



No. S-226670  
Vancouver Registry

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

AND

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

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

PETITIONERS

### NOTICE OF APPLICATION

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

#### To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia on October 11, 2022 at 2:45 pm for the orders set out in Part 1 below.

#### Part 1: ORDERS SOUGHT

1. The Applicants seek the following orders:
  - (a) an order abridging the time for service of this Notice of Application and supporting materials and deeming this application to be returnable on October 11, 2022, and dispensing with service thereof upon any interested party other than those parties on the Service List maintained by FTI Consulting Canada Inc., as court-appointed "**Monitor**" in these *Companies' Creditors Arrangement Act*, R.S.C. 195 c. C-36 (the "**CCAA**") proceedings;
  - (b) an order substantially in the form attached as **Schedule "A"** approving (i) an interim financing facility (the "**Interim Financing**") in the maximum principal amount of US \$16.5 million to be made available to Trevali Corp. by the Bank of Nova Scotia, HSBC Bank Canada, Société Générale, Bank of Montreal, the

Toronto-Dominion Bank, National Bank of Canada and ING Capital LLC (collectively, the "RCF Lenders") pursuant to an interim financing term sheet (the "Interim Financing Term Sheet"); and (ii) a corresponding first-ranking priority charge in favour of the Bank of Nova Scotia, in its capacity as administrative agent to the RCF Lenders (in such capacity, the "RCF Administrative Agent"), for and on behalf of the RCF Lenders, to secure the Applicants' obligations under the Interim Financing Term Sheet;

- (c) an order substantially in the form attached as **Schedule "B"** approving a "**Settlement Agreement**" dated October 12, 2022 between the RCF Administrative Agent, for and on behalf of the RCF Lenders, Glencore International AG, Glencore AG, and Glencore Canada Corporation (collectively, "**Glencore**"), Trevali Corp., Trevali NB, GLCR Limited, Trevali Holdings (Bermuda) Ltd., Boundary Ventures Limited, Wilru Investment One Hundred and Thirty Four (Proprietary) Limited, Rosh Pinah Base Metals (Proprietary) Limited, and Rosh Pinah Holdings (Proprietary) Limited; and
- (d) an order substantially in the form attached as **Schedule "C"** extending the stay of proceedings until and including December 15, 2022.

2. The Applicants further seek such additional orders as counsel for the Applicants may advise and this Court deems to be appropriate in the circumstances.

## **Part 2: FACTUAL BASIS**

### ***The Need for Interim Financing and the Interim Financing Term Sheet***

- 3. The Applicants obtained protection under the CCAA on August 19, 2022.
- 4. On September 14, 2022, in furtherance of their restructuring efforts, the Applicants applied for and obtained from this Court an order (the "**SISP Order**") approving a sales and investment solicitation process (the "**SISP**") for their interests in the Rosh Pinah and Caribou mines.
- 5. In applying for the SISP, the Applicants advised this Court that they would require interim financing to (a) fund their ongoing restructuring efforts, including the SISP, and (b) continue operations at the Rosh Pinah mine, all of which is to preserve value for their stakeholders.
- 6. The Applicants' need for interim financing has now become urgent. Their most recent cashflow demonstrates that the Applicants (a) require a first tranche of interim financing during the week ending October 25, 2022, meaning that this funding may be required as early as October 19; and (b) will require funding in the amount of approximately US \$16 million to finance their ongoing operations and restructuring efforts up to and including the week ending January 31, 2023.
- 7. Considering their urgent need for interim financing, the Applicants have agreed with the RCF Administrative Agent on the terms of an Interim Financing Term Sheet pursuant to which the RCF Lenders will make the necessary Interim Financing available to the Applicants.
- 8. The terms of the proposed Interim Financing, which are more fully set out in the Interim Financing Term Sheet, are as follows (capitalized terms appearing in this table that are not

otherwise defined in this Notice of Application have the meanings ascribed to them in the Interim Financing Term Sheet):

|  |   |
|--|---|
| <b>Borrower:</b>                             | Trevall Corp.   |
| <b>Guarantors:</b>                           | As in the "RCF Credit Agreement", being the existing Amended and Restated Credit Agreement dated August 6, 2022 between Trevall Corp. as borrower, the Bank of Nova Scotia and HSBC Bank of Canada as Co-Lead Arrangers and Joint Bookrunners, the RCF Administrative agent and the RCF Lenders (as amended).   |
| <b>Lenders:</b>                              | RCF Lenders   |
| <b>Purpose:</b>                              | To fund the ordinary course working capital and other general corporate purposes of Trevall Corp. and the ongoing operations of the Rosh Pinah mine, but not the operations of either of the Caribou or Perkoa mines.   |
| <b>Documentation:</b>                        | Interim Financing will be provided pursuant to an amendment to the existing RCF Credit Agreement between Trevall Corp. and the RCF Lenders.   |
| <b>Interest/Applicable Margin:</b>           | Currently 13.45% - being the "Base Rate" under the RCF Credit Agreement (which is currently approximately 5.45%) plus 8%.   |
| <b>Interim Financing Charge:</b>             | A priority charge in favour of the RCF Administrative Agent, for and on behalf of the RCF Lenders.  |
| <b>Security:</b>                             | As per the RCF Credit Agreement and the Interim Financing Charge.   |
| <b>Priority of Interim Financing Charge:</b> | After the Administration Charge, the D&O Charge, the Intercompany Advances Charge (as defined in the Amended and Restated Initial Order dated August 29, 2022 (the "ARIO")), the KERP Charge (as defined in the Key Employee Retention Plan Approval Order dated September 14, 2022, and the Sales Agent Charge (as defined in the SISP Order, but only in respect of amounts payable to the "Sales Agent", National Bank Financial Inc., upon completion of a sale of Rosh Pinah pursuant to the SISP), and prior to that portion of the Sales Agent Charge that is in respect of all remaining amounts secured thereby. |
| <b>Maturity Date/Repayment:</b>              | The earlier of: (a) 180 days after court approval; (b) completion of a transaction for the Applicants' assets for gross proceeds in excess of \$16.5 million; (c) the implementation of a CCAA plan acceptable to the RCF Lenders; (d) the date on which the ARIO expires or these CCAA proceedings are terminated; and (e) the occurrence of certain Events of Default in respect of which the RCF Lenders have elected, in their sole discretion, to accelerate the obligations of the Applicants in connection with the Interim Financing.   |

|                                |  |
|--------------------------------|--|
| DIP Upfront Fee and Agency Fee | DIP Upfront Fee of 150 bps (approximately \$247,500 but capitalized) and an Agency fee of approximately \$50,000.  |
| Conditions Precedent           | Usual and customary (but material) for an interim facility of this type, plus additional conditions precedent considered necessary by the RCF Lenders, including a resolution satisfactory to the RCF Lenders of the dispute between the Applicants and the Glencore Entities with respect to the potential exercise by certain Glencore Entities of set-off against amounts owing by them for delivery under any off-take agreements with any Subject Entities. |
| Affirmative Covenants          | Numerous covenants including (a) complying with the SISP procedures and timelines; (b) complying with the DIP Budgets; and (c) obtaining Namibian Exchange Control Approval.   |
| Negative Covenants             | Numerous covenants including not approving or presenting for approval by the court any sale or transaction which does not provide for the payment in full of the RCF Lenders.  |
| Events of Default              | As per the RCF Credit Agreement, with certain additions including if no Qualified Final Bid is received with respect to the Applicants' interest in the Rosh Pinah Mine or if no Final Agreement is executed by the Final Agreement Deadline with respect to the Applicants' interest in the Rosh Pinah mine (with defined terms as in the SISP).  |

9. The Interim Financing Term Sheet has been approved by Trevali Corp. and, as noted below, is also approved by Glencore pursuant to the Settlement Agreement.

***The Settlement Agreement between Trevali, the RCF Lenders, and Glencore***

10. The Interim Financing Term Sheet is part of a broader Settlement Agreement among the Applicants' largest secured creditors and primary stakeholders, being the RCF Lenders and Glencore.

11. The Settlement Agreement arises out of a need for certainty with respect to Glencore's purported "global" setoff rights with respect to various "off-take" agreements held by Glencore for the purchase of concentrate produced at each of the Rosh Pinah, Caribou, and Perkoa mines.

12. In a Notice of Application filed with this Court on September 29, 2022, the Applicants advised this Court that the Applicants required certainty with respect to the receipt of receivables forecasted to be payable by Glencore and that for this reason any actual or purported "global" set-off rights exercisable by Glencore with respect to such receivables be suspended or stayed pending their determination and/or enforcement. It was the Applicants' position that such relief was necessary for the Applicants to (a) determine their liquidity requirements, (b) advance the SISP, and (c) source necessary interim financing.

13. The RCF Lenders and Glencore, with the involvement of the Applicants, have negotiated the Settlement Agreement which (a) resolves the parties' respective concerns regarding, among other things, Glencore's claim to "global" setoff, on the one hand, and the preservation of Glencore's off-take agreements and any rights of setoff thereunder, on the other; and (b) facilitates the provision of the Interim Financing to Trevali Corp. by the RCF Lenders in accordance with the terms of the Interim Financing Term Sheet.

14. The terms of the Settlement Agreement include, among others, the following:

- (a) a formula agreed to by the RCF Lenders and Glencore for the distribution of net proceeds of any realization with respect to assets that are subject to the parties' respective security as between them;
- (b) approval by Glencore of the Interim Financing Term Sheet;
- (c) waiver by Glencore of any right or claim to apply "global" setoff that will remain effective during the pendency of these CCAA proceedings and also in perpetuity in relation to the owners of the Caribou, Perkoa, and Rosh Pinah Mines acquired by a third party through the SISF; provided, however, that such waiver on the part of Glencore will not apply as between any Glencore entity and any two or more mine owners or mines that are acquired by the same third party, either directly or indirectly, in relation to liabilities incurred by the mine owner *after* the completion of any such acquisition transaction(s);
- (d) an acknowledgement and agreement by Trevali Corp. and the RCF Lenders that, aside from the waiver set forth above, Glencore continues to have rights of set-off under its various off-take agreements in accordance with the terms thereof and that such rights are not stayed and will not be sought to be stayed by Trevali or the RCF Lenders;
- (e) neither the RCF Lenders nor any Trevali entities will, directly or indirectly, propose, seek, approve, consent to, vote in favour of or support any transaction that seeks or purports to eliminate, disclaim, terminate, repudiate, modify or otherwise adversely affect or impact any of the Glencore off-take agreements (including the sale of the assets of any mine free of the relevant off-take agreement) without the express written consent of Glencore; and
- (f) the RCF Lenders and the Applicants agree that Glencore can retrieve up the concentrate remaining at the Caribou Mine (having an estimated value of approximately \$250,000) at its own cost and that the amount payable by Glencore (including its costs of picking up the concentrate) will be paid by way of set-off against the amount owing by Trevali Corp. under the Caribou off-take agreement.

15. The Settlement Agreement and the parties' obligations thereunder are conditional upon, among other things, the Settlement Agreement and the Interim Financing Term Sheet being approved by this Court.

***Extension of the Stay of Proceedings***

16. In conjunction with their application to approve the Interim Financing Term Sheet and the Settlement Agreement, the Applicants also seek an extension of the stay of proceedings until December 15, 2022. Extension of the stay until this time will allow the Applicants to, among other restructuring efforts, implement the SISF, which contemplates a Final Bid Deadline (as defined in

the SISP) in respect of the Rosh Pinah mine of November 21, 2022, and a Final Agreement Deadline (as defined in the SISP) of December 9, 2022.

### **Part 3: LEGAL BASIS**

#### ***The Interim Financing Should be Approved***

17. As recently stated by the Supreme Court of Canada, interim financing protects the going-concern value of the debtor company while it develops a workable solution to its insolvency issues, enabling the preservation and realization of the value of a debtor's assets.

***9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10 at para. 85.***

18. This Court has jurisdiction to approve the Interim Financing Term Sheet and the Interim Lenders' Charge pursuant to section 11.2 of the CCAA, which sets out a list of non-exhaustive factors to be considered by courts in deciding whether to approve interim financing and grant an interim lenders' charge, including:

- (a) the period during which the company is expected to be subject to CCAA proceedings;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or the charge; and
- (g) the views of the Monitor.

19. No one factor set out in s. 11.2(4) governs or limits the Court's consideration. The exercise is necessarily one of balancing the respective interests of the debtors and its stakeholders towards ensuring, if appropriate, that the financing will assist the debtor company to obtain the "breathing room" said to be needed to hopefully achieve a restructuring acceptable to the creditors and the court.

***1057863 B.C. Ltd. (Re), 2020 BCSC 1359 at para. 35***

20. In addition to the statutory factors set out above, courts have determined that several additional factors are relevant to an application under section 11.2. These include whether:

- (a) the petitioner would be forced to stop operating without interim financing and whether bankruptcy would be in the interest of the petitioner's stakeholders;
- (b) the proposed interim financing will support the Applicants' restructuring plans, including implementation of a sales process; and

- (c) the proposed facility has been approved by the Applicants' management.

***North American Tungsten Corp. (Re)*, 2015 BCSC 1376  
at paras. 33-35; *8440522 Canada Inc. (Re)*, 2013 ONSC  
6167 at para. 32.**

21. The proposed Interim Financing and corresponding Interim Lenders' Charge are necessary and appropriate for the following reasons, among others:

- (a) the Interim Financing will allow the Applicants to preserve value for the Rosh Pinah mine, the Applicants' only current source of revenue and most valuable asset;
- (b) the Interim Financing will also enhance the prospects of a viable restructuring, allowing the Applicants to implement the SISP as approved by this Court in the interest of their stakeholders;
- (c) the amount the Interim Financing and terms of the Interim Financing Term Sheet are appropriate having regard to how the Applicants' affairs will be managed during these CCAA proceedings and the period during which the Applicants expect to be under CCAA protection, including specifically with respect to the Applicants' projected cashflow needs and the timelines under the SISP; and
- (d) the RCF Lenders and Glencore, being respectively the Applicants' first and second ranking secured lenders, support the relief sought on this application, including approval of the Interim Financing Term Sheet.

22. In summary, the terms of the Interim Financing Term Sheet are the best terms available to the Applicants in the circumstances given (a) the Applicants' urgent need for funding to implement their restructuring efforts, including the completion of the SISP, (b) the need to allocate funds to preserve the value of the Rosh Pinah mine pending the completion of the SISP, (c) the ongoing challenges at the Caribou and Perkoa mines; (d) the structural impediments to interim financing given the location of the Trevali assets; and (e) the approval of the Interim Financing Term Sheet by Glencore.

23. No creditor will be materially prejudiced because of the approval of the Interim Financing or the granting of the Interim Financing Charge.

***The Settlement Agreement Should be Approved***

24. This Court has jurisdiction to approve transactions and settlements pursuant to section 11 of the CCAA.

***Walter Energy Canada Holdings Inc. (Re)*, 2017 BCSC  
1968 at para. 32 [*Walter Energy*]**

25. The test for approving a settlement under the CCAA requires that this Court conclude that: (a) the settlement is fair and reasonable; (b) the settlement provides substantial benefit to the stakeholders; and (c) the settlement is consistent with the purpose and spirit of the CCAA.

***Walter Energy at para. 33***

26. In applying this test, courts will review a proposed settlement from the perspective of fairness and reasonableness in the context of moving the applicable proceedings towards a successful resolution.

***Re Stelco Inc., 2005 CarswellOnt 6283 (C.A.) at para. 18, citing Hong Kong Bank v. Chef Ready Foods (1990), 4 C.B.R. (3d) 311 (B.C.C.A.) at paras. 10, 26-27***

27. In the present case, the approval and implementation of the Settlement Agreement will, among other things:

- (a) permit the Applicants to focus on advancing the SISP, without the overhang and potential value destruction associated with a dispute related to concentrate purchases and set-off rights, with a view to preserving value for stakeholders;
- (b) remove a major stumbling block to the Applicants' ability to obtain urgently needed Interim Financing; and
- (c) allow the Applicants to avoid complex and costly litigation with Glencore either before this Court or elsewhere and avoid the risks, delays, and uncertainties associated with such proceedings.

28. To the extent there are any concessions provided by the Applicants associated with the performance of the Applicants' obligations under the Settlement Agreement, they are outweighed by the benefits that the Settlement Agreement will provide to the Applicants' restructuring efforts.

29. In the circumstances, the Settlement Agreement (a) is fair and reasonable; (b) provides substantial benefit to the Applicants and their stakeholders; and (c) is consistent with the purpose and spirit of the CCAA.

#### ***The Stay of Proceedings Should be Extended***

30. A stay of proceedings is the "central tool" by which this Court maintains the status quo for a debtor, allowing a debtor the necessary time, flexibility and "breathing room" to carry out a supervised restructuring or organized sales process while continuing its ongoing operations.

***1057863 B.C. Ltd. (Re), 2022 BCSC 876 at paras. 31, 35 [1057863], citing Timminco Limited (Re), 2012 ONSC 2515 at para. 15.***

31. Subsection 11.02 of the CCAA provides this Court with broad discretion to allow a debtor time and space to advance its restructuring efforts, including by extending a stay of proceedings. The baseline considerations and requirements for a stay extension are that a stay is "appropriate" and that debtors have been and are acting in good faith and with due diligence.

#### ***CCAA s. 11.02(2)-(3)***

32. Extending the stay until December 15, 2022 is necessary and appropriate having regard to the Applicants' restructuring efforts to date and the timelines set out in the SISP. Extending the stay of proceedings, in conjunction with the approval of the Interim Financing Term Sheet and



Settlement Agreement, will provide the Applicants with the needed stability and breathing room to focus on the SISP and avoid the costs associated with further stay extension applications.

33. The Applicants have been and continue to act in good faith and with due diligence.

**Part 4: MATERIAL TO BE RELIED ON**

- 34. Affidavit #6 of Brendan Creaney, affirmed October 3, 2022;
- 35. Affidavit #7 of Brendan Creaney, affirmed October 11, 2022;
- 36. Affidavit #1 of Jennifer Alambre, affirmed October 11, 2022;
- 37. Third Report of FTI Consulting Canada Inc., dated October 3, 2022;
- 38. Fourth Report of FTI Consulting Canada Inc., to be filed; and
- 39. Such further and other material as counsel for the Applicants may advise.

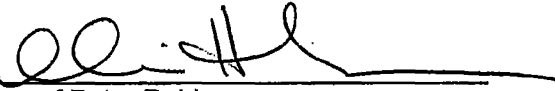
The Applicants estimate that the application will take 1 hour.

This matter is not within the jurisdiction of a master.

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

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

Date: October 11, 2022

For: 

Signature of Peter Rubin  
Lawyer for the Applicants

Blake, Cassels & Graydon LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street PO Box 49314  
Vancouver, BC V7X 1L3  
Email: peter.rubin@blakes.com  
Telephone: 604.631.3315

|                                    |  |
|------------------------------------|--|
| To be completed by the court only: |  |
| Order made                         |  |
| <input type="checkbox"/>           | in the terms requested in paragraphs ..... of Part 1 of this notice of application |
| <input type="checkbox"/>           | with the following variations and additional terms:                                |
|                                    | _____  |
|                                    | _____  |
|                                    | _____  |
| Date: _____                        | Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master        |

## **APPENDIX**

### **THIS APPLICATION INVOLVES THE FOLLOWING:**

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

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

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

AND

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

PETITIONERS

**ORDER MADE AFTER APPLICATION  
(INTERIM FINANCING APPROVAL)**

BEFORE     )   THE HONOURABLE MADAM JUSTICE     )  
              )   FITZPATRICK                                 )   October 11, 2022  
              )   )

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia on the 11<sup>th</sup> day of October, 2022; AND ON HEARING Peter Rubin and Claire Hildebrand, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #6 of Brendan Creaney, made October 3, 2022, Affidavit #7 of Brendan Creaney, made October 11, 2022, the Third Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioners) (the "**Monitor**") dated October 3, 2022, and the Fourth Report of the Monitor dated October 11, 2022; AND pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985 c. C-36, as amended, the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

**THIS COURT ORDERS that:**

***Time for Service***

1. The time for service of the Petitioners' Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service

thereof upon any interested party other than those parties on the Service List maintained by the Monitor in these proceedings is hereby dispensed with.

### ***Capitalized Terms***

2. Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Amended and Restated Initial Order of this Court granted on August 29, 2022 as may be amended from time to time, the "**Amended and Restated Initial Order**").

### ***Interim Financing***

3. Trevali Mining Corporation ("**Trevali Corp.**") is hereby authorized and empowered to obtain and borrow under an interim financing tranche (the "**DIP Tranche**") to be made available to Trevali Corp. pursuant to the terms of an amendment (the "**Fifth Amendment**") to the existing credit facility extended to Trevali Corp. under the Second Amended and Restated Credit Agreement dated August 6, 2020 between Trevali Corp., as borrower, The Bank of Nova Scotia and HSBC Bank Canada, as co-lead arrangers and joint bookrunners, The Bank of Nova Scotia, as administrative agent (the "**Administrative Agent**"), and lenders party thereto (the "**Interim Lenders**") (as amended from time to time, including by the Fifth Amendment, the "**Credit Agreement**"), provided that:

- (a) borrowings under the DIP Tranche shall not exceed the principal amount of US \$16.5 million unless permitted by further Order of this Court; and
- (b) such authorization and empowerment is conditional upon the execution by Trevali Corp. (with the consent of the Monitor), the Administrative Agent and the Interim Lenders of the Fifth Amendment, as contemplated by the Interim Financing Term Sheet.

4. The DIP Tranche shall be on the terms and subject to the conditions set forth in the Credit Agreement as amended by the Fifth Amendment on the terms set forth in the Indicative Term Sheet Debtor-in-Possession Facility attached to the Affidavit #7 of Brendan Creaney made October 11, 2022 (the "**Interim Financing Term Sheet**").

5. The Petitioners are hereby authorized and empowered to execute and deliver such amendments to the Credit Agreement, including the Fifth Amendment and any Credit Documents and Security Documents (in each case as defined in the Credit Agreement) entered into in connection therewith, and any mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive DIP Documents**"), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by Administrative Agent or the Interim Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their respective indebtedness, interest, fees, liabilities and obligations to the Administrative Agent and the Interim Lenders under and pursuant to the Interim Financing Term Sheet and the Definitive DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. The Administrative Agent, for and on behalf of the Interim Lenders, shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lenders' Charge**") on the Property. The Interim Lenders' Charge shall not secure an obligation that existed prior to August 19, 2022 (the date the Initial Order was made in these proceedings). For certainty, the preceding sentence shall

apply to the Interim Lenders' Charge only and not to any other Security (as defined in the Credit Agreement). The Interim Lenders' Charge shall have the priority set out in paragraphs 9 and 11 hereof.

7. Notwithstanding any other provision of this Order, the Amended and Restated Initial Order or any other order of this Court:

- (a) the Administrative Agent and the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive DIP Documents;
- (b) upon the occurrence of an event of default under the Interim Financing Term Sheet, any of the Definitive DIP Documents or the Interim Lenders' Charge, the Administrative Agent and the Interim Lenders may immediately cease making advances to Trevali Corp. and, upon three (3) Banking Days' (as defined in the Credit Agreement) notice to the Petitioners and the Monitor, may exercise any and all of their rights and remedies against the Petitioners or the Property under or pursuant to the Interim Financing Term Sheet, the Definitive DIP Documents, and the Interim Lenders' Charge, including without limitation, set off and/or consolidate any amounts owing by the Interim Lenders to the Petitioners in connection with the DIP Tranche against the obligations of the Petitioners to the Administrative Agent or Interim Lenders under the Interim Financing Term Sheet, the Definitive DIP Documents or the Interim Lenders' Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and
- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

8. The Interim Lenders, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive DIP Documents.

***Validity and Priority of Charges***

9. The priorities of:

- (a) the Administration Charge;
- (b) the D&O Charge;
- (c) the Intercompany Advances Charge;
- (d) the KERP Charge (as defined in the Key Employee Retention Plan Approval Order granted by this Court on September 14, 2022);

- (e) the Sales Agent Charge (as defined in the SISP and Sales Agent Approval Order granted by this Court on September 14, 2022, the "SISP Order"); and
  - (f) the Interim Lenders' Charge;
- (collectively, the "Charges")

as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – D&O Charge;

Third – the Intercompany Advances Charge;

Fourth – the KERP Charge (to the maximum amount of US \$800,000);

Fifth – the Sales Agent Charge solely in respect of amounts payable upon completion of a transaction for the sale of the Rosh Pinah Mine pursuant to the SISP (as defined in the SISP Order);

Sixth – the Interim Lenders' Charge (to a maximum principal amount of US \$16,500,000 plus capitalized, accrued, or outstanding interest, fees and expenses); and

Seventh – the Sales Agent Charge in respect of all remaining amounts secured thereby.

10. Any security documentation evidencing, or the filing, registration or perfection of, the Interim Lenders' Charge shall not be required, and the Interim Lenders' Charge shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Interim Lenders' Charge coming into existence, notwithstanding any failure to file, register or perfect the Interim Lenders' Charge.

11. The Interim Lenders' Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and shall rank in priority to all other security interests, trusts, liens, mortgages, charges, and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

12. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent of the Monitor and the beneficiaries of the Charges (or in the case of the Interim Lenders' Charge, the Administrative Agent).

13. The Interim Financing Term Sheet, Fifth Amendment, the Credit Agreement, and the Definitive DIP Documents and the Interim Lenders' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Administrative Agent and the Interim Lenders shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s)

issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Interim Lenders' Charge nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet, Fifth Amendment, the Credit Agreement or the Definitive DIP Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;
- (b) none of the Administrative Agent or the Interim Lenders shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the Interim Financing Term Sheet or the Fifth Amendment, the creation of the Interim Lenders' Charge, or the execution, delivery or performance of the Credit Agreement or the Definitive DIP Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Interim Financing Term Sheet, the Fifth Amendment, the Credit Agreement or the Definitive DIP Documents, and the granting of the Interim Lenders' Charge, does not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

14. THIS COURT ORDERS that any charge created by this Order over leases of real property in Canada shall only be a charge in the Petitioners' interest in such real property leases.

**General**

15. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso, and Namibia to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

16. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

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



---

Signature of Peter Rubin  
Lawyer for the Petitioners

BY THE COURT.

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Registrar

**Schedule "A"**

| <b>COUNSEL NAME</b> | <b>PARTY REPRESENTED</b> |
|---------------------|--------------------------|
|                     |                          |
|                     |                          |
|                     |                          |
|                     |                          |
|                     |                          |

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**

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**ORDER MADE AFTER APPLICATION**

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Peter Rubin  
BLAKE, CASSELS & GRAYDON LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street, P.O. Box 49314  
Vancouver, B.C. V7X 1L3  
604.631.3300  
Agent: Dye & Durham

51343639

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

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

AND

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

PETITIONERS

**ORDER MADE AFTER APPLICATION  
(SETTLEMENT AGREEMENT APPROVAL)**

BEFORE     )   THE HONOURABLE MADAM JUSTICE             )  
              )   FITZPATRICK   )   October 11, 2022  
              )   )

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia on the 11<sup>th</sup> day of October, 2022; AND ON HEARING Peter Rubin and Claire Hildebrand, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #6 of Brendan Creaney, made October 3, 2022, Affidavit #7 of Brendan Creaney, made October 11, 2022, the Third Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioners) (the "**Monitor**") dated October 3, 2022, and the Fourth Report of the Monitor dated October 11, 2022; AND pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 as amended, the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

***Time for Service***

1. The time for service of the Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof upon

any interested party other than those parties on the Service List maintained by the Monitor for these proceedings is hereby dispensed with.

***Settlement Agreement Approved***

2. Subject to paragraph 3, the settlement agreement between The Bank of Nova Scotia, as agent for and on behalf of The Bank of Nova Scotia, HSBC Bank Canada, Société Générale, Bank of Montreal, The Toronto-Dominion Bank, National Bank of Canada, and ING Capital LLC, Glencore International AG, Glencore AG, Glencore Canada Corporation, Trevali Mining Corporation ("**Trevali Corp.**"), Trevali Mining (New Brunswick) Ltd., GLCR Limited, Trevali Holdings (Bermuda) Ltd., Boundary Ventures Limited, Wilru Investment One Hundred and Thirty Four (Proprietary) Limited, Rosh Pinah Base Metals (Proprietary) Limited, and Rosh Pinah Holdings (Proprietary) Limited dated October 12, 2022 (the "**Settlement Agreement**") is hereby approved in its entirety, and the Petitioners are hereby authorized and directed to enter into the Settlement Agreement.

3. Such approval is conditional upon the execution by Trevali Corp. (with the consent of the Monitor), the Administrative Agent and the Interim Lenders of the Fifth Amendment, as contemplated by the Interim Financing Term Sheet (with each of "**Administrative Agent**", "**Interim Lenders**", "**Fifth Amendment**" and "**Interim Financing Term Sheet**" as defined in the Interim Financing Approval Order of this Court made October 11, 2022).

4. The Petitioners are hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the implementation of the Settlement Agreement.

***General***

5. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, Burkina Faso, Namibia, or the United States to give effect to this Order and to assist the Petitioners and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and their agents as may be necessary or desirable to give effect to this Order or to assist the Petitioners and their agents in carrying out the terms of this Order.

6. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.

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

---

Signature of Peter Rubin  
Lawyer for the Petitioners

BY THE COURT.

Registrar

---

**Schedule "A"**

| <b>COUNSEL NAME</b>   | <b>PARTY REPRESENTED</b>        |
|---|---------------------------------|
| FTI Consulting Canada Inc., the Monitor                                 | John Sandrelli<br>Valerie Cross |
| Bank of Nova Scotia, as Administrative Agent<br>for the RCF Lenders     | Kibben Jackson                  |
| Glencore International AG<br>Glencore AG<br>Glencore Canada Corporation | Lance Williams<br>Forrest Finn  |
| Directors of Trevali Mining Corporation                                 | Mary Buttery K.C.               |
|   |                                 |
|   |                                 |

No. S-226670  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

---

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

AND

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

AND

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

PETITIONERS

---

**ORDER MADE AFTER APPLICATION**

---

Peter Rubin  
BLAKE, CASSELS & GRAYDON LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street, P.O. Box 49314  
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604.631.3300  
Agent: Dye & Durham

51343635



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*,  
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CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

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

PETITIONERS

**ORDER MADE AFTER APPLICATION  
(STAY EXTENSION)**

BEFORE ) THE HONOURABLE MADAM JUSTICE )  
) FITZPATRICK ) October 11, 2022  
) )

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 11<sup>th</sup> day of October, 2022; AND ON HEARING Peter Rubin and Claire Hildebrand, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #6 of Brendan Creaney, made October 3, 2022, Affidavit #7 of Brendan Creaney, made October 11, 2022, the Third Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioners) (the "**Monitor**") dated October 3, 2022, and the Fourth Report of the Monitor made October 11, 2022; AND pursuant to the *Companies Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended, the *British Columbia Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

***Time for Service***

1. The time for service of the Petitioners' Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof upon any interested party other than those parties on the Service List maintained by the Monitor is hereby dispensed with.

**Stay Extension**

2. The Stay Period (as defined in the Amended and Restated Initial Order of this Court dated August 29, 2022) is hereby extended until and including December 15, 2022.

**General**

3. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso, and Namibia to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

4. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.

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

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Signature of Peter Rubin  
Lawyer for the Petitioners

BY THE COURT.

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Registrar

**Schedule "A"**

| <b>COUNSEL NAME</b>   | <b>PARTY REPRESENTED</b>        |
|---|---------------------------------|
| FTI Consulting Canada Inc., the Monitor                                 | John Sandrelli<br>Valerie Cross |
| Bank of Nova Scotia, as Administrative Agent<br>for the RCF Lenders     | Kibben Jackson                  |
| Glencore International AG<br>Glencore AG<br>Glencore Canada Corporation | Forrest Finn                    |
|   |                                 |
|   |                                 |
|   |                                 |

No. S-226670  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*,  
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**PETITIONERS**

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**ORDER MADE AFTER APPLICATION**

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