shares in priority to any Person which is not a Lender at the time that the Borrower provided the afore-mentioned notice to the Administrative Agent. The Replacement Lender or Replacement Lenders shall, in the aggregate, advance all (but not part) of the Terminated Lender's Pro Rata Share of the affected credit and, in the aggregate, assume all (but not part) of the Terminated Lender's Individual Commitments and obligations under the Credit Facility and acquire all (but not part) of the rights of the Terminated Lender and assume all (but not part) of the obligations of the Terminated Lender under each of the other Credit Documents to the extent they relate to the Credit Facility (but in no event shall any other Lender or the Administrative Agent be obliged to do so).

With respect to such advance, acquisition and assumption, the Pro Rata Share of such credit of each Replacement Lender and the Individual Commitments and the obligations of such Replacement Lender under the Credit Facility and the rights and obligations of such Replacement Lender under each of the other Credit Documents to the extent they relate to the Credit Facility shall be increased by its respective pro rata share (based on the relative Individual Commitments of the Replacement Lenders) of the Terminated Lender's Pro Rata Share of such credit and Individual Commitments and obligations and rights and obligations under each of the other Credit Documents to the extent they relate to the Credit Facility on a date mutually acceptable to the Replacement Lenders and the Borrower. On such date, each of the Replacement Lenders shall execute an instrument substantially in the form of Schedule ~~CB~~ hereto and shall extend to the Borrower the Terminated Lender's Pro Rata Share of such credit and shall prepay to the Terminated Lender the Accommodations of the Terminated Lender then outstanding, together with all interest accrued thereon and all other amounts owing to the Terminated Lender hereunder, and, upon such advance and prepayment by the Replacement Lenders, the Terminated Lender shall cease to be a "**Lender**" in connection with the Credit Facility for purposes of this agreement and shall no longer have any obligations thereunder. In

addition to the foregoing, in respect of any Replacement Lender that is not, on the relevant date, an existing Lender, such Replacement Lender shall execute and deliver a Joinder Agreement (in the form set forth in Schedule PO hereto), which shall be executed and delivered by the Borrower and the Administrative Agent, and each such Replacement Lender shall be bound by the terms of the Credit Documents as a Lender. Upon the assumption of the Terminated Lender's Individual Commitments as aforesaid by a Replacement Lender, Schedule A hereto shall be deemed to be amended to reflect the amended or new Individual Commitments of such Replacement Lenders under the Credit Facility pursuant to the respective amounts of such assumptions.

For certainty, the Borrower shall not be required to pay a Terminated Lender that is a Defaulting Lender which has failed to fund any portion of any extension of credit required to be funded by it hereunder in respect of breakage costs or other amounts required to be paid as a result of prepayment to such Lender. In the event that a Terminated Lender is not replaced pursuant to the foregoing provisions and provided (x) no Default or Event of Default has occurred and is continuing at the time of any such prepayment and cancellation or would arise immediately thereafter and (y) such prepayment and cancellation is not prohibited by Applicable Law, the Borrower may, upon five Banking Days' notice to the Terminated Lender and the Administrative Agent, cancel the Individual Commitment of such Terminated Lender and prepay advances of such Terminated Lender then outstanding, together with all interest accrued thereon and all other amounts owing to such Terminated Lender hereunder (such payments shall be made to the Administrative Agent), and, upon such notice and prepayment by the Borrower, such Terminated Lender shall cease to be a "Lender" for all purposes of this agreement and shall no longer have any obligations hereunder.

8.4 Indemnity Relating to Credits

Upon notice from the Administrative Agent to the Borrower (which notice shall be accompanied by a detailed calculation of the amount to be paid by the Borrower), the Borrower shall pay to the Administrative Agent such amount or amounts as will compensate the Administrative Agent or the Lenders (including, for certainty, the Issuing Lender) for any loss, cost or expense incurred by them:

- (a) in the liquidation or redeposit of any funds acquired by the Lenders to fund or maintain any portion of a Loan as a result of:
 - (i) the failure of the Borrower to borrow or make repayments on the dates specified under this agreement or in any notice from the Borrower to the Administrative Agent (~~provided that if any notice specifies the repayment of a LIBOR Loan at any time other than its maturity date, then the Borrower shall be responsible for any loss, costs or expenses referred to above~~); or
 - (ii) the repayment or prepayment of any amounts on a day other than the payment dates prescribed herein or in any notice from the Borrower to the Administrative Agent (~~provided that if any notice specifies the repayment of a LIBOR Loan at any time other than its maturity date, then the~~

~~Borrower shall be responsible for any loss, costs or expenses referred to above); or~~

- (b) with respect to any Existing Letter, arising from claims or legal proceedings, and including reasonable legal fees and disbursements, respecting the collection of amounts owed by the Borrower hereunder in respect of such Existing Letter or the enforcement of the Administrative Agents' or Lenders' rights hereunder in respect of such Existing Letter including legal proceedings attempting to restrain the Lenders (including the Issuing Lender) from paying any amount under such Existing Letter.

Notwithstanding the foregoing, the Borrower shall not be required to indemnify a Lender for any such cost or expense if such cost or expense is incurred while such Lender is a Defaulting Lender which has failed to fund any portion of any extension of credit required to be funded by it hereunder.

8.5 Indemnity for Transactional and Environmental Liability

- (a) The Borrower hereby agrees to indemnify and hold the Administrative Agent, each Lender, the Issuing Lender and each of their respective Affiliates, shareholders, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which indemnification hereunder is sought), and including reasonable legal fees and out of pocket disbursements and amounts paid in settlement which are approved by the Borrower (collectively in this Section 8.5(a), the "**Indemnified Liabilities**"), incurred or suffered by, or asserted against, the Indemnified Parties or any of them as a result of, or arising out of, or relating to (i) the extension of credit contemplated herein, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any credit extended hereunder, (iii) any actual or threatened investigation, litigation or other proceeding relating to any credit extended or proposed to be extended as contemplated herein or (iv) the execution, delivery, performance or enforcement of the Credit Documents and any instrument, document or agreement executed pursuant hereto; provided such indemnity (x) does not extend to any such Indemnified Liabilities that a court of competent jurisdiction determined arose on account of the relevant Indemnified Party's gross negligence, criminal act or willful misconduct or breach by such Indemnified Party of its obligations under the Credit Documents, (y) does not extend to any loss of profit, income, revenue or business opportunities (it being agreed, however, for certainty, that such exclusion shall not apply to the repayment of principal, the payment of interest, fees and other related costs and expenses, or any other amount expressly required to be paid, repaid or reimbursed (as applicable) under or pursuant to Credit Documents), and (z) shall not apply to disputes solely between or among Indemnified Parties.

- (b) Without limiting the generality of the indemnity set out in the preceding clause (a), the Borrower hereby further agrees to indemnify and hold the Indemnified Parties free and harmless from and against any and all claims, demand, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith, including reasonable and documented legal fees and out of pocket disbursements and amounts paid in settlement which are approved by the Borrower, of any and every kind whatsoever paid (collectively in this Section 8.5(b), the “**Indemnified Liabilities**”), incurred or suffered by, or asserted against, the Indemnified Parties or any of them for, with respect to, or as a direct or indirect result of, (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or Release from, any real property legally or beneficially owned (or any estate or interest which is owned), leased, used or operated by any Obligor of any Hazardous Material, contaminant, pollutant or waste, and (ii) any other violation of or liability pursuant to an Environmental and Social Law with respect to any Obligor, and regardless of whether caused by, or within the control of, such Obligor, except for any such Indemnified Liabilities that a court of competent jurisdiction determined arose on account of the relevant Indemnified Party’s gross negligence or willful misconduct.
- (c) All obligations provided for in this Section 8.5 shall survive indefinitely the permanent repayment of the outstanding credit hereunder and the termination of this agreement. The obligations provided for in this Section 8.5 shall not be reduced or impaired by any investigation made by or on behalf of the Credit Parties. This Section 8.5 shall not apply with respect to Taxes other than Taxes that represent claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, or expenses arising from any non-Tax claim.
- (d) The Borrower hereby agrees that, for the purposes of effectively allocating the risk of loss placed on the Borrower by this Section 8.5, each Credit Party shall be deemed to be acting as the agent or trustee on behalf of and for the benefit of their respective shareholders, officers, directors, employees and agents.
- (e) If, for any reason, the obligations of the Borrower pursuant to this Section 8.5 shall be unenforceable, the Borrower agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under Applicable Law.

8.6 Gross-Up for Taxes

- (a) Any and all payments made by or on behalf of the Borrower under this agreement or under any other Credit Document (any such payment being hereinafter referred to as a “**Payment**”) to or for the benefit of a Credit Party shall be made without set-off or counterclaim, and free and clear of, and without deduction or withholding for, or on account of, any and all present or future Taxes except to the extent that such deduction or withholding is required by law or the administrative practice of any Official Body. If any such Taxes are so required to

be deducted or withheld from or in respect of any Payment made to or for the benefit of a Credit Party, the Borrower shall:

- (i) promptly notify the Administrative Agent of such requirement;
 - (ii) with respect to Indemnified Taxes, pay to such Credit Party in addition to the Payment to which such Credit Party is otherwise entitled, such additional amount as is necessary to ensure that the net amount actually received by such Credit Party (free and clear of, and net of, any such Indemnified Taxes, including the full amount of any Indemnified Taxes required to be deducted or withheld from any additional amount paid by the Borrower under this Section 8.6(a), whether assessable against the Borrower or such Credit Party) equals the full amount the Credit Party, would have received had no such deduction or withholding been required;
 - (iii) make such deduction or withholding;
 - (iv) pay to the relevant Official Body in accordance with Applicable Law the full amount of Taxes required to be deducted or withheld (including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrower, to the Credit Party under this Section 8.6(a)), within the time period required by Applicable Law; and
 - (v) as promptly as possible thereafter, forward to the relevant Credit Party an original official receipt (or a certified copy), or other documentation reasonably acceptable to the Administrative Agent and such Credit Party, evidencing such payment to such Official Body.
- (b) In addition, the Borrower agrees to pay any and all present or future Other Taxes.
- (c) The Borrower hereby indemnifies and holds harmless each Credit Party, on an after-Taxes basis, for the full amount of Taxes and Other Taxes, interest, penalties and other liabilities, levied, imposed or assessed against (and whether or not paid directly by) the Administrative Agent or such Credit Party, as applicable, and for all expenses, resulting from or relating to the Borrower' failure to:
- (i) remit to the Administrative Agent or such Credit Party the documentation referred to in Section 8.6(a)(v); or
 - (ii) pay any Taxes or Other Taxes when due to the relevant Official Body (including any Taxes imposed by any Official Body on amounts payable under this Section 8.6).

The provisions of this Section 8.6(c) shall apply whether or not such Taxes or Other Taxes were correctly or legally assessed. The Administrative Agent or any Credit Party who pays any Taxes or Other Taxes shall promptly notify the Borrower of such payment, provided, however, that failure to provide such notice shall not detract from, or compromise, the obligations of the Borrower under this

Section 8.6. Payment pursuant to this indemnification shall be made within 20 days from the date the Administrative Agent or the relevant Credit Party, as the case may be, makes written demand therefor accompanied by a certificate as to the amount of such Taxes or Other Taxes and the calculation thereof, which calculation shall be prima facie evidence of such amount.

- (d) If the Borrower determines in good faith that a reasonable basis exists for contesting any Indemnified Taxes for which a payment has been made under this Section 8.6, the relevant Credit Party shall, if so requested by the Borrower, cooperate with the Borrower in challenging such Indemnified Taxes at the Borrower's expense.
- (e) If any Credit Party receives a refund of, or credit for, Taxes for which a payment has been made by the Borrower under this Section 8.6, which refund or credit in the good faith judgment of the Credit Party is attributable to the Indemnified Taxes giving rise to such payment made by the Borrower, then such Credit Party shall reimburse the Borrower for such amount (if any, but not exceeding the amount of any payment made under this Section 8.6 that gives rise to such refund or credit), net of out-of-pocket expenses of such Credit Party which the Credit Party determines in its absolute discretion will leave it, after such reimbursement, in no better or worse position than it would have been in if such Indemnified Taxes had not been exigible. The Borrower, upon the request of a Credit Party, agrees to repay such Credit Party any portion of any such refund or credit paid over to the Borrower that a Credit Party is required to pay to the relevant Official Body and agrees to pay any interest, penalties or other charges paid by such Credit Party as a result of or related to such payment to such Official Body. No Credit Party shall be under any obligation to arrange its tax affairs in any particular manner so as to claim any refund or credit. No Credit Party shall be obliged to disclose any information regarding its tax affairs or computations to the Borrower or any other Person in connection with this Section 8.6(e) or any other provision of this Section 8.6.
- (f) Any Credit Party that is entitled to an exemption from or reduction of withholding Taxes or Other Taxes (collectively, "**Relevant Taxes**") under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to Payments shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law and reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law (if any) as will permit such payments to be made without withholding or at a reduced rate of withholding or a reduced rate of Relevant Taxes. In addition, (i) any Credit Party, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law (if any) or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Credit Party is subject to withholding or information reporting requirements, and (ii) any Credit Party that ceases to be, or

to be deemed to be, resident in Canada for purposes of Part XIII of the *Tax Act* or any successor provision thereto in respect of Payments shall within five Banking Days thereof notify the Borrower and the Administrative Agent in writing. Notwithstanding the foregoing, no Credit Party shall be required to deliver any documentation pursuant to this Section 8.6(f) that such Credit Party is not legally able to deliver.

- (g) Additional amounts payable under Section 8.6(a) have the same character as the Payments to which they relate. For greater certainty, for example, additional amounts payable under Section 8.6(a), in respect of interest payable under a Credit Document, shall be payments of interest under such Credit Document. All payments made under this Section 8.6 shall be subject to the provisions of this Section 8.6.
- (h) The Borrower's obligations under this Section 8.6 shall survive without limitation the termination of the Credit Facility and this agreement and all other Credit Documents and the permanent repayment of the outstanding credit and all other amounts payable hereunder or thereunder.

ARTICLE 9 REPAYMENTS AND PREPAYMENTS

9.1 Repayment of Credit Facility

- (a) Pre-Filing Tranche. The parties hereto acknowledge and agree that all outstanding credit under the Pre-Filing Tranche (for certainty, being amounts under the "Credit Facility", as such term was defined prior to the Fifth Amendment Effective Date) was due and payable by the Borrower to the Administrative Agent, for the account of the Lenders, on September 18, 2022 and that, subject to the Forbearance, all such amounts remain due and payable and that all such overdue amounts continue to accrue interest at the Base Rate plus the Applicable Rate (which includes, for certainty, an additional 2% Default rate of interest per paragraph (b) of the definition of Applicable Rate). If there exists any Excess Budgeted Revenue at any time after the DIP Tranche has been repaid in full and cancelled, the Borrower shall apply all such Excess Budgeted Revenue to the repayment of its outstanding and overdue payment obligations in respect of the Pre-Filing Tranche.
- (b) DIP Tranche. The Borrower shall repay to the Administrative Agent, for the account of the Lenders, in full the outstanding credit under the ~~Credit Facility~~ DIP Tranche on the DIP Maturity Date together with all accrued and ~~unpaid~~ uncapitalized interest thereon and all accrued and ~~unpaid~~ uncapitalized fees with respect thereto. ~~As concerns any Letter which, on the Maturity Date, has an expiry date later than the Maturity Date, the Borrower shall pay to the Issuing Lender on the Maturity Date the then contingent liability of the Issuing Lender thereunder (to be held solely for the purpose of satisfying any draw under such Letter and to be held subject to Section 13.2). Following such payment by the Borrower to the Issuing Lender, the Borrower shall have no further liability to the~~

~~Lenders with respect to any such Letter.~~ The foregoing payment obligation without any requirement for the Administrative Agent, for and on behalf of the Lenders, to make demand upon the Borrower or to give notice that the DIP Tranche has expired and that all Secured Obligations under the DIP Tranche are due and payable.

9.2 Repayment of Credit Excess

In the event that there is a Credit Excess with respect to a particular Tranche of the Credit Facility at any time, the Borrower shall repay to the Lenders on demand the amount of such Credit Excess. Each such repayment shall be deposited by the Administrative Agent in a segregated account and held in trust for the Lenders to be applied to repay outstanding Accommodations under the relevant Tranche of the Credit Facility as they mature or, as applicable, to satisfy reimbursement obligations with respect to outstanding Existing Letters as such Loans mature or as such Existing Letters are drawn upon, as the case may be.

9.3 Voluntary Prepayments

Subject to Section 9.5, the Borrower shall be entitled to prepay all or any portion of the outstanding Loans under the ~~Credit Facility~~ DIP Tranche at any time, without penalty, provided that Section 8.4 shall be complied with in connection with any such prepayment and any such prepayment of all or any portion of any Loan shall be in an amount of no less than \$1,000,000 and otherwise in integral multiples of \$100,000 in excess thereof. Amounts under the ~~Credit Facility~~ DIP Tranche which have been prepaid as aforesaid may not be re-borrowed. Other than any payments required pursuant to Section 8.4, there are no premiums, penalties or other additional payments associated with any voluntary prepayments under this Section 9.3.

9.4 Mandatory Prepayments

The Borrower shall, within ~~five~~ two Banking Days of the occurrence of a Prepayment Trigger Event, repay, firstly, all accrued but uncapitalized interest of fees under the DIP Tranche and, secondly, prepay outstanding credit under the Credit Facility DIP Tranche in an amount equal to 100% of the Applicable Prepayment Amount in respect of such Prepayment Trigger Event. Amounts which are prepaid under the ~~Credit Facility~~ DIP Tranche as aforesaid on account of any relevant Prepayment Trigger Event may not be re-borrowed. ~~Section 8.4 shall be complied with in connection with any prepayment pursuant to Section 9.4.~~

9.5 Prepayment Notice

The Borrower shall give written notice to the Administrative Agent of each voluntary prepayment pursuant to Section 9.2. Such notice shall be substantially in the form set forth in Schedule QP hereto (a "**Prepayment Notice**") shall be irrevocable, shall be given in accordance with Section 3.10 and shall specify:

- (a) the date on which the prepayment is to take place; and
- (b) the type and principal amount of the Loan or the portion thereof which is to be prepaid.

9.6 Reimbursement or Conversion on Presentation of Existing Letters

- (a) On presentation of an Existing Letter and payment thereunder by the Issuing Lender, the Borrower shall forthwith pay (and in any event no later than 11:00 a.m. (Toronto time) on the date of any payment by the Issuing Lender under a Letter) to the Administrative Agent for the account of the Issuing Lender, and thereby reimburse the Issuing Lender for, all amounts paid by Issuing Lender pursuant to such Letter (the “**Reimbursement Amount**”). Provided the Borrower shall have received written notice of the presentment and payment under an Existing Letter prior to 4:00 p.m. (Toronto time) on a Banking Day, the Borrower shall pay the corresponding Reimbursement Amount as aforementioned on such Banking Day. If the Borrower shall have received written notice of the presentment and payment under a Letter after 4:00 p.m. (Toronto time) on a Banking Day, the Borrower pay the corresponding Reimbursement Amount as aforementioned by 10:00 a.m. (Toronto time) on the next following Banking Day. Failing such payment, the Borrower shall be deemed to have effected, notwithstanding any other provision hereof, a conversion of such Letter into a ~~Base Rate Loan~~ to the extent of the Reimbursement Amount.
- (b) If the Issuing Lender makes payment under any Existing Letter and the Borrower does not fully reimburse the Issuing Lender in accordance with Section 9.6(a), then Section 9.6(a) shall apply to deem a ~~Base Rate Loan~~ to be outstanding to the Borrower under this agreement in the manner therein set out regardless of whether the conditions set forth in Section 12.1 are satisfied (each such Loan for the purposes of this Section 9.6(b), an “Existing Letter Reimbursement Loan”). Each such Existing Letter Reimbursement Loan shall be in an amount equal to the U.S. Dollar Equivalent on the date of the subject Existing Letter Reimbursement Loan of (i) the Canadian Dollar face amount of the subject Existing Letter and (ii) the Canadian Dollar accrued but unpaid quarterly Letter fees in respect of such Existing Letter, as calculated in accordance with Section 7.6 hereof. Each Lender shall, on request by the Issuing Lender, immediately pay to the Issuing Lender an amount equal to such Lender’s Pro Rata Share of the amount paid by the Issuing Lender such that each Lender is participating in the deemed ~~Base Rate Existing Letter Reimbursement~~ Loan in accordance with its Pro Rata Share. The obligation of each Lender to pay the Issuing Lender its Pro Rata Share of each such deemed Existing Letter Reimbursement Loan shall be absolute and unconditional and shall not be affected by any circumstance, including, but not limited to, (A) any setoff, counterclaim, recoupment, defence or other right which such Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, (including, for the avoidance of doubt, the Forbearance Events of Default) or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing.
- (c) Each Lender shall immediately on demand indemnify the Issuing Lender to the extent of such Lender’s Pro Rata Share of any amount paid or liability incurred by

the Issuing Lender under each Existing Letter issued by it to the extent that the Borrower does not fully reimburse the Issuing Lender therefor.

- (d) Until each Lender funds its Existing Letter Reimbursement Loan pursuant to this Section 9.6 to reimburse the Issuing Lender for any amount drawn under any Existing Letter, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of the Issuing Lender.
- (e) If any Lender fails to immediately make available to the Administrative Agent for the account of the Issuing Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 9.6, the Issuing Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Lender at a rate per annum equal to the ~~30-day LIBOR~~ Base Rate plus the Applicable Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the Issuing Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Pro Rata Share of the relevant Existing Letter Reimbursement Loan. A certificate of the Issuing Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this Section 9.6(e) shall be conclusive absent manifest error.

9.7 Letters Subject to an Order

To the extent the Borrower is required to repay the Accommodations in full pursuant to Article 9 or Article 13 or otherwise, the Borrower shall pay to the Issuing Lender for deposit to the Letter Cash Collateral Account an amount equal to the maximum amount available to be drawn under any unexpired Letter or which becomes the subject of any Order; payment in respect of each such Letter shall be due forthwith upon demand in the currency in which such Existing Letter is denominated. The Issuing Lender shall apply funds in the Letter Cash Collateral Account to (a) satisfy any reimbursements obligations of the Borrower to the Issuing Lender under Section 9.6, or (b) refund to the Borrower any amounts payable by the Issuing Lender to the Borrower under Section 13.3.

9.8 Currency of Repayment

~~All~~ With the exception of the Existing Letters, all payments and repayments of outstanding credit hereunder shall be made in the currency of such outstanding credit.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties

To induce the Lenders and the Administrative Agent to enter into this agreement and to induce the Finance Parties to extend credit under the Finance Documents, the Borrower

hereby represents and warrants to the Finance Parties, as of the date of this agreement, as of the date of each extension of credit hereunder, as of the last day of each ~~Fiscal Quarter and as of the consummation date of each Permitted Acquisition~~ calendar month, as follows and acknowledges and confirms that the Finance Parties are relying upon such representations and warranties in entering into this agreement and in extending credit under the Finance Documents:

- (a) **Status and Power.** Each Obligor and Subject Entity is a corporation duly incorporated or continued and organized and validly subsisting in good standing under the laws of its governing jurisdiction and each Obligor and Subject Entity is duly qualified, registered or licensed in all jurisdictions where the nature of its business makes such qualification, registration or licensing necessary, except where the failure to be in such standing or so qualified, registered or licensed would not reasonably be expected to have a Material Adverse Effect. Each Obligor has all requisite corporate capacity, power and authority to own, hold under licence or lease its properties, and to carry on its business as now conducted. Each Obligor has all necessary corporate capacity or otherwise Court sanctioned authority pursuant to the CCAA Proceeding to enter into, and carry out the transactions contemplated by, the Finance Documents to which it is a party.
- (b) **Authorization and Enforcement.** All necessary action, corporate, judicial or otherwise, has been taken to authorize the execution, delivery and performance by each Obligor of the Finance Documents to which it is a party. Each Obligor has duly executed and delivered the Finance Documents to which it is a party. The Finance Documents to which each Obligor is a party are legal, valid and binding obligations of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent that the enforceability thereof may be limited by (i) applicable bankruptcy, insolvency, moratorium, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and (ii) the fact that the courts may deny the granting or enforcement of equitable remedies.
- (c) **Compliance with Other Instruments.**
 - (i) The execution, delivery and performance by each Obligor of the Finance Documents to which it is a party, and the consummation of the transactions contemplated herein and therein, do not and will not conflict with, result in any breach or violation of, or constitute a default under, the terms, conditions or provisions of, the charter or constating documents or by-laws of, or any shareholder agreement or declaration relating to, such Obligor.
 - (ii) The execution, delivery and performance by each Obligor of the Finance Documents to which it is a party, and the consummation of the transactions contemplated herein and therein, (i) do not and will not conflict with, result in any breach or violation of, or constitute a default under, the terms, conditions or provisions of, (x) any law, regulation, judgment, decree or order binding on or applicable to such Obligor or (y)

any Material Agreement, Mining License or Permit to which such Obligor is a party or is otherwise bound or by which such Obligor benefits or to which its property is subject which conflict, breach, violation or default would result in a Material Adverse Effect, and (ii) do not require the Approval of any Official Body, other than the Exchange Control Approvals and any necessary Approval which has been obtained and remains in full force and effect.

- (d) **Financial Statements.** The consolidated financial statements of the Borrower for the most recently completed month, Fiscal Quarter or Fiscal Year, as the case may be, were prepared in accordance with GAAP. The balance sheet of the aforesaid financial statement presents in all material respects a fair statement of the consolidated financial condition and assets and liability of the Borrower as at the date thereof and the statements of operations, retained earnings and cash flow contained in the aforesaid financial statements fairly presents in all material respects the results of the consolidated operations of the Borrower throughout the period covered thereby. Except to the extent reflected or reserved against in the aforesaid balance sheet (including the notes thereto) and except as incurred in the ordinary and usual course of the consolidated business of the Borrower, the Borrower does not have, as at the date of such balance sheet, any outstanding Indebtedness or any liability or obligations (whether accrued, absolute, contingent or otherwise) of a material nature required to be reflected or reserved against in a balance sheet (including the notes thereto) prepared in accordance with generally accepted accounting principles.
- (e) **Litigation.** Except as disclosed in Schedule ~~L~~K, there are no actions, suits, inquiries, claims or proceedings (whether or not purportedly on behalf of any Obligor) pending or threatened in writing against or affecting any Obligor before any Official Body which in any case or in the aggregate would reasonably be expected to have a Material Adverse Effect.
- (f) **Title to Assets.** Each Obligor has good and marketable title to its property, assets and undertaking, free from any Lien other than the Permitted Liens.
- (g) **Conduct of Business.** No Company is in violation of any Applicable Laws, save (except in the case of Anti-Corruption Laws) for non-compliance which would not reasonably be expected to have a Material Adverse Effect. ~~Each~~Subject to the Initial Order, each Obligor and Subject Entity holds all licenses, certificates of approval, approvals, registrations, permits and consents which are required to operate its businesses where they are currently being operated except where the failure to have such licenses, certificates of approval, approvals, registrations, permits and consents would not reasonably be expected to have a Material Adverse Effect.
- (h) **Outstanding Defaults.** ~~No~~With the exception of the Forbearance Events of Default, no Default or Event of Default exists or would result from the incurring of any Secured Obligations by any Obligor. No event has occurred which constitutes or which, with the giving of notice, lapse of time or both, would

constitute a default under or in respect of, or a lapse of, any Mining Licenses relating to the Rosh Pinah Mine other than (i) a lapse of any Mining License which would not reasonably be expected to have a Material Adverse Effect and (ii) any default under or in respect of any Mining License relating to the Rosh Pinah Mine which does not afford the grantor of any such Mining License the right to revoke such Mining License or impose more restrictive conditions thereon which would reasonably be expected to have a Material Adverse Effect ~~or as otherwise disclosed in the Perfection Certificates.~~

- (i) **Tax Returns and Taxes.** Except as disclosed on Schedule ~~NM~~, each Obligor and Subject Entity has filed all material Tax returns and Tax reports required by law to have been filed by it and has paid all Taxes thereby shown to be owing, except any such Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with generally accepted accounting principles shall have been set aside on its books.
- (j) **Expropriation or Condemnation.** There is no present or threatened (in writing to an Obligor or Subject Entity) expropriation or condemnation of the property or assets of any Obligor or Subject Entity, which expropriation or condemnation would reasonably be expected to have a Material Adverse Effect.
- (k) **Environmental Compliance.** Except as disclosed on Schedule ~~ON~~:
 - (i) All facilities and property (including underlying groundwater) directly or indirectly owned, leased, used or operated by each Company and Subject Entity are owned, leased used or operated by such Company and Subject Entity in compliance with all Environmental and Social Laws except where any non-compliance would not reasonably be expected to have a Material Adverse Effect and to the Knowledge of the Borrower all facilities and property (including underlying groundwater) previously owned, leased, used or operated by each Company and Subject Entity were owned or leased in compliance with all Environmental and Social Laws except where any non-compliance would not reasonably be expected to have a Material Adverse Effect;
 - (ii) There are no pending or threatened (in writing)
 - (A) claims, complaints, notices or requests for information received by any Company or Subject Entity from any Official Body with respect to any alleged violation of any Environmental and Social Law which alleged violation would reasonably be expected to have a Material Adverse Effect;
 - (B) complaints, notices or inquiries to any Company or Subject Entity from any Official Body regarding potential liability under any Environmental and Social Law which potential liability would reasonably be expected to have a Material Adverse Effect;

- (iii) To the Knowledge of the Borrower, there have been no Releases of any Hazardous Materials or any escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials at, on, under or from any property now or previously owned, operated, used or leased by any Company or Subject Entity in violation of Environmental and Social Laws except for Releases of any Hazardous Materials which would not reasonably be expected to have a Material Adverse Effect;
 - (iv) Each Company and Subject Entity has been issued and is in compliance with all permits, certificates, approvals, licenses and other authorizations under any Environmental and Social Laws to carry on its business except where any non-issuance or non-compliance would not reasonably be expected to have a Material Adverse Effect; and
 - (v) To the Knowledge of the Borrower, no conditions exist at, on or under any property now or previously owned, operated, used or leased by any Company or Subject Entity which, with the passage of time, or the giving of notice or both, would give rise to liability under any Environmental and Social Law except for the existence of any such conditions which would not reasonably be expected to have a Material Adverse Effect.
- (l) ***Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).*** On the Original Closing Date: (i) the Borrower's most recent audited balance sheet stated that it had net assets of at least Cdn.\$75,000,000; and (ii) ~~the Borrower's shares are traded on a Canadian stock exchange or a stock exchange designated under subsection 262(1) of the Tax Act; and~~ (iii) the Borrower operates in a country that is a member of the Financial Action Task Force.
- (m) **Corporate Structure.** As at the date hereof, and hereafter, except as such information may change as a result of a transaction not prohibited hereby and, where required, reported to the Administrative Agent ~~in accordance with Section 11.1(b)(iii),~~ the chart attached hereto as Schedule GF accurately sets out the corporate structure of the Borrower and all of its Subsidiaries and evidences (i) intercorporate share ownership; (ii) ownership of Material Mines and (iii) share ownership of the Subject Entities.
- (n) **Employee Benefit Plans and Pension Plans.**
- (i) Schedule ML lists all Pension Plans and indicates each Pension Plan, if any, that is a DB Pension Plan.
 - (ii) There is no proceeding or claim (other than routine claims for benefits and related appeals) pending or, to the Knowledge of the Borrower, threatened against any Obligor with respect to any Employee Benefit Plan or any Pension Plan that, individually or in the aggregate, would be reasonably expected to result in a Material Adverse Effect.

- (iii) Each Obligor has established, operated and administered (including the payment, withholding and remitting of all required contributions in a timely manner) each Employee Benefit Plan and each Pension Plan in compliance with all Applicable Law except for such instances of non-compliance as, individually and in the aggregate, have not resulted in and are not reasonably likely to result in a Material Adverse Effect.
- (iv) The expected post-retirement benefit obligation of the Obligors under the Employee Benefit Plans does not and is not reasonably likely to have a Material Adverse Effect.
- (o) **Collective Bargaining Agreements.** Each Obligor and Subject Entity is in compliance with the terms and conditions of all collective bargaining agreements relating to the operations and employment matters at the Rosh Pinah Mine except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect.
- (p) **Material Agreements.** Each Material Agreement relating to the Rosh Pinah Mine to which any Obligor is a party is in full force and effect and no material breach by any Obligor or, to the Knowledge of the Borrower, any other party thereto of any of the terms or conditions thereof has occurred and is continuing, and there have been no events that are continuing which, but for giving notice, lapse of time or any other condition subsequent, would constitute a default of a material obligation thereunder or the imposition of any material sanction on any Obligor to such Material Agreement of which it is aware; provided that this Section 10.1(p) does not apply (i) to Material Agreements that have reached the end of their term; (ii) where, within ninety (90) days of termination of a Material Agreement, such Material Agreement has been replaced by a Replacement Material Agreement, and (iii) Material Agreements (other than any off-take agreement in respect of production from ~~a Material~~the Rosh Pinah Mine) the breach or termination of which would not result in a Material Adverse Effect.
- (q) **Solvency Proceedings.** ~~No~~ Other than in connection with the CCAA Proceeding and except in connection with a bankruptcy of Trevali NB, no Obligor or Subject Entity has:
 - (i) admitted its inability to pay its debts generally as they become due or failed to pay its debts generally as they become due;
 - (ii) in respect of itself, filed an assignment or petition in bankruptcy or a petition to take advantage of any insolvency statute;
 - (iii) made an assignment for the benefit of its creditors;
 - (iv) consented to the appointment of a receiver, liquidator, judicial manager, administrator, trustee, custodian or similar official of the whole or any substantial part of its assets;

- (v) filed a petition or answer seeking a reorganization, arrangement, adjustment or composition in respect of itself under applicable bankruptcy laws or any other Applicable Law or statute of Canada or other applicable jurisdiction or any subdivision thereof;
 - (vi) other than in accordance with the terms of this Agreement, had a resolution passed for its winding up, judicial management, official management, receivership or liquidation; or
 - (vii) been adjudged by a court having jurisdiction a bankrupt or insolvent, nor has a decree or order of a court having jurisdiction been entered for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy of any Obligor or Subject Entity with such decree or order having remained in force and undischarged or unstayed for a period of 30 days.
- (r) **Purpose of Credit.** No part of the proceeds of any Accommodation has been used by the Borrower, directly or, to the Knowledge of the Borrower, indirectly, (i) in violation of any Sanctions, (ii) which could result in the imposition of Sanctions against any Person (including any Person participating in the transactions contemplated hereby, whether as Credit Party or otherwise), (iii) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws or (iv) to finance any hostile acquisition (being, for the avoidance of doubt, a takeover bid that the board of directors of such company does not support). No Obligor is a charity registered with the Canada Revenue Agency and no Obligor solicits charitable financial donations from the public.
- (s) **Mining Licenses.** The Mining Licenses have been validly granted and recorded in the public registry (if applicable), and are owned, leased or otherwise validly held, with enforceable title, by ~~the applicable Obligor or Subject Entity as described in Schedule G and~~ RPZC are in full force and effect, except where the failure to maintain such Mining Licenses in full force and effect would not reasonably be expected to result in a Material Adverse Effect. ~~The Administrative Agent and/or the Peruvian Collateral Agent (if applicable) for the benefit of the Finance Parties pursuant to the Security Documents has a Lien in its favour on the Mining Licenses in respect of the Material Mines (other than the Rosh Pinah Mine and the Perkoa Mine). The Mining Licenses grant the relevant Obligor or Subject Entity~~ RPZC the exclusive and enforceable right to explore and/or extract minerals (as applicable) from the areas covered by the relevant Mining Licenses in accordance with the respective terms and conditions thereof and applicable thereto. All Mining Licenses have been issued in the name of ~~an Obligor or a Subject Entity (or an Obligor or a Subject Entity has otherwise valid and recorded title to them)~~ RPZC and, except for Permitted Liens, all fees, including maintenance fees, and other payments due to any Official Body in respect of the Mining Licenses have been paid in full on a timely basis, except as would not

materially interfere with the use made by the applicable Obligor or Subject Entity RPZC of the relevant Mining Licenses. No fees, royalties or other similar payments payable to any Person other than Official Bodies are or shall become due with respect to any of the Mining Licenses other than as set forth therein or in existence as of the date hereof or, where such payment does not result in a Material Adverse Effect.

- (t) **Authorizations for the Mining Operations.** All Permits necessary for the Mining Operations (including those required under Environmental and Social Laws), as of the relevant date this representation is made and necessary for maintaining and preserving the rights of the relevant Obligors and Subject Entities RPZC therein, are in full force and effect and are sufficient to permit such Mining Operations in effect as at such relevant date, in each case, in all material respects as contemplated by the Mine Plan, in each case other than those which (i) are not now necessary and which are expected to be obtained in the ordinary course of business by the time they are necessary or (ii) the failure to have or to obtain before the DIP Maturity Date would not result in a Material Adverse Effect. No Obligor or Subject Entity RPZC has not taken any action or omitted to take any action, and to the Knowledge of the Borrower no other person has taken any action or omitted to take any action, which would be reasonably likely to result in the forfeiture, loss, extinction, cancellation, adverse change, non-renewal or non-issuance of any Permit.
- ~~(u) **Perfection Certificates.** All information in each Perfection Certificate is true and correct in all material respects as at the date of delivery of such Perfection Certificate. The Borrower has provided written notification to the Administrative Agent as required in accordance with Section 11.1(b) of any change in the information certified in the Perfection Certificates which change would result in a Lien on a Secured Asset becoming unperfected or, in the case of any after acquired asset, such asset not subject to a Lien under a Security Document (where such other acquired asset is, in accordance with Schedule R, to be subject to a Lien in favour of the Finance Parties).~~
- (u) **[Intentionally Deleted.]**
- (v) **Assets Insured.** The Secured Assets of each Obligor are insured with insurers, in amounts, and for risks which are reasonable and prudent and appropriate to its size, nature and stage of development. All premiums due and payable under such policies have been paid and the Obligors are in compliance in all material respects with the terms of such policies.
- (w) **Capital of Guarantors.** On the date of the delivery of the relevant Perfection Certificate, the authorized and issued capital of each Guarantor and the owner of record of all such issued capital, is as set forth in the Perfection Certificate of the relevant Obligor and all of the issued Shares have been issued by each such Guarantor and are outstanding as fully paid and, where applicable, non-assessable. There are no outstanding warrants, options or other agreements which require or may require the issuance of any Shares of any Guarantor or the

issuance of any debt or securities convertible into Shares of any Guarantor, there are no outstanding debt or securities convertible into Shares of any Guarantor and there are no Shares allotted for issuance, in each case, other than those that may be outstanding to an Obligor.

- (x) **Liens and Pledges.** The Liens granted to the Administrative Agent ~~or the Peruvian Collateral Agent~~ pursuant to the Security Documents delivered on or prior to the date this representation is made are fully perfected first priority Liens in and to the Secured Assets of the relevant Obligor, subject only to Permitted Liens and will, upon the acquisition of additional Secured Assets by such Obligor, constitute first charges or security interests upon all such Secured Assets of each such Obligor, in accordance with Schedule ~~RQ~~, free and clear of all Liens except Permitted Liens. All Shares issued by each Guarantor have been pledged in favour of the Administrative Agent ~~or the Peruvian Collateral Agent~~, as applicable, for and on behalf of the Finance Parties, pursuant to a Security Document. All obligations of the CCAA Debtors under or in connection with the DIP Tranche including without limitation, all principal, capitalized interest, accrued but uncapitalized interest, fees, expenses (including the Permitted Fees and Expenses) and other amounts owing in respect of post-filing fees and expenses of the Administrative Agent are secured by the DIP Charge.
- (y) **Consents, Approvals, etc.** Save and except as set forth on Schedule ~~FS~~ hereto, no consents, approvals, acknowledgements, undertakings, non-disturbance agreements, directions or other documents or instruments which have not already been provided to the Administrative Agent are required to be entered into by any Person (i) to make effective the Security created or intended to be created by the Obligors in favour of the Administrative Agent ~~or the Peruvian Collateral Agent~~ pursuant to the Security Documents, (ii) to ensure the perfection and the intended priority of such Security and (iii) to implement the transactions contemplated hereby.
- (z) **No Material Adverse Change.** ~~Since the date of the most recent audited financial statements of the Borrower furnished to the Administrative Agent pursuant to or in connection with any Finance Document~~Fifth Amendment Effective Date, there has been no Material Adverse Change.
- (aa) **Sanctions.** None of the transactions contemplated by the Finance Documents, nor the execution and delivery thereof, violates the Sanctions and each Company and Subject Entity is in compliance with all Sanctions. Furthermore, none of the Borrower, any Subsidiary or Affiliate of the Borrower or any director, officer, employee of the Borrower or any of its Subsidiaries or Affiliates is a Sanctioned Person and none of the Borrower and its Subsidiaries or Affiliates engages in any dealings or transactions with a Sanctioned Person, contrary to Sanctions.
- (bb) **Anti-Money Laundering Legislation.** The Borrower has adopted and maintains adequate procedures and controls to ensure that it and the other Companies and Subject Entities are in compliance with all Anti-Money Laundering Legislation.

- (cc) Bank Accounts of RPZC Shareholders. None of Wilru Investments One Hundred and Thirty Four (Proprietary) Limited, Rosh Pinah Base Metals (Proprietary) Limited or Rosh Pinah Mine Holdings (Proprietary) Limited maintain as depositor or beneficiary any deposit and operating accounts domiciled outside Namibia.
- (dd) ~~(ee)~~ **No Omissions.** None of the representations and statements of fact set forth in this Section 10.1 omits to state any material fact necessary to make any such representation or statement of fact not misleading in any material respect.

10.2 Survival of Representations and Warranties

All of the representations and warranties of the Borrower contained in Section 10.1 shall survive the execution and delivery of this agreement until the Secured Obligations Termination Date, notwithstanding any investigation made at any time by or on behalf of any Finance Party.

ARTICLE 11 COVENANTS

11.1 Affirmative Covenants

The Borrower hereby covenants and agrees with the Administrative Agent and the Finance Parties that, until the Secured Obligations Termination Date, and unless waived in writing in accordance with Section 14.14:

- (a) **Prompt Payment.** The Borrower shall duly and punctually pay, or cause to be duly and punctually paid to the Finance Parties and, if applicable, the Peruvian Collateral Agent, all amounts payable by each Obligor under the Finance Documents to which it is a party at the times and places and in the currency and manner mentioned therein.
- (b) **Financial Reporting.** The Borrower shall furnish the Administrative Agent with the following statements and reports:
- (i) [Intentionally Deleted]
 - (ii) [Intentionally Deleted]
 - (iii) upon request by the Administrative Agent, DIP Budgets and Updated Cash Flows produced in a singular and consolidated format;
 - (iv) on Friday of each second week, commencing on October 21, 2022, updated rolling 13-week cash flow forecasts for each of the Borrower, Trevali NB and RPZC, in each case substantially in the form of the DIP Budgets and prepared with the assistance of the Monitor and each of which is in form and substance satisfactory to the Majority Lenders in their sole discretion (the "Updated Cash Flows") together with a

variance report for each of the Borrower, Trevali NB and RPZC (each, a “Cash Flow Variance Report” and collectively the “Cash Flow Variance Reports”), certified in each case by a senior officer of the Borrower, showing on a line-by-line basis the actual receipts and disbursements and the total available liquidity for the last day of the prior two-week period and noting therein all variances on a line-by-line basis from the amounts in the applicable DIP Budget, with explanations for all material variances (and the Majority Lenders may, in their sole discretion, agree to substitute any of the Updated Cash Flows for the corresponding then current DIP Budgets, in which case the Updated Cash Flows shall thereafter be deemed to be the effective DIP Budgets for the purposes this Agreement); and

- ~~(i) as soon as reasonably practicable and in any event within 90 days after the end of each Fiscal Year, copies of the audited consolidated financial statements of the Borrower for such Fiscal Year together with the auditors’ report on such audited financial statements, as well as a chart setting out the corporate structure of the Borrower and all of its Subsidiaries, whether direct or indirect, and evidencing (i) intercorporate share ownership; (ii) mine ownership and (iii) share ownership of the Subject Entities, in each case, to the extent the information in the prior delivered chart is out of date;~~
- ~~(ii) as soon as reasonably practicable and in any event within 45 days after the end of each of the first three Fiscal Quarters in each Fiscal Year, the Borrower’s unaudited consolidated financial statements for each of the first three Fiscal Quarters in each Fiscal Year;~~
- ~~(iii) concurrent with the deliveries of financial statements pursuant to clauses (i) and (ii) above, a duly executed and completed Compliance Certificate and written notification of any change in the information certified in the Perfection Certificates which change would result in any Lien in favour of the Administrative Agent or Peruvian Collateral Agent on any such Secured Asset becoming unperfected or, in the case of any after-acquired asset, such asset not being subject to a Lien under a Security Document where, pursuant to Schedule R, such after-acquired assets are required to be subject to a Lien in favour of the Finance Parties;~~
- ~~(iv) on or before February 15, 2021 and notwithstanding the foregoing paragraph 11.1(b)(iii), a Compliance Certificate in respect of the Fiscal Quarter ending December 31, 2020;~~
- ~~(v) as soon as reasonably practicable and in any event within 90 days after the end of each Fiscal Year, a Mine Plan;~~
- ~~(vi) the Borrower’s consolidated and updated twelve week cash flow forecast statements in form and substance satisfactory to the Administrative Agent~~

~~delivered to the Administrative Agent on a bi-weekly basis commencing on the date hereof and on each fourteenth day thereafter;~~

- ~~(vii) the Borrower's updated statement of unencumbered cash balances, segmented by operation and location, in form and substance satisfactory to the Administrative Agent, acting reasonably, delivered to the Administrative Agent on a bi-weekly basis commencing on the date hereof and on each fourteenth day thereafter (and, to the extent any such statement discloses a Liquidity position of less than \$7,500,000, the Borrower shall promptly provide to the Lenders a written plan for replenishing its Liquidity position to a level equal to or greater than \$7,500,000); and~~
- (v) ~~(viii)~~ such other statements, reports and information concerning the Borrower or any of its Subsidiaries as the Administrative Agent, on the instructions of the Majority Lenders, may reasonably request from time to time.

Information required to be delivered with respect to the Borrower pursuant to Section 11.1(b) shall be deemed to have been delivered on the date on which such information has been posted on the Borrower's website on the Internet, at www.sedar.com or at another website identified by the Borrower by notice to the Administrative Agent and accessible by the Lenders without charge.

- (c) **Use of Proceeds.** ~~The Borrower shall apply all of the proceeds of the Credit Facility for its Pre-Filing Tranche advanced after the Fifth Amendment Effective Time, if any, shall be used solely to reimburse the Issuing Lender for un-reimbursed amounts paid to beneficiaries under the Existing Letters. The proceeds of the DIP Tranche shall be used by the Borrower solely in accordance with, and subject to, the DIP Budgets (a) to fund the ordinary course working capital and other general corporate purposes excluding, for the avoidance of doubt, Permitted Acquisitions of the Borrower, (b) to fund ongoing operations of the Rosh Pinah Mine by way of loans to RPZC pursuant to the Intercorporate Loan Agreement and (c) to pay Permitted Fees and Expenses. No proceeds of the DIP Tranche may be used for any other purpose, except with the prior written approval of the Administrative Agent acting on the instructions of the Majority Lenders (in their sole and absolute discretion). For certainty, proceeds of the DIP Tranche shall not be used (i) to fund the Caribou Mine or the Perkoa Mine, (ii) to repay the Pre-Filing Tranche nor (iii) to, directly or indirectly, assert or pursue any claims against the Administrative Agent or any other Finance Party. The Borrower shall not drawdown credit under the Credit Facility for the purpose of accumulating and/or maintaining cash in depository or investment accounts outside the ordinary course of business. The Borrower shall not use any part of the proceeds of any Accommodation directly or, to the Knowledge of the Borrower, indirectly, (i) in violation of any Sanctions, (ii) in any manner which will result in the imposition of Sanctions against any Person (including any Person participating in the transactions contemplated hereby, whether as Credit Party or otherwise) or (iii) for any payments to any governmental official or~~

employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws.

- (d) **Insurance.** The Borrower shall, and shall cause each other Obligor and Subject Entity to, maintain on an individual or aggregate basis, with financially sound and reputable insurers, insurance with respect to the properties and business of the Obligors and Subject Entity against loss, damage, risk or liability of the kinds customarily insured against by Persons carrying on a similar business. In each such policy with respect to the Obligors (other than Obligors existing under the laws of the Republic of Namibia), the Borrower shall cause the Administrative Agent to be named as secured party or mortgagee and lender's loss payee in respect of property and casualty insurance and as additional insured in respect of liability insurance in a manner acceptable to the Administrative Agent, acting reasonably. The Borrower shall, and shall cause each other Obligor to, comply with all of the material provisions contained in all such insurance policies. All premiums for such insurance shall be paid by the Borrower or applicable Obligor when due and certificates of insurance and, if requested, photocopies of the policies shall be delivered to the Administrative Agent.
- (e) **Access to Senior Financial Officers.** Upon the reasonable request of the Administrative Agent at reasonable intervals, the Borrower shall, and shall cause each ~~Obligor~~Subject Entity to, make available its senior financial and technical officers and its consultants and financial advisors to representatives of the Administrative Agent to answer questions concerning such ~~Obligor's~~Subject Entity's business and affairs.
- (f) **Reimbursement of Expenses.** The Borrower hereby agrees to reimburse the Co-Lead Arrangers and each Credit Party from time to time, upon presentation of a summary statement, for all reasonable and documented out-of-pocket expenses (including but not limited to the Co-Lead Arrangers' syndication expenses (including printing, distribution and bank meetings), travel expenses, due diligence expenses and reasonable and documented fees and disbursements of one primary counsel and any local counsel or special counsel (including any restructuring advisor and mining engineer retained by or on behalf of the Administrative Agent and/or its counsel) to the Administrative Agent, in each case incurred ~~(whether before or from and~~ after the date hereof except as specifically noted) of the Initial Order in connection with the Credit Facility and the preparation of the Finance Documents ~~or~~ and the amendment, modification, interpretation, enforcement or waiver hereof or thereof and otherwise in connection with the Court Orders and in connection with the CCAA Proceeding.
- (g) **Notice of Expropriation or Condemnation, Litigation and Default/Event of Default.** The Borrower shall promptly notify the Lenders in writing:
- (i) of the commencement or the written threat of any expropriation, compulsory purchase or condemnation of any material assets, property or

undertaking of any Obligor or Subject Entity or of the institution of any proceedings related thereto;

- (ii) of any actions, suits, inquiries, disputes, claims or proceedings (whether or not purportedly on behalf of a Obligor or Subject Entity) commenced or threatened in writing against or affecting a Obligor or Subject Entity before any Official Body which in any case or in the aggregate would reasonably be expected to have a Material Adverse Effect;
 - (iii) of any material developments in respect of any litigation referenced in Schedule ~~LK~~ hereto or otherwise disclosed to the Administrative Agent pursuant to paragraph (ii), above;
 - (iv) upon the occurrence of either a Default or an Event of Default, the nature and date of occurrence of such Default or Event of Default, the Borrower's assessment of the duration and effect thereof and the action which the Borrower proposes to take with respect thereto;
 - (v) upon the occurrence of a Material Adverse Change, the nature and date of occurrence of such Material Adverse Change, the Borrower's assessment of the duration and effect thereof and the action which the Borrower proposes to take with respect thereto;
 - (vi) of any event which has occurred or which constitutes or which, with the giving of notice, lapse of time or both, would constitute a default under or in respect of, or a lapse of, any Mining License; and
 - (vii) upon any income earned by an Obligor that is subject to currency controls or other similar Applicable Laws which prohibit the transfer of Cash from the jurisdiction where such income was earned to any other jurisdiction in which one or more Obligors operate, are resident for tax purposes and/or are otherwise incorporated.
- (h) **Inspection of Assets and Operations.** The Borrower shall, and shall cause each Obligor and Subject Entity to, permit representatives of the Administrative Agent and the Lenders (including, for certainty, any advisors appointed by or on behalf of the Administrative Agent and/or its counsel) from time to time to, subject to compliance with applicable health and safety protocols, inspect the assets, property or undertaking (including, for certainty, the Material Mines) of any Obligor or Subject Entity and for that purpose to enter on any property which is owned and controlled by any Obligor or Subject Entity and where any of the assets, property or undertaking of any Obligor or Subject Entity may be situated during reasonable business hours upon reasonable notice and, unless otherwise expressly agreed, at the cost of the Lenders.
- (i) **Corporate Existence.** The Borrower shall, and shall cause each other ~~Obligor~~ and Subject Entity to, maintain its corporate existence in good standing and qualify and remain duly qualified to carry on business and own property in each

jurisdiction where the nature of its business makes such qualification necessary except where failure to be so qualified would not reasonably be expected to have a Material Adverse Effect and except in connection with a Permitted Reorganization.

- (j) **Conduct of Business.** The Borrower shall, and shall cause each other Company to, conduct its business according to good, safe and prudent industry practice, and otherwise in such a manner so as to comply with all Applicable Laws, so as to observe and perform all its obligations under leases, licences and agreements necessary for the proper conduct of its business and so as to preserve and protect its property and assets and the earnings, income and profits therefrom, except where such non-compliance, non-observance or non-performance would not reasonably be expected to have a Material Adverse Effect (save and except for Anti-Corruption Laws which shall not be so qualified by a Material Adverse Effect) or otherwise, as concerns Trevali NB only, where any such non-compliance, non-observance or non-performance arises as a result of the Caribou Mine being placed on care and maintenance or otherwise as a result of the CCAA Proceeding. The Borrower shall, and shall cause each other Company to, conduct its business in such a manner so as to comply with all Environmental and Social Laws except where any non-compliance would not reasonably be expected to result in a Material Adverse Effect. The Borrower shall, and shall cause each other ~~Obligor and Subject Entity~~ Company to, perform all obligations incidental to any trust imposed upon it by statute and shall ensure that any breaches of the said obligations and the consequences of any such breach shall be promptly remedied, except failure to so remedy would not reasonably be expected to result in a Material Adverse Effect. The Borrower shall, and shall cause each other ~~Obligor and Subject Entity~~ Company to, obtain and maintain all material licenses, permits, government approvals, franchises, authorizations and other rights necessary for the operation of its business except where failure to so obtain such licenses, permits, government approvals, franchises, authorizations and rights would not reasonably be expected to have a Material Adverse Effect. The Borrower shall, and shall cause each other Company and its and their respective officers and employees to, comply with all Anti-Corruption Laws and Sanctions.
- (k) **Taxes.** The Borrower shall pay, and shall cause each other Obligor to pay, all material Taxes levied, assessed or imposed upon it and upon its property or assets or any part thereof, as and when the same become due and payable, save and except when and so long as the validity of any such Taxes is being contested in good faith by appropriate proceedings and reserves are being maintained in accordance with generally accepted accounting principles.
- (l) **Environmental Matters.** The Borrower shall, and shall cause each other Obligor and Subject Entity to, promptly notify the Administrative Agent and provide copies upon receipt of all material written claims, complaints or notices received from Official Bodies relating to the condition of its facilities and properties or material compliance with Environmental and Social Laws and, save for any good faith contesting of any such claims, complaints or notices shall proceed diligently

to resolve any such claims, complaints or notices relating to material compliance with Environmental and Social Laws.

(m) ~~[Intentionally Deleted.]~~

(n) ~~[Intentionally Deleted.]~~

(o) ~~[Intentionally Deleted.]~~

(p) ~~[Intentionally Deleted.]~~

~~(m) Net Senior Secured Leverage Ratio.~~ The Borrower shall maintain the Net Senior Secured Leverage Ratio to be less than or equal to

~~(i) 3.25:1.00 at all times during the Fiscal Quarter ending December 31, 2020;~~

~~(ii) 2.75:1.00 at all times during the Fiscal Quarter ending March 31, 2021 to and including the Fiscal Quarter ending December 31, 2021;~~

~~(iii) at less than or equal to 2.50:1.00 at all times thereafter;~~

~~and shall calculate the Net Senior Secured Leverage Ratio as at the last day of each Fiscal Quarter from and including the Fiscal Quarter ending December 31, 2020.~~

~~(n) Total Net Leverage Ratio.~~ The Borrower shall maintain the Total Net Leverage Ratio to be less than or equal to

~~(i) 4.25:1.00 at all times during the Fiscal Quarter ending December 31, 2020;~~

~~(ii) 3.75:1.00 at all times during the Fiscal Quarter ending March 31, 2021 to and including the Fiscal Quarter ending December 31, 2021;~~

~~(iii) at less than or equal to 3.50:1.00 at all times thereafter;~~

~~and shall calculate the Total Net Leverage Ratio as at the last day of each Fiscal Quarter from and including the Fiscal Quarter ending December 31, 2020.~~

~~(o) Interest Expense Coverage Ratio.~~ The Borrower shall at all times maintain the Interest Expense Coverage Ratio to be greater than or equal to 4:00:1 and shall calculate such ratio as at the last day of each such Fiscal Quarter from and including the Fiscal Quarter ending December 31, 2020.

~~(p) Tangible Net Worth.~~ The Borrower shall, at all times from and including December 31, 2020, maintain Tangible Net Worth in an amount greater than or equal to (i) 70% of Tangible Net Worth as at December 31, 2020 plus (ii) 50% of the aggregate positive Net Income for each Fiscal Quarter beginning with the Fiscal Quarter ending on December 31, 2020. For the purpose of the foregoing, if the Net Income for a particular Fiscal Quarter is negative, the Net Income for such

~~Fiscal Quarter shall be deemed to be zero, as at the last day of each Fiscal Quarter.~~

- (q) **Glencore Facility.** The Borrower covenants and agrees that it shall,
- (i) at its earliest possible opportunity and at all times until maturity of the Glencore Facility, drawdown the maximum credit available to it under the Glencore Facility; and
 - (ii) promptly deliver to the Administrative Agent copies of (A) each Glencore Document as and when entered into by the relevant Obligor and (B) each amendment, waiver and consent in respect of any Glencore Document.
- (r) **Books and Records.** The Borrower shall, and shall cause each other Obligor to, keep proper books of account and records covering all its business and affairs on a current basis, make full, true and correct entries of its transactions in such books, set aside on its books from their earnings all such proper reserves as required by GAAP and permit representatives of the Administrative Agent to inspect such books of account, records and documents and to make copies therefrom during reasonable business hours and upon reasonable notice; provided that unless an Event of Default has occurred and is continuing, such inspection rights with respect to the Obligors shall be limited to once per calendar year.
- (s) **Change of Name or Jurisdiction.** If any Obligor changes its legal name or its jurisdiction of formation or the jurisdiction of its location for the purposes of the PPSA or adopts a French form of its legal name, the Borrower shall provide the Administrative Agent with prior written notice of such change or adoption.
- (t) **Maintenance of Secured Assets.** The Borrower shall, and shall cause each other Obligor and Subject Entity RPZC Shareholder and RPZC to, maintain, preserve, protect and keep all of its ownership, lease, use, licence and other interests in the assets necessary for it to be able to operate the Material Mines Rosh Pinah Mine substantially in accordance with good, safe and prudent mining and business practice.
- (u) **Additional Guarantees and Security.**
- (i) At least ten Banking Days prior to the direct or indirect formation or acquisition by the Borrower of a Material Subsidiary after the date hereof, the Borrower shall notify the Administrative Agent of such proposed formation or acquisition (a “**Subsidiary Notice**”).
 - (ii) On or before the date of the formation or acquisition of any Material Subsidiary referred to in a Subsidiary Notice, the Borrower shall provide to the Administrative Agent a Perfection Certificate with respect to such Material Subsidiary and such other information regarding such Material Subsidiary and its business, finances and assets as the Administrative Agent may reasonably request (including, without limitation, requisite

information to identify such Material Subsidiary under the applicable “know your client” and anti-money laundering/anti-terrorism legislation and regulations).

- (iii) Subject to the last sentence of this Section 11.1(u), the Borrower shall, or shall cause each entity (i) which is to become a Material Subsidiary and is referred to in a Subsidiary Notice or (ii) which qualifies as a Material Subsidiary to, as soon as reasonably practicable using its commercial best efforts and in any event within fifteen Banking Days after the formation, acquisition or qualification of such Material Subsidiary, deliver to the Administrative Agent the following:
- (A) a Guarantee executed by such Material Subsidiary in favour of the Administrative Agent;
 - (B) Security Documents executed by such Material Subsidiary in favour of the Administrative Agent ~~and/or Peruvian Collateral Agent, as applicable, and,~~ to the extent required to perfect a pledge on the Shares of such Material Subsidiary, Security Documents (or amendments thereto) by the shareholder of such Material Subsidiary in each case consistent with the principles set out on Schedule RQ;
 - (C) any third party agreements, consents or acknowledgements reasonably requested by the Administrative Agent ~~and/or Peruvian Collateral Agent, as applicable,~~ and required to perfect the Security granted by such Material Subsidiary or for such Security to have the intended priority;
 - (D) a certificate of status or good standing for such Material Subsidiary (where available) issued by the appropriate governmental body or agency of the jurisdiction in which such Material Subsidiary is incorporated;
 - (E) certificates representing all of the issued and outstanding Shares of the Material Subsidiary, duly endorsed in blank or accompanied by an executed stock transfer power of attorney (where such Shares are certificated);
 - (F) to the extent not previously delivered to the Administrative Agent by an Obligor on behalf of the Material Subsidiary, insurance certificates issued by the applicable insurance brokers with respect to the insurance policies maintained by or on behalf of the Material Subsidiary and acknowledging the interests of the Finance Parties in such policies as referred to in Section 11.1(d);
 - (G) a Closing Certificate of such Material Subsidiary;

- (H) opinions of such Material Subsidiary's counsel with respect to, *inter alia*, such Material Subsidiary, the enforceability of the afore-mentioned Credit Documents, registration and perfection of the afore-mentioned Security Documents and as to such other matters as the Administrative Agent may reasonably request, and otherwise in form and substance satisfactory to the Administrative Agent; and
- (I) a certificate of a senior officer of the Borrower certifying that no Default has occurred and is continuing or would occur or arise immediately after or as a result of such Material Subsidiary becoming a Guarantor hereunder;

whereupon such Material Subsidiary shall become a Guarantor for all purposes of this agreement. Notwithstanding the aforementioned 10 Banking Day period which the Borrower has to cause such Material Subsidiary to become a Guarantor and complete the foregoing covenants, (i) such Subsidiary shall, forthwith upon its formation or acquisition, become subject to the representations and warranties, covenants and events of default hereunder as if it had become a Guarantor hereunder on such date of formation or acquisition (provided that no Default shall arise solely as a consequence of the non-delivery of the documents and actions contemplated by this Section 11.1(u) prior to the date required pursuant hereto) and (ii) the registration and perfection of the Security Documents in respect of mortgages, equipment pledges and mineral pledges and exploitation permit pledges and delivery of related legal opinions shall be completed as soon as commercially practicable after such formation, acquisition or qualification of such Material Subsidiary.

- (v) **Security.** The Borrower shall ensure that, at all times, (i) the Secured Obligations of the Obligors are collaterally secured by the Security in accordance with the principles set out on Schedule RQ and shall meet all obligations (including all filing and registration obligations) provided in the Security Documents subject to the terms hereof and thereof, (ii) the Secured Obligations under the DIP Tranche are subject to the DIP Charge and (iii) the Borrower's rights under the Intercorporate Loan Agreement and the Intercorporate Services Agreement are collaterally secured by the Security.

- ~~(w) **Employee Benefit Plans and Pension Plans.** The Borrower shall, and shall cause each Obligor to:~~

- ~~(i) establish, maintain and operate (including the payment, withholding and remitting of all required contributions in a timely manner) all Employee Benefit Plans and Pension Plans so as to comply in all respects with all Applicable Laws and the respective requirements of the governing documents for such plans, except as individually and in the aggregate does~~

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~~not and would not reasonably be expected to have a Material Adverse Effect;~~

~~(ii) promptly and in any event with 10 Banking Days after the relevant event, deliver to the Administrative Agent an updated Schedule M if there are material changes to any Pension Plan with respect to information set out in such Schedule;~~

~~(iii) deliver to the Administrative Agent, promptly and in any event within 10 Banking Days after the relevant Obligor becoming aware of any Pension Event, a written notice setting forth the nature thereof and the action, if any, that any Obligor proposes to take with respect thereto; and~~

~~(iv) promptly and in any event within 10 Banking Days after request by the Administrative Agent, deliver to the Administrative Agent copies of any DB Pension Plan established after the date hereof by an Obligor or Subject Entity whose Shares have been pledged to the Administrative Agent pursuant to the Security and related actuarial valuations or financial statements;~~

(w) ~~(x)~~ **Violations of Anti-Terrorism Laws.** If to the Knowledge of the Borrower (i) any holder of a direct or indirect equity or financial interest in it or (ii) any Company or Subject Entity is the subject of any enforcement action or restriction under the Anti-Terrorism Laws and/or Anti-Corruption Laws, the Borrower shall promptly notify the Administrative Agent in writing thereof. Upon the request of the Administrative Agent, it shall promptly provide any information the Administrative Agent believes is reasonably necessary to be delivered to comply with any Anti-Terrorism Laws and Anti-Corruption Laws.

~~(y) Mine Plan.~~ By no later than September 30, 2020, the Borrower shall deliver to the Lenders an updated Mine Plan which was prepared between the date of this agreement and the date of delivery to the Lenders.

(x) [Reserved].

(y) ~~(z)~~ **[Reserved].**

~~(aa) Exchange Control Approval.~~ The Borrower shall furnish the Administrative Agent with:

~~(i) evidence that a duly completed application for the renewal of the Exchange Control Approval (on an annual basis after the Original Closing Date) is submitted as soon as reasonably practicable and in any event within 60 days prior to the expiration of the preceding Exchange Control Approval; and~~

(z) ~~(ii) the Exchange Control Approval.~~ On or before the earlier of (i) the date of the second extension of credit to the Borrower under the DIP Tranche and (ii)

November 15, 2022, the Borrower shall furnish the Administrative Agent with (i) a renewed Exchange Control Approval as soon as is reasonably practicable but in any event in respect of the guarantees and share pledges granted by, or in respect of, (i) Wilru, (ii) Rosh Pinah Base Metals and (iii) Rosh Pinah Mine Holdings and (ii) a new Exchange Control Approval in relation to the loans to be made by the Borrower to RPZC pursuant to the Intercorporate Loan Agreement and the Borrower's collateral assignment of rights in the Intercorporate Loan Agreement and the Intercorporate Services Agreement to the Administrative Agent. The Borrower covenants and agrees that it shall cause each such Exchange Control Approval to be renewed on an annual basis by no later than the expiry date of the preceding relevant Exchange Control Approval, such renewed Exchange Control Approval being on terms no more restrictive than the Exchange Control Approval rendered on or before the Original Closing Date or is otherwise acceptable to the Majority Lenders, acting reasonably.

- (aa) CCAA Proceeding Positive Covenants. The Borrower shall duly and punctually observe the following covenants related to the CCAA Proceeding:
- (i) provide to the Administrative Agent a copy of all materials to be served and/or filed in connection any application or motion brought by the Borrower or Trevali NB for a Court Order at least five (5) Banking Days before the earlier of service and filing thereof to permit review by the Lenders and their legal and financial advisors, unless it is not practical in the circumstances to provide a copy of such materials in such timing in which case the Borrower and Trevali NB shall provide the Administrative Agent with a copy of such materials as far in advance as the circumstances permit, which materials (including the proposed Court Order) shall be in form and substance acceptable to the Majority Lenders;
 - (ii) provide to the Administrative Agent, promptly upon receipt, a copy of all materials received by the Borrower or Trevali NB from third parties in connection with any application or motion to the Court or another court in or in respect of the CCAA Proceeding;
 - (iii) comply with the provisions of the Court Orders including, without limitation, the Initial Order, the Amended and Restated Initial Order, the SISP Order and the DIP Order;
 - (iv) comply with the SISP procedures and timelines in all respects, including by achieving the milestones set out in the SISP and carrying out the SISP in accordance with the SISP Order and the Appendices thereto;
 - (v) comply at all times (or in the case of Trevali NB and RPZC, cause such Subject Entities to comply) with the DIP Budgets, provided each of the Borrower, Trevali NB and/or RPZC shall be permitted a cumulative aggregate negative variance from its DIP Budget of not more than ten percent (10%) or \$200,000, whichever is more, in respect of each of the aggregate cash receipts and aggregate disbursements (for certainty, such

variance shall be calculated on an entity-by-entity (and not consolidated)) basis as the difference, expressed as a percentage, between:

- (A) the actual cumulative aggregate cash receipts and aggregate disbursements, as applicable, (excluding debt service payments and hedge payments) of each of the Borrower, Trevali NB or RPZC, during the period from the start of the applicable DIP Budget to the calculation date, and
- (B) the budgeted cumulative aggregate cash receipts and aggregate disbursements, as applicable, (excluding debt service payments and hedge payments) of each such entity, as applicable,

during the period from the start of the applicable DIP Budget to the relevant calculation date;

- (vi) deliver to the Administrative Agent, concurrently with the delivery thereof to the Monitor (A) copies of all monthly internal financial statements, liquidity and updates to the DIP Budgets that are reported bi-weekly, together with any related or supporting information provided to the Monitor, and (B) any written reports, commentary or analysis received by the Borrower or Trevali NB from the Monitor regarding the financial position of the Borrower and Trevali NB and their affiliates (as applicable) or otherwise;
- (vii) provide the Administrative Agent with a weekly status update (which at a Lender's request shall include weekly meetings with National Bank Financial) regarding the status of the CCAA Proceeding and the SISP, including any information which may otherwise be confidential, subject to same being maintained as confidential by the Lenders in accordance with the SISP;
- (viii) keep the Lenders apprised on a timely basis of all material developments with respect to the Security, the business and affairs of the Subject Entities, and the SISP, including, without limiting the foregoing, by providing to the Administrative Agent copies of (i) all marketing, process and other materials which it intends to provide to prospective interested parties in carrying out the SISP, including all bid process letters and draft forms of letter of interest or definitive agreements, which materials shall be to the satisfaction of the Administrative Agent, acting reasonably, and (ii) all expressions of interest bids or offers received, whether binding or non-binding; provided that if any of the Lenders is participating in the assessment, preparation, or submission of any bid pursuant to the SISP, the Borrower shall be entitled to restrict the SISP-related disclosure to the 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 the SISP until such time as the Administrative Agent provides the Monitor with assurance, acceptable to the Monitor,

that measures have been taken by the Administrative Agent to ensure that the disclosure would not in the professional judgment of the Monitor be likely to negatively impact the integrity of the SISP.

11.2 Restrictive Covenants

The Borrower hereby covenants and agrees with the Administrative Agent and the Finance Parties that, until the Secured Obligations Termination Date, and unless waived in writing in accordance with Section 14.14:

- (a) **Liens.** The Borrower shall not, and shall not permit or suffer any other Obligor or Subject Entity to, enter into or grant, create, assume or suffer to exist any Lien affecting any of their respective properties, assets or undertaking, whether now owned or hereafter acquired, save and except for the Permitted Liens.
- (b) **Corporate Existence.** The Borrower shall not, and shall not permit or suffer any other Obligor or Subject Entity to, take part in any Corporate Reorganization or Capital Reorganization other than pursuant to a Permitted Reorganization. The Borrower shall not suffer or permit any Subject Entity to have any Subsidiaries other than wholly-owned Subsidiaries of a Subject Entity formed for the sole purpose of business directly related to the operation or management of the subject Material Mine.
- (c) **Disposition of Assets.** The Borrower shall not, and shall not suffer or permit any other Obligor or Subject Entity to, sell, transfer or otherwise Dispose of any of their respective assets other than pursuant to a Permitted Disposition.
- (d) **Risk Management Agreements.** The Borrower shall not, and shall not suffer or permit any other Obligor to, enter into any Risk Management Agreement other than a Permitted Risk Management Agreement which was entered into prior to the date of the Initial Order.
- (e) **Amendments.** The Borrower shall not, nor shall it suffer or permit any other ~~Obligor~~ Subject Entity to, amend:
 - (i) their articles of incorporation (other than in connection with a transaction permitted under Section 11.2(b)) or amend, enter into or terminate any unanimous shareholder agreement applicable to ~~an Obligor~~ a Subject Entity, in each case, if such amendment would reasonably be expected to have a Material Adverse Effect; or
 - (ii) or terminate any Material Agreement ~~if such amendment or termination would reasonably be expected to have a Material Adverse Effect, except if, within ninety (90) days of such amendment or termination, such Material Agreement has been replaced by a Replacement Material Agreement, unless approved by the Administrative Agent acting on the instructions of the Majority Lenders.~~

- (f) **Distributions.** The Borrower shall not declare or pay any Distributions other than Distributions consisting solely of its Shares and shall not, for the avoidance of doubt, declare or pay any cash Distributions made with the prior written consent of the Administrative Agent, acting on the instructions of the Majority Lenders in their sole and absolute discretion, and otherwise with the approval of the Court in the CCAA Proceeding. The Borrower shall not suffer or permit any Subject Entity to pay any Distribution to any minority shareholder of a Subject Entity unless a pro rata Distribution is paid concurrently according to ownership interests in such Subject Entity to each shareholder.
- (g) **Indebtedness.** The Borrower shall not, and shall not suffer or permit any other ~~Obligor~~ Subject Entity to, create, incur, assume or suffer to exist any Indebtedness other than Permitted Indebtedness.
- (h) **Investments.** The Borrower shall not, and shall not permit any other ~~Obligor~~ Subject Entity to, make any Investments other than Permitted Investments.
- (i) **Acquisitions.** The Borrower shall not, and shall not suffer or permit any other ~~Obligor~~ Subject Entity to, make any Acquisitions ~~other than Permitted Acquisitions.~~ The Borrower shall not suffer or permit any Subject Entity to make any Acquisitions.
- (j) **Transactions with Affiliates.** The Borrower shall not, and shall not permit any other ~~Obligor~~ Subject Entity to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transaction or series of transactions with, any of its shareholders, its Affiliates or shareholders of its Affiliates (other than, in each case, other ~~Obligors~~ Subject Entities provided the subject transaction does not result in any Secured Asset no longer being subject to the Security) ~~other than (x) as may be specifically permitted hereunder or (y) in the ordinary course of business at prices and on terms and conditions not less favourable to such Obligor than could be obtained on an arm's length basis from unrelated third parties.~~ Notwithstanding the foregoing the Subject Entities shall be permitted to enter into the RPZC Set-Off Transaction.
- (k) **Business Activities.** The Borrower shall not and shall not permit any other Company to, engage in any business activity other than the development, operation, exploration and acquisition of mineral properties and any activity incidental thereto or related to the business of mining generally.
- (l) **Streaming, Metal Prepay and Royalty Arrangements.** Save and except for the royalties disclosed in Schedule SR hereto in existence as of the date hereof, the Borrower shall not, and shall not suffer or permit any other Obligor or Subject Entity to, be a party to any streaming, metal prepay or royalty arrangement ~~other than resulting from (and not in contemplation of) a Permitted Acquisition.~~

- (m) **Fiscal Year.** The Borrower shall not, and shall not suffer or permit any Obligor to, change its Fiscal Year end.
- (n) **Pension Plan.** The Borrower shall not, and shall not suffer or permit any Obligor to, terminate or wind up in whole or in part or withdraw from a Canadian Pension Plan if:
- (i) there would be or would reasonably be expected to be a wind-up deficiency resulting in an obligation of an Obligor to pay or contribute in excess of \$10,000,000 in respect of such Canadian Pension Plan; or
 - (ii) such termination, wind up or withdrawal would reasonably be expected to result in a Material Adverse Effect.
- (o) **Deposit and Operating Accounts.** The Borrower shall not and shall not suffer or permit any Obligor to maintain deposit or operating accounts with any financial institution other than a Finance Party or which is not otherwise required to, and is, subject to the Security. Notwithstanding the foregoing sentence, the Obligors may maintain deposit or operating accounts not subject to the Security with a financial institution other than a Finance Party provided that a Finance Party does not provide deposit or operating account services in a relevant jurisdiction and all such accounts in such jurisdictions for all Obligors does *not* hold in deposit more than ~~\$40,000,000~~ \$1,000,000 in the aggregate at any particular time.
- (p) **Subject Entities.** The Borrower shall not suffer or permit any Subject Entity to (i) assign, whether by way of security or otherwise, any rights in any off-take contract to which it is a party (unless to the Administrative Agent as Security), nor (ii) grant Lien in favour of any Person (other than customary banker's liens for fees, overdrafts, other customary charges pursuant to the account operating documents and the like in the normal course of business) other than the Administrative Agent on such Subject Entities' deposit or operating accounts.
- (q) **Off-Take Contracts.** Without the prior written consent of the Administrative Agent acting on the instructions of the Majority Lenders (such consent not to be unreasonably withheld or delayed), and subject always to the covenants and restrictions set forth in the Intercreditor Agreement and the Settlement Agreement, the Borrower shall not suffer or permit any Obligor or Subject Entity to change, vary, waive or terminate (prior to its stated maturity) any off-take sales contract for minerals produced or extracted from any Material Mine unless such change variance or waiver is non-material in nature and is entered into in the ordinary course of business when no default has occurred and is continuing under the subject off-take sales contract.
- (r) **Glencore Documents.** The Borrower shall not, nor suffer or permit any other Company to, enter into (or make any amendments to) Glencore Documents that would:

- (i) be prohibited pursuant to the Intercreditor Agreement;
- (ii) result in any representation and warranty, covenant or event of default in the Glencore Documents being more restrictive or onerous than the comparable provision in the Credit Documents;
- (iii) cause interest rates or fees to be paid to Glencore under the Glencore Documents which are higher than the interest rates or fees paid to the Credit Parties under the Credit Documents;
- (iv) require the full or partial repayment of the Indebtedness under the Glencore Facility prior to repayment in full of the Secured Obligations unless otherwise permitted under the Intercreditor Agreement, or
- (v) provide for a guarantee of, or security for, the payment and performance of the Glencore Obligations prior to the execution and delivery of the Intercreditor Agreement by each party thereto;
- (vi) afford Glencore any guarantee of, or security for, the payment and performance of the Glencore Obligations which has not been provided to the Finance Parties in respect of the Secured Obligations in priority to Glencore and the Glencore Obligations.

(s) CCAA Proceeding Negative Covenants. The Borrower covenants and agrees that, notwithstanding anything to the contrary in this Credit Agreement, it shall not, and shall not suffer or permit any Subject Entity to,:

- (A) seek any Court Order that may adversely impact the Finance Parties, including its claims, rights and entitlements under the Credit Agreement and the Finance Documents, the DIP Charge and at law or in equity without the prior written consent of the Administrative Agent, acting on the instructions of the Majority Lenders, and the approval of the Monitor, and otherwise, not seek any Court Order without prior consultation with the Lenders and the approval of the Monitor;
- (B) use the proceeds of any Loan under the DIP Tranche except in accordance with the DIP Budgets;
- (C) except as contemplated by the Credit Agreement or any Court Order, and except as otherwise required by Applicable Law, make any payment of any Indebtedness or obligations existing as at August 19, 2022 (the "Pre-Filing Debt"), other than in accordance with the DIP Budget or as approved by the Monitor;
- (D) create, incur or permit to exist any Indebtedness other than Pre-Filing Debt, Accommodations and accounts payable in the

ordinary course of business and in accordance with the DIP Budgets;

- (E) except for Permitted Liens and the DIP Charge, create or permit to exist any Lien or provide or seek or support a motion by another Person to provide any Lien, upon any of the Security;
- (F) present for acceptance by any creditors or approval by the Court any plan of compromise or arrangement or take any other action which contemplates or may result in a compromise or other impairment of the Secured Obligations (including obligations under the DIP Tranche), or the rights of the Administrative Agent and the other Finance Parties under or in respect thereof;
- (G) accept, enter into or present for approval by the Court any sale or other transaction involving any of the Subject Entities (Trevali NB excepted) which does not provide for the payment in full in cash upon closing of all Secured Obligations of the Obligor under the Credit Agreement (including the DIP Tranche) and related Finance Documents;
- (H) disclaim any contract that is directly or indirectly material to the Borrower's or Subject Entities' business without the prior written approval of the Administrative Agent, acting reasonably, and the Monitor, other than any Off-Take Agreements (as defined in the Intercreditor Agreement);
- (I) amend or renew, extend the term, disclaim or accept the surrender of any mining claim, lease or concession without the prior written approval of the Administrative Agent (acting reasonably) and consent of the Monitor; excluding any such disclaimer or surrender resulting from (i) liquidation or other insolvency proceeding initiated by Nantou and (ii) any bankruptcy proceeding initiated in respect of Trevali NB;
- (J) suffer or permit any further funding of the Caribou Mine or the Perkoa Mine by any of the Subject Entities other than as required by Applicable Laws; and
- (K) suffer or permit any plan of compromise or arrangement filed by a CCAA Debtor in the CCAA Proceeding or by any Subject Entity in any other proceedings to contemplate or result in a compromise or other impairment of the Secured Obligations of the Obligor under the Credit Agreement and any other Finance Documents, or the rights of the Administrative Agent or the Lenders under or in respect thereof.

11.3 Performance of Covenants by Administrative Agent

The Administrative Agent may, on the instructions of the Majority Lenders and upon notice by the Administrative Agent to the Borrower, perform any covenant of the Borrower under this agreement which the Borrower fails to perform or cause to be performed after demand for performance has been made and which the Administrative Agent is capable of performing, including any covenants the performance of which requires the payment of money, provided that the Administrative Agent shall not be obligated to perform any such covenant on behalf of the Borrower and no such performance by the Administrative Agent shall require the Administrative Agent to further perform the Borrower's covenants or shall operate as a derogation of the rights and remedies of the Finance Parties under this agreement or as a waiver of such covenant by the Administrative Agent. Any amounts paid by the Administrative Agent as aforesaid shall be reimbursed by the Lenders in their Pro Rata Shares and shall be repaid by the Borrower to the Administrative Agent on behalf of the Lenders on demand.

ARTICLE 12 CONDITIONS PRECEDENT TO OBTAINING CREDIT

12.1 Conditions Precedent to All Credit

Subject to ~~Section~~ Sections 3.12, 4.2 and 12.2, the obligation of the Lenders to extend credit hereunder is subject to fulfilment of the following conditions precedent on the date such credit is extended:

- (a) the Borrower shall have complied with the requirements of Article 4, ~~Article 5~~ or Article 6, as the case may be, in respect of the relevant credit;
- (b) no Default or Event of Default (other than the Forbearance Events of Default) has occurred and is continuing or would arise immediately after giving effect to or as a result of such extension of credit; ~~and~~
- (c) the representations and warranties of the Borrower contained in Section 10.1 shall be true and correct in all material respects (except that any representation and warranty which is already qualified as to materiality or by reference to any Material Adverse Effect shall be true and correct in all respects) on the date such credit is extended as if such representations and warranties were made on such date immediately after the relevant extension of credit except to the extent the same expressly relate to an earlier date; ~~and~~
- (d) each Drawdown Notice under the DIP Tranche submitted by the Borrower after October 28, 2022 shall be accompanied by a certificate of a senior officer of the Borrower addressed to the Administrative Agent (i) certifying the quantum proceeds of the relevant DIP Tranche Loan which will be on-lent to RPZC pursuant to the Intercorporate Loan Agreement and (ii) attaching a duly passed resolution of the board of RPZC approving the incurrence of Indebtedness under the Intercorporate Loan Agreement in a corresponding amount.

12.2 Conditions Precedent to the Restatement Date

This agreement shall become effective upon the fulfillment or waiver of the following conditions precedent (the “Effective Time”):

- (a) the conditions precedent in Section 12.1 have been fulfilled or waived;
- (b) no Material Adverse Change has occurred since June 30, 2020;
- (c) with the exception of the Intercreditor Agreement, each Obligor shall have duly executed and delivered to the Administrative Agent ~~and/or the Peruvian Collateral Agent, as applicable,~~ each of the Credit Documents (which, in the case of previously executed Credit Documents, shall be limited to a Confirmation delivered in respect thereof from each applicable Obligor and such other amendments deemed necessary or advisable by the Administrative Agent’s counsel, acting reasonably) to which it is a party in form and substance satisfactory to the Administrative Agent;
- (d) Glencore, the Borrower and the Credit Parties shall have executed and delivered the Intercreditor Agreement or the intercreditor principles commitment letter referenced in the definition of Intercreditor Agreement;
- (e) Glencore and the Borrower have executed the Glencore Loan Agreement and Glencore has advanced no less than \$3,600,000 to the Borrower thereunder;
- (f) the Administrative Agent has received certified true copies of each Glencore Document, each in form and substance satisfactory to the Lenders, in existence as of the date hereof;
- (g) the Administrative Agent has received, in form and substance satisfactory to the Administrative Agent:
 - (i) the Perfection Certificate of each Obligor;
 - (ii) a Closing Certificate of each Obligor;
 - (iii) a certificate of status or good standing for each Obligor and Subject Entity issued by the appropriate governmental body or agency of the jurisdiction in which such Obligor or Subject Entity is incorporated to the extent such is customarily issued by such party in the relevant jurisdiction;
 - (iv) updated insurance binders, certificates of insurance and statements of coverage with respect to the insurance referred to in Section 11.1(d);
 - (v) opinions of counsel to each Obligor addressed to, *inter alia*, the Administrative Agent and the Finance Parties and their counsel, relating to the status and capacity of such Obligor, the due authorization, execution and delivery and the validity and enforceability of this agreement and the

other Credit Documents described in Section 12.2(c) to which such Obligor is a party in the jurisdiction where the Secured Assets of the Borrower are located and the jurisdiction of incorporation of such Obligor, and such other matters as the Administrative Agent may reasonably request; and

- (vi) reliance letters in respect of opinions of counsel to the Obligors previously delivered in connection with the Existing Credit Agreement;
- (h) there shall exist no pending or threatened litigation, proceedings or investigations which (x) contest the consummation of the Credit Facility or any part thereof or (y) would reasonably be expected to have a Material Adverse Effect;
- (i) except as otherwise provided in the relevant Security Documents, all documents and instruments shall have been properly registered, recorded and filed in all places which, searches shall have been conducted in all jurisdictions which, and deliveries of all consents, approvals, acknowledgments, undertakings, directions, negotiable documents of title, landlord waivers and other documents and instruments to the Administrative Agent ~~or the Peruvian Collateral Agent, as applicable,~~ shall have been made which, in the opinion of the Administrative Agent's counsel, are necessary to make effective the Security created or intended to be created by the Obligors pursuant to the Security Documents and to ensure the perfection and the intended first ranking priority (subject to Permitted Liens) of such Security; and
- (j) the Borrower shall have paid (i) to the Administrative Agent and the Co-Lead Arrangers all fees and expenses (including the fees and expenses of the Administrative Agent's legal counsel and restructuring advisor) required to be paid pursuant to any Credit Document ~~including those fees set forth in the Co-Lead Arrangers Fee Letter~~ and (ii) to the Administrative Agent all accrued interest and fees under the Existing Credit Agreement.

12.3 Waiver

The terms and conditions of Sections 12.1 and 12.2 are inserted for the sole benefit of the Lenders, and the Lenders may waive them in accordance with Section 14.14, in whole or in part, with or without terms or conditions, in respect of any extension of credit, without prejudicing their right to assert the terms and conditions of Section 12.1 and in whole or in part in respect of any other extension of credit.

12.4 Entry Into Effect of this Amendment and Restatement.

At as of the Effective Time, this agreement shall amend and restate the Existing Credit Agreement in its entirety and the Existing Credit Agreement as so amended and restated is hereby ratified and confirmed by the parties hereto. This agreement is not intended by the parties to, and shall not constitute, a payment, discharge, satisfaction or novation of the whole or any item or part of the Secured Obligations (as defined in the Existing Credit Agreement) remaining outstanding and owing to the Finance Parties until paid in full in accordance with the

provisions of this agreement. The parties hereto agree that, at the Effective Time, the Loans and Letters (each as is defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement shall become outstanding hereunder as advances of the same type. The Borrower hereby confirms to and agrees with the Finance Parties that its Secured Obligations (as defined in the Existing Credit Agreement) shall continue in full force and effect in accordance with their respective terms (amended and restated, as applicable, by this agreement). With respect to the outstanding Accommodations (as defined in the Existing Credit Agreement) at the Effective Time (but prior to giving effect to any drawdown under the Credit Facility), the Lenders shall make such payments among themselves (as calculated by the Administrative Agent) so as to ensure that the aggregate amount of credit outstanding under all Accommodations shall be owing to the Lenders in accordance with their respective Pro Rata Share. All references to the term "Credit Agreement" as defined and contained in the Credit Documents delivered in connection with the Existing Credit Agreement shall, from and after the Restatement Date, be deemed to refer to this agreement without the need for any amendment to such Credit Document. All references to one or more provisions of the Existing Credit Agreement contained in the Credit Documents shall, from and after the Restatement Date, be deemed to refer to the corresponding provisions of this agreement, without the need for any amendment to such Credit Documents.

ARTICLE 13 DEFAULT AND REMEDIES

13.1 Events of Default

Upon the occurrence of any one or more of the following events, unless expressly waived in writing in accordance with Section 14.14:

- (a) ~~the breach by the Borrower of the any payment or repayment provisions of Section 9.1, 9.2 or 9.4 within two Banking Days after the payment is due (such two Banking Day Period to apply solely to payments prior to the respective Maturity Dates) hereunder;~~
- (b) ~~the failure of the Borrower to pay any amount due under the Credit Documents (other than amounts due pursuant to Section 9.1, 9.2 or 9.4) within five Banking Days after the payment is due~~ **[Intentionally Deleted];**
- (c) except in respect of (i) the CCAA Proceeding, (ii) bankruptcy proceedings which may be initiated in respect of Trevali NB and (iii) as otherwise specifically permitted hereunder, the commencement by any Obligor or Subject Entity or by any other Person of proceedings for the dissolution, liquidation, winding up or receivership of any Obligor or Subject Entity or for the suspension of operations of any Obligor or Subject Entity under any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect applicable to such Obligor or Subject Entity (provided that, if such proceedings are commenced by any Person other than an Obligor or Subject Entity or an Affiliate thereof, such proceedings shall only constitute an Event of Default if such proceedings are not

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being diligently defended and have not been discharged, vacated or stayed within 30 days after commencement);

- (d) other than as contemplated by the CCAA Proceeding or a bankruptcy proceeding in respect of Trevali NB. if any Obligor or Subject Entity ceases or threatens to cease to carry on its business or is adjudged or declared bankrupt or insolvent or admits its inability to pay its debts generally as they become due or fails to pay its debts generally as they become due or makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of a receiver, trustee, administrator, liquidator or conservator under applicable insolvency legislation for it or for any part of its property (or such a receiver or trustee is appointed for it or any part of its property), or commences (or any other Person commences) any proceedings relating to it under any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect applicable to such Obligor or Subject Entity (provided that, if such proceedings are commenced by any Person other than an Obligor or Subject Entity or an Affiliate thereof, such proceedings shall only constitute an Event of Default if such proceedings are not being diligently defended and have not been discharged, vacated or stayed within 30 days after commencement), or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for it or for any part of its property, or suffers the appointment of any receiver or trustee, sequestrator, administrator, liquidator, conservator or other custodian under applicable insolvency legislation for it or such part of its property;
- (e) if any representation or warranty made by any Obligor in any Finance Document or referred to herein or any material information furnished in writing to the Administrative Agent by any Obligor proves to have been incorrect in any respect when made or furnished ~~which, if capable of being cured, has not been remedied within 20 Banking Days after written notice to do so has been given by the Administrative Agent to the Borrower;~~
- (f) if a writ, execution, attachment or similar process is issued or levied against all or any portion of the property of any Obligor in connection with any judgment against it in an amount of at least \$5,000,000 or its Exchange Equivalent, and such writ, execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within sixty days after its entry, commencement or levy;
- (g) any breach of any of ~~Section~~ Sections 11.1(c), ~~11.1(m), (n), (oz)~~ or 11.1(paa) or any provision of Section 11.2;
- (h) the breach or failure of due observance or performance by any Obligor of any covenant or provision of any Credit Document (other than those previously referred to in this Section 13.1) and such breach or failure continues for ~~45~~ two Banking Days after the earlier of (x) the Borrower becoming aware of such breach or failure or (y) the Administrative Agent or any other Credit Party giving the Borrower notice of such breach or failure;

- (i) if one or more encumbrancers, lienors or landlords take possession of any part of an Obligor's property having a fair market value of at least \$5,000,000 or its Exchange Equivalent of any Obligor or attempt to enforce their security or other remedies against such property and their claims remain unsatisfied for such period as would permit such property to be sold thereunder;
- (j) if an event of default under any agreement, indenture or instrument, under which any Obligor has outstanding Indebtedness in an amount of at least \$5,000,000 or its Exchange Equivalent or under which another Person has outstanding Indebtedness in an amount of at least \$5,000,000 or its Exchange Equivalent which is guaranteed by a Obligor, shall happen (with all applicable grace periods having expired) and the remedies under such agreement, indenture or instrument have not been stayed pursuant to the Court Orders or if any Indebtedness of or guaranteed by any Obligor in an amount of at least \$5,000,000 or its Exchange Equivalent which is payable on demand is not paid on demand and the remedies under such guarantee has not been stayed pursuant to the Court Orders;
- (k) the expropriation, abandonment or condemnation of a ~~Material~~ the Rosh Pinah Mine or any material part thereof;
- (l) the cessation of production at any ~~Material Mine (other than the Caribou Mine while on care and maintenance)~~ the Rosh Pinah Mine for a period of ~~480~~ 30 consecutive days;
- (m) the occurrence of a Change of Control;
- (n) any one or more of the Credit Documents is determined by a court of competent jurisdiction not to be a legal, valid and binding obligation of any Obligor which is a party thereto, enforceable by the Administrative Agent ~~or the Peruvian Collateral Agent, as applicable~~, the Lenders or any of them against such Obligor and such Credit Document has not been replaced by a legal, valid, binding and enforceable document which is equivalent in effect to such Credit Document, assuming such Credit Document had originally been legal, valid, binding and enforceable, in form and substance acceptable to the Administrative Agent ~~or the Peruvian Collateral Agent, as applicable~~, within 30 days of such determination, provided, however, that such grace period shall only be provided if such Obligor actively co-operates with the Administrative Agent ~~or the Peruvian Collateral Agent, as applicable~~, to so replace such Credit Document;
- (o) the validity, enforceability or priority of any of the Finance Documents is contested in any manner by any Obligor;
- (p) any Finance Document is terminated by any Obligor prior to its stated maturity or rescinded by any Obligor in violation of the terms of any Finance Document;
- (q) any Security Document does not constitute first ranking, priority security in the Secured Assets of each Obligor (subject to Permitted Liens);

- (r) the occurrence of a Second Lien Event of Default (as defined in the Intercreditor Agreement); or and either the rights and remedies of Glencore resulting from such Second Lien Event of Default are not stayed by the Court Orders or Glencore has not agreed to forbear from enforcement on term and conditions satisfactory to the Majority Lenders in their sole discretion;
- (s) a Pension Event occurs and
 - (i) in the event of a wind up or termination of the relevant Canadian Pension Plan, there would be or would reasonably be expected to be a wind-up deficiency resulting in an obligation of an Obligor to pay or contribute in excess of \$5,000,000; or
 - (ii) it would reasonably be expected to result in a Material Adverse Effect;
- (t) the Majority Lenders determine, in their sole discretion, acting reasonably, that a Material Adverse Change has occurred after the Fifth Amendment Effective Time;
- (u) any Obligor fails to pay or remit any amounts that constitute Priority Payables as they become due from time to time;
- (v) the Initial Order, the Amended and Restated Initial Order, the SISP Order or the DIP Order is amended, restated or otherwise varied in a manner that adversely affects, or would reasonably be expected to adversely affect (in each case without regard to materiality), the interests of the Finance Parties, without the prior written consent of the Administrative Agent acting on the instructions of the Majority Lenders, or any Court Order is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacation, amendment or restatement adversely affects or would reasonably be expected to adversely affect (in each case without regard to materiality) the interests of the Finance Parties, including any Court Order resulting in:
 - (i) the termination or lifting of or amendment to the stay imposed by the Court Orders or otherwise in the CCAA Proceeding;
 - (ii) the issuance of a bankruptcy order against any the Borrower;
 - (iii) the grant of an appeal of, or leave to appeal the Initial Order, the Amended and Restated Initial Order, the SISP Order or the DIP Order;
 - (iv) the grant or declaration that any other claim or Lien ranks equal or in priority to the DIP Charge or the Security, except as permitted hereunder;
 - (v) the stay, reversal, vacation or other modification of the Credit Agreement or any other Finance Document, the DIP Charge or the Security or prejudicially affecting the Administrative Agent, the Finance Parties or the Security;

- (w) the SISP is amended, modified, terminated or otherwise varied, which for greater certainty includes any amendments or modifications to the bid deadlines and bid requirements, without the prior written consent of the Administrative Agent acting on the instructions of the Majority Lenders;
- (x) the appointment of a receiver and manager, receiver, interim receiver or similar official or any process of any court becomes enforceable against any Subject Entity (other than Trevali NB) or any of their property, any of their property is seized or levied upon, or a creditor or governmental agency takes possession of any property of a Subject Entity (other than Trevali NB);
- (y) any violation or breach of any Court Order by a CCAA Debtor;
- (z) subject to the Amended and Restated Initial Order, the SISP Order, the DIP Order any other Court Order, or the prior written consent of the Administrative Agent (acting on the instructions of the Majority Lenders), any Subject Entity ceases to carry on or maintain its business or its assets in the ordinary course of the business (for the avoidance of doubt, the foregoing shall not be triggered by the Caribou Mine or the Perkoa Mine being placed on care and maintenance);
- (aa) any proceeding, motion or application is commenced or filed by a CCAA Debtor, or if commenced by another Person, supported or otherwise consented to by a CCAA Debtor, seeking the invalidation, subordination or other challenge of the terms of the DIP Charge, the Credit Agreement or any other Finance Document;
- (bb) any applicable DIP Budget and/or Updated Cash Flow, in each case as updated from time to time, indicates that such DIP Tranche does not provide sufficient liquidity for the operations of the Borrower or RPZC, as applicable;
- (cc) no Qualified LOI (as defined in the SISP) in respect of RPZC (or its shareholders which are directly or indirectly Controlled by the Borrower) is received at the LOI Deadline (as defined in the SISP) or no Potential Bidder (as defined in the SISP) in respect of RPZC (or its shareholders which are directly or indirectly Controlled by the Borrower) is determined to be a Qualified Bidder (as defined in the SISP) within 5 calendar days of the LOI Deadline;
- (dd) no Qualified Final Bid (as defined in the SISP) in respect of RPZC (or its shareholders which are directly or indirectly Controlled by the Borrower) is received at the Final Bid Deadline (as defined in the SISP) or no Qualified Final Bid in respect of RPZC is determined to be a Winning Bid (as defined in the SISP) within 3 Banking Days of the Final Bid Deadline (as defined in the SISP);
- (ee) no Final Agreement (as defined in the SISP) in respect of RPZC (or its shareholders which are directly or indirectly Controlled by the Borrower) is executed by the Final Agreement Deadline;

- (ff) the transaction contemplated in any Final Agreement is not approved by the Court or such transaction does not close on the earlier of (A) the date contemplated in such Final Agreement and (B) the Outside Closing Date (as defined in the SISP);
- (gg) any stay of proceedings ordered by the Court in the CCAA Proceeding, including, without limitation, in the Initial Order and the Amended and Restated Initial Order, shall apply to the Administrative Agent or any Finance Party, in respect of the DIP Tranche, provided, however, that the DIP Order shall provide that the Administrative Agent and the Finance Parties, in respect of the DIP Tranche, may not exercise any of their rights or remedies under or pursuant to the Credit Agreement or any other Finance Documents, without providing 3 Banking Days' notice to the Borrower and the Monitor;
- (hh) if the Administrative Agent and the Finance Parties are not at all times treated as an "unaffected creditor" in the CCAA Proceeding and in any plan of compromise or arrangement filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to any Subject Entity thereafter including, without limitation, proceedings under the CCAA or the *Bankruptcy and Insolvency Act* (Canada) or any other legislation of any jurisdiction pertaining to insolvency or creditors' rights;
- (ii) if the Borrower lends proceeds of the DIP Tranche to RPZC pursuant to the Intercorporate Loan Agreement without the board of RPZC having approved the incurrence of such Indebtedness pursuant to a duly passed board resolution;

the Administrative Agent (with the approval and instructions of the Majority Lenders) may, by notice to the Borrower, terminate the Credit Facility ~~(provided, however, that the Credit Facility shall automatically terminate, without notice of any kind, upon the occurrence of an event described in clause (c) or (d) above)~~ and the Administrative Agent (with the approval and instructions of the Majority Lenders) may, by the same or further notice to the Borrower, declare all Indebtedness of the Borrower to the Lenders pursuant to this agreement (including the then contingent liability of the Issuing Lender under all Existing Letters) to be immediately due and payable whereupon all such indebtedness shall immediately become and be due and payable without further demand or other notice of any kind, all of which are expressly waived by the Borrower ~~(provided, however, that all such indebtedness of the Borrower to the Lenders shall automatically become due and payable, without notice of any kind, upon the occurrence of an event described in clause (c) or (d) above)~~. Upon the payment by the Borrower to the Issuing Lender of the then aggregate contingent liability under all outstanding Existing Letters issued by the Issuing Lender, the Borrower shall have no further liability to the Issuing Lender with respect to such Existing Letters.

13.2 Letters

With respect to any Existing Letters which are outstanding at the time that all indebtedness of the Borrower to the Lenders pursuant to this agreement become immediately due and payable pursuant to Section 13.1, the Borrower shall forthwith pay to the Issuing Lender (or to the Administrative Agent for the account of the Issuing Lender) for deposit to the Letter Cash

Collateral Account the then aggregate contingent liability of the Issuing Lender under such Existing Letters. Thereafter, the Administrative Agent shall apply the funds so deposited in the Letter Cash Collateral Account at the direction of the Issuing Lender to (a) satisfy the reimbursement obligations of the Borrower to the Issuing Lender under Section 9.6 as Existing Letters are drawn upon or (b) refund to the Borrower any amounts payable by the Issuing Lender to the Borrower under Section 13.3.

13.3 Refund of Overpayments

With respect to each Existing Letter for which the Issuing Lender has been paid all of its contingent liability pursuant to Article 9 or Article 13 and provided that all amounts due by the Borrower to the Issuing Lender under Article 9 or Article 13 have been paid, the Issuing Lender agrees to pay to the Borrower, upon the later of:

- (a) if the Existing Letter is subject to an Order, the date on which any final and non-appealable order, judgment or other determination has been rendered or issued either permanently enjoining the Issuing Lender from paying under such Existing Letter or terminating any outstanding Order; and
- (b) the earlier of:
 - (i) the date on which either the original counterpart of such Existing Letter is returned to the Issuing Lender for cancellation or the Issuing Lender is released by the beneficiary thereof from any further obligations in respect of such Existing Letter;
 - (ii) the expiry of such Existing Letter; and
 - (iii) (where the contingent liability under such Existing Letter is less than the face amount thereof), all amounts possibly payable under such Existing Letter have been paid;

an amount equal to any excess of the amount received by the Issuing Lender hereunder in respect of its contingent liability under such Existing Letter over the total of amounts applied to reimburse the Issuing Lender for amounts paid by it under or in connection with such Existing Letter (the Issuing Lender having the right to so appropriate such funds).

13.4 Remedies Cumulative

The Borrower expressly agrees that the rights and remedies of the Administrative Agent and the Lenders under this agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by the Administrative Agent or any Lender of any right or remedy for a default or breach of any term, covenant or condition in this agreement does not waive, alter, affect or prejudice any other right or remedy to which the Administrative Agent or such Lender may be lawfully entitled for the same default or breach. Any waiver by the Administrative Agent with the approval of the Majority Lenders or all of the Lenders in accordance with Section 14.14 of the strict observance, performance or compliance with any term, covenant or condition of this agreement is not a

waiver of any subsequent default and any indulgence by the Lenders with respect to any failure to strictly observe, perform or comply with any term, covenant or condition of this agreement is not a waiver of the entire term, covenant or condition or any subsequent default. No failure or delay by the Administrative Agent or any Lender in exercising any right shall operate as a waiver of such right nor shall any single or partial exercise of any power or right preclude its further exercise or the exercise of any other power or right.

13.5 Set-Off

In addition to any rights now or hereafter granted under Applicable Law, (and not by way of limitation of any such rights) but subject always to the Court Orders, the Administrative Agent and each Lender is authorized, at any time that an Event of Default has occurred and is continuing without notice to the Borrower or to any other Person, any such notice being expressly waived by the Borrower, to set-off, appropriate and apply any and all deposits, matured or unmatured, general or special, and any other indebtedness at any time held by or owing by the Administrative Agent or such Lender, as the case may be, to or for the credit of or the account of the Borrower against and on account of the obligations and liabilities of the Borrower which are due and payable to the Administrative Agent or such Lender, as the case may be, under the Credit Documents.

ARTICLE 14 THE ADMINISTRATIVE AGENT

14.1 **Appointment and Authorization of Administrative Agent** ~~and Peruvian Collateral Agent~~

- (a) Each Finance Party hereby appoints and authorizes, and hereby agrees that it will require any assignee of any of its interests in the Finance Documents (other than the holder of a participation in its interests herein or therein) to appoint and authorize the Administrative Agent to execute and deliver, to take such actions as agent on its behalf and to exercise such powers under the Credit Documents as are delegated to the Administrative Agent by such Finance Party by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Administrative Agent nor any of its directors, officers, employees or agents shall be liable to any of the Finance Parties for any action taken or omitted to be taken by it or them hereunder or thereunder or in connection herewith or therewith, except for its own gross negligence or wilful misconduct and each Finance Party hereby acknowledges that the Administrative Agent is entering into the provisions of this Section 14.1 on its own behalf and as agent and trustee for its directors, officers, employees and agents.

- ~~(b) Each Finance Party hereby appoints and authorizes, and hereby agrees that it will require any assignee of any of its interests in the Finance Documents (other than the holder of a participation in its interests herein or therein) to appoint and authorize the Peruvian Collateral Agent to execute and deliver, to take such actions as agent on its behalf and to exercise such powers under the Peruvian Security Documents as are delegated to the Peruvian Collateral Agent by such Finance Party by the terms hereof, together with such powers as are reasonably~~

~~incidental thereto. Neither the Peruvian Collateral Agent nor any of its directors, officers, employees or agents shall be liable to any of the Finance Parties for any action taken or omitted to be taken by it or them hereunder or thereunder or in connection herewith or therewith, except for its own gross negligence or wilful misconduct and each Finance Party hereby acknowledges that the Peruvian Collateral Agent is entering into the provisions of this Section 14.1 on its own behalf and as agent and trustee for its directors, officers, employees and agents. Each of the Finance Party hereby agrees that it shall take any and all necessary or appropriate further actions as it might be required to take, by law or otherwise, to authorize the Peruvian Collateral Agent to carry out the foregoing or for the Peruvian Security Documents to exercise its faculties and powers, and to comply with its obligations, under the Peruvian Security Documents, directly or through its attorneys-in-fact or designees, including but not limited to the individualization of any required special power of attorney.~~

(b) ~~[Intentionally Deleted.]~~

(c) Each Lender hereby authorizes the Administrative Agent ~~and the Peruvian Collateral Agent~~ to execute and deliver the Intercreditor Agreement and the Settlement Agreement for and on behalf of each of the Lenders. Each of the Lenders hereby agrees that it shall take any and all necessary or appropriate further actions as it might be required to take, by law or otherwise, to authorize the Administrative Agent ~~and Peruvian Collateral Agent~~ to carry out the foregoing or to exercise its faculties and powers, and to comply with its obligations, under the Intercreditor Agreement and/or the Settlement Agreement directly or through its attorneys-in-fact or designees, including but not limited to the individualization of any required special power of attorney.

14.2 Interest Holders

The Administrative Agent may treat each Lender set forth in Schedule A hereto or the person designated in the last notice delivered to it under Section 16.5 as the holder of all of the interests of such Lender under the Credit Documents.

14.3 Consultation with Counsel

The Administrative Agent may consult with legal counsel selected by it as counsel for the Administrative Agent and the other Finance Parties and shall not be liable for any action taken or not taken or suffered by it in good faith and in accordance with the advice and opinion of such counsel.

14.4 Documents

The Administrative Agent shall not be under any duty to the Finance Parties to examine, enquire into or pass upon the validity, effectiveness or genuineness of the Credit Documents or any instrument, document or communication furnished pursuant to or in connection with the Credit Documents and the Administrative Agent shall, as regards the

Finance Parties, be entitled to assume that the same are valid, effective and genuine, have been signed or sent by the proper parties and are what they purport to be.

14.5 Administrative Agent as Finance Party

With respect to those portions of the Credit Facility made available by it, the Administrative Agent shall have the same rights and powers under the Credit Documents as any other Finance Party and may exercise the same as though it were not the Administrative Agent. The Administrative Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Obligors and their Affiliates and persons doing business with the Obligors and/or any of their Affiliates as if it were not the Administrative Agent and without any obligation to account to the Finance Parties therefor.

14.6 Responsibility of Administrative Agent

The duties and obligations of the Administrative Agent to the Finance Parties under the Credit Documents are only those expressly set forth herein. The Administrative Agent shall not have any duty to the Finance Parties to investigate whether a Default or an Event of Default has occurred. The Administrative Agent shall, as regards the Finance Parties, be entitled to assume that no Default or Event of Default has occurred and is continuing unless the Administrative Agent has actual knowledge or has been notified by the Borrower of such fact or has been notified by a Finance Party that such Finance Party considers that a Default or Event of Default has occurred and is continuing, such notification to specify in detail the nature thereof.

14.7 Action by Administrative Agent

The Administrative Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it on behalf of the Finance Parties by and under this agreement and the Intercreditor Agreement; provided, however, that the Administrative Agent ~~or the Peruvian Collateral Agent~~ shall not exercise any rights under Section 13.1, or the other Credit Documents or expressed to be on behalf of or with the approval of the Majority Lenders without the request, consent or instructions of the Majority Lenders. Furthermore, any rights of the Administrative Agent expressed to be on behalf of or with the approval of the Majority Lenders shall be exercised by the Administrative Agent upon the request or instructions of the Majority Lenders. The Administrative Agent shall incur no liability to the Finance Parties under or in respect of any of the Credit Documents with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except for its gross negligence or wilful misconduct. The Administrative Agent shall in all cases be fully protected in acting or refraining from acting under any of the Credit Documents in accordance with the instructions of the Majority Lenders and any action taken or failure to act pursuant to such instructions shall be binding on all Finance Parties. In respect of any notice by or action taken by the Administrative Agent hereunder, the Borrower shall at no time be obliged to enquire as to the right or authority of the Administrative Agent to so notify or act.

14.8 Notice of Events of Default

In the event that the Administrative Agent shall acquire actual knowledge or shall have been notified of any Default or Event of Default, the Administrative Agent shall promptly notify the Lenders and shall take such action and assert such rights under Section 13.1 of this agreement and under the other Credit Documents as the Majority Lenders shall request in writing and the Administrative Agent shall not be subject to any liability by reason of its acting pursuant to any such request. If the Majority Lenders shall fail for five Banking Days after receipt of the notice of any Default or Event of Default to request the Administrative Agent to take such action or to assert such rights under any of the Credit Documents in respect of such Default or Event of Default, the Administrative Agent may, but shall not be required to, and subject to subsequent specific instructions from the Majority Lenders, take such action or assert such rights (other than rights under Section 13.1 of this agreement or under the other Credit Documents and other than giving an express waiver of any Default or any Event of Default) as it deems in its discretion to be advisable for the protection of the Finance Parties except that, if the Majority Lenders have instructed the Administrative Agent not to take such action or assert such rights, in no event shall the Administrative Agent act contrary to such instructions unless required by law to do so.

14.9 Responsibility Disclaimed

The Administrative Agent shall be under no liability or responsibility whatsoever as agent hereunder:

- (a) to the Borrower or any other Person as a consequence of any failure or delay in the performance by, or any breach by, any Finance Party or Finance Parties of any of its or their obligations under any of the Finance Documents;
- (b) to any Finance Party or Finance Parties as a consequence of any failure or delay in performance by, or any breach by, any Obligor of any of their respective obligations under any of the Finance Documents; or
- (c) to any Finance Party or Finance Parties for any statements, representations or warranties in any of the Finance Documents or in any other documents contemplated hereby or thereby or in any other information provided pursuant to any of the Finance Documents or any other documents contemplated hereby or thereby or for the validity, effectiveness, enforceability or sufficiency of any of the Finance Documents or any other document contemplated hereby or thereby.

14.10 Indemnification

The Finance Parties agree to indemnify the Administrative Agent ~~and the Peruvian Collateral Agent~~ (to the extent not reimbursed by the Borrower) pro rata in accordance with their relative Exposures from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent ~~or the Peruvian Collateral Agent~~ in any way relating to or arising out of any of the Credit

Documents or any other document contemplated hereby or thereby or any action taken or omitted by the Administrative Agent ~~or the Peruvian Collateral Agent~~ under any of the Credit Documents or any document contemplated hereby or thereby, except that no Finance Party shall be liable to the Administrative Agent ~~or the Peruvian Collateral Agent~~ for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or wilful misconduct of the Administrative Agent ~~the Peruvian Collateral Agent~~.

14.11 Credit Decision

Each Lender represents and warrants to the Administrative Agent that:

- (a) in making its decision to enter into this agreement and to make its Pro Rata Share of the Credit Facility available to the Borrower, it is independently taking whatever steps it considers necessary to evaluate the financial condition and affairs of the Obligors and that it has made an independent credit judgment without reliance upon any information furnished by the Administrative Agent; and
- (b) so long as any portion of the Credit Facility is being utilized by the Borrower, it will continue to make its own independent evaluation of the financial condition and affairs of the Obligors.

14.12 Successor Administrative Agent ~~or Peruvian Collateral Agent~~

Subject to the appointment and acceptance of a successor Administrative Agent ~~or Peruvian Collateral Agent~~, as the case may be and otherwise as provided below, the Administrative Agent ~~or Peruvian Collateral Agent~~, as the case may be, may, with the prior written consent of the Borrower (which consent shall not be required for so long as a Default has occurred and is continuing), resign at any time by giving 30 days written notice thereof to the Borrower and the Credit Parties. Upon any such resignation, the Majority Lenders, with the prior written consent of the Borrower (which consent shall not be required (x) if the successor Administrative Agent ~~or Peruvian Collateral Agent~~, as the case may be, is an Affiliate or Subsidiary of the Administrative Agent ~~or Peruvian Collateral Agent~~ or of a Lender on the date hereof or (y) for so long as a Default has occurred and is continuing), shall have the right to appoint a successor Administrative Agent ~~or Peruvian Collateral Agent~~, as applicable, who shall be one of the Lenders unless none of the Lenders wishes to accept such appointment. If no successor Administrative Agent ~~or Peruvian Collateral Agent~~ shall have been so appointed and shall have accepted such appointment by the time of such resignation, then the retiring Administrative Agent ~~or Peruvian Collateral Agent~~, as the case may be, may, on behalf of the Credit Parties and with the prior written consent of the Borrower (which consent shall not be required for so long as a Default has occurred and is continuing), appoint a successor Administrative Agent which shall be a bank organized under the laws of Canada which has combined capital and reserves in excess of \$250,000,000 and has an office in Toronto ~~or appoint a successor Peruvian Collateral Agent which shall be a Peruvian domiciled corporate trustee or financial institution and has an office in Lima~~. Upon the acceptance of any appointment as Administrative Agent ~~or Peruvian Collateral Agent~~ hereunder by a successor Administrative Agent ~~or Peruvian Collateral Agent~~, as the case may be, such successor Administrative Agent ~~or~~

~~Peruvian Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, duties and obligations of the retiring Administrative Agent or Peruvian Collateral Agent, as applicable (in its capacity as Administrative Agent or Peruvian Collateral Agent, as applicable, but not in its capacity as a Credit Party) and the retiring Administrative Agent or Peruvian Collateral Agent shall be discharged from its duties and obligations hereunder (in its capacity as Administrative Agent or Peruvian Collateral Agent but not in its capacity as a Credit Party). After any retiring Administrative Agent's or Peruvian Collateral Agent's resignation hereunder as the Administrative Agent or Peruvian Collateral Agent, provisions of this Article 14 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent or Peruvian Collateral Agent, as the case may be.~~

14.13 Delegation by Administrative Agent

With the prior approval of the Majority Lenders, the Administrative Agent shall have the right to delegate any of its duties or obligations hereunder as Administrative Agent to any Affiliate of the Administrative Agent so long as the Administrative Agent shall not thereby be relieved of such duties or obligations.

14.14 Waivers and Amendments

- (a) Subject to Sections 14.14(b) and (c) ~~of~~, unless otherwise specifically provided for in any other Credit Document; any term, covenant or condition of any of the Credit Documents may only be amended with the prior consent of the Borrower and the Majority Lenders or compliance therewith may be waived (either generally or in a particular instance and either retroactively or prospectively) by the Majority Lenders and in any such event the failure to observe, perform or discharge any such covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or after such failure), shall not be construed as a breach of such covenant, condition or obligation or as a Default or Event of Default.
- (b) Notwithstanding Section 14.14(a), without the prior written consent of each Lender, no such amendment or waiver shall directly:
 - (i) increase the Credit Limit or the amount of the Individual Commitment of any Lender;
 - (ii) amend the definitions of "Applicable Rate", "Change of Control", "~~Credit Sub Limit~~", "~~DIP Maturity Date~~" or "Applicable Prepayment Amount" or any definition forming part thereof;
 - (iii) amend or waive Sections 2.3, 9.1, 9.4, 10.1(r), 10.1(aa), 11.1(c) or the last sentence of Section 11.1(j) or any defined term used therein;
 - (iv) ~~delete any reference to Credit Sub Limit in Section 2.5~~ **Intentionally deleted**;

- (v) extend the time for the payment of interest or fees on Accommodations, forgive any portion of principal thereof, reduce the stated rate of interest or fees thereon or amend the requirement of *pro rata* application of all amounts received by the Administrative Agent in respect thereof; or
 - (vi) permit any subordination or postponement of any of the Secured Obligations.
- (c) Notwithstanding Section 14.14(a), without the prior written consent of each Lender, each Qualified Cash Management Lender and each Qualified Risk Management Lender, no such amendment or waiver shall directly:
- (i) change the percentage of the Lenders' requirement to constitute the Majority Lenders or otherwise amend the definition of Majority Lenders;
 - (ii) permit any subordination of any of the Secured Obligations;
 - (iii) except as otherwise permitted pursuant to Section 14.19, release or discharge the Security Documents, in whole or in part;
 - (iv) alter the terms of this Section 14.14;
 - (v) amend the definitions of "Cash Management Agreement", "Lenders", "Secured Risk Management Agreements", "Enforcement Date", "Exposure", "Finance Documents", "Finance Parties", "Majority Lenders", "Qualified Affiliate", "Qualified Risk Management Lender", "Risk Management Agreements" or "Secured Obligations" or any definition forming part thereof.
 - (vi) change the ability of a Qualified Risk Management Lender to close out or terminate a Secured Risk Management Agreement or the ability to net or set-off;
 - (vii) amend or waive any Guarantee or Security Document or Section 11.2(d) or Sections 14.20 to 14.23 , inclusive; or
 - (viii) alter the terms of the Intercreditor Agreement.
- (d) No amendment to or waiver of any provision hereof to the extent it affects the rights or obligations of the Administrative Agent shall be effective without the prior written consent of the Administrative Agent.
- (e) Without the prior written consent of the Issuing Lender, no amendment to or waiver of Article 14 or any other provision hereof to the extent it affects the rights or obligations of the Issuing Lender shall be effective.
- (f) Notwithstanding any other provision hereof, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder,

except that, without the consent of such Defaulting Lender, (i) the Individual Commitment of such Defaulting Lender may not be increased or extended and (ii) the time for the payment of interest or fees on Accommodations shall not be extended, the principal thereof shall not be forgiven, the stated rate of interest or fees thereon shall not be reduced and the requirement of pro rata application of all amounts received by the Administrative Agent in respect thereof shall not be amended.

14.15 Determination by Administrative Agent Conclusive and Binding

Any determination to be made by the Administrative Agent on behalf of or with the approval of the Lenders or the Majority Lenders under this agreement shall be made by the Administrative Agent in good faith and, if so made, shall be binding on all parties, absent manifest error. The Obligor is entitled to assume that any action taken by the Administrative Agent under or in connection with any Credit Document has been appropriately authorized by the Lenders or the Majority Lenders, as the case may be, pursuant to the terms hereof.

14.16 Adjustments among Lenders after Acceleration

- (a) The Lenders agree that, at any time after all indebtedness of the Borrower to the Lenders pursuant hereto has become immediately due and payable pursuant to Section 13.1 or after the cancellation or termination of the Credit Facility, they will at any time or from time to time upon the request of any Lender through the Administrative Agent purchase portions of the availments made available by the other Lenders which remain outstanding, and make any other adjustments which may be necessary or appropriate, in order that the amounts of the availments made available by the respective Lenders which remain outstanding, as adjusted pursuant to this Section 14.16, will be in the same proportions as their respective Pro Rata Shares thereof with respect to the Credit Facility immediately prior to such acceleration, cancellation or termination.
- (b) The Lenders agree that, at any time after all Indebtedness of the Borrower to the Lenders pursuant hereto has become immediately due and payable pursuant to Section 13.1 or after the cancellation or termination of the Credit Facility, the amount of any repayment made by the Borrower under this agreement, and the amount of any proceeds of the exercise of any rights or remedies of the Lenders under the Credit Documents, which are to be applied against amounts owing hereunder as principal, will be so applied in a manner such that to the extent possible, the availments made available by the Lenders which remain outstanding, after giving effect to such application, will be in the same proportions as their respective Pro Rata Shares thereof with respect to the Credit Facility immediately prior to the cancellation or termination thereof immediately prior to such acceleration, cancellation or termination.
- (c) For greater certainty, the Lenders acknowledge and agree that without limiting the generality of the provisions of Section 14.16(a) and (b), such provisions will have application if and whenever any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, compensation,

or otherwise), other than on account of any monies owing or payable by the Borrower to it under the Credit Documents in excess of its *pro rata* share of payments on account of monies owing by the Borrower to all the Finance Parties thereunder.

- (d) The Borrower agrees to be bound by and to do all things necessary or appropriate to give effect to any and all purchases and other adjustments made by and between the Lenders pursuant to this Section 14.16.

14.17 Redistribution of Payment

If a Lender shall receive payment of a portion of the aggregate amount of principal and interest due to it hereunder which is greater than the proportion received by any other Lender in respect of the aggregate amount of principal and interest due in respect of the Credit Facility (having regard to the respective Individual Commitments of the Lenders), the Lender receiving such proportionately greater payment shall purchase a participation (which shall be deemed to have been done simultaneously with receipt of such payment) in that portion of the aggregate outstanding credit of the other Lender or Lenders so that the respective receipts shall be *pro rata* to their respective participation in the credits; provided, however, that if all or part of such proportionately greater payment received by such purchasing Lender shall be recovered from the Borrower, such purchase shall be rescinded and the purchase price paid for such participation shall be returned by such selling Lender or Lenders to the extent of such recovery, but without interest.

14.18 Distribution of Notices

Except as otherwise expressly provided herein, promptly after receipt by the Administrative Agent of any notice or other document which is delivered to the Administrative Agent hereunder on behalf of the Lenders, the Administrative Agent shall provide a copy of such notice or other document to each of the Lenders; provided, however, that a copy of any such notice delivered at any time during the continuance of an Event of Default shall be delivered by the Administrative Agent to each of the Finance Parties.

14.19 Discharge of Security

To the extent a sale or other disposition of the Secured Assets is permitted pursuant to the provisions hereof, the Lenders hereby authorize the Administrative Agent ~~and the Peruvian Collateral Agent, as applicable,~~ to execute and deliver, and the Administrative Agent ~~and the Peruvian Collateral Agent, as applicable,~~ will execute and deliver at the request of the Borrower, at the cost and expense of the Borrower, such releases, discharges and other instruments which are necessary for the purposes of (i) releasing and discharging the Security therein or for the purposes of recording the provisions or effect thereof in any office where the Security Documents may be registered or recorded, (ii) releasing any Guarantor from its obligations under its guarantee of the Secured Obligations if such Guarantor ceases to be Subsidiary of the Borrower (in the case of a disposition of Secured Assets consisting of the Shares of a Guarantor) or (iii) for the purpose of more fully and effectively carrying out the provisions of this Section 14.19.

14.20 Determination of Exposures

Concurrent with any request for any approval or instructions of the Majority Lenders and prior to any distribution of Cash Proceeds of Realization to the Finance Parties, the Administrative Agent shall request each Finance Party to provide to the Administrative Agent a written calculation of such Finance Party's Exposure, each such calculation to be certified true and correct by the Finance Party providing same. Each Finance Party shall so provide such calculation within two Banking Days following the request of the Administrative Agent. Any such calculation provided by a particular Finance Party shall, absent manifest error, constitute prima facie evidence of such Finance Party's Exposure at such time. With respect to each determination of the Exposure of the Finance Parties, the Administrative Agent shall promptly notify the Finance Parties. For the purposes of determining a particular Finance Party's Exposure:

- (a) the Exposure of a Finance Party under any Credit Documents shall be the aggregate amount (expressed in United States dollars) owing to such Finance Party thereunder on such date;
- (b) the Exposure of a Qualified Risk Management Lender in respect of Secured Risk Management Agreements shall be measured as the net exposure of such Qualified Risk Management Lender under all Secured Risk Management Agreements with the Obligors to which such Qualified Risk Management Lender is a party, being the aggregate exposure of such Qualified Risk Management Lender thereunder less the aggregate exposure of the relevant Obligor thereunder; the exposure of party to a Secured Risk Management Agreement shall be, in the case of a Secured Risk Management Agreement which has not been terminated as of such date, the total amount which would be owing to such party by the other party under such Secured Risk Management Agreement in the event of the early termination as of such date of such Secured Risk Management Agreement as a result of the occurrence of a default, event of default or termination event (however specified or designated) with respect to such other party thereunder or, in the case of a Secured Risk Management Agreement which has been terminated as of such date, the total amount which is owing to such party by the other party under such Secured Risk Management Agreement, in each case expressed in United States dollars;
- (c) the Exposure of a Qualified Cash Management Lender in respect of Cash Management Agreements shall be measured as the net exposure of such Qualified Cash Management Lender under all Cash Management Agreements with the Obligors to which such Qualified Cash Management Lender is a party, being the aggregate exposure of such Qualified Cash Management Lender thereunder less the aggregate exposure of the Obligors thereunder; the exposure of a party to a Cash Management Agreement shall be, in the case of a Cash Management Agreement which has not been terminated as of such date, the total amount which would be owing to such party by the other party under such Cash Management Agreement in the event of the early termination as of such date of such Cash Management Agreement as a result of the occurrence of a default, event of default

or termination event (however specified or designated) with respect to such party thereunder or, in the case of a Cash Management Agreement which has been terminated as of such date, the total amount which is owing to such party by the other party under such Cash Management Agreement, in each case expressed in United States dollars; and

- (d) any amount of Secured Obligations of the Borrower denominated in any currency other than United States dollars shall be expressed as the U.S. Dollar Equivalent thereof.

14.21 Decision to Enforce Security

Upon the Security becoming enforceable in accordance with its terms, the Administrative Agent shall promptly so notify each of the Finance Parties. Any Lender may thereafter provide the Administrative Agent with a written request to enforce the Security. Forthwith after the receipt of such a request, the Administrative Agent shall seek the instructions of the Majority Lenders as to whether the Security should be enforced and the manner in which the Security should be enforced. In seeking such instructions, the Administrative Agent shall submit a specific proposal to the Finance Parties. From time to time, any Lender may submit a proposal to the Administrative Agent as to the manner in which the Security should be enforced and the Administrative Agent shall submit any such proposal to the Finance Parties for approval of the Majority Lenders. The Administrative Agent shall promptly notify the Finance Parties of all instructions and approvals of the Majority Lenders. If the Majority Lenders instruct the Administrative Agent to enforce the Security, each of the Finance Parties agree to accelerate the Secured Obligations owed to it to the extent permitted under the relevant Finance Document and in accordance with the relevant Finance Document.

14.22 Enforcement

The Administrative Agent reserves the sole right to enforce, instruct or otherwise deal with ~~(and instruct the Peruvian Collateral Agent to enforce or otherwise deal with)~~, the guarantee of the Borrower in Article 15, the Guarantees and the Security and to deal with the Obligors in connection therewith; provided, however, that the Administrative Agent shall so enforce, or otherwise deal with, the guarantee of the Borrower in Article 15, the Guarantees and the Security only as the Majority Lenders shall instruct.

14.23 Application of Cash Proceeds of Realization.

- (a) All Proceeds of Realization not in the form of cash shall be forthwith delivered to the Administrative Agent and disposed of, or realized upon, by the Administrative Agent in such manner as the Majority Lenders may approve so as to produce Cash Proceeds of Realization.
- (b) Subject to the claims, if any, of secured creditors of the Obligors whose security ranks in priority to the Security, all Cash Proceeds of Realization shall be applied and distributed, and the claims of the Finance Parties shall be deemed to have the relative priorities which would result in the Cash Proceeds of Realization being applied and distributed, as follows:

- (i) firstly, to the payment of all reasonable costs and expenses incurred by the Administrative Agent and the Peruvian Collateral Agent (including all legal fees and disbursements and restructuring advisory fees) in the exercise of all or any of the powers granted to it hereunder or under the DIP Charge, the Security Documents and the Guarantees or otherwise in connection with the CCAA Proceedings and in payment of all of the remuneration of any Receiver and all costs and expenses properly incurred by such Receiver (including all legal fees and disbursements) in the exercise of all or any powers granted to it under this agreement, the DIP Charge, the Guarantees and the Security Documents;
- (ii) secondly, in payment of all amounts of money borrowed or advanced by the Administrative Agent and the Peruvian Collateral Agent or such Receiver pursuant to the Security Documents;
- (iii) thirdly, to the payment ~~of~~ to the Lenders of accrued and unpaid and uncapitalized interest and fees forming part of the Secured Obligations under the DIP Tranche;
- (iv) fourthly, to the repayment to the Lenders of the outstanding principal amount borrowed, and the principal amount of interest and fees capitalized under, the DIP Tranche;
- (v) fifthly, to the payment to the Lenders of accrued and unpaid interest and fees under the Pre-Filing Tranche;
- (vi) ~~(iv) fourthly~~ sixthly, to the payment of the balance of the outstanding Secured Obligations of the Obligors (including holding as cash collateral to be applied against Secured Obligations which have not then matured) to the Finance Parties pro rata in accordance with their relative Exposures, which Cash Proceeds of Realization shall be applied by each Finance Party to its Exposure in such manner as it sees fit; and
- (vii) ~~(v)~~ the balance, if any, in accordance with Applicable Law.

14.24 Survival

The provisions of Articles 8, 10, 11, 14, 15 and Section 16.7 and all other provisions of this agreement which are necessary to give effect to each of the provisions of such Articles shall survive the permanent repayment in full of the Credit Facility and the termination of all of the Individual Commitments of the Lenders in connection therewith until the Secured Obligations Termination Date.

14.25 Entering Into Contracts

The Administrative Agent may enter into any Credit Document as agent for and on behalf of the Finance Parties and the Peruvian Collateral Agent may enter into any Peruvian Security Document as agent for and on behalf of the Finance Parties.

ARTICLE 15 GUARANTEE

15.1 Guarantee

The Borrower hereby unconditionally, absolutely and irrevocably guarantees the full and punctual payment to the Finance Parties, as and when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise of all of the Secured Obligations related to Cash Management Agreements and Secured Risk Management Agreements of each other Obligor in the same currency as the currency of such Secured Obligations, whether for principal, interest, fees, expenses, indemnities or otherwise.

15.2 Nature of Guarantee

The guarantee provided for in this Article 15 shall in all respects be a continuing, absolute, unconditional and irrevocable guarantee of payment when due and not of collection, and shall remain in full force and effect until the Secured Obligations Termination Date. The Borrower guarantees that such Secured Obligations described in Section 15.1 will be paid strictly in accordance with the terms thereof, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Finance Parties with respect thereto. The Borrower renounces all benefits of discussion and division. The liability of the Borrower hereunder shall be absolute, unconditional and irrevocable irrespective of, and without being released or limited by:

- (a) any lack of validity, legality or enforceability of any provision of this agreement;
- (b) the failure of any Finance Party
 - (i) to assert any claim or demand or to enforce any right or remedy against any Obligor or any other Person (including any other guarantor) under the provisions of any Finance Document, or otherwise, or
 - (ii) to exercise any right or remedy against any other guarantor of, or collateral securing, any such Secured Obligations;
- (c) any change in the time, manner or place of payment of, or in any term of, all or any such Secured Obligations, or any other extension, compromise, indulgence or renewal of any such Secured Obligation;
- (d) any reduction, limitation, variation, impairment, discontinuance or termination of such Secured Obligations for any reason (other than by reason of any payment which is not required to be rescinded), including any claim of waiver, release,

discharge, surrender, alteration or compromise, and shall not be subject to (and the Borrower hereby waives any right to or claim of) any defence or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, such Secured Obligations or otherwise (other than by reason of any payment which is not required to be rescinded);

- (e) any amendment to, rescission, waiver or other modification of, or any consent to any departure from, any of the terms of such Secured Obligations or any guarantees or security;
- (f) any addition, exchange, release, discharge, renewal, realization or non-perfection of any collateral security;
- (g) any amendment to, or waiver or release or addition of, or consent to departure from, any other guarantee held by the Finance Parties as security for any such Secured Obligations;
- (h) the loss of or in respect of or the unenforceability of any other guarantee or other security which the Finance Parties may now or hereafter hold in respect of such Secured Obligations, whether occasioned by the fault of a Finance Party or otherwise;
- (i) any change in the name of an Obligor or in the constating documents, capital structure, capacity or constitution of an Obligor, the bankruptcy or insolvency of an Obligor, the sale of any or all of an Obligor's business or assets or being consolidated, merged or amalgamated with any other Person; or
- (j) any other circumstance (other than final payment in full of the Secured Obligations) which might otherwise constitute a defence available to, or a legal or equitable discharge of any surety or any other guarantor.

Any Secured Obligation which may not be recoverable from the Borrower as guarantor shall be recoverable from the Borrower as principal debtor in respect thereof.

15.3 Finance Parties not Bound to Exhaust Recourse

The Finance Parties shall not be bound to exhaust their recourse against an Obligor or others or any security or other guarantees it may at any time hold before being entitled to payment hereunder from the Borrower.

15.4 Evidence of Secured Obligations

A written statement of the Administrative Agent as to the amount of any Secured Obligations described in Section 15.1, except for manifest error, be conclusive evidence and shall, in any event, be *prima facie* evidence against such Obligor as to the amount of such Secured Obligations.

15.5 Guarantee in Addition to Other Security

The guarantee provided for in this Article 15 shall be in addition to and not in substitution for any other guarantee or other security which the Finance Parties may now or hereafter hold in respect of the Secured Obligations, and the Finance Parties shall be under no obligation to marshal in favour of the Borrower any other guarantee or other security or any moneys or other assets which they may be entitled to receive or may have a claim upon.

15.6 Reinstatement

The guarantee provided for in this Article 15 and all other terms of this Article 15 shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment by the Borrower or any other Obligor of any of the Secured Obligations described in Section 15.1 is rescinded or must otherwise be returned by the recipients thereof by reason of the insolvency, bankruptcy or reorganization of the Borrower or such other Obligor or for any other reason, all as though such payment had not been made.

15.7 Waiver of Notice, Etc.

The Borrower hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Secured Obligations described in Section 15.1 and this agreement.

15.8 Subrogation Rights, Assignment and Postponement of Claim

The Borrower shall not exercise any rights which it may acquire by way of subrogation under this agreement, by any payment made hereunder or otherwise, until the Secured Obligations Termination Date. Any amount paid to the Borrower on account of any such subrogation rights prior to the Secured Obligations Termination Date shall be held in trust for the benefit of the Finance Parties and shall immediately be paid to the Finance Parties and credited and applied against the Secured Obligations, whether matured or unmatured, in accordance with the terms hereof; provided, however, that if the Secured Obligations Termination Date has occurred, the Borrower shall be subrogated to the rights of the Finance Parties against the applicable Obligor with respect to all Secured Obligations described in Section 15.1 and, at the Borrower's request, the Finance Parties will execute and deliver to the Borrower appropriate documents (without recourse and without representation or warranty, except that it has not released, assigned or encumbered any such subject Secured Obligations) necessary to evidence the transfer by subrogation to the Borrower of all such Secured Obligations.

15.9 Advance After Certain Events

All advances, renewals and credits made or granted hereunder or in connection herewith by the Finance Parties purportedly to or for any Obligor after the bankruptcy or insolvency of such Obligor but before the Finance Parties have received notice thereof, shall be deemed to form part of the Secured Obligations described in Section 15.1, and all advances, renewals and credits obtained from the Finance Parties hereunder purportedly by or on behalf of

any Obligor shall be deemed to form part of such Secured Obligations, notwithstanding any lack or limitation of power, incapacity or disability of such Obligor or of the directors or agents thereof and notwithstanding that such Obligor may not be a legal or suable entity and notwithstanding any irregularity, defect or informality in the obtaining of such advances, renewals or credits, whether or not the Finance Parties had knowledge thereof. Any such advance, renewal or credit which may not be recoverable from the Borrower as guarantor shall be recoverable from the Borrower as principal debtor in respect thereof.

ARTICLE 16 MISCELLANEOUS

16.1 Notices

All notices and other communications provided for herein shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by telefacsimile, charges prepaid, at or to the applicable addresses, telefacsimile numbers or email address (which email notice shall be sent with a "read receipt" request to qualify as a valid notice hereunder), as the case may be, set out opposite the parties' name on the signature page hereof or at or to such other address or addresses, telefacsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Banking Day and such delivery is received before 4:00 p.m. (Toronto time); otherwise, it shall be deemed to have been validly and effectively given on the Banking Day next following such date of delivery. Any communication which is transmitted by telefacsimile or email as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Banking Day and such transmission was received before 4:00 p.m. (Toronto time); otherwise, it shall be deemed to have been validly and effectively given on the Banking Day next following such date of transmission. Any party sending a notice hereunder by telefacsimile or email shall, in order to constitute valid notice hereunder, have received a confirmation of receipt from the intended recipient's telecopier or email server.

16.2 Severability

Any provision hereof which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

16.3 Counterparts

This agreement may be executed in one or more counterparts, and by means of facsimile or other electronic form, including PDF, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

16.4 Successors and Assigns

This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

16.5 Assignment

- (a) Neither the Credit Documents nor the benefit thereof may be assigned by the Borrower.
- (b) A Lender may at any time sell to one or more other persons (“**Participants**”) participating interests in any credit outstanding hereunder, any commitment of such Lender hereunder or any other interest of the Lender hereunder. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender’s obligations under this agreement to the Borrower shall remain unchanged and such Lender shall remain solely entitled to enforce its rights hereunder, such Lender shall remain solely responsible for the performance thereof and the Borrower shall continue to be obligated to such Lender in connection with such Lender’s rights under this agreement. The Borrower agrees that if amounts outstanding under this agreement are due and unpaid, or shall have been declared to be or shall have become due and payable upon the occurrence of an Event of Default, or any Default which might mature into an Event of Default, each Participant shall be deemed to have the right of setoff in respect of its participating interest in amounts owing under this agreement to the same extent as if the amount of its participating interest were owing directly to it as the relevant Lender under this agreement. The Borrower also agrees that each Participant shall be entitled to the benefits of Article 8 with respect to its participation hereunder and for the purposes of Article 8 such Participant shall be deemed to be a Lender to the extent of such participation, provided, that such Participant shall have complied with obligations of a Lender provided in Article 8 and that no Participant shall be entitled to receive any greater amount pursuant to such Article than the relevant Lender would have been entitled to receive in respect of the amount of the participation transferred by the relevant Lender to such Participant had no such transfer occurred. Notwithstanding any of the foregoing, no Lender shall sell Glencore a participating interest as set forth above unless a pro rata participating interest is purchased by Glencore from each other Lender.
- (c) With the prior written consent of, (x) the Borrower (which consent shall not be required (i) if such sale is to one or more other Lenders or to an Affiliate of any Lender unless such sale results in an increased cost to the Borrower, including any liability under Sections 8.2 or 8.6 or (ii) in circumstances where an Event of Default has occurred and is continuing), (y) the Administrative Agent and (z) the Issuing Lender, a Lender may at any time sell all or any part of its rights and obligations under the Credit Documents to one or more Eligible Assignees (“**Purchasing Lenders**”). Upon such sale, the Lender shall, to the extent of such sale, be released from its obligations under the Credit Documents and each of the

Purchasing Lenders shall become a party to the Credit Documents to the extent of the interest so purchased provided, however, no Lender that is a Defaulting Lender shall be released from any obligation in respect of any damages arising in connection with it being or becoming a Defaulting Lender. Any such assignment shall be for Individual Commitments of at least \$5,000,000 or such lesser amounts as would represent the entire interest of such Lender. Upon such sale, the Lender shall either retain an Individual Commitment of \$5,000,000 or have assigned the entirety of its Individual Commitment. Any such assignment by a Lender shall not be effective unless and until such Lender has paid to the Administrative Agent an assignment fee in the amount of \$5,000 for each Purchasing Lender, unless and until the Purchasing Lender has executed an instrument substantially in the form of Schedule ~~C~~B hereto whereby the Purchasing Lender has agreed to be bound by the terms of the Credit Documents as a Lender and has agreed to a specific Individual Commitment and a specific address and telefacsimile number for the purpose of notices as provided in Section 16.1 and unless and until the requisite consents to such assignment have been obtained, unless and until a copy of a fully executed copy of such instrument has been delivered to each of the Administrative Agent and the Borrower. Upon any such assignment becoming effective, Schedule A hereto shall be deemed to be amended to include the Purchasing Lender as a Lender with the specific Individual Commitment, address and telefacsimile number as aforesaid and the Individual Commitment of the Lender making such assignment shall be deemed to be reduced by the amount of the Individual Commitment of the Purchasing Lender. Notwithstanding the foregoing, no consent of any Person shall be required, nor shall any assignment fee be payable, where a Lender assigns all or any part of its rights and obligations hereunder to one or more other Lenders or Affiliates of a Lender (unless such sale results in an increased cost to the Borrower, including any liability under Sections 8.2 or 8.6, in which case, the consent of the Borrower shall be required unless a Default has occurred and is continuing) or pledges or assigns its rights hereunder to a Federal Reserve Bank of the United States, the Bank of Canada, the European Central Bank or any other central bank. Notwithstanding any of the foregoing, no Lender shall sell Glencore any of its commitments or obligations hereunder unless ~~unless~~ a pro rata interest is purchased by Glencore from each other Lender.

- (d) The Borrower authorizes the Administrative Agent and the Lenders to disclose to any Participant or Purchasing Lender (each, a “**Transferee**”) and any prospective Transferee or any professional advisor of any Transferee or prospective Transferee and authorizes each of the Lenders to disclose to any other Lender any and all financial information in their possession concerning the Obligors which has been delivered to them by or on behalf of the Borrower pursuant to this agreement or which has been delivered to them by or on behalf of the Borrower in connection with their credit evaluation of the Obligors prior to becoming a party to this agreement, so long as any such Transferee agrees not to disclose any confidential, non-public information to any person other than its non-brokerage affiliates, employees, accountants or legal counsel, unless required by law and authorizes each of the Lenders to disclose to any other Lender and to any Person

where disclosure is required by law, regulation, legal process or regulatory authority (for certainty under any circumstance and not solely in connection with assignment of rights).

16.6 Disclosure

- (a) Each of the Administrative Agent and the other Finance Parties agrees to use all Information solely for the purposes of providing services that are the subject of the Finance Documents and shall treat confidentially all such Information, except that Information may be disclosed (a) to it, its Affiliates and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (where the Persons to whom disclosure is made will be informed of the confidential nature of the Information and agree to be bound by the provisions of this Section 16.6 or enter into an agreement containing provisions substantially the same as the provisions of this Section 16.6), (b) to the extent requested, and where such disclosure is required by Applicable Law, by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other Finance Party, (e) to Glencore plc and its Subsidiaries (collectively, "**Glencore**"), (f) in connection with the exercise of any remedies under any Credit Document or any action or proceeding relating to any Credit Document or the enforcement of rights under the Credit Documents, (g) subject to an agreement containing provisions substantially the same as those of this Section, to (x) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (y) any actual or prospective counterparty (or its advisors) to any Risk Management Agreement, credit-linked note or similar transaction relating to the Borrower and the Secured Obligations, and any credit insurance or reinsurance provider relating to the Borrower and its Secured Obligations, (h) with the consent of the Borrower or (i) to the extent Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent or any Finance Party on a non-confidential basis from a source other than an Obligor. Notwithstanding the foregoing, the Borrower hereby consents and agrees that the Credit Parties and Glencore shall be permitted (i) to share all Information with one another and (ii) to discuss (whether verbally or in writing) proposals to refinance the Secured Obligations provided the Borrower shall be afforded a reasonable opportunity to participate in such refinancing dialogue among the Credit Parties and Glencore (provided further that the Borrower's refusal or inability to participate in such dialogue between the Credit Parties and Glencore shall not invalidate the rights of the Credit Parties and Glencore under this Section 16.6).
- (b) For purposes of this Section, "**Information**" means all information received in connection with any Credit Document from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that was available to the Administrative Agent or any other Finance Party on a non-confidential basis before such receipt. Any Person

required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if the Person has exercised the same degree of care to maintain the confidentiality of the Information as the Person would accord to its own confidential information. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the Credit Facility as is necessary to assign unique identifiers, it being understood that the Person to whom disclosure is made will be informed of the confidential nature of the Information and instructed to make available to the public only such Information as the Person normally makes available in the course of its business of assigning identification numbers.

- (c) In addition, the Administrative Agent may provide customary information including details of the Obligors, the amount, term, purpose, pricing and repayment requirements of the Credit Facility and the principal covenants contained in this Agreement to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

16.7 Judgment Currency

- (a) If, for the purpose of obtaining or enforcing judgment against the Borrower in any court in any jurisdiction, it becomes necessary to convert into a particular currency (such currency being hereinafter in this Section 16.7 referred to as the “**Judgment Currency**”) an amount due in another currency (such other currency being hereinafter in this Section 16.7 referred to as the “**Indebtedness Currency**”) under this agreement, the conversion shall be made at the rate of exchange prevailing on the Banking Day immediately preceding:
 - (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of a jurisdiction that will give effect to such conversion being made on such date; or
 - (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 16.7(a)(ii) being hereinafter in this Section 16.7 referred to as the “**Judgment Conversion Date**”).
- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 16.7(a)(ii), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Borrower shall pay to the appropriate judgment creditor or creditors such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Indebtedness Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.

- (c) Any amount due from the Borrower under the provisions of Section 16.7(b) shall be due to the appropriate judgment creditor or creditors as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this agreement.
- (d) The term “rate of exchange” in this Section 16.7 means the Exchange Equivalent.

16.8 Contractual Recognition of Bail-In

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including:
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document applicable solely to the relevant Party to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

16.9 Illegality

If any Lender determines, acting reasonably, that any Applicable Law has made it unlawful, or that any Official Body (other than a first nations aboriginal government or other analogous Official Body) has asserted that it is unlawful, for such Lender to hold or benefit from a Guarantee or Lien over real property, as the case may be, pursuant to any law of any applicable country, such Lender may notify the Administrative Agent and disclaim any benefit of such Guarantee or Lien over real property, as the case may be, to the extent of such illegality; provided, that such determination or disclaimer shall not invalidate or render unenforceable such Guarantee or Lien over real property, as the case may be, for the benefit of any other Lender.

16.10 Further Assurances

The Borrower shall, and shall cause each other Obligor to, from time to time and at all times hereafter, upon every reasonable request of the Administrative Agent, make, do, execute, and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be necessary in the opinion of the Administrative Agent, acting reasonably, for more effectually implementing and carrying out the true intent and

meaning of the Credit Documents or any agreement delivered pursuant hereto or thereto and such additional security, legal opinions, consents, approvals, acknowledgements, undertakings, non-disturbance agreements, directions and negotiable documents of title in connection with the property and assets of the Obligors, in form and substance satisfactory to the Administrative Agent, as the Administrative Agent may from time to time request, to ensure (i) that all Secured Assets are subject to a Lien in favour of the Administrative Agent and (ii) the intended first ranking priority of such Liens (subject to Permitted Liens which by their nature would constitute prior ranking security).

16.11 WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

16.12 Anti-Money Laundering Legislation.

The Borrower acknowledges that, pursuant to Anti-Money Laundering Legislation, the Finance Parties may be required to obtain, verify and record information regarding each Obligor, their respective directors, authorized signing officers, direct or indirect shareholders or other persons in Control of such Obligor, and the transactions contemplated by the Finance Documents, and disclose such information to Official Bodies. The Borrower consents to such information being obtained, verified, recorded and disclosed to Official Bodies and agrees to promptly provide to the Finance Parties all such information, including supporting documentation and other evidence, as may be reasonably requested by a Finance Party, or any prospective Transferee or in order to comply with Anti-Money Laundering Legislation.

16.13 Entire Agreement

This agreement and the agreements referred to herein and delivered pursuant hereto (~~including the Co-Lead Arrangers Fee Letter~~) constitute the entire agreement between the parties hereto and supersede any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF the parties hereto have executed and delivered this agreement on the date first written above.

Trevali Mining Corporation
1900 – 999 West Hastings Street
Vancouver, BC V6C 2W2

TREVALI MINING CORPORATION

Attention: Steven Molnar
Chief Legal Officer
Email: smolnar@trevali.com

By: _____
Name:
Title:

Attention: Matthew Quinlan
Chief Financial Officer
Email: mquinlan@trevali.com

By: _____
Name:
Title:

The Bank of Nova Scotia **THE BANK OF NOVA SCOTIA, as**
 Global Banking and Markets—Loan Syndications **Administrative Agent**
 – Agency Services
 40 King Temperance Street West, 62nd Floor
 Toronto, Ontario M5W 2X6M5H 1Y4

Attention: ~~Managing Director~~ Head of Agency
Services
 Email: Agency.services@scotiabank.com

By: _____
 Name:

Title:

By: _____
 Name:
 Title:

The Bank of Nova Scotia
Corporate Banking - Global Mining
Special Accounts Management
40 King Street West, 62nd Floor
Toronto, Ontario M5W 2X6

**THE BANK OF NOVA SCOTIA, as
Lender**

Attention: Justin Mitges, Director, Corporate Banking
Email: stephen.maeneiljustinl.mitges@scotiabank.com

By: _____
Name:
Title:

Attention: Rocco Fabiano, Vice President
Email: rocco.fabiano@scotiabank.com

By: _____
Name:
Title:

Scotiabank Peru S.A.A.
Av Dionisio Derteano 102, Piso 3,
San Isidro, Lima,
Peru 51

**SCOTIABANK PERU S.A.A., as
Collateral Agent**

Attention: Lorena Angélica Guiulfo Vera and
Claudia Patricia Quiroz Chavez

Email: lorena.guiulfo@scotiabank.com.pe
cotiab.quiroz@scotiabank.com.pe

By: _____

Name:

By: _____

Name:

Title:

HSBC Bank Canada
70 York St, 9th Floor,
Toronto, Ontario M5J 1S9

Attention: Harjeet Sadera
Telefax: (416) 868-3817
Email: Harjeet_Sadera@hsbc.ca

HSBC BANK CANADA, as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

Société Générale
245 Park Avenue
New York, New York 10167

SOCIÉTÉ GÉNÉRALE, as Lender

Attention: Alvaro Belevan
Telefax:
Email:

By: _____
Name:
Title:

By: _____
Name:
Title:

Bank of Montreal
~~1 First Canadian Place, 4th Floor~~
100 King Street West, 19th Floor
Toronto, Ontario M5X 1H3 1A1

BANK OF MONTREAL, as Lender

Attention: ~~Ben Rough~~Michael M.
Johnson
~~Telefax: 604 443-1408~~
Email:
~~Ben.Rough~~michaelm.johnson@bmo.com

By: _____
Name:
Title:

By: _____
Name:
Title:

The Toronto-Dominion Bank
66 Wellington Street West
TD Tower, 9th Floor
Toronto, Ontario M5K 1A3

Attention: Liza Straker
Telefax: 416-944-5164
Email: Liza.Straker@tdsecurities.com

**THE TORONTO-DOMINION BANK, as
Lender**

By: _____
Name:
Title:

By: _____
Name:
Title:

National Bank of Canada
130 King Street West, 32nd Floor
Toronto, Ontario M5X 1J9

Attention: Lauren Reid
Telefax: 416-869-6545
Email: lauren.reid@nbc.ca

NATIONAL BANK OF CANADA, as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

ING Capital LLC
1133 Avenue of the Americas
8th Floor
New York, NY, 10036
Attention: Remko van de Water
Telefax: 646-424-7484
Email: Remko.van.de.Water@ing.com

ING CAPITAL LLC, as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

**SCHEDULE A
LENDERS AND INDIVIDUAL COMMITMENTS**

Credit Facility

<u>RT-Lenders</u>	<u>Pre-Filing Tranche Individual Commitments</u>		<u>DIP Tranche Individual Commitments</u>
	<u>Loans</u> (U.S. Dollars)	<u>Existing Letters</u> (Canadian Dollars)	<u>U.S. Dollars</u>
The Bank of Nova Scotia	18,856,849.74	\$ 26,072,727.28 697.0 36.36	3,600,000.00
HSBC Bank Canada	18,856,849.74	\$ 26,072,727.28 697.0 36.36	3,600,000.00
Société Générale	15,714,041.41	\$ 21,727,272.72 580.8 63.64	3,000,000.00
Bank of Montreal	9,428,424.85	\$ 13,036,363.64 348.5 18.18	1,800,000.00
The Toronto-Dominion Bank	7,857,020.72	\$ 10,863,636.36 290.4 31.82	1,500,000.00
National Bank of Canada	7,857,020.72	\$ 10,863,636.36 290.4 31.82	1,500,000.00
ING Capital LLC	7,857,020.72	\$ 10,863,636.36 290.4 31.82	1,500,000.00
Total	86,427,227.90	\$119,500,000.00 3,194,750.00	16,500,000.00

**SCHEDULE B
COMPLIANCE CERTIFICATE**

TO: **THE BANK OF NOVA SCOTIA, as administrative agent**

I, _____, the [senior financial officer] of Trevali Mining Corporation (the "Borrower"), hereby certify that, not in a personal capacity and without personal liability:

1. I am the duly appointed [senior financial officer] of the Borrower named in the second amended and restated credit agreement dated as of August 6, 2020 (as amended to the date hereof, the "Credit Agreement") between the Borrower, the Lenders named therein and The Bank of Nova Scotia, as administrative agent of the Lenders and as such I am providing this Certificate for and on behalf of the Borrower pursuant to the Credit Agreement.
2. I am familiar with and have examined the provisions of the Credit Agreement including, without limitation, those of Article 10, Article 11 and Article 13 therein.
3. To the best of my knowledge, information and belief and after due inquiry, no Default has occurred and is continuing.
4. As at or for the relevant period ending _____, the amounts and financial ratios as contained in Sections 11.1(m), (n), (o) and (p) of the Credit Agreement are as follows and detailed calculations thereof are attached hereto:¹

	Actual Amount or Percentage		Required Amount or Percentage
(a) Net Senior Leverage Ratio	(b)	(e)	[<3.25:1] [<u><2.75:1</u>] [<u><2.50:1</u>]
(d) Total Net Leverage Ratio	(e)	(f)	[<4.25:1] [<u><3.75:1</u>] [<u><3.50:1</u>]
(g) Interest Expense Coverage Ratio	(h)	(i)	≥1.00:1
(j) Tangible Net Worth	(k)	(l)	See worksheet

The attached calculation worksheet as at the relevant period ending _____ accurately sets out the information therein contained.

5. Attached hereto is

- (a) supplemental disclosure in respect of the Perfection Certificates to the extent mandated pursuant to Section 11.1(b)(iii); and

¹In addition to the calculation worksheet, the Borrower shall provide detailed calculations demonstrating its calculation of Net Senior Secured Indebtedness, Total Indebtedness, Rolling EBITDA, Rolling Interest Expense and Tangible Net Worth for the purposes hereof.

-2-

(b) to the extent that the chart most recently provided is inaccurate, a chart setting out the corporate structure of the Borrower and indicating intercorporate share ownership and material mine ownership.

6. Unless the context otherwise requires, capitalized terms in the Credit Agreement which appear herein without definitions shall have the meanings ascribed thereto in the Credit Agreement.

DATED this _____ day of _____, 20_____.

(Signature)

(Name - please print)

(Title of Senior Financial Officer)

CALCULATION WORKSHEET

Following the definitions and calculations more fully defined in the Credit Agreement:

Net Senior Secured Leverage Ratio

Senior Secured Indebtedness	\$ _____	(A)
Unrestricted Cash	\$ _____	(B)
Rolling EBITDA	\$ _____	(C)
Net Senior Secured Leverage Ratio (Actual)	\$ _____	((A-B):C)

~~Net Senior Secured Leverage Ratio (Max. Permitted): [$\leq 3.25:1$] [$\leq 2.75:1$] [$\leq 2.50:1$]~~

Compliance [Yes]/[No]

Total Net Leverage Ratio

Total Indebtedness	\$ _____	(A)
Unrestricted Cash	\$ _____	(B)
Rolling EBITDA	\$ _____	(C)
Total Net Leverage Ratio (Actual)	\$ _____	((A-B):C)

Compliance [Yes]/[No]

Tangible Net Worth (Min. Required): Sum of (E) plus (G)

50% of positive quarterly Net Income beginning with Fiscal Quarter ending on December 31, 2020	\$	(G)
Tangible Net Worth (Actual)	\$	(F)
TNW Base	\$	(E)

Tangible Net Worth

Compliance [Yes]/[No]

Interest Expense Coverage Ratio (Min. Permitted) 4.00:1

Interest Expense Coverage Ratio (Actual)	\$	(C:D)
Rolling Interest Expense	\$	(B)
Rolling EBITDA	\$	(E)

Interest Expense Coverage Ratio

Compliance [Yes]/[No]

Total Net Leverage Ratio (Max. Permitted): <1.25:1 <3.75:1 <3.50:1)
--	---

~~SCHEDULE C~~
SCHEDULE C
FORM OF ASSIGNMENT

Dated _____, 20__

Reference is made to the second amended and restated credit agreement dated as of August 6, 2020 (as amended to the date hereof, the “**Credit Agreement**”) between Trevali Mining Corporation, as borrower, the Lenders named therein and The Bank of Nova Scotia, as administrative agent of the Lenders (in that capacity, the “**Administrative Agent**”). Terms defined in the Credit Agreement are used herein as therein defined.

_____ (the “**Assignor**”) and _____ (the “**Assignee**”) agree as follows:

- (a) The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, a _____% interest in and to all of the Assignor’s rights and obligations under the Credit Agreement with respect to the Credit Facility (the “**Facility**”) as of the Effective Date (as defined below) (including, without limitation, such percentage interest in the Assignor’s Individual Commitment with respect to the Facility as in effect on the Effective Date, the credit extended by the Assignor under the Facility and outstanding on the Effective Date and the corresponding rights and obligations of the Assignor under all of the Credit Documents as it relates to the Facility).
- (b) The Assignor (i) represents and warrants that as of the date hereof its Individual Commitment with respect to the Facility is \$ _____ (without giving effect to assignments thereof which have not yet become effective, including, but not limited to, the assignment contemplated hereby), and the aggregate outstanding amount of credit extended by it under the Facility is \$ _____ (without giving effect to assignments thereof which have not yet become effective, including, but not limited to, the assignment contemplated hereby); (ii) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (iii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any other instrument or document furnished pursuant thereto; (iv) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Obligor or the performance or observance by the Obligors of any of their obligations under the Credit Documents or any other instrument or document furnished pursuant thereto; and (v) gives notice to the Administrative Agent and the Borrower of the assignment to the Assignee hereunder.
- (c) The effective date of this Assignment (the “**Effective Date**”) shall be the later of _____ and the date on which a copy of a fully executed copy of this

Assignment has been delivered to the Borrower and the Administrative Agent in accordance with Section 16.5(c) of the Credit Agreement.

- (d) The Assignee hereby agrees to the specific Individual Commitment under the Facility of \$_____ and to the address and telefacsimile number set out after its name on the signature page hereof for the purpose of notices as provided in Section 16.1 of the Credit Agreement.
- (e) As of the Effective Date (i) the Assignee shall, in addition to any rights and obligations under the Credit Documents held by it immediately prior to the Effective Date, have the rights and obligations under the Credit Documents that have been assigned to it pursuant to this Assignment and (ii) the Assignor shall, to the extent provided in this Assignment, relinquish its rights and be released from its obligations under the Credit Documents.
- (f) The Assignor and Assignee shall make all appropriate adjustments in payments under the Credit Documents for periods prior to the Effective Date directly between themselves.

This Assignment shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

[ASSIGNOR]

By: _____
Name:
Title:

[ASSIGNEE]

By: _____
Name:
Title:

Address

Attention: _____
Telefax: _____

Acknowledged and agreed to as of this _____ day of _____, 20_____.

**THE BANK OF NOVA SCOTIA, as
Administrative Agent**

By: _____
Name:
Title:

By: _____
Name:
Title:

Acknowledged and agreed to as of this _____ day of _____, 20_____.

**THE BANK OF NOVA SCOTIA, as Issuing
Lender**

By: _____
Name:
Title:

By: _____
Name:
Title:

²¹TREVALI MINING CORPORATION

By: _____
Name:
Title:

²¹Only required if no Event of Default has occurred and is continuing.

~~SCHEDULE D~~
SCHEDULE D
FORM OF DRAWDOWN NOTICE

TO: The Bank of Nova Scotia, as Administrative Agent

~~WBO~~Global Wholesale Operations – Loan Administration and Agency Services
 62nd Floor, 40150 King Street West, 6th Floor
 Toronto, Ontario ~~M5W 2X6~~M5H 1J9
 Attention: ~~Director, Loan Agency and Operations~~Senior Manager
 Facsimile: ~~(416) 866-5991~~416-866-5991
 Email: corporatelending.agencyops@scotiabank.com

With a copy to:

~~Global Banking and Markets~~—Loan Syndications – Agency Services
 40 KingTemperance Street West, 55th6th Floor
 Toronto, Ontario ~~M5H 1H1~~Y4
 Attention: Head Agency Services
 Facsimile: (416) 866-3329
 Email: agency.services@scotiabank.com

RE: Second amended and restated credit agreement dated August 6, 2020 (as amended to the date hereof, the “**Credit Agreement**”) between Trevali Mining Corporation, as borrower, the Lenders named therein and The Bank of Nova Scotia, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably notifies you that it wishes to draw down under the ~~Credit Facility~~DIP Tranche on **[date of drawdown]** as follows:by way of a Loan in the amount of \$~~[]~~.

The Borrower represents and warrants to the Lenders that (i) the proceeds of the Loan (the “Loan Proceeds”) requested hereby shall be used for the purpose of [insert description of use of proceeds] and (ii) that such purpose has been fully and accurately accounted for in the most recent DIP Budgets delivered to the Administrative Agent. The undersigned hereby certifies to the Administrative Agent that \$[] of the Loan Proceeds will be on-lent to RPZC pursuant to the Intercorporate Loan Agreement and attached hereto is a certified true copy of a duly passed resolution of the board of RPZC approving of the incurrence of Indebtedness pursuant to the Intercorporate Loan Agreement in a corresponding amount.

Availment Option:	_____
Amount:	_____
If LIBOR Loan, Interest Period:	_____
If Letter, (a copy being attached hereto):	_____

Type of Letter (Financial or Non-Financial):	_____
Date of Issuance:	_____
Named Beneficiary:	_____
Maturity Date:	_____
Amount:	_____
Other Terms:	_____

[You are hereby irrevocably authorized and directed to pay the proceeds of the drawdown to _____ and this shall be your good and sufficient authority for so doing.]

No Default or Event of Default (other than the Forbearance Events of Default subject to the Forbearance) has occurred and is continuing nor will arise immediately after giving effect to or as a result of the extension of credit hereby requested and the undersigned hereby confirms the truth and accuracy of the representations and warranties set forth in Article 10 of the Credit Agreement in all material respects (except that any representation and warranty which is already qualified as to materiality or by reference to any Material Adverse Effect shall be true and correct in all respects) on the date hereof except to the extent any such representation and warranty expressly relates solely to an earlier date. The Borrower represents and warrants to the Administrative Agent that, ~~as of the date of this drawdown notice, (i) it has less than an aggregate \$20,000,000 in deposit or investment accounts outside the ordinary course of business and (ii) that it is not drawing down under the Credit Facility solely for the purpose of accumulating cash in excess of an aggregate \$20,000,000 in and/or maintaining cash in deposit or investment accounts outside the ordinary course of business.~~

All capitalized terms defined in the Credit Agreement and used herein shall have the meanings ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, 20__.

TREVALI MINING CORPORATION

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE D
[INTENTIONALLY DELETED]

SCHEDULE E
FORM OF ROLLOVER NOTICE [INTENTIONALLY DELETED]

TO: The Bank of Nova Scotia, as Administrative Agent

WBO—Loan Administration and Agency Services
62nd Floor, 40 King Street West
Toronto, Ontario M5W 2X6
Attention: Director, Loan Agency and Operations
Facsimile: (416) 866-5991

With a copy to:

Global Banking and Markets—Loan Syndications
40 King Street West, 55th Floor
Toronto, Ontario M5H 1H1
Attention: Head Agency Services
Facsimile: (416) 866-3329

RE: Second amended and restated credit agreement dated August 6, 2020 (as amended to the date hereof, the “Credit Agreement”) between Trevali Mining Corporation, as borrower, the Lenders named therein and The Bank of Nova Scotia, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably requests a rollover of outstanding credit under the Credit Facility on [date of rollover] as follows:

Maturity Date of Maturing LIBOR Loan	_____
Principal Amount of Maturing LIBOR Loan	\$ _____
Portion Thereof to be Replaced	\$ _____
Interest Period of New LIBOR Loan	_____ months

No Default or Event of Default has occurred and is continuing nor will arise immediately after giving effect to or as a result of the extension of credit hereby requested and the undersigned hereby confirms the truth and accuracy of the representations and warranties set forth in Article 10 of the Credit Agreement in all material respects (except that any representation and warranty which is already qualified as to materiality or by reference to any Material Adverse Effect shall be true and correct in all respects) on the date hereof except to the extent any such representation and warranty expressly relates solely to an earlier date.

All capitalized terms defined in the Credit Agreement and used herein shall have the meaning ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, 20____.

TREVALI MINING CORPORATION

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE F
FORM OF CONVERSION NOTICE

TO: ~~The Bank of Nova Scotia, as Administrative Agent~~

~~WBO—Loan Administration and Agency Services~~
~~62nd Floor, 40 King Street West~~
~~Toronto, Ontario M5W 2X6~~
~~Attention: Director, Loan Agency and Operations~~
~~Faeximile: (416) 866-5991~~

With a copy to:

~~Global Banking and Markets—Loan Syndications~~
~~40 King Street West, 55th Floor~~
~~Toronto, Ontario M5H 1H1~~
~~Attention: Head Agency Services~~
~~Faeximile: (416) 866-3329~~

RE: ~~Second amended and restated credit agreement dated August 6, 2020 (as amended to the date hereof, the "Credit Agreement") between Trevali Mining Corporation, as borrower, the Lenders named therein and The Bank of Nova Scotia, as administrative agent of the Lenders~~

~~Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably requests a conversion of outstanding credit under the Credit Facility on [date of conversion] as follows:~~

Converting From	Converting Into
LIBOR Loans	LIBOR Loans
Maturity Date of _____ Maturing LIBOR Loan	Principal \$ _____ Amount of New LIBOR Loan
Principal Amount of \$ _____ Maturing LIBOR Loan	Interest _____ months Period of New LIBOR Loan
Portion Thereof to \$ _____ be converted	
Base Rate Loans	Base Rate Loan
Principal Amount \$ _____ of Base Rate Loan to be converted	Principal \$ _____ Amount of New Base Rate Loan
Portion Thereof \$ _____ to be converted	

No Default or Event of Default has occurred and is continuing nor will arise immediately after giving effect to or as a result of the extension of credit hereby requested and the undersigned hereby confirms the truth and accuracy of the representations and warranties set forth in Article 10 of the Credit Agreement in all material respects (except that any representation and warranty which is already qualified as to materiality or by reference to any Material Adverse Effect shall be true and correct in all respects) on the date hereof except to the extent any such representation and warranty expressly relates solely to an earlier date.

All capitalized terms defined in the Credit Agreement and used herein shall have the meaning ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, 20_____.

TREVALI MINING CORPORATION

By: _____
Name:
Title:

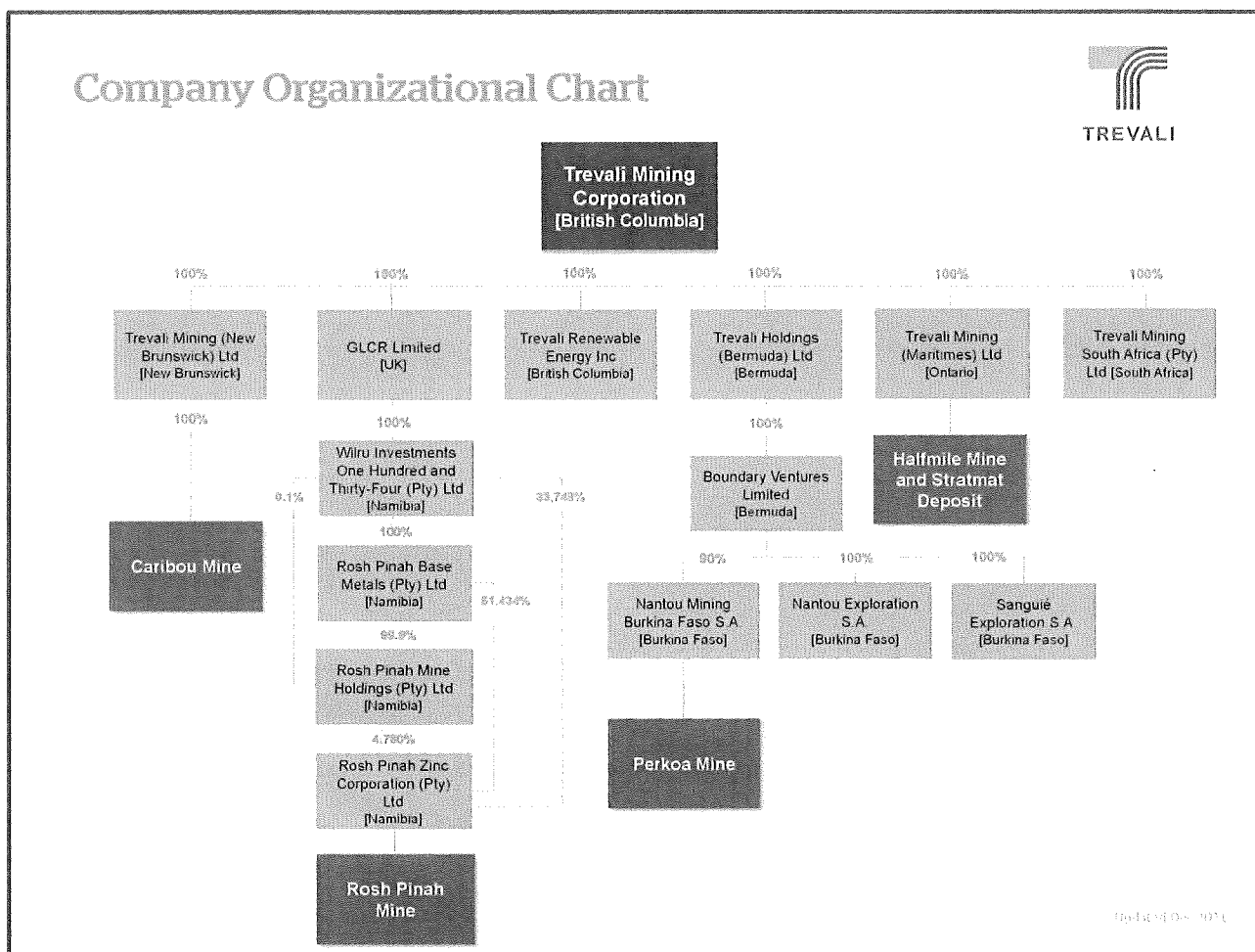
By: _____
Name:
Title:

~~SCHEDULE G~~
~~SCHEDULE G~~
CORPORATE STRUCTURE

(See attached)

| 286051.00072/448686332-4119213578.6

Second Amended an



|

| ~~286051.00072/148927691.7~~
286051.00072/148927691.7

Second Amended and Restated Credit Agreement - Trevali

~~SCHEDULE H~~
SCHEDULE H
APPLICABLE RATES

PRE-FILING TRANCHE

Base Rate Loan interest rate margin	LIBOR Loan interest rate margin and Financial Letter issuance fee rate	Standby Fee rate	Non-Financial Existi ng Letter issuance fee rate
4.50% per annum	5.50% per annum	1.25% per annum	3.66% per annum

DIP TRANCHE

Base Rate Loan interest rate margin	Standby Fee rate
8.00% per annum	1.25% per annum

~~SCHEDULE~~
SCHEDULE 1
REIMBURSEMENT INSTRUMENT

TO: The Bank of Nova Scotia, as Administrative Agent

~~WBO~~Global Wholesale Operations – Loan Administration and Agency Services
 62nd Floor, 40 King Street West, 6th Floor
 Toronto, Ontario M5W 2X6/M5H 1J9
 Attention: Director, Loan Agency and Operations/Senior Manager
 Facsimile: (416) 866-5991/416-866-5991
 Email: corporatelending.agencyops@scotiabank.com

With a copy to:

Global Banking and Markets – Loan Syndications – Agency Services
 40 King Temperance Street West, 55th6th Floor
 Toronto, Ontario M5H 4H4/Y4
 Attention: Head Agency Services
 Facsimile: (416) 866-3329
 Email: agency.services@scotiabank.com

**WITH A
 COPY TO:**

RE: Second amended and restated credit agreement dated August 6, 2020 (as amended to the date hereof, the “**Credit Agreement**”) between Trevali Mining Corporation, as borrower, the Lenders named therein and The Bank of Nova Scotia, as administrative agent of the Lenders

For good and valuable consideration, the undersigned hereby agrees to immediately reimburse the Issuing Lender (as defined in the Credit Agreement) the amount of each and any demand or other request for payment presented to and paid by the Issuing Lender in accordance with each Letter (as defined in the Credit Agreement) issued by the Issuing Lender on behalf of the undersigned (even if, under laws applicable to the rights of the beneficiary of such Letter, a demand or other request for payment is validly presented after expiry of such Letter).

DATED as of the _____ day of _____, _____.
 [NAME OF SUBSIDIARY]

~~SCHEDULE~~ **SCHEDULE J**
GUARANTEES AND SECURITY DOCUMENTS

1. Guarantees

- (a) Downstream Guarantee (contained in Article 15 of the Credit Agreement) granted by Trevali Mining Corporation (the “**Borrower**”) in favour of The Bank of Nova Scotia, as administrative agent, (the “**Administrative Agent**”), governed by the laws of the Province of Ontario.
- (b) Guarantee Agreement granted by each of Trevali Mining (New Brunswick) Ltd. (“**Trevali NB**”), Trevali Holdings Bermuda Ltd. (“**Trevali Bermuda**”), and Trevali Peru S.A.C. (“**Trevali Peru**”), in favour of the Administrative Agent, governed by the laws of the Province of Ontario.
- (c) Guarantee Agreement granted by each of Boundary Ventures Limited (“**Boundary**”), and GLCR Limited (“**GLCR**”), in favour of the Administrative Agent, governed by the laws of the Province of Ontario.
- (d) Guarantee Agreement grant by each of Wilru Investments One Hundred and Thirty Four (Proprietary) Limited (“**Wilru**”), Rosh Pinah Base Metals (Proprietary) Limited (“**Pinah Base**”), and Rosh Pinah Mine Holdings Proprietary Limited (“**Pinah Holdings**”) in favour of the Administrative Agent, governed by the laws of the Province of Ontario.
- (e) Debt Guarantee and Counter-Indemnity among Guinea Fowl Investments Fifty Eight (Proprietary) Limited (“**Special SPV**”), Wilru, Pinah Holdings, Pinah Base, and GLCR in favour of the Administrative Agent, governed by the laws of Namibia.
- (f) Unsecured guaranty between Nantou Mining Burkina Faso S.A., as guarantor and the Administrative Agent as beneficiary, governed by the laws of Burkina Faso.

2. Security Documents

- (a) General Security Agreement among the Borrower, Trevali NB and the Administrative Agent, governed by laws of the Province of Ontario.
- (b) ~~Pledge Agreement over Trevali Peru shares, among the Borrower, Valentin Paniagua Jara (“**Valentin**”), Trevali Peru, Scotia Bank Peru S.A.A., as Peruvian collateral agent (the “**Peruvian Collateral Agent**”) and Servicios Conexos Notreg E.I.R.L., governed by the laws of Peru, as amended by a first amending agreement entered into among the Borrower, Valentin and the Peruvian Collateral Agent. [Intentionally Deleted].~~
- (c) Share Charge among the Borrower and the Administrative Agent with respect to the securities of Trevali Bermuda, governed by the laws of Bermuda.

- 2 -

- (d) Share Charge among the Borrower and the Administrative Agent with respect to the securities of GLCR, governed by the laws of England & Wales.
- (e) Security Agreement over sales contracts with respect to the Caribou Mine among the Borrower and the Administrative Agent, governed by the laws of England and Wales.
- (f) Debenture / Mortgage among Trevali NB and the Administrative Agent, governed by the laws of Province of New Brunswick.
- (g) Non-Disturbance Agreement among Trevali NB, the Administrative Agent and Her Majesty the Queen in Right of the Province of New Brunswick, as represented by the Minister of Energy and Resource Development, governed by the laws of Province of New Brunswick.
- (h) Irrevocable Direction and Consent to assignment with respect to the present and future off-take and sale agreements between, *inter alia*, the Borrower and the Administrative Agent, in relation to the Caribou Mine, as governed by the laws of England & Wales.
- (i) ~~[Intentionally Deleted].~~
- (j) ~~[Intentionally Deleted].~~
- (k) ~~[Intentionally Deleted].~~
- (l) ~~[Intentionally Deleted].~~
- (m) ~~[Intentionally Deleted].~~
- (n) ~~[Intentionally Deleted].~~
- (i) ~~Guarantee Trust Agreement over (i) "*Bienes Muebles*", (ii) "*Concesiones Mineras*", (iii) "*Concesion de Beneficio*" and (iv) "*Derechos Contractuales*" among Trevali Peru and the Peruvian Collateral Agent, governed by the laws of Peru, as amended by a first amending agreement entered into by Trevali Peru and the Peruvian Collateral Agent.~~
- (j) ~~Pre-constitution of Pledge over Santander Concesiones S.A.C. ("**Santander SAC**") shares among Trevali Peru, Santander SAC, the Peruvian Collateral Agent, and Servicios Conexos Notreg E.I.R.L., governed by the laws of Peru, as amended by a first amending agreement entered into by Trevali Peru, Santander SAC, the Peruvian Collateral Agent, and Servicios Conexos Notreg E.I.R.L.~~
- (k) ~~Conditional Assignment of Rights Agreement with respect to the credit rights owned or held in the off take agreements among Trevali Peru, the Borrower and the Peruvian Collateral Agent governed by the laws of Peru, as amended by a first~~

~~amending agreement entered into by Trevali Peru, the Borrower and the Peruvian Collateral Agent.~~

- ~~(l) Conditional Assignment Agreement with respect to the mining assignment agreement among, *inter alia*, Trevali Peru, Compañía Minerales Santander S.A.C., Santander SAC, and the Peruvian Collateral Agent, governed by the laws of Peru, as amended by a first amending agreement entered into by, among others, Trevali Peru, Compañía Minerales Santander SAC, Santander SAC and the Peruvian Collateral Agent.~~
- ~~(m) Security Agreement over sales contracts with respect to the Santander Mine among Trevali Peru, the Borrower and the Administrative Agent, governed by the laws of England and Wales.~~
- ~~(n) Irrevocable Direction and Consent to assignment with respect to the present and future off take and sale agreements between, *inter alia*, the Borrower and the Administrative Agent, in relation to the Santander Mine, as governed by the laws of England & Wales.~~
- (o) Fixed and Floating Charge among Trevali Bermuda and the Administrative Agent, governed by the laws of Bermuda.
- (p) Share Charge among Trevali Bermuda and the Administrative Agent with respect to the securities of Boundary, governed by the laws of Bermuda.
- (q) Fixed and Floating Charge among Boundary and the Administrative Agent, governed by the laws of Bermuda.
- (r) Assignment Agreement for Security Purposes regarding Bank Accounts among Boundary and the Administrative Agent, governed by the laws of Switzerland.
- (s) Debenture among GLCR and the Administrative Agent, governed by the laws of England & Wales.
- (t) Share Pledge and Cession Agreement among GLCR, Wilru, and Special SPV with respect to the securities of Wilru, governed by the laws of Namibia.
- (u) Share Pledge and Cession Agreement among Wilru, Pinah Base, and Special SPV with respect to the securities of Pinah Base, governed by the laws of Namibia.
- (v) Share Pledge and Cession Agreement among Pinah Base, Pinah Holdings and Special SPV with respect to the securities of Pinah Holdings, governed by the laws of Namibia.
- (w) Intercorporate Postponement and Subordination Agreement among the Borrower, the Companies (other than the Subject Entities), and the Administrative Agent, governed by the laws of the Province of Ontario.

~~(x) Pledge Agreement over Bank Account No. ME 000-4059701 of Trevali Peru entered into by Trevali Peru, the Borrower, the Peruvian Collateral Agent and Servicios Conexos Notreg E.I.R.L., governed by the laws of Peru, as amended by a first amending agreement entered into by Trevali Peru, the Peruvian Collateral Agent, Scotiabank Peru S.A.A. and Servicios Conexos Notreg E.I.R.L.~~

(x) **[Intentionally Deleted].**

(y) Omnibus Confirmation of Finance Documents granted by the Obligors, governed by laws of the Province of Ontario.

(z) Recordal of Security among GLCR, Wilru, Pinah Base, Pinah Holdings, Special SPV and the Administrative Agent, governed by the laws of Namibia.

(aa) Cession in Security Agreement among Borrower and the Administrative Agent, with respect to intercorporate loans and intercorporate services receivables owing from RPZC, governed by the laws of Namibia.

(bb) Supplemental Share Charge among the Borrower and the Administrative Agent with respect to the securities of GLCR, governed by the laws of England & Wales.

(cc) Supplemental Debenture among GLCR and the Administrative Agent, governed by the laws of England & Wales.

(dd) Supplemental Security Agreement Over Sales Contracts with respect to the Caribou Mine among the Borrower and the Administrative Agent, governed by the laws of England and Wales.

~~SCHEDULE~~ **SCHEDULE K**
QUALIFIED AFFILIATE INSTRUMENT OF ADHESION

TO: THE BANK OF NOVA SCOTIA, as Administrative Agent

AND TO: THE OTHER PARTIES TO THE CREDIT AGREEMENT REFERRED TO BELOW

Reference is made to the second amended and restated credit agreement dated August 6, 2020 (as amended to the date hereof, the “**Credit Agreement**”) between Trevali Mining Corporation, as borrower, the Lenders named therein and The Bank of Nova Scotia, as administrative agent of the Lenders (in that capacity, the “**Administrative Agent**”). Terms defined in the Credit Agreement are used herein as therein defined.

WHEREAS the Credit Agreement provides that an Affiliate of a Lender may become a Qualified Affiliate under the Credit Agreement if it executes this instrument and delivers it to the Administrative Agent;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, the undersigned hereby represents, warrants and covenants as follows:

1. By executing this instrument, the undersigned hereby covenants and agrees to be bound by the terms and conditions of the Credit Agreement as a Qualified Affiliate, including all amendments, supplements and additions thereto, deletions therefrom and restatements thereof, solely as relates to the terms and conditions set forth in Article 14 of the Credit Agreement.
2. The undersigned hereby acknowledges that it has been provided with a copy of the Credit Agreement.

DATED this _____ day of _____, _____.

**[INSERT NAME OF QUALIFIED
AFFILIATE]**

By: _____
Name:
Title:

~~SCHEDULE L~~
~~SCHEDULE L~~
LITIGATION

The Caribou Mine is subject to ongoing arbitration with respect to payments pursuant to the 10% net profit interest royalty (the “NPI Royalty Payments”) in favour of an unrelated third party (the “Third Party”). Trevali Mining Corporation’s position in the arbitration is that past losses at the Caribou Mine can be used to offset any NPI Royalty Payments, and the Third Party disputes this interpretation.

- The CCAA Proceeding.
- Action number S228113 filed in the British Columbia Supreme Court on October 7, 2022 relating to a proposed class action proceeding against Trevali Mining Corporation, Ricus Grimbeek, Brendan Creaney, Jill Gardiner, Russell Ball, Aline Cote, Nick Popovic, Jeane Hull, Dan Isserow and Richard Williams.

~~SCHEDULE M~~
SCHEDULE M
PENSIONS

Canadian Pension Plans

Nil.

Non-Canadian Pension Plans

Nantou Mining Burkina Faso SA is subject to and complies with applicable laws in Burkina Faso which require employers to make pension contributions to government-run pension funds with respect to non-expatriate employees.

~~SCHEDULE~~ ~~SCHEDULE N~~
TAXES

On August 31, 2017, (i) Merope Holdings Limited entered into a tax agreement in favour of Trevali Holdings (Bermuda) Ltd. in relation to the Perkoa Mine, and (ii) Glencore International Investments Limited entered into a tax agreement in favour of the Borrower in relation to the Rosh Pinah Mine.

~~SCHEDULE~~ ~~SCHEDULE O~~
ENVIRONMENTAL COMPLIANCE

Nil.

~~SCHEDULE~~
~~SCHEDULE P~~
FORM OF JOINDER AGREEMENT

Reference is made to the second amended and restated credit agreement dated as of August 6, 2020 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, the “**Credit Agreement**”) between Trevali Mining Corporation, as borrower, the Lenders named therein and The Bank of Nova Scotia, as Administrative Agent. Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned in the Credit Agreement.

RECITALS:

Pursuant to Section 8.3 of the Credit Agreement, the Borrower wishes to designate the Replacement Lender defined below as a Lender under the Credit Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Borrower, the Lenders, the Administrative Agent and _____ (the “**Replacement Lender**”), hereby agree as follows:

1. The Credit Agreement shall, henceforth from the date of the execution and delivery of this Replacement Lender, be read and construed as if the Replacement Lender were party to the Credit Agreement having all the rights and obligations of a Lender under the Credit Agreement having the Individual Commitment set out in paragraph 2 below. Accordingly all references in any Credit Documents to (a) any “Lender” shall be treated as including a reference to the Replacement Lender and (b) the Credit Agreement shall be treated as a reference to the Credit Agreement as supplemented by this Joinder Agreement to the intent that this Joinder Agreement and the Credit Agreement shall be read and construed together as one single agreement.
2. The Individual Commitment of the Replacement Lender shall be \$_____ and Schedule A of the Credit Agreement shall be deemed to be amended accordingly.
3. The Replacement Lender represents and warrants to each of the other parties to the Credit Agreement that it has been provided with a copy of the Credit Agreement.
4. The Replacement Lender irrevocably authorizes and directs the Administrative Agent, as its attorney and agent, with full power of substitution and delegation, to complete, execute and deliver on behalf of the Replacement Lender each Credit Document to be executed by it or on its behalf and each agreement, document and instrument to be executed by it or on its behalf pursuant to each Credit Document, and to take such action on its behalf as may be authorized or directed pursuant to any such Credit Document.
5. This Joinder Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Transmission of an executed signature page of this Joinder

Agreement by facsimile transmission or by e-mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

- 6. This Joinder Agreement shall be governed by, and interpreted in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF, the parties hereto have caused this Joinder Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the _____ day of _____, _____.

TREVALI MINING CORPORATION

[REPLACEMENT LENDER]

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA,
as Administrative Agent and Issuing Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

~~SCHEDULE~~
SCHEDULE Q
FORM OF VOLUNTARY PREPAYMENT NOTICE

TO: The Bank of Nova Scotia, as Administrative Agent

~~WBO~~Global Wholesale Operations – Loan Administration and Agency Services
~~62nd Floor, 401~~50 King Street West, 6th Floor
 Toronto, Ontario ~~M5W 2X6~~M5H 1J9
 Toronto, Ontario ~~M5V 2T3~~
 Attention: Director, Loan Agency and Operations/Senior Manager
 Facsimile: ~~(416) 866-5991~~416-866-5991
 Email: corporatelending.agencyops@scotiabank.com

With a copy to:

~~Global Banking and Markets~~—Loan Syndications – Agency Services
 40 KingTemperance Street West, 55th6th Floor
 Toronto, Ontario ~~M5H 4H4~~M5H 1Y4
 Attention: Head Agency Services
 Facsimile: (416) 866-3329
 Email: agency.services@scotiabank.com

RE: Second amended and restated credit agreement dated as of August 6, 2020 (as amended to the date hereof, the “**Credit Agreement**”) between Trevali Mining Corporation, as borrower, the Lenders named therein and The Bank of Nova Scotia, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably gives notice in accordance with Section 9.5 of the Credit Agreement that the undersigned commits to prepay the _____[‡] under the Credit Facility ~~which has an Interest Period expiring on <@>~~ [Pre-Filing Tranche/DIP Tranche], in the amount of \$<@>.

All capitalized terms defined in the Credit Agreement and used herein shall have the meaning ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, 20____.

TREVALI MINING CORPORATION

By: _____
 Name:
 Title:

By: _____

[‡]Specify type of Loan.

Name:
Title:

~~SCHEDULE R~~
SCHEDULE R
SECURED ASSETS

Section	Obligor Jurisdiction of Incorporation or Formation	Assets to be pledged, collaterally assigned or secured pursuant to a Security Document
1	Canada (or a province thereof), the United Kingdom and Bermuda	All present and future assets (which shall include, for the avoidance of doubt, all Shares issued by Nantou Mining Burkina Faso SA. To Boundary Ventures Limited) other than the Shares of any Excluded Subsidiary.
2	[Intentionally Deleted] Peru	All present and future mining concessions in respect of the Santander Mine and installations attendant thereto and certain intangible assets consisting of a bank account hosted by the Peruvian Collateral Agent and the cash that will be deposited in such account upon foreclosure, off take rights and corresponding receivables upon foreclosure. In addition, assets secured pursuant to the Peruvian Security Documents include all existing and future shares issued by Trevali Peru and all shares of Santander Concesiones S.A.C. [Intentionally Deleted]
3	Namibia	All deposit and operating accounts domiciled outside Namibia and all Shares issued by <u>Wilru</u> , Rosh Pinah Base Metals (Proprietary) Limited and Rosh Pinah Mine Holdings (Proprietary) Limited
4	Any other Permitted Jurisdiction	All present and future assets other than the Excluded Assets.

Excluded Assets:

The present and future assets referenced in Section 5 of Schedule RQ, real and personal, of the Obligors subject to the Security (the “**Collateral**”), provided that such Collateral shall exclude (i) a pledge of the shares in the capital of any Excluded Subsidiary, (ii) any governmental licenses, permits or approvals, to the extent a security interest in any such licenses, permits or approvals would be prohibited or restricted thereby (including any legally effective prohibition or restriction), (iii) pledges and security interests prohibited by Applicable Law (excluding, for the avoidance of doubt, any legal requirement to obtain the consent of any governmental authority to a charge on mineral tenures and mining claims comprising of any Material Mine which are required for the extraction of minerals), (iv) personal property or other assets to the extent a security interest in such assets would result in tax payments by the relevant Obligor in an amount which exceeds the value of the subject Collateral as reasonably determined by the Borrower and the Administrative Agent, in writing, (v) any lease, license, joint venture agreement or other agreement (including pursuant to a purchase money security interest or similar arrangement) to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement (or purchase money arrangement) or create a right of termination in favour of any other party thereto (other than an Obligor) after giving effect to the applicable anti-assignment provisions of the PPSA or other similar applicable law, other than proceeds and receivables thereof, the restriction on assignment of which is expressly deemed unenforceable against third parties under the PPSA or other similar applicable law notwithstanding such prohibition, (vi) any leased real property constituting office space, (vii) any owned real property consisting of residential housing stock, (viii) at all times: (X) any mining property owned by an Obligor that is on care and maintenance, or (Y) in respect of a mining property that is an exploration property or has otherwise yet to achieve commercial production, such mine and all facilities and all licenses, permits etc. attendant thereto (for the avoidance of doubt, at the time that an Obligor or any Affiliate thereof publicly announces that the status of any such mining property has changed to operating or otherwise achieved commercial production, as the case may be, such mining property and related facilities shall cease to constitute Excluded Assets and security, consents, registrations, legal opinions and other documentation shall be provided to the Administrative Agent by the relevant Obligor within 90 days of such change of status, all in a manner substantially consistent with security over the Caribou Mine granted to the Administrative Agent, with such accommodations necessary and reasonable under relevant Applicable Laws).

The Collateral will also exclude those items of personal property or other assets as to which the Administrative Agent and the Borrower reasonably agree in writing that the cost of obtaining such a security interest or perfection thereof are excessive in relation to the benefit to the Lenders of the security to be afforded thereby (the foregoing described in the previous two sentences are collectively referred to as the “**Excluded Assets**”).

~~SCHEDULE~~ **SCHEDULE S**
ROYALTIES

1. The Caribou Mine is subject to: (i) a 2% provincial royalty on the annual net revenue generated by the mining operation; and (ii) a 16% provincial net profits tax on annual net profits exceeding Cdn. \$100,000; and (iii) a 10% net profit interest royalty payable by Trevali Mining (New Brunswick) Ltd. to an unrelated third party.
- ~~2. The Santander Mine is subject: (i) a 'special mining tax' (Impuesto Especial a la Minería), which is applied on a sliding scale of 0.2% to 0.4% on the net operating income of the mining operations; and (ii) a 'mining royalty' (Regalía a la Minería), which is applied on a sliding scale of 0.1% to 0.6% on the net operating income of the mining operations.~~
- ~~2.~~ 3. A decree issued by the Ministry of the Economy and Finance of Burkina Faso imposes a royalty of 3% on revenues generated from base metals.
- ~~3.~~ 4. The Namibia Minerals Act levies a royalty of 3% ~~on~~ of the net market value on sales of zinc and lead production.
- ~~5. Under Namibian law, mine production is subject to (i) 3% royalties on net market value payable to the Namibian State, and (ii) 3% of net market value payable to PE Minerals.~~
4. Pursuant to the RPZC Shareholders Agreement and the Operational Agreement in respect of the Rosh Pinah Mine, a royalty of 3% of net market value is payable to PE Minerals (the registered holder of the Rosh Pinah mining license).

~~SCHEDULE~~
~~SCHEDULE T~~
CONSENTS AND APPROVALS

1. Annual renewal of Exchange Control Approval granted by the Bank of Namibia in relation to the guarantees and security granted by, or in respect of, Wilru Investments One Hundred and Thirty Four (Proprietary) Limited, Rosh Pinah Base Metals (Proprietary) Limited, and Rosh Pinah Mine Holdings (Proprietary) Limited.

SCHEDULE T
EXISTING LETTERS

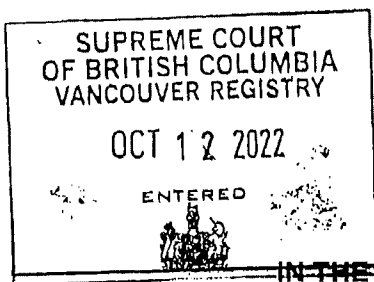
<u>Beneficiary</u>	<u>Amount</u>	<u>Currency</u>	<u>Expiry Date</u>	<u>Final Expiration</u>
<u>The New Brunswick Department of Environment and Local Government</u>	<u>1,250,000.00</u>	<u>Canadian Dollars</u>	<u>November 30, 2022</u>	<u>Autorenewal</u>
<u>Department of Environment and Local Government</u>	<u>289,500.00</u>	<u>Canadian Dollars</u>	<u>March 18, 2023</u>	<u>Autorenewal</u>
<u>XL Specialty Insurance Company</u>	<u>1,655,250.00</u>	<u>Canadian Dollars</u>	<u>July 13, 2023</u>	<u>Autorenewal</u>

SCHEDULE U
RPZC SET-OFF TRANSACTION

- I) As of the Fifth Amendment Effective Time:
1. RPZC is indebted to the Borrower pursuant to the Intercorporate Services Agreement in the amount of \$3,495,698, which, as of October 26, 2022, is equivalent to NAD 63,133,431 (the “RPZC Intercorporate Services Debt”):
 2. RPZC is indebted to the Borrower in the amount of NAD 167,833,891, which comprises an advance of NAD 77,728,287 made by the Borrower on August 30, 2022 (which is equal to \$4,600,000 as of such date) and an advance of NAD 90,105,605 by the Borrower on September 30, 2022 (which is equal to \$5,000,000 as of such date) (such amount being exclusive of any amounts which may be loaned to RPZC on or after the Fifth Amendment Effective Time, the “RPZC Post-Filing Intercorporate Loan Debt”):
 3. Wilru is indebted to RPZC for undocumented unsecured intercompany loans in the amount of NAD 300,413,381, which, as of October 26, 2022, is \$16,633,889 (the “Wilru Intercorporate Debt”):
- II) The RPZC Set-Off Transaction means the following series of related-party transactions:
1. The Borrower assigns the RPZC Intercorporate Services Debt and the RPZC Post-Filing Intercorporate Loan Debt to Wilru;
 2. Wilru sets off the RPZC Intercorporate Services Debt and the RPZC Post-Filing Intercorporate Loan Debt against the Wilru Intercorporate Debt (the “Wilru/RPZC Set-Off Transaction”):
 3. At the conclusion of the Wilru/RPZC Set-Off Transaction, the Wilru Intercorporate Debt will be NAD 69,446,059, which, as of October 26, 2022, is equal to \$3,845,228 (the “Post-Set Off Wilru Intercorporate Debt”).

**EXHIBIT B
DIP ORDER**

See attached.



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

**ORDER MADE AFTER APPLICATION
(INTERIM FINANCING APPROVAL)**

BEFORE) THE HONOURABLE MADAM JUSTICE)
) FITZPATRICK) October 11, 2022
))

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia on the 11th day of October, 2022; AND ON HEARING Peter 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 #6 of Brendan Creaney, made October 3, 2022, Affidavit #7 of Brendan Creaney, made October 11, 2022, the Third Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioners) (the "**Monitor**") dated October 3, 2022, and the Fourth Report of the Monitor dated October 11, 2022; AND pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985 c. C-36, as amended, the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

Time for Service

1. The time for service of the Petitioners' Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service

thereof upon any interested party other than those parties on the Service List maintained by the Monitor in these proceedings is hereby dispensed with.

Capitalized Terms

2. Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Amended and Restated Initial Order of this Court granted on August 29, 2022 as may be amended from time to time, the "**Amended and Restated Initial Order**").

Interim Financing

3. Trevali Mining Corporation ("**Trevali Corp.**") is hereby authorized and empowered to obtain and borrow under an interim financing tranche (the "**DIP Tranche**") to be made available to Trevali Corp. pursuant to the terms of an amendment (the "**Fifth Amendment**") to the existing credit facility extended to Trevali Corp. under the Second Amended and Restated Credit Agreement dated August 6, 2020 between Trevali Corp., as borrower, The Bank of Nova Scotia and HSBC Bank Canada, as co-lead arrangers and joint bookrunners, The Bank of Nova Scotia, as administrative agent (the "**Administrative Agent**"), and lenders party thereto (the "**Interim Lenders**") (as amended from time to time, including by the Fifth Amendment, the "**Credit Agreement**"), provided that:

- (a) borrowings under the DIP Tranche shall not exceed the principal amount of US \$16.5 million unless permitted by further Order of this Court; and
- (b) such authorization and empowerment is conditional upon the execution by Trevali Corp. (with the consent of the Monitor), the Administrative Agent and the Interim Lenders of the Fifth Amendment, as contemplated by the Interim Financing Term Sheet.

4. The DIP Tranche shall be on the terms and subject to the conditions set forth in the Credit Agreement as amended by the Fifth Amendment on the terms set forth in the Indicative Term Sheet Debtor-in-Possession Facility attached to the Affidavit #7 of Brendan Creaney made October 11, 2022 (the "**Interim Financing Term Sheet**").

5. The Petitioners are hereby authorized and empowered to execute and deliver such amendments to the Credit Agreement, including the Fifth Amendment and any Credit Documents and Security Documents (in each case as defined in the Credit Agreement) entered into in connection therewith, and any mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive DIP Documents**"), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by Administrative Agent or the Interim Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their respective indebtedness, interest, fees, liabilities and obligations to the Administrative Agent and the Interim Lenders under and pursuant to the Interim Financing Term Sheet and the Definitive DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. The Administrative Agent, for and on behalf of the Interim Lenders, shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lenders' Charge**") on the Property. The Interim Lenders' Charge shall not secure an obligation that existed prior to August 19, 2022 (the date the Initial Order was made in these proceedings). For certainty, the preceding sentence shall

apply to the Interim Lenders' Charge only and not to any other Security (as defined in the Credit Agreement). The Interim Lenders' Charge shall have the priority set out in paragraphs 9 and 11 hereof.

7. Notwithstanding any other provision of this Order, the Amended and Restated Initial Order or any other order of this Court:

- (a) the Administrative Agent and the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive DIP Documents;
- (b) upon the occurrence of an event of default under the Interim Financing Term Sheet, any of the Definitive DIP Documents or the Interim Lenders' Charge, the Administrative Agent and the Interim Lenders may immediately cease making advances to Trevali Corp. and, upon three (3) Banking Days' (as defined in the Credit Agreement) notice to the Petitioners and the Monitor, may exercise any and all of their rights and remedies against the Petitioners or the Property under or pursuant to the Interim Financing Term Sheet, the Definitive DIP Documents, and the Interim Lenders' Charge, including without limitation, set off and/or consolidate any amounts owing by the Interim Lenders to the Petitioners in connection with the DIP Tranche against the obligations of the Petitioners to the Administrative Agent or Interim Lenders under the Interim Financing Term Sheet, the Definitive DIP Documents or the Interim Lenders' Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and
- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

8. The Interim Lenders, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive DIP Documents.

Validity and Priority of Charges

9. The priorities of:

- (a) the Administration Charge;
- (b) the D&O Charge;
- (c) the Intercompany Advances Charge;
- (d) the KERP Charge (as defined in the Key Employee Retention Plan Approval Order granted by this Court on September 14, 2022);

- (e) the Sales Agent Charge (as defined in the SISP and Sales Agent Approval Order granted by this Court on September 14, 2022, the "**SISP Order**"); and
 - (f) the Interim Lenders' Charge;
- (collectively, the "**Charges**")

as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – D&O Charge;

Third – the Intercompany Advances Charge;

Fourth – the KERP Charge (to the maximum amount of US \$800,000);

Fifth – the Sales Agent Charge solely in respect of amounts payable upon completion of a transaction for the sale of the Rosh Pinah Mine pursuant to the SISP (as defined in the SISP Order);

Sixth – the Interim Lenders' Charge (to a maximum principal amount of US \$16,500,000 plus capitalized, accrued, or outstanding interest, fees and expenses); and

Seventh – the Sales Agent Charge in respect of all remaining amounts secured thereby.

10. Any security documentation evidencing, or the filing, registration or perfection of, the Interim Lenders' Charge shall not be required, and the Interim Lenders' Charge shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Interim Lenders' Charge coming into existence, notwithstanding any failure to file, register or perfect the Interim Lenders' Charge.

11. The Interim Lenders' Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and shall rank in priority to all other security interests, trusts, liens, mortgages, charges, and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

12. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent of the Monitor and the beneficiaries of the Charges (or in the case of the Interim Lenders' Charge, the Administrative Agent).

13. The Interim Financing Term Sheet, Fifth Amendment, the Credit Agreement, and the Definitive DIP Documents and the Interim Lenders' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Administrative Agent and the Interim Lenders shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s)

issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Interim Lenders' Charge nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet, Fifth Amendment, the Credit Agreement or the Definitive DIP Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;
- (b) none of the Administrative Agent or the Interim Lenders shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the Interim Financing Term Sheet or the Fifth Amendment, the creation of the Interim Lenders' Charge, or the execution, delivery or performance of the Credit Agreement or the Definitive DIP Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Interim Financing Term Sheet, the Fifth Amendment, the Credit Agreement or the Definitive DIP Documents, and the granting of the Interim Lenders' Charge, does not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

14. THIS COURT ORDERS that any charge created by this Order over leases of real property in Canada shall only be a charge in the Petitioners' interest in such real property leases.

General

15. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso, and Namibia to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

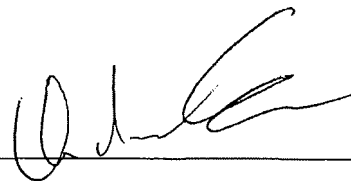
16. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

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 Rubin
Lawyer for the Petitioners

BY THE COURT.



Registrar



Schedule "A"

COUNSEL NAME	PARTY REPRESENTED
FTI Consulting Canada Inc., the Monitor	John Sandrelli Valerie Cross
Bank of Nova Scotia, as Administrative Agent for the RCF Lenders	Kibben Jackson Glen Nesbitt
Glencore International AG Glencore AG Glencore Canada Corporation	Lance Williams Forrest Finn
Directors of Trevali Mining Corporation	Mary Buttery K.C.