



This is the 1st affidavit of
Yiota Petrakis in this case and was
made on July 17, 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, **Yiota Petrakis**, of Suite 2600 – 595 Burrard Street, Vancouver, Legal Administrative Assistant,
SWEAR THAT:

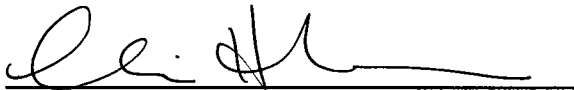
1. I am the assistant to Claire Hildebrand, an Associate of Blake, Cassels & Graydon LLP, the solicitors for Trevali Mining Corporation and Trevali Mining (New Brunswick) Ltd., the Petitioners in this proceeding, and as such I have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify in which case I believe that both the information from the informant and the resulting statement are true.
2. Attached to this Affidavit as Exhibit "A" is a copy of an "Intercreditor Agreement" dated September 30, 2020, between Trevali Mining Corporation, the Bank of Nova Scotia, Glencore Canada Corporation and others.

3. Attached to this Affidavit as Exhibit "B" is a partially redacted email from Mr. Lance Williams to Mr. Kibben Jackson dated October 2, 2022, and previous correspondence (with attachment).


4. Attached to this Affidavit as Exhibit "C" is an email from Ms. Hildebrand to a number of recipients dated October 11, 2022 (without attachments).

5. Attached to this Affidavit as Exhibit "D" is a transcript from proceedings in chambers in the British Columbia Supreme Court dated October 11, 2022.

SWORN BEFORE ME at Vancouver, British Columbia on July 17, 2023

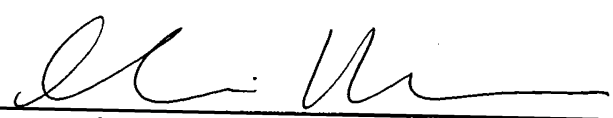

A Commissioner for taking Affidavits for British Columbia

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Yiota Petrakis

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(604) 631-3331

This is Exhibit "A" referred to in the affidavit of Yiota Petrakis sworn before me at Vancouver, British Columbia this 17th day of July, 2023.



A Commissioner for taking Affidavits
for British Columbia

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THE BANK OF NOVA SCOTIA
as First Lien Creditor Agent

GLENCORE CANADA CORPORATION
as Second Lien Creditor

SCOTIABANK PERU S.A.A.
as Peruvian Collateral Agent

GUINEA FOWL INVESTMENTS FIFTY EIGHT (PROPRIETARY) LIMITED
as First Lien Creditor Namibian Debt Guarantor

**ALOE INVESTMENTS TWO HUNDRED AND SIXTY SEVEN (PROPRIETARY)
LIMITED**
as Second Lien Creditor Namibian Debt Guarantor

THE BANK OF NOVA SCOTIA
as Swiss Collateral Agent

TREVALI MINING CORPORATION
as Debtor

The Guarantor Subsidiaries

Intercreditor Agreement

September 30, 2020

FASKEN

Fasken Martineau DuMoulin LLP
Toronto, Ontario

TABLE OF CONTENTS

	Page
EFFECTIVE DATE	1
PREAMBLE	1
PARTIES	1
RECITALS	1
AGREEMENT	2
1. CONSENT AND ACKNOWLEDGEMENT	2
1.1 CONSENT AND ACKNOWLEDGEMENT OF FIRST LIEN CREDITOR AGENT... 2	2
1.2 CONSENT AND ACKNOWLEDGEMENT OF SECOND LIEN CREDITOR..... 3	3
2. LIEN PRIORITIES	3
2.1 SENIORITY OF LIENS SECURING FIRST LIEN OBLIGATIONS	3
2.2 FIRST LIEN OBLIGATIONS AND SECOND LIEN OBLIGATIONS..... 4	4
2.3 FIRST AND SECOND LIEN COLLATERAL TO BE IDENTICAL..... 6	6
2.4 PLEDGED COLLATERAL..... 7	7
2.5 LIMITATIONS ON DUTIES AND OBLIGATIONS	9
2.6 PROHIBITION ON CONTESTING LIENS; NO MARSHALING.....10	10
2.7 CONFIRMATION OF SUBORDINATION AND PRIORITY IN SECOND LIEN COLLATERAL DOCUMENTS.....	10
2.8 RELEASE OF LIENS OR GUARANTIES.....	11
2.9 PURCHASE RIGHT OF SECOND LIEN CLAIMHOLDERS.....	12
2.10 REPAYMENTS AND PREPAYMENTS OF SECOND LIEN OBLIGATIONS	14
3. MODIFICATION OF OBLIGATIONS.....	14
3.1 PERMITTED MODIFICATIONS.....	14
3.2 MODIFICATIONS REQUIRING CONSENT	15
3.3 PARALLEL MODIFICATIONS TO SECOND LIEN OBLIGATIONS.....	16
3.4 NOTICE OF MODIFICATIONS	17
4. ENFORCEMENT	17
4.1 WHO MAY EXERCISE REMEDIES	17
4.2 MANNER OF EXERCISE.....	20
4.3 SPECIFIC PERFORMANCE.....	20
4.4 NOTICE OF EXERCISE	21
4.5 APPLICATION OF PROCEEDS.....	21

4.6	INSURANCE.....	21
4.7	COLLATERAL TURNOVER	22
4.8	REFINANCING AFTER DISCHARGE OF FIRST LIEN OBLIGATIONS	22
5.	CANADIAN INSOLVENCY PROCEEDINGS	23
5.1	CANADA DIP FINANCING.....	23
5.2	SALE OF COLLATERAL.....	24
5.3	RELIEF FROM THE STAY	24
5.4	FIRST LIEN OBJECTIONS TO SECOND LIEN ACTIONS.....	24
5.5	AVOIDANCE; REINSTATEMENT OF OBLIGATIONS	24
5.6	REORGANIZATION SECURITIES	25
5.7	POST-PETITION CLAIMS.....	25
5.8	WAIVERS	25
5.9	SEPARATE GRANTS OF SECURITY AND SEPARATE CLASSIFICATION	26
5.10	VOTING.....	26
5.11	EFFECTIVENESS IN INSOLVENCY PROCEEDINGS	27
6.	PERUVIAN INSOLVENCY PROCEEDINGS	27
6.1	PERUVIAN DIP FINANCING.....	27
6.2	SALE OF COLLATERAL.....	28
6.3	RELIEF FROM THE STAY	28
6.4	FIRST LIEN OBJECTIONS TO SECOND LIEN ACTIONS.....	28
6.5	AVOIDANCE; REINSTATEMENT OF OBLIGATIONS	28
6.6	REORGANIZATION SECURITIES	29
6.7	POST-PETITION CLAIMS.....	29
6.8	WAIVERS	29
6.9	SEPARATE GRANTS OF SECURITY AND SEPARATE CLASSIFICATION	29
6.10	VOTING.....	30
6.11	EFFECTIVENESS IN INSOLVENCY PROCEEDINGS	30
7.	SWISS COLLATERAL AGENT	31
7.1	APPOINTMENT OF SWISS COLLATERAL AGENT	31
7.2	LIMITATION OF DUTIES AND PROTECTION OF THE SWISS COLLATERAL AGENT.....	32
7.3	KNOWLEDGE OF EVENTS OF DEFAULT.....	35
7.4	SWISS COLLATERAL AGENT ACTING ON INSTRUCTIONS.....	35
7.5	RELIANCE.....	36
7.6	COMPLIANCE ASSUMPTIONS.....	36

7.7	RESIGNATION, REMOVAL AND REPLACEMENT OF THE SWISS COLLATERAL AGENT	37
7.8	INDEMNIFICATION OF THE SWISS COLLATERAL AGENT	38
7.9	AMENDMENTS TO AGREEMENT	41
8.	MISCELLANEOUS	41
8.1	CONFLICTS	41
8.2	NO WAIVERS; REMEDIES CUMULATIVE; INTEGRATION	41
8.3	EFFECTIVENESS; SEVERABILITY; TERMINATION.....	41
8.4	MODIFICATIONS OF THIS AGREEMENT	42
8.5	INFORMATION CONCERNING FINANCIAL CONDITION OF THE BORROWERS AND SUBSIDIARIES.....	42
8.6	NO RELIANCE	42
8.7	NO WARRANTIES; INDEPENDENT ACTION	43
8.8	SUBROGATION	44
8.9	GOVERNING LAW.....	44
8.10	JURISDICTION	44
8.11	WAIVER OF JURY TRIAL.....	45
8.12	NOTICES	45
8.13	FURTHER ASSURANCES	46
8.14	SUCCESSORS AND ASSIGNS.....	46
8.15	AUTHORIZATION.....	46
8.16	NO THIRD-PARTY BENEFICIARIES.....	46
8.17	NO INDIRECT ACTIONS.....	47
8.18	COUNTERPARTS	47
8.19	ORIGINAL GRANTORS; ADDITIONAL GRANTORS	47
9.	DEFINITIONS.....	47
9.1	DEFINED TERMS	47
9.2	USAGES	57
	SCHEDULE A FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT	4

EFFECTIVE DATE

This Intercreditor Agreement is made as of September 30, 2020.

PREAMBLE**PARTIES**

- **THE BANK OF NOVA SCOTIA**, as senior administrative agent for the holders of the First Lien Obligations (as defined herein) (in such capacity, the *First Lien Creditor Agent*)
- **GLENCORE CANADA CORPORATION** a corporation incorporated under the laws of the Province of Ontario (the *Second Lien Creditor*)
- **SCOTIABANK PERU S.A.A.**, a corporation (*sociedad anónima abierta*) existing under the laws of Peru (the *Peruvian Collateral Agent*)
- **THE BANK OF NOVA SCOTIA**, as Swiss collateral agent for and on behalf of the First Lien Claimholders and the Second Lien Claimholders (in such capacity, the *Swiss Collateral Agent*)
- **GUINEA FOWL INVESTMENTS FIFTY EIGHT (PROPRIETARY) LIMITED**, a private company incorporated and existing under the laws of Namibia (the *First Lien Creditor Namibian Debt Guarantor*)
- **ALOE INVESTMENTS TWO HUNDRED AND SIXTY SEVEN (PROPRIETARY) LIMITED (PROPRIETARY) LIMITED**, a private company incorporated and existing under the laws of Namibia (the *Second Lien Creditor Namibian Debt Guarantor*)
- **TREVALI MINING CORPORATION**, a corporation existing under the laws of the Province of British Columbia (the *Borrower*)
- The Guarantor Subsidiaries (as defined below)

RECITALS**WHEREAS:**

The Borrower, certain lenders and the First Lien Creditor Agent have entered into a second amended and restated credit agreement dated August 6, 2020 providing for a US\$150,000,000 revolving credit facility (as amended, modified, supplemented or restated from time to time in accordance with the provisions hereof, the *First Lien Credit Agreement*).

The Borrower and the Second Lien Creditor have entered into a facility agreement (as amended, modified, supplemented (or deemed to be so amended, modified or supplemented in accordance with the provisions hereof) or restated from time to time in accordance with the

provisions hereof, the *Second Lien Loan Agreement*) dated August 6, 2020 providing for a US\$20,000,000 non-revolving credit facility;

The Borrower has caused certain of its current Subsidiaries (the *Initial Guarantor Subsidiaries*) and agreed to cause certain of its future Subsidiaries (the *Future Guarantor Subsidiaries*) to guarantee the First Lien Obligations of the Borrower and certain of its Subsidiaries under the First Lien Loan Documents, the Hedge Agreements and the Cash Management Agreements.

The Borrower has agreed to cause the Initial Guarantor Subsidiaries and the Future Guarantor Subsidiaries (collectively, the *Guarantor Subsidiaries*) to guarantee the Second Lien Obligations of the Borrower under the Second Lien Loan Agreement.

The Borrower, each Guarantor Subsidiary and each other Person that executes and delivers a First Lien Collateral Document or a Second Lien Collateral Document as a “grantor”, “chargor” or “pledgor” (or the equivalent) is a *Grantor*.

A Grantor may enter into Hedge Agreements and Cash Management Agreements with one or more lenders under the First Lien Credit Agreement or their affiliates as counterparties, which may be included in the First Lien Obligations.

The First Lien Obligations and the Second Lien Obligations are secured by Liens on substantially all the assets of the Borrower and the Guarantor Subsidiaries other than the Excluded Assets.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. CONSENT AND ACKNOWLEDGEMENT

1.1 CONSENT AND ACKNOWLEDGEMENT OF FIRST LIEN CREDITOR AGENT

- (a) The First Lien Creditor Agent consents to the incurring by the Borrower of the Second Lien Obligations and the granting by the Borrower and the Guarantor Subsidiaries of guarantees and security in connection with the Second Lien Obligations. The First Lien Creditor Agent acknowledges and agrees that such actions do not constitute defaults or events of default under the First Lien Loan Documents.
- (b) The First Lien Claimholders acknowledge the existence of Off-Take Agreements and agree that, so long as the Second Lien Creditor is in compliance with its obligations under section 2.2(d), all deliveries (and any payments) to the Second Lien Creditor (or its affiliates) pursuant to the Off-Take Agreements shall not be subject to postponement or stoppage at any time by the First Lien Claimholders

hereunder or otherwise pursuant to the First Lien Loan Documents and, for the avoidance of doubt, subject to section 2.2(d), nothing in this Agreement shall prejudice or limit the rights of the Second Lien Creditor (or its affiliates) under the provisions of the Off-Take Agreements including the right to make, file and enforce any claim against an Off-Take Counterparty, including for specific performance and/or monetary damages.

- (c) The First Lien Creditor Agent represents that, as of the date of this Agreement, pursuant to the First Lien Credit Agreement, the principal amount of US\$150,000,000 is the maximum authorized principal amount of the Credit Facility (as defined in the First Lien Credit Agreement).

1.2 CONSENT AND ACKNOWLEDGEMENT OF SECOND LIEN CREDITOR

- (a) The Second Lien Creditor consents to the incurring by the Borrower and the Guarantor Subsidiaries of the First Lien Obligations and the granting by the Borrower and the Guarantor Subsidiaries of guarantees and security in connection with the First Lien Obligations. The Second Lien Creditor acknowledges and agrees that such actions do not constitute defaults or events of default under the Second Lien Loan Documents.
- (b) The Second Lien Creditor represents that, as of the date of this Agreement, pursuant to the Second Lien Loan Agreement, the principal amount of US\$20,000,000 is the maximum authorized aggregate principal amount of the Second Lien Obligations under the Second Lien Loan Agreement and that, except under (and in respect of) the Second Lien Loan Agreement and the Off-Take Agreements existing as of the date of this Agreement, there is no other indebtedness owing to the Second Lien Creditor from the Borrower or the Guarantor Subsidiaries.

2. LIEN PRIORITIES

2.1 SENIORITY OF LIENS SECURING FIRST LIEN OBLIGATIONS

- (a) Until the Discharge of the First Lien Obligations, a Lien on Collateral securing any First Lien Obligation will at all times be senior and prior in all respects to a Lien on such Collateral securing any Second Lien Obligation, and a Lien on Collateral securing any Second Lien Obligation will at all times be junior and subordinate in all respects to a Lien on such Collateral securing any First Lien Obligation.
- (b) Until the Discharge of the First Lien Obligations and except as otherwise expressly provided herein, the priority of the Liens securing First Lien Obligations and the Second Lien Obligations and the rights and obligations of the Parties will remain in full force and effect irrespective of

- (1) how a Lien was acquired (whether by grant, possession, statute, operation of law, subrogation, or otherwise),
- (2) the time, manner, or order of the grant, attachment, or perfection of a Lien (including by way of filing or registration system as required under any applicable law),
- (3) any conflicting provision of the PPSA, Mortgages Act or other applicable law (including any law of any Relevant Jurisdiction),
- (4) any defect in, or non-perfection, setting aside, or avoidance of, a Lien or a First Lien Loan Document or a Second Lien Loan Document,
- (5) the modification of a First Lien Obligation or a Second Lien Obligation, in each case in accordance with the terms hereof,
- (6) the modification of a First Lien Loan Document or a Second Lien Loan Document,
- (7) the subordination of a Lien on Collateral securing a First Lien Obligation to a Lien securing another obligation of a Grantor or other Person that is permitted under the First Lien Loan Documents or secures a DIP Financing deemed consented to by the Second Lien Creditor pursuant to section 5.1, "*Canada DIP Financing*", or section 6.1 "*Peruvian DIP Financing*",
- (8) the exchange of a security interest in any Collateral for a security interest in other Collateral,
- (9) the commencement of an Insolvency Proceeding,
- (10) any default or breach under any First Lien Loan Document or Second Lien Loan Document by any party thereto; or
- (11) any other circumstance whatsoever, including a circumstance that might be a defence available to, or a discharge of, a Grantor in respect of a First Lien Obligation or a Second Lien Obligation or obligor in respect of such Obligation.

2.2 FIRST LIEN OBLIGATIONS AND SECOND LIEN OBLIGATIONS

- (a) *First Lien Obligations* means all Obligations of the Grantors under
- (1) the First Lien Credit Agreement and the other First Lien Loan Documents,
 - (2) the guaranties by the Borrower and the Guarantor Subsidiaries of the Borrower's Obligations and Guarantor Subsidiaries' Obligations under the First Lien Loan Documents,

- (3) any Hedge Agreement entered into with an agent or a lender (or an Affiliate thereof) under the First Lien Credit Agreement (even if the counterparty or an Affiliate of the counterparty ceases to be an agent or a lender under the First Lien Credit Agreement),
- (4) any Cash Management Agreement, or
- (5) any other agreement or instrument granting a Lien or providing for the perfection of a Lien securing any of the foregoing.

Notwithstanding any other provision hereof, the term "First Lien Obligations" will include accrued interest, fees, costs, and other charges incurred under the First Lien Credit Agreement, the other First Lien Loan Documents, Hedge Agreements and Cash Management Agreements, whether incurred before or after commencement of an Insolvency Proceeding, and whether or not allowable in an Insolvency Proceeding. To the extent that any payment with respect to the First Lien Obligations (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent, preferential, void or voidable in any respect, set aside, or required to be paid to a debtor, debtor in possession, creditor, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

(b) ***Second Lien Obligations*** means all Obligations of the Grantors under

- (1) the Second Lien Loan Agreement and the other Second Lien Loan Documents,
- (2) the guaranties by the Guarantor Subsidiaries of the Borrower's Obligations under the Second Lien Loan Documents,
- (3) any other agreement or instrument granting a Lien or providing for the perfection of a Lien securing any of the foregoing.

Notwithstanding any other provision hereof, the term "Second Lien Obligations" (i) will include accrued interest, fees, costs, and other charges incurred under the Second Lien Loan Agreement and the other Second Lien Loan Documents, whether incurred before or after commencement of an Insolvency Proceeding, and whether or not allowable in an Insolvency Proceeding and (ii) will not include any obligations under the Off-Take Agreements. To the extent that any payment with respect to the Second Lien Obligations (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent, preferential, void or voidable in any respect, set aside, or required to be paid to a debtor, debtor in possession, creditor, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

- (c) Except as expressly provided for in the First Lien Credit Agreement, the inclusion of Obligations under Hedge Agreements or Cash Management Agreements in the First Lien Obligations will not create in favor of the applicable counterparty any rights in connection with the management or release of any Collateral or of the Obligations of any Grantor under any First Lien Collateral Document.
- (d) The Parties covenant and agree that, notwithstanding anything to the contrary in this Agreement, the Second Lien Documents, the Off-Take Agreements or applicable law, the Second Lien Obligations shall not be set-off or otherwise applied against or in reduction of obligations arising under the Off-Take Agreements and vice versa. For the avoidance of doubt, the Second Lien Creditor shall have the right to set off any amounts (other than the Second Lien Obligations) under the Off-Take Agreements in accordance with the terms thereof.
- (e) The First Lien Creditor Agent, the Peruvian Collateral Agent, the First Lien Creditor Namibian Debt Guarantor and the holders of First Lien Obligations are, together, the *First Lien Claimholders*.
- (f) The Second Lien Creditor, the Second Lien Creditor Namibian Debt Guarantor and the holders of Second Lien Obligations are, together, the *Second Lien Claimholders*.

2.3 FIRST AND SECOND LIEN COLLATERAL TO BE IDENTICAL

- (a) The Parties intend that the First Lien Collateral and the Second Lien Collateral be identical. Accordingly, subject to the other provisions of this Agreement, the Parties will cooperate
 - (1) to determine the specific items included in the First Lien Collateral and the Second Lien Collateral, the steps taken to perfect the Liens thereon, and the identity of the Persons having First Lien Obligations or Second Lien Obligations, and
 - (2) to make the forms, documents, and agreements creating or evidencing the First Lien Collateral and Second Lien Collateral and the guaranties of the First Lien Obligations and the guaranties of the Second Lien Obligations materially the same, other than with respect to the first and second lien nature of the Liens.
- (b) Until the Discharge of First Lien Obligations, and whether or not an Insolvency Proceeding has commenced, the Borrower and Guarantor Subsidiaries will not grant, and will use their best efforts to prevent any other Person (including, for certainty, any Subject Entity) from granting, a Lien on any property
 - (1) in favor of a First Lien Claimholder to secure the First Lien Obligations under the First Lien Loan Documents unless the Borrower, such Guarantor Subsidiaries or such other Person grants (or offers to grant with a

reasonable opportunity for the Lien to be accepted) a Second Lien Claimholder a junior Lien on such property to secure the Second Lien Obligations (however, the refusal of a Second Lien Claimholder to accept such Lien will not prevent the First Lien Claimholder from taking the Lien), and

- (2) in favor of a Second Lien Claimholder to secure the Second Lien Obligations unless the Borrower, such Guarantor Subsidiaries or such other Person grants (or offers to grant with a reasonable opportunity for the Lien to be accepted) the First Lien Creditor Agent a senior Lien on such property to secure the First Lien Obligations (however, the refusal of the First Lien Creditor Agent to accept such Lien will not prevent a Second Lien Claimholder from taking the Lien).
- (c) Subject to section 2.1, "*Seniority of Liens Securing First Lien Obligations*", if (i) a Second Lien Creditor hereafter acquires a Lien on property (other than Excluded Assets) to secure a Second Lien Obligation where the property is not also subject to a Lien securing the First Lien Obligations, then such Second Lien Creditor will give the First Lien Creditor Agent written notice of such Lien no later than three (3) Business Days prior to acquiring such Lien and (ii) a First Lien Claimholder hereafter acquires a Lien on property (other than Excluded Assets) to secure a First Lien Obligation under the First Lien Credit Agreement when the property is not also subject to a Lien securing the Second Lien Obligations, then such First Lien Claimholder will give the Second Lien Creditor written notice of such Lien no later than five (5) Business Days after acquiring such Lien. If such First Lien Claimholder or Second Lien Creditor fails to provide such timely notice to the Second Lien Creditor or the First Lien Creditor Agent, respectively, and during the period after which notice is given by the First Lien Claimholder or Second Lien Creditor, respectively, but prior to the time the Second Lien Creditor or the First Lien Creditor Agent, respectively, have acquired a corresponding Lien, such property will be deemed to be Collateral for all purposes hereunder provided that such property is not otherwise Excluded Assets.

2.4 PLEDGED COLLATERAL

- (a) If the First Lien Creditor Agent has any Collateral in its possession or control (such Collateral being the "*Pledged Collateral*"), then, subject to section 2.1, "*Seniority of Liens Securing First Lien Obligations*", and this section 2.4, the First Lien Creditor Agent will possess or control the Pledged Collateral as gratuitous bailee and/or gratuitous agent for perfection for the benefit of the Second Lien Claimholders as secured parties, so as to satisfy the applicable requirements of section 22.1 of the PPSA (Ontario) (or, as applicable, any similar requirement under the laws of any Relevant Jurisdiction). In this section 2.4, "control" has the meaning given that term in section 1(2) of the PPSA (Ontario) (or any similar concept under the laws of any Relevant Jurisdiction).
- (b) The First Lien Creditor Agent will have no obligation to any First Lien Claimholder or any Second Lien Claimholder to ensure that any Pledged

Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this section 2.4. The duties or responsibilities of the First Lien Creditor Agent under this section 2.4 will be limited solely to possessing or controlling the Pledged Collateral as bailee and/or agent for perfection in accordance with this section 2.4 and delivering the Pledged Collateral upon a Discharge of First Lien Obligations as provided in subsection (d) below.

(c) The Second Lien Claimholders hereby waive and release the First Lien Creditor Agent from all claims and liabilities arising out of the First Lien Creditor Agent's role under this section 2.4 as bailee and/or agent with respect to the Pledged Collateral except to the extent any Final Judgment determines that any Second Lien Claimholder has suffered damages as a direct result of the First Lien Creditor Agent's gross negligence or willful misconduct.

(d) Upon the Discharge of First Lien Obligations, the First Lien Creditor Agent will release, deliver or transfer control of any Pledged Collateral in its possession or control, together with any security cessions granted to the First Lien Creditor Agent) as well as any necessary transfers, assignments, endorsements or stock transfer powers (such transfers, assignments, endorsements or powers will be without recourse and without any representation or warranty made by the First Lien Creditor Agent),

(1) *first*, to the Second Lien Claimholders if any Second Lien Obligations remain outstanding, and

(2) *second*, to the applicable Grantor,

and will take any other action reasonably requested by the Second Lien Claimholders (at the expense of the Borrower or, upon default by the Borrower in payment or reimbursement thereof, the Second Lien Claimholders) in connection with the Second Lien Claimholders obtaining a first-priority interest in the Pledged Collateral.

(e) If any Second Lien Claimholder has Pledged Collateral in its possession or control, then, subject to section 2.1, "*Seniority of Liens Securing First Lien Obligations*", and this section 2.4, then such Second Lien Claimholder will possess or control the Pledged Collateral as gratuitous bailee for perfection for the benefit of the First Lien Creditor Agent as secured party, so as to satisfy the requirements of section 22.1 of the PPSA (Ontario) (or, as applicable, any similar requirement under the laws of a Relevant Jurisdiction).

(f) The Second Lien Claimholder will have no obligation to any First Lien Claimholder to ensure that any Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this section 2.4. The duties or responsibilities of a Second Lien Claimholder under this section 2.4 will be limited solely to possessing or controlling the Pledged Collateral as bailee and/or agent for perfection in

accordance with this section 2.4 and delivering the Pledged Collateral (i) forthwith upon receipt to the First Lien Creditor Agent if a Discharge of First Lien Obligations has not occurred or, as the case may be, (ii) upon a Discharge of Second Lien Obligations as provided in subsection (g) below.

- (g) Upon the Discharge of Second Lien Obligations, the Second Lien Claimholders will deliver or transfer control of any Pledged Collateral in their possession or control, any security cessions granted to any of the Second Lien Claimholders) as well as any necessary endorsements or stock transfer powers (which endorsements or powers will be without recourse and without any representation or warranty) to the applicable Grantor.

2.5 LIMITATIONS ON DUTIES AND OBLIGATIONS

- (a) (1) The First Lien Creditor Agent will be solely responsible for perfecting and maintaining the perfection of its Liens on the First Lien Collateral, and (2) except for the First Lien Creditor Agent's obligations under section 2.4, "*Pledged Collateral*", First Lien Claimholders will not be responsible for perfecting and maintaining the perfection of the Liens on the Second Lien Collateral.
- (b) This Agreement is intended solely to govern the respective Lien priorities as between First Lien Claimholders and Second Lien Claimholders and does not impose on First Lien Claimholders or Second Lien Claimholders any obligations in respect of the disposition of Proceeds of Disposition or foreclosure on any Collateral that would conflict with a prior perfected claim in favour of another Person, an order or decree of a court or other Governmental Authority or applicable law.
- (c) Notwithstanding any other provision of this Agreement, the First Lien Creditor Agent will only be required to verify the payment of, or other satisfactory arrangements with respect to, First Lien Obligations arising under Cash Management Agreements or Hedge Agreements if the First Lien Creditor Agent receives notice of such Obligations, together with any supporting documentation the First Lien Creditor Agent requests, from the applicable Person.
- (d) Except for obligations expressly provided for herein, the First Lien Claimholders will have no liability to the Second Lien Claimholders for any action by a First Lien Claimholder with respect to any First Lien Obligations or Collateral, including
 - (1) the maintenance, preservation, or collection of First Lien Obligations or any Collateral, and
 - (2) the foreclosure upon, or the sale, liquidation, maintenance, preservation, or other disposition of, any Collateral.
- (e) The First Lien Creditor Agent will not have by reason of this Agreement or any other document a fiduciary relationship with any First Lien Claimholder or

Second Lien Claimholder. The parties recognize that the interests of First Lien Claimholders and Second Lien Claimholders may differ, and First Lien Claimholders may act in their own interest without taking into account the interests of the Second Lien Claimholders.

2.6 PROHIBITION ON CONTESTING LIENS; NO MARSHALING

- (a) The First Lien Creditor Agent will not contest in any proceeding (including an Insolvency Proceeding) the validity, enforceability, perfection, or priority of any Lien securing a Second Lien Obligation, but nothing in this section 2.6 will impair the rights of any First Lien Claimholder to enforce this Agreement, including the priority of the Liens securing the First Lien Obligations or the provisions for exercise of remedies.
- (b) The Second Lien Claimholders will not contest in any proceeding (including an Insolvency Proceeding) the validity, enforceability, perfection, or priority of any Lien securing a First Lien Obligation, but nothing in this section 2.6 will impair the rights of any Second Lien Claimholders to enforce this Agreement, including the priority of the Liens securing the Second Lien Obligations or the provisions for exercise of remedies.
- (c) Until the Discharge of First Lien Obligations, the Second Lien Claimholders will not assert any marshaling, appraisal, valuation or other similar right that may otherwise be available to a junior secured creditor.

2.7 CONFIRMATION OF SUBORDINATION AND PRIORITY IN SECOND LIEN COLLATERAL DOCUMENTS

The Borrower will cause each Second Lien Collateral Document to include the following language (or language to similar effect approved by the First Lien Creditor Agent) and any other language the First Lien Creditor Agent reasonably requests to reflect the subordination and priority of such Lien:

“Notwithstanding anything herein to the contrary, the Lien and security interest granted to the Second Lien Claimholders pursuant to this Agreement and the exercise of any right or remedy by the Second Lien Claimholders hereunder are subject to the provisions of the Intercreditor Agreement, dated September 30, 2020 (as amended, restated, supplemented, or otherwise modified from time to time, the “**Intercreditor Agreement**”), among The Bank of Nova Scotia, as the First Lien Creditor Agent, Glencore Canada Corporation, as the Second Lien Creditor, Scotiabank Peru S.A.A., as Peruvian Collateral Agent, Guinea Fowl Investments Fifty Eight (Proprietary) Limited, as First Lien Creditor Namibian Debt Guarantor, Aloe Investments Two Hundred And Sixty Seven (Proprietary) Limited, as Second Lien Creditor Namibian Debt Guarantor, Trevali Mining Corporation, The Bank of Nova Scotia, as Swiss Collateral Agent and the Guarantor Subsidiaries (as defined therein) from time to time party thereto and other persons party or that may become party thereto from time to time. If there is a conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement will control.”.

2.8 RELEASE OF LIENS OR GUARANTIES

- (a) If the First Lien Creditor Agent releases a Lien on Collateral, or releases a Grantor from its Obligations under its guaranty of the First Lien Obligations which guaranty is secured by a Lien on Collateral, in connection with:
- (1) an Enforcement Action, or
 - (2) a Disposition of any Collateral permitted under the First Lien Loan Documents other than pursuant to an Enforcement Action (whether or not there is a First Lien Event of Default),

then any Lien of a Second Lien Claimholder on such Collateral, and the Obligations of the Grantor under such guaranty of the Second Lien Obligations, will be, except as otherwise provided below and to the extent possible and/or permitted under applicable law, automatically and simultaneously released to the same extent, and such Second Lien Claimholder will, upon receipt of evidence of the First Lien release, promptly execute and deliver to the First Lien Creditor Agent or the Grantor such termination statements, releases, and other documents as the First Lien Creditor Agent or the Grantor requests to effectively confirm the release, *provided* that such release will not occur without the consent of a Second Lien Claimholder

- (x) for an Enforcement Action as to any Collateral the net Proceeds of the Disposition of which will not be distributed in accordance with section 4.5, "*Application of Proceeds*", except as otherwise required pursuant to the PPSA, the Mortgages Act and applicable law, subject to the relative priorities described in section 2.1, "*Seniority of Liens Securing First Lien Obligations*",
 - (y) for a Disposition other than pursuant to an Enforcement Action and which is permitted under a First Lien Loan Document, if the Disposition is prohibited by a provision of any Second Lien Loan Document other than solely as the result of the existence of a default or event of default under such Second Lien Loan Document.
- (b) The Second Lien Claimholders hereby appoint the First Lien Creditor Agent and any officer or agent, with full power of substitution, as their true and lawful attorney-in-fact with full power and authority in the place and stead of the Second Lien Claimholders or in the First Lien Creditor Agent's own name, in the First Lien Creditor Agent's discretion to take any action and to execute any and all documents and instruments that may be reasonable and appropriate for the limited purpose of carrying out the terms of this section 2.8 other than, and without prejudice to, the exercise solely by a Second Lien Claimholder of its consent right pursuant to section 2.8(a), including any endorsements or other instruments of transfer or release. This appointment is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations or such time as this Agreement is terminated in accordance with its terms.

- (c) Until the Discharge of First Lien Obligations, to the extent that the First Lien Creditor Agent
- (1) releases a Lien on Collateral or a Grantor from its Obligations under its guaranty, which Lien or guaranty is reinstated, or
 - (2) obtains a new Lien on Collateral or additional guaranty from a Grantor,
- then the Second Lien Claimholders will be granted a Lien on such Collateral and an additional guaranty, as the case may be, subject to section 2.1, "*Seniority of Liens Securing First Lien Obligations*" and section 2.3, "*First and Second Lien Collateral to be Identical*".
- (d) Until the Discharge of First Lien Obligations, to the extent a Second Lien Claimholder obtains a new Lien on Collateral or an additional guaranty from a Grantor, the First Lien Creditor Agent will be granted a Lien on such Collateral and an additional guaranty, as the case may be, subject to section 2.1, "*Seniority of Liens Securing First Lien Obligations*" and section 2.3, "*First and Second Lien Collateral to be Identical*".
- (e) Nothing in this section 2.8 will waive any First Lien Event of Default resulting from the grant of Liens under the Second Lien Collateral Documents securing any such excess amounts, or the right of First Lien Claimholders to exercise any rights and remedies under the First Lien Loan Documents as a result thereof.

2.9 PURCHASE RIGHT OF SECOND LIEN CLAIMHOLDERS

- (a) The First Lien Claimholders hereby grant the Second Lien Claimholders an option to purchase the First Lien Obligations (the "***Purchased Obligations***"), exercisable by the Second Lien Claimholders at any time. Such purchase will:
- (1) include all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, the First Lien Obligations and, to the extent First Lien Obligations under Hedge Agreements and/or Cash Management Agreements have not crystallized at the time of purchase by the Second Lien Claimholders, cash collateral in an amount equal to at least 105% of the uncrystallized First Lien Obligations at such time,
 - (2) be on an "as is, where is" basis, without legal warranty of any kind, and at the Second Lien Claimholders sole risk and peril,
 - (3) be made pursuant to an assignment and assumption agreement substantially in the form attached hereto as Schedule A (the "***Assignment and Assumption Agreement***"), and
 - (4) otherwise be subject to the terms and conditions of this section 2.9.

The First Lien Claimholders and the First Lien Creditor Agent will retain all rights to indemnification attributable to the Purchased Obligations provided in the

relevant First Lien Loan Documents for all claims and other amounts relating to periods prior to the purchase of the Purchased Obligations pursuant to this section 2.9, and (x) shall continue to have the benefit of all Liens under the First Lien Collateral Documents as security for such claims and other amounts and (y) for such period, the Second Lien Claimholders shall hold such Liens and First Lien Collateral in trust for the First Lien Creditor Agent and the First Lien Claimholders.

- (b) The First Lien Creditor Agent will, from time to time after the delivery of a Purchase Notice pursuant to section 2.9(c) and upon the reasonable written request of the Second Lien Claimholders, promptly advise the Second Lien Claimholders in writing of the then current amount of the Purchased Obligations (with reasonable details of the calculation thereof).
- (c) If the Second Lien Claimholders desire to purchase the Purchased Obligations, the Second Lien Claimholders will deliver a purchase notice (the "*Purchase Notice*") to the First Lien Creditor Agent that:
 - (1) states that it is a Purchase Notice under this section 2.9, and
 - (2) designates a purchase date (the "*Purchase Date*") on which the purchase will occur that is at least five Business Days, but not more than ten Business Days, after the First Lien Creditor Agent's receipt of the Purchase Notice.
- (d) Upon the First Lien Creditor Agent's receipt of an effective Purchase Notice conforming to this section 2.9, the Second Lien Claimholders will be irrevocably obligated to purchase, and the First Lien Claimholders will be irrevocably obligated to sell, all, and not less than all, of the Purchased Obligations in accordance with the terms set out in the Assignment and Assumption Agreement.
- (e) The purchase price for the Purchased Obligations (the "*Purchase Price*") will equal the sum of (i) the principal amount (including capitalized interest) at par of all debts, loans and advances included in the Purchased Obligations, (ii) all accrued and unpaid interest thereon through the Purchase Date, and (iii) all accrued and unpaid fees, expenses, costs, penalties and other amounts owed to the First Lien Claimholders and the First Lien Creditor Agent under the First Lien Loan Documents on the Purchase Date (including for certainty, all costs and expenses of the First Lien Creditor Agent incurred in connection with the completion of the transactions contemplated in the Purchase Notice).
- (f) Before 10:00 a.m. (Toronto time) on the Purchase Date,
 - (1) the Second Lien Claimholders and the First Lien Claimholders will execute and deliver the Assignment and Assumption Agreement;
 - (2) the Second Lien Claimholders will pay the Purchase Price to the First Lien Creditor Agent by wire transfer of same day funds;

- (3) the Second Lien Claimholders will execute and deliver to the First Lien Claimholders and the First Lien Creditor Agent a waiver of all claims arising out of this Agreement and the transactions contemplated hereby and any other documentation that the First Lien Claimholders, acting reasonably, may require; and
 - (4) in order to reflect the transfer of the First Lien Collateral to the Second Lien Claimholders, as a result of the acquisition of the Purchased Obligations by the Second Lien Claimholders, the First Lien Collateral Documents governed by the laws of each Relevant Jurisdiction shall, as requested by the Second Lien Claimholders, be amended or released.
- (g) Notwithstanding anything to the contrary in this Agreement, following delivery of a Purchase Notice, the Standstill Period, if applicable, shall be extended until the earlier of (x) the date that such purchase is complete and (y) 60 days following the delivery of the Purchase Notice. Unless and until all of the requirements of section 2.9(f) are completed, neither the granting of the purchase option in this section 2.9 nor the delivery of a Purchase Notice shall in any way limit or restrict the First Lien Creditor Agent's or the First Lien Claimholders' rights under the First Lien Loan Documents or this Agreement, including the right to commence or continue any Enforcement Action.

2.10 REPAYMENTS AND PREPAYMENTS OF SECOND LIEN OBLIGATIONS

Subject to section 7.6 of the Second Lien Loan Agreement (as such provision exists as of the date hereof), the Second Lien Claimholders shall not accept, and no Grantor shall pay, any amounts in respect of the repayment or prepayment of the Second Lien Obligations until Discharge of First Lien Obligations has occurred. For the avoidance of doubt, payments and deliveries under the Off-Take Agreements shall not be postponed or otherwise affected by this Agreement.

3. MODIFICATION OF OBLIGATIONS

3.1 PERMITTED MODIFICATIONS

Subject to section 3.2, "*Modifications Requiring Consent*" and except as otherwise expressly provided in this section 3,

- (a) the First Lien Obligations may be modified in accordance with their terms, and their aggregate amount increased or Refinanced, without notice to or consent by any Second Lien Claimholder, *provided* that the holders of any Refinancing Indebtedness (or their agent) bind themselves in writing addressed to the Second Lien Claimholders to the terms of this Agreement, and
- (b) the Second Lien Obligations may be modified in accordance with their terms, and their aggregate amount increased or Refinanced, without notice to or consent by any First Lien Claimholder, *provided* that the holders of any Refinancing

Indebtedness (or their agent) bind themselves in writing addressed to First Lien Claimholders to the terms of this Agreement.

However, no such modification may alter or otherwise affect sections 2.1, "*Seniority of Liens Securing First Lien Obligations*" or 2.6, "*Prohibition on Contesting Liens; No Marshaling*".

3.2 MODIFICATIONS REQUIRING CONSENT

Notwithstanding the preceding section 3.1, and except as otherwise permitted as DIP Financing pursuant to section 5.1, "Canada Dip Financing", or section 6.1, "Peruvian Dip Financing",

- (a) the following modifications to the First Lien Loan Documents require the prior written consent of the Second Lien Claimholders, such consent not to be unreasonably withheld, delayed or conditioned:
 - (1) increases to the Credit Limit (as defined in, the First Lien Credit Agreement as of the date hereof) in excess of \$150,000,000;
 - (2) decreases in the quantum of commitments under the First Lien Credit Agreement by any First Lien Claimholders (other than (i) any decrease as a result of an assignment of all or a portion of such commitments pursuant to Section 16.5 of the First Lien Credit Agreement and otherwise in accordance with the provisions hereof), (ii) any such decrease on account of a voluntary or mandatory prepayment of principal under the First Lien Credit Agreement or otherwise (iii) any such decrease made during the continuance of a First Lien Event of Default);
 - (3) increases to the interest rates and/or fees payable under or in connection with the First Lien Credit Agreement (save as specifically provided in the First Lien Credit Agreement as in effect on the date of this Agreement);
 - (4) shortening the tenor or maturity of the First Lien Credit Agreement; or
 - (5) changes to a prepayment, redemption, or defeasance provision so as to require a new payment or accelerate an existing payment Obligation,
- (b) notwithstanding section 3.2(a), any modifications made in accordance with the terms of the First Lien Loan Documents relating to default interest, prepayment rights and acceleration and termination rights will not require the consent of the Second Lien Claimholders,
- (c) the following modifications to the Second Lien Loan Agreement require the prior written consent of all First Lien Claimholders, such consent not to be unreasonably withheld, delayed or conditioned:
 - (1) increases to the interest rates and/or fees payable under the Second Lien Loan Agreement;

- (2) shortening the tenor or maturity of the Second Lien Loan Agreement;
 - (3) changes to a prepayment, redemption, or defeasance provision so as to require a new payment or accelerate an existing payment Obligation, or
 - (4) changes to any provision which prohibits Dispositions other than solely as the result of the existence of a default or event of default under any Second Lien Loan Document,
- (d) notwithstanding section 3.2(c), modifications made in accordance with the terms of the Second Lien Loan Documents relating to default interest and acceleration and termination rights will not require the consent of the First Lien Creditor Agent, and
 - (e) notwithstanding any other provision of this Agreement, the tenor, final maturity date, interest rates and scheduled interest payments under the Second Lien Loan Agreement shall be identical to the tenor, final maturity date, interest rates and scheduled interest payments under the First Lien Credit Agreement.

3.3 PARALLEL MODIFICATIONS TO SECOND LIEN OBLIGATIONS

Subject to section 3.2, "*Modifications Requiring Consent*", if a First Lien Claimholder and a Grantor

- (a) amend, agree to waive compliance with and/or consent to a departure from the provisions of, in each case, any First Lien Loan Document (in each case in accordance with the provisions of Section 14.14 of the First Lien Credit Agreement), the amendment, waiver and/or consent will apply automatically to any comparable provision of a Second Lien Loan Document without the consent of, and without any action by, the Second Lien Claimholders or any Grantor; or
- (b) modify a First Lien Collateral Document, the modification will apply automatically to any comparable provision of a Second Lien Collateral Document in which the Grantor grants a Lien on the same Collateral, without the consent of any Second Lien Claimholder and without any action by a Second Lien Claimholder or any Grantor, *provided* that no such modification will
 - (1) remove or release Second Lien Collateral, except to the extent that (1) the release is permitted or required by section 5.1, "*Canada DIP Financing*", or section 6.1, "*Peruvian DIP Financing*" if applicable and (2) there is a corresponding release of First Lien Collateral,
 - (2) impose duties on a Second Lien Claimholder or otherwise affects its rights, including under the Off-Take Agreements, without its consent, or
 - (3) permit other Liens on the Collateral not permitted under the terms of the Second Lien Loan Documents or section 5, "*Canadian Insolvency*

Proceedings” or section 6, “*Peruvian Insolvency Proceedings*” of this Agreement.

3.4 NOTICE OF MODIFICATIONS

The Borrower will notify the Second Lien Claimholders, and the Borrower will notify the First Lien Creditor Agent, of each modification, waiver and/or consent in respect of the First Lien Obligations or Second Lien Obligations, respectively, within five Business Days after the effective date of any such modification, waiver or consent and provide copies of any documents executed and delivered in connection with such modification, waiver or consent.

4. ENFORCEMENT

4.1 WHO MAY EXERCISE REMEDIES

- (a) Subject to subsections (b) and (c) below, until the Discharge of First Lien Obligations, First Lien Claimholders will have the exclusive right to
- (1) commence and maintain an Enforcement Action (including the rights to set off, apply or credit bid their debt),
 - (2) instruct the Peruvian Collateral Agent, the First Lien Creditor Namibian Debt Guarantor and the Swiss Collateral Agent,
 - (3) subject to section 2.8, “*Release of Liens or Guaranties*”, make determinations regarding the release or disposition of, or restrictions with respect to, the Collateral, and
 - (4) otherwise enforce the rights and remedies of a secured creditor under the PPSA, the Mortgages Act or any Insolvency Laws or other applicable laws of any applicable jurisdiction, so long as any Proceeds received by the Peruvian Collateral Agent, the First Lien Creditor Namibian Debt Guarantor, the Swiss Collateral Agent and/or the First Lien Creditor Agent and other First Lien Claimholders in the aggregate in excess of those necessary to achieve Discharge of First Lien Obligations are distributed in accordance with section 4.5, “*Application of Proceeds*”, except as otherwise required pursuant to the PPSA, the Mortgages Act or other applicable laws of any applicable jurisdiction, subject to the relative priorities described in section 2.1, “*Seniority of Liens Securing First Lien Obligations*”.
- (b) Notwithstanding the preceding section 4.1(a), the Second Lien Claimholders may commence an Enforcement Action or exercise rights with respect to a Lien securing a Second Lien Obligation (or instruct the Swiss Collateral Agent to do so) if
- (1) 180 days have elapsed since the Second Lien Claimholders notified the First Lien Creditor Agent in writing of the Second Lien Event of Default

(as such period may be extended in accordance with section 2.9(g) or 4.1(f), the "*Standstill Period*"),

- (2) First Lien Claimholders are not then diligently pursuing an Enforcement Action with respect to all or a material portion of the Collateral or diligently attempting to vacate any stay or prohibition against such exercise,
 - (3) any Second Lien Event of Default has not been cured, and
 - (4) no Grantor is then subject to an Insolvency Proceeding.
- (c) Notwithstanding section 4.1(a), but subject to section 2.3, "*First and Second Lien Collateral to Be Identical*", the Second Lien Claimholders may take the following actions (each, an "*Unrestricted Enforcement Action*")
- (1) provide any notice of default or event of default to the Borrower or the Guarantor Subsidiaries (or any of them) under the Second Lien Loan Agreement or of any intention to enforce such a default or event of default,
 - (2) make a demand for payment on the Borrower or the Guarantor Subsidiaries (or any of them) with respect to the Second Lien Obligations or accelerate such payment obligations,
 - (3) file a proof of claim or similar instrument with respect to any Second Lien Obligations in connection with or prior to any Enforcement Action,
 - (4) file a proof of claim or statement of interest, vote on a plan of reorganization or arrangement or a proposal under any Insolvency Law (including a vote to accept or reject a plan of partial or complete liquidation, reorganization, arrangement, composition, or extension), and make other filings, arguments, and motions, with respect to the Second Lien Obligations and the Collateral in any Insolvency Proceeding commenced by or against any Grantor; provided that, in each case, the right is not exercised contrary to any position taken by the First Lien Claimholders or in contravention of any provision of this Agreement,
 - (5) take action to create, perfect, preserve, or protect its Lien on the Collateral, so long as such actions are not adverse to the priority status in accordance with this Agreement, to the Liens on the Collateral securing the First Lien Obligations, or the First Lien Claimholders' rights and remedies in respect thereof,
 - (6) file necessary pleadings in opposition to a claim objecting to or otherwise seeking the disallowance of a Second Lien Obligation or a Lien securing the Second Lien Obligations,

- (7) join (but not exercise any control over) a judicial foreclosure or Lien enforcement proceeding with respect to the Collateral initiated by the First Lien Creditor Agent, to the extent that such action could not reasonably be expected to interfere with the Enforcement Action, but no Second Lien Claimholder may receive any Proceeds thereof unless expressly permitted herein,
 - (8) file actions to prevent expiry of any statute of limitations,
 - (9) bid for or purchase Collateral at any public, private or judicial foreclosure upon such Collateral initiated by any First Lien Claimholder, or any sale of Collateral during an Insolvency Proceeding or power of sale proceeding; *provided* that such bid or purchase may not include a "credit bid" in respect of the Second Lien Obligations unless it contemplates the Discharge of First Lien Obligations upon or prior to closing; and
 - (10) take any action under the provisions of the Off-Take Agreements to the extent not prohibited by section 2.2(d) of this Agreement, including the right to make, file and enforce any claim against an Off-Take Counterparty, including for specific performance and/or monetary damages.
- (d) Except as otherwise expressly set forth in this section 4.1, Second Lien Claimholders may exercise any rights and remedies that could be exercised by an unsecured creditor; except that no Second Lien Claimholder shall exercise any unsecured creditor rights or remedies in respect of the Collateral which (i) such Second Lien Claimholder would be precluded from exercising in its capacity as a secured creditor, or (ii) are otherwise inconsistent with the terms of this Agreement; and provided that any judgment Lien obtained by a Second Lien Claimholder as a result of any exercise of unsecured creditor rights or remedies will be included in the Second Lien Collateral and be subject to this Agreement for all purposes (including in relation to the First Lien Obligations). For certainty and without limiting the foregoing, no Second Lien Claimholder shall initiate or join in an involuntary case or proceeding under any Insolvency Law with respect to a Grantor prior to the end of the Standstill Period against a Grantor that has guaranteed or granted Liens on the Collateral to secure the Second Lien Obligations in accordance with the terms of the Second Lien Loan Documents and applicable law.
- (e) The First Lien Creditor Agent will notify the Second Lien Claimholders of the Discharge of First Lien Obligations within 5 Business Days after such discharge.
- (f) The Standstill Period will be extended indefinitely at all times during which (i) the First Lien Creditor Agent is diligently pursuing its rights and remedies under the First Lien Loan Documents, (ii) an Insolvency Proceeding is ongoing and/or (iii) an Enforcement Action initiated by or on behalf of the First Lien Creditor Agent has been judicially or statutorily stayed.

4.2 MANNER OF EXERCISE

- (a) Subject to the requirements of this Agreement, a First Lien Claimholder may take any Enforcement Action
- (1) in any manner in its sole discretion in compliance with applicable law,
 - (2) without consultation with or the consent of any Second Lien Claimholder,
 - (3) regardless of whether an Insolvency Proceeding has been commenced,
 - (4) regardless of any provision of any Second Lien Loan Document (other than this Agreement), and
 - (5) subject to section 4.2(d) and section 5.10(c) below, regardless of whether such exercise is adverse to the interest of any Second Lien Claimholder.
- (b) The rights of a First Lien Claimholder to enforce any provision of this Agreement or any First Lien Loan Document will not be prejudiced or impaired by
- (1) any act or failure to act of any Grantor or any other First Lien Claimholder, or
 - (2) noncompliance by any Person other than such First Lien Claimholder with any provision of this Agreement, any First Lien Loan Document, or any Second Lien Loan Document, regardless of any knowledge thereof that any First Lien Claimholder may have or otherwise be charged with.
- (c) The Second Lien Claimholders will not contest, protest, object to, or take any action to defeat, delay or hinder any Enforcement Action by a First Lien Claimholder made in compliance with this Agreement, including section 5.10(c), and applicable law and each waives any and all claims with respect thereto.
- (d) If, pursuant to an Enforcement Action, a First Lien Claimholder forecloses upon or otherwise acquires Collateral consisting of (i) shares of an Off-Take Counterparty and/or (ii) a Material Mine the production from which is subject to an Off-Take Agreement, such First Lien Claimholder's foreclosure or acquisition shall be subject to the terms and conditions hereof, including section 5.10(c), and the relevant Off-Take Agreements.

4.3 SPECIFIC PERFORMANCE

The First Lien Claimholders and the Second Lien Claimholders may each demand specific performance of this Agreement, and each such First Lien Claimholder and Second Lien Claimholder waives any defence based on the adequacy of a remedy at law and any other defence that might be asserted to bar the remedy of specific performance in any action brought by a Second Lien Claimholder or a First Lien Claimholder, respectively.

4.4 NOTICE OF EXERCISE

The First Lien Creditor Agent and the Second Lien Claimholders will provide reasonable prior notice to the other of any Enforcement Action.

4.5 APPLICATION OF PROCEEDS

Until the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations, and regardless of whether an Insolvency Proceeding has been commenced, Collateral or Proceeds therefrom received in connection with an Enforcement Action or, subject to section 5.6 and 6.5, each “*Reorganization Securities*”, received in connection with any Insolvency Proceeding involving a Grantor will be applied

- (a) *first*, to the payment in full of the costs of enforcement of the First Lien Creditor Agent, the Peruvian Collateral Agent, the First Lien Creditor Namibian Debt Guarantor, the Swiss Collateral Agent or the Second Lien Claimholders, as applicable (including the costs and expenses of any advisers or agents appointed by any of the foregoing),
- (b) *second*, to the payment in full of all First Lien Obligations then due,
- (c) *third*, to the payment in full of all Second Lien Obligations then due, and
- (d) *fourth*, to the applicable Grantor or as otherwise required by applicable law

in each case as specified in the First Lien Loan Documents or the Second Lien *Loan Documents*, or as otherwise determined by the First Lien Claimholders or the Second Lien Claimholders, as applicable.

Notwithstanding the foregoing, until the Discharge of First Lien Obligations, any non-cash Collateral or non-cash Proceeds will be held by the First Lien Creditor Agent, the Peruvian Collateral Agent, the First Lien Creditor Namibian Debt Guarantor and/or the Swiss Collateral Agent, as applicable, as Collateral pursuant to section 2.4, *Pledged Collateral*, unless the failure to apply such amounts as set forth above would be commercially unreasonable.

4.6 INSURANCE

The First Lien Creditor Agent and the Second Lien Creditor will be named as additional insureds and/or loss payees, as applicable, under any insurance policies maintained by any Grantor. Until the Discharge of First Lien Obligations and subject to the rights of the Grantors under the First Lien Loan Documents,

- (a) the First Lien Creditor Agent will have the exclusive right to adjust settlement for any losses covered by an insurance policy covering the Collateral, and to approve an award granted in a condemnation or similar proceeding (or a deed in lieu of condemnation) affecting the Collateral, and
- (b) all Proceeds of such policy, award, or deed will be distributed in accordance with section 4.5, “*Application of Proceeds*”, except as otherwise required pursuant to

the PPSA, the Mortgages Act and applicable law, subject to the relative priorities described in section 2.1, "*Seniority of Liens Securing First Lien Obligations*", and thereafter, if no Second Lien Obligations are outstanding, to the payment to the owner of the subject property, such other Person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct.

4.7 COLLATERAL TURNOVER

Until the Discharge of First Lien Obligations, whether or not an Insolvency Proceeding has commenced, Collateral or Proceeds (including insurance proceeds or property or Proceeds subject to Liens referred to in paragraph (c) of section 2.3, "*First and Second Lien Collateral to Be Identical*") received by the Second Lien Claimholders in connection with an Enforcement Action or, subject to section 5.6 and section 6.5, each "*Reorganization Securities*", or received in connection with any Insolvency Proceeding, will be

- (a) segregated and held in trust, and
- (b) promptly paid over to the First Lien Creditor Agent in the form received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The First Lien Creditor Agent is authorized to make such endorsements as agent for the Second Lien Claimholders. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

4.8 REFINANCING AFTER DISCHARGE OF FIRST LIEN OBLIGATIONS

If, contemporaneously with the Discharge of First Lien Obligations, the Borrower issues or incurs Refinancing of the First Lien Obligations that is permitted to be incurred under the Second Lien Loan Documents, then the First Lien Obligations will automatically be deemed not to have been discharged for all purposes of this Agreement (except for actions taken as a result of the initial Discharge of First Lien Obligations). The Borrower and the new First Lien Creditor Agent (the *New Agent*) will deliver notice stating that the Borrower has entered into a new First Lien Loan Document and identifying the New Agent within five Business Days of such Refinancing. Upon the Second Lien Claimholders' receipt of such notice,

- (a) the Obligations under such Refinancing indebtedness will automatically be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein,
- (b) the New Agent under such new First Lien Loan Documents will be the First Lien Creditor Agent for all purposes of this Agreement,
- (c) the Second Lien Claimholders will promptly
 - (1) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Borrower or the New Agent reasonably requests to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement, and

- (2) deliver to the New Agent any Pledged Collateral held by it together with any necessary endorsements (or otherwise allow the New Agent to obtain control of such Pledged Collateral), and
- (d) the New Agent will promptly agree in writing addressed to the Second Lien Claimholders to be bound by the terms of this Agreement.

If any Obligations under the new First Lien Loan Documents are secured by Collateral that does not also secure the Second Lien Obligations, then the Grantors will cause the Second Lien Obligations to be secured at such time by a second priority Lien on such Collateral to the same extent provided in the First Lien Collateral Documents and this Agreement.

5. CANADIAN INSOLVENCY PROCEEDINGS

Section 5.1 to 5.9 shall apply in the context of any Canadian Insolvency Proceedings and section 5.10 shall apply in all Insolvency Proceedings (and Insolvency Transactions if applicable).

5.1 CANADA DIP FINANCING

- (a) Until the Discharge of First Lien Obligations, the Second Lien Claimholders will not contest, protest or object to, and each Second Lien Claimholder will be deemed to have consented as a secured creditor to the Borrower or any other Grantor obtaining DIP Financing that is proposed to rank in priority to or *pari passu* with the First Lien Obligations if the First Lien Creditor Agent consents in writing to such DIP Financing.
- (b) The Second Lien Claimholders will not support, and will make good faith and commercially reasonable efforts to oppose, any DIP Financing that is proposed to rank in priority to or *pari passu* with the First Lien Obligations unless such DIP Financing is provided by the holders of First Lien Obligations (or any of them) or consented to by the First Lien Creditor Agent.
- (c) No Second Lien Claimholder may provide DIP Financing to the Borrower or any other Grantor secured by Liens equal or senior in priority to the Liens securing any First Lien Obligations.
- (d) The First Lien Creditor Agent will not support, and will make good faith and commercially reasonable efforts to oppose, any DIP Financing that is proposed to rank in priority to or *pari passu* with the Second Lien Obligations and subordinate to the First Lien Obligations (unless the holders of First Lien Obligations have declined to offer DIP Financing and such DIP financing is being offered by the Second Lien Claimholders on terms that are consistent with the terms of this Agreement).
- (e) The Grantors will provide to each of the First Lien Creditor Agent and the Second Lien Claimholders at least ten days' written notice of, and all material terms,

conditions and other particulars of, any offer of DIP Financing that is received, obtained or solicited by the Grantors.

5.2 SALE OF COLLATERAL

Subject to compliance by the First Lien Claimholders with section 5.10(c), the Second Lien Claimholders will not contest, protest, or object to, and will be deemed to have consented to Disposition of Collateral in a Canadian Insolvency Proceeding, including, pursuant to section 36 of the CCAA or section 65.13 of the BIA free and clear of its Liens or other interests if the First Lien Creditor Agent consents in writing to the Disposition, *provided* that either (i) pursuant to court order, the Liens of the Second Lien Claimholders attach to the net Proceeds of the Disposition with the same priority and validity as the Liens held by the Second Lien Claimholders on such Collateral, and the Liens remain subject to the terms of this Agreement, or (ii) the net Proceeds of a Disposition of Collateral are applied in accordance with section 4.5, "*Application of Proceeds*".

The Second Lien Claimholders shall be entitled to bid for and purchase Collateral in a Canadian Insolvency Proceeding, but such bid or purchase transaction may not include a "credit bid" unless it provides for the Discharge of First Lien Obligations on or before closing.

Subject to section 5.10(c), the First Lien Claimholders shall be entitled to bid for and purchase Collateral in a Canadian Insolvency Proceeding, including via a "credit bid", without restriction.

5.3 RELIEF FROM THE STAY

Until the Discharge of First Lien Obligations, no Second Lien Claimholder may seek relief from any stay in a Canadian Insolvency Proceeding in respect of the Collateral without the First Lien Creditor Agent's prior written consent or oppose any request by the First Lien Creditor Agent for relief from such stay.

5.4 FIRST LIEN OBJECTIONS TO SECOND LIEN ACTIONS

Subject to section 4.1, "*Who May Exercise Remedies*" and section 5.10(c), nothing in this section 5 limits a First Lien Claimholder from objecting in a Canadian Insolvency Proceeding or otherwise to any action taken by a Second Lien Claimholder asserting any of its rights and remedies under the Second Lien Loan Documents.

5.5 AVOIDANCE; REINSTATEMENT OF OBLIGATIONS

If a First Lien Claimholder or a Second Lien Claimholder receives payment or property on account of a First Lien Obligation or Second Lien Obligation, and the payment is subsequently invalidated, avoided, voided, declared to be fraudulent, preferential or a transfer at undervalue, set aside, or otherwise required to be transferred or equivalent value paid to a trustee, receiver, the Borrower, other Grantor or any creditor, or the estate of the Borrower or any other Grantor (for purposes of this section 5.5, a *Recovery*), then, to the extent of the Recovery, the First Lien Obligations or Second Lien Obligations intended to have been satisfied by the payment will be reinstated as First Lien Obligations or Second Lien Obligations, as applicable,

on the date of the Recovery, and no Discharge of First Lien Obligations or Discharge of Second Lien Obligations, as applicable, will be deemed to have occurred for all purposes hereunder. If this Agreement is terminated prior to a Recovery, this Agreement will be reinstated in full force and effect, and such prior termination will not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from the date of reinstatement. Upon any such reinstatement of First Lien Obligations, the Second Lien Claimholder will deliver to the First Lien Creditor Agent any Collateral or Proceeds thereof received between the Discharge of First Lien Obligations and their reinstatement. The Second Lien Claimholders shall not benefit from a Recovery, and any distribution made to the Second Lien Claimholders as a result of a Recovery will be paid over to the First Lien Creditor Agent for application to the First Lien Obligations in accordance with section 4.5, "*Application of Proceeds*".

5.6 REORGANIZATION SECURITIES

Nothing in this Agreement prohibits or limits the right of the Second Lien Claimholders to receive and retain any debt or equity securities that are issued by a reorganized debtor pursuant to a plan of reorganization, compromise or arrangement, or a proposal under the BIA or similar dispositive restructuring plan in connection with a Canadian Insolvency Proceeding; provided that any such debt securities received by a Second Lien Claimholder on account of a Second Lien Obligation that constitutes a "secured claim" within Canadian Insolvency Laws will be paid over or otherwise transferred to the First Lien Creditor Agent for application in accordance with section 4.5 "*Application of Proceeds*", unless such plan or proposal under which such distribution is made is consented to by the affirmative vote of all classes composed of the secured claims of First Lien Claimholders.

If, in a Canadian Insolvency Proceeding, debt Obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization, compromise or arrangement, or a proposal under the BIA, or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then, to the extent the debt Obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt Obligations pursuant to such plan and will apply with like effect to the Liens securing such debt Obligations.

5.7 POST-PETITION CLAIMS

The Second Lien Claimholders shall not oppose or seek to challenge any claim by a First Lien Claimholder for allowance or payment in any Canadian Insolvency Proceeding of First Lien Obligations consisting of Post-Petition Claims.

5.8 WAIVERS

Each Second Lien Claimholder waives

- (a) any claim it may hereafter have against any First Lien Claimholder arising out of any financing arrangement or grant of a security interest in connection with the

Collateral in an Insolvency Proceeding, so long as such actions are not in express contravention of the terms of this Agreement; and

- (b) solely in its capacity as a holder of a Lien on Collateral, any claim or cause of action that any Grantor may have against any First Lien Claimholder, except to the extent arising from a breach by such First Lien Claimholder of the provisions of this Agreement.

5.9 SEPARATE GRANTS OF SECURITY AND SEPARATE CLASSIFICATION

The grants of Liens pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents constitute two separate and distinct grants. Because of, among other things, their differing rights in the Collateral, the Second Lien Obligations, to the extent deemed to be “secured claims” are fundamentally different from the First Lien Obligations and must be separately classified in any plan of reorganization in a Canadian Insolvency Proceeding. The Second Lien Claimholders will not seek in a Canadian Insolvency Proceeding to be treated as part of the same class of creditors as First Lien Claimholders and will not oppose or contest any pleading by First Lien Claimholders seeking separate classification of their respective secured claims.

5.10 VOTING

- (a) First Lien Claimholders and the Second Lien Claimholders shall not be restricted in any manner in the exercise of their voting and other rights in Insolvency Proceedings (including, their right to bid for and purchase Collateral on a “credit bid” basis or otherwise), *except* as expressly provided in this Agreement *and provided* such rights are exercised in a manner consistent with this Agreement.
- (b) The Second Lien Claimholders shall not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in Insolvency Proceedings) any Insolvency Transaction unless such Insolvency Transaction (A) contemplates the Discharge of First Lien Obligations in cash upon or prior to closing or implementation, or (B) the First Lien Claimholders consent to, vote in favour of or otherwise support such Insolvency Transaction (in compliance with this Agreement).
- (c) Notwithstanding any other provision in this Agreement, the First Lien Creditor Agent shall not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in Insolvency Proceedings) any Insolvency Transaction,
 - (1) that purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact the Off-Take Agreements without the express written consent of the Second Lien Creditor; or

- (2) that contests, challenges or brings into question the validity or enforceability of the Off-Take Agreements.

The First Lien Creditor Agent acknowledges the mutual intention of the Second Lien Claimholders and the First Lien Claimholders that no Insolvency Transaction described in this section 5.10(c) should be consummated contrary to this section 5.10(c) and that the Second Lien Claimholders are relying upon the provisions of this section 5.10(c) in entering into the Second Lien Loan Agreement and this Agreement.

5.11 EFFECTIVENESS IN INSOLVENCY PROCEEDINGS

The Parties acknowledge that this Agreement is a “subordination agreement” which will be effective before, during, and after the commencement of a Canadian Insolvency Proceeding. All references in this Agreement to any Grantor will include any receiver or trustee for such Person in an Insolvency Proceeding.

6. PERUVIAN INSOLVENCY PROCEEDINGS

This section 6 shall apply in the context of any Peruvian Insolvency Proceedings.

6.1 PERUVIAN DIP FINANCING

- (a) Until the Discharge of First Lien Obligations, the Second Lien Creditor will not contest, protest or object to, and each Second Lien Creditor will be deemed to have consented as a secured creditor to the Borrower or any other Grantor obtaining DIP Financing that is proposed to rank in priority to or *pari passu* with the First Lien Obligations if the First Lien Creditor Agent consents in writing to such DIP Financing.
- (b) The Second Lien Creditor will not support, and will make good faith and commercially reasonable efforts to oppose, any DIP Financing that is proposed to rank in priority to or *pari passu* with the First Lien Obligations unless such DIP Financing is provided by the holders of First Lien Obligations (or any of them) or consented to by the First Lien Creditor Agent.
- (c) No Second Lien Creditor may provide DIP Financing to the Borrower or any other Grantor secured by Liens equal or senior in priority to the Liens securing any First Lien Obligations.
- (d) The First Lien Creditor Agent will not support, and will make good faith and commercially reasonable efforts to oppose, any DIP Financing that is proposed to rank in priority to or *pari passu* with the Second Lien Obligations and subordinate to the First Lien Obligations (unless the holders of First Lien Obligations have declined to offer DIP Financing and such DIP financing is being offered by the Second Lien Creditor on terms that are consistent with the terms of this Agreement).

- (e) The Grantors will promptly provide to each of the First Lien Creditor Agent and the Second Lien Creditor at least ten days' written notice of, and all material terms, conditions and other particulars of, any offer of DIP Financing that is received, obtained or solicited by the Grantors.

6.2 SALE OF COLLATERAL

The Second Lien Creditor will not contest, protest, or object to, and will be deemed to have consented to Disposition of Collateral in a Peruvian Insolvency Proceeding of any of the Grantors, as applicable, pursuant to sections 67.5, 81.2 and 85.2, as applicable, of the Peruvian Bankruptcy Code, in order to proceed with the enforcement and foreclosure of the Collateral outside said Peruvian Insolvency Proceeding so that the proceeds of such foreclosure can be distributed among the applicable secured creditors, as long as (i) should the Grantor is under a reorganization proceeding, the Collateral is perfected to the benefit of such secured creditors before publication of the Peruvian Insolvency Proceeding, and (ii) should the Grantor is under a liquidation proceeding, the collection of rights and obligations preferred by statute within the insolvency (i.e. labour, social security, pension and wage) are not affected.

6.3 RELIEF FROM THE STAY

Until the Discharge of First Lien Obligations, no Second Lien Creditor may seek relief from any stay in a Peruvian Insolvency Proceeding in respect of the Collateral without the First Lien Creditor Agent's prior written consent or oppose any request by the First Lien Creditor Agent for relief from such stay.

6.4 FIRST LIEN OBJECTIONS TO SECOND LIEN ACTIONS

Subject to section 4.1, "*Who May Exercise Remedies*" and section 6.10 (c), nothing in this section 6 limits a First Lien Claimholder from opposing and/or objecting in a Peruvian Insolvency Proceeding or otherwise to any action taken by a Second Lien Creditor asserting any of its rights and remedies under the Second Lien Loan Documents.

6.5 AVOIDANCE; REINSTATEMENT OF OBLIGATIONS

If a First Lien Claimholder or a Second Lien Creditor receives payment or property on account of a First Lien Obligation or Second Lien Obligation, and the payment is subsequently invalidated, avoided, voided, declared to be fraudulent, preferential or a transfer at undervalue, set aside, or otherwise required to be transferred or equivalent value paid to a trustee, receiver, the Borrower, other Grantor or any creditor, or the estate of the Borrower or any other Grantor (for purposes of this Section 5.5, a *Recovery*), then, to the extent of the Recovery, the First Lien Obligations or Second Lien Obligations intended to have been satisfied by the payment will be reinstated as First Lien Obligations or Second Lien Obligations, as applicable, on the date of the Recovery, and no Discharge of First Lien Obligations or Discharge of Second Lien Obligations, as applicable, will be deemed to have occurred for all purposes hereunder. If this Agreement is terminated prior to a Recovery, this Agreement will be reinstated in full force and effect, and such prior termination will not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from the date of reinstatement. Upon any such reinstatement of First Lien Obligations, the Second Lien Creditor will deliver to the First Lien Creditor Agent

any Collateral or Proceeds thereof received between the Discharge of First Lien Obligations and their reinstatement. The Second Lien Creditor shall not benefit from a Recovery, and any distribution made to the Second Lien Creditor as a result of a Recovery will be paid over to the First Lien Creditor Agent for application to the First Lien Obligations in accordance with section 4.5, "Application or Proceeds".

6.6 REORGANIZATION SECURITIES

Nothing in this Agreement prohibits or limits the right of the Second Lien Creditor to receive and retain any debt or equity securities that are issued by a reorganized debtor pursuant to a plan of reorganization, compromise or arrangement, or a proposal under Peruvian Insolvency Law or similar dispositive restructuring plan in connection with a Peruvian Insolvency Proceeding; provided that any such debt securities received by the Second Lien Creditor on account of a Second Lien Obligation that constitutes a "secured claim" within Peruvian Insolvency Laws will be paid over or otherwise transferred to the First Lien Creditor Agent for application in accordance with section 4.5 "*Application of Proceeds*", unless such plan or proposal under which such distribution is made is consented to by the affirmative vote of all classes composed of the secured claims of First Lien Claimholders.

6.7 POST-PETITION CLAIMS

The Second Lien Creditor shall not oppose or seek to challenge any claim by a First Lien Claimholder for allowance or payment in any Peruvian Insolvency Proceeding of First Lien Obligations consisting of Post-Petition Claims.

6.8 WAIVERS

The Second Lien Creditor waives:

- (a) any claim it may hereafter have against any First Lien Claimholder arising out of any financing arrangement or grant of a security interest in connection with the Collateral in a Peruvian Insolvency Proceeding, so long as such actions are not in express contravention of the terms of this Agreement; and
- (b) solely in its capacity as a holder of a Lien on Collateral, any claim or cause of action that any Grantor may have against any First Lien Claimholder, except to the extent arising from a breach by such First Lien Claimholder of the provisions of this Agreement.

6.9 SEPARATE GRANTS OF SECURITY AND SEPARATE CLASSIFICATION

The grants of Liens pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents constitute two separate and distinct grants. Because of, among other things, their differing rights in the Collateral, the Second Lien Obligations, to the extent deemed to be "secured claims" are fundamentally different from the First Lien Obligations and must be separately classified in any plan of reorganization in a Peruvian Insolvency Proceeding. Second Lien Creditor will not seek in a Peruvian Insolvency Proceeding

to be treated as part of the same class of creditors as First Lien Claimholders and will not oppose or contest any pleading by First Lien Claimholders seeking separate classification of their respective secured claims.

6.10 VOTING

- (a) First Lien Claimholders and the Second Lien Creditor shall not be restricted in any manner in the exercise of their voting and other rights in Insolvency Proceedings (including, without limitation, their right to bid for and purchase Collateral on a “credit bid” basis or otherwise), *except* as expressly provided in this Agreement *and provided* such rights are exercised in a manner consistent with this Agreement.
- (b) The Second Lien Creditor shall not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in Insolvency Proceedings) any Insolvency Transaction unless such Insolvency Transaction (A) contemplates the Discharge of First Lien Obligations in cash upon or prior to closing or implementation, or (B) the First Lien Claimholders consent to, vote in favour of or otherwise support such Insolvency Transaction (in compliance with this Agreement).
- (c) Notwithstanding any other provision in this Agreement, the First Lien Creditor Agent shall not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in Insolvency Proceedings) any Insolvency Transaction,
 - (1) that purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact the Off-Take Agreements without the express written consent of the Second Lien Creditor; or
 - (2) that contests, challenges or brings into question the validity or enforceability of the Off-Take Agreements.

The First Lien Creditor Agent acknowledges the mutual intention of the Second Lien Creditor and the First Lien Claimholders that no Insolvency Transaction described in this section 5.10(c) should be consummated contrary to this section 6.10(c) and that the Second Lien Creditor is relying upon the provisions of this section 5.10(c) in entering into the Second Lien Loan Agreement and this Agreement.

6.11 EFFECTIVENESS IN INSOLVENCY PROCEEDINGS

The Parties acknowledge that this Agreement is a “subordination agreement” which will be effective before, during, and after the commencement of a Peruvian Insolvency Proceeding. All references in this Agreement to any Grantor will include any receiver or trustee for such Person in an Insolvency Proceeding.

7. SWISS COLLATERAL AGENT

7.1 APPOINTMENT OF SWISS COLLATERAL AGENT

- (a) Each of the Creditors hereby designates and appoints (i) The Bank of Nova Scotia as the Swiss Collateral Agent and (ii) each successor thereof appointed pursuant hereto as the Swiss Collateral Agent, in each case under this Agreement, and the Swiss Collateral Agent hereby accepts such designation and appointment. The Swiss Collateral Agent is hereby vested with all broad powers and faculties to take such necessary or required actions on its behalf under the provisions of this Agreement and the Swiss Security Document and any other instruments and agreements referred to herein or therein, together with such other powers as are reasonably incidental thereto, and each of the Creditors hereby recognizes such designation and appointment, without the need of any further requirement, formalization or notice. The appointment, authorization and powers made by this section 7.1(a) are given for valuable consideration and coupled with an interest. Each of the Creditors 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, for the Swiss Collateral Agent (and its successors appointed pursuant hereto) to exercise its faculties and powers, and to comply with its obligations, under this Agreement and the Swiss Security Document, as the case may be, directly or through its attorneys-in-fact or designees, including but not limited to the individualization of any required special power of attorney.
- (b) Each of the Creditors hereby authorizes the Swiss Collateral Agent, (and each successor appointed pursuant hereto) to, directly or pursuant to Article 7 of this Agreement, as applicable, (i) execute, enter into and accept the Swiss Security Document and all other instruments relating to the Swiss Security Document on behalf and for the benefit of each Creditor, as applicable, (ii) accept proceeds of the Swiss Collateral on behalf and for the benefit of each of the Creditors, as applicable, and transfer and distribute the Proceeds with respect thereto to the Creditors in accordance with section 4.5 hereof, (iii) take action on its behalf expressly permitted and instructed by the Creditors pursuant to the terms of this Agreement to perfect, maintain, preserve and enforce the Liens granted by the Swiss Security Document and to manage as lienholder the Swiss Collateral subject thereto, (iv) execute instruments of release or to take such other action necessary to release Liens upon the Swiss Collateral to the extent instructed by the applicable Creditors pursuant to the terms of this Agreement, and (v) exercise such other powers and perform such other actions and duties as are, in each case, expressly delegated and instructed by the Creditors to the Swiss Collateral Agent by the terms hereof and by the terms of the Swiss Security Document. Without limiting the generality of the foregoing, each of the Creditors authorizes and directs the Swiss Collateral Agent to enter into the Swiss Security Document, and any ancillary documents thereto, on behalf and for the benefit of each of the Creditors. Each of the Creditors hereby agrees, and each holder of any First Lien Obligations or any Second Lien Obligations by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the

Swiss Collateral Agent in accordance with the provisions of this Agreement and/or the Swiss Security Document, and the exercise by the Creditors of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto and shall be authorized by and binding upon of the Creditors.

- (c) The Swiss Collateral Agent, subject to its faculties, powers and restrictions under this Agreement and the Swiss Security Document, will have the right and power to demand performance by Boundary, as grantor of the applicable First Lien Obligations and Second Lien Obligations, in accordance with written instructions given by the relevant Creditor that is owed such First Lien Obligations and/or Second Lien Obligations demanded and to enforce upon the instruction of the relevant Creditor any rights and remedies relating to the Swiss Collateral owned by Boundary, as grantor of the First Lien Obligations and Second Lien Obligations.
- (d) Without limiting or affecting its rights under this Agreement against the Grantors, as grantors of the First Lien Obligations and Second Lien Obligations, the Swiss Collateral Agent agrees with each of the Creditors that it will not exercise its rights as Swiss Collateral Agent with respect to the individual rights of each of the Creditors under this Agreement or the Swiss Security Document except as expressly provided, authorized and instructed in writing by the applicable instructing Creditor pursuant to the terms of this Agreement and otherwise the Swiss Security Document.
- (e) At any time or times, in order to comply with any legal requirement in any jurisdiction, the Swiss Collateral Agent may employ or appoint agents and attorneys-in-fact, or a bank or trust company or one or more other Persons reasonably acceptable to the Creditors, either to act as co-agent or co-agents or sub-agent or sub-agents, jointly with the Swiss Collateral Agent, or to act as separate agent or agents on behalf of the Creditors with such power and authority as may be necessary for the effectual operation of the provisions hereof and of the Swiss Security Document and as may be specified in the instrument of appointment. The Swiss Collateral Agent shall not be responsible for any actions of such agent (including but not limited to the negligence or misconduct of any such agent) appointed with reasonable care. The Swiss Collateral Agent and any such sub-agent or co-agent may perform any of its duties and exercise any of its rights and powers through its Affiliates. The provisions of this Article * shall apply to any other such sub-agent or co-agent selected by the Swiss Collateral Agent with reasonable care and to the Affiliates of the Swiss Collateral Agent and any other such sub-agent or co-agent.

7.2 LIMITATION OF DUTIES AND PROTECTION OF THE SWISS COLLATERAL AGENT

- (a) The Swiss Collateral Agent is authorized to take such actions and to exercise such powers as are hereby delegated to the Swiss Collateral Agent by the terms of this

Agreement or any Swiss Security Document, together with such actions and powers as are reasonably incidental thereto.

- (b) The Swiss Collateral Agent shall not have any duties or obligations under this Agreement or the Swiss Security Document to which it is a party except those expressly set forth herein and therein. The duties of the Swiss Collateral Agent shall be mechanical and administrative in nature. Without limiting the generality of the foregoing, (i) the Swiss Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, (ii) except as expressly set forth in the Swiss Security Document or this Agreement, the Swiss Collateral Agent shall not have any duty to disclose, and shall not be liable for any failure to disclose, any information relating to any Grantor, as grantor of the First Lien Obligations and Second Lien Obligations, that is communicated to or obtained by the Person serving as the Swiss Collateral Agent or any of its Affiliates in any capacity, (iii) the Swiss Collateral Agent shall not be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or under any of the Swiss Security Document and (iv) the Swiss Collateral Agent shall not be liable or responsible for its failure to act or to fulfil any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Swiss Collateral Agent (including, but not limited to, on account of any applicable law or directive of a Governmental Authority, any act of God or war). Neither of the Swiss Collateral Agent nor any of its respective officers, directors, employees, attorneys, advisors or agents shall be liable for any action taken or not taken by it with the consent or at the request of any of the Creditors in accordance with the terms hereof or of the Swiss Security Document, as applicable, or in the absence of its own gross negligence or wilful misconduct as determined by a Final Judgment. The Swiss Collateral Agent shall not be responsible for the existence, genuineness or validity or value of any Collateral or for the filing, recording, validity, perfection, priority, maintenance or enforceability of any Lien, whether impaired by operation of law or by reason of any action or omission to act on its part under the Security Document, provided that (x) the Swiss Collateral Agent will take such further steps as may be instructed in writing by any of the Creditors to perfect the Liens on the Swiss Collateral (and the Swiss Collateral Agent shall give prompt notice of any such request to the Creditors), so long as the Swiss Collateral Agent is otherwise permitted to take such action under this Agreement, the Swiss Security Document and by applicable law and is indemnified pursuant hereto prior to taking any action contemplated hereunder or thereunder, and (y) upon receipt of written instruction by any Creditor, the Swiss Collateral Agent will execute, procure, acknowledge, deliver and record all such further instruments, deeds, conveyances, mortgages, financing statements, continuation statements, notices, third party consents and agreements and similar documents as are contemplated by the Swiss Security Document and reasonably deemed necessary by such Creditor and as are presented to the Swiss Collateral Agent for filing or recording to preserve, perfect, continue and protect the Liens granted on the Swiss Collateral in favor of the Swiss Collateral Agent pursuant to the Swiss Security Document on all or any portion of the Swiss Collateral. The Swiss Collateral

Agent shall not be deemed to have knowledge of any Event of Default unless and until written notice thereof is given to the Swiss Collateral Agent by a Creditor and/or a Grantor, and the Swiss Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with the Swiss Security Document by a Grantor thereunder or instruction provided by a Creditor in relation thereto, (B) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in the Swiss Security Document by any other party thereto, (D) the validity, enforceability, effectiveness or genuineness of the Swiss Security Document or any other agreement, instrument or document, or (E) the satisfaction of any condition set forth in the Swiss Security Document. The Swiss Collateral Agent shall not be responsible or liable for special, indirect, consequential or punitive loss or damage of any kind whatsoever (including loss of profit), irrespective of whether the Swiss Collateral Agent has been advised of the likelihood of such loss or damage and regardless of the form of action, the Swiss Security Document, together with such actions and powers as are reasonably incidental thereto.

- (c) The Swiss Collateral Agent shall be entitled to rely on, and shall not incur any liability for relying on, any notice, request, certificate, consent, statement, instrument, document or other writing purporting to be genuine and to have been signed or sent by the proper Person. The Swiss Collateral Agent may also rely on any statement made to it orally or by telephone and purporting to be made by the proper Person, and shall not incur any liability for relying thereon.
- (d) Each of the Creditors agrees that it shall not instruct, authorize or direct the Swiss Collateral Agent to take any action that is contrary to the terms of this Agreement. The Swiss Collateral Agent may refuse to act on any notice, consent, direction or instruction from any Creditor that, in the Swiss Collateral Agent's reasonable opinion:
 - (1) is contrary to law or the provisions of the Swiss Security Document;
 - (2) is not clear, at the discretion of the Swiss Collateral Agent, as to the action or tasks to be taken by the Swiss Collateral Agent;
 - (3) contradicts any notice, consent, direction or instruction provided by another Creditor;
 - (4) is provided by a Creditor in respect of Security Interest or a Swiss Security Document in respect of which such Creditor does not have an interest; or
 - (5) may expose the Swiss Collateral Agent to liability for which it has not been indemnified by the Creditors in accordance with this Agreement.

- (e) The parties hereto acknowledge that the provisions of this section 7.2(e) shall survive the resignation, replacement or the removal of the Swiss Collateral Agent or the termination of this Agreement.

7.3 KNOWLEDGE OF EVENTS OF DEFAULT

- (a) The Swiss Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or an Enforcement Action unless the Swiss Collateral Agent has received a written notice from a Creditor and/or a Grantor specifying the Default, the Event of Default or the Enforcement Action, provided, however, that a Creditor shall not be obliged to give notice of the occurrence of an Event of Default or an Enforcement Action to the Swiss Collateral Agent, and the failure to give such notice shall not constitute a waiver thereof.
- (b) If the Swiss Collateral Agent has received a written notice pursuant to section 7.3(a) or any other written notice received by it under or pursuant to the Swiss Security Document, it shall forthwith provide a copy thereof to the Creditors.

7.4 SWISS COLLATERAL AGENT ACTING ON INSTRUCTIONS

- (a) The Swiss Collateral Agent may at any time request written instructions from the applicable Creditors with respect to any actions or approvals which, by the terms of this Agreement or the Swiss Security Document, the Swiss Collateral Agent is permitted, required, instructed or directed to take or to grant on behalf of the Creditors, and the Swiss Collateral Agent shall be absolutely entitled to refrain from taking any such action or to withhold any such approval and shall not be under any liability whatsoever as a result thereof until it shall have received such written instructions. No Creditor shall have any right of action against the Swiss Collateral Agent as a result of the Swiss Collateral Agent acting or refraining from acting under this Agreement or the Swiss Security Document in accordance with instructions from the applicable Creditors given in accordance with this Agreement. Except as expressly set forth in this Agreement or as a result of a breach of this Agreement, no Creditor shall have any liability to any other Creditor or any Grantor in connection with the exercise of any right conferred upon the Creditor in this Agreement.
- (b) Any amendment to this Agreement or the Swiss Security Document, except as expressly permitted hereunder (including section 3.3 hereof) or as may be required to correct any obvious error therein, shall require the consent of the First Lien Agent and the Second Lien Creditor. Further, but subject always to section 3.3, the Swiss Collateral Agent may not agree or take any action to release or waive any Lien without the written consent of each of the Creditors for whose benefit any of the affected Lien is held. Also, the Swiss Collateral Agent may refrain from taking any action in respect of any Lien for which it has received instructions that are not in accordance with the requirements of this Agreement. Any amendment or waiver which changes or relates to the rights and/or the

obligations of the Swiss Collateral Agent shall also require the consent of the Swiss Collateral Agent.

- (c) Notwithstanding sections 7.4(a) and 7.4(b), the Swiss Collateral Agent shall be entitled, but shall not be obligated, to take such action as it deems necessary where unanticipated events have occurred which, in the good faith judgment of the Swiss Collateral Agent, require that immediate action be taken in order to preserve or protect the whole or any part of the Swiss Collateral or any rights and remedies under any Swiss Security Document and the Swiss Collateral Agent shall provide a written notification to the Creditors of the action so taken.
- (d) Any instructions from any Creditor to the Swiss Collateral Agent shall be subject to the indemnities set forth in section 7.8.

7.5

RELIANCE

- (a) The Swiss Collateral Agent shall be protected in acting and relying reasonably upon any written notice, direction, instruction, order, certificate, confirmation, request, waiver, consent, receipt or other paper or document (collectively referred to as "Documents") furnished to it and signed by any Person required to, or entitled to execute and deliver to such Swiss Collateral Agent any such Documents in connection with this Agreement and, in the case of the Swiss Collateral Agent, the Swiss Security Document, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained, which it in good faith believes to be genuine.
- (b) The Swiss Collateral Agent may retain and consult with outside legal counsel, independent accountants and other advisors and experts selected by it as may be reasonably required for the purpose of discharging its duties or determining its rights under this Agreement and the Swiss Security Document, and may rely and act upon the advice of such counsel, accountants, advisors or experts appointed with reasonable care and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountant, advisor or expert, provided that relying on such advice is not determined by a Final Judgment to constitute gross negligence or wilful misconduct. The Borrower shall pay or reimburse the Swiss Collateral Agent for any reasonable fees, expenses and disbursements of such counsel, accountant, advisor or expert and failing any such reimbursement by the Borrower, the Creditors shall reimburse the Swiss Collateral Agent for all such reasonable fees, expenses and disbursements.

7.6

COMPLIANCE ASSUMPTIONS

- (a) The Swiss Collateral Agent shall be entitled to assume that any instructions or certificates received by the Swiss Collateral Agent, as the case may be, from any one or more of the Creditors or any other Person under or pursuant to this Agreement are (a) given in accordance with the provisions of this Agreement if it so states on the face of such instructions; and (b) given, in the case of a Creditor,

in accordance with the provisions of the applicable Transaction Document to which the Creditor is bound.

- (b) Subject to the terms of this Agreement, the Swiss Collateral Agent shall not be liable to any other Person for any action taken or omitted under or in connection with this Agreement in accordance with instructions or certificates referred to in clause (a) above unless such action or omission is caused by its gross negligence or wilful misconduct as determined by a Final Judgment.
- (c) Subject to the terms of this Agreement, an instructing Creditor pursuant hereto shall not be liable to any other Person for any action taken or omitted under or in connection with this Agreement in accordance with instructions or certificates referred to in clause (a) above unless such action or omission is determined by a Final Judgment to be caused by its gross negligence or wilful misconduct.
- (d) The Swiss Collateral Agent shall also be entitled to assume without inquiry (in the absence of actual knowledge to the contrary) that each party to this Agreement is duly performing and observing all of its obligations contained in this Agreement, in the Swiss Security Document and in the Documents.

7.7 RESIGNATION, REMOVAL AND REPLACEMENT OF THE SWISS COLLATERAL AGENT

- (a) The Swiss Collateral Agent may resign at any time by giving at least thirty (30) days' prior written notice thereof (or such shorter period as may be agreed to by the Creditors) to the Creditors and to the Borrower and such resignation shall not be effective until such date as a successor shall have been appointed and accepted such appointment as provided in section 7.7(b) below and the Creditors shall have paid all fees and expenses owed to the resigning Swiss Collateral Agent prior to the effectiveness of such resignation. In addition, the Swiss Collateral Agent may be removed with five (5) Business Days prior notice, with or without cause, by written notice received by the Swiss Collateral Agent jointly from the Creditors, and such removal shall be effective on the date jointly specified by the Creditors. After any resignation or removal hereunder of the Swiss Collateral Agent, the provisions of this Article 7 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as the Swiss Collateral Agent hereunder while it was the Swiss Collateral Agent under this Agreement.
- (b) Upon receiving written notice of any such resignation or removal, a successor Swiss Collateral Agent shall be appointed by unanimous written agreement of the Creditors and, provided that no Event of Default shall have occurred and be continuing, consented to by the Borrower (such consent not to be unreasonably withheld or delayed). If a successor Swiss Collateral Agent shall not have been appointed pursuant to this section 7.7(b) within a thirty (30) day period after the resigning Swiss Collateral Agent's resignation or upon removal of the removed Swiss Collateral Agent, then the resigning or removed Swiss Collateral Agent may but shall not be required to appoint a successor Swiss Collateral Agent meeting the qualifications specified in this section 7.7(b). The Creditors hereby

consent to such appointment by the resigning or removed Swiss Collateral Agent so long as the criteria set forth above are met.

- (c) The resignation or removal of the Swiss Collateral Agent shall take effect on the day specified in the notice described in section 7.7(a), unless previously a successor Swiss Collateral Agent shall have been appointed and shall have accepted such appointment in accordance with section 7.7(b), in which event such resignation or removal shall take effect immediately upon the acceptance of such appointment by such successor Swiss Collateral Agent, provided, however, subject to section 7.7(a), that no such resignation or removal shall be effective hereunder unless and until a successor Swiss Collateral Agent shall have been appointed and shall have accepted such appointment.
- (d) Upon the effective appointment of a successor Swiss Collateral Agent, the successor Swiss Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Swiss Collateral Agent and the predecessor Swiss Collateral Agent hereby appoints the successor Swiss Collateral Agent the attorney-in-fact of such predecessor Swiss Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Swiss Collateral Agent hereunder and all Swiss Collateral, power, trusts, duties, documents, rights and authority of the previous Swiss Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Swiss Collateral Agent shall, nevertheless, on the written request of any Creditor or successor Swiss Collateral Agent, execute and deliver any other such instrument transferring to such successor Swiss Collateral Agent all the Swiss Collateral, properties, rights, power, trust, duties, authority and title of such predecessor, including, but not limited to, if applicable, any filings before public registries, or any other administrative, judicial or authority of any kind. By execution of this Agreement or any joinder to this Agreement, each Grantor, to the extent requested by any Creditor or the Swiss Collateral Agent shall procure any and all documents, conveyances or instruments and execute same, to the extent required, in order to reflect the transfer to the successor Swiss Collateral Agent.

7.8

INDEMNIFICATION OF THE SWISS COLLATERAL AGENT

- (a) In addition to and without limiting any other protection of the Swiss Collateral Agent and Creditors in this Agreement (including under section 7.8(b)), the Documents, the Swiss Security Document or otherwise by law, the Grantors agree jointly and severally to indemnify the Swiss Collateral Agent and each of the Creditors and their respective insurance consultants, independent technical consultants, Affiliates, agents, receivers, successors, assigns, officers, directors and employees (collectively for the purpose of this section 7.8, the "Indemnitees") (in respect of each of whom it is agreed that the Swiss Collateral Agent and each of the Creditors are acting as agent for the purpose of agreeing to the availability of such indemnity) from and against any claim, liability, obligation, loss, damage

or expense (including reasonable legal fees and expenses) which any of them may sustain or incur as a consequence of:

- (1) any representation or warranty made herein by a Grantor which was incorrect at the time it was made or deemed to have been made;
 - (2) a default by an Grantor in the payment of any sum due from it under or in connection with a Transaction Document, including, but not limited to, all sums (whether in respect of principal, interest or any other amount) paid or payable to lenders of funds borrowed by the Creditors, or any of them, in order to fund the amount of any such unpaid amount to the extent the Swiss Collateral Agent, the Creditors, or any of them, are not otherwise reimbursed;
 - (3) any default an Grantor hereunder or under any Transaction Document or Swiss Security Document;
 - (4) the consummation of any of the transactions by any Grantor contemplated by any of the Transaction Documents;
 - (5) any lack of perfection or first priority of any of the Liens intended to result from the Swiss Security Document (subject only to Permitted Liens (as defined in the First Lien Credit Agreement));
 - (6) carrying out the instructions of a Creditor in accordance with the terms of this Agreement; and
 - (7) generally, the Swiss Collateral Agent and the Creditors having entered into this Agreement and the Documents. A certificate of a Creditor or the Swiss Collateral Agent as to the amount of any such loss or expense shall be prima facie evidence as to the amount thereof, in the absence of manifest error, provided that the Creditor or the Swiss Collateral Agent, as the case may be, determines the amount owing to it in good faith using any reasonable method and provides a detailed description of its calculation of the amount owing to it.
- (b) Each of the Grantors shall indemnify and hold harmless the Indemnitees from and against any and all liabilities (including strict liability), actions, demands, fines, awards, sanctions, penalties, damages, obligations, losses, costs and expenses (including consultants' fees, investigation and laboratory fees, reasonable legal fees, expenses and remedial costs), suits, costs of any settlement or judgement and claims of any and every nature and kind whatsoever which may now or in the future (whether before or after the release and discharge of the Swiss Security Document in favor of the Swiss Collateral Agent or any Creditor) be paid, incurred or suffered by or served against any Indemnitee (whether direct or indirect and whether based on any applicable law or at equitable cause or on contract or otherwise) by any Person.

- (c) To the extent the Swiss Collateral Agent is not indemnified in full therefor by the Grantors, without releasing the Grantors from their indemnity obligations, each of the Creditors indemnify the Swiss Collateral Agent, and each of its successors, assigns, directors, officers, managers, legal representatives, accountants, agents and employees (to the extent that the Swiss Collateral Agent is not reimbursed by the Grantors), rateably as between the Creditors respectively, based upon their respective First Lien Obligations and/or Second Lien Obligations then owing, from and against any and all losses whatsoever which may be imposed on, incurred by, or asserted against the Swiss Collateral Agent, or any of its directors, officers, employees or agents in any way relating to or arising out of this Agreement, the Swiss Security Document or any action taken or omitted by the Swiss Collateral Agent in such capacity under this Agreement, provided that no Creditor shall be liable for any portion of such losses resulting from (i) any action taken by the Swiss Collateral Agent pursuant to any request or instructions given by another Creditor or (ii) the gross negligence or wilful misconduct of the Swiss Collateral Agent or any of its Affiliates as determined by a Final Judgment. Without limitation of the foregoing, each of the Creditors agrees to reimburse the Swiss Collateral Agent promptly upon demand for its rateable share of any out-of-pocket expenses (including reasonable counsel fees, costs or expenses) incurred by the Swiss Collateral Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and each other Swiss Security Document, to the extent that the Swiss Collateral Agent is not reimbursed for such expenses by the Grantors. The agreements in this section 7.8 shall survive the payment of the Obligations to the extent set forth above or the resignation or removal of the Swiss Collateral Agent.
- (d) The Swiss Collateral Agent shall forthwith provide each of the Creditors with written notice of any failure by any Grantor to pay any amounts claimed, requested or demanded by the Swiss Collateral Agent pursuant to this Agreement if such failure to pay by any Grantor occurs and continues for 30 days.
- (e) For greater certainty and notwithstanding any provision of any Transaction Document or Swiss Security Document, the indemnities set forth in this section 7.8, together with all other protections afforded to the Swiss Collateral Agent in this Agreement, shall extend to all matters undertaken under or in connection with any Swiss Security Document.
- (f) The agreements in this section 7.8 shall survive the repayment of the First Lien Obligations and Second Lien Obligations, the termination of this Agreement, the resignation or removal of the Swiss Collateral Agent.
- (g) For greater certainty, and without limitation to any rights contained in any Documents, to the extent that any Creditor pays or reimburses any amounts to the Swiss Collateral Agent pursuant to this Agreement or any Swiss Security Document (including pursuant to this section 7.8 and pursuant to section 7.1(d)), such amount shall form part of the Creditor's Obligations.

7.9 AMENDMENTS TO AGREEMENT

The Swiss Collateral Agent shall be permitted, and each Creditor hereby authorizes and directs the Swiss Collateral Agent, to enter into modified forms of this Agreement or any Swiss Security Document from time to time, and the Swiss Collateral Agent is hereby authorized and directed to sign any such modified forms of this Agreement or Swiss Security Document and any related documents thereto, provided that the Swiss Collateral Agent shall provide copies thereof to each Creditor.

8. MISCELLANEOUS

8.1 CONFLICTS

If this Agreement conflicts with the First Lien Loan Documents or the Second Lien Loan Documents, this Agreement will control.

8.2 NO WAIVERS; REMEDIES CUMULATIVE; INTEGRATION

A Party's failure or delay in exercising a right under this Agreement will not waive the right, nor will a Party's single or partial exercise of a right preclude it from any other or further exercise of that or any other right.

The rights and remedies provided in this Agreement will be cumulative and not exclusive of other rights or remedies provided by law.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, oral or written, relating to its subject matter.

8.3 EFFECTIVENESS; SEVERABILITY; TERMINATION

This Agreement will become effective when executed and delivered by the Parties.

Each First Lien Claimholder and each Second Lien Claimholder waives any right it may have under applicable law to revoke this Agreement or any provision hereunder or any consent by it pursuant hereto.

This Agreement will survive, and continue in full force and effect, in any Insolvency Proceeding.

If a provision of this Agreement is prohibited or unenforceable in a jurisdiction, the prohibition or unenforceability will not invalidate the remaining provisions hereof, or invalidate or render unenforceable that provision in any other jurisdiction.

Subject to section 2.4(d), "*Pledged Collateral*", 4.5, "*Application of Proceeds*", 4.8, "*Refinancing After Discharge of First Lien Obligations*", 5.4, "*First Lien Objections to Second Lien Actions*", 5.5, "*Avoidance; Reinstatement of Obligations*", 6.4, "*First Lien Objections to Second Lien Actions*" and 6.5 "*Avoidance; Reinstatement of Obligations*", if

applicable, this Agreement will terminate and be of no further force and effect upon the Discharge of Second Lien Obligations.

8.4 MODIFICATIONS OF THIS AGREEMENT

A modification or waiver of any provision of this Agreement will only be effective if in writing signed on behalf of each Party or its authorized agent, and a waiver will be a waiver only for the specific instance involved and will not impair the rights of the Parties making the waiver or the obligations of the other Parties to such Party in any other respect or at any other time. Notwithstanding the foregoing, the Borrower nor any Guarantor Subsidiary will have a right to consent to or approve a modification of this Agreement, and the Borrower nor any Guarantor Subsidiary will have a right to enforce any provision of this Agreement.

8.5 INFORMATION CONCERNING FINANCIAL CONDITION OF THE BORROWERS AND SUBSIDIARIES

First Lien Claimholders and Second Lien Claimholders will be responsible for keeping themselves informed of

- (a) the financial condition of the Grantors, and
- (b) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations.

No First Lien Claimholder will have any duty to advise any Second Lien Claimholder, and the Second Lien Claimholders will have no duty to advise any First Lien Claimholder, of information known to it regarding any such condition or circumstances or otherwise.

If a First Lien Claimholder provides any such information to a Second Lien Claimholder, or a Second Lien Claimholder provides any such information to any First Lien Claimholder, the First Lien Claimholder, or Second Lien Claimholder, respectively, will have no obligation to:

- (a) make, and it does not make, any express or implied representation or warranty, including as to accuracy, completeness, truthfulness, or validity;
- (b) provide additional information on that or any subsequent occasion;
- (c) undertake any investigation; or
- (d) disclose information that, pursuant to applicable law or accepted or reasonable commercial finance practices, it desires or is required to maintain as confidential.

8.6 NO RELIANCE

- (a) The First Lien Creditor Agent acknowledges that it and each other First Lien Claimholder has, independently and without reliance on any Second Lien Claimholder, and based on documents and information the First Lien Claimholder

deemed appropriate, made its own credit analysis and decision to enter into the First Lien Loan Documents and this Agreement, and will continue to make its own credit decisions in taking or not taking any action under the First Lien Loan Documents or this Agreement.

- (b) Each Second Lien Claimholder acknowledges that it has, independently and without reliance on any First Lien Claimholder (other than under section 5.10(c)), and based on documents and information a Second Lien Claimholder deemed appropriate, made its own credit analysis and decision to enter into the Second Lien Loan Documents and this Agreement, and will continue to make its own credit decisions in taking or not taking any action under the Second Lien Loan Documents or this Agreement.

8.7 NO WARRANTIES; INDEPENDENT ACTION

- (a) Except as otherwise expressly provided herein,
 - (1) no Second Lien Claimholder has made any express or implied representation or warranty to any First Lien Claimholder, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any Second Lien Loan Document, the ownership of any Collateral, or the perfection or priority of any Liens thereon, and
 - (2) each Second Lien Claimholder may manage and supervise its loans and extensions of credit under the Second Lien Loan Documents in accordance with applicable law and as it may otherwise, in its sole discretion, deem appropriate.
- (b) Except as otherwise expressly provided herein,
 - (1) no First Lien Claimholder has made any express or implied representation or warranty to the Second Lien Claimholders, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any First Lien Loan Document, the ownership of any Collateral, or the perfection or priority of any Liens thereon, and
 - (2) each First Lien Claimholder may manage and supervise its loans and extensions of credit under the First Lien Loan Documents in accordance with law and as it may otherwise, in its sole discretion, deem appropriate.

The Second Lien Claimholders will not have any duty to any First Lien Claimholder, and no First Lien Claimholder will have any duty to the Second Lien Claimholders, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Borrower or any other Grantor (including the First Lien Loan Documents and the Second Lien Loan Documents), regardless of any knowledge thereof that it may have or be charged with.

8.8 SUBROGATION

If any Second Lien Claimholder pays or distributes cash, property, or other assets to a First Lien Claimholder under this Agreement, then such a Second Lien Claimholder will be subrogated to the rights of the First Lien Claimholder with respect to the value of the payment or distribution, *provided* that such a Second Lien Claimholder waives its right to exercise such right of subrogation until the Discharge of First Lien Obligations. Such payment or distribution will not reduce the Second Lien Obligations.

8.9 GOVERNING LAW

This Agreement shall be governed by, 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 First Lien Claimholders and Second Lien Claimholders under the laws of any jurisdiction where any Grantor or its property may be located.

8.10 JURISDICTION

SUBMISSION TO JURISDICTION AND WAIVER OF OBJECTIONS, WITH RESPECT TO ANY CLAIM ARISING OUT OF THIS AGREEMENT:

- (a) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE JURISDICTION OF, THE COURTS OF THE PROVINCE OF ONTARIO, CANADA LOCATED AT TORONTO INCLUDING ANY APPELLATE COURT THEREOF (“COURT OF PRIMARY JURISDICTION”); AND
- (b) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES:
 - (1) ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING ARISING OUT OF OR RELATING TO ANY OF THIS AGREEMENT BROUGHT IN THE COURT OF PRIMARY JURISDICTION;
 - (2) ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN THE COURT OF PRIMARY JURISDICTION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;
 - (3) THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING BROUGHT IN THE COURT OF PRIMARY JURISDICTION, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER THE BORROWER;
 - (4) THE RIGHT TO REQUIRE ANY FIRST LIEN CLAIMHOLDER OR SECOND LIEN CLAIMHOLDER TO POST SECURITY FOR COSTS

IN ANY PROCEEDING BROUGHT IN THE COURT OF PRIMARY JURISDICTION; AND

- (5) THE RIGHT TO ANY OTHER JURISDICTION TO WHICH IT MAY BE ENTITLED BY REASON OF ITS PRESENT OR FUTURE DOMICILE.

8.11 WAIVER OF JURY TRIAL

EACH PARTY WAIVES ITS RIGHT TO JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT IT HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT IT WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 8.11 AND EXECUTED BY EACH OF THE PARTIES), AND WILL APPLY TO ANY SUBSEQUENT MODIFICATION HEREOF. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

8.12 NOTICES

- (a) Any notice to a First Lien Claimholder or the Second Lien Claimholder under this Agreement must also be given to the First Lien Creditor Agent and the Second Lien Creditor, respectively. Unless otherwise expressly provided herein, notices and consents must be in writing and will be deemed to have been given (i) when delivered in person or by courier service and signed for against receipt thereof, (ii) upon receipt of facsimile, and (iii) three Business Days after deposit in the mail with first-class postage prepaid and properly addressed. For the purposes hereof, the address of each Party will be as set forth below the Party's name on the signature pages hereto, or at such other address as the Party may designate by notice to the other Parties.
- (b) Failure to give a notice or copies as required by section 3.4, "*Notice of Exercise*", or section 4.1(e) regarding notice of Discharge of First Lien Obligations will not affect the effectiveness or validity of the exercise of remedies otherwise permitted hereunder and under applicable law, impose any liability on any First Lien Claimholder or Second Lien Claimholder, or waive any rights of any Party.

8.13 FURTHER ASSURANCES

The First Lien Creditor Agent, the Second Lien Claimholder, the Borrower and other Grantors will each take such further action and will execute and deliver such additional documents and instruments (in recordable form, if requested) as the First Lien Creditor Agent or the Second Lien Creditor may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

8.14 SUCCESSORS AND ASSIGNS

This Agreement is binding upon and inures to the benefit of each First Lien Claimholder and each Second Lien Claimholder, and their respective permitted successors and permitted assigns. However, no provision of this Agreement will inure to the benefit of the Borrower, or any other Grantor, or a trustee, receiver, debtor-in-possession, creditor trust or other representative of an estate or creditor of the Borrower, or any other Grantor, including where such estate or creditor representative is the beneficiary of a Lien securing Collateral by virtue of the avoidance of such Lien in an Insolvency Proceeding. If the First Lien Creditor Agent resigns or is replaced pursuant to the First Lien Credit Agreement or this Agreement, as applicable, its successor will be a party to this Agreement with all the rights, and subject to all the obligations, of this Agreement. Notwithstanding any other provision of this Agreement, this Agreement may not be assigned to any Person except as expressly contemplated herein. The First Lien Claimholders may transfer all or part of the First Lien Obligations and the Second Lien Claimholders may transfer all or a portion of the Second Lien Obligations to third parties; provided that such transferee(s) agree in writing to be bound by this Agreement and the transferees agree that such transfer shall not enhance the rights of the holders of all such rights in First Lien Obligations or the Second Lien Obligations, as applicable, under applicable Insolvency Laws.

8.15 AUTHORIZATION

By its signature hereto, each Person signing this Agreement on behalf of a Party represents and warrants to the other Parties that it is duly authorized to execute this Agreement.

8.16 NO THIRD-PARTY BENEFICIARIES

No Person is a third-party beneficiary of this Agreement and no trustee in bankruptcy for, receiver of or bankruptcy estate of, or unsecured creditor of, any Grantor will have or acquire or be entitled to exercise any right of a First Lien Claimholder or the Second Lien Claimholder under this Agreement, whether upon an avoidance or equitable subordination of a Lien of a First Lien Claimholder or the Second Lien Claimholder, or otherwise. None of the Borrower, any other Grantor, or any other creditor of any thereof has any rights hereunder, and the Borrower nor any other Grantor may not rely on the terms hereof. Nothing in this Agreement impairs the Obligations of the Borrower and the other Grantors to pay principal, interest, fees, and other amounts as provided in the First Lien Loan Documents and the Second Lien Loan Documents. Except to the extent expressly provided in this Agreement, no Person will have a right to notice of a modification to, or action taken under, this Agreement or any First Lien Collateral Document (including the release or impairment of any Collateral) other than as a lender under the First Lien Credit Agreement, and then only to the extent expressly provided in

the First Lien Loan Documents. Except to the extent expressly provided in this Agreement, no Person will have a right to notice of a modification to or action taken under, this Agreement or any Second Lien Collateral Document (including the release or impairment of any Collateral) other than as a lender under the Second Lien Loan Agreement, and then only to the extent expressly provided in the Second Lien Loan Documents.

8.17 NO INDIRECT ACTIONS

Unless otherwise expressly stated, if a Party may not take an action under this Agreement, then it may not take that action indirectly, or assist or support any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the Party but is intended to have substantially the same effects as the prohibited action.

8.18 COUNTERPARTS

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy or electronic facsimile or other electronic means will be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable, and each Party utilizing telecopy, electronic facsimile, or other electronic means for delivery will deliver a manually executed original counterpart to each other Party on request.

8.19 ORIGINAL GRANTORS; ADDITIONAL GRANTORS

The Borrower and each other Grantor on the date of this Agreement will constitute the original Grantors party hereto. The original Grantors will cause each Subsidiary of a Borrower that becomes a Grantor after the date hereof to contemporaneously become a party hereto (as a Guarantor Subsidiary) by executing and delivering a joinder agreement (in form and substance satisfactory to the First Lien Creditor Agent and the Second Lien Creditor) to the First Lien Creditor Agent and the Second Lien Creditor. The Parties further agree that, notwithstanding any failure to take the actions required by the immediately preceding sentence, each Person that becomes a Grantor at any time (and any security granted by any such Person) will be subject to the provisions hereof as fully as if it constituted a Guarantor Subsidiary party hereto and had complied with the requirements of the immediately preceding sentence.

9. DEFINITIONS

9.1 DEFINED TERMS

Unless otherwise stated or the context otherwise clearly requires, the following terms have the following meanings:

Affiliate means, for a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For these purposes, "control" means the possession, directly or indirectly,

of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and “controlled” has a correlative meaning.

Agreement is defined in the Recitals.

Assignment and Assumption Agreement is defined in section 2.9(a)(3).

BIA means the *Bankruptcy and Insolvency Act* (Canada).

Borrower means Trevali Mining Corporation.

Boundary means Boundary Ventures Limited.

Business Day means a day other than a Saturday, Sunday, or other day on which commercial banks in Vancouver, Toronto or Zurich are authorized or required by law to close.

Canadian Insolvency Proceeding means an Insolvency Proceeding commenced in a court of competent jurisdiction within Canada or under any Insolvency Law having force in any Canadian jurisdiction.

Cash Management Agreement means an agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer, or other cash management arrangements, to which a Grantor is a party and a lender under the First Lien Credit Agreement or an Affiliate of such lender is the applicable counterparty at the date hereof or at the time it enters into such agreement (even if such counterparty later ceases to be such a lender or Affiliate).

Cash Management Amounts means amounts payable under Cash Management Agreements, other than interest and fees.

CCAA means the *Companies' Creditors Arrangement Act* (Canada).

Collateral means all of the property of any Grantor, whether real, personal, or mixed (excluding for certainty, any Excluded Assets), that is (or is required to be) both First Lien Collateral and Second Lien Collateral, including any property subject to Liens granted pursuant to or section 5 “*Canadian Insolvency Proceedings*” or section 6 “*Peruvian Insolvency Proceedings*”, to secure both First Lien Obligations and Second Lien Obligations.

Creditors means, collectively, the First Lien Claimholders and the Second Lien Creditor and **Creditor** means any one of the Creditors, as the context so requires.

DIP Financing means the obtaining of credit or incurring debt secured by Liens on the Collateral in or in connection with any Insolvency Proceeding, including pursuant to section 11.2 of the CCAA or section 31(1) or 50.6 of the BIA or pursuant to any other Insolvency Law.

Discharge of First Lien Obligations means,

- (a) payment in full in cash of the principal of, Cash Management Amounts, Early Termination Amounts and interest (including interest accruing on or after the commencement of an Insolvency Proceeding, whether or not such interest would be allowed in the proceeding) on all outstanding Indebtedness included in the First Lien Obligations,
- (b) payment in full in cash of all other First Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than indemnification Obligations for which no claim or demand for payment, whether oral or written, has been made at such time),
- (c) cash collateralization of indemnification obligations for claims that have been made, threatened or may reasonably be expected to be successful,
- (d) termination or expiration of any commitments to extend credit that would be First Lien Obligations,
- (e) termination of all transactions under Hedge Agreements, and
- (f) termination or cash collateralization (in an amount and manner reasonably satisfactory to the First Lien Creditor Agent, but in no event greater than 105% of the aggregate undrawn face amount) of all Letters of Credit.

Discharge of Second Lien Obligations means

- (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of an Insolvency Proceeding, whether or not such interest would be allowed in the proceeding) on all outstanding Indebtedness included in the Second Lien Obligations,
- (b) payment in full in cash of all other Second Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than indemnification Obligations for which no claim or demand for payment, whether oral or written, has been made at such time), and
- (c) cash collateralization of indemnification obligations for claims that have been made, threatened or may reasonably be expected to be successful.

Disposition means any sale, Sale Leaseback (as defined in the First Lien Credit Agreement), 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.

Early Termination Amount under any Hedge Agreement to which any First Lien Claimholder is party means the amount, if any, which is (or would be) payable by the Grantor party to that Hedge Agreement to that First Lien Claimholder if an Early Termination Date (as defined therein) has been (or were to be) designated under that Hedge Agreement.

Enforcement Action means an action (excluding any Unrestricted Enforcement Action) under applicable law to

- (a) foreclose, execute, levy, or collect on, take possession or control of, accept, sell or otherwise realize upon (judicially or non-judicially), appoint a receiver over or lease, license, or otherwise dispose of (whether publicly or privately), Collateral, or otherwise exercise or enforce remedial rights with respect to Collateral under the First Lien Loan Documents or the Second Lien Loan Documents (including by way of set-off, application, recoupment, notification of a public or private sale or other disposition pursuant to the PPSA, Mortgages Act, appropriation, sale of the assets, notification to account debtors, notification to depository banks under deposit account control agreements, or exercise of rights under landlord consents, if applicable), realisation and any enforcement methods under the Peruvian Law,
- (b) solicit bids from third Persons to conduct the liquidation or disposition of Collateral or to engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third Persons for the purposes of valuing, marketing, promoting, and selling Collateral,
- (c) to accept or receive a transfer of Collateral in satisfaction of Indebtedness or any other Obligation secured thereby,
- (d) to otherwise enforce a security interest or exercise another right or remedy, as a secured creditor or otherwise, pertaining to the Collateral at law, in equity, or pursuant to the First Lien Loan Documents or Second Lien Loan Documents (including the commencement of applicable legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the actions described in the preceding clauses, and exercising voting rights in respect of Equity Interests comprising Collateral),
- (e) initiate or join in the initiation of any Insolvency Proceeding in respect of any Obligor or Collateral; or
- (f) effect the Disposition of Collateral by any Grantor after the occurrence and during the continuation of a First Lien Event of Default or a Second Lien Event of Default with the consent of the First Lien Creditor Agent or the Second Lien Creditor, as applicable.

Event of Default means a First Lien Event of Default and/or a Second Lien Event of Default, as the context so requires.

Equity Interest means, for any Person, any and all shares, interests, participations, or other equivalents, including membership interests (however designated, whether voting or non-voting) of equity of the Person, including, if the Person is a partnership, partnership interests (whether general or limited) or any other interest or participation that confers on a holder the right to receive a share of the profits and losses of, or distributions of assets of, the partnership, but not including debt securities convertible or exchangeable into equity unless and until actually converted or exchanged.

Excluded Assets means the Excluded Assets under, and as defined in, the First Lien Credit Agreement as of the date hereof.

Final Judgment means a judgment, order, declaration or award of a court, other Governmental Authority, arbitrator or other alternative dispute resolution authority of competent jurisdiction from which no appeal may be made or from which all rights of appeal have expired or been exhausted.

First Lien Creditor Agent is defined in the Preamble.

First Lien Claimholders is defined in section 2.2(e).

First Lien Collateral means the assets of any Grantor, whether real, personal, or mixed (other than Excluded Assets), as to which a Lien is granted as security for a First Lien Obligation.

First Lien Collateral Documents means the “Security Documents” defined in the First Lien Credit Agreement, and any other documents or instruments granting, confirming or reaffirming a Lien on real or personal property to secure a First Lien Obligation or granting rights or remedies with respect to such Liens.

First Lien Credit Agreement is defined in the Recitals.

First Lien Event of Default means an “Event of Default” as defined in the First Lien Credit Agreement.

First Lien Lenders means the “Finance Parties” defined in the First Lien Credit Agreement.

First Lien Loan Documents means

- (a) the First Lien Credit Agreement and the other “Finance Documents” defined in the First Lien Credit Agreement,
- (b) each other agreement, document, or instrument providing for, evidencing, guaranteeing, or securing an Obligation under the First Lien Credit Agreement or any other First Lien Loan Document,
- (c) any other document or instrument executed or delivered at any time in connection with the Borrower and/or any Guarantor Subsidiary’s Obligations under the First Lien Credit Agreement or any other First Lien Loan Document, including any guaranty of or grant of Collateral to secure such Obligations, and any intercreditor or joinder agreement to which holders of First Lien Obligations are parties to the extent effective at the relevant time, and
- (d) each other agreement, document, or instrument providing for, evidencing, guaranteeing, or securing any DIP Financing provided by or consented to in writing by the First Lien Lenders and deemed consented to by the Second Lien Claimholders pursuant to section 5.1, “*Canada DIP Financing*”, or section 6.1,

“*Peruvian DIP Financing*”, to the extent effective at the relevant time, *provided* that any such documents or instruments to which any First Lien Claimholder is a party in connection with a DIP financing (other than a DIP financing deemed consented to by the Second Lien Claimholders pursuant to section 5.1, “*Canada DIP Financing*”), will not be deemed First Lien Loan Documents unless so designated in writing by the First Lien Creditor Agent.

First Lien Obligations is defined in section 2.2(a).

Fraudulent Conveyances Law means the *Assignments and Preferences Act* (Ontario), the *Fraudulent Conveyances Act* (Ontario), the *Fraudulent Conveyances Act* (British Columbia), the *Fraudulent Preference Act* (British Columbia), the *Assignments and Preferences Act* (New Brunswick), sections 95 to 101 of the *BIA*, sections 237 and 239 of the *Companies Act 1981 of Bermuda*, sections 47 of the *Bankruptcy Act 1989 of Bermuda*, sections 36C of the *Conveyancing Act 1983 of Bermuda*, or any other like, equivalent or analogous legislation of any jurisdiction, domestic or foreign.

Future Guarantor Subsidiaries is defined in the Recitals.

Governmental Authority means any federal, state, provincial, municipal, national, or other government, governmental department, commission, board, bureau, court, agency, or instrumentality, or political subdivision thereof, or any entity or officer exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to any government or any court, in each case whether associated with a province of Canada, Canada or any other foreign entity or government.

Grantor is defined in the Recitals.

Guarantor Subsidiaries is defined in the Recitals.

Hedge Agreement means

- (a) a “Secured Risk Management Agreement” defined in the First Lien Credit Agreement,
- (b) a spot foreign exchange agreement or
- (c) a forward foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap, or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with the operations of any Grantor,

in each case, to the extent that the incurrence of the obligations in respect thereof is permitted under the First Lien Loan Documents.

Indebtedness means and includes all Obligations that constitute “Indebtedness” under the First Lien Credit Agreement and all Obligations that constitute “Indebtedness” under the Second Lien Loan Agreement.

Initial Guarantor Subsidiaries is defined in the Recitals.

Insolvency Law means the BIA, the CCAA, the *Winding-Up and Restructuring Act* (Canada), Peruvian Insolvency Law, the *Companies Act 1981 of Bermuda*, the Insolvency Act 1986 (United Kingdom) and any provision of any statute governing the existence of any artificial legal Person permitting that legal Person to propose an arrangement with respect to any class of its creditors, including, plans of arrangement under applicable corporate law statutes, or any other like, equivalent or analogous legislation of any jurisdiction, domestic or foreign.

Insolvency Proceeding means, with respect to any Grantor, any proceeding contemplated by any application, petition, assignment, filing of notice or other means, whether voluntary or involuntary, under any Insolvency Law seeking any moratorium, reorganization, adjustment, composition, proposal, compromise, arrangement, administration or other like or similar relief in respect of any or all of the obligations of such Grantor, seeking the winding up, liquidation, reorganization or dissolution of such Grantor or all or any part of its property, seeking any order, declaring, finding or adjudging such Grantor insolvent or bankrupt, seeking the appointment (provisional, interim or permanent) of any receiver or resulting, by operation of law, in the bankruptcy of such Grantor, seeking the appointment of a liquidator, provisional liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer of such Grantor or all or any part of its property or seeking any other relief in respect of such Grantor under any Insolvency Law, Fraudulent Conveyances Law or similar laws affecting the rights of creditors generally applicable to such Grantor.

Insolvency Transaction means any plan, arrangement, liquidation, reorganization, proposal, compromise, asset sale, Disposition or similar arrangement or transaction, pursuant to any Insolvency Proceeding or otherwise.

Letters of Credit means "Letters" defined in the First Lien Credit Agreement.

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, deposit arrangement, title retention, capital lease or discount, factoring or securitization arrangement on recourse terms, (iii) any equivalent or analogous interest created under Peruvian Law, (iv) any statutory deemed trust or lien, (v) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property, (vi) any security cessions (including any reversionary cession, out and out cession or a cession in *securitatem debiti* (assuming the pledge construction) created under Namibian Law, and (vii) any agreement to grant any of the rights or interests described in Clauses (i) to (vi) of this definition.

Material Mine has the meaning given to it in the First Lien Credit Agreement.

Mortgages Act means the *Property Law Act* (British Columbia), the *Property Act* (New Brunswick) or any other like, equivalent or analogous legislation in any jurisdiction, domestic or foreign.

New Agent is defined in section 4.8.

Obligations means the First Lien Obligations and/or the Second Lien Obligations, as the context so requires.

Off-Take Agreements means the off-take agreements existing as of the date hereof between the Second Lien Creditor (or its affiliates) and the Off-Take Counterparties including the off-take agreements identified as Contract No. 062-10-12611-P, Contract No. 180-11-11996-P, Contract No. 062-12-12076-P, Contract No. 180-13-11417-P, Contract No. 062-11-10035-P, Contract No. 062-15-33356-P, Contract No. 180-11-10036-P and Contract No. 180-15-33358-P.

Off-Take Counterparty means each of the Borrower, Rosh Pinah Zinc Corporation (Proprietary) Limited, Nantou Mining Burkina Faso S.A., Trevali Peru S.A.C. and each other Person that is a subsidiary or affiliate of the Borrower that is party to an Off-Take Agreement.

Obligations means all obligations of every nature of a Person owed to any obligee under an agreement, whether for principal, interest, or payments for early termination, fees, expenses, indemnification, or otherwise, and all guaranties of any of the foregoing, whether absolute or contingent, due or to become due, now existing or hereafter arising, and including interest and fees that accrue after the commencement by or against any Person of any proceeding under any Insolvency Law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

Party means a party to this Agreement.

Person means any natural person, corporation, limited liability company, trust, business trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

Peruvian Insolvency Law means the Peruvian General Insolvency Law No. 27809 (*Ley 27809, Ley General del Sistema Concursal*), as amended from time to time (the "Peruvian Bankruptcy Code"), and the Peruvian Accelerated Proceeding for Bankruptcy Reorganization Law (*Procedimiento Acelerado de Refinanciación Comercial – PARC*), approved by Legislative Decree No. 1511, and its regulations, approved by Supreme Decree No. 102-2020-PCM.

Peruvian Insolvency Proceeding means an Insolvency Proceeding commenced before the *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI)* or any Insolvency Proceeding having force in any Peruvian jurisdiction.

Peruvian Law means any laws and regulations applicable in Peru.

Pledged Collateral is defined in section 2.4(a).

Post-Petition Claims means interest, fees, costs, expenses, and other charges that pursuant to the First Lien Credit Agreement or the Second Lien Loan Agreement continue to accrue after the commencement of an Insolvency Proceeding, to the extent such interest, fees, expenses, and other charges are allowed or allowable under Insolvency Law or in the Insolvency Proceeding.

PPSA means the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (New Brunswick), the *Personal Property Security Act* (Ontario) or any other like, equivalent or analogous legislation in any jurisdiction, domestic or foreign.

Proceeds means

- (a) all “proceeds”, as defined in section 1(1) of the PPSA of the Province of Ontario, any similar provisions of any other Relevant Jurisdiction, of the Collateral, and
- (b) whatever is recovered when Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily, including any additional or replacement Collateral provided during any Insolvency Proceeding and any payment or property received in an Insolvency Proceeding on account of any “secured claim” (within the meaning of the BIA, CCAA or similar Insolvency Law).

Purchase Date is defined in section 2.9(c)(2).

Purchase Notice is defined in section 2.9(c).

Purchase Price is defined in section 2.9(e).

Purchased Obligations is defined in section 2.9(a).

Recovery is defined in section 5.5 or 6.5, as the context requires.

Refinance means with respect to the First Lien Obligations or Second Lien Obligations, as applicable, to refinance, replace, repay or issue other Indebtedness in exchange or replacement for the First Lien Obligations or Second Lien Obligations, as applicable, in whole or in part, whether with the same or different lenders, agents or arrangers; *provided*, that (i) such Indebtedness, and the Liens securing such Indebtedness, meets the requirement of this Agreement, (ii) the Person providing such refinancing is not a Grantor and agrees to be bound by the terms of this Agreement and (iii) such refinancing does not contain terms that would not be prohibited by section 3.1 of this Agreement if such refinancing were effected by an amendment to the First Lien Obligations or Second Lien Obligations, as applicable. “**Refinanced**” and “**Refinancing**” have correlative meanings.

Relevant Jurisdiction means any country or sub-jurisdiction thereof which is stated to be the governing law of a First Lien Loan Document (which on the date hereof consists of Canada (and specifically the Provinces of British Columbia, Ontario and New Brunswick), Peru, Namibia, Burkina Faso, Switzerland, the United Kingdom and Bermuda) or which is otherwise applicable to any Grantor or Collateral or to the validity or enforceability of any First Lien Loan Documents or any Liens created thereby.

Second Lien Creditor means Glencore Canada Corporation.

Second Lien Collateral means the assets of any Grantor, whether real, personal, or mixed (other than Excluded Assets), as to which a Lien is granted as security for a Second Lien Obligation.

Second Lien Collateral Documents means the “Security Documents” defined in the Second Lien Loan Agreement, and any other documents or instruments granting a Lien on real or personal property to secure a Second Lien Obligation or granting rights or remedies with respect to such Liens.

Second Lien Event of Default means an “Event of Default” as defined in the Second Lien Loan Agreement.

Second Lien Loan Agreement has the meaning given to it in the preamble.

Second Lien Loan Documents means

- (a) the Second Lien Loan Agreement and the “Security Documents” defined in the Second Lien Loan Agreement,
- (b) each other agreement, document, or instrument providing for, evidencing, guaranteeing, or securing an Obligation under any Second Lien Loan or any other Second Lien Loan Document, and
- (c) any other document or instrument executed or delivered at any time in connection with the Borrower and/or any Guarantor Subsidiary’s Obligations under the Second Lien Loan Agreement or any other Second Lien Loan Document, including any guaranty of or grant of Collateral to secure such Obligations, and any intercreditor or joinder agreement to which holders of Second Lien Obligations are parties, to the extent effective at the relevant time.

Notwithstanding any provision of a Second Lien Loan Document, no Off-Take Agreement shall constitute a “Second Lien Loan Document” for the purposes of this Agreement.

Second Lien Obligations is defined in section 2.2(b).

Standstill Period is defined in section 4.1(b)(1).

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.

Subsidiary of a Person means a corporation or other entity a majority of whose voting stock is directly or indirectly owned or controlled by the Person. For these purposes, “voting stock” of a Person means securities or other ownership interests of the Person having general power under ordinary circumstances to vote in the election of the directors, or other persons performing similar functions, of the Person. References to a percentage or proportion of voting stock refer to the relevant percentage or proportion of the votes entitled to be cast by the voting stock.

Swiss Security Document means the Assignment Agreement for Security Purposes regarding Bank Accounts governed by the laws of Switzerland to be entered into among Boundary and the Swiss Collateral Agent.

Unrestricted Enforcement Action is defined in section 4.1(c).

US\$ means lawful money of the United States of America.

9.2 USAGES

Unless otherwise stated or the context clearly requires otherwise:

First Lien Creditor Agent. References to the First Lien Creditor Agent will refer to the First Lien Creditor Agent acting on behalf of itself and on behalf of all of the other First Lien Claimholders. Actions taken by the First Lien Creditor Agent pursuant to this Agreement are meant to be taken on behalf of itself and the other First Lien Claimholders.

Singular and plural. Definitions of terms apply equally to the singular and plural forms.

Masculine and feminine. Pronouns will include the corresponding masculine, feminine, and neuter forms.

Will and shall. “Will” and “shall” have the same meaning.

Time periods. In computing periods from a specified date to a later specified date, the words “from” and “commencing on” (and the like) mean “from and including”, and the words “to”, “until”, and “ending on” (and the like) mean “to but excluding”.

When action may be taken. Any action permitted under this Agreement may be taken at any time and from time to time.

Time of day. All indications of time of day mean Toronto, Ontario time.

Including. “Including” means “including, but not limited to”.

Or. “A or B” means “A or B or both”.

Statutes and regulations. References to a statute refer to the statute and all regulations promulgated under or implementing the statute as in effect at the relevant time. References to a specific provision of a statute or regulation include successor provisions. References to a section of the BIA or CCAA also refer to any similar provision of Insolvency Law.

Agreements. References to an agreement (including this Agreement) refer to the agreement as amended, modified, supplemented or restated at the relevant time.

Governmental agencies and self-regulatory organizations. References to a governmental or quasi-governmental agency or authority or a self-regulatory organization include any successor agency, authority, or self-regulatory organization.

Section references. Section references refer to sections of this Agreement. References to numbered sections refer to all included sections. For example, a reference to

section 5 also refers to sections 5.1, 5.1(a), etc. References to a section or article in an agreement, statute, or regulation include successor and renumbered sections and articles of that or any successor agreement, statute, or regulation.

Successors and assigns. References to a Person include the Person's permitted successors and permitted assigns.

Herein, etc. "Herein", "hereof", "hereunder", and words of similar import refer to this Agreement in its entirety and not to any particular provision.


Assets and property. "Asset" and "property" have the same meaning and refer to both real and personal, tangible and intangible assets and property, including cash, securities, accounts, and general intangibles.

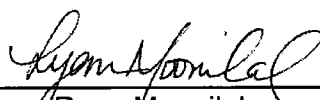
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SIGNATURES

FIRST LIEN CREDITOR AGENT:


**THE BANK OF NOVA SCOTIA, as First
Lien Creditor Agent**

By: 
Name: Clement Yu
Title: Director

By: 
Name: Ryan Moonilal
Title: Analyst

The Bank of Nova Scotia
Corporate Banking - Loan Syndications
40 King Street West, 62nd Floor
Toronto, Ontario M5W 2X6

Attention: Managing Director
Facsimile: (416) 866-3329
Email: agency.services@scotiabank.com

SECOND LIEN CREDITOR:**GLENCORE CANADA CORPORATION,
as Second Lien Creditor**By: 
Name:
Title:By: _____
Name:
Title:Glencore Canada Corporation
100 King Street West
Suite 6900, P.O. Box 403
Toronto, ON M5X 1E3

to the care of:


Glencore International AG
Baarermttstrasse 3
P.O. Box 1363
Baar 6341
SwitzerlandAttention: General Counsel
Email: general.counsel@glencore.comAttention: Carlos Francisco Fernandez
Email: Carlos.Fernandez@glencore.com

PERUVIAN COLLATERAL AGENT:

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

By: 

Name: Lorena Angélica Guiulfo Vera
Title: Gerente de Productos y Servicios
Fiduciarios

By: 

Name: Claudia Patricia Quiroz Chávez
Title: Asesora Legal Senior

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

Attention: Lorena Angélica Guiulfo Vera and
Claudia Patricia Quiroz Chavez
Facsimile: -
Email: lorena.guiulfo@scotiabank.com.pe
claudia.quiroz@scotiabank.com.pe

SWISS COLLATERAL AGENT:

THE BANK OF NOVA SCOTIA, as Swiss
Collateral Agent

By: 

Name: Clement Yu
Title: Director

By: 

Name: Ryan Moonilal
Title: Analyst

The Bank of Nova Scotia
Corporate Banking - Loan Syndications
40 King Street West, 62nd Floor
Toronto, Ontario M5W 2X6

Attention: Managing Director
Facsimile: (416) 866-3329
Email: agency.services@scotiabank.com

**FIRST LIEN CREDITOR
NAMIBIAN DEBT GUARANTOR:**

**GUINEA FOWL INVESTMENTS FIFTY
EIGHT (PROPRIETARY) LIMITED, as
First Lien Creditor Namibian Debt Guarantor**

By: 

Name: *Rozanne Kamalie*

Title: *Director*

By: _____

Name:

Title:

Guinea Fowl Investments Fifty Eight
(Proprietary) Limited
200 On Main Corner, 3rd Floor
Cape Town, South Africa


Fax: +2721 862067553

E-mail: rozanne.kamalie@tmf-group.com

Attention: Rozanne Kamalie

**SECOND LIEN CREDITOR
NAMIBIAN DEBT GUARANTOR:**

**ALOE INVESTMENTS TWO HUNDRED
AND SIXTY SEVEN (PROPRIETARY)
LIMITED**, as Second Lien Creditor Namibian
Debt Guarantor

By: 
Name: SILVIA SILVESTER KURZ
Title: DIRECTOR

By: _____
Name:
Title:

Aloe Investments Two Hundred and Sixty
Seven (Proprietary) Limited
Unit 3, 2nd Floor, Dr Agostinho Neto Road,
Ausspann Plaza, Ausspannplatz, Windhoek,
Namibia

Fax : +264-61-429855
Email: silvia.kurz@lbcommserv.com
Attention: Silvia Kurz

ACKNOWLEDGED AND AGREED TO BY:

TREVALI MINING CORPORATION

By: Name: Steven Molnar
Title: chief legal officer

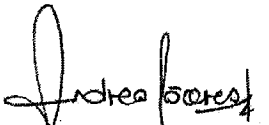
By: _____

Name:
Title:Trevali Mining Corporation
Suite 1900 – 999 West Hastings Street
Vancouver, BC V6C 2W2Attention: Ricus Grimbeek,
President and CEO
Email: rgrimbeek@trevali.comTREVALI MINING (NEW BRUNSWICK)
LTD.By: Name: Steven Molnar
Title: President

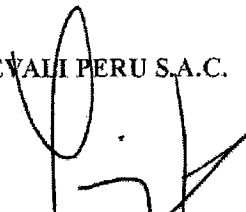
By: _____

Name:
Title:Trevali Mining (New Brunswick) Ltd.
c/o Trevali Mining Corporation
Suite 1900 – 999 West Hastings Street
Vancouver, BC V6C 2W2Attention: Ricus Grimbeek,
President and CEO
Email: rgrimbeek@trevali.com

IN THE PRESENCE OF:



 SIGNATURE OF WITNESS
 NAME: ANDREA CÁCERES PAREDES
 ADDRESS: AV. REYNALDO VIVANCO 690
402, SURCO, LIMA (PERU)

TREVALI PERU S.A.C.

 By: _____
 Name: VALENTIN PANIAGUA
 Title: Attorney-in-fact
 By: _____
 Name:
 Title:

Trevali Peru S.A.C.
 c/o Trevali Mining Corporation
 Suite 1900 – 999 West Hastings Street
 Vancouver, BC V6C 2W2

Attention: Ricus Grimbeek,
 President and CEO
 Email: rgrimbeek@trevali.com

GLCR LIMITED

By: _____
 Name:
 Title:

By: _____
 Name:
 Title:

GLCR Limited
 c/o Trevali Mining Corporation
 Suite 1900 – 999 West Hastings Street
 Vancouver, BC V6C 2W2

Attention: Ricus Grimbeek,
 President and CEO
 Email: rgrimbeek@trevali.com

TREVALI PERU S.A.C.

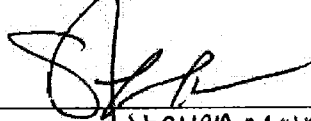
By: _____
 Name:
 Title:

By: _____
 Name:
 Title:

Trevali Peru S.A.C.
 c/o Trevali Mining Corporation
 Suite 1900 – 999 West Hastings Street
 Vancouver, BC V6C 2W2

Attention: Ricus Grimbeek,
 President and CEO
 Email: rgrimbeek@trevali.com

GLCR LIMITED

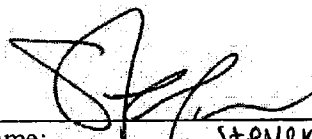
By: 
 Name: STEVEN MOINDAR
 Title: DIRECTOR

By: _____
 Name:
 Title:

GLCR Limited
 c/o Trevali Mining Corporation
 Suite 1900 – 999 West Hastings Street
 Vancouver, BC V6C 2W2

Attention: Ricus Grimbeek,
 President and CEO
 Email: rgrimbeek@trevali.com

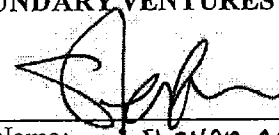
TREVALI HOLDINGS (BERMUDA) LTD.

By: 
Name: Steven Molnar
Title: Chief Legal Officer

Trevali Holdings (Bermuda) Ltd.
c/o Trevali Mining Corporation
Suite 1900 – 999 West Hastings Street
Vancouver, BC V6C 2W2

Attention: Ricus Grimbeek,
President and CEO
Email: rgrimbeek@trevali.com

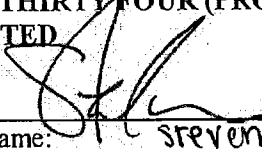
BOUNDARY VENTURES LIMITED

By: 
Name: Steven Molnar
Title: Director

Boundary Ventures Limited
c/o Trevali Mining Corporation
Suite 1900 – 999 West Hastings Street
Vancouver, BC V6C 2W2

Attention: Ricus Grimbeek,
President and CEO
Email: rgrimbeek@trevali.com

**WILRU INVESTMENTS ONE HUNDRED
AND THIRTY FOUR (PROPRIETARY)
LIMITED**

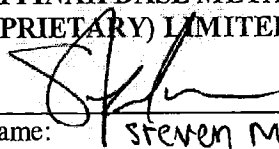
By: 
Name: Steven Molnar
Title: Director

By: _____
Name:
Title:

Wilru Investments One Hundred and Thirty
Four (Proprietary) Limited
c/o Trevali Mining Corporation
Suite 1900 – 999 West Hastings Street
Vancouver, BC V6C 2W2

Attention: Ricus Grimbeck,
President and CEO
Email: rgrimbeck@trevali.com

**ROSH PINAH BASE METALS
(PROPRIETARY) LIMITED**

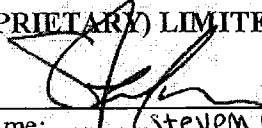
By: 
Name: Steven Molnar
Title: Director

By: _____
Name:
Title:

Rosh Pinah Base Metal (Proprietary) Limited
c/o Trevali Mining Corporation
Suite 1900 – 999 West Hastings Street
Vancouver, BC V6C 2W2

Attention: Ricus Grimbeck,
President and CEO
Email: rgrimbeck@trevali.com

**ROSH PINAH MINE HOLDINGS
(PROPRIETARY) LIMITED**

By: 
Name: Steven Molnar
Title: Director

By: _____
Name:
Title:

Rosh Pinah Mine Holdings (Proprietary)
Limited
c/o Trevali Mining Corporation
Suite 1900 – 999 West Hastings Street
Vancouver, BC V6C 2W2

Attention: Ricus Grimbeek,
President and CEO
Email: rgrimbeek@trevali.com

SCHEDULE A
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Dated _____, 20__

Reference is made to the second amended and restated credit agreement dated as of September 30, 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**”) [See Exhibit 1 hereto for the list of **Assignors**] 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 100% 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 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, the assignment contemplated hereby), and the aggregate outstanding amount of credit extended by it under the Facility is \$ _____ [See Exhibit 2 hereto] (without giving effect to assignments thereof which have not yet become effective, including, 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) subject to section 2.9(a) of the **[Intercreditor Agreement]**, 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:

**GLENCORE CANADA CORPORATION
 AG**

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:

¹TREVALI MINING CORPORATION

By: _____
Name:
Title:

EXHIBIT "A"**LIST OF ASSIGNORS**

The Bank of Nova Scotia

HSBC Bank Canada

Société Générale

Bank of Montreal

The Toronto-Dominion Bank

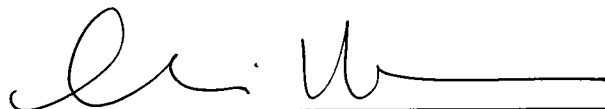
National Bank of Canada

ING Capital LLC

EXHIBIT "B"**PURCHASE PRICE AND WIRE TRANSFER INSTRUCTIONS**

Assignor	Amount of Purchase Price to be Paid to Assignor	Wire Transfer Instructions
The Bank of Nova Scotia		
HSBC Bank Canada		
Société Générale		
Bank of Montreal		
The Toronto-Dominion Bank		
National Bank of Canada		
ING Capital LLC		

This is Exhibit "B" referred to in the affidavit of Yiota Petrakis sworn before me at Vancouver, British Columbia this 17th day of July, 2023.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Alambre, Jennifer

From: Williams, Lance <lwilliams@mccarthy.ca>
Sent: Sunday, October 2, 2022 7:12 PM
To: Kibben Jackson
Cc: Stuart Brotman; Glen Nesbitt; Langdon, Christopher; Finn, Forrest; Rubin, Peter; Hildebrand, Claire
Subject: RE: [EXT] Trevali [MT-MTDOCS.FID3712943]
Attachments: Settlement Financial Terms - McT Comments(45902930.2).docx

Follow Up Flag: Follow up
Flag Status: Completed

External Email | Courrier électronique externe

Without Prejudice

Kibben,

Please find attached our proposed revisions to the financial terms language. It doesn't change the terms themselves – just seeks to add more clarity around them (I don't expect controversially).

Happy to discuss. Please note these remain subject to Glencore's final confirmation, but I don't expect there to be an issue.

If there are any issues, give me a call and I'm happy to chat through.

Lance



Lance Williams
 Partner | Associé
 Litigation | Litige
 T: 604-643-7154
 C: 778-928-9758
 E: lwilliams@mccarthy.ca

McCarthy Tétrault LLP
 Suite 2400
 745 Thurlow Street
 Vancouver BC V6E 0C5

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From: Kibben Jackson <kjackson@fasken.com>
Sent: Sunday, October 02, 2022 8:12 AM
To: Rubin, Peter <peter.rubin@blakes.com>; Claire.hildebrand@blakes.com
Cc: Stuart Brotman <sbrotman@fasken.com>; Glen Nesbitt <gnesbitt@fasken.com>; Williams, Lance

<lwilliams@mccarthy.ca>; Langdon, Christopher <CLANGDON@mccarthy.ca>; Finn, Forrest <ffinn@mccarthy.ca>
Subject: Re: [EXT] RE: Trevali [MT-MTDOCS.FID3712943]

Sorry. Hit send early.

As I was saying: in terms of the status of the negotiations:

- The Lenders' representatives authorized us to present the financial offer and non-financial terms to Glencore. Note that each Lender will still need credit committee approvals as part of seeking same for the DIP facility.
- Glencore has indicated, on a without prejudice basis, that the terms are acceptable subject to certain additions/clarifications to the non-financial terms (set out in Lance's email below) and a description of the financial terms that might be incorporated in a final settlement agreement (see that description in my email below).
- We (ie the Lenders) will need to confirm that the new language re the non-financial terms is acceptable, and we believe a discussion with Trevali regarding those terms will be of assistance in that regard.
- Glencore needs to confirm the description of the financial terms is consistent with its understanding of the proposed deal.
- As will be apparent, we need Trevali to be a party to the agreement so we wanted to get it to you as soon as it made sense to do so. It may be that a call will assist so that I can explain the deal and answer any questions you have. If you want me to call today please let me know.

I have, I think, fairly captured everything concerning the status of our settlement t negotiations though I have no doubt Lance will weigh in if I've got anything wrong or missed anything.

I look forward to discussing this with you and concluding the settlement.

Get Outlook for iOS

From: Kibben Jackson <kjackson@fasken.com>
Sent: Sunday, October 2, 2022 8:01:08 AM
To: Rubin, Peter <peter.rubin@blakes.com>; Claire.hildebrand@blakes.com <claire.hildebrand@blakes.com>
Cc: Stuart Brotman <sbrotman@fasken.com>; Glen Nesbitt <gnesbitt@fasken.com>; Williams, Lance <lwilliams@mccarthy.ca>; Langdon, Christopher <CLANGDON@mccarthy.ca>; Finn, Forrest <ffinn@mccarthy.ca>
Subject: Fwd: [EXT] RE: Trevali [MT-MTDOCS.FID3712943]

Peter/Claire:

We (the Agent and Glencore) want to bring Trevali in to the settlement discussions at this time.

You will see from the email chain below where the discussions are at. In terms of the status of the negotiations:

Get Outlook for iOS

From: Kibben Jackson <kjackson@fasken.com>
Sent: Sunday, October 2, 2022 7:25 AM
To: Williams, Lance <lwilliams@mccarthy.ca>
Cc: Langdon, Christopher <CLANGDON@mccarthy.ca>; Finn, Forrest <ffinn@mccarthy.ca>
Subject: Re: [EXT] RE: Trevali [MT-MTDOCS.FID3712943]

Get Outlook for iOS

From: Kibben Jackson <kjackson@fasken.com>
Sent: Sunday, October 2, 2022 7:23:46 AM
To: Williams, Lance <lwilliams@mccarthy.ca>
Cc: Langdon, Christopher <CLANGDON@mccarthy.ca>; Finn, Forrest <ffinn@mccarthy.ca>
Subject: Re: [EXT] RE: Trevali [MT-MTDOCS.FID3712943]

Here is a description of the financial terms. I would like to bring the debtor into this now to deal with the other terms. Yes?

In its simplest form, the sharing formula would kick in on any proceeds distributed to the Lenders after repayment of the DIP, on account of the RCF. We've tried to take a stab at how definitions might play out below:

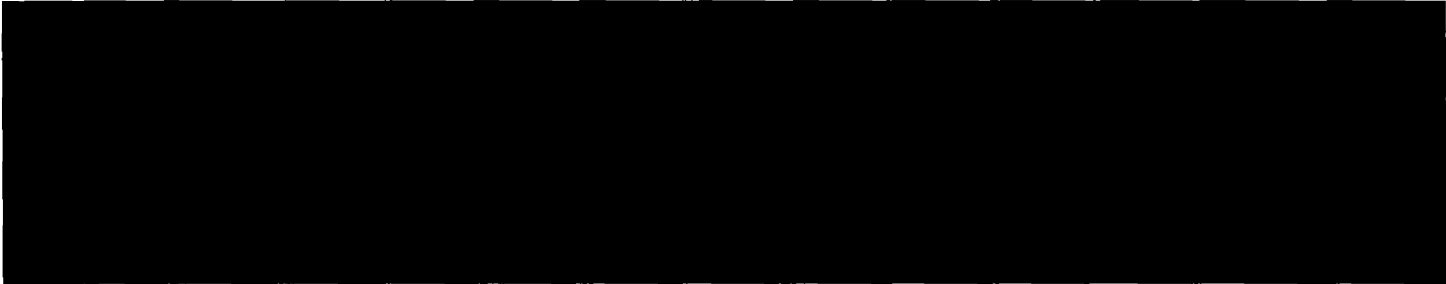
1. Gross Proceeds less Realization Costs = Net Proceeds Available for Distribution
2. Net Proceeds Available for Distribution less Outstanding DIP Balance = Net Proceeds

Where:

Gross Proceeds means any proceeds realized by Trevali subject to the security of both the Lenders and Glencore, including Trevali's direct or indirect interest in RPZC or the Rosh Pinah Mine, insurance proceeds claimed by Trevali in respect of the Perkoa insurance claim, amounts receivable from Cerro De Pasco Resources Inc. or other assets.

Realization Costs mean professional fees (including any success fee to National Bank Financial, fees of the Monitor/Monitors Counsel, Lenders Counsel and Advisors and other fees) not otherwise funded by amounts outstanding under the DIP plus a provision for wind-down / additional realization costs after repayment of the DIP plus any taxes payable on the sale of Trevali's direct or indirect interest in RPZC or the Rosh Pinah Mine plus any other priority charges / costs pursuant to Trevali's ongoing insolvency proceedings.

Outstanding DIP Balance means amount outstanding under the DIP including principal, interest, fees and costs.





Get Outlook for iOS

From: Williams, Lance <lwilliams@mccarthy.ca>
Sent: Saturday, October 1, 2022 9:49:09 PM
To: Kibben Jackson <kjackson@fasken.com>
Cc: Langdon, Christopher <CLANGDON@mccarthy.ca>; Finn, Forrest <ffinn@mccarthy.ca>
Subject: [EXT] RE: Trevali [MT-MTDOCS.FID3712943]

Without Prejudice

Hi Kibben,

Following up on the below. Have you heard back if these are OK and is language coming for the payments? If the 'other terms' are OK, we should get them over to the debtor so they can sign off on the terms that affect them. I don't think the money concerns them, so don't see needing their sign off there.

Lance



Lance Williams (he/him)
Partner | Associé
Bankruptcy and Restructuring | Faillite et restructuration
T: 604-643-7154
C: 778-928-9758
E: lwilliams@mccarthy.ca

McCarthy Tétrault LLP
Suite 2400
745 Thurlow Street
Vancouver BC V6E 0C5

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From: Williams, Lance
Sent: Friday, September 30, 2022 2:52 PM
To: Kibben Jackson (kjackson@fasken.com) <kjackson@fasken.com>
Cc: Langdon, Christopher <CLANGDON@mccarthy.ca>; Finn, Forrest <ffinn@mccarthy.ca>
Subject: Trevali [MT-MTDOCS.FID3712943]

Without Prejudice

Kibben,

For the "other terms" around the proposed settlement, we've put together the following. I think they are consistent with what was discussed, but happy to talk through any issues/questions. Also we should get the financial terms put into words (including what priority amounts are, gross recoveries, net recoveries, etc.). Is that something your group with A&M can do? I presume we'll do a settlement agreement up, but would be good to get into a formal email settlement before then so we can down-tools on the application.

Thanks,

Lance

- The settlement, and the concessions herein, are conditional on the DIP facility being approved by the Court in the CCAA proceeding.
- Glencore will approve of the terms of the Lenders' DIP facility and will not oppose it in the CCAA proceeding.
- Glencore will formally waive any claim to set off Rosh Pinah payments against non-Rosh Pinah Trevali liabilities (a) during the entire CCAA process and (b) for all time for any purchaser of Rosh Pinah.
- The Lenders and Trevali will acknowledge that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its respective off-take agreements, that those rights are not stayed, will not seek to stay them, and will not challenge any set-offs to date or in the future (including for greater certainty, all set-offs at Caribou). For the avoidance of doubt, Glencore (and its affiliates) shall have the right to set-off any amounts (other than debt subordinated under the intercreditor agreement between, amongst others, the Lenders and Glencore) under the off-take agreements in accordance with the terms thereof and nothing in these settlement terms shall prejudice or limit the rights of Glencore (or its affiliates) under the provisions of the off-take agreements including the right to make, file and enforce any claim against a Trevali off-take counterparty, including for specific performance and/or monetary damages.
- Lenders and Trevali agree that Glencore can pickup the remaining off-take at Caribou and that the sale of the same to Glencore will be set-off under the relevant off-take agreement. Trevali will cooperate to facilitate such transfer and sale.
- The Lenders and Trevali will not contest, challenge or bring into question the validity or enforceability of the off-take agreements.
- The Lenders and Trevali will not, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support (including with any court or any monitor or other court officer appointed in any insolvency proceeding) any transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any off-take agreement (including the sale of the assets of a mine free of the relevant off-take agreement), without the express written consent of Glencore.
- The parties will agree to conduct themselves in a commercially reasonable manner in accordance with the agreements among them, including this settlement, and Glencore and the Lenders will offer commercially reasonable cooperation and will provide commercially reasonable assistance in the SISP if requested, including in any discussions with potential

bidders. Among other things, neither Glenore nor the Lenders will assert in discussions in the SISP with any prospective investors or purchasers any rights or entitlements in relation to the Trevali assets/business which are not expressly contemplated in its agreements with the relevant Trevali entities/each other. The parties will continue to abide by the terms of the inter-creditor agreement. Nothing herein prevents the Lenders or Glencore from taking positions or making arguments in their interest, provided those positions are consistent with the terms of their agreements (including this settlement).

- The settlement will be approved by the court to the extent the parties consider it advisable.
- The consent of Trevali in the above will include all relevant subsidiaries of Trevali as may be necessary to give effect to this agreement.



Lance Williams (he/him)

Partner | Associé
Bankruptcy and Restructuring | Faillite et restructuration
T: 604-643-7154
C: 778-928-9758
E: lwilliams@mccarthy.ca

McCarthy Tétrault LLP

Suite 2400
745 Thurlow Street
Vancouver BC V6E 0C5

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<https://www.fasken.com/en/terms-of-use-email/>

Fasken has a COVID-19 management plan in place. We prioritize maintaining a safe workplace; encourage social distancing and uphold privacy and confidentiality for those we work with. We have reduced the need to attend our offices to necessary visits, and are minimizing in-person meetings. We have enhanced digital communications with you through telephone & web conferencing, secure email, Fasken Edge, etc.

Please do not visit our offices without an appointment in advance; and please excuse us if we do not shake your hand. In the event the risk of COVID-19 increases and affects our ability to provide legal services or representation, we will make the best arrangements within our power to obtain time extensions and/or adjournments. We appreciate your understanding.

> [COVID-19 Resource Centre for Businesses](#)

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> [Centre de ressources sur la COVID-19 pour les entreprises](#)

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In its simplest form, the sharing formula would kick in on any proceeds distributed to the Lenders after repayment of the DIP, on account of the RCF. We've tried to take a stab at how definitions might play out below:

1. Gross Proceeds less Realization Costs = Net Proceeds Available for Distribution
2. Net Proceeds Available for Distribution less Outstanding DIP Balance= Net Proceeds

Where:

Gross Proceeds means any proceeds, in its broadest sense, realized by Trevali or any of its subsidiaries or affiliates (collectively, "Trevali") that is subject to the security of both the Lenders and Glencore, including without limitation, Trevali's direct or indirect interest in Rosh Pinah Zinc Corporation (Pty) Limited ("RPZC") and the Rosh Pinah Mine, insurance proceeds claimed by Trevali in respect of the Perkoa insurance claim, amounts receivable from Cerro De Pasco Resources Inc. or realised from other assets.

Realization Costs mean the following, to the extent the same have not already been paid from the DIP financing and are paid from the Gross Proceeds:

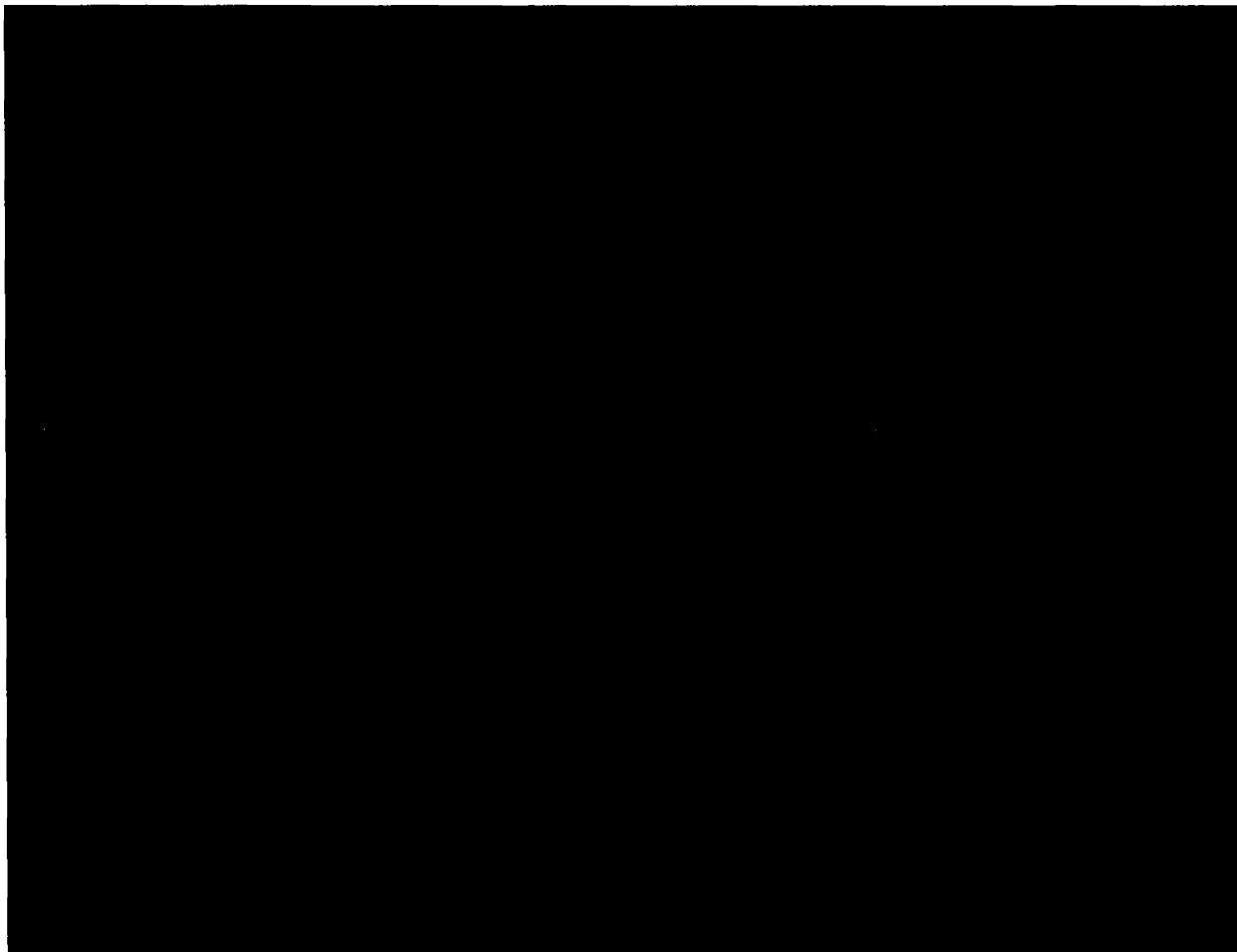
- a) court approved professional fees (including any success fee to National Bank Financial, fees of the Monitor/Monitor's Counsel, Lender's Counsel and advisors and other fees) that are secured by a court ordered charge in priority to the Lenders' security, to the maximum amount of the respective charge;
- b) reasonable provision for the wind-down of Trevali and additional realization costs after repayment of the DIP, subject to court approval;
- c) any taxes payable by Trevali on the sale of Trevali's direct or indirect interest in RPZC or the Rosh Pinah Mine having priority to the Lenders' security; and
- d) payment of the amounts secured under any other court approved priority charges having priority to the Lenders' security pursuant to Trevali's ongoing insolvency proceedings, to the maximum amount of such charge.

For greater certainty, Realization Costs do not include any direct or indirect recovery by the Lenders or any payments for or on account of the Lenders, other than the recovery of fees set out in a) above. Realization Costs will only include those items above that are paid from the Gross Proceeds and will not include amounts paid from Trevali's other resources or from the DIP.

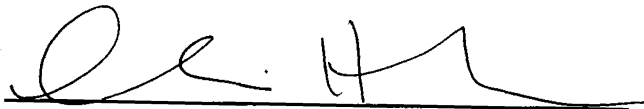
DIP means the interim financing to be provided by the Lenders in Trevali's CCAA proceeding, subject to court approval.

Outstanding DIP Balance means amount outstanding under the DIP, including principal, interest, fees and costs. For greater certainty, the DIP shall not directly or indirectly include any pre-filing obligations of Trevali to the Lenders, and there shall be no direct or indirect recovery to the Lenders from the DIP other than the principal to be advanced as part of the DIP, interest thereon, and fees and costs, all as expressly approved as part of the DIP facility.

Payment terms:



This is Exhibit "C" referred to in the affidavit of Yiota Petrakis sworn before me at Vancouver, British Columbia this 17th day of July, 2023.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Hildebrand, Claire

From: Hildebrand, Claire
Sent: Tuesday, October 11, 2022 2:32 PM
To: 'Cross, Valerie'; Rubin, Peter; Bychawski, Peter; Burns, Alison; tom.powell@fticonsulting.com; craig.munro@fticonsulting.com; mike.clark@fticonsulting.com; huw.parks@fticonsulting.com; Sandrelli, John; Schultz, Jordan; Watson, Eamonn; Arenas, Avic; Ali, Ramez; sbrotman@fasken.com; kjackson@fasken.com; lwilliams@mccarthy.ca; ffinn@mccarthy.ca; sdanielisz@mccarthy.ca; ek@knd.law; sn@knd.law; ts@knd.law; DCieloszczyk@koskielavlin.com; mbuttery@osler.com; amanasterski@osler.com; Levine, Jason; Christopher.Whibbs@gnb.ca; Jennifer.Welles@gnb.ca; James.Mockler@gnb.ca; wroberts@lawsonlundell.com; JPetrie@nbpower.com; LMurray@nbpower.com; lhiebert@blg.com; tony.richardson@mcinnescooper.com
Subject: RE: In the Matter of the CCAA of Trevali Mining Corporation et al., | SCBC Action No. S226670, Vancouver Registry
Attachments: 2022-10-11 - Notice of Application (Petitioners).pdf; Affidavit #7 of B. Creaney.PDF; Interim Financing Order.pdf; Order (Glencore Settlement Approval).pdf; Order (December Stay Extension).pdf

TO THE SERVICE LIST:

Please find enclosed for service upon you unfiled copies of the Petitioners' application and supporting affidavit for the following orders:

- (a) An order abridging time for service of these materials such that the application is properly returnable at 2:45 pm today;
- (b) An order approving interim financing in the principal amount of US \$16.5 million;
- (c) An order approving a "Settlement Agreement" (as defined in the Notice of Application); and
- (d) An order extending the stay of proceedings to December 15, 2022.

Claire

Claire Hildebrand (she/her)
 Associate
 claire.hildebrand@blakes.com
 T. +1-604-631-3331

From: Cross, Valerie <valerie.cross@dentons.com>
Sent: Tuesday, October 11, 2022 11:31 AM
To: Hildebrand, Claire <claire.hildebrand@blakes.com>; Rubin, Peter <peter.rubin@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Burns, Alison <alison.burns@blakes.com>; tom.powell@fticonsulting.com; craig.munro@fticonsulting.com; mike.clark@fticonsulting.com; huw.parks@fticonsulting.com; Sandrelli, John <john.sandrelli@dentons.com>; Schultz, Jordan <jordan.schultz@dentons.com>; Watson, Eamonn <eamonn.watson@dentons.com>; Arenas, Avic <avic.arenas@dentons.com>; Ali, Ramez <ramez.ali@dentons.com>; sbrotman@fasken.com; kjackson@fasken.com; lwilliams@mccarthy.ca; ffinn@mccarthy.ca; sdanielisz@mccarthy.ca; ek@knd.law; sn@knd.law; ts@knd.law; DCieloszczyk@koskielavlin.com; mbuttery@osler.com; amanasterski@osler.com; Levine, Jason <jason.levine@justice.gc.ca>; Christopher.Whibbs@gnb.ca; Jennifer.Welles@gnb.ca; James.Mockler@gnb.ca; wroberts@lawsonlundell.com; JPetrie@nbpower.com; LMurray@nbpower.com; lhiebert@blg.com; tony.richardson@mcinnescooper.com
Subject: RE: In the Matter of the CCAA of Trevali Mining Corporation et al., | SCBC Action No. S226670, Vancouver Registry

External Email | Courrier électronique externe

TO THE SERVICE LIST:

We write as Monitor's counsel to provide a further update in respect of today's hearing in the above-captioned matter. Today's hearing is now scheduled to proceed at **2:45pm** today, October 11, 2022, before Madam Justice Fitzpatrick.

It is anticipated that the following applications will proceed and that materials will be available for 2:45pm:

1. Petitioners' application to: (a) approve an interim lending term sheet; (b) approve a settlement agreement among the Agent, Glencore and Trevali; and (c) extend the stay of proceedings into December 2022; and
2. Agent's application for a sealing order.

Kind regards,
Valerie



Valerie Cross
Senior Associate

My pronouns are: She/Her/Hers

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LuatViet > Fernanda Lopes & Associados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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From: Hildebrand, Claire <claire.hildebrand@blakes.com>

Sent: Tuesday, October 11, 2022 9:04 AM

To: Rubin, Peter <peter.rubin@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Hildebrand, Claire <claire.hildebrand@blakes.com>; Burns, Alison <alison.burns@blakes.com>; tom.powell@fticonsulting.com; craig.munro@fticonsulting.com; mike.clark@fticonsulting.com; huw.parks@fticonsulting.com; Sandrelli, John <john.sandrelli@dentons.com>; Schultz, Jordan <jordan.schultz@dentons.com>; Cross, Valerie <valerie.cross@dentons.com>; Watson, Eamonn <eamonn.watson@dentons.com>; Arenas, Avic <avic.arenas@dentons.com>; Ali, Ramez <ramez.ali@dentons.com>; sbrotman@fasken.com; kjackson@fasken.com; lwilliams@mccarthy.ca; ffinn@mccarthy.ca; sdanielisz@mccarthy.ca; ek@knd.law; sn@knd.law; ts@knd.law; DCieloszczyk@koskielavin.com; muttery@osler.com; amanasterski@osler.com; Levine, Jason <jason.levine@justice.gc.ca>; Christopher.Whibbs@gnb.ca; Jennifer.Welles@gnb.ca; James.Mockler@gnb.ca; wroberts@lawsonlundell.com; JPetrie@nbpower.com; LMurray@nbpower.com; lhiebert@blg.com; tony.richardson@mcinnescooper.com

Subject: In the Matter of the CCAA of Trevali Mining Corporation et al., | SCBC Action No. S226670, Vancouver Registry

[WARNING: EXTERNAL SENDER]

TO THE SERVICE LIST:

We write to provide an update in respect of today's hearing set for 10 am (in person/teams).

The Petitioners are not in a position to proceed this morning with the applications: to (a) approve the interim lending facility; (b) approve the settlement agreement among the Agent, Glencore and Trevali; and (c) extend the CCAA stay of proceedings into December.

We will be attending in Court and will be asking Justice Fitzpatrick for a date later this week, if possible, to proceed with the applications. If that is not possible, then we will likely be proceeding on October 17th.

We will provide an update after today's court hearing.

Teams Information:

Appearance on 11th October 2022, 10:00 am at Vancouver Law Courts, 073

Meeting link click here:

https://can01.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F%2Fmeetup-join%2F19%253ameeting_NjEzYzQ5MTYtOGQyMi00YjQ0LWlONiMtNjRjNDRIOGI3Zig4%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252288c2f485-81c9-4402-a143-70d7ce08aec5%2522%252c%2522Oid%2522%253a%252266ea325e-1fa0-460d-a516-23426037b615%2522%257d&data=05%7C01%7Cclaire.hildebrand%40blakes.com%7C388d7722c9694663785208daaba04b00%7Cb2a43d8509bb449097b62ed27388cab2%7C0%7C0%7C638011002178890062%7CUnknown%7CTWfPbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoIV2luMzliLCJBtIl6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C&sdata=xKgO9Sy7hjdounfv81UMfDmXEWtZnJs2%2FgERzcTh0%3D&reserved=0

For telephone appearances or audio difficulties during video appearances:

Dial In telephone number: (778)725-6348

Toll Free telephone number: (844)636-7837

Phone Conference ID #: 72900594#

Best,

Claire

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This is Exhibit "D" referred to in the affidavit Yiota Petrakis sworn before me at Vancouver, British Columbia this 17th day of July, 2023.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
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Vancouver, B.C. V7X 1L3
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No. S226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE JUSTICE FITZPATRICK)

Vancouver, BC
October 11, 2022

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-91, AS AMENDED**

AND

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

Petitioners

PROCEEDINGS IN CHAMBERS

COPY

Patricia Bentley / Charest Legal Solutions Inc.

CharestLegalSolutions.com

Phone: 604-669-6449

No. S226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE JUSTICE FITZPATRICK)

Vancouver, BC
October 11, 2022

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-91, AS AMENDED

AND

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

Petitioners

PROCEEDINGS IN CHAMBERS

Counsel for the Petitioners:	P. Rubin C. Hildebrand
Counsel for FTI Canada Consulting:	J. Sandrelli V. Cross
Counsel for Bank of Nova Scotia:	K. Jackson
Counsel for Glencore:	F. Finn L. Williams
Counsel for Trevali Mining Board of Directors:	M. Buttery, KC

Patricia Bentley / Charest Legal Solutions Inc.

CharestLegalSolutions.com

Phone: 604-669-6449

**PROCEEDINGS IN CHAMBERS
OCTOBER 11, 2022**

PROCEEDINGS

Witness	Proceedings	Page
	Submissions for the petitioners by Cnsl P. Rubin	1
	Discussion re scheduling	6
	Submissions for the petitioners by Cnsl P. Rubin (continued)	10
	Submissions for the agent by Cnsl K. Jackson	30
	Submissions for Glencore Canada by Cnsl L. Williams	35
	Submissions for the monitor by Cnsl J. Sandrelli	35
	[Oral reasons for judgment re orders sought]	38
	Reporter certification	39

EXHIBITS

Exhibit	Description	Page
	No exhibits marked.	

1
Submissions for the petitioners by Cnsl P. Rubin

2
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October 11, 2022
Vancouver, BC

(PROCEEDINGS COMMENCED AT 10:08 A.M.)

THE CLERK: In the Supreme Court of British Columbia at Vancouver, this 11th day of October, 2022. In the matter of Trevali Mining Corporation, Madam Justice.

THE COURT: Thank you. Mr. Rubin.

CNSL P. RUBIN: Thank you. Peter Rubin, R-u-b-i-n, and with me is Claire Hildebrand, counsel to the petitioners.

THE COURT: Thank you. Mr. Sandrelli.

CNSL J. SANDRELLI: Morning, Justice Fitzpatrick. John Sandrelli and with me is Cross, initial V, appearing for the monitor. My pronouns are he/him, and Ms. Cross's are she/her.

THE COURT: Okay, thank you.

CNSL K. JACKSON: Good morning, Justice. It's Jackson, initial K, appearing for the Bank of Nova Scotia as administrative agent for the RCF lenders.

THE COURT: Okay, thank you.

CNSL F. FINN: Justice, Finn, F-i-n-n, first initial F, appearing for Glencore Canada Corporation. Pronouns he/him/his.

THE COURT: Okay, thank you.

CNSL P. RUBIN: So Madam Justice, there's nobody online, so it's just everybody here in person.

THE COURT: M'mm-hmm.

CNSL P. RUBIN: You'll note there are no materials. There was no materials downloaded to the FTS site, and we have no materials before you. I will provide some background and explain what has happened.

SUBMISSIONS FOR THE PETITIONERS BY CNSL P. RUBIN:

The original intention, as you know, was to bring an application before you today -- at least that was the hope -- to seek approval of three things: The first was an extension of the stay of proceedings to a date in December.

THE COURT: M'mm-hmm.

CNSL P. RUBIN: The second was to seek approval of a settlement agreement that has been reached between Glencore, the agent and Trevali; and then

2

Submissions for the petitioners by Cnsl P. Rubin

1 the third aspect was approval of an internal
2 lending facility to be provided by the agent,
3 which is Mr. Jackson's client.

4 The parties worked very hard over the end of
5 last week and over this long weekend, and again,
6 the hope was to bring an application before you
7 today.

8 What has happened just recently is we have
9 been advised that, while there is a settlement
10 agreement -- a form of settlement agreement that
11 has been finally approved, and there is a form of
12 DIP term sheet which has been finally approved as
13 between Glencore and the agent, there is a
14 lending syndicate here, and the lenders do not
15 yet have approval from all members of the
16 syndicate. There may only be one lender that
17 they're needing approval from, so very close
18 there, but the form of the settlement agreement,
19 the form of the DIP term sheet has been agreed
20 to. So that is good news.

21 Because we don't have that final sign-off
22 from what I'm understanding is the final lender,
23 we can't proceed today. In addition, we have
24 been advised -- I should back up.

25 Originally the intention was to seek
26 approval of the interim lending facility based on
27 the DIP term sheet which has been settled, so
28 it's probably a 12- to 14-page document. It's a
29 relatively detailed DIP term sheet.

30 We're advised this morning that the lenders
31 would like the court to approve the actual
32 amendment to the credit agreement, as opposed to
33 a DIP term sheet, and I'll provide a bit of
34 background on that.

35 The way that the DIP is structured is,
36 rather than just providing a DIP at the parent
37 level, the intention is that an amendment will be
38 made to the existing credit agreement, because
39 currently, as you are aware, the agent and the
40 syndicate of lenders are the senior secured
41 lender. There's approximately -- I'm going to
42 say approximately \$90 million that's owed to that
43 group pursuant to a credit agreement, and if I
44 recall correctly, I think it has a credit limit
45 of -- I think it maybe \$150 million. It's quite
46 substantial.

47 So because of the structure of Trevali, as

3

Submissions for the petitioners by Cnsl P. Rubin

1 you will recall, there are really only two
2 Canadian petitioners in the CCAA, and then
3 there's a number of subsidiaries in foreign
4 countries. The credit agreement, as it's
5 currently structured, has security, not just at
6 the parent level in Trevali (New Brunswick) and
7 Caribou, but it has security down the chain in
8 various countries.

9 One of the issues -- or matters that the
10 lenders have properly raised is, well, if there's
11 a DIP provided only at the Canadian parent level,
12 what level of security does that provide them?
13 And so the solution to that problem is to amend
14 the existing credit agreement such that the court
15 would provide a DIP charge over the assets of
16 both Trevali parent company and Trevali (New
17 Brunswick), but also would approve Trevali
18 entering into an amendment to the credit
19 agreement, which would then allow the
20 additional -- we'll call it the DIP tranche -- to
21 be funded through the credit agreement, a
22 separate tranche, and it would then benefit from
23 the security that's already in place down the
24 corporate chain through the other countries,
25 which provides the needed certainty that the
26 lenders would want.

27 That is not a surprise, obviously, to us.
28 It's not a surprise to Glencore. That concept,
29 you know, has been discussed between the parties.

30 In any event, I only give you that
31 background so that, you know, when we do get back
32 before you, I wanted you to understand the reason
33 for the structure of the DIP facility.

34 Next relates to timing, and I sincerely
35 apologize, because I know we had today booked
36 and, as I said, everybody worked, including over
37 the weekend, and some people worked very hard
38 over the weekend.

39 THE COURT: Is there any chance of it happening later
40 today?

41 CNSL P. RUBIN: No, I don't believe so, because what
42 the two -- again, because of the two issues: One
43 is lender approval; and then second of all,
44 finalizing the form of credit agreement. It was
45 actually, I think, Mr. Jackson's suggestion,
46 could we get back today before 2:00? It was his
47 suggestion to try and find a solution to this

4

Submissions for the petitioners by Cnsl P. Rubin

1 problem, but I think the lending group has said
2 they can't move that quickly, in part because
3 they need to finalize the credit agreement. The
4 credit agreement needs to go to the lenders for
5 the review -- or the amendment to the credit
6 agreement, and then back before this court.

7 So I have discussed this with Mr. Sandrelli
8 and Mr. Jackson. I know we have this -- I
9 believe we have a date, which is the following
10 Monday, the 17th, tentatively booked or booked,
11 and if I recall correctly, there was some mention
12 at the last hearing about the possibility of
13 there being some time on the 14th, but that was
14 dependent on your schedule and other matters not
15 proceeding.

16 And so at least my thought, after having
17 discussed this with both of them, is, if we're
18 able to move on the 14th -- or excuse me -- if
19 we're able to get time on the 14th, and we may
20 not know that today or tomorrow, we appreciate
21 that, I think it would behoove us to try to get
22 before you on the 14th to get this -- both the
23 DIP, the settlement agreement and the stay
24 extension approved, in part because we have
25 funding and timing problems with getting money
26 down to Africa.

27 THE COURT: Yes, I thought it was urgent.

28 CNSL P. RUBIN: It is urgent, which is why people were
29 working this weekend, and we thought we were
30 going to be before you until this morning. And
31 so we would have provided advance notice of this,
32 but this came up this morning, and that's the
33 reason why we weren't able to provide advance
34 notice.

35 THE COURT: Is there any basis upon which we could do
36 it -- approve it provisionally subject to the
37 lender approval?

38 CNSL P. RUBIN: That would absolutely work for me.

39 THE COURT: It's not my favourite way of doing things,
40 as all of you know.

41 CNSL P. RUBIN: Yes.

42 THE COURT: But it allows you some flexibility, and it
43 would -- obviously if there's a change in the
44 lending approval, then that would need to be
45 addressed.

46 CNSL P. RUBIN: Yeah, so we have -- as I said, we have
47 a final form of DIP term sheet. And again, the

5
Submissions for the petitioners by Cnsl P. Rubin

1 original plan was to simply approve the DIP term
2 sheet. Actually, in my recent experience it's
3 been the standard practice just to approve the
4 DIP term sheet and allow the parties to enter
5 into definitive documents later on. In some
6 cases the parties enter into them, and in some
7 cases they don't. They just rely on the term
8 sheet.

9 It's understandable why the lenders want an
10 amended credit agreement in this case, and so I
11 guess the question -- and maybe a question for my
12 friend Mr. Jackson -- is, you know, whether --
13 because again, there is a current form of credit
14 agreement that has been circulated. It's not
15 final, but I do wonder whether there's a
16 possibility of agreeing -- or having the court
17 approve that form of settlement agreement subject
18 to lender approval or subject to the parties
19 making, you know, other changes to that document.

20 THE COURT: And oversight by the monitor.

21 CNSL P. RUBIN: Absolutely.

22 THE COURT: To make sure that it's consistent. I'm
23 assuming Mr. Sandrelli is fine with that.

24 CNSL P. RUBIN: Yeah, and I should say --

25 THE COURT: You know, as you know, my time is very
26 limited, and I just looked at the materials for
27 this three-day matter that starts tomorrow, and
28 it may be a three-day matter.

29 CNSL P. RUBIN: Yes, understood.

30 THE COURT: So I'm wondering whether you want to try
31 to put something together that we might be able
32 to look at this afternoon. Does that make any
33 sense?

34 CNSL P. RUBIN: Certainly it does make sense, and
35 perhaps we could hear from Mr. Jackson. I think
36 Mr. Sandrelli would support that, and it may be
37 that Mr. Jackson needs to take instructions. But
38 perhaps what we do is, subject to his views, is
39 stand down and come back.

40 THE COURT: Do you want to stand down for 15 minutes
41 while all of you discuss that and maybe speak to
42 your clients and get some sense of that?

43 Mr. Jackson, you're getting to your feet.

44 CNSL K. JACKSON: Justice, I'm, sorry, moving very
45 slowly today. I can give a brief update, which
46 my friend didn't know.

47 So I've now heard that we have all the

6
Discussion re scheduling

1 lenders signed off on the form of settlement
2 agreement, which is kind of the way this domino
3 starts to work, because attached to the
4 settlement agreement is the DIP term sheet. What
5 I'm seeking clarification on is that the DIP term
6 sheet, which has a schedule, has also been signed
7 off. But if those two things are signed off, I
8 think there is a possibility -- I'll have to get
9 instructions -- that we could be back at least
10 seeking approval of the settlement agreement and
11 the DIP term sheet.

12 The credit agreement and amending agreement
13 is the sort of new piece that my friend mentioned
14 to you earlier. It's that sort of bigger piece,
15 and I think we have to find out where that's at
16 and the timing on that and, quite frankly,
17 whether we need to have that approved
18 provisionally or in some manner.

19 So I can certainly seek instructions, but
20 things are happening quickly, and we may be able
21 to come back this afternoon to get at least
22 something established to move this forward to
23 avoid the need for a later hearing. So I can
24 find out.

25 THE COURT: I'm going to suggest we stand for 15
26 minutes while all of you have a chat offline and
27 see what you might be able to come up with, to be
28 creative, given the time pressures and my timing,
29 my availability, and go from there.

30 So why don't we stand down until, like,
31 10:35, and if you need more time, then just let
32 Mr. Clerk know, and we'll go from there.

33 CNSL J. SANDRELLI: Thank you, Justice.

34 CNSL P. RUBIN: Thank you.

35 THE COURT: All right. Thank you.

36 THE CLERK: Order in chambers. Chambers is stood
37 down.

38
39 **(PROCEEDINGS RECESSED AT 10:18 A.M.)**
40 **(PROCEEDINGS RECONVENED AT 10:38 A.M.)**
41

42 THE COURT: Mr. Rubin.

43 CNSL P. RUBIN: Thank you.

44 So after discussions amongst all of us, and
45 Mr. Jackson is able to take some instructions,
46 but not able to reach everyone that he would like
47 to. We also have a bit of a timing problem in

7
Discussion re scheduling

1 terms of Glencore's signatories being in Europe,
2 which are eight hours ahead.

3 So here's what we were thinking might work,
4 subject, of course, to your views, is can we come
5 back before you this afternoon at 3:00 rather
6 than 2:00, only to give us an extra hour to deal
7 with time zones in Toronto. The thought would
8 be -- and again, people need instructions -- but
9 the thought would be come back before you at 3:00
10 seeking approval of the settlement agreement.
11 The settlement agreement won't have all of the
12 signatures on it, but we don't see that as a
13 problem. The real reason for seeking approval of
14 the settlement agreement is because Trevali needs
15 court approval to sign the settlement agreement,
16 in our view.

17 But we could put a form of settlement
18 agreement before you, and we would put a form of
19 DIP term sheet, which is attached to the
20 settlement agreement. So we'd seek approval of
21 the settlement agreement. We would ask for the
22 stay extension into December, and then we would
23 also seek approval of the internal lending
24 facility based on the term sheet, but conditional
25 upon the parties -- the parties being Trevali,
26 Glencore, the agent and the monitor -- signing
27 off and approving of the form of amendment to the
28 credit facility, and we go that route.

29 Now, that amendment to the credit facility,
30 you know, could be filed with the Court later, if
31 need be.

32 THE COURT: M'mm-hmm.

33 CNSL P. RUBIN: It doesn't necessarily need to be, but
34 of course there wouldn't be any funding until
35 those four parties had signed off on the actual
36 credit agreement.

37 THE COURT: Is the credit agreement already before the
38 court?

39 CNSL P. RUBIN: It is not, and in fact, there are
40 drafts that are being circulated and were
41 circulated this weekend.

42 THE COURT: No, I meant the original one.

43 CNSL P. RUBIN: Oh, I'm sorry. The existing credit
44 agreement. It actually -- I think it might -- it
45 might be either -- I don't know if it's in
46 Brendan's affidavit. We had a secretarial
47 affidavit that we filed. I just couldn't answer

8
Discussion re scheduling

1 the question now.
2 THE COURT: Okay. Well, I --
3 CNSL P. RUBIN: But the amendments are substantial to
4 the existing -- I think it's a fifth amendment to
5 the credit agreement is where we're at. So
6 that's, I think -- and then the idea would be
7 hopefully that dispenses with the need for
8 subsequent approval of the actual fifth amendment
9 to the credit agreement.
10 THE COURT: M'mm-hmm.
11 CNSL P. RUBIN: But again, Mr. Jackson will need to
12 take instructions on that. But our thought is,
13 at least the people in this room, is if the court
14 is approving of the settlement agreement,
15 approving of the term sheet, approving of the
16 parties entering into an amendment to the credit
17 facility that is signed off by all parties and
18 the monitor, we're hoping that should give enough
19 comfort to the lenders because, of course, once
20 Glencore, Trevali and the monitor sign off, I
21 can't imagine there being any issues between
22 those parties.
23 THE COURT: But as I say, you know, even if we do all
24 of that, if there is something that comes up that
25 you think still requires some tweaking from the
26 court's point of view, you can always -- I still
27 am sitting the remainder of the week and on
28 Monday, of course.
29 CNSL P. RUBIN: Right.
30 THE COURT: So you could still run back on a fairly
31 expedited basis, if need be.
32 CNSL P. RUBIN: And our hope would be to dispense with
33 that, but again -- so if that works, we would
34 like to try to be back before you at 3:00, and I
35 think everyone is on the same page.
36 THE COURT: 2:45?
37 CNSL P. RUBIN: 2:45, sure.
38 CNSL K. JACKSON: Sold.
39 CNSL P. RUBIN: [Indiscernible], but we take our
40 direction from you, of course. But 2:45 works,
41 yes.
42 THE COURT: Or 2:30, I mean, is even --
43 CNSL P. RUBIN: I think part of the issue is just in
44 Toronto, we're trying to get people who are -- I
45 think there's -- I saw an email that someone
46 can't address this until 2:00.
47 Right. It's the approvals that they've been

9
Discussion re scheduling

1 waiting on from some of the lenders was scheduled
2 for end of the day, which of course, in our
3 parlance, means 5:00 Toronto, apparently. So
4 that's why a little bit after 2:00 would be
5 helpful for us.

6 THE COURT: Oh, I see. Okay. All right. Well, okay,
7 that's fine.

8 So Mr. Jackson, do you have anything to add,
9 then?

10 CNSL K. JACKSON: No. No, Justice. I am -- a little
11 bit of helpful guidance from the court this
12 morning will go some way to trying to resolve
13 this in a more practical way than we've seen so
14 far. So my friend's done a fine job of
15 summarizing what we think will work, but I've
16 been wrong before, and my partners in Toronto
17 know better than me sometimes, so I'll be
18 fighting the good fight to try and get this done
19 today.

20 THE COURT: Yes. All right.

21 Mr. Sandrelli?

22 CNSL J. SANDRELLI: So on behalf of the monitor, we
23 think that approach is sensible in all the
24 circumstances. So I think we'd ask that an email
25 go out to the CCAA Service List again right after
26 court today giving everybody the heads up that
27 we'll be back at 2:45, hopefully, to have it
28 before the court.

29 THE COURT: Yes. I think that would be useful. Thank
30 you.

31 Okay. We'll stand down until 2:45 and go
32 from there. And Mr. Clerk can just let the
33 registry know that we'll be expecting some
34 late-filed materials just on the eve of you
35 reconvening.

36 CNSL P. RUBIN: Thank you.

37 THE COURT: Okay, thank you.

38 THE CLERK: Order in chambers. Chambers is stood
39 down.

40

41 **(PROCEEDINGS RECESSED AT 10:44 A.M.)**
42 **(PROCEEDINGS RECONVENED AT 3:02 P.M.)**

43

44 CNSL P. RUBIN: We have two new parties, so --

45 THE COURT: All right. Why don't we do appearances
46 again, then, since we've got some new people to
47 introduce.

10

Submissions for the petitioners by Cnsl P. Rubin

1 CNSL P. RUBIN: So Peter Rubin, R-u-b-i-n. Pronouns
2 he and him. And with me again, is
3 Ms. Hildebrand, first initial C. She's not here
4 right now, but she was here. I just looked over
5 and she wasn't here. She will be back. Pronouns
6 are she and her.

7 THE COURT: All right.

8 CNSL J. SANDRELLI: Good afternoon, Justice. John
9 Sandrelli. With me is Cross, initial V,
10 appearing for the monitor.

11 THE COURT: Okay, thank you.

12 CNSL K. JACKSON: Good afternoon, Justice. It's
13 Jackson, initial K, appearing for the Bank of
14 Nova Scotia as the administrative agent to the
15 lenders, and with me is Glen Nesbitt, last name
16 N-e-s-b-i-t-t, who is probably presently hustling
17 up from our office.

18 CNSL M. BUTTERY: He's right behind you.

19 CNSL K. JACKSON: Wow.

20 THE COURT: You're having some difficulty, I see.

21 CNSL K. JACKSON: It's one of those days. I'm just
22 going to sit down now.

23 THE COURT: Yes, all right.

24 Is there anybody else that's supposed to be
25 in the room that isn't and vice versa?

26 CNSL M. BUTTERY: Good afternoon, Justice. Buttery,
27 B-u-t-t-e-r-y, initial M, KC, she /her, counsel
28 for the board of directors of Trevali mining.

29 THE COURT: Okay, thank you.

30 And Mr. Williams?

31 CNSL L. WILLIAMS: Justice, Williams, first initial L,
32 pronouns he/him. I believe for the purpose of
33 this application, appearing for Glencore Canada
34 Corporation.

35 THE COURT: Okay. And Mr. Finn is no longer?

36 CNSL L. WILLIAMS: Mr. Finn did not come back. I'm
37 replacing Mr. Finn.

38 THE COURT: I see, okay. Thank you.

39 CNSL P. RUBIN: And I don't believe there's everybody
40 online, so I think everybody here is in person.

41 THE COURT: Yes, okay. Thank you.

42

43 **SUBMISSIONS FOR THE PETITIONERS BY CNSL P. RUBIN (continued):**

44 I can advise the court that after this
45 morning's appearance, people went back and worked
46 very hard over a number of hours.

47 THE COURT: Yes.

11

Submissions for the petitioners by Cnsl P. Rubin

1 CNSL P. RUBIN: It's been a little bit chaotic, I will
2 admit, but we did get materials out, and we have
3 materials before you. But I will advise that the
4 motion materials that are before you were not
5 sent to the Service List until approximately, I
6 would say, 2:30 or 2:25 today. So Ms. Hildebrand
7 sent that material out, and I think the monitor's
8 report then came out very shortly thereafter as
9 well.

10 As we discussed earlier, though,
11 Mr. Sandrelli's office did send a note to the
12 CCAA Service List after the hearing this morning,
13 letting people know that we'd be back before you
14 seeking the orders that I mentioned earlier
15 today. But we have not heard from any other
16 parties, perhaps not unexpectedly, given that the
17 principal stakeholders are here in the courtroom
18 today.

19 THE COURT: All right. Okay. Well, if anybody gets
20 any message in the middle of this hearing from
21 somebody who wishes to weigh in in some fashion,
22 I'd appreciate being advised.

23 CNSL P. RUBIN: Very good.

24 And so before you we have the company's
25 application, which is the binder before you
26 there, seeking three orders, as I referenced
27 earlier: approval of the settlement agreement,
28 approval of the interim financing, and then
29 third, an extension of the stay. And then in
30 addition, there's a separate application brought
31 by Mr. Jackson in respect of a sealing order
32 related to the unredacted copy of the settlement
33 agreement. So two applications. Our application
34 seeks three orders.

35 THE COURT: M'mm-hmm.

36 CNSL P. RUBIN: And in considering how to best move
37 forward, you clearly have the background of where
38 we're at. I'm not going to repeat the summary of
39 where we get to with respect to the settlement
40 agreement and how it's linked to the DIP. I
41 think that what I might do is actually start with
42 the terms of the settlement agreement, perhaps
43 take you through that, then take you through the
44 DIP terms, and what I will say is the orders that
45 we're seeking are amended such that both the
46 approval of the interim financing and the
47 approval of the settlement agreement are

12

Submissions for the petitioners by Cnsl P. Rubin

1 conditional upon execution of the credit
2 agreement. That -- again, drafts were circulated
3 today as well, so we'd hope to have that
4 finalized this week, but that's the structure of
5 the agreement.
6 So if I can start with the settlement
7 agreement, it is attached to the monitor's fourth
8 report. You may not have that, so perhaps I can
9 hand that up. And this fourth report attaches a
10 redacted version of the settlement agreement, and
11 it is found at appendix A, and so the pages are
12 numbered in the bottom, and it's just after
13 page 21.
14 THE COURT: 21. Oh, yes.
15 CNSL P. RUBIN: So after page 21 there's an
16 appendix A, settlement agreement.
17 THE COURT: Settlement agreement, okay.
18 CNSL P. RUBIN: And I will just perhaps take you
19 through some of the -- what I think are the key
20 provisions in this settlement agreement.
21 As you can see here --
22 THE COURT: Sorry, Madam Clerk, do you have a yellow
23 highlighter or something like that? I forgot my
24 bits and bobs. Thank you.
25 All right. Sorry, yes.
26 CNSL P. RUBIN: Yes, so the settlement agreement, as
27 you can see, is among a variety of parties. So
28 the Bank of Nova Scotia is the agent, and then,
29 in addition, there's the listed parties, which
30 are the lenders at schedule A.
31 THE COURT: M'mm-hmm.
32 CNSL P. RUBIN: You can see that there are three
33 Glencore entities that are parties to this: So
34 this is Glencore International AG, Glencore AG
35 and then Glencore Canada, so all three parties.
36 And then there are the Trevali parties, or the
37 Trevali Group, as it is defined.
38 THE COURT: And these are all the subsidiaries in --
39 CNSL P. RUBIN: Yes.
40 THE COURT: -- Burkina Faso and Namibia and --
41 CNSL P. RUBIN: And Bermuda and elsewhere, yes, and in
42 the UK.
43 THE COURT: Yes.
44 CNSL P. RUBIN: So I won't go through the recitals,
45 but I will start on page 5. There are two pages
46 of recitals and then the defined terms.
47 Starting on page 5 of the settlement

13

Submissions for the petitioners by Cnsl P. Rubin

1 agreement, paragraph 4, this is the provision
2 that provides that the parties' obligations under
3 this agreement are conditional on granting one or
4 more orders in the CCAA proceedings involving
5 the -- authorizing the applicants to enter into
6 this agreement, the interim financing term sheet,
7 as I've mentioned previously, and an agreement to
8 further amend the terms of the lenders' credit
9 agreement. You'll recall that's the structure of
10 the DIP that I mentioned earlier this morning.

11 THE COURT: M'mm-hmm.

12 CNSL P. RUBIN: Paragraph 5, what paragraph 5 does is
13 that it --

14 THE COURT: Mine has been redacted.

15 CNSL P. RUBIN: Yes, and so I want to just generally
16 describe paragraph 5. What it does is
17 paragraph 5 sets out the method in which net
18 proceeds will be divided amongst the parties, and
19 I'll hand up an unredacted version.

20 THE COURT: M'mm-hmm. Proceeds of the mines. Is that
21 what --

22 CNSL P. RUBIN: Yeah, and what I'll do is I'll
23 generally describe this in a way. And that's the
24 version that will be subject to the sealing
25 order, if it's granted, the one that's in front
26 of you.

27 THE COURT: Oh, I see. So this is the confidential --

28 CNSL P. RUBIN: Confidential, yeah.

29 THE COURT: -- supplement to the fourth report. So is
30 this for me?

31 CNSL P. RUBIN: I think that is for you.

32 CNSL K. JACKSON: It's for you, subject to us
33 obtaining the sealing order that Mr. Nesbitt is
34 going to bring that application, yes.

35 THE COURT: Yes, okay. Thank you.

36 CNSL P. RUBIN: And so what paragraph 5 does is it
37 describes the way in which the parties will share
38 what are net proceeds. So there will be -- I'll
39 describe it very generally, but there will be
40 proceeds available for distribution. Assets will
41 be sold. There will be costs incurred. You will
42 then have a net proceeds that are available to
43 distribution which could be distributed to the
44 creditors.

45 And paragraph 5 in (a) through (d) sets out
46 how those net proceeds would be distributed, and
47 so I won't say what those are on the record, but

14

Submissions for the petitioners by Cnsl P. Rubin

1 you can see there's a formula by which certain
2 amounts owed to one party, next amounts go to
3 another party, et cetera. And so that is the
4 commercial arrangement that has been reached
5 between Glencore and the agent, so that is part
6 of the settlement.

7 And I'll let Mr. Jackson speak to the
8 purpose for sealing that, but obviously the
9 concern would be that, to the extent that parties
10 are aware of how funds are being distributed,
11 that might impact the way in which they bid for
12 assets or the amount that they bid for assets,
13 but I'll let Mr. Jackson speak to that. But
14 that's why paragraph 5 is redacted.

15 Turning to paragraph 6 of the settlement
16 agreement, so Glencore approves the interim
17 financing term sheet, which I will turn to later,
18 so Glencore has approved of the DIP term sheet.

19 Paragraph 7 is the paragraph that deals with
20 the setoff issues. And the way paragraph 7 is
21 set up is that in the first sort of seven or
22 eight lines, it confirms that there will be no
23 what we've been referring to as global setoff or
24 a multilateral setoff, and that's what the first
25 part of paragraph 7 says.

26 THE COURT: Just for the record, Ms. Hildebrand is
27 here now.

28 CNLSL P. RUBIN: Yes.

29 THE COURT: I didn't know if Madam Clerk knew her.

30 CNLSL P. RUBIN: And so what paragraph 7 confirms is
31 essentially that Glencore is permitted to
32 continue to exercise what I would describe as
33 local setoffs at a particular mine, but there is
34 no ability, and there's an agreement that they
35 will not be setting off, or there will be no
36 exercise of multilateral setoff.

37 The second part of paragraph 7 starts about
38 eight or nine lines in, starts off with "shall
39 not, however in the middle of the paragraph, and
40 that paragraph -- or that part of the paragraph
41 says that:

42
43 Such waiver of Glencore shall not, however,
44 apply as between any Glencore entity and any
45 two or more mine owners or mines that are
46 acquired by the same third party, either
47 directly or indirectly, in relation to

15

Submissions for the petitioners by Cnsl P. Rubin

1 liabilities incurred by the mine owner after
2 the completion of any such acquisition
3 transaction.
4

5 So what that's intended to do is if there is a
6 purchaser of two mines after the transaction,
7 post closing of the transaction, this does not
8 mean that there's a waiver of Glencore in respect
9 of that post-transaction potential setoff claim.
10 So that should not impact the SISP per se, but
11 what the agreement does in the first part is
12 confirm that, during the CCAA proceedings, there
13 is no global setoff, which was the principal
14 concern that was raised before you a number of
15 weeks ago.

16 I should advise the court, because it is in
17 Mr. Creaney's affidavit, Friday was the deadline
18 for nonbinding LOIs of Caribou. There have been
19 no bids whatsoever at Caribou. So I think it's
20 likely the issue itself in the second part of
21 paragraph 7 won't be any sort of an issue,
22 because currently there is no bidder or
23 prospective bid even for Caribou.

24 Paragraph 8. Paragraph 8 confirms that
25 Glencore continues to have right of setoffs under
26 the offtake agreement, so what is what I
27 mentioned earlier with respect to the local
28 setoff. The rights as they exist currently
29 remain in place, and so if they're permitted
30 under the contract, Glencore is permitted to
31 exercise what I have been describing as the local
32 setoff rates.

33 Paragraph 9 of the settlement agreement,
34 neither the lenders nor the Trevali Group will
35 contest, challenge or bring into question the
36 validity or enforceability of any of the offtake
37 agreements.

38 And paragraph 10 is a similar paragraph. So
39 there are a number of paragraphs in here which
40 seek to protect the existence of the offtake
41 agreement. So paragraph 9 is one of those.
42 Paragraph 10 is also one of those in which, in
43 paragraph 10, the lenders -- neither the lenders
44 nor the Trevali Group will support any
45 transaction that purports to eliminate or
46 disclaim or repudiate or adversely affect any of
47 the offtake agreements. So the agreement is we

16

Submissions for the petitioners by Cnsl P. Rubin

1 will leave the offtake agreements as they exist.

2 Paragraph 11 is a request that would have
3 been made by Glencore. There's certain offtake
4 or concentrate that sits at the Caribou mine at
5 New Brunswick. In the grand scheme of things,
6 it's not a material amount. The evidence
7 discloses it's probably worth in the range of
8 \$250,000, but there is offtake or concentrate
9 that sits -- I'm going to say on the ground in
10 New Brunswick, and so the agreement in
11 paragraph 11 is that Glencore will be permitted
12 to come pick up that offtake, provided Glencore
13 does so at their cost and pays for any costs in
14 cash.

15 THE COURT: This was a mine product generated prior to
16 the care and maintenance, obviously. Is that
17 right?

18 CNSL P. RUBIN: Actually, it was generated pre care
19 and maintenance.

20 THE COURT: Oh, sorry, before, yes. Before, yes.

21 CNSL P. RUBIN: Yes. And it's been sitting there.
22 And so the idea there is that, you know, Glencore
23 is entitled to purchase that offtake. Pursuant
24 to a contract, they are the 100 percent
25 purchaser, so they're going to come pick up that
26 offtake.

27 They will, however, not be paying for that
28 offtake, because there are offsets under the
29 existing contract, but to the extent there are
30 any expenses, they will pay for those expenses in
31 cash.

32 Paragraph 12 is the cooperation paragraph
33 that provides that Glencore and the lenders will
34 assist with respect to the SISP. We're really
35 talking about Rosh Pinah now, and that they will
36 assist in respect of any matters, including
37 discussions with lenders. In essence, all
38 parties will be moving forward to try to create
39 as much value as they can in that SISP process.

40 And then there are the, you know, usual
41 paragraphs at the end that discussion, you know,
42 binding on affiliates, terms are generally to be
43 kept confidential subject to, obviously, this
44 court hearing, time is of the essence and what
45 have you.

46 So that's the structure of the settlement
47 agreement. Not a lengthy agreement. It has not

17

Submissions for the petitioners by Cnsl P. Rubin

1 been signed yet, but the idea is that it would be
2 and will be signed in the ensuing couple of days
3 along with the credit agreement if the court
4 approves of the transactions.

5 So the next document I thought I would turn
6 to is the term sheet, and the DIP term sheet is
7 found in your binder at tab 3B, and tab 3 is
8 Mr. Creaney's affidavit, which was sworn about an
9 hour ago, and attached at Exhibit B is the term
10 sheet.

11 So this is the form of term sheet that has
12 been agreed to and has been signed off by
13 Trevali, Glencore and the agent.

14 THE COURT: M'mm-hmm. Yes.

15 CNSL P. RUBIN: And again, I'll take you through some
16 highlights of this document. So as you can see
17 in terms of documentation, there's reference to
18 the DIP tranche, and I mentioned that earlier
19 this morning. So what there will be is a 16 and
20 a half million dollar DIP tranche under the
21 existing credit facility, so that's what that
22 document is, and so this confirms it will be an
23 amendment to the existing credit agreement.

24 Principal amount of up to 16 and a half
25 million dollars. Again, these are US dollars as
26 well, and then there's reference in the first
27 page to the prefiling tranche, which is the,
28 obviously, pre-CCAA filing amount of
29 approximately \$90 million.

30 The forbearance provision on the next page
31 is the fairly standard forbearance provision
32 whereby the lenders have agreed to forbear from
33 existing events of default, and they have agreed
34 to forbear from enforcing their rights.

35 The reason it's so lengthy is what was set
36 out here is all of the existing events of default
37 to make sure we capture them all so that the
38 forbearance agreement does what it's intended to
39 do. So that is the forbearance provision.

40 Turning the page over, the borrower is the
41 petitioner, Trevali Mining Corporation, and the
42 guarantors are as per the existing credit
43 agreement.

44 The purpose -- I did want to stop at the
45 purpose so you can see in the purpose provision,
46 sub (a):
47

18

Submissions for the petitioners by Cnsl P. Rubin

1 To fund the ordinary course working capital
2 and other general corporate purposes of the
3 borrower.
4

5 And then (b):
6

7 To fund ongoing operations of the Rosh Pinah
8 mine and to pay permitted fees and expenses.
9

10 And permitted fees and expenses are expenses of
11 the lender, not of the company, but those
12 expenses are covered under the DIP budget in any
13 event.

14 The reason I wanted to stop there is you can
15 see further down this certain where it says "for
16 certainty."
17

18 For certainty, proceeds of the DIP tranche
19 shall not be used to fund the Caribou or
20 Perkoa mines or repay the prefiling tranche.
21

22 And so again, that's nothing new. We were all
23 aware of that going into this, and the cash flows
24 have always contemplated DIP being used for
25 purposes --

26 THE COURT: It's not a rollup, then, you're telling
27 me. Is that right?

28 CNSL P. RUBIN: It's not a rollup, no.

29 THE COURT: Yeah.

30 CNSL P. RUBIN: No, it's not a rollup, and -- but
31 again, it is limited to corporate expenses and
32 Rosh Pinah. Money cannot be used for Caribou or
33 in Burkina Faso at the Perkoa mine.

34 The DIP budget, you know, standard.
35 Borrower has to provide a rolling 13-week
36 detailed cash flow. In the second paragraph
37 under DIP budget, every second week, the borrower
38 is required to provide a 13-week cash flow
39 forecast and a variance report, so that's what's
40 set out in the DIP budget provisions.

41 Interest rate applicable margin on page 4.
42 It is the base rate plus 8 percent. The base
43 rate is a floating rate. I understand it's
44 currently around 5.5 percent, plus 8 percent, so
45 currently the DIP rate is about 13.5 percent.

46 The security is as per the existing credit
47 agreement with the addition of a DIP charge, as I

19

Submissions for the petitioners by Cnsl P. Rubin

1 mentioned this morning. So nothing is unusual
2 there.

3 The next page does, again, confirm that, as
4 a requirement, there does need to be a DIP
5 charge, and then there's a priority section which
6 I will take you to now, as opposed to in the
7 order.

8 The way the priority section works is that
9 the existing charges are all remaining in place
10 save one, and so when you look at the priority of
11 the DIP charge section, you can see the admin
12 charge, the D&O charge, intercompany, KERP
13 charge. Those are all as they currently stand.

14 And then there is a sales agent charge.
15 That's National Bank Financial, and so the way
16 this has been structured is that the sales agent
17 charge stays ahead of the DIP, but only in
18 respect of amounts that are payable upon
19 completion of a transaction related to Rosh
20 Pinah.

21 So what is left that wouldn't captured? We
22 don't think there's very much. There could be a
23 potential, a monthly amount that isn't captured
24 on the sale of Rosh Pinah depending on timing.
25 We have discussed this with National Bank
26 Financial, and they have signed off on this what
27 I've called bifurcation of their sales agent
28 charge. And so you'll see that the sales agent
29 charge is in fifth place, and then also on sale
30 in seventh place to capture any excess. And then
31 the DIP sits between them at number 6.

32 The next section is maturity date repayment.
33 Again, just to give you a sense, it's a six-month
34 DIP. That being said, if there is -- this is in
35 paragraph (b). If there's a sale or sales of the
36 equity of all of the assets, then the DIP would
37 terminate, as can be expected, because at this
38 point we're looking at Rosh Pinah only.

39 Paragraph (d), if the stay expires, then,
40 again, that would be a maturity event. (E), on
41 the occurrence of an event of default. So those
42 are things that are not unusual in a DIP term
43 sheet.

44 Turning over to mandatory prepayments. The
45 structure here is that if there are certain
46 events -- and most of these are circumstances
47 which aren't expected -- then those payments have

20

Submissions for the petitioners by Cnsl P. Rubin

1 to be made on account of the DIP.

2 So for instance, paragraph (a), insurance
3 proceeds. To the extent that there is an
4 insurance proceed, that has to be paid. Not
5 unusual.

6 Paragraph (c), to the extent there's
7 proceeds from the sale of secured assets other
8 than inventory, again, those funds have to be
9 paid.

10 Paragraph (d), any extraordinary payments
11 that aren't accounted for in the DIP budget.
12 Again, with an entity of this size and with
13 different jurisdictions, trying to capture
14 extraordinary payments.

15 Turning to the next page, there's a DIP
16 upfront fee which is described as 150 basis
17 points, the maximum amount of the DIP tranche.
18 The affidavit evidence discloses that that is
19 expected to be around \$250,000, but that is to be
20 PIK. So it won't be paid in cash, but there is
21 an agency fee as well, as per the existing credit
22 agreement, and the evidence on that is that that
23 is approximately \$50,000. So those are the two
24 fees in addition to the interest rate.

25 THE COURT: What does the PIK stand for again? I know
26 I've come across that. I just can't --

27 CNSL P. RUBIN: Payable in kind.

28 THE COURT: Oh, I see.

29 CNSL P. RUBIN: Is where it comes from, as opposed to
30 being paid in cash.

31 THE COURT: Yes.

32 CNSL P. RUBIN: Conditions precedent to the funding of
33 the DIP. There are -- there are a number of
34 them, but the parties are working very hard on
35 satisfying these conditions. So there are what I
36 will describe as full banking teams that have
37 been working on this, and it's complicated
38 because it's not just Canadian law; it's UK law;
39 it's Bermudian law; it's African law. So the
40 issues here and the matters set out in the
41 conditions precedent are being worked on, as I
42 said.

43 They include the security documentation,
44 which is number 1; number 3, legal opinions. So
45 again, there's legal opinions, including not just
46 from Canada, but from different jurisdictions.
47 So, as I said, there's a group of people working

21

Submissions for the petitioners by Cnsl P. Rubin

1 on that as we speak.

2 Paragraph 5 within this section, turning the
3 page over, the usual, you know, filing --
4 security filings in the different jurisdictions.

5 THE COURT: M'mm-hmm.

6 CNSL P. RUBIN: Paragraph 6 is one that I've already
7 referenced, and that is execution and delivery of
8 a settlement agreement among the agent, Glencore.
9 You've just seen that. So that's a condition of
10 the DIP term sheet.

11 Paragraph 8, updated insurance certificates.
12 So happy to go to the insurance companies and try
13 and get updates. There's just -- there's a lot
14 going on behind the scenes.

15 Affirmative covenants. Again, just if I
16 could summarize those. Again, there are a number
17 of them. There are things like, on page 10,
18 complying -- this is paragraph (c) on page 10 --
19 complying with court orders. Paragraph (d),
20 complying with the SISP procedures and timelines.

21 Paragraph (e), complying with the DIP budgets.
22 There's a variance provision in there. It's
23 not a large variance, though. It's only 10
24 percent or \$200,000, whichever is more. But
25 again, it's what was negotiated in the
26 circumstances.

27 Down at the bottom of the page,
28 paragraph (f), requirement to deliver to the
29 agent updated cash flows and cash flow variance
30 reports, so that will be done.

31 Turning the page over in paragraph (h),
32 provide updates to the administrative agent on
33 the weekly status of matters.

34 Paragraph (i) is a bit of a lengthier
35 provision. What (i) does is that it provides
36 that the lenders are entitled to all information
37 related to the SISP, including bidders, et
38 cetera. What we've done in paragraph (i),
39 though, is that we provided that, to the extent
40 there's any concern with the disclosure of that
41 information, that it would impact the integrity
42 of the SISP, after considering the judgment of
43 the monitor, then that information would not be
44 disclosed to the lender. So we've tried to
45 address, you know, those issues to protect the
46 integrity of the SISP process.

47 Then paragraph (j) at the bottom, just to

22

Submissions for the petitioners by Cnsl P. Rubin

1 give you another example:

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On or before the earlier of the date of the second extension and November 15th, the borrower shall furnish the administrative agent with a renewed exchange control approval in respect of the guarantee in share pledges.

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So this is a matter of Namibian law that when you amend credit agreements, as I understand it, and want authority to take money out of the jurisdiction, you need approval of what's called the exchange control -- I don't know exactly what they're called -- but exchange control approval.

So that process has been undertaken as well, but again, just to give you a sense of what is going on behind the scenes, there is simply -- there's simply a lot. But for understandable reasons, the agent wants to make sure that, to the extent there are sale proceeds, that everything is done in accordance with local law.

Negative covenants, I don't -- I don't plan on going through these, except for I did want to comment on -- I think it was (f) and (g). And so (f) and (g) provide that there shall be no -- no compromise -- or excuse me. There shall be no compromise of the agent's security or position in any CCAA, and that's set in paragraphs (f) and (g).

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And you can see in (g) that this is a covenant that provides that we will not and our client will not seek approval by the court of any transaction which does not provide for payment in full upon the cash or closing of all secured obligations of the obligors.

So to the extent that there is a transaction in the SISP that does not see the agent paid out in full, we will need their consent to move forward with that transaction. They'll obviously have a decision to make as to whether they want to proceed with that application or fund the process to continue to look at other bids. But I wanted to note that provision in the DIP as well.

THE COURT: Has there been a legal opinion or legal opinions about the validity of the security?

CNSL P. RUBIN: There has not been -- no, there has

23

Submissions for the petitioners by Cnsl P. Rubin

1 not, to my knowledge. There has not been any
2 legal opinions.

3 I know that the issue of their security and
4 the validity of their security has not been
5 raised by our clients or by Glencore, who sits in
6 second position after them, and of course, they
7 have negotiated, and they have an inter-creditor
8 agreement confirming their respective positions,
9 and of course the settlement agreement as well.

10 Events of default. There are the usual
11 ones. Paragraph (a) is the MAC provision, so
12 material adverse change. And so what we've done
13 in a number of these events of default sections
14 is try to carve out circumstances that relate to
15 Burkina Faso or Caribou, New Brunswick, because
16 normally matters such as putting in mining care
17 maintenance or commencing liquidation proceedings
18 would be an event of default. So we've carved
19 those items out of the event of default section.

20 And then there are the usual ones, like in
21 paragraph (c), amendments to the initial order or
22 the amended and restated initial order or the
23 SISP order or DIP orders amended in a way that
24 adversely impacts the administrative agent.

25 THE COURT: M'mm-hmm.

26 CNSL P. RUBIN: Turning the page over to
27 paragraph (d). Paragraph (d) is an event of
28 default that relates to the SISP being amended or
29 modified or terminated or modifications or
30 extension of the bid deadlines.

31 And then (e) relates to the appointment of a
32 receiver manager or the like over any of the
33 entities other than Trevali (New Brunswick)
34 because, again, that may be a process which we
35 have to take with Trevali (New Brunswick). So
36 we've tried to carve out those matters to allow
37 us the flexibility to deal with the assets that
38 are unlikely to result in any real value.

39 And then turning the page over, other events
40 of default, in (i), if there are DIP budgets or
41 updated cash flow that demonstrate that there is
42 insufficient liquidity, that would be an event of
43 default.

44 And (j), (k) and (l) and (m) all relate to
45 the SISP, so that if the events under the SISP
46 don't occur, like there's no letters of intent,
47 there's no final bids, we don't meet the bid

24

Submissions for the petitioners by Cnsl P. Rubin

1 deadlines, those are all linked to events of
2 default.

3 And then finally, the last one is unaffected
4 creditor status, and I touched on this earlier.
5 This is a provision that confirms that the
6 administrative agent will be treated as an
7 unaffected creditor in any proceedings or any
8 plan of compromise.

9 In paragraph (d) it provides that:

10
11 Any plan or compromise filed by our clients
12 cannot contemplate or result in a compromise
13 or impairment of them.
14

15 And then paragraph (c):

16
17 Any stay of proceedings ordered by the court
18 shall not apply to the administrative agent,
19 the lenders or any finance parties in
20 respect of the DIP tranche only, provided,
21 however, the DIP order shall provide that
22 the administrative agent, the lenders and
23 finance parties in respect of the DIP
24 tranche may not exercise any of their rights
25 or remedies under or pursuant to this
26 indicative DIP term sheet without providing
27 three banking days' notice.
28

29 So that's the provision that allows us to come to
30 court, to the extent that we're concerned with
31 any step that's being taken.

32 I know I went through that in some detail,
33 but I did think it was appropriate in the
34 circumstances.

35 THE COURT: M'mm-hmm.

36 CNSL P. RUBIN: So there is an affidavit from
37 Mr. Creaney who's the CFO. I can take you
38 through that, but, you know, he sets out -- and
39 this is at tab 3 -- he sets out in -- I guess
40 it's about eight pages worth -- information about
41 his evidence concerning the interim financing
42 term sheet. He does talk about the urgency in
43 paragraph 5 and paragraph 4, the urgency and the
44 need for the interim financing and how, in order
45 to proceed with matters, including the SISP,
46 approximately \$16 million will be needed. So
47 there is evidence of that.

25

Submissions for the petitioners by Cnsl P. Rubin

1 Paragraph 6 he talks about whether there was
2 an ability in the company's view to look at
3 financing options other than through the
4 administrative agent, so he deals with that issue
5 as well.

6 He references at paragraph 8 that the
7 interim financing term sheet was part of a
8 broader settlement that we were -- we were part
9 of, and obviously that's a settlement amongst the
10 company's two largest creditors. And I say two
11 largest creditors. Of course you have the agent
12 as the senior secured creditor owed approximately
13 \$90 million and you have Glencore that's owed
14 about 13 million under the loan facility.

15 THE COURT: M'mm-hmm.

16 CNSL P. RUBIN: But then you also have Glencore, who
17 is the sole and 100 percent purchaser of all of
18 the offtake at all three mines. So these are
19 clearly the two largest stakeholders.

20 Mr. Creaney sets out the -- some of the key
21 terms of the interim financing at paragraph 9,
22 and so there's a table that's set out there, but
23 I've taken you through all of those already, but
24 Mr. Creaney does that as well.

25 THE COURT: M'mm-hmm.

26 CNSL P. RUBIN: And he states in paragraph 10 that the
27 applicants believe that the terms of that interim
28 financing facility or term sheet are the best
29 terms available to the applicants, and he sets
30 out why at paragraph 10.

31 Talks about the urgency at paragraph 11 and
32 wanting -- and needing to ensure that the most
33 valuable asset, which is the Rosh Pinah mine --
34 this is at paragraph 11 -- is preserved, and it's
35 critical that the value of that asset be
36 preserved for the SISP and in terms of this CCAA
37 to preserve asset value for all stakeholders.

38 References at paragraph 14 that there was a
39 press release on October 6th, and so the
40 application for liquidation in Burkina Faso has
41 been made public. So again, he references that
42 in his affidavit.

43 And then the next section of the affidavit
44 goes on to the settlement agreement, and what he
45 sets out in the settlement agreement is the
46 benefits that have been -- benefits to the
47 company and the process from the settlement

26

Submissions for the petitioners by Cnsl P. Rubin

1 agreement. And I don't think I'll take you
2 through that, but he also sets out, obviously,
3 what the main terms of the settlement agreement
4 are, and in the company's view, the settlement
5 agreement achieves that certainty that we've been
6 talking about, and you may recall that there was
7 a monitor's report -- I can't recall if it was
8 the last one or the one before -- where the
9 monitor also commented on the need for certainty
10 in order to allow us to move forward because
11 there was a concern that, if amounts weren't paid
12 for offtake at Rosh Pinah, that would create
13 uncertainty with respect to the DIP, how much
14 money is needed, whether we could even get a DIP
15 and whether we could continue with the SISP
16 process.

17 At paragraph 24 Mr. Creaney states that:

18
19 The applicants believe that, to the extent
20 there are any concessions provided by
21 Trevali associated with the performance of
22 the applicant's obligations under the
23 settlement agreement, they are outweighed by
24 the benefits that the settlement agreement
25 will provide to the restructuring efforts.

26
27 That's paragraph 24.

28 And at paragraph 25 he sets out a number of
29 items as to, at least in his view, why the
30 settlement agreement is appropriate, and that's
31 at paragraph 25.

32 And then finally on the stay extension, the
33 stay extension is being sought to December 15th.
34 The reason for that date is that there is a final
35 agreement deadline of December 9th, and this is
36 found at paragraph 28 of his affidavit. So
37 there's a final agreement deadline in respect of
38 Rosh Pinah of December 9th, and so the thought
39 was we'd extend the stay to December 15th, and
40 the cash flows demonstrate that with the DIP,
41 there will be -- should be sufficient funding to
42 carry us through into January.

43 There are three forms of orders.

44 THE COURT: M'mm-hmm.

45 CNSL P. RUBIN: I could take you to those forms of
46 orders now. I could obviously have you hear from
47 other parties before I go to the form of orders.

27

Submissions for the petitioners by Cnsl P. Rubin

1 I'm in your hands, obviously.

2 THE COURT: I think I would like you to go through
3 them, Mr. Rubin, please.

4 CNSL P. RUBIN: Very good.

5 THE COURT: Where do I find these?

6 CNSL P. RUBIN: Those are found at tabs 1A, 1B and 1C.

7 THE COURT: M'mm-hmm.

8 CNSL P. RUBIN: And so tab 1A is the interim financing
9 approval order.

10 THE COURT: Okay.

11 CNSL P. RUBIN: And paragraph 3 of the order is a
12 paragraph that authorizes Trevali, empowers them
13 to borrow under an interim financing tranche,
14 which is the DIP tranche, pursuant to the terms
15 of an amendment to a credit facility, provided
16 that, (a), borrowings under the DIP tranche shall
17 not exceed 16.5 million; and (b), such
18 authorization empowerment is conditional -- and
19 this is the conditional language that we added --
20 is conditional upon the execution by Trevali
21 Corp. with the consent of the monitor, the
22 administrative agent and the interim lenders of
23 the fifth amendment, as contemplated by the
24 interim financing term sheet.

25 So what this paragraph does is it authorizes
26 us to enter into the DIP agreement subject to
27 consent of the monitor, and it's conditional upon
28 all of the parties signing that credit -- the
29 amendment to the credit agreement, which, again,
30 we hope to have done this week. So that's
31 paragraph 3.

32 Paragraph 4 confirms that the DIP tranche
33 should be on the terms and subject to the
34 conditions set forth in the credit agreement as
35 amended by the fifth amendment on the terms set
36 forth in the indicative term the sheet, debtor
37 repossession facility that's attached to
38 Mr. Creaney's affidavit.

39 So what this does is it provides the
40 authority to enter into an amendment to the
41 credit facility, provided it's consistent,
42 essentially, with what's in the DIP term sheet
43 that I took you through. So that's how we've
44 structured it.

45 Paragraph 5 is the usual paragraph that
46 authorizes the petitioners to execute and deliver
47 amendments to the credit agreement, any

28

Submissions for the petitioners by Cnsl P. Rubin

1 documents, any security documents, mortgages,
2 chattels, et cetera. So we've had to amend it,
3 given our structure, but that is a fairly
4 standard provision.

5 Paragraph 6 provides that the administrative
6 agent is entitled to an interim lender's charge,
7 and it confirms that that interim lender's charge
8 only applies to matters post filing.

9 Paragraph 7 is, again, not an unusual
10 provision that we've pulled from the model order
11 language:
12

13 Notwithstanding any other provision in this
14 order, the amended restated initial order or
15 any other order of this court, the
16 administrative agent can take steps from
17 time to time to file, register ...
18

19 Et cetera.

20
21 ... and perfect their interim lender's
22 charge or under any of the DIP documents.
23

24 And then:

25
26 Upon an event of default, the interim
27 lender --
28

29 Excuse me.

30
31 ... the administrative agent may immediately
32 cease making advances.
33

34 So they don't have to wait to stop advancing
35 money, but they have to give three banking days'
36 notice to us, to the extent they're going to
37 exercise any other of their remedies.

38 Paragraph 8 provides that they'll be treated
39 as unaffected in any plan of arrangement or
40 compromise.

41 And then paragraph 9 sets out the priorities
42 of the various charges because of the change in
43 the sales agent charges I took you earlier. So
44 paragraph 9 sets out what those priorities will
45 be, and you can see them on page 4, the new
46 fifth, sixth and seventh structure there of the
47 sales agent charge and the interim lender's

29

Submissions for the petitioners by Cnsl P. Rubin

1 charge.

2 And then at paragraphs 10, 11, 12 are all
3 standard form provisions, as is 13, so is 14, 15,
4 16. So the rest of it are standard form.

5 Paragraph (b), then, is the settlement
6 agreement approval order, and paragraph 2 --
7 again, this is the settlement agreement that is
8 attached to the monitor's report, or the redacted
9 version is. So this is subject to paragraph 3,
10 which is the conditional language. But:

11
12 Subject to paragraph 3, the settlement
13 agreement between the Bank of Nova Scotia,
14 as agent --

15
16 And it lists the various parties who are subject
17 to that agreement.

18
19 ... is hereby approved in its entirety and
20 the petitioner should hereby authorize and
21 direct it to enter into the settlement
22 agreement.

23
24 3:

25
26 Such approval is conditional --

27
28 And this is the same language as in the previous
29 order:

30
31 Such approval is conditional upon the
32 execution by Trevali Corp. with the consent
33 of the monitor, the administrative agent and
34 the interim lenders of the fifth amendment
35 as contemplated by the interim financing
36 term sheet.

37
38 As defined in the previous order. And then, 4:

39
40 The petitioner hereby authorizes to take
41 such additional steps and execute such
42 additional documents as may be necessary.

43
44 And then the aid in recognition paragraph and the
45 endorsement paragraph. That order is fairly
46 short.

47 THE COURT: M'mm-hmm.

30

Submissions for the agent by Cnsl K. Jackson

1 CNSL P. RUBIN: And then even shorter is the next
2 order, which is the stay extension order which,
3 again, like the other orders, abridges the time
4 for service and extends the stay in paragraph 2
5 up to and including December 15th, and then the
6 aid in recognition and the endorsement paragraph.

7 THE COURT: All right.

8 CNSL P. RUBIN: So those are the orders that we
9 circulated amongst this group for a number of
10 days and then recirculated today to add the
11 conditional language in, and I think we've got
12 sign-off from everybody that the conditionality
13 language works from our perspective, including
14 the monitor's.

15 The law is set out in our application,
16 including the law with respect to the settlement
17 agreement. So it's all in there. I don't
18 purport to plan to take you it to, but it is
19 there in case you wanted to look at it.

20 I think that's everything that I have,
21 subject to any questions, of course.

22 THE COURT: Okay. All right.

23 CNSL P. RUBIN: Thank you.

24 THE COURT: Thank you, Mr. Rubin.

25 Mr. Jackson, do you want to go next?

26 CNSL K. JACKSON: Certainly, Justice. Thank you.

27

28 **SUBMISSIONS FOR THE AGENT BY CNSL K. JACKSON:**

29 So we have our own application for a sealing
30 order for the monitor's supplemental report.

31 THE COURT: Right.

32 CNSL K. JACKSON: It's the one that was handed up to
33 you that attaches the unredacted copy of the
34 settlement agreement.

35 THE COURT: M'mm-hmm.

36 CNSL K. JACKSON: I don't -- I could respond to my
37 friend's submissions on the other applications.
38 I don't know that you need to hear from me. We
39 are obviously supportive. This has been a result
40 of a lot of -- a lot of work, but this is the
41 key, I think, from our perspective, to getting
42 this plane to cruising altitude, as I said
43 before.

44 So I don't think you probably need to
45 hear -- unless you have any questions
46 specifically for my client, I don't want to take
47 everyone's time basically going over what my

31

Submissions for the agent by Cnsl K. Jackson

1 friend said and simply standing to say that we're
2 supportive, of course, of the applications.

3 But on the sealing order, would that be
4 appropriate to speak to that application now?

5 THE COURT: Yes, I do want to hear from you on that.

6 CNSL K. JACKSON: Thank you. And so you have -- you
7 have a notice of application that was handed up
8 to you. We have a filed copy, but only one copy,
9 so if you're okay working off the unfiled notice
10 of application, it attaches a draft order, very
11 standard in the sense that it's going -- the
12 proposed order being that the confidential
13 supplement be filed under seal and access to
14 counsel for the petitioners and counsel for the
15 monitor, and subject to further order of the
16 court. It's been vetted. We have a copy here,
17 if the court is minded to make the order.

18 The law, we've been over, with the *Sherman*
19 *Estate*, any number of times now. Here's the
20 concern. And so we wanted to do this as -- we
21 wanted to be as -- sort of use a scalpel on this.
22 It's not the overall terms of the settlement
23 agreement, the concept of why we did this, in
24 order to get certainty around multilateral setoff
25 not being asserted My Lord to ensure that we
26 could fund the DIP. That's the essence of the
27 settlement agreement. There's a cost to that,
28 and that cost is laid out in those provisions.

29 And it's not per se telling people what the
30 cost is. It's the way that it's structured that
31 caused us some concern, and so it's this. And we
32 see it in the unredacted copy of the settlement
33 agreement, paragraph 5.

34 It might even be easier, because there is a
35 second redacted part, which is actually towards
36 the --

37 THE COURT: That was my question. What exactly has
38 been redacted, because that's all that you want
39 to seal, isn't it, is the redactions in the
40 settlement agreement itself?

41 CNSL K. JACKSON: It would be unredacted settlement
42 agreement, but it concerns specifically the
43 redacted portions, of course. And so, yes, it's
44 paragraph 5.

45 THE COURT: M'mm-hmm.

46 CNSL K. JACKSON: And the schedule C, which is the
47 illustrative chart. And both of them -- the

32

Submissions for the agent by Cnsl K. Jackson

1 illustrative chart shows the -- it basically
2 gives some sort of description that's helpful to
3 people about what the -- what the financial terms
4 are, which is somewhat clearer than trying to
5 parse through paragraph 5.

6 And it's just those two things, and if you
7 look at it, what will become -- from schedule C,
8 the illustrative chart, what is very clear is
9 from the net proceeds, what one can figure out is
10 you'll see that there is a floor -- two floors,
11 in fact -- one that kicks in effectively
12 immediately upon the DIP being paid off and any
13 other priority costs. And the second one kicking
14 in four lines down at a certain net proceeds.

15 And I can tell you from the way that the
16 negotiations evolved that that wasn't just a
17 number picked at random. It's -- it might be
18 taken as being indicative of Glencore's view --
19 or perhaps the parties' view, because it's not
20 clear on the face of the document -- what the
21 potential value of the Rosh Pinah mine is.
22 Someone could try and reverse engineer that and
23 divine from that chart and from the way that the
24 sale proceeds or the net provides are divvied up,
25 they could probably try and do a bit of math on
26 what the priority costs would be, being the DIP,
27 and there's certain other charges, roughly what
28 the parties may have indicated could be a value.

29 To be clear, we don't -- my clients don't
30 necessarily agree with that, but the way the
31 negotiations evolved, that floor was inserted for
32 a reason, and of course when you put a floor in,
33 it's for the benefit of the person who's getting
34 paid. That's Mr. Williams' client.

35 And so there's some sensitivity around the
36 formula and the chart being in the public view,
37 because someone might try to reverse engineer
38 that to try and come up with what they think is
39 indicative of value according to the parties,
40 rightly or wrongly, and it would be a number that
41 our clients wouldn't enthused about, and frankly,
42 no one would be. Well, no one here.

43 And so that's the concern, and again, we
44 tried to use a scalpel by just taking about the
45 financial terms of the settlement itself, which
46 really only affects my clients and Glencore,
47 because it's how they chop up the money that ends

33

Submissions for the agent by Cnsl K. Jackson

1 up coming to the secured creditors.
2 THE COURT: All right. Well, I think I understand the
3 settlement agreement itself, but the supplement,
4 which is what you're proposing to seal --
5 CNSL K. JACKSON: Right.
6 THE COURT: -- in its entirety, there's some narrative
7 that's at the beginning of this book, that is the
8 report.
9 CNSL K. JACKSON: Yes.
10 THE COURT: And so what does the monitor say in here,
11 as you're the one speaking to it, as opposed to
12 Mr. Sandrelli -- what does the monitor say in
13 here that you want to keep confidential?
14 CNSL K. JACKSON: Right. Well, it effectively
15 describes the commercial terms, but I should say
16 it's not my report. I think it doesn't actually
17 say that it's [indiscernible]. It basically
18 summarizes what's in there. It's our application
19 that says why we think it should be kept
20 confidential. The monitor merely summarizes the
21 entirety in its report of what the settlement
22 does, including the financial terms.
23 And so it's the report which describes those
24 in a bit more detail attaching the unredacted
25 version that we want to have sealed. But I think
26 the monitor can advise the court whether it
27 thinks the application is appropriate, given the
28 concerns raised by the agent, as can Trevali, all
29 of which have seen it, and Glencore as well. But
30 I don't think the monitor's report goes much
31 beyond explaining the financial terms in somewhat
32 more detail or a little more explanation.
33 THE COURT: Well, I see that, you know, in the -- this
34 is in the confidential one, paragraph 10 is the
35 key commercial terms, as it's called. That's
36 essentially all that's in there.
37 CNSL K. JACKSON: Right.
38 THE COURT: Which may or may not be the same as
39 paragraph 21 in the unredacted fourth report.
40 CNSL K. JACKSON: Having just received those, I'm
41 going to defer to my friend on that question.
42 THE COURT: So if there's any -- anything that's
43 not -- that's been redacted in the narrative, I
44 want to know about that.
45 CNSL K. JACKSON: Right. I'll have to defer to my
46 friend for that. I don't, having not had a
47 chance -- it's as fresh to me as you, Justice.

34

Submissions for the agent by Cnsl K. Jackson

1 THE COURT: All right. So you're concerned about
2 paragraph 5 and schedule C.
3 CNSL K. JACKSON: For my part, if we just appended it
4 to a secretarial affidavit and handed it up with
5 the same, that would be all I would be seeking.
6 THE COURT: Right.
7 CNSL K. JACKSON: But the fact that it's attached to
8 the confidential report, to the extent that the
9 confidential report does get into -- and it does;
10 I concede -- parts of it that obviously get into
11 a description of what paragraph 5 and schedule C
12 do -- we need to have that under seal as well.
13 THE COURT: Yeah, okay. Well --
14 CNSL K. JACKSON: But as to the differences between
15 the non-confidential and the proposed
16 confidential reports, I'd have to defer to my
17 friends to tell you which ones.
18 THE COURT: Yes. Well, I'll let Mr. Sandrelli or
19 Ms. Cross address that.
20 CNSL K. JACKSON: It may be more efficient.
21 THE COURT: Yes.
22 CNSL K. JACKSON: For me, anyways.
23 THE COURT: Yes.
24 CNSL K. JACKSON: And so I don't intend to belabour
25 this, Justice. I think I've explained our
26 concerns, and if the concerns, in fact, are
27 meritorious, then we meet the test, is my
28 submission in that regard.
29 I don't have anything else to say on that.
30 THE COURT: Okay.
31 CNSL K. JACKSON: And I do have, as I say, a draft of
32 the order, but I'll wait to hear if -- if Your
33 Justice makes the order before handing that up,
34 unless you would like it now.
35 THE COURT: Hopefully you've got approved forms of
36 order --
37 CNSL K. JACKSON: It's vetted.
38 THE COURT: -- for all of it, because the registry is
39 closing in ten minutes.
40 CNSL K. JACKSON: No, this is vetted. This is vetted.
41 THE COURT: Oh, the other orders too, Mr. Rubin.
42 CNSL P. RUBIN: Yes.
43 THE COURT: Ms. Hildebrand is shaking --
44 CNSL P. RUBIN: Ms. Hildebrand is with me, so it's all
45 been taken care of.
46 THE COURT: Okay, good. All right. Thank you.
47 CNSL K. JACKSON: Thank you, Justice.

35

Submissions for Glencore Canada by Cnsl L. Williams
Submissions for the monitor by Cnsl J. Sandrelli

1 Okay, Mr. Williams.
2

3 **SUBMISSIONS FOR GLENCORE CANADA BY CNSL L. WILLIAMS:**

4 Keeping the registry closing time in mind,
5 I'll be very fast.

6 THE COURT: Yes.

7 CNSL L. WILLIAMS: Glencore supports the applications.
8 I would just flag, in case it becomes relevant in
9 future, we've obviously just received the
10 materials, and so there's some -- for example,
11 the monitor's report, I wouldn't necessarily
12 characterize the offtake agreements and what
13 obligations are currently there the same. It's
14 irrelevant to this application, so I just want it
15 noted, we haven't reviewed them. We shouldn't be
16 taken as not objecting to any language, but I
17 don't think it's relevant for today.

18 So subject to any questions you have, we're
19 content with all the orders going.

20 THE COURT: Okay, thank you.

21 Ms. Buttery?

22 CNSL M. BUTTERY: The client takes no position,
23 Justice.

24 THE COURT: All right. As far as I am aware, your
25 client is now a person -- a board of one. Is
26 that correct?

27 CNSL M. BUTTERY: A board of one currently, but of
28 course representing the other board members who
29 are [indiscernible].

30 THE COURT: Right.

31 CNSL M. BUTTERY: And our concerns would of course be
32 the priority and that the company would continue
33 to proceed such that there won't be any liability
34 for the directors and officers.

35 THE COURT: Okay. All right. Thank you.

36 Mr. Sandrelli and Ms. Cross.

37

38 **SUBMISSIONS FOR THE MONITOR BY CNSL J. SANDRELLI:**

39 Let me just deal with the last part first on
40 the confidential supplement. The application as
41 brought by my friend on behalf of lenders is to
42 seal the entirety of the confidential supplement.

43 THE COURT: Yes.

44 CNSL J. SANDRELLI: So that was done in that way.

45 To your question on what's in the
46 confidential supplement in the description that
47 is confidential and not in the main report, it's

36

Submissions for the monitor by Cnsl J. Sandrelli

1 really paragraph 10(c). So 10(c) of the
2 confidential supplement sets out the economics.
3 THE COURT: Which is the same --
4 CNSL J. SANDRELLI: So 10(c) of the confidential
5 supplement.
6 THE COURT: Also -- well, it's not -- so you've
7 deleted -- 10(c). Oh, I see. So this is really
8 the sharing issue.
9 CNSL J. SANDRELLI: The sharing.
10 THE COURT: That's highlighted in paragraph 5.
11 CNSL J. SANDRELLI: Yes.
12 THE COURT: And schedule C.
13 CNSL J. SANDRELLI: That's correct. And just for
14 ease, the rest of the description in the
15 confidential supplement is duplicative of what's
16 in the fourth report, which is publicly
17 available. We just thought for ease and
18 description, we'd include the same general terms
19 in the confidential supplement as well, and
20 that's how we proceeded.
21 So as I say, the order sought is to seal the
22 entirety of the confidential supplement.
23 THE COURT: So you've got a new schedule -- a new sub
24 (c) which just says there's some sharing.
25 CNSL J. SANDRELLI: Correct.
26 THE COURT: A schedule of distribution.
27 CNSL J. SANDRELLI: Correct. 10(c), that's correct.
28 THE COURT: Right. Okay.
29 CNSL J. SANDRELLI: And the monitor's position on the
30 need for sealing is actually at paragraph 23 of
31 the fourth report. The monitor supports the
32 sealing and notes that, in its view, the
33 agreement includes commercially sensitive
34 information with respect to the schedule of
35 distribution, the disclosure of which could
36 undermine the integrity of the ongoing SISP
37 involving Trevali's interest in the Rosh Pinah
38 mine. And that could be used by potential
39 purchasers to derive information on the lenders'
40 and Glencore's views of value, which is the point
41 that Mr. Jackson was making, and the monitor
42 concurs in that regard and supports the sealing
43 accordingly.
44 THE COURT: Yes. Well, it's sort of akin to
45 commercial terms of the sale in the sense of
46 being able to reverse engineer.
47 CNSL J. SANDRELLI: Right. Or, you know, appraisal

37

Submissions for the monitor by Cnsl J. Sandrelli

1 information that's routinely sealed as well in
2 the context of assessments.

3 THE COURT: Yes.

4 CNSL J. SANDRELLI: So again, in the interests of
5 time, it really -- the monitor's comments and
6 views on -- and I'm in your hands, because I
7 would normally be more than four minutes, so I
8 don't know if we want to try to extend the
9 registry or just leave this with you. I'm in
10 your hands.

11 THE COURT: Well, I don't think it's necessary,
12 Mr. Sandrelli. I mean, I think you've -- the
13 monitor is obviously satisfied that these
14 arrangements are reasonable, the settlement
15 agreement, for example, and I'm assuming, because
16 other than that, the whole thing falls apart, to
17 some degree.

18 CNSL J. SANDRELLI: Yeah.

19 THE COURT: And the financing is obviously critical in
20 terms of keeping the Rosh Pinah mine going.

21 CNSL J. SANDRELLI: That's correct. And preserving
22 the value of that, of the whole SISP process.

23 The monitor does go into detail of the
24 reasons as to why it believes the various orders
25 are appropriate and fair and reasonable in the
26 circumstances, and so the parties will have that.
27 The Service List will have that. Your Justice,
28 you have that, and those are paragraphs 18, 19,
29 22 of the report.

30 THE COURT: Yes. Well, I mean, I think from my point
31 of view, Mr. Sandrelli, it boils down to this.
32 The monitor has -- I think is saying that it's
33 satisfied that there's been sufficient oversight,
34 notwithstanding the urgency of the situation.

35 CNSL J. SANDRELLI: Yes.

36 THE COURT: And all of that, and that I can rely on
37 that.

38 CNSL J. SANDRELLI: No question. And, as I say, the
39 monitor's been involved on a daily basis
40 throughout the entire process and negotiation
41 leading up to today, and so has been involved in
42 realtime and, again, commends the parties to
43 getting to this point.

44 THE COURT: Yes. I mean, otherwise we were going to
45 have quite a contested matter.

46 CNSL J. SANDRELLI: Yes.

47 THE COURT: Particularly from Mr. Williams' point of

38

Submissions for the monitor by Cnsl J. Sandrelli

1 view, as I understand it.
2 CNSL J. SANDRELLI: Yes. That's correct.
3 THE COURT: Okay. All right. Thank you.
4 CNSL J. SANDRELLI: Thank you.
5

6 **[ORAL REASONS FOR JUDGMENT RE ORDERS SOUGHT]**
7

8 THE COURT: That's that. And form of orders.
9 CNSL P. RUBIN: They have been vetted. There is an
10 application to extend the stay, and I don't know
11 if you referenced that in your decision.
12 THE COURT: Yes, sorry. I'm sorry, Mr. Rubin. Thank
13 you.
14

15 **[ORAL REASONS FOR JUDGMENT RE ORDERS SOUGHT]**
16

17 THE COURT: I assume you want these orders today. Is
18 that right?
19 CNSL P. RUBIN: If possible we'll take them down. If
20 we can't, we will come back in the morning.
21 THE COURT: Madam Clerk, would you mind phoning the
22 registry and asking them to just allow Mr. Rubin
23 or whoever to do that.
24 All right. Finally, you should set a new
25 date in December as soon as possible at 9:00,
26 because I'm pretty sure I'm in Kamloops that
27 week, so you should set a place card for 9:00
28 sometime that week.
29 CNSL P. RUBIN: We will.
30 THE COURT: To make sure that you've got -- because
31 I've actually just also extended the stay on
32 another matter to December. I think Mr. Jackson
33 knows about that one.
34 CNSL P. RUBIN: Okay.
35 THE COURT: So just to make sure that we have a date.
36 CNSL P. RUBIN: Very good.
37 THE COURT: Okay?
38 CNSL P. RUBIN: Very good, thank you. Thank you for
39 your accommodations today.
40 CNSL K. JACKSON: Justice, I do hate to interrupt
41 this, but my colleague here, Mr. Nesbitt, has
42 pointed out that the order we have contemplates
43 the date of the confidential supplement being
44 filed as of today, and it may be that we've
45 missed that and we won't get it filed. The
46 problem is it's in the order as of October 11th,
47 and maybe I can just ask Your Justice to make it

39
Reporter certification

1 October 12th and then we can just do it in the
2 morning.
3 THE COURT: I'll put it for the 12th, yes.
4 CNSL K. JACKSON: If that works.
5 THE COURT: Yes, okay. The date won't change, but --
6 CNSL K. JACKSON: Thank you, Justice.
7 THE COURT: Okay. Thank you all.
8 CNSL P. RUBIN: Thank you.
9 THE CLERK: Order in chambers. Chambers is adjourned.

10
11 (PROCEEDINGS ADJOURNED AT 4:06 P.M.)

12
13 REPORTER CERTIFICATION

14
15 I, Tiffany Vincent, Official Reporter in the
16 Province of British Columbia, Canada, BCSRA
17 No. 576, do hereby certify:

18
19 That the proceedings were transcribed by me
20 from audio provided of recorded proceedings, and
21 the same is a true and correct and complete
22 transcript of said proceedings to the best of my
23 skill and ability.

24
25 IN WITNESS WHEREOF, I have hereunto
26 subscribed my name on this day, the 30th of
27 March, 2023.

28
29
30 *J. Vincent*

31
32 _____
33 Tiffany Vincent
34 Authorized Reporter
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/			9	
/her [1] - 10:27			9 [5] - 15:33, 15:41, 25:21, 28:41, 28:44 9:00 [2] - 38:25, 38:27 9th [2] - 26:35, 26:38	
1			A	
1 [1] - 20:44 10 [10] - 15:38, 15:42, 15:43, 21:17, 21:18, 21:23, 25:26, 25:30, 29:2, 33:34 10(c) [3] - 36:1, 36:4, 36:27 10(c) [2] - 36:1, 36:7 100 [2] - 16:24, 25:17 10:08 [1] - 1:4 10:18 [1] - 6:39 10:35 [1] - 6:31 10:38 [1] - 6:40 10:44 [1] - 9:41 11 [6] - 1:1, 16:2, 16:11, 25:31, 25:34, 29:2 11th [2] - 1:7, 38:46 12 [3] - 2:28, 16:32, 29:2 12th [2] - 39:1, 39:3 13 [2] - 25:14, 29:3 13-week [2] - 18:35, 18:38 13.5 [1] - 18:45 14 [2] - 25:38, 29:3 14-page [1] - 2:28 14th [4] - 4:13, 4:18, 4:19, 4:22 15 [3] - 5:40, 6:25, 29:3 150 [1] - 20:16 15th [4] - 22:4, 26:33, 26:39, 30:5 16 [3] - 17:19, 17:24, 29:4 16.5 [1] - 27:17 17th [1] - 4:10 18 [1] - 37:28 19 [1] - 37:28 1A [2] - 27:6, 27:8 1B [1] - 27:6 1C [1] - 27:6	3 [3] - 17:7, 20:44, 24:39, 27:11, 27:31, 29:9, 29:12, 29:24 30th [1] - 39:26 3:00 [3] - 7:5, 7:9, 8:34 3:02 [1] - 9:42 3B [1] - 17:7	A.M [4] - 1:4, 6:39, 6:40, 9:41 ability [3] - 14:34, 25:2, 39:23 able [9] - 4:18, 4:19, 4:33, 5:31, 6:20, 6:27, 6:45, 6:46, 36:46 abridges [1] - 30:3 absolutely [2] - 4:38, 5:21 access [1] - 31:13 accommodations [1] - 38:39 accordance [1] - 22:22 according [1] - 32:39 accordingly [1] - 36:43 account [1] - 20:1 accounted [1] - 20:11 achieves [1] - 26:5 acquired [1] - 14:46 acquisition [1] - 15:2 actual [3] - 2:31, 7:35, 8:8 add [2] - 9:8, 30:10 added [1] - 27:19 addition [5] - 2:23, 11:30, 12:29, 18:47, 20:24 additional [3] - 3:20, 29:41, 29:42 address [3] - 8:46, 21:45, 34:19 addressed [1] - 4:45 adjourned [1] - 39:9 ADJOURNED [1] - 39:11 admin [1] - 19:11 administrative [14] - 1:22, 10:14, 21:32, 22:5, 23:24, 24:6, 24:18, 24:22, 25:4, 27:22, 28:5, 28:16,	28:31, 29:33 admit [1] - 11:2 advance [2] - 4:31, 4:33 advances [1] - 28:32 advancing [1] - 28:34 adverse [1] - 23:12 adversely [2] - 15:46, 23:24 advise [4] - 10:44, 11:3, 15:16, 33:26 advised [4] - 2:9, 2:24, 2:30, 11:22 affect [1] - 15:46 affects [1] - 32:46 affidavit [11] - 7:46, 7:47, 15:17, 17:8, 20:18, 24:36, 25:42, 25:43, 26:36, 27:38, 34:4 affiliates [1] - 16:42 Africa [1] - 4:26 African [1] - 20:39 afternoon [6] - 5:32, 6:21, 7:5, 10:8, 10:12, 10:26 AG [2] - 12:34 agency [1] - 20:21 agent [35] - 1:22, 1:47, 2:2, 2:13, 2:39, 7:26, 10:14, 12:28, 14:5, 17:13, 19:14, 19:16, 19:27, 19:28, 21:8, 21:29, 21:32, 22:6, 22:20, 22:38, 23:24, 24:6, 24:18, 24:22, 25:4, 25:11, 27:22, 28:6, 28:16, 28:31, 28:43, 28:47, 29:14, 29:33, 33:28 AGENT [1] - 30:28 agent's [1] - 22:28 ago [2] - 15:15, 17:9 agree [1] - 32:30 agreed [4] - 2:19, 17:12, 17:32, 17:33 agreeing [1] - 5:16 agreement [103] - 1:46, 2:10, 2:18, 2:32, 2:38, 2:43, 3:4, 3:14, 3:19, 3:21, 3:44, 4:3, 4:4, 4:6, 4:23, 5:10, 5:14, 5:17, 6:2, 6:4, 6:10, 6:12, 7:10, 7:11, 7:14, 7:15, 7:18, 7:20, 7:21, 7:36, 7:37, 7:44, 8:5, 8:9, 8:14, 11:27, 11:33, 11:40, 11:42, 11:47,	12:2, 12:5, 12:7, 12:10, 12:16, 12:17, 12:20, 12:26, 13:1, 13:3, 13:6, 13:7, 13:9, 14:16, 14:34, 15:11, 15:26, 15:33, 15:41, 15:47, 16:10, 16:47, 17:3, 17:23, 17:38, 17:43, 18:47, 20:22, 21:8, 23:8, 23:9, 25:44, 25:45, 26:1, 26:3, 26:5, 26:23, 26:24, 26:30, 26:35, 26:37, 27:26, 27:29, 27:34, 27:47, 29:6, 29:7, 29:13, 29:17, 29:22, 30:17, 30:34, 31:23, 31:27, 31:33, 31:40, 31:42, 33:3, 36:33, 37:15 agreements [5] - 15:37, 15:47, 16:1, 22:11, 35:12 ahead [2] - 7:2, 19:17 aid [2] - 29:44, 30:6 akin [1] - 36:44 allow [5] - 3:19, 5:4, 23:36, 26:10, 38:22 allows [2] - 4:42, 24:29 altitude [1] - 30:42 amend [4] - 3:13, 13:8, 22:11, 28:2 amended [7] - 5:10, 11:45, 23:22, 23:23, 23:28, 27:35, 28:14 amending [1] - 6:12 amendment [16] - 2:32, 2:37, 3:18, 4:5, 7:27, 7:29, 8:4, 8:8, 8:16, 17:23, 27:15, 27:23, 27:29, 27:35, 27:40, 29:34 amendments [3] - 8:3, 23:21, 27:47 amount [6] - 14:12, 16:6, 17:24, 17:28, 19:23, 20:17 amounts [4] - 14:2, 19:18, 26:11 answer [1] - 7:47 anyways [1] - 34:22 apart [1] - 37:16 apologize [1] - 3:35 appearance [1] - 10:45 appearances [1] - 9:45 appearing [6] - 1:17, 1:21, 1:26, 10:10,
	4 [6] - 13:1, 18:41, 24:43, 27:32, 28:45, 29:38 4:06 [1] - 39:11			
	5 [18] - 12:45, 12:47, 13:12, 13:16, 13:17, 13:36, 13:45, 14:14, 21:2, 24:43, 27:45, 31:33, 31:44, 32:5, 34:2, 34:11, 36:10 5.5 [1] - 18:44 576 [1] - 39:17 5:00 [1] - 9:3			
	6 [5] - 14:15, 19:31, 21:6, 25:1, 28:5 6th [1] - 25:39			
	7 [7] - 14:19, 14:20, 14:25, 14:30, 14:37, 15:21, 28:9			

<p>10:13, 10:33 appended [1] - 34:3 appendix [2] - 12:11, 12:16 applicable [1] - 18:41 applicant's [1] - 26:22 applicants [4] - 13:5, 25:27, 25:29, 26:19 application [19] - 1:40, 2:6, 10:33, 11:25, 11:30, 11:33, 13:34, 22:42, 25:40, 30:15, 30:29, 31:4, 31:7, 31:10, 33:18, 33:27, 35:14, 35:40, 38:10 applications [4] - 11:33, 30:37, 31:2, 35:7 applies [1] - 28:8 apply [2] - 14:44, 24:18 appointment [1] - 23:31 appraisal [1] - 36:47 appreciate [2] - 4:20, 11:22 approach [1] - 9:23 appropriate [5] - 24:33, 26:30, 31:4, 33:27, 37:25 approval [29] - 1:41, 1:45, 2:1, 2:15, 2:17, 2:26, 3:43, 4:37, 4:44, 5:18, 6:10, 7:10, 7:13, 7:15, 7:20, 7:23, 8:8, 11:27, 11:28, 11:46, 11:47, 22:7, 22:13, 22:15, 22:33, 27:9, 29:6, 29:26, 29:31 approvals [1] - 8:47 approve [6] - 2:31, 3:17, 4:36, 5:1, 5:3, 5:17 approved [7] - 2:11, 2:12, 4:24, 6:17, 14:18, 29:19, 34:35 approves [2] - 14:16, 17:4 approving [4] - 7:27, 8:14, 8:15 arrangement [2] - 14:4, 28:39 arrangements [1] - 37:14 aspect [1] - 2:1 asserted [1] - 31:25 assessments [1] - 37:2</p>	<p>asset [3] - 25:33, 25:35, 25:37 assets [7] - 3:15, 13:40, 14:12, 19:36, 20:7, 23:37 assist [2] - 16:34, 16:36 associated [1] - 26:21 assume [1] - 38:17 assuming [2] - 5:23, 37:15 AT [6] - 1:4, 6:39, 6:40, 9:41, 9:42, 39:11 attached [7] - 6:3, 7:19, 12:7, 17:9, 27:37, 29:8, 34:7 attaches [3] - 12:9, 30:33, 31:10 attaching [1] - 33:24 audio [1] - 39:20 authority [2] - 22:12, 27:40 authorization [1] - 27:18 authorize [1] - 29:20 Authorized [1] - 39:33 authorizes [4] - 27:12, 27:25, 27:46, 29:40 authorizing [1] - 13:5 availability [1] - 6:29 available [4] - 13:40, 13:42, 25:29, 36:17 avoid [1] - 6:23 aware [4] - 2:39, 14:10, 18:23, 35:24</p>	<p>21:14, 22:18 behoove [1] - 4:21 belabour [1] - 34:24 believes [1] - 37:24 benefit [2] - 3:22, 32:33 benefits [3] - 25:46, 26:24 Bermuda [1] - 12:41 Bermudian [1] - 20:39 best [3] - 11:36, 25:28, 39:22 better [1] - 9:17 between [9] - 1:47, 2:13, 3:29, 8:21, 14:5, 14:44, 19:31, 29:13, 34:14 beyond [1] - 33:31 bid [5] - 14:11, 14:12, 15:23, 23:30, 23:47 bidder [1] - 15:22 bidders [1] - 21:37 bids [3] - 15:19, 22:43, 23:47 bifurcation [1] - 19:27 bigger [1] - 6:14 binder [2] - 11:25, 17:7 binding [1] - 16:42 bit [8] - 2:33, 6:47, 9:4, 9:11, 11:1, 21:34, 32:25, 33:24 bits [1] - 12:24 board [4] - 10:28, 35:25, 35:27, 35:28 bobs [1] - 12:24 boils [1] - 37:31 book [1] - 33:7 booked [3] - 3:35, 4:10 borrow [1] - 27:13 borrower [5] - 17:40, 18:3, 18:35, 18:37, 22:5 borrowings [1] - 27:16 bottom [3] - 12:12, 21:27, 21:47 Brendan's [1] - 7:46 brief [1] - 5:45 bring [4] - 1:40, 2:6, 13:34, 15:35 British [2] - 1:6, 39:16 broader [1] - 25:8 brought [2] - 11:30, 35:41 Brunswick [6] - 3:6, 3:17, 16:5, 16:10, 23:15, 23:33 Brunswick [1] - 23:35</p>	<p>budget [5] - 18:12, 18:34, 18:37, 18:40, 20:11 budgets [2] - 21:21, 23:40 Burkina [4] - 12:40, 18:33, 23:15, 25:40 BUTTERY [6] - 10:18, 10:26, 10:27, 35:22, 35:27, 35:31 Buttery [2] - 10:26, 35:21 BY [5] - 1:38, 10:43, 30:28, 35:3, 35:38</p>	<p>18:16, 18:18, 26:5, 26:9, 31:24 certificates [1] - 21:11 CERTIFICATION [1] - 39:13 certify [1] - 39:17 cetera [4] - 14:3, 21:38, 28:2, 28:19 CFO [1] - 24:37 chain [2] - 3:7, 3:24 challenge [1] - 15:35 chambers [6] - 6:36, 9:38, 39:9 chance [2] - 3:39, 33:47 change [4] - 4:43, 23:12, 28:42, 39:5 changes [1] - 5:19 chaotic [1] - 11:1 characterize [1] - 35:12 charge [16] - 3:15, 18:47, 19:5, 19:11, 19:12, 19:13, 19:14, 19:17, 19:28, 19:29, 28:6, 28:7, 28:22, 28:47, 29:1 charges [4] - 19:9, 28:42, 28:43, 32:27 chart [5] - 31:47, 32:1, 32:8, 32:23, 32:36 chat [1] - 6:26 chattels [1] - 28:2 chop [1] - 32:47 circulated [5] - 5:14, 7:40, 7:41, 12:2, 30:9 circumstances [6] - 9:24, 19:46, 21:26, 23:14, 24:34, 37:26 claim [1] - 15:9 Claire [1] - 1:12 clarification [1] - 6:5 clear [3] - 32:8, 32:20, 32:29 clearer [1] - 32:4 clearly [2] - 11:37, 25:19 CLERK [4] - 1:6, 6:36, 9:38, 39:9 clerk [2] - 6:32, 9:32 Clerk [3] - 12:22, 14:29, 38:21 client [6] - 2:3, 22:33, 30:46, 32:34, 35:22, 35:25 clients [6] - 5:42, 23:5, 24:11, 32:29, 32:41, 32:46 close [1] - 2:17</p>
C				
<p>CANADA [1] - 35:3 Canada [5] - 1:26, 10:33, 12:35, 20:46, 39:16 Canadian [3] - 3:2, 3:11, 20:38 cannot [2] - 18:32, 24:12 capital [1] - 18:1 capture [3] - 17:37, 19:30, 20:13 captured [2] - 19:21, 19:23 card [1] - 38:27 care [4] - 16:16, 16:18, 23:16, 34:45 Caribou [8] - 3:7, 15:18, 15:19, 15:23, 16:4, 18:19, 18:32, 23:15 carry [1] - 26:42 carve [2] - 23:14, 23:36 carved [1] - 23:18 case [3] - 5:10, 30:19, 35:8 cases [2] - 5:6, 5:7 cash [12] - 16:14, 16:31, 18:23, 18:36, 18:38, 20:20, 20:30, 21:29, 22:35, 23:41, 26:40 caused [1] - 31:31 CCAA [8] - 3:2, 9:25, 11:12, 13:4, 15:12, 17:28, 22:29, 25:36 cease [1] - 28:32 certain [6] - 14:1, 16:3, 18:15, 19:45, 32:14, 32:27 certainly [3] - 5:34, 6:19, 30:26 certainty [6] - 3:25,</p>				
B				
<p>b [1] - 19:35 background [4] - 1:35, 2:34, 3:31, 11:37 Bank [6] - 1:21, 10:13, 12:28, 19:15, 19:25, 29:13 banking [3] - 20:36, 24:27, 28:35 base [2] - 18:42 based [2] - 2:26, 7:24 basis [4] - 4:35, 8:31, 20:16, 37:39 BC [1] - 1:2 BCSRA [1] - 39:16 become [1] - 32:7 becomes [1] - 35:8 beginning [1] - 33:7 behalf [2] - 9:22, 35:41 behind [3] - 10:18,</p>				

<p>closing [4] - 15:7, 22:35, 34:39, 35:4</p> <p>CNSL [146] - 1:11, 1:15, 1:20, 1:25, 1:29, 1:32, 1:38, 1:45, 3:41, 4:28, 4:38, 4:41, 4:46, 5:21, 5:24, 5:29, 5:34, 5:44, 6:33, 6:34, 6:43, 7:33, 7:39, 7:43, 8:3, 8:11, 8:29, 8:32, 8:37, 8:38, 8:39, 8:43, 9:10, 9:22, 9:36, 9:44, 10:1, 10:8, 10:12, 10:18, 10:19, 10:21, 10:26, 10:31, 10:36, 10:39, 10:43, 11:1, 11:23, 11:36, 12:15, 12:18, 12:26, 12:32, 12:39, 12:41, 12:44, 13:12, 13:15, 13:22, 13:28, 13:31, 13:32, 13:36, 14:28, 14:30, 16:18, 16:21, 17:15, 18:28, 18:30, 20:27, 20:29, 20:32, 21:6, 22:47, 23:26, 24:36, 25:16, 25:26, 26:45, 27:4, 27:6, 27:8, 27:11, 30:1, 30:8, 30:23, 30:26, 30:28, 30:32, 30:36, 31:6, 31:41, 31:46, 33:5, 33:9, 33:14, 33:37, 33:40, 33:45, 34:3, 34:7, 34:14, 34:20, 34:22, 34:24, 34:31, 34:37, 34:40, 34:42, 34:44, 34:47, 35:3, 35:7, 35:22, 35:27, 35:31, 35:38, 35:44, 36:4, 36:9, 36:11, 36:13, 36:25, 36:27, 36:29, 36:47, 37:4, 37:18, 37:21, 37:35, 37:38, 37:46, 38:2, 38:4, 38:9, 38:19, 38:29, 38:34, 38:36, 38:38, 38:40, 39:4, 39:6, 39:8</p> <p>colleague [1] - 38:41</p> <p>Columbia [2] - 1:6, 39:16</p> <p>comfort [1] - 8:19</p> <p>coming [1] - 33:1</p> <p>COMMENCED [1] - 1:4</p> <p>commencing [1] - 23:17</p>	<p>commends [1] - 37:42</p> <p>comment [1] - 22:25</p> <p>commented [1] - 26:9</p> <p>comments [1] - 37:5</p> <p>commercial [4] - 14:4, 33:15, 33:35, 36:45</p> <p>commercially [1] - 36:33</p> <p>companies [1] - 21:12</p> <p>company [4] - 3:16, 18:11, 25:47, 35:32</p> <p>company's [4] - 11:24, 25:2, 25:10, 26:4</p> <p>complete [1] - 39:21</p> <p>completion [2] - 15:2, 19:19</p> <p>complicated [1] - 20:37</p> <p>complying [4] - 21:18, 21:19, 21:20, 21:21</p> <p>compromise [6] - 22:27, 22:28, 24:8, 24:11, 24:12, 28:40</p> <p>concede [1] - 34:10</p> <p>concentrate [2] - 16:4, 16:8</p> <p>concept [2] - 3:28, 31:23</p> <p>concern [7] - 14:9, 15:14, 21:40, 26:11, 31:20, 31:31, 32:43</p> <p>concerned [2] - 24:30, 34:1</p> <p>concerning [1] - 24:41</p> <p>concerns [5] - 31:42, 33:28, 34:26, 35:31</p> <p>concessions [1] - 26:20</p> <p>concurs [1] - 36:42</p> <p>condition [1] - 21:9</p> <p>conditional [11] - 7:24, 12:1, 13:3, 27:18, 27:19, 27:20, 27:27, 29:10, 29:26, 29:31, 30:11</p> <p>conditionality [1] - 30:12</p> <p>conditions [4] - 20:32, 20:35, 20:41, 27:34</p> <p>confidential [21] - 13:27, 13:28, 16:43, 31:12, 33:13, 33:20, 33:34, 34:8, 34:9, 34:15, 34:16, 35:40, 35:42, 35:46, 35:47, 36:2, 36:4, 36:15, 36:19, 36:22, 38:43</p> <p>confirm [2] - 15:12, 19:3</p>	<p>confirming [1] - 23:8</p> <p>confirms [7] - 14:22, 14:30, 15:24, 17:22, 24:5, 27:32, 28:7</p> <p>consent [4] - 22:39, 27:21, 27:27, 29:32</p> <p>considering [2] - 11:36, 21:42</p> <p>consistent [2] - 5:22, 27:41</p> <p>contemplate [1] - 24:12</p> <p>contemplated [3] - 18:24, 27:23, 29:35</p> <p>contemplates [1] - 38:42</p> <p>content [1] - 35:19</p> <p>contest [1] - 15:35</p> <p>contested [1] - 37:45</p> <p>context [1] - 37:2</p> <p>continue [4] - 14:32, 22:43, 26:15, 35:32</p> <p>continued [1] - 10:43</p> <p>continues [1] - 15:25</p> <p>contract [3] - 15:30, 16:24, 16:29</p> <p>control [3] - 22:6, 22:14, 22:15</p> <p>cooperation [1] - 16:32</p> <p>copy [6] - 11:32, 30:33, 31:8, 31:16, 31:32</p> <p>Corp [2] - 27:21, 29:32</p> <p>corporate [3] - 3:24, 18:2, 18:31</p> <p>Corporation [4] - 1:8, 1:26, 10:34, 17:41</p> <p>correct [8] - 35:26, 36:13, 36:25, 36:27, 37:21, 38:2, 39:21</p> <p>correctly [2] - 2:44, 4:11</p> <p>cost [4] - 16:13, 31:27, 31:28, 31:30</p> <p>costs [4] - 13:41, 16:13, 32:13, 32:26</p> <p>counsel [4] - 1:12, 10:27, 31:14</p> <p>countries [3] - 3:4, 3:8, 3:24</p> <p>couple [1] - 17:2</p> <p>course [16] - 7:4, 7:34, 8:19, 8:28, 8:40, 9:2, 18:1, 23:6, 23:9, 25:11, 30:21, 31:2, 31:43, 32:32, 35:28, 35:31</p> <p>Court [2] - 1:6, 7:30</p> <p>court [22] - 2:31, 3:14,</p>	<p>4:6, 5:16, 7:15, 7:38, 8:13, 9:11, 9:26, 9:28, 10:44, 15:16, 16:44, 17:3, 21:19, 22:33, 24:17, 24:30, 28:15, 31:16, 31:17, 33:26</p> <p>COURT [138] - 1:10, 1:14, 1:19, 1:24, 1:28, 1:31, 1:44, 3:39, 4:27, 4:35, 4:39, 4:42, 5:20, 5:22, 5:25, 5:30, 5:40, 6:25, 6:35, 6:42, 7:32, 7:37, 7:42, 8:2, 8:10, 8:23, 8:30, 8:36, 8:42, 9:6, 9:20, 9:29, 9:37, 9:45, 10:7, 10:11, 10:20, 10:23, 10:29, 10:35, 10:38, 10:41, 10:47, 11:19, 11:35, 12:14, 12:17, 12:22, 12:31, 12:38, 12:40, 12:43, 13:11, 13:14, 13:20, 13:27, 13:29, 13:35, 14:26, 14:29, 16:15, 16:20, 17:14, 18:26, 18:29, 20:25, 20:28, 20:31, 21:5, 22:45, 23:25, 24:35, 25:15, 25:25, 26:44, 27:2, 27:5, 27:7, 27:10, 29:47, 30:7, 30:22, 30:24, 30:31, 30:35, 31:5, 31:37, 31:45, 33:2, 33:6, 33:10, 33:33, 33:38, 33:42, 34:1, 34:6, 34:13, 34:18, 34:21, 34:23, 34:30, 34:35, 34:38, 34:41, 34:43, 34:46, 35:6, 35:20, 35:24, 35:30, 35:35, 35:43, 36:3, 36:6, 36:10, 36:12, 36:23, 36:26, 36:28, 36:44, 37:3, 37:11, 37:19, 37:30, 37:36, 37:44, 37:47, 38:3, 38:8, 38:12, 38:17, 38:21, 38:30, 38:35, 38:37, 39:3, 39:5, 39:7</p> <p>court's [1] - 8:26</p> <p>courtroom [1] - 11:17</p> <p>covenant [1] - 22:32</p> <p>covenants [2] - 21:15, 22:23</p> <p>covered [1] - 18:12</p> <p>Creaney [4] - 24:37,</p>	<p>25:20, 25:24, 26:17</p> <p>Creaney's [3] - 15:17, 17:8, 27:38</p> <p>create [2] - 16:38, 26:12</p> <p>creative [1] - 6:28</p> <p>credit [38] - 2:32, 2:38, 2:43, 2:44, 3:4, 3:14, 3:18, 3:21, 3:44, 4:3, 4:4, 4:5, 5:10, 5:13, 6:12, 7:28, 7:29, 7:36, 7:37, 7:43, 8:5, 8:9, 8:16, 12:1, 13:8, 17:3, 17:21, 17:23, 17:42, 18:46, 20:21, 22:11, 27:15, 27:28, 27:29, 27:34, 27:41, 27:47</p> <p>creditor [4] - 23:7, 24:4, 24:7, 25:12</p> <p>creditors [4] - 13:44, 25:10, 25:11, 33:1</p> <p>critical [2] - 25:35, 37:19</p> <p>cross [4] - 1:16, 10:9, 34:19, 35:36</p> <p>cross's [1] - 1:18</p> <p>cruising [1] - 30:42</p> <p>current [1] - 5:13</p>
D				
<p>D&O [1] - 19:12</p> <p>d [1] - 23:27</p> <p>daily [1] - 37:39</p> <p>date [9] - 1:43, 4:9, 19:32, 22:3, 26:34, 38:25, 38:35, 38:43, 39:5</p> <p>days [3] - 10:21, 17:2, 30:10</p> <p>days' [2] - 24:27, 28:35</p> <p>deadline [3] - 15:17, 26:35, 26:37</p> <p>deadlines [2] - 23:30, 24:1</p> <p>deal [3] - 7:6, 23:37, 35:39</p> <p>deals [2] - 14:19, 25:4</p> <p>debtor [1] - 27:36</p> <p>December [9] - 1:43, 7:22, 26:33, 26:35, 26:38, 26:39, 30:5, 38:25, 38:32</p> <p>decision [2] - 22:41, 38:11</p> <p>default [12] - 17:33, 17:36, 19:41, 23:10, 23:13, 23:18, 23:19,</p>				

<p>23:28, 23:40, 23:43, 24:2, 28:26</p> <p>defer [3] - 33:41, 33:45, 34:16</p> <p>defined [3] - 12:37, 12:46, 29:38</p> <p>definitive [1] - 5:5</p> <p>degree [1] - 37:17</p> <p>deleted [1] - 36:7</p> <p>deliver [2] - 21:28, 27:46</p> <p>delivery [1] - 21:7</p> <p>demonstrate [2] - 23:41, 26:40</p> <p>dependent [1] - 4:14</p> <p>derive [1] - 36:39</p> <p>describe [5] - 13:16, 13:23, 13:39, 14:32, 20:36</p> <p>described [1] - 20:16</p> <p>describes [3] - 13:37, 33:15, 33:23</p> <p>describing [1] - 15:31</p> <p>description [5] - 32:2, 34:11, 35:46, 36:14, 36:18</p> <p>detail [4] - 24:32, 33:24, 33:32, 37:23</p> <p>detailed [2] - 2:29, 18:36</p> <p>differences [1] - 34:14</p> <p>different [3] - 20:13, 20:46, 21:4</p> <p>difficulty [1] - 10:20</p> <p>DIP [67] - 2:12, 2:19, 2:27, 2:29, 2:33, 2:35, 2:36, 3:11, 3:15, 3:20, 3:33, 4:23, 4:47, 5:1, 5:4, 6:4, 6:5, 6:11, 7:19, 11:40, 11:44, 13:10, 14:18, 17:6, 17:18, 17:20, 18:12, 18:18, 18:24, 18:34, 18:37, 18:40, 18:45, 18:47, 19:4, 19:11, 19:17, 19:31, 19:34, 19:36, 19:42, 20:1, 20:11, 20:15, 20:17, 20:33, 21:10, 21:21, 22:44, 23:23, 23:40, 24:20, 24:21, 24:23, 24:26, 26:13, 26:14, 26:40, 27:14, 27:16, 27:26, 27:32, 27:42, 28:22, 31:26, 32:12, 32:26</p> <p>direct [1] - 29:21</p> <p>direction [1] - 8:40</p> <p>directly [1] - 14:47</p> <p>directors [2] - 10:28,</p>	<p>35:34</p> <p>disclaim [1] - 15:46</p> <p>disclosed [1] - 21:44</p> <p>discloses [2] - 16:7, 20:18</p> <p>disclosure [2] - 21:40, 36:35</p> <p>discuss [1] - 5:41</p> <p>discussed [5] - 3:29, 4:7, 4:17, 11:10, 19:25</p> <p>discussion [1] - 16:41</p> <p>discussions [2] - 6:44, 16:37</p> <p>dispense [1] - 8:32</p> <p>dispenses [1] - 8:7</p> <p>distributed [3] - 13:43, 13:46, 14:10</p> <p>distribution [4] - 13:40, 13:43, 36:26, 36:35</p> <p>divided [1] - 13:18</p> <p>divine [1] - 32:23</p> <p>divvied [1] - 32:24</p> <p>document [6] - 2:28, 5:19, 17:5, 17:16, 17:22, 32:20</p> <p>documentation [2] - 17:17, 20:43</p> <p>documents [5] - 5:5, 28:1, 28:22, 29:42</p> <p>dollar [1] - 17:20</p> <p>dollars [2] - 17:25</p> <p>domino [1] - 6:2</p> <p>done [8] - 9:14, 9:18, 21:30, 21:38, 22:22, 23:12, 27:30, 35:44</p> <p>down [15] - 3:7, 3:23, 4:26, 5:39, 5:40, 6:30, 6:37, 9:31, 9:39, 10:22, 18:15, 21:27, 32:14, 37:31, 38:19</p> <p>downloaded [1] - 1:33</p> <p>draft [2] - 31:10, 34:31</p> <p>drafts [2] - 7:40, 12:2</p> <p>duplicative [1] - 36:15</p> <p>during [1] - 15:12</p>	<p>either [2] - 7:45, 14:46</p> <p>eliminate [1] - 15:45</p> <p>elsewhere [1] - 12:41</p> <p>email [2] - 8:45, 9:24</p> <p>empowerment [1] - 27:18</p> <p>empowers [1] - 27:12</p> <p>end [3] - 2:4, 9:2, 16:41</p> <p>endorsement [2] - 29:45, 30:6</p> <p>ends [1] - 32:47</p> <p>enforceability [1] - 15:36</p> <p>enforcing [1] - 17:34</p> <p>engineer [3] - 32:22, 32:37, 36:46</p> <p>ensuing [1] - 17:2</p> <p>ensure [2] - 25:32, 31:25</p> <p>enter [6] - 5:4, 5:6, 13:5, 27:26, 27:40, 29:27</p> <p>entering [2] - 3:18, 8:16</p> <p>enthused [1] - 32:41</p> <p>entire [1] - 37:40</p> <p>entirety [5] - 29:19, 33:6, 33:21, 35:42, 36:22</p> <p>entities [2] - 12:33, 23:33</p> <p>entitled [3] - 16:23, 21:36, 28:6</p> <p>entity [2] - 14:44, 20:12</p> <p>equity [1] - 19:36</p> <p>essence [3] - 16:37, 16:44, 31:26</p> <p>essentially [3] - 14:31, 27:42, 33:36</p> <p>established [1] - 6:22</p> <p>Estate [1] - 31:19</p> <p>et [4] - 14:3, 21:37, 28:2, 28:19</p> <p>Europe [1] - 7:1</p> <p>eve [1] - 9:34</p> <p>event [9] - 3:30, 18:13, 19:40, 19:41, 23:18, 23:19, 23:27, 23:42, 28:26</p> <p>events [8] - 17:33, 17:36, 19:46, 23:10, 23:13, 23:39, 23:45, 24:1</p> <p>evidence [5] - 16:6, 20:18, 20:22, 24:41, 24:47</p> <p>evolved [2] - 32:16, 32:31</p>	<p>exactly [2] - 22:14, 31:37</p> <p>example [3] - 22:1, 35:10, 37:15</p> <p>exceed [1] - 27:17</p> <p>except [1] - 22:24</p> <p>excess [1] - 19:30</p> <p>exchange [3] - 22:6, 22:14, 22:15</p> <p>excuse [3] - 4:18, 22:27, 28:29</p> <p>execute [2] - 27:46, 29:41</p> <p>execution [4] - 12:1, 21:7, 27:20, 29:32</p> <p>exercise [5] - 14:32, 14:36, 15:31, 24:24, 28:37</p> <p>Exhibit [1] - 17:9</p> <p>exist [2] - 15:28, 16:1</p> <p>existence [1] - 15:40</p> <p>existing [13] - 2:38, 3:14, 7:43, 8:4, 16:29, 17:21, 17:23, 17:33, 17:36, 17:42, 18:46, 19:9, 20:21</p> <p>expected [3] - 19:37, 19:47, 20:19</p> <p>expecting [1] - 9:33</p> <p>expedited [1] - 8:31</p> <p>expenses [7] - 16:30, 18:8, 18:10, 18:12, 18:31</p> <p>experience [1] - 5:2</p> <p>expires [1] - 19:39</p> <p>explain [1] - 1:35</p> <p>explained [1] - 34:25</p> <p>explaining [1] - 33:31</p> <p>explanation [1] - 33:32</p> <p>extend [3] - 26:39, 37:8, 38:10</p> <p>extended [1] - 38:31</p> <p>extends [1] - 30:4</p> <p>extension [9] - 1:42, 4:24, 7:22, 11:29, 22:4, 23:30, 26:32, 26:33, 30:2</p> <p>extent [11] - 14:9, 16:29, 20:3, 20:6, 21:39, 22:21, 22:37, 24:30, 26:19, 28:36, 34:8</p> <p>extra [1] - 7:6</p> <p>extraordinary [2] - 20:10, 20:14</p>	<p>facility [13] - 2:2, 2:26, 3:33, 7:24, 7:28, 7:29, 8:17, 17:21, 25:14, 25:28, 27:15, 27:37, 27:41</p> <p>fact [4] - 7:39, 32:11, 34:7, 34:26</p> <p>fair [1] - 37:25</p> <p>fairly [4] - 8:30, 17:31, 28:3, 29:45</p> <p>falls [1] - 37:16</p> <p>far [2] - 9:14, 35:24</p> <p>fashion [1] - 11:21</p> <p>Faso [4] - 12:40, 18:33, 23:15, 25:40</p> <p>fast [1] - 35:5</p> <p>favourite [1] - 4:39</p> <p>fee [2] - 20:16, 20:21</p> <p>fees [3] - 18:8, 18:10, 20:24</p> <p>feet [1] - 5:43</p> <p>fifth [7] - 8:4, 8:8, 19:29, 27:23, 27:35, 28:46, 29:34</p> <p>fight [1] - 9:18</p> <p>fighting [1] - 9:18</p> <p>figure [1] - 32:9</p> <p>file [1] - 28:17</p> <p>filed [8] - 7:30, 7:47, 9:34, 24:11, 31:8, 31:13, 38:44, 38:45</p> <p>filing [3] - 17:28, 21:3, 28:8</p> <p>filings [1] - 21:4</p> <p>final [7] - 2:21, 2:22, 4:47, 5:15, 23:47, 26:34, 26:37</p> <p>finalize [1] - 4:3</p> <p>finalized [1] - 12:4</p> <p>finalizing [1] - 3:44</p> <p>finally [5] - 2:11, 2:12, 24:3, 26:32, 38:24</p> <p>finance [2] - 24:19, 24:23</p> <p>financial [4] - 32:3, 32:45, 33:22, 33:31</p> <p>Financial [2] - 19:15, 19:26</p> <p>financing [15] - 11:28, 11:46, 13:6, 14:17, 24:41, 24:44, 25:3, 25:7, 25:21, 25:28, 27:8, 27:13, 27:24, 29:35, 37:19</p> <p>fine [3] - 5:23, 9:7, 9:14</p> <p>FINN [2] - 1:25</p> <p>Finn [4] - 1:25, 10:35, 10:36, 10:37</p> <p>first [9] - 1:25, 1:42,</p>
			E	
	<p>ease [2] - 36:14, 36:17</p> <p>easier [1] - 31:34</p> <p>economics [1] - 36:2</p> <p>effectively [2] - 32:11, 33:14</p> <p>efficient [1] - 34:20</p> <p>efforts [1] - 26:25</p> <p>eight [4] - 7:2, 14:22, 14:38, 24:40</p>			
			F	
				<p>face [1] - 32:20</p>

<p>10:3, 10:31, 14:21, 14:24, 15:11, 17:26, 35:39</p> <p>Fitzpatrick [1] - 1:15</p> <p>flag [1] - 35:8</p> <p>flexibility [2] - 4:42, 23:37</p> <p>floating [1] - 18:43</p> <p>floor [3] - 32:10, 32:31, 32:32</p> <p>floors [1] - 32:10</p> <p>flow [4] - 18:36, 18:38, 21:29, 23:41</p> <p>flows [3] - 18:23, 21:29, 26:40</p> <p>following [1] - 4:9</p> <p>FOR [7] - 1:38, 10:43, 30:28, 35:3, 35:38, 38:6, 38:15</p> <p>forbear [2] - 17:32, 17:34</p> <p>forbearance [4] - 17:30, 17:31, 17:38, 17:39</p> <p>forecast [1] - 18:39</p> <p>foreign [1] - 3:3</p> <p>forgot [1] - 12:23</p> <p>form [17] - 2:10, 2:11, 2:18, 2:19, 3:44, 4:47, 5:13, 5:17, 6:1, 7:17, 7:18, 7:27, 17:11, 26:47, 29:3, 29:4, 38:8</p> <p>forms [3] - 26:43, 26:45, 34:35</p> <p>formula [2] - 14:1, 32:36</p> <p>forth [2] - 27:34, 27:36</p> <p>forward [5] - 6:22, 11:37, 16:38, 22:40, 26:10</p> <p>four [3] - 7:35, 32:14, 37:7</p> <p>fourth [6] - 12:7, 12:9, 13:29, 33:39, 36:16, 36:31</p> <p>frankly [2] - 6:16, 32:41</p> <p>fresh [1] - 33:47</p> <p>Friday [1] - 15:17</p> <p>friend [7] - 5:12, 5:46, 6:13, 31:1, 33:41, 33:46, 35:41</p> <p>friend's [2] - 9:14, 30:37</p> <p>friends [1] - 34:17</p> <p>front [1] - 13:25</p> <p>FTS [1] - 1:33</p> <p>full [3] - 20:36, 22:35, 22:39</p>	<p>fund [5] - 18:1, 18:7, 18:19, 22:42, 31:26</p> <p>funded [1] - 3:21</p> <p>funding [4] - 4:25, 7:34, 20:32, 26:41</p> <p>funds [2] - 14:10, 20:8</p> <p>furnish [1] - 22:5</p> <p>future [1] - 35:9</p>	<p>happy [1] - 21:12</p> <p>hard [4] - 2:4, 3:37, 10:46, 20:34</p> <p>hate [1] - 38:40</p> <p>he/him [2] - 1:18, 10:32</p> <p>he/him/his [1] - 1:27</p> <p>heads [1] - 9:26</p> <p>hear [6] - 5:35, 26:46, 30:38, 30:45, 31:5, 34:32</p> <p>heard [2] - 5:47, 11:15</p> <p>hearing [5] - 4:12, 6:23, 11:12, 11:20, 16:44</p> <p>helpful [3] - 9:5, 9:11, 32:2</p> <p>hereby [4] - 29:19, 29:20, 29:40, 39:17</p> <p>hereunto [1] - 39:25</p> <p>highlighted [1] - 36:10</p> <p>highlighter [1] - 12:23</p> <p>highlights [1] - 17:16</p> <p>Hildebrand [6] - 1:12, 10:3, 11:6, 14:26, 34:43, 34:44</p> <p>hmm [19] - 1:31, 1:44, 7:32, 8:10, 11:35, 12:31, 13:11, 13:20, 17:14, 21:5, 23:25, 24:35, 25:15, 25:25, 26:44, 27:7, 29:47, 30:35, 31:45</p> <p>hope [5] - 1:41, 2:6, 8:32, 12:3, 27:30</p> <p>hopefully [3] - 8:7, 9:27, 34:35</p> <p>hoping [1] - 8:18</p> <p>hour [2] - 7:6, 17:9</p> <p>hours [2] - 7:2, 10:46</p> <p>hustling [1] - 10:16</p>	<p>16:36, 20:45, 21:37, 24:45, 30:5, 30:13, 30:16, 33:22</p> <p>incurred [2] - 13:41, 15:1</p> <p>indicated [1] - 32:28</p> <p>indicative [4] - 24:26, 27:36, 32:18, 32:39</p> <p>indirectly [1] - 14:47</p> <p>indiscernible [1] - 8:39</p> <p>indiscernible [2] - 33:17, 35:29</p> <p>information [7] - 21:36, 21:41, 21:43, 24:40, 36:34, 36:39, 37:1</p> <p>initial [11] - 1:16, 1:21, 1:25, 10:3, 10:9, 10:13, 10:27, 10:31, 23:21, 23:22, 28:14</p> <p>inserted [1] - 32:31</p> <p>instance [1] - 20:2</p> <p>instructions [6] - 5:37, 6:9, 6:19, 6:45, 7:8, 8:12</p> <p>insufficient [1] - 23:42</p> <p>insurance [4] - 20:2, 20:4, 21:11, 21:12</p> <p>integrity [3] - 21:41, 21:46, 36:36</p> <p>intend [1] - 34:24</p> <p>intended [2] - 15:5, 17:38</p> <p>intent [1] - 23:46</p> <p>intention [3] - 1:39, 2:25, 2:37</p> <p>inter [1] - 23:7</p> <p>inter-creditor [1] - 23:7</p> <p>intercompany [1] - 19:12</p> <p>interest [3] - 18:41, 20:24, 36:37</p> <p>interests [1] - 37:4</p> <p>interim [2] - 2:26, 11:28, 11:46, 13:6, 14:16, 24:41, 24:44, 25:7, 25:21, 25:27, 27:8, 27:13, 27:22, 27:24, 28:6, 28:7, 28:21, 28:26, 28:47, 29:34, 29:35</p> <p>internal [2] - 2:1, 7:23</p> <p>International [1] - 12:34</p> <p>interrupt [1] - 38:40</p> <p>introduce [1] - 9:47</p> <p>inventory [1] - 20:8</p> <p>involved [2] - 37:39,</p>	<p>37:41</p> <p>involving [2] - 13:4, 36:37</p> <p>irrelevant [1] - 35:14</p> <p>issue [6] - 8:43, 15:20, 15:21, 23:3, 25:4, 36:8</p> <p>issues [6] - 3:9, 3:42, 8:21, 14:20, 20:40, 21:45</p> <p>items [2] - 23:19, 26:29</p> <p>itself [4] - 15:20, 31:40, 32:45, 33:3</p>
G				
<p>g [2] - 22:25, 22:30</p> <p>general [2] - 18:2, 36:18</p> <p>generally [4] - 13:15, 13:23, 13:39, 16:42</p> <p>generated [2] - 16:15, 16:18</p> <p>given [4] - 6:28, 11:16, 28:3, 33:27</p> <p>Glen [1] - 10:15</p> <p>Glencore [33] - 1:26, 1:47, 2:13, 3:28, 7:26, 8:20, 10:33, 12:33, 12:34, 12:35, 14:5, 14:16, 14:18, 14:31, 14:43, 14:44, 15:8, 15:25, 15:30, 16:3, 16:11, 16:12, 16:22, 16:33, 17:13, 21:8, 23:5, 25:13, 25:16, 32:46, 33:29, 35:7</p> <p>GLENCORE [1] - 35:3</p> <p>Glencore's [3] - 7:1, 32:18, 36:40</p> <p>global [2] - 14:23, 15:13</p> <p>grand [1] - 16:5</p> <p>granted [1] - 13:25</p> <p>granting [1] - 13:3</p> <p>ground [1] - 16:9</p> <p>Group [3] - 12:37, 15:34, 15:44</p> <p>group [4] - 2:43, 4:1, 20:47, 30:9</p> <p>guarantee [1] - 22:7</p> <p>guarantors [1] - 17:42</p> <p>guess [2] - 5:11, 24:39</p> <p>guidance [1] - 9:11</p>				
H				
<p>half [2] - 17:20, 17:24</p> <p>hand [2] - 12:9, 13:19</p> <p>handed [3] - 30:32, 31:7, 34:4</p> <p>handing [1] - 34:33</p> <p>hands [3] - 27:1, 37:6, 37:10</p>				
I				
<p>idea [3] - 8:6, 16:22, 17:1</p> <p>illustrative [3] - 31:47, 32:1, 32:8</p> <p>imagine [1] - 8:21</p> <p>immediately [2] - 28:31, 32:12</p> <p>impact [3] - 14:11, 15:10, 21:41</p> <p>impacts [1] - 23:24</p> <p>impairment [1] - 24:13</p> <p>IN [1] - 39:25</p> <p>include [2] - 20:43, 36:18</p> <p>includes [1] - 36:33</p> <p>including [9] - 3:36,</p>				
J				
				<p>JACKSON [34] - 1:20, 5:44, 8:38, 9:10, 10:12, 10:19, 10:21, 13:32, 30:26, 30:28, 30:32, 30:36, 31:6, 31:41, 31:46, 33:5, 33:9, 33:14, 33:37, 33:40, 33:45, 34:3, 34:7, 34:14, 34:20, 34:22, 34:24, 34:31, 34:37, 34:40, 34:47, 38:40, 39:4, 39:6</p> <p>Jackson [16] - 1:21, 4:8, 5:12, 5:35, 5:37, 5:43, 6:45, 8:11, 9:8, 10:13, 11:31, 14:7, 14:13, 30:25, 36:41, 38:32</p> <p>Jackson's [2] - 2:3, 3:45</p> <p>January [1] - 26:42</p> <p>job [1] - 9:14</p> <p>John [2] - 1:16, 10:8</p> <p>judgment [1] - 21:42</p> <p>JUDGMENT [2] - 38:6, 38:15</p> <p>jurisdiction [1] - 22:13</p> <p>jurisdictions [3] - 20:13, 20:46, 21:4</p> <p>Justice [22] - 1:9, 1:15, 1:20, 1:25, 1:29, 5:44, 6:33, 9:10, 10:8, 10:12, 10:26, 10:31, 30:26, 33:47, 34:25, 34:33, 34:47, 35:23, 37:27, 38:40, 38:47, 39:6</p>
K				
				<p>Kamloops [1] - 38:26</p> <p>KC [1] - 10:27</p> <p>keep [1] - 33:13</p>

<p>keeping [2] - 35:4, 37:20</p> <p>kept [2] - 16:43, 33:19</p> <p>KERP [1] - 19:12</p> <p>key [4] - 12:19, 25:20, 30:41, 33:35</p> <p>kicking [1] - 32:13</p> <p>kicks [1] - 32:11</p> <p>kind [2] - 6:2, 20:27</p> <p>knowledge [1] - 23:1</p> <p>knows [1] - 38:33</p>	<p>level [4] - 2:37, 3:6, 3:11, 3:12</p> <p>liabilities [1] - 15:1</p> <p>liability [1] - 35:33</p> <p>likely [1] - 15:20</p> <p>limit [1] - 2:44</p> <p>limited [2] - 5:26, 18:31</p> <p>lines [3] - 14:22, 14:38, 32:14</p> <p>linked [2] - 11:40, 24:1</p> <p>liquidation [2] - 23:17, 25:40</p> <p>liquidity [1] - 23:42</p> <p>List [4] - 9:25, 11:5, 11:12, 37:27</p> <p>listed [1] - 12:29</p> <p>lists [1] - 29:16</p> <p>loan [1] - 25:14</p> <p>local [4] - 14:33, 15:27, 15:31, 22:22</p> <p>LOIs [1] - 15:18</p> <p>look [6] - 5:32, 19:10, 22:43, 25:2, 30:19, 32:7</p> <p>looked [2] - 5:26, 10:4</p> <p>looking [1] - 19:38</p> <p>Lord [1] - 31:25</p>	<p>1:33, 1:34, 5:26, 9:34, 11:2, 11:3, 11:4, 35:10</p> <p>math [1] - 32:25</p> <p>matter [6] - 1:8, 5:27, 5:28, 22:10, 37:45, 38:32</p> <p>matters [9] - 3:9, 4:14, 16:36, 20:40, 21:33, 23:16, 23:36, 24:45, 28:8</p> <p>maturity [2] - 19:32, 19:40</p> <p>maximum [1] - 20:17</p> <p>mean [5] - 8:42, 15:8, 37:12, 37:30, 37:44</p> <p>means [1] - 9:3</p> <p>meant [1] - 7:42</p> <p>meet [2] - 23:47, 34:27</p> <p>members [2] - 2:15, 35:28</p> <p>mention [1] - 4:11</p> <p>mentioned [7] - 6:13, 11:14, 13:7, 13:10, 15:27, 17:18, 19:1</p> <p>merely [1] - 33:20</p> <p>meritorious [1] - 34:27</p> <p>message [1] - 11:20</p> <p>method [1] - 13:17</p> <p>middle [2] - 11:20, 14:39</p> <p>might [10] - 5:31, 6:27, 7:3, 7:44, 7:45, 11:41, 14:11, 31:34, 32:17, 32:37</p> <p>million [9] - 2:42, 2:45, 17:20, 17:25, 17:29, 24:46, 25:13, 25:14, 27:17</p> <p>mind [2] - 35:4, 38:21</p> <p>minded [1] - 31:17</p> <p>mine [12] - 13:14, 14:33, 14:45, 15:1, 16:4, 16:15, 18:8, 18:33, 25:33, 32:21, 36:38, 37:20</p> <p>mines [5] - 13:20, 14:45, 15:6, 18:20, 25:18</p> <p>Mining [2] - 1:8, 17:41</p> <p>mining [2] - 10:28, 23:16</p> <p>minutes [4] - 5:40, 6:26, 34:39, 37:7</p> <p>missed [1] - 38:45</p> <p>model [1] - 28:10</p> <p>modifications [1] - 23:29</p> <p>modified [1] - 23:29</p>	<p>Monday [2] - 4:10, 8:28</p> <p>money [6] - 4:25, 18:32, 22:12, 26:14, 28:35, 32:47</p> <p>MONITOR [1] - 35:38</p> <p>monitor [2] - 1:17, 5:20, 7:26, 8:18, 8:20, 9:22, 10:10, 21:43, 26:9, 27:21, 27:27, 29:33, 31:15, 33:10, 33:12, 33:20, 33:26, 36:31, 36:41, 37:13, 37:23, 37:32</p> <p>monitor's [1] - 11:7, 12:7, 26:7, 29:8, 30:14, 30:30, 33:30, 35:11, 36:29, 37:5, 37:39</p> <p>month [1] - 19:33</p> <p>monthly [1] - 19:23</p> <p>morning [12] - 1:15, 1:20, 2:30, 4:30, 4:32, 9:12, 11:12, 13:10, 17:19, 19:1, 38:20, 39:2</p> <p>morning's [1] - 10:45</p> <p>mortgages [1] - 28:1</p> <p>most [2] - 19:46, 25:32</p> <p>motion [1] - 11:4</p> <p>move [6] - 4:2, 4:18, 6:22, 11:36, 22:39, 26:10</p> <p>moving [2] - 5:44, 16:38</p> <p>multilateral [3] - 14:24, 14:36, 31:24</p>	<p>needed [3] - 3:25, 24:46, 26:14</p> <p>needing [2] - 2:17, 25:32</p> <p>needs [3] - 4:4, 5:37, 7:14</p> <p>negative [1] - 22:23</p> <p>negotiated [2] - 21:25, 23:7</p> <p>negotiation [1] - 37:40</p> <p>negotiations [2] - 32:16, 32:31</p> <p>Nesbitt [3] - 10:15, 13:33, 38:41</p> <p>NESBITT [1] - 10:16</p> <p>net [7] - 13:17, 13:38, 13:42, 13:46, 32:9, 32:14, 32:24</p> <p>new [8] - 6:13, 9:44, 9:46, 18:22, 28:45, 36:23, 38:24</p> <p>New [7] - 3:6, 3:16, 16:5, 16:10, 23:15, 23:33, 23:35</p> <p>news [1] - 2:20</p> <p>next [10] - 3:34, 14:2, 17:5, 17:30, 19:3, 19:32, 20:15, 25:43, 30:1, 30:25</p> <p>nine [1] - 14:38</p> <p>nobody [1] - 1:29</p> <p>non [1] - 34:15</p> <p>non-confidential [1] - 34:15</p> <p>nonbinding [1] - 15:18</p> <p>normally [2] - 23:16, 37:7</p> <p>note [3] - 1:32, 11:11, 22:44</p> <p>noted [1] - 35:15</p> <p>notes [1] - 36:32</p> <p>nothing [2] - 18:22, 19:1</p> <p>notice [6] - 4:31, 4:34, 24:27, 28:36, 31:7, 31:9</p> <p>notwithstanding [2] - 28:13, 37:34</p> <p>Nova [4] - 1:22, 10:14, 12:28, 29:13</p> <p>November [1] - 22:4</p> <p>number [15] - 3:3, 10:46, 15:14, 15:39, 19:31, 20:33, 20:44, 21:16, 23:13, 26:28, 30:9, 31:19, 32:17, 32:40</p> <p>numbered [1] - 12:12</p>
L				
<p>laid [1] - 31:28</p> <p>language [7] - 27:19, 28:11, 29:10, 29:28, 30:11, 30:13, 35:16</p> <p>large [1] - 21:23</p> <p>largest [3] - 25:10, 25:11, 25:19</p> <p>last [6] - 2:5, 4:12, 10:15, 24:3, 26:8, 35:39</p> <p>late [1] - 9:34</p> <p>late-filed [1] - 9:34</p> <p>law [9] - 20:38, 20:39, 22:10, 22:22, 30:15, 30:16, 31:18</p> <p>leading [1] - 37:41</p> <p>least [6] - 1:40, 4:16, 6:9, 6:21, 8:13, 26:29</p> <p>leave [2] - 16:1, 37:9</p> <p>left [1] - 19:21</p> <p>legal [5] - 20:44, 20:45, 22:45, 23:2</p> <p>lender [9] - 2:16, 2:22, 2:41, 3:43, 4:37, 5:18, 18:11, 21:44, 28:27</p> <p>lender's [4] - 28:6, 28:7, 28:21, 28:47</p> <p>lenders [25] - 1:23, 2:14, 2:30, 2:40, 3:10, 3:26, 4:4, 5:9, 6:1, 8:19, 9:1, 10:15, 12:30, 15:34, 15:43, 16:33, 16:37, 17:32, 21:36, 24:19, 24:22, 27:22, 29:34, 35:41</p> <p>lenders' [2] - 13:8, 36:39</p> <p>lending [6] - 2:2, 2:14, 2:26, 4:1, 4:44, 7:23</p> <p>lengthier [1] - 21:34</p> <p>lengthy [2] - 16:47, 17:35</p> <p>letters [1] - 23:46</p> <p>letting [1] - 11:13</p>				
	M			
	<p>m'mm [19] - 1:31, 1:44, 7:32, 8:10, 11:35, 12:31, 13:11, 13:20, 17:14, 21:5, 23:25, 24:35, 25:15, 25:25, 26:44, 27:7, 29:47, 30:35, 31:45</p> <p>m'mm-hmm [19] - 1:31, 1:44, 7:32, 8:10, 11:35, 12:31, 13:11, 13:20, 17:14, 21:5, 23:25, 24:35, 25:15, 25:25, 26:44, 27:7, 29:47, 30:35, 31:45</p> <p>MAC [1] - 23:11</p> <p>Madam [5] - 1:8, 1:29, 12:22, 14:29, 38:21</p> <p>main [2] - 26:3, 35:47</p> <p>maintenance [3] - 16:16, 16:19, 23:17</p> <p>manager [1] - 23:32</p> <p>mandatory [1] - 19:44</p> <p>manner [1] - 6:18</p> <p>March [1] - 39:27</p> <p>margin [1] - 18:41</p> <p>material [3] - 11:7, 16:6, 23:12</p> <p>materials [9] - 1:32,</p>			
		N		
		<p>name [2] - 10:15, 39:26</p> <p>Namibia [1] - 12:40</p> <p>Namibian [1] - 22:10</p> <p>narrative [2] - 33:6, 33:43</p> <p>National [2] - 19:15, 19:25</p> <p>necessarily [3] - 7:33, 32:30, 35:11</p> <p>necessary [2] - 29:42, 37:11</p> <p>need [20] - 4:3, 4:44, 6:17, 6:23, 6:31, 7:8, 7:31, 7:33, 8:7, 8:11, 8:31, 19:4, 22:13, 22:39, 24:44, 26:9, 30:38, 30:44, 34:12, 36:30</p>		

O				
<p>objecting [1] - 35:16 obligations [4] - 13:2, 22:36, 26:22, 35:13 obligors [1] - 22:36 obtaining [1] - 13:33 obviously [16] - 3:27, 4:43, 14:8, 16:16, 16:43, 17:28, 22:40, 25:9, 26:2, 26:46, 27:1, 30:39, 34:10, 35:9, 37:13, 37:19 occur [1] - 23:46 occurrence [1] - 19:41 October [5] - 1:1, 1:7, 25:39, 38:46, 39:1 office [2] - 10:17, 11:11 officers [1] - 35:34 Official [1] - 39:15 offline [1] - 6:26 offsets [1] - 16:28 offtake [14] - 15:26, 15:36, 15:40, 15:47, 16:1, 16:3, 16:8, 16:12, 16:23, 16:26, 16:28, 25:18, 26:12, 35:12 once [1] - 8:19 one [27] - 2:16, 3:9, 3:42, 7:42, 10:21, 13:3, 13:25, 14:2, 15:41, 15:42, 19:10, 21:6, 24:3, 26:8, 30:32, 31:8, 32:9, 32:11, 32:13, 32:42, 33:11, 33:34, 35:25, 35:27, 38:33 ones [3] - 23:11, 23:20, 34:17 ongoing [2] - 18:7, 36:36 online [2] - 1:30, 10:40 operations [1] - 18:7 opinion [1] - 22:45 opinions [4] - 20:44, 20:45, 22:46, 23:2 opposed [4] - 2:32, 19:6, 20:29, 33:11 options [1] - 25:3 ORAL [2] - 38:6, 38:15 order [38] - 6:36, 9:38, 11:31, 13:25, 13:33, 19:7, 23:21, 23:22, 23:23, 24:21, 24:44, 26:10, 27:9, 27:11, 28:10, 28:14, 28:15, 29:6, 29:29, 29:38,</p>	<p>29:45, 30:2, 30:30, 31:3, 31:10, 31:12, 31:15, 31:17, 31:24, 34:32, 34:33, 34:36, 36:21, 38:42, 38:46, 39:9 ordered [1] - 24:17 orders [17] - 11:14, 11:26, 11:34, 11:44, 13:4, 21:19, 23:23, 26:43, 26:46, 26:47, 30:3, 30:8, 34:41, 35:19, 37:24, 38:8, 38:17 ORDERS [2] - 38:6, 38:15 ordinary [1] - 18:1 original [3] - 1:39, 5:1, 7:42 originally [1] - 2:25 otherwise [1] - 37:44 outweighed [1] - 26:23 overall [1] - 31:22 oversight [2] - 5:20, 37:33 owed [4] - 2:42, 14:2, 25:12, 25:13 own [1] - 30:29 owner [1] - 15:1 owners [1] - 14:45</p>	<p>21:28, 21:31, 21:34, 21:38, 21:47, 23:11, 23:21, 23:27, 24:9, 24:15, 24:43, 25:1, 25:6, 25:21, 25:26, 25:30, 25:31, 25:34, 25:38, 26:17, 26:27, 26:28, 26:31, 26:36, 27:11, 27:12, 27:25, 27:31, 27:32, 27:45, 28:5, 28:9, 28:38, 28:41, 28:44, 29:5, 29:6, 29:9, 29:12, 29:44, 29:45, 30:4, 30:6, 31:33, 31:44, 32:5, 33:34, 33:39, 34:2, 34:11, 36:1, 36:10, 36:30 paragraphs [5] - 15:39, 16:41, 22:29, 29:2, 37:28 parent [4] - 2:36, 3:6, 3:11, 3:16 pariance [1] - 9:3 parse [1] - 32:5 part [14] - 4:2, 4:24, 8:43, 14:5, 14:25, 14:37, 14:40, 15:11, 15:20, 25:7, 25:8, 31:35, 34:3, 35:39 particular [1] - 14:33 particularly [1] - 37:47 parties [32] - 2:4, 3:29, 5:4, 5:6, 5:18, 7:25, 7:35, 8:16, 8:17, 8:22, 9:44, 11:16, 12:27, 12:29, 12:33, 12:35, 12:36, 13:18, 13:37, 14:9, 16:38, 20:34, 24:19, 24:23, 26:47, 27:28, 29:16, 32:28, 32:39, 37:26, 37:42 parties' [2] - 13:2, 32:19 partners [1] - 9:16 parts [1] - 34:10 party [3] - 14:2, 14:3, 14:46 pay [2] - 16:30, 18:8 payable [2] - 19:18, 20:27 paying [1] - 16:27 payment [1] - 22:34 payments [3] - 19:47, 20:10, 20:14 pays [1] - 16:13 people [11] - 3:37, 4:28, 7:8, 8:13, 8:44, 9:46, 10:45, 11:13,</p>	<p>20:47, 31:29, 32:3 per [5] - 15:10, 17:42, 18:46, 20:21, 31:29 percent [7] - 16:24, 18:42, 18:44, 18:45, 21:24, 25:17 perfect [1] - 28:21 performance [1] - 26:21 perhaps [7] - 5:35, 5:38, 11:16, 11:42, 12:8, 12:18, 32:19 Perkoa [2] - 18:20, 18:33 permitted [6] - 14:31, 15:29, 15:30, 16:11, 18:8, 18:10 person [4] - 1:30, 10:40, 32:33, 35:25 perspective [2] - 30:13, 30:41 Peter [2] - 1:11, 10:1 petitioner [3] - 17:41, 29:20, 29:40 petitioners [4] - 1:13, 3:2, 27:46, 31:14 PETITIONERS [2] - 1:38, 10:43 phoning [1] - 38:21 pick [2] - 16:12, 16:25 picked [1] - 32:17 piece [2] - 6:13, 6:14 PIK [2] - 20:20, 20:25 Pinah [12] - 16:35, 18:7, 18:32, 19:20, 19:24, 19:38, 25:33, 26:12, 26:38, 32:21, 36:37, 37:20 place [6] - 3:23, 15:29, 19:9, 19:29, 19:30, 38:27 plan [6] - 5:1, 22:23, 24:8, 24:11, 28:39, 30:18 plane [1] - 30:42 pledges [1] - 22:8 plus [2] - 18:42, 18:44 point [6] - 8:26, 19:38, 36:40, 37:30, 37:43, 37:47 pointed [1] - 38:42 points [1] - 20:17 portions [1] - 31:43 position [4] - 22:28, 23:6, 35:22, 36:29 positions [1] - 23:8 possibility [3] - 4:12, 5:16, 6:8 possible [2] - 38:19, 38:25</p>	<p>post [3] - 15:7, 15:9, 28:8 post-transaction [1] - 15:9 potential [4] - 15:9, 19:23, 32:21, 36:38 practical [1] - 9:13 practice [1] - 5:3 pre [2] - 16:18, 17:28 pre-CCAA [1] - 17:28 precedent [2] - 20:32, 20:41 prefiling [2] - 17:27, 18:20 prepayments [1] - 19:44 presently [1] - 10:16 preserve [1] - 25:37 preserved [2] - 25:34, 25:36 preserving [1] - 37:21 press [1] - 25:39 pressures [1] - 6:28 pretty [1] - 38:26 previous [2] - 29:28, 29:38 previously [1] - 13:7 principal [3] - 11:17, 15:13, 17:24 priorities [2] - 28:41, 28:44 priority [6] - 19:5, 19:8, 19:10, 32:13, 32:26, 35:32 problem [5] - 3:13, 4:1, 6:47, 7:13, 38:46 problems [1] - 4:25 procedures [1] - 21:20 proceed [5] - 2:23, 20:4, 22:42, 24:45, 35:33 proceeded [1] - 36:20 PROCEEDING [1] - 4:15 PROCEEDINGS [6] - 1:4, 6:39, 6:40, 9:41, 9:42, 39:11 proceedings [9] - 1:43, 13:4, 15:12, 23:17, 24:7, 24:17, 39:19, 39:20, 39:22 proceeds [13] - 13:18, 13:20, 13:38, 13:40, 13:42, 13:46, 18:18, 20:3, 20:7, 22:21, 32:9, 32:14, 32:24 process [9] - 16:39, 21:46, 22:16, 22:43, 23:34, 25:47, 26:16, 37:22, 37:40</p>
	<p>P</p> <p>P.M [2] - 9:42, 39:11 page [19] - 8:35, 12:13, 12:15, 12:45, 12:47, 17:27, 17:30, 17:40, 18:41, 19:3, 20:15, 21:3, 21:17, 21:18, 21:27, 21:31, 23:26, 23:39, 28:45 pages [3] - 12:11, 12:45, 24:40 paid [8] - 20:4, 20:9, 20:20, 20:30, 22:38, 26:11, 32:12, 32:34 paragraph [99] - 13:1, 13:12, 13:16, 13:17, 13:36, 13:45, 14:14, 14:15, 14:19, 14:20, 14:25, 14:30, 14:37, 14:39, 14:40, 15:21, 15:24, 15:33, 15:38, 15:41, 15:42, 15:43, 16:2, 16:11, 16:32, 18:36, 19:35, 19:39, 20:2, 20:6, 20:10, 21:2, 21:6, 21:11, 21:18, 21:19, 21:21,</p>			

<p>product [1] - 16:15 pronouns [5] - 1:17, 1:27, 10:1, 10:5, 10:32 properly [1] - 3:10 proposed [2] - 31:12, 34:15 proposing [1] - 33:4 prospective [1] - 15:23 protect [2] - 15:40, 21:45 provide [12] - 1:35, 2:33, 3:12, 3:15, 4:33, 18:35, 18:38, 21:32, 22:26, 22:34, 24:21, 26:25 provided [10] - 2:2, 3:11, 4:31, 16:12, 21:39, 24:20, 26:20, 27:15, 27:41, 39:20 provides [10] - 3:25, 13:2, 16:33, 21:35, 22:32, 24:9, 27:39, 28:5, 28:38, 32:24 providing [2] - 2:36, 24:26 Province [1] - 39:16 provision [14] - 13:1, 17:30, 17:31, 17:39, 17:45, 21:22, 21:35, 22:44, 23:11, 24:5, 24:29, 28:4, 28:10, 28:13 provisionally [2] - 4:36, 6:18 provisions [4] - 12:20, 18:40, 29:3, 31:28 public [2] - 25:41, 32:36 publicly [1] - 36:16 pulled [1] - 28:10 purchase [1] - 16:23 purchaser [3] - 15:6, 16:25, 25:17 purchasers [1] - 36:39 purport [1] - 30:18 purports [1] - 15:45 purpose [5] - 10:32, 14:8, 17:44, 17:45 purposes [2] - 18:2, 18:25 pursuant [4] - 2:43, 16:23, 24:25, 27:14 put [5] - 5:31, 7:17, 7:18, 32:32, 39:3 putting [1] - 23:16</p>	<p style="text-align: center;">Q</p> <p>questions [3] - 30:21, 30:45, 35:18 quickly [2] - 4:2, 6:20 quite [3] - 2:45, 6:16, 37:45</p> <p style="text-align: center;">R</p> <p>R-u-b-i-n [1] - 10:1 raised [4] - 3:10, 15:14, 23:5, 33:28 random [1] - 32:17 range [1] - 16:7 rate [5] - 18:41, 18:42, 18:43, 18:45, 20:24 rates [1] - 15:32 rather [2] - 2:36, 7:5 RCF [1] - 1:22 RE [2] - 38:6, 38:15 reach [1] - 6:46 reached [2] - 1:46, 14:4 real [2] - 7:13, 23:38 really [6] - 3:1, 16:34, 32:46, 36:1, 36:7, 37:5 realtime [1] - 37:42 reason [7] - 3:32, 4:33, 7:13, 17:35, 18:14, 26:34, 32:32 reasonable [2] - 37:14, 37:25 reasons [2] - 22:20, 37:24 REASONS [2] - 38:6, 38:15 received [2] - 33:40, 35:9 receiver [1] - 23:32 recent [1] - 5:2 recently [1] - 2:8 RECESSED [2] - 6:39, 9:41 recirculated [1] - 30:10 recitals [2] - 12:44, 12:46 recognition [2] - 29:44, 30:6 RECONVENED [2] - 6:40, 9:42 reconvening [1] - 9:35 record [2] - 13:47, 14:26 recorded [1] - 39:20 redacted [8] - 12:10, 13:14, 14:14, 29:8, 31:35, 31:38, 31:43,</p>	<p>33:43 redactions [1] - 31:39 reference [2] - 17:17, 17:26 referenced [3] - 11:26, 21:7, 38:11 references [3] - 25:6, 25:38, 25:41 referring [1] - 14:23 regard [2] - 34:28, 36:42 register [1] - 28:17 registry [5] - 9:33, 34:38, 35:4, 37:9, 38:22 relate [2] - 23:14, 23:44 related [3] - 11:32, 19:19, 21:37 relates [3] - 3:34, 23:28, 23:31 relation [1] - 14:47 relatively [1] - 2:29 release [1] - 25:39 relevant [2] - 35:8, 35:17 rely [2] - 5:7, 37:36 remain [1] - 15:29 remainder [1] - 8:27 remaining [1] - 19:9 remedies [2] - 24:25, 28:37 renewed [1] - 22:6 repay [1] - 18:20 repayment [1] - 19:32 repeat [1] - 11:38 replacing [1] - 10:37 report [2] [1] - 11:8, 12:8, 12:9, 13:29, 18:39, 26:7, 29:8, 30:30, 33:8, 33:16, 33:21, 33:23, 33:30, 33:39, 34:8, 34:9, 35:11, 35:47, 36:16, 36:31, 37:29 REPORTER [1] - 39:13 Reporter [2] - 39:15, 39:33 reports [2] - 21:30, 34:16 repossession [1] - 27:37 representing [1] - 35:28 repudiate [1] - 15:46 request [1] - 16:2 required [1] - 18:38 requirement [2] - 19:4, 21:28</p>	<p>requires [1] - 8:25 resolve [1] - 9:12 respect [14] - 11:31, 11:39, 15:8, 15:27, 16:34, 16:36, 19:18, 22:7, 24:20, 24:23, 26:13, 26:37, 30:16, 36:34 respective [1] - 23:8 respond [1] - 30:36 rest [2] - 29:4, 36:14 restated [2] - 23:22, 28:14 restructuring [1] - 26:25 result [3] - 23:38, 24:12, 30:39 reverse [3] - 32:22, 32:37, 36:46 review [1] - 4:5 reviewed [1] - 35:15 rightly [1] - 32:40 rights [3] - 15:28, 17:34, 24:24 rolling [1] - 18:35 rollup [3] - 18:26, 18:28, 18:30 room [2] - 8:13, 10:25 Rosh [12] - 16:35, 18:7, 18:32, 19:19, 19:24, 19:38, 25:33, 26:12, 26:38, 32:21, 36:37, 37:20 roughly [1] - 32:27 route [1] - 7:28 routinely [1] - 37:1 Rubin [9] - 1:10, 1:11, 6:42, 10:1, 27:3, 30:24, 34:41, 38:12, 38:22 RUBIN [8] [1] - 1:11, 1:29, 1:32, 1:38, 1:45, 3:41, 4:28, 4:38, 4:41, 4:46, 5:21, 5:24, 5:29, 5:34, 6:34, 6:43, 7:33, 7:39, 7:43, 8:3, 8:11, 8:29, 8:32, 8:37, 8:39, 8:43, 9:36, 9:44, 10:1, 10:39, 10:43, 11:1, 11:23, 11:36, 12:15, 12:18, 12:26, 12:32, 12:39, 12:41, 12:44, 13:12, 13:15, 13:22, 13:28, 13:31, 13:36, 14:28, 14:30, 16:18, 16:21, 17:15, 18:28, 18:30, 20:27, 20:29, 20:32, 21:6, 22:47,</p>	<p>23:26, 24:36, 25:16, 25:26, 26:45, 27:4, 27:6, 27:8, 27:11, 30:1, 30:8, 30:23, 34:42, 34:44, 38:9, 38:19, 38:29, 38:34, 38:36, 38:38, 39:8 run [1] - 8:30</p> <p style="text-align: center;">S</p> <p>sale [7] - 19:24, 19:29, 19:35, 20:7, 22:21, 32:24, 36:45 sales [7] - 19:14, 19:16, 19:27, 19:28, 19:35, 28:43, 28:47 Sandrelli [12] - 1:14, 1:16, 4:7, 5:23, 5:36, 9:21, 10:9, 33:12, 34:18, 35:36, 37:12, 37:31 SANDRELLI [22] - 1:15, 6:33, 9:22, 10:8, 35:38, 35:44, 36:4, 36:9, 36:11, 36:13, 36:25, 36:27, 36:29, 36:47, 37:4, 37:18, 37:21, 37:35, 37:38, 37:46, 38:2, 38:4 Sandrelli's [1] - 11:11 satisfied [2] - 37:13, 37:33 satisfying [1] - 20:35 save [1] - 19:10 saw [1] - 8:45 scalpel [2] - 31:21, 32:44 scenes [2] - 21:14, 22:18 schedule [11] - 4:14, 6:6, 12:30, 31:46, 32:7, 34:2, 34:11, 36:12, 36:23, 36:26, 36:34 scheduled [1] - 9:1 scheme [1] - 16:5 Scotia [4] - 1:22, 10:14, 12:28, 29:13 se [2] - 15:10, 31:29 seal [6] - 31:13, 31:39, 33:4, 34:12, 35:42, 36:21 sealed [2] - 33:25, 37:1 sealing [9] - 11:31, 13:24, 13:33, 14:8, 30:29, 31:3, 36:30, 36:32, 36:42</p>
---	--	--	---	--

<p>second [10] - 1:45, 3:43, 14:37, 15:20, 18:36, 18:37, 22:4, 23:6, 31:35, 32:13</p> <p>secretarial [2] - 7:46, 34:4</p> <p>section [7] - 19:5, 19:8, 19:11, 19:32, 21:2, 23:19, 25:43</p> <p>sections [1] - 23:13</p> <p>secured [5] - 2:40, 20:7, 22:35, 25:12, 33:1</p> <p>security [12] - 3:5, 3:7, 3:12, 3:23, 18:46, 20:43, 21:4, 22:28, 22:46, 23:3, 23:4, 28:1</p> <p>see [23] - 6:27, 7:12, 9:6, 10:20, 10:38, 12:21, 12:27, 12:32, 13:27, 14:1, 17:16, 17:45, 18:15, 19:11, 19:28, 20:28, 22:31, 22:38, 28:45, 31:32, 32:10, 33:33, 36:7</p> <p>seek [8] - 1:41, 1:45, 2:25, 6:19, 7:20, 7:23, 15:40, 22:33</p> <p>seeking [8] - 6:5, 6:10, 7:10, 7:13, 11:14, 11:26, 11:45, 34:5</p> <p>seeks [1] - 11:34</p> <p>send [1] - 11:11</p> <p>senior [2] - 2:40, 25:12</p> <p>sense [7] - 5:33, 5:34, 5:42, 19:33, 22:17, 31:11, 36:45</p> <p>sensible [1] - 9:23</p> <p>sensitive [1] - 36:33</p> <p>sensitivity [1] - 32:35</p> <p>sent [2] - 11:5, 11:7</p> <p>separate [2] - 3:22, 11:30</p> <p>Service [4] - 9:25, 11:5, 11:12, 37:27</p> <p>service [1] - 30:4</p> <p>set [11] - 14:21, 17:35, 18:40, 20:40, 22:29, 25:22, 27:34, 27:35, 30:15, 38:24, 38:27</p> <p>setoff [9] - 14:20, 14:23, 14:24, 14:36, 15:9, 15:13, 15:28, 15:32, 31:24</p> <p>setoffs [2] - 14:33, 15:25</p> <p>sets [12] - 13:17, 13:45, 24:38, 24:39,</p>	<p>25:20, 25:29, 25:45, 26:2, 26:28, 28:41, 28:44, 36:2</p> <p>setting [1] - 14:35</p> <p>settled [1] - 2:27</p> <p>settlement [60] - 1:46, 2:9, 2:10, 2:18, 4:23, 5:17, 6:1, 6:4, 6:10, 7:10, 7:11, 7:14, 7:15, 7:17, 7:20, 7:21, 8:14, 11:27, 11:32, 11:39, 11:42, 11:47, 12:6, 12:10, 12:16, 12:17, 12:20, 12:26, 12:47, 14:6, 14:15, 15:33, 16:46, 21:8, 23:9, 25:8, 25:9, 25:44, 25:45, 25:47, 26:3, 26:4, 26:23, 26:24, 26:30, 29:5, 29:7, 29:12, 29:21, 30:16, 30:34, 31:22, 31:27, 31:32, 31:40, 31:41, 32:45, 33:3, 33:21, 37:14</p> <p>seven [1] - 14:21</p> <p>seventh [2] - 19:30, 28:46</p> <p>shaking [1] - 34:43</p> <p>shall [9] - 14:38, 14:43, 18:19, 22:5, 22:26, 22:27, 24:18, 24:21, 27:16</p> <p>share [2] - 13:37, 22:8</p> <p>sharing [3] - 36:8, 36:9, 36:24</p> <p>she/her [1] - 1:18</p> <p>sheet [32] - 2:12, 2:19, 2:27, 2:29, 2:33, 4:47, 5:2, 5:4, 5:8, 6:4, 6:6, 6:11, 7:19, 7:24, 8:15, 13:6, 14:17, 14:18, 17:6, 17:10, 17:11, 19:43, 21:10, 24:26, 24:42, 25:7, 25:28, 27:24, 27:36, 27:42, 29:36</p> <p>Sherman [1] - 31:18</p> <p>short [1] - 29:46</p> <p>shorter [1] - 30:1</p> <p>shortly [1] - 11:8</p> <p>shows [1] - 32:1</p> <p>sign [4] - 2:21, 7:15, 8:20, 30:12</p> <p>sign-off [2] - 2:21, 30:12</p> <p>signatories [1] - 7:1</p> <p>signatures [1] - 7:12</p> <p>signed [9] - 6:1, 6:6, 6:7, 7:35, 8:17, 17:1,</p>	<p>17:2, 17:12, 19:26</p> <p>signing [2] - 7:26, 27:28</p> <p>similar [1] - 15:38</p> <p>simply [4] - 5:1, 22:18, 22:19, 31:1</p> <p>sincerely [1] - 3:34</p> <p>SISP [17] - 15:10, 16:34, 16:39, 21:20, 21:37, 21:42, 21:46, 22:38, 23:23, 23:28, 23:45, 24:45, 25:36, 26:15, 36:36, 37:22</p> <p>sit [1] - 10:22</p> <p>site [1] - 1:34</p> <p>sits [4] - 16:4, 16:9, 19:31, 23:5</p> <p>sitting [2] - 8:27, 16:21</p> <p>situation [1] - 37:34</p> <p>six [1] - 19:33</p> <p>six-month [1] - 19:33</p> <p>sixth [1] - 28:46</p> <p>size [1] - 20:12</p> <p>skill [1] - 39:23</p> <p>slowly [1] - 5:45</p> <p>sold [2] - 8:38, 13:41</p> <p>sole [1] - 25:17</p> <p>solution [2] - 3:13, 3:47</p> <p>someone [3] - 8:45, 32:22, 32:37</p> <p>sometime [1] - 38:28</p> <p>sometimes [1] - 9:17</p> <p>somewhat [2] - 32:4, 33:31</p> <p>soon [1] - 38:25</p> <p>sorry [7] - 5:44, 7:43, 12:22, 12:25, 16:20, 38:12</p> <p>sort [7] - 6:13, 6:14, 14:21, 15:21, 31:21, 32:2, 36:44</p> <p>sought [2] - 26:33, 36:21</p> <p>SOUGHT [2] - 38:6, 38:15</p> <p>speaking [1] - 33:11</p> <p>specifically [2] - 30:46, 31:42</p> <p>stakeholders [3] - 11:17, 25:19, 25:37</p> <p>stand [7] - 5:39, 5:40, 6:25, 6:30, 9:31, 19:13, 20:25</p> <p>standard [7] - 5:3, 17:31, 18:34, 28:4, 29:3, 29:4, 31:11</p> <p>standing [1] - 31:1</p> <p>start [3] - 11:41, 12:6,</p>	<p>12:45</p> <p>starting [1] - 12:47</p> <p>starts [4] - 5:27, 6:3, 14:37, 14:38</p> <p>states [2] - 25:26, 26:17</p> <p>status [2] - 21:33, 24:4</p> <p>stay [13] - 1:42, 4:23, 7:22, 11:29, 19:39, 24:17, 26:32, 26:33, 26:39, 30:2, 30:4, 38:10, 38:31</p> <p>stays [1] - 19:17</p> <p>step [1] - 24:31</p> <p>steps [2] - 28:16, 29:41</p> <p>still [3] - 8:25, 8:26, 8:30</p> <p>stood [2] - 6:36, 9:38</p> <p>stop [3] - 17:44, 18:14, 28:34</p> <p>structure [8] - 2:47, 3:33, 12:4, 13:9, 16:46, 19:45, 28:3, 28:46</p> <p>structured [5] - 2:35, 3:5, 19:16, 27:44, 31:30</p> <p>sub [2] - 17:46, 36:23</p> <p>subject [16] - 4:36, 5:17, 5:18, 5:38, 7:4, 13:24, 13:32, 16:43, 27:26, 27:33, 29:9, 29:12, 29:16, 30:21, 31:15, 35:18</p> <p>submission [1] - 34:28</p> <p>submissions [1] - 30:37</p> <p>SUBMISSIONS [5] - 1:38, 10:43, 30:28, 35:3, 35:38</p> <p>subscribed [1] - 39:26</p> <p>subsequent [1] - 8:8</p> <p>subsidiaries [2] - 3:3, 12:38</p> <p>substantial [2] - 2:46, 8:3</p> <p>sufficient [2] - 26:41, 37:33</p> <p>suggest [1] - 6:25</p> <p>suggestion [2] - 3:45, 3:47</p> <p>summarize [1] - 21:16</p> <p>summarizes [2] - 33:18, 33:20</p> <p>summarizing [1] - 9:15</p> <p>summary [1] - 11:38</p>	<p>supplement [12] - 13:29, 31:13, 33:3, 35:40, 35:42, 35:46, 36:2, 36:5, 36:15, 36:19, 36:22, 38:43</p> <p>supplemental [1] - 30:30</p> <p>support [2] - 5:36, 15:44</p> <p>supportive [2] - 30:39, 31:2</p> <p>supports [3] - 35:7, 36:31, 36:42</p> <p>supposed [1] - 10:24</p> <p>Supreme [1] - 1:6</p> <p>surprise [2] - 3:27, 3:28</p> <p>sworn [1] - 17:8</p> <p>syndicate [3] - 2:14, 2:16, 2:40</p>
T				
<p>tab [4] - 17:7, 24:39, 27:8</p> <p>table [1] - 25:22</p> <p>tabs [1] - 27:6</p> <p>talks [2] - 25:1, 25:31</p> <p>teams [1] - 20:36</p> <p>ten [1] - 34:39</p> <p>tentatively [1] - 4:10</p> <p>term [32] - 2:12, 2:19, 2:27, 2:29, 2:33, 4:47, 5:1, 5:4, 5:7, 6:4, 6:5, 6:11, 7:19, 7:24, 8:15, 13:6, 14:17, 14:18, 17:6, 17:9, 17:11, 19:42, 21:10, 24:26, 24:42, 25:7, 25:28, 27:24, 27:36, 27:42, 29:36</p> <p>terminate [1] - 19:37</p> <p>terminated [1] - 23:29</p> <p>terms [25] - 7:1, 11:42, 11:44, 12:46, 13:8, 16:42, 17:17, 25:21, 25:27, 25:29, 25:36, 26:3, 27:14, 27:33, 27:35, 31:22, 32:3, 32:45, 33:15, 33:22, 33:31, 33:35, 36:18, 36:45, 37:20</p> <p>test [1] - 34:27</p> <p>thereafter [1] - 11:8</p> <p>they've [1] - 8:47</p> <p>thinking [1] - 7:3</p> <p>thinks [1] - 33:27</p> <p>third [3] - 2:1, 11:29, 14:46</p> <p>three [11] - 1:41, 5:27,</p>				

<p>5:28, 11:26, 11:34, 12:32, 12:35, 24:27, 25:18, 26:43, 28:35</p> <p>three-day [2] - 5:27, 5:28</p> <p>throughout [1] - 37:40</p> <p>Tiffany [2] - 39:15, 39:32</p> <p>timelines [1] - 21:20</p> <p>timing [6] - 3:34, 4:25, 6:16, 6:28, 6:47, 19:24</p> <p>today [20] - 1:40, 2:7, 2:23, 3:35, 3:40, 3:46, 4:20, 5:45, 9:19, 9:26, 11:6, 11:15, 11:18, 12:3, 30:10, 35:17, 37:41, 38:17, 38:39, 38:44</p> <p>together [1] - 5:31</p> <p>tomorrow [2] - 4:20, 5:27</p> <p>took [2] - 27:43, 28:43</p> <p>Toronto [4] - 7:7, 8:44, 9:3, 9:16</p> <p>touched [1] - 24:4</p> <p>towards [1] - 31:35</p> <p>tranche [14] - 3:20, 3:22, 17:18, 17:20, 17:27, 18:18, 18:20, 20:17, 24:20, 24:24, 27:13, 27:14, 27:16, 27:32</p> <p>transaction [9] - 15:3, 15:6, 15:7, 15:9, 15:45, 19:19, 22:34, 22:37, 22:40</p> <p>transactions [1] - 17:4</p> <p>transcribed [1] - 39:19</p> <p>transcript [1] - 39:22</p> <p>treated [2] - 24:6, 28:38</p> <p>Trevali [24] - 1:8, 1:47, 2:47, 3:6, 3:16, 3:17, 7:14, 7:25, 8:20, 10:28, 12:36, 12:37, 15:34, 15:44, 17:13, 17:41, 23:33, 23:35, 26:21, 27:12, 27:20, 29:32, 33:28</p> <p>Trevali's [1] - 36:37</p> <p>tried [3] - 21:44, 23:36, 32:44</p> <p>true [1] - 39:21</p> <p>try [13] - 3:47, 4:21, 5:30, 8:34, 9:18, 16:38, 21:12, 23:14, 32:22, 32:25, 32:37, 32:38, 37:8</p> <p>trying [4] - 8:44, 9:12,</p>	<p>20:13, 32:4</p> <p>turn [2] - 14:17, 17:5</p> <p>turning [8] - 14:15, 17:40, 19:44, 20:15, 21:2, 21:31, 23:26, 23:39</p> <p>tweaking [1] - 8:25</p> <p>two [16] - 3:1, 3:42, 6:7, 9:44, 11:33, 12:45, 14:45, 15:6, 20:23, 25:10, 25:19, 32:6, 32:10</p>	<p>useful [1] - 9:29</p> <p>usual [5] - 16:40, 21:3, 23:10, 23:20, 27:45</p>	<p>10:31, 35:1</p> <p>WILLIAMS [4] - 10:31, 10:36, 35:3, 35:7</p> <p>Williams' [2] - 32:34, 37:47</p> <p>wishes [1] - 11:21</p> <p>WITNESS [1] - 39:25</p> <p>wonder [1] - 5:15</p> <p>wondering [1] - 5:30</p> <p>works [5] - 8:33, 8:40, 19:8, 30:13, 39:4</p> <p>worth [2] - 16:7, 24:40</p> <p>wow [1] - 10:19</p> <p>wrongly [1] - 32:40</p>
	U		V
<p>UK [2] - 12:42, 20:38</p> <p>unaffected [3] - 24:3, 24:7, 28:39</p> <p>uncertainty [1] - 26:13</p> <p>under [16] - 13:2, 15:25, 15:30, 16:28, 17:20, 18:12, 18:37, 23:45, 24:25, 25:14, 26:22, 27:13, 27:16, 28:22, 31:13, 34:12</p> <p>undermine [1] - 36:36</p> <p>understandable [2] - 5:9, 22:19</p> <p>understood [1] - 5:29</p> <p>undertaken [1] - 22:16</p> <p>unexpectedly [1] - 11:16</p> <p>unfiled [1] - 31:9</p> <p>unless [2] - 30:45, 34:34</p> <p>unlikely [1] - 23:38</p> <p>unredacted [7] - 11:32, 13:19, 30:33, 31:32, 31:41, 33:24, 33:39</p> <p>unusual [4] - 19:1, 19:42, 20:5, 28:9</p> <p>up [22] - 2:24, 4:32, 6:27, 8:24, 9:26, 10:17, 12:9, 13:19, 14:21, 16:12, 16:25, 17:24, 30:5, 30:32, 31:7, 32:24, 32:38, 32:47, 33:1, 34:4, 34:33, 37:41</p> <p>update [1] - 5:45</p> <p>updated [3] - 21:11, 21:29, 23:41</p> <p>updates [2] - 21:13, 21:32</p> <p>upfront [1] - 20:16</p> <p>urgency [4] - 24:42, 24:43, 25:31, 37:34</p> <p>urgent [2] - 4:27, 4:28</p> <p>US [1] - 17:25</p>		<p>validity [3] - 15:36, 22:46, 23:4</p> <p>valuable [1] - 25:33</p> <p>value [9] - 16:39, 23:38, 25:35, 25:37, 32:21, 32:28, 32:39, 36:40, 37:22</p> <p>Vancouver [2] - 1:2, 1:7</p> <p>variance [4] - 18:39, 21:22, 21:23, 21:29</p> <p>variety [1] - 12:27</p> <p>various [4] - 3:8, 28:42, 29:16, 37:24</p> <p>versa [1] - 10:25</p> <p>version [5] - 12:10, 13:19, 13:24, 29:9, 33:25</p> <p>vetted [5] - 31:16, 34:37, 34:40, 38:9</p> <p>vice [1] - 10:25</p> <p>view [11] - 7:16, 8:26, 25:2, 26:4, 26:29, 32:18, 32:19, 32:36, 36:32, 37:31, 38:1</p> <p>views [4] - 5:38, 7:4, 36:40, 37:6</p> <p>Vincent [2] - 39:15, 39:32</p>	
			W
		<p>wait [2] - 28:34, 34:32</p> <p>waiting [1] - 9:1</p> <p>waiver [2] - 14:43, 15:8</p> <p>wants [1] - 22:20</p> <p>week [7] - 2:5, 8:27, 12:4, 18:37, 27:30, 38:27, 38:28</p> <p>weekend [5] - 2:5, 3:37, 3:38, 4:29, 7:41</p> <p>weekly [1] - 21:33</p> <p>weeks [1] - 15:15</p> <p>weigh [1] - 11:21</p> <p>whatsoever [1] - 15:19</p> <p>whereby [1] - 17:32</p> <p>WHEREOF [1] - 39:25</p> <p>whichever [1] - 21:24</p> <p>whole [2] - 37:16, 37:22</p> <p>Williams [3] - 10:30,</p>	
			Y
			yellow [1] - 12:22
			Z
			zones [1] - 7:7