

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION
AND 12334992 CANADA INC.**

Applicants

COMPENDIUM OF THE APPLICANTS

June 10, 2026

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Iron Mines LP*

TO: SERVICE LIST

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CANADA

CONSOLIDATION

CODIFICATION

Export Development Act

Loi sur le développement des exportations

R.S.C., 1985, c. E-20

L.R.C. (1985), ch. E-20

Current to May 26, 2026

À jour au 26 mai 2026

Last amended on March 26, 2026

Dernière modification le 26 mars 2026



R.S.C., 1985, c. E-20

L.R.C., 1985, ch. E-20

An Act to establish Export Development Canada, to support and develop trade between Canada and other countries and Canada's competitiveness in the international market-place and to provide development financing and other forms of development support

Loi créant Exportation et développement Canada et visant à soutenir et à développer le commerce entre le Canada et l'étranger ainsi que la capacité concurrentielle du pays sur le marché international et à fournir du financement de développement et d'autres formes de soutien du développement

Short Title

Short title

1 This Act may be cited as the *Export Development Act*.

R.S., 1985, c. E-20, s. 1; 2001, c. 33, s. 2(F).

Titre abrégé

Titre abrégé

1 *Loi sur le développement des exportations*.

L.R. (1985), ch. E-20, art. 1; 2001, ch. 33, art. 2(F).

Interpretation

Definitions

2 In this Act,

Board means the Board of Directors of the Corporation; (*conseil*)

body corporate means an incorporated body wherever or however incorporated; (*personne morale*)

Chairman [Repealed, 2001, c. 33, s. 3]

Chairperson means the Chairperson of the Board; (*Version anglaise seulement*)

Corporation means Export Development Canada, the corporation established by section 3; (*Société*)

director means a director of the Corporation; (*administrateur*)

entity means a body corporate, a trust, a partnership, a fund, an unincorporated association or organization, Her Majesty in right of Canada or of a province, an agency of Her Majesty in either of such rights and the government of a foreign country or any political subdivision thereof and any agency thereof; (*entité*)

Définitions

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

administrateur Administrateur de la Société. (*director*)

biens Biens de toute nature, meubles ou immeubles, en droit ou en *equity*, qu'ils soient situés au Canada ou ailleurs. Leur sont assimilés les sommes d'argent, marchandises, droits incorporels et terres, ainsi que les obligations, servitudes et toute espèce de droits, d'intérêts ou de profits, présents ou futurs, acquis ou éventuels, dans des biens, ou en provenant ou s'y rattachant. (*property*)

comité de direction Le comité de direction du conseil. (*Executive Committee*)

conseil Le conseil d'administration de la Société. (*Board*)

entité Personne morale, fiducie, société de personnes, fonds, toute organisation ou association non dotée de la personnalité morale, Sa Majesté du chef du Canada ou

(iii) the provision of benefits under the pension plan,

(iv) the payment of pensions, and

(v) the investment of the assets of the fund; and

(e) generally, for the conduct and management of its activities.

R.S., 1985, c. E-20, s. 16; 2001, c. 33, s. 10.

General

Offices

17 (1) The Corporation may establish offices in and outside Canada, and the Corporation's head office shall be in the National Capital Region as described in the schedule to the *National Capital Act*.

Approval

(2) The Corporation shall obtain the approval of the Minister and the Minister of Foreign Affairs before establishing any office outside Canada.

Conditions

(3) The approval may be of a limited duration and may be subject to conditions.

Revocation

(4) Either the Minister or the Minister of Foreign Affairs may, if he or she considers it appropriate, revoke the approval by giving notice to the Corporation of the revocation and of its effective date.

R.S., 1985, c. E-20, s. 17; 1993, c. 26, s. 6; 2010, c. 12, s. 1832.

Agent of Her Majesty

18 The Corporation is for all purposes an agent of Her Majesty in right of Canada.

R.S., c. E-18, s. 18; 1984, c. 31, s. 14.

Terms and conditions

19 The Board may, subject to this Act and any by-law of the Board, determine the terms and conditions on which the Corporation may exercise any power under this Act.

R.S., 1985, c. E-20, s. 19; 1993, c. 26, s. 7.

Staff

20 The Corporation may employ such officers and employees and such consultants and advisers as it deems necessary to carry out its purposes and shall fix the terms

Dispositions générales

Bureaux et siège social

17 (1) La Société peut constituer des bureaux au Canada et à l'étranger. Son siège social est fixé dans la région de la capitale nationale définie à l'annexe de la *Loi sur la capitale nationale*.

Agrément

(2) La constitution de tout bureau à l'étranger est subordonnée à l'agrément du ministre et du ministre des Affaires étrangères.

Conditions

(3) L'agrément peut être de durée limitée et assorti de conditions.

Révocation

(4) Le ministre ou le ministre des Affaires étrangères peut, s'il l'estime indiqué, révoquer l'agrément en donnant à la Société un avis précisant la date de prise d'effet de la révocation.

L.R. (1985), ch. E-20, art. 17; 1993, ch. 26, art. 6; 2010, ch. 12, art. 1832.

Mandataire de Sa Majesté

18 La Société est mandataire de Sa Majesté du chef du Canada.

S.R., ch. E-18, art. 18; 1984, ch. 31, art. 14.

Conditions d'exercice des pouvoirs

19 Le conseil peut, sous réserve des autres dispositions de la présente loi et de ses règlements administratifs, fixer les conditions d'exercice des pouvoirs de la Société prévus par la présente loi.

L.R. (1985), ch. E-20, art. 19; 1993, ch. 26, art. 7.

Personnel

20 La Société peut engager le personnel ainsi que les experts et autres conseillers qu'elle estime nécessaires à la réalisation de sa mission; elle définit leurs conditions d'emploi et fixe et verse leur rémunération.

S.R., ch. E-18, art. 20.

DIP FACILITY LOAN AGREEMENT

DATED AS OF JUNE 3, 2026

WHEREAS Baffinland Iron Mines Corporation and Baffinland Iron Mines LP (collectively, the "**Borrowers**") have requested the DIP Lender (defined below) to provide funding, in connection with the Borrowers' proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") commenced before the Ontario Superior Court of Justice – Commercial List (the "**Court**"), in accordance with the terms and conditions set out herein (the "**CCAA Proceeding**");

AND WHEREAS FTI Consulting Canada Inc. has been appointed as monitor of the Borrowers and the Guarantors (in such capacity, the "**Monitor**") pursuant to the Initial Order.

AND WHEREAS Export Development Canada ("**EDC**") is party to a Credit Agreement with the Borrowers dated as of October 7, 2022, as amended from time to time, pursuant to which EDC provided a secured credit facility to the Borrowers on the terms set out therein (the "**Pre-Filing Facility**").

AND WHEREAS the DIP Lender has agreed to provide the DIP Facility (defined below) in accordance with the terms and conditions set out below.

NOW THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

- 1. Defined Terms:** A capitalized term not defined in the body of this Agreement has the meaning ascribed to it in the Definitions section below.
- 2. Interpretation:** In this Agreement, words signifying the singular number include the plural and *vice versa*, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

References in this Agreement to Sections or Schedules are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise.
- 3. Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America.
- 4. Borrowers:** Baffinland Iron Mines Corporation ("**BIM Corp**") and Baffinland Iron Mines LP ("**Baffin LP**").
- 5. Guarantors:** Nunavut Iron Ore, Inc. and 12334992 Canada Inc. (collectively, the "**Guarantors**" and collectively with the Borrowers, the "**Obligors**").

6. **DIP Lender:** His Majesty in Right of Canada, as represented by EDC (the “**DIP Lender**”).
7. **DIP Facility:** A senior secured, super-priority, debtor-in-possession, interim, revolving credit facility (the “**DIP Facility**”) up to a maximum principal amount of US\$400,000,000 in a Finished Product Funding Scenario (as defined below), increased to a maximum of US\$475,000,000 in the event of a Finished Product Non-Funding Scenario (as defined below) (“**Facility Amount**”), subject to the terms and conditions contained herein.
- The Borrowers shall be entitled to prepay amounts under the DIP Facility, without premium or penalty, and re-borrow amounts hereunder, subject to the terms and conditions herein and in all cases in an aggregate principal amount up to the Facility Amount.
8. **DIP Advances:** Advances (each, an “**Advance**”) shall be made in two-week intervals (or as otherwise agreed by the Borrowers and DIP Lender) with the principal amount of the aggregate Advances outstanding being no more than the Facility Amount.
- The DIP Lender shall deposit, into the Borrowers’ Account, each Advance, other than the Initial Advance (defined below) within one (1) Business Day following the date on which the Advance Conditions are satisfied and the Borrowers deliver to the DIP Lender an Advance confirmation certificate in form reasonably satisfactory to the DIP Lender, which shall include a reconciliation to the Approved Cash Flow (an “**Advance Confirmation Certificate**”).
- The Advance Confirmation Certificate shall certify that (i) all representations and warranties of the Obligor contained in this Agreement remain true and correct as of such date in all material respects both before and after giving effect to the use of such proceeds, (ii) no Default or Event of Default then exists and is continuing or would result therefrom; and (iii) the Advance is required for expenditures identified in the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) and shall be used solely in accordance with this Agreement.
- Advances under the DIP Facility in the aggregate principal amount of up to US\$110,000,000 (the “**Bridge Advances**”) shall be made available to the Borrowers during the four week period beginning on the date of the Second Amended and Restated Initial Order (the “**Bridge Period**”), subject to satisfaction of the Advance Conditions and delivery of an Advance Confirmation Certificate one (1) Business Day prior to each Advance during such period (other than the first advance under the DIP Facility (the “**Initial Advance**”) which shall be advanced to the Borrower on the date of the Second Amended and Restated Initial Order in accordance with an Advance Confirmation Certificate delivered by the Borrower to the DIP Lender no later than the granting of the Second Amended and Restated Initial Order). Notwithstanding anything else to the contrary herein, fees accruing on or levied in relation to or in respect

of the Bridge Advances shall not be payable by the Obligors, and no Obligors shall be liable for the payment of such amounts, whether as Indebtedness or as an obligation or liability of any kind, nor shall such amounts form a part of the DIP Obligations during the Bridge Period. For greater certainty, interest shall accrue and be payable on the Bridge Advances pursuant to the terms hereof and reasonable, documented, out of pocket legal expenses of the DIP Lender will be payable in connection with the Bridge Advances pursuant to the terms hereof. In the event the DIP Facility is not refinanced during the Bridge Period (which refinancing is only permitted in full), the fees that have accrued or would have otherwise been payable to the DIP Lender pursuant to the terms hereof and any professional fees or expenses that would have otherwise been payable hereunder by the Borrowers, in each case but for the limitations provided herein, shall be deemed to have accrued and shall be payable from the date of the Initial Advance to but excluding the last day of the Bridge Period and shall form a part of the DIP Obligations. If the Bridge Facility is so refinanced, no such fees or professional fees and expenses (other than reasonable, documented, out of pocket legal fees and expenses of the DIP Lender) shall be owing or payable by the Obligors.

The Borrowers hereby confirm that during the Bridge Period no alternative proposals for interim financing will be solicited or accepted by the Borrowers.

9. **Use of Proceeds:** The proceeds of the DIP Facility shall be used solely by the Borrowers for items provided in the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) and in amounts in accordance with the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) and in accordance with the orders of the Court in the CCAA Proceedings. No proceeds may be used for any other purpose except with the prior written approval of the DIP Lender, acting reasonably.
10. **Assignment by the Borrowers:** The Borrowers shall not be permitted to assign this Agreement without the prior written consent of the DIP Lender.
11. **Evidence of Indebtedness:** The DIP Lender shall maintain a register evidencing Advances and repayments under the DIP Facility and all other amounts owing from time to time hereunder. The DIP Lender's register constitutes, in the absence of manifest error, *prima facie* evidence of the Indebtedness of the Borrowers to the DIP Lender pursuant to the DIP Facility.
12. **Interest and Fees:** All amounts owing by the Borrowers hereunder to the DIP Lender on account of principal, overdue interest and expenses shall bear interest at a rate equal to the Citibank prime rate from time to time plus 4.75% per annum (the "**Interest Rate**"). To the extent permitted by Law, effective upon the occurrence of and during the continuance of an Event of Default, all amounts owing to the DIP Lender hereunder by the Borrowers on account of principal, overdue interest, and fees and expenses for which

payment is overdue shall bear interest at the Interest Rate plus an additional 2% per annum (the Interest Rate, as increased, the "**Default Rate**").

All interest and, where applicable, fees hereunder shall be computed on the basis of a year of 365 or 366 days (as applicable) and shall accrue and be calculated daily and, in the case of interest, payable in cash, monthly in arrears on the last Business Day of each month (each, an "**Interest Payment Date**"); provided that unless otherwise agreed by the DIP Lender, interest accruing at the Default Rate shall be payable in cash on demand, both before and after demand and judgment.

In the case of an Advance, the first interest period shall commence on and include the date of such Advance and shall end on and exclude the next following Interest Payment Date. Thereafter, in the case of such Advance, the interest period shall commence on and include the Interest Payment Date and end on and exclude the next Interest Payment Date or the Maturity Date, whichever is earlier.

In consideration of the DIP Lender's provision of the DIP Facility, the Borrowers shall pay to the DIP Lender a fee in the amount of 2% of the Facility Amount, which shall be payable upon the first Advance under the DIP Facility after the Bridge Period.

In further consideration of the DIP Lender's entry into the DIP Facility, the Borrowers shall pay to the DIP Lender a commitment fee for each day from the date of the Second Amended and Restated Initial Order to and including the Maturity Date equal to (A) 1.5% multiplied by (B) the average daily amount of the Unused Commitment (the "**Commitment Fee**").

The Commitment Fee shall be computed on the basis of a year of 365 or 366 days (as applicable) and shall accrue and be calculated daily and be payable in cash at the Maturity Date.

"**Unused Commitment**" means that portion of the Facility Amount, in US dollars, that is not advanced or otherwise utilized as Finished Product Credit Support on the applicable day. For greater certainty, if the Finished Product Non-Funding Election (as defined below) is delivered by the Borrowers in accordance with the terms hereof, then the Facility Amount for each day following the Finished Product Non-Funding Election shall be deemed to be US\$475,000,000 (less any reductions pursuant to Section 14 below) when determining the daily Unused Commitment.

The DIP Lender hereby confirms that no additional fees will be accrued in the event of any amendment, consent, waiver or accommodations that the DIP Lender may agree to provide, in their sole discretion, pursuant the terms hereof, other than reasonable, documented, out-of-pocket expenses in connection with implementation of such amendment, consent, waiver or accommodation or additional interest and fees that accrue solely from any increase in the Facility Amount.

13. **Other Costs and Expenses:** Subject to the limitations in Section 8, the Borrowers shall pay all reasonable and documented third-party out-of-pocket costs and expenses of the DIP Lender, including outside counsel and financial advisory fees payable to BMO Capital Markets, for all reasonable due diligence and transaction advice, and all reasonable and documented out-of-pocket fees, expenses and disbursements of outside counsel in connection with the preparation, negotiation and consummation of this Agreement and the administration of the DIP Facility, including any reasonable and documented third-party out-of-pocket costs and expenses incurred by the DIP Lender in connection with the enforcement of any of the rights and remedies available hereunder or under the DIP Security.
14. **Approved Cash Flow:** The cash flow projection submitted to the Court on the motion for the Second Amended and Restated Initial Order and accepted by the Monitor for the 13-week period following the Second Amended and Restated Initial Order, but excluding any Excess Expansion and Exploration Expenses shall be the initial "**Approved Cash Flow**". The Approved Cash Flow shall include provision for: (i) the reasonable and documented professional fees and expenses of the Monitor and its counsel and counsel for the Obligors, (ii) interest, fees and other amounts owing to the DIP Lender under this Agreement, (iii) royalty payments under each of the Royalty Agreements when due and payable; provided such Royalty Agreement is properly registered on title, and the Monitor's counsel is of the view that the royalty granted under such Royalty Agreement is a valid royalty at law and runs with the land, (iii) cash collateral required to support letters of credit issued by financial institutions; (iv) the reasonable and documented out-of-pocket expenses of the DIP Lender under this Agreement; and (v) the Borrowers' funding requirements during the period of the Approved Cash Flow, including, without limitation, in respect of the pursuit of the SISP and the working capital and other general corporate funding requirements of the Borrowers during such period, including amounts payable under the Benefits Agreement, and the costs and expenses associated with the CCAA Proceeding.
- The Borrowers, with the assistance of the Monitor, may from time to time, but no more frequently than once per calendar month (unless otherwise consented to by the DIP Lender), present the DIP Lender with a revised budget substantially in the form of the then current Approved Cash Flow (the "**Updated Cash Flow**"). Subject to the written approval of the DIP Lender, in its reasonable discretion, the Updated Cash Flow shall thereafter be deemed to be the effective Approved Cash Flow for the purposes hereof.
- If the DIP Lender has not approved an Updated Cash Flow at the time the then current Approved Cash Flow expires, the prior Approved Cash Flow shall remain in effect and each line item therein shall roll forward for a four-week period with disbursement lines for operating costs set forth in the then applicable Approved Cash Flow being rolled forward, and all other line items being limited to any unused portion of the amount set forth

for such line item in the prior Approved Cash Flow. The above four-week roll forward period shall be extended for subsequent consecutive four-week periods for as long as good faith discussions are continuing between the Borrowers and the DIP Lender to arrive at an approved Updated Cash Flow.

On the second to last Business Day of every fourth week, the Borrowers shall deliver to the Monitor and the DIP Lender and its legal counsel a variance calculation (the “**Variance Report**”) setting forth actual receipts and disbursements for the preceding four weeks ending on the preceding Friday (each a “**Testing Period**”) and on a cumulative basis as against the then-current Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses), and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Testing Period in the Approved Cash Flow; each such Variance Report is to be promptly discussed with the DIP Lender and its legal and financial advisors. Each Variance Report shall include reasonably detailed explanations for any material variances during the relevant Testing Period.

The Approved Cash Flow will contemplate that a Finished Product Funder (a) continues to provide payments in the ordinary course (the “**Finished Product Funding Scenario**”) pursuant to its pre-filing contractual purchase arrangements; and (b) provides similar finished product funding from October 2026 until October 2027. In the event a Finished Product Funder does not make payments in accordance with its contractual obligations and/or a new finished product funding arrangement is not entered into by September 30, 2026 for the October 2026 through September 2027 period (the “**Finished Product Non-Funding Scenario**”), the Approved Cash Flow shall expire on September 30, 2026 and be replaced in form and substance satisfactory to the DIP Lender, acting reasonably, on or prior to September 30, 2026 for all periods following October 1, 2026.

In a Finished Product Non-Funding Scenario, the Borrowers may elect, no later than October 1, 2026 (the “**Finished Product Non-Funding Election**”) to:

- (i) increase the Facility Amount by an amount up to US\$75,000,000; or
- (ii) on terms acceptable to the DIP Lender, obtain credit support from the DIP Lender for Finished Product Funders to maintain or obtain finished product funding arrangements for the duration of the term hereof (the “**Finished Product Credit Support**”) in an amount up to US\$75,000,000 less any increase to the Facility Amount in (i) above.

If the Borrowers determine on or prior to September 30, 2026 that the Finished Product Funder will continue to provide payments in the ordinary course, the Finished Product Non-Funding Scenario will not arise and

Finished Product Credit Support is no longer necessary, then the Facility Amount will remain a maximum principal amount of US\$400,000,000.

For the purposes of this Agreement, the Approved Cash Flow shall include all supporting documentation provided in respect thereof to the DIP Lender.

For greater certainty, any finished product arrangements with a Finished Product Funder entered into after the date hereof must be in form and substance acceptable to the DIP Lender in its sole discretion; provided, for clarity, that terms that are in aggregate at least as favourable to the Borrowers as the existing arrangement with the Finished Product Funder shall be acceptable to the DIP Lender.

14A **Permitted
Variances**

The obligations herein requiring the Obligors to comply with or act in accordance with the Approved Cash Flow are subject to any Permitted Variances that arise from either (i) non-forecasted reductions in cash inflows; (ii) disbursements for non-forecasted and non-discretionary expenditures; or (iii) non-forecasted disbursements required to obtain continued supply for essential suppliers.

15. **Conditions
Precedent to
the Initial
Advance**

The DIP Lender's obligation to make the Initial Advance hereunder from the Loan Amount is subject to and conditional upon, the satisfaction of all of the following conditions precedent (the "**Initial Advance Conditions**"):

- (a) The Obligors shall have executed and delivered this Agreement;
- (b) the Court shall have issued the Second Amended and Restated Initial Order in form and substance satisfactory to the DIP Lender, acting reasonably, among other things:
 - (i) authorizing and approving this Agreement;
 - (ii) granting the DIP Charge and the priority of the DIP Charge contemplated in this Agreement;
 - (iii) granting a stay of proceedings until a date that is at least nine (9) weeks after the date of the Second Amended and Restated Initial Order; and
 - (iv) providing for provisional execution, or other satisfactory protection, in respect of any and all Advances made and/or Liens and/or charges granted for the DIP Loans, including the DIP Charge;

and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired), unless otherwise agreed by the DIP Lender, in its reasonable discretion;

- (c) no Default or Event of Default shall have occurred and be continuing or will occur as a result of the Initial Advance;

- (d) The DIP Lender shall have received an Advance Confirmation Certificate in accordance with the terms hereof; and
- (e) there shall be no Encumbrances on the Collateral ranking in priority to or *pari passu* with the DIP Charge other than as expressly permitted by the terms hereof.

16. **Conditions Precedent to Advances of the Facility Amount:**

The DIP Lender's agreement to make any Advances available from the Facility Amount (other than the Initial Advance) is subject to, and conditional upon, the satisfaction of all of the following conditions precedent (the "**Advance Conditions**"), each of which is for the benefit of the DIP Lender and may be waived by the DIP Lender in its sole discretion:

- (a) the Second Amended and Restated Initial Order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired), unless otherwise agreed by the DIP Lender, in its reasonable discretion;
- (b) The DIP Lender shall have received an Advance Confirmation Certificate in accordance with the terms hereof;
- (c) Subject to Section 8, all reasonable and documented third-party out-of-pocket expenses payable to the DIP Lender hereunder have been paid or will be paid from the proceeds of the requested Advance on the date of the applicable Advance;
- (d) There shall be no Encumbrances on the Collateral ranking in priority to or *pari passu* with the DIP Charge other than as expressly permitted by the terms hereof;
- (e) No Default or Event of Default shall have occurred and be continuing or will occur as a result of the requested Advance; and
- (f) The requested Advance shall be in accordance with an Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) that is effective at the time of such Advance.

17. **DIP Charge:**

All of the obligations of the Obligors under or in connection with the DIP Facility, including without limitation, all principal, interest, fees, Finished Product Credit Support, and amounts owing in respect of reasonable and documented third-party out-of-pocket expenses of the DIP Lender and the indemnification obligations owed to the DIP Lender hereunder (collectively, the "**DIP Obligations**"), shall be secured by a Court-ordered charge on the Collateral in favour of the DIP Lender (the "**DIP Charge**").

The DIP Charge shall rank ahead of any and all Encumbrances on the Collateral other than (i) the administration charge not exceeding US\$5,000,000, (ii) the directors and officers charge not exceeding US\$20,400,000, and (iii) in respect of the Cash Collateral (as defined in

the Amended and Restated Initial Order) (collectively, the "**Priority Charges**"), unless otherwise consented to by the DIP Lender in writing.

18. **DIP Security:** The Guarantors hereby jointly and severally guarantee in favour of the DIP Lender the payment and performance of the DIP Obligations of the Borrowers.
- The DIP Lender shall be permitted to request DIP Security (in form and substance reasonably satisfactory to the DIP Lender) from the Obligors at any time. The DIP Security shall continue as a first priority Encumbrance on the Collateral in favour of the DIP Lender subject to subordination only in respect of the Priority Charges. For greater certainty, the delivery of DIP Security shall not be a condition precedent to Advances as set out in Section 15 or 16.
19. **Borrowers' Account:** Advances shall be deposited into a bank account to be designated by the Borrowers at a financial institution in Canada, reasonably acceptable to the DIP Lender (the "**Borrowers' Account**") and utilized by the Borrowers in accordance with the terms of this Agreement.
20. **Prepayments:** The Borrowers may, in their discretion, prepay any amounts outstanding under the DIP Facility, without fee or penalty, at any time prior to the Maturity Date (as defined below).
- In the event the Borrowers hold Excess Cash, the amounts outstanding under the DIP Facility shall be prepaid in an amount equal to such Excess Cash on the date that such Excess Cash is reported to the DIP Lender.
- "**Excess Cash**" means any aggregate Unrestricted Cash balance in excess of US\$20,000,000 determined as at the date of delivery of any Variance Report required hereunder.
- "**Unrestricted Cash**" means any cash that (i) is not required (as determined by the Borrowers, acting reasonably) for expenditures to be paid by the Borrowers before the date of the next Advance, and (ii) is not posted as Cash Collateral.
21. **Repayment and Maturity Date:** All DIP Obligations shall be due and payable on the earliest of the occurrence of any of the following:
- (a) The date which is five (5) Business Days after which demand is made following the occurrence of any Event of Default which is continuing as of such date;
 - (b) The date that is the 12-month anniversary of the granting of the Second Amended and Restated Initial Order, which may be extended at the election of the Borrowers for up to six months, in exchange for the Extension Fee, in the event that a Restructuring Transaction in form and substance acceptable to the DIP Lender and that would repay the DIP Obligations owing to the DIP Lender in full, has been approved by the Court and remains conditional

only upon any approvals required from any Governmental Authority;

- (c) The closing of a Restructuring Transaction; or
 - (d) The date on which the CCAA Proceedings are terminated.
- (such earliest date, the "**Maturity Date**").

The DIP Lender's commitment to make Advances under the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be fully repaid no later than the Maturity Date, without the DIP Lender being required to make demand upon the Borrowers or Guarantors or to give notice that the DIP Facility has expired and that the obligations thereunder are due and payable.

The DIP Obligations shall be unaffected in any plan of compromise or arrangement and in any other Restructuring Transaction involving any of the Borrowers or the Guarantors (a "**Plan**"), other than after the payment in full in cash to the DIP Lender of all DIP Obligations on or before the date such Plan is implemented.

Unless otherwise consented to in writing by the DIP Lender, the net cash proceeds of any sale, realization or disposition of, or with respect to, any of the Collateral (including obsolete, excess or worn-out Collateral) out of the ordinary course of business (for greater certainty, net of transaction fees and applicable taxes in respect thereof), or any insurance proceeds (net of expenses incurred by the applicable Obligor in connection therewith, including transaction fees and applicable taxes in respect thereof) (each "**Net Proceeds**") paid to the Borrowers or Guarantors in respect of Collateral, shall be paid to the DIP Lender and applied to reduce the DIP Obligations and permanently reduce and cancel an equivalent portion of the Facility Amount in an amount equal to the Net Proceeds of such sale, realization, disposition or insurance; provided that, if the applicable Obligor requests an amount equal to or less than such Net Proceeds to repair or replace the affected Collateral, subject to such Obligor's written notice thereof to the DIP Lender promptly following the sale, realization, disposition or casualty event in respect of insurance proceeds then the Facility Amount shall not be reduced by such amount and such amount shall remain available under the DIP Facility solely for the repair or replacement of the affected Collateral.

22. **Payments:**

All payments of principal, interest, fees and expenses hereunder, if applicable, shall be made for value in the full amount due at or before 12:00 noon (Eastern time) on the day such amount is due by deposit or transfer thereof to the DIP Lender or as the DIP Lender may direct. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment. Each payment to be made by the Borrowers under this Agreement shall be made in full without deduction, set-off or counterclaim

of any kind or for any reason. If any expenses incurred by the Borrowers after the date of this Agreement are not paid by the Borrowers, the DIP Lender may, but shall have no duty to do so, pay all such expenses whereupon such amounts shall be added to and form part of the DIP Obligations and shall reduce the availability under the DIP Facility.

23. **Indemnity:** Subject to section 8, the Obligors agree to indemnify and hold harmless the DIP Lender, solely in its capacity as lender under the DIP Facility and not in any other capacity, and its Affiliates, partners and officers, directors, employees, representatives, advisors, solicitors and agents (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or reasonable and documented third-party out-of-pocket expenses of any kind or nature whatsoever which may be incurred by any of the Indemnified Persons (collectively, the "**Claims**") as a result of, in connection with or in any way related to the DIP Facility, the CCAA Proceedings, any bankruptcy and insolvency proceedings in respect of the Obligors, the priority of the DIP Charge, the proposed or actual use of the proceeds of the DIP Facility or this Agreement; provided, however, that the Obligors shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any Claim (a) to the extent it resulted from the gross negligence, wilful misconduct or bad faith of any Indemnified Person as finally determined by a court of competent jurisdiction, (b) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the Obligors, or (c) to the extent arising from a breach by an Indemnified Person of an agreement between such Indemnified Person and a third party. The Obligors shall not be responsible or liable to any Indemnified Person or any other person for consequential or punitive damages.
- The indemnities granted under this Agreement shall survive any termination of the DIP Facility.
24. **Representations and Warranties:** Each Obligor represents and warrants to the DIP Lender, upon which the DIP Lender has relied in entering into this Agreement that:
- (a) The transactions contemplated by this Agreement and upon the granting of the Second Amended and Restated Initial Order:
 - (i) are within the powers of the Obligor and constitute legal, valid and binding obligations of the Obligor;
 - (ii) have been duly authorized, executed and delivered by or on behalf of the Obligor; and
 - (iii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any Material Contracts to which it is

a party or pursuant to which any of its assets or property may be affected;

- (b) Each Obligor has been duly incorporated or formed and is validly existing under the law of its jurisdiction of its formation;
- (c) Each Obligor owns its assets with good and marketable title thereto;
- (d) The Business has been and will continue to be conducted in material compliance with all applicable Laws and Authorizations of each jurisdiction in which the Business has been or is being carried on subject to the provisions of the CCAA and any Court order made after the date of the Initial Order;
- (e) Each Obligor has obtained any material Authorizations for the operation of the Business, which Authorizations remain, and after entering into the DIP Facility will remain, in full force and effect. No proceedings have been commenced to revoke or amend any such Authorizations;
- (f) The Obligors maintain adequate insurance coverage, as is customary with companies in the same or similar business of such type, in such amounts and against such risks as is prudent for a business of its nature with financially sound and reputable insurers and that contain reasonable coverage and scope;
- (g) Each Obligor does not have any defined benefit pension plans or similar plans and is in material compliance with all applicable Laws respecting its employees' employment and all collective bargaining agreements to which it is a party or otherwise bound;
- (h) Each Obligor is current on its post-CCAA filing payment obligations for rent and other occupancy costs and expenses in respect of any premises that it leases;
- (i) The Obligors have maintained and paid current their obligations for payroll, source deductions, harmonized, goods and services and retail sales tax, and are not in arrears of their statutory obligations to pay or remit any amount in respect of these obligations;
- (j) All obligations of each Obligor (including fiduciary, funding, investment and administrative obligations, if any) required to be performed in connection with employee benefit plans of such Obligor have been performed on a timely basis;
- (k) Except as otherwise disclosed to the DIP Lender in writing in connection with entry into this Agreement, each Obligor has filed all Tax returns which were required to be filed and paid all Taxes (including interest and penalties) which are due and payable, except for charges, fees or dues which are not material in amount or which are not delinquent or if delinquent are being contested in good faith by appropriate proceedings;
- (l) Other than potential proceedings in connection with the Second Amended and Restated Initial Order to be sought by the Borrower, or this DIP Facility, or as stayed pursuant to the Amended and Restated Initial Order or the Second Amended and Restated Initial

Order (once granted), there is not now pending or, to the knowledge of any of the senior officers of any of the Borrowers, threatened against any of the Borrowers, nor has any Borrower received notice in respect of, any material claim, potential claim, litigation, action, suit, arbitration or other proceeding by or before any court, tribunal, governmental entity or regulatory body in each case that would reasonably be expected to be material and adverse to the Obligors, taken as a whole;

- (m) As of the date hereof, all Material Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms, subject to the stay of proceedings granted by the Court in the CCAA Proceedings, and no Borrower has any knowledge of any default by any party (including counterparties) that has occurred and is continuing thereunder (other than, in each case, those defaults arising as a result of or relating to the insolvency of the Borrowers or any of their affiliates or the commencement of the CCAA Proceedings);
- (n) Except as otherwise disclosed to the DIP Lender in writing in connection with the entry into this Agreement, there are no agreements of any kind between any of the Obligors and any other third party or any holder of debt or any equity securities of an Obligor with respect to any Restructuring Transaction;
- (o) No Default or Event of Default has occurred and is continuing;
- (p) All of the Obligors' agreements in respect of Indebtedness and security therefor, Encumbrances affecting the Collateral, or other commercial arrangements, in each case with related parties or associates or Affiliates of related parties, or agreements or commercial arrangements entered into as a condition of the foregoing, in effect currently (other than agreements solely between Obligors) have been disclosed to the DIP Lender in writing in connection with entry into this Agreement;
- (q) All financial statements of the Obligors for the 2025 financial year have been provided to the DIP Lender and have been prepared in compliance with IFRS as applicable in Canada and do not contain any material misstatements;
- (r) The Obligors are subject to no material environmental, labour, pension or employee benefits liabilities or obligations that are overdue, and are not the subject of any material environmental, labour, pension or employee benefits violations; and
- (s) All information provided by or on behalf of each Obligor to the DIP Lender for the purposes of or in connection with this Agreement or any transaction contemplated herein is, true and accurate in all material respects on the date as of which such information was provided, not incomplete and does not omit to state any fact necessary to make such information (taken as a whole) not materially misleading at such time, in light of the circumstances under which such information was provided.

25. **Affirmative
Covenants:**

In addition to all other covenants and obligations contained herein, each Obligor agrees and covenants to perform and do each of the following until the DIP Facility is fully repaid:

- (a) Provide the DIP Lender and its counsel draft copies of and the opportunity to review all motions, applications, proposed Court orders and other materials or documents that the Borrowers or Guarantors intend to file in the CCAA Proceedings at least three (3) Business Days prior to any such filing or, where it is not practically possible to do so within such time, as soon as possible on or prior to the date on which such motion, application, proposed Court order or other materials or document is served on the service list in respect of the CCAA Proceeding;
- (b) Take all commercially reasonable actions necessary or available to defend the Second Amended and Restated Initial Order, and any other orders of the Court in the CCAA Proceedings to the extent relating to the DIP Facility or any other matter that affects the DIP Lender adversely in any material respect, from any appeal, reversal, modifications, amendment, stay or vacating not expressly consented to in writing in advance by the DIP Lender;
- (c) Submit to the Court the Second Amended and Restated Initial Order, and any other Court orders which are being sought by the Obligor in a form confirmed in advance to be satisfactory to the DIP Lender to the extent relating to the DIP Facility or any other matter that affects the DIP Lender in any material respect, subject to any amendments that are required by the Court or the Obligors that are acceptable to the DIP Lender to the extent relating to the DIP Facility or any other matter that affects the DIP Lender in any material respect;
- (d) Comply with the provisions of Court orders made in the CCAA Proceeding, including the Second Amended and Restated Initial Order;
- (e) Promptly provide notice to the DIP Lender and its counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract, permit or license;
- (f) Allow the DIP Lender, its employees, agents, advisors and representatives access to all information and documentation of the Obligors, as may be reasonably requested by the DIP Lender, during normal business hours, in each case subject to applicable privacy laws and solicitor-client privilege;
- (g) Cause management and the transaction advisor of the Borrowers to cooperate with reasonable requests for information by the DIP Lender in connection with matters reasonably related to the DIP Facility, the CCAA Proceedings, the SISF (as defined below) or compliance of the Obligors with their obligations pursuant to this Agreement;
- (h) Deliver to the DIP Lender the reporting and other information from time to time reasonably requested by the DIP Lender and as set

out in this Agreement including, without limitation, the Variance Reports at the times set out herein;

- (i) Use the proceeds of the DIP Facility only in accordance with the restrictions set out in this Agreement and pursuant to the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) and Court orders;
- (j) Comply with the Milestones (as defined below);
- (k) Preserve, renew, maintain and keep in full force and effect its corporate existence and the material Authorizations required in respect of the Business or any of the Collateral;
- (l) Keep the DIP Lender apprised on a timely basis of all material developments with respect to the Business and affairs of the Obligors;
- (m) Conduct all business activities in the ordinary course of business, consistent with past practice;
- (n) Except to the extent otherwise agreed by the DIP Lender (acting reasonably), preserve the Collateral and avoid any Encumbrance thereon;
- (o) Maintain in good standing and in full force and effect all material security deposits, permits and licenses necessary for the operation of the business of the Obligors, the Steensby expansion and pursuit of the SISP, and advise the DIP Lender promptly of any actual or pending changes in the status of such material security deposits, licenses or permits, and use commercially reasonable efforts to cause the issuers of letters of credit posted to secure the Borrowers' obligations to renew such letters of credit;
- (p) At all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is customary for the business of the Obligors with financially sound and reputable insurers in coverage and scope acceptable to the DIP Lender, acting reasonably, and, if requested by the DIP Lender, cause the DIP Lender to be listed as a loss payee or additional insured (as applicable) on such insurance policies;
- (q) Comply with the terms of, and use commercially reasonable efforts to keep in full force and effect in accordance with their terms, all Material Contracts in all material respects, subject to any stay of proceedings in a Court order issued in the CCAA proceeding;
- (r) Comply in all material respects with the terms of and keep in full force and effect in accordance with their terms, all supply arrangements material to the Borrowers' business including, without limitation, fuel supply and product shipping arrangements, subject to any Court order issued in the CCAA proceeding;
- (s) Comply with the terms of and keep in full force and effect the Benefits Agreement;
- (t) Maintain physical segregation of all Finished Product Funder's acquired product such that at all times any Finished Product

Funder's acquired product is identifiable, separate and apart from any product not acquired by the Finished Product Funder;

- (u) Promptly notify the DIP Lender of the occurrence of any Default or Event of Default;
- (v) Comply in all material respects with all applicable Laws and the terms and conditions of all Authorizations; and
- (w) Pay when due all principal, interest, fees and other amounts payable by the Obligor under this Agreement to the DIP Lender.

26. **Negative Covenants:**

Each Obligor covenants and agrees not to do the following, other than with the prior written consent of the DIP Lender from and after the date hereof:

- (a) Make any payment of principal or interest in respect of Indebtedness, or complete deliveries or processing of material on account of prepay or similar arrangements (other than in accordance with finished product funding arrangements with a Finished Product Funder), in each case existing as of the date of the Initial Order or declare or pay any dividends, except as provided for in the Approved Cash Flows;
- (b) Issue any debt or equity instruments or securities, or other rights or entitlements to the foregoing;
- (c) Except for the DIP Obligations, any Indebtedness secured by the Priority Charges, any other Indebtedness incurred in the ordinary course of business or incurred prior to the date hereof and ranking subordinate to the DIP Obligations, or Indebtedness contemplated by the Approved Cash Flows, incur or permit to exist any Indebtedness, or provide or seek or support a motion by another party to provide Indebtedness. This paragraph (c) shall not prohibit arrangements with a Finished Product Funder for the October 2026 through September 2027 period in form and substance acceptable to the DIP Lender in its sole discretion; provided, for clarity, that terms that are in aggregate at least as favourable to the Borrowers as the existing arrangement with the Finished Product Funder shall be acceptable to the DIP Lender;
- (d) Enter into new agreements or commercial arrangements or amend any existing agreements or commercial arrangements of any kind with related parties or associates or Affiliates of related parties; for certainty, nothing herein shall restrict the Obligors' rights to disclaim any of the above contracts or arrangements with related parties or associates or Affiliates of related parties in accordance with the CCAA.
- (e) Except for the Priority Charges, the DIP Charge, and any Encumbrance existing prior to the date hereof and ranking subordinate to the DIP Charge, create or permit to exist any Encumbrance, or provide or seek or support a motion by another party to provide an Encumbrance, upon any of the Collateral, other than such additional Encumbrances as are acceptable to the DIP Lender in its sole discretion. This paragraph (e) shall not prohibit

arrangements with a Finished Product Funder for the October 2026 through September 2027 period in form and substance acceptable to the DIP Lender in its sole discretion; provided, for clarity, that terms that are in aggregate at least as favourable to the Borrowers as the existing arrangement with the Finished Product Funder shall be acceptable to the DIP Lender;

- (f) Make any payments outside the ordinary course of the Business, unless provided for in the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) or to ensure ongoing supply of goods or services essential for the Business;
- (g) Make any investments, acquisitions, capital expenditures, or any loans to or guarantee the Indebtedness or obligations of any other Person or entity, other than in accordance with the Approved Cash Flow (but excluding any Excess Exploration and Expansion Expenses);
- (h) Change its jurisdiction of incorporation or registered office;
- (i) Change its name, fiscal year end or accounting policies or amalgamate, consolidate with, merge into, dissolve or enter into any similar transaction with any other entity;
- (j) Cease to carry on the Business as currently being conducted or materially change its operations or business practices, in each case without the consent of the DIP Lender;
- (k) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking, other than (i) the sale or disposition of inventory in the ordinary course of business, or (ii) the disposition of obsolete, redundant or ancillary assets in accordance with the Second Amended and Restated Initial Order or another Court order;
- (l) Except as otherwise contemplated in any Court order, or in accordance with the Approved Cash Flow, (i) establish or make any retention or bonus payments to any person; (ii) increase compensation or severance entitlements or other benefits payable to directors, senior officers or senior management; or (iii) make any payments to related parties, other than royalty payments, subject to section 14(iii);
- (m) Enter into any settlement agreement or agree to any settlement arrangements with any regulatory authority or in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against the Obligor;
- (n) Enter into any amalgamation, reorganization, liquidation, dissolution, winding-up, merger or other transaction or series of transactions whereby, directly or indirectly, all or any significant portion of the undertaking, property or assets of any Obligor would become the property of any other Person or Persons that does not provide for the full repayment of the obligations under the DIP Facility upon closing;

- (o) Amend or seek to amend the Second Amended and Restated Initial Order;
- (p) Use the Advances for any purpose other than the purposes permitted hereunder, as set out in the applicable Advance Confirmation Certificate and the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses), or such other purposes as may be agreed to by the DIP Lender, in writing;
- (q) Disclaim, cancel or terminate any Material Contract, without the prior written consent of the DIP Lender;
- (r) Seek, or consent to the appointment over any of the Obligors of, a receiver or trustee in bankruptcy or any similar official in any jurisdiction;
- (s) Seek or consent to the lifting of the stay of proceedings in the Amended and Restated Initial Order or Second Amended and Restated Initial Order, as applicable, in favour of the Obligors; and
- (t) Enter into any currency, interest rate, commodity or forward, futures, swap, options or other hedging arrangements, other than for ordinary course risk management purposes, without the consent of the DIP Lender.

27. **Sales and Investment Solicitation Process:**

The Borrowers, Guarantors and DIP Lender agree that the Borrowers (in consultation with the Monitor) shall pursue a sale and investment solicitation process (the "**SISP**") approved pursuant to court order in form and substance acceptable to the DIP Lender (the "**SISP Order**"). The SISP Order shall be granted on or prior to the date that is 60 days following the issuance of the Second Amended and Restated Initial Order (the "**SISP Order Date**"), and for greater certainty the SISP Order shall establish various milestone dates for the SISP (together with the SISP Order Date, the "**Milestones**"). All terms of the SISP, including all Milestones, must be acceptable to the DIP Lender in its reasonable discretion. Forthwith after the date hereof, the Borrowers shall work with the Monitor to commence the process of identifying a financial advisor appropriately experienced and qualified to conduct the SISP. The financial advisor, its scope of services and compensation must be acceptable to the DIP Lender in its reasonable discretion.

28. **Events of Default:**

The occurrence of any one or more of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:

- (a) Any Court order to the extent relating to the DIP Facility or any other matter that affects the DIP Lender adversely in any material respect, is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacating, amendment or restatement is not in form and substance acceptable to the DIP Lender, including the issuance of a Court order:
 - (i) appointing a receiver and manager, receiver, interim receiver or similar official in respect of an Obligor;

- (ii) terminating, lifting or amending the stay imposed within the CCAA Proceeding;
 - (iii) granting any other claim or Encumbrance of equal or priority status to that of the DIP Charge, other than the Priority Charges; or
 - (iv) staying, reversing, vacating or otherwise modifying this Agreement;
- (b) The seeking or support by the Obligors of any Court order in the CCAA Proceedings that is not in form and substance acceptable to the DIP Lender, acting reasonably;
 - (c) Failure of an Obligor to diligently oppose any party that brings an application or motion for any of the relief set out in subsection 28(a) above;
 - (d) The failure of an Obligor to comply with, the Amended and Restated Initial Order, the Second Amended and Restated Initial Order, or any other Court order in the CCAA Proceedings;
 - (e) The lifting of the stay of proceedings granted in the Initial Order or the Second Amended and Restated Initial Order for any person to enforce upon their rights, or for the appointment of a receiver over any of the assets, property or undertaking of the Obligors;
 - (f) The CCAA Proceeding is terminated or converted to bankruptcy proceedings;
 - (g) The expiry without further extension of the stay of proceedings provided for in the Amended and Restated Initial Order or the Second Amended and Restated Initial Order;
 - (h) Failure of an Obligor to pay any amounts arising hereunder when due and owing hereunder;
 - (i) The Obligor ceases to carry on or maintain the Business or its assets in the ordinary course of the Business in compliance with the covenants contained in this Agreement, except where such cessation is otherwise consented to in advance in writing by the DIP Lender;
 - (j) Any representation or warranty made or given hereunder by any Obligor shall be incorrect or misleading in any material respect when made;
 - (k) Failure of an Obligor to perform or comply with any term or covenant of this Agreement, including the failure to achieve any Milestone;
 - (l) If an Obligor makes any material payments of any kind not permitted by this Agreement, the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) or any order of the Court;
 - (m) If the period of an Approved Cash Flow expires and, within the four-week period following such expiry (or such further extended period as may be applicable), no Updated Cash Flow has become an Approved Cash Flow;

- (n) There shall exist a cumulative negative variance in excess of the Permitted Variance for the period from the date of the Second Amended and Restated Initial Order to the last day of such Testing Period, measured relative to the Approved Cash Flow (excluding for greater certainty any Excess Exploration and Expansion Expenses);
- (o) Except as stayed by order of the Court or any other court with jurisdiction over the matter, the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of CDN\$500,000 in the aggregate, against any of the Obligors or the Collateral that is not released, discharged, vacated, or stayed or accepted for payment by an insurer within 30 days after their entry, commencement or levy; or
- (p) Any plan is filed or sanctioned by the Court and such plan is in a form and in substance that is not acceptable to the DIP Lender and that does not provide for the repayment of the obligations under the DIP Facility in full upon implementation.

29. **Remedies:**

Upon the occurrence and continuance of an Event of Default which is continuing on the date which is five (5) Business Days after the Borrowers have received written notice of such Event of Default from the DIP Lender, the DIP Lender may in its discretion, elect on prior written notice to the Borrowers and the Monitor to:

- (a) set-off, consolidate or accelerate all amounts outstanding under the DIP Facility and declare such amounts to be immediately due and payable;
- (b) terminate the DIP Facility;
- (c) apply for a Court order, on terms satisfactory to the Monitor and the DIP Lender, providing the Monitor with the power, in the name of and on behalf of the Borrowers, to take all necessary steps in the CCAA Proceeding to realize on the Collateral;
- (d) Apply to a court: (i) for the appointment of an interim receiver, a receiver or a receiver and manager of the undertaking, property and assets of any Obligor; (ii) for the appointment of a trustee in bankruptcy of any Obligor; or (iii) to seek other relief;
- (e) exercise the powers and rights of a secured party; and
- (f) exercise all such other rights and remedies available to the DIP Lender hereunder, or pursuant to the Second Amended and Restated Initial Order and applicable Law.

No failure or delay on the part of the DIP Lender in exercising any of its rights and remedies shall be deemed to be a waiver of any kind.

30. **Taxes:**

All payments by an Obligor under this Agreement, including any payments required to be made from and after the exercise of any remedies available to the DIP Lender upon the occurrence and continuance of an Event of Default, shall be made free and clear of, without reduction for or on

account of, any present or future Taxes; provided, however, that if any Taxes are required by applicable Law to be withheld ("**Withholding Taxes**") from any amount payable to the DIP Lender under this Agreement, the amounts so payable to the DIP Lender shall be increased to the extent necessary to yield to the DIP Lender on a net basis after payment of all Withholding Taxes, the amount payable hereunder at the rate or in the amount specified hereunder and the Obligor shall provide evidence satisfactory to the DIP Lender that the Taxes have been so withheld and remitted.

31. **Termination by Borrowers** The Borrowers shall be entitled to terminate this Agreement upon notice to the DIP Lender: (a) in the event that the DIP Lender has failed to fund any Advance when required to do so under this Term Sheet, or (b) at any time following the payment in full in immediately available funds of all of the outstanding DIP Obligations. Effective immediately upon such termination, all obligations of the Obligor and the DIP Lender under this Agreement shall cease, except for those obligations that explicitly survive termination. For greater certainty, all outstanding DIP Obligations in respect of all Advances funded prior to such termination shall become immediately due and payable concurrently with such termination and the DIP Lender shall not be required to make any further extensions of credit under this Agreement.
32. **Further Assurances:** The Obligor shall, at their own expense, from time to time do, execute and deliver or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the DIP Lender may reasonably request for the purpose of giving effect to this Agreement.
33. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties related to the subject matter hereof. To the extent there is any inconsistency between this Agreement and any other documents entered into in connection herewith, this Agreement shall prevail.
34. **Amendments and Waivers:** No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement. Any such consent, approval, waiver, instruction, or other expression of the DIP Lender made hereunder may be delivered by any written instrument, including by way of electronic mail, by legal counsel on behalf of the DIP Lender.
- This Agreement may not be amended except by an instrument in writing signed by each of the Obligor and the DIP Lender.
35. **Severability:** Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof or effecting the validity of enforceability of such provision in any other jurisdiction.

36. **No Third Party Beneficiary:** No Person, other than the Obligors and the DIP Lender are entitled to rely upon this Agreement and the parties expressly agree that this Agreement does not confer rights upon any party not a signatory hereto.
37. **Counterparts and Facsimile Signatures:** This Agreement may be executed in any number of counterparts delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Agreement by signing any counterpart of it.
38. **Assignment:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
39. **Notices:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the Person as set forth below:

in the case of a notice to the Obligors at:

c/o Baffinland Iron Mines Corporation
360 Oakville Place Dr., Suite 300
Oakville, Ontario L6H 6K8

Attention: Mark O'Brien
Email: mark.obrien@baffinland.com

with a copy (which shall not constitute notice) to:

Davies Ward Phillips & Vineberg LLP
155 Wellington St. W.
Toronto, ON M5V 3J7

Attention: Natalie Renner and Rob Nicholls
Email: nrenner@dwpv.com and rnicholls@dwpv.com

in the case of a notice to the DIP Lender at:

c/o Export Development Canada
150 Slater Street
Ottawa, ON, K1A 1K3

Attention: Mark Doyle and Ashley Glen
Email: mduoyle@edc.ca; aglen@edc.ca

Attention: Loans Services
Email: LS-directlending@edc.ca

Attention: Covenants Officer
Email: covenantsofficer@edc.ca

With a copy to the DIP Lender's legal counsel:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000
Toronto, Ontario M5K 1E7

Attention: Evan Cobb
Email: evan.cobb@nortonrosefulbright.com

In either case, with a copy to the Monitor:

FTI Consulting Canada Inc.

Attention: Jeffrey Rosenberg
Email: Jeffrey.rosenberg@fticonsulting.com

With a copy to, which shall not constitute notice:

Osler, Hoskin & Harcourt LLP
First Canadian Place, 100 King St. W. #6200
Toronto, ON M5H 1H1

Attention: Marc Wasserman and Michael De Lellis
Email: mwasserman@osler.com and mdelellis@osler.com

Any notice delivered or transmitted to a Person as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

40. **Business Days:** If any event shall occur hereunder or any action shall be required hereunder on a day that is not a Business Day, then such event shall be deemed to occur and such action shall be deemed required on the next following Business Day.
41. **Governing Law and Jurisdiction:** This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein.
42. **Definitions:** For the purposes of this Agreement, unless context otherwise requires, the following terms have the respective meanings set out below, and grammatical variations of such terms have corresponding meanings:
"Advance" has the meaning given to that term in Section 8;

"Advance Confirmation Certificate" has the meaning given to that term in Section 8;

"Affiliate" of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;

"Agreement" means this Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;

"Approved Cash Flow" has the meaning given to that term in Section 14. The inclusion of a particular category of expenditure in the initial Approved Cash Flow shall not be an approval by the DIP Lender of any expenditures in any future period, not intended to be covered by the Approved Cash Flow.

"Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Collateral or the Business;

"Amended and Restated Initial Order" means the Order granted in the CCAA Proceedings on May 25, 2026 amending and restating the Initial Order;

"Benefits Agreement" means the impact benefits agreement between BIM Corp. and the Qikiqtani Inuit Association dated September 6, 2013, as amended on October 22, 2018, and as may be further amended, supplemented or amended and restated from time to time;

"Borrowers" has the meaning given to that term in the recitals;

"Borrowers' Account" has the meaning given to that term in Section 19;

"Business" means the business of iron ore mining at the Mary River Mine on Baffin Island in Nunavut, Canada.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in Toronto, Ontario or Ottawa, Ontario or in New York, New York;

"CCAA" has the meaning given to that term in the recitals;

"CCAA Proceeding" has the meaning given to that term in the recitals;

"Collateral" means all now-owned and hereafter-acquired assets and property of the Obligors, real and personal, tangible or intangible and all proceeds therefrom, including the Borrowers' Account and all assets used in the Business;

"Court" has the meaning given to that term in the recitals;

"Default" means the occurrence or existence of any event, fact or circumstances, that with the giving of notice, passage of time, or both, would constitute an Event of Default;

"Default Rate" has the meaning given to that term in Section 12;

"DIP Charge" has the meaning given to that term in Section 17;

"DIP Facility" has the meaning given to that term in Section 7;

"DIP Obligations" has the meaning given to that term in Section 17;

"DIP Security" means security documents granted by the Obligors providing for a security interest in the Collateral and related personal property security registrations made in favour of the DIP Lender in connection with such security interest together with such confirmations, financing statements, renewals, amendments, discharges, insurance endorsements, or other documents as may be reasonably requested by the DIP Lender as security for the DIP Obligations;

"Encumbrances" means any hypothec, encumbrance, lien, charge, pledge, deposit arrangement, mortgage, title retention agreement, trust, deemed trust, security interest of any nature, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege, royalty, stream, offtake, prepayment or any other arrangement or condition that in substance or effect secures payment or performance of an obligation, or any contract to create any of the foregoing;

"Event of Default" has the meaning given to that term in Section 28;

"Excess Exploration and Expansion Expenses" means, unless otherwise consented to by the DIP Lender in writing in its sole discretion,

- (i) expenditures by the Obligors on exploration activities that either: (a) exceed amounts necessary to preserve the assets or Authorizations of the Obligors, including preserving existing assets and Authorizations that are strictly necessary for Steensby expansion, or (b) exceed US\$10,000,000 in aggregate from the date of this Agreement; and
- (ii) expenditures of the Obligors on expansion of operations in amounts that either: (a) exceed the amounts necessary to preserve the assets or Authorizations of the Obligors, including preserving existing assets and Authorizations that are strictly necessary for Steensby expansion, or (b) exceed US\$20,000,000 in aggregate from the date of this Agreement.

"Extension Fee" means a fee payable to the DIP Lender in the amount of 1% of the Facility Amount, which shall accrue and be payable in cash at the Maturity Date (if payable).

"Facility Amount" has the meaning given to that term in Section 7;

"Finished Product Funder" means IRH or any party who enters into a finished product funding arrangement with the Borrowers similar to the current arrangements with IRH, for the October 2026 through September 2027 period.

“Governmental Authority” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

“Hedging Obligations” means, with respect to any Person, the net payment obligations of such Person outstanding under (a) interest rate or currency swap agreements, interest rate or currency cap, collar or floor agreements and (b) any other agreements or arrangements entered into in order to protect such Person against fluctuations in commodity prices, interest rates or currency exchange rates;

“Indebtedness” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, including by way of overdraft and drafts or orders accepted as representing extensions of credit, (b) all obligations of such Person evidenced by bonds, debentures, the face amount of all letters of credit, letters of guarantee and similar instruments, notes or other similar instruments, (c) all indebtedness, liabilities and obligations secured by an Encumbrance on any asset of such Person, whether or not the same is otherwise indebtedness, liabilities or obligations of such Person, (d) all indebtedness, liabilities and obligations of others which is, directly or indirectly, guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, (e) all indebtedness, liabilities and obligations in respect of financial instruments which are classified as a liability on the balance sheet of such Person, and (f) all obligations of such Person to otherwise assure a creditor against loss (for certainty, Hedging Obligations incurred by an Obligor in the ordinary course shall not be considered Indebtedness for purposes of this Agreement);

“Indemnified Persons” has the meaning given to that term in Section 23;

“Initial Order” means the Initial Order granted in the CCAA Proceedings on May 15, 2026;

“Interest Payment Date” has the meaning given to that term in Section 12;

“Interest Rate” has the meaning given to that term in Section 12;

“Law” means any federal, provincial, county, territorial, district, municipal, local or foreign, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

“Material Contract” means any contract, license or agreement: (i) to which a Borrower or Guarantor is a party or is bound; (ii) which is material to, or necessary in, the operation of the business of a Borrower or Guarantor; and (iii) which such Borrower or Guarantor cannot promptly

replace by an alternative and comparable contract with comparable commercial terms.

“Maturity Date” has the meaning given to that term in Section 21;

“Monitor” means FTI Consulting Canada Inc., as the court-appointed monitor of the Borrowers and Nunavut Iron Ore Mines, Inc.;

“Obligors” has the meaning given to that term in Section 5;

“Permitted Variance” means a variance of not more than 10% relative to the aggregate net cash flow (excluding for greater certainty any Excess Exploration and Expansion Expenses) on a cumulative basis since the beginning of the period covered by the applicable Approved Cash Flow; provided that for the purposes of determining any net cash flow, the fees, costs and expenses payable to the Monitor, the DIP Lender or their respective advisors shall be excluded from such net cash flow.

“Person” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee;

“Priority Charges” has the meaning given to that term in Section 17;

“Restructuring Transaction” means any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, plan or other material transaction of, or in respect of, the Obligors, or any of them, or all or a material portion of their Business, assets or obligations;

“Royalty Agreements” means, collectively, (i) the royalty agreement entered into among the Borrowers, 15877580 Canada Inc., ArcelorMittal Canada Inc., 15877563 Canada Inc. and 15877482 Canada Inc. dated March 25, 2024 and (ii) the royalty agreement entered into among the Borrowers, 16572367 Canada Inc., 15877563 Canada Inc. and 15877482 Canada Inc.;

“Second Amended and Restated Initial Order” means an order, or orders, of the Court, in form and substance satisfactory to the DIP Lender (acting reasonably) and obtained on application made on notice to, such Persons as the DIP Lender and Obligors determine, acting reasonably, among other things, amending and restating the Amended and Restated Initial Order, approving the DIP Facility, granting the DIP Charge and granting the Obligors an extension of the stay of proceedings;

“Tax” and **“Taxes”** means any taxes, duties, fees, premiums and assessments imposed by any Governmental Authority, including all interest, penalties, fines or additions to tax imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and

anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

"Updated Cash Flow" has the meaning given to that term in Section 14; and

"Withholding Taxes" has the meaning given to that term in Section 30.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

DIP LENDER:

HIS MAJESTY IN RIGHT OF CANADA

Per: _____
Name: Mark Doyle
Title: Senior Special Risks Manager,
Export Development Canada

Per: _____
Name: Alexandre Richard
Title: Special Risks Manager, Export
Development Canada

BORROWERS:

**BAFFINLAND IRON MINES
CORPORATION**

by _____
Name:
Title:

by _____
Name:
Title:

**BAFFINLAND IRON MINES LP, by its
general partner, BAFFINLAND IRON
MINES CORPORATION**

by _____

Name:
Title:

by _____

Name:
Title:

GUARANTORS:

NUNAVUT IRON ORE, INC.

by _____

Name:
Title:

by _____

Name:
Title:

12334992 CANADA INC.

by _____

Name:
Title:

by _____

Name:
Title:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NUNAVUT
IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION, AND 12334992 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF CELESTE VAN TONDER
(sworn June 3, 2026)

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Robin Schwill (LSO# 47854C)
Tel: 416.863.5502
Email: rschwill@dwpv.com

Natalie Renner (LSO# 55954A)
Tel: 416.367.7489
Email: nrenner@dwpv.com

Robert Nicholls (LSO# 75180A)
Tel: 416.367.7547
Email: rnicholls@dwpv.com

Lawyers for the Applicants and Baffinland Iron Mines LP

Affidavit of Celeste van Tonder sworn May 14, 2026, (Motion Record of the Applicant, Tab 7) p. A4830

Court File No.: _____

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

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement of Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation, and 12334992 Canada Inc.

Applicants

**AFFIDAVIT OF CELESTE VAN TONDER
(Sworn May 14, 2026)**

I, Celeste van Tonder, of the City of Oakville, in the Province of Ontario, **MAKE**

OATH AND SAY:

1. I am the Vice President and Chief Financial Officer of Nunavut Iron Ore, Inc. ("**NIO**"), the Chief Financial Officer of 12334992 Canada Inc. ("**123 Canada Inc.**") and the Chief Financial Officer of Baffinland Iron Mines Corporation ("**BIM Corp.**"), which also acts as the general partner of Baffinland Iron Mines LP ("**BIM LP**", and together with the Applicants, the "**Debtors**"). I have held these positions since October 2, 2023. I have also been a director of 123 Canada Inc. and BIM Corp. since August 29, 2024.

2. I am familiar with the Debtors' day-to-day operations, business and financial affairs and I have been actively engaged in discussions and negotiations concerning their financial circumstances. As such, I have personal knowledge of the matters described in this Affidavit. Where I have relied on information from other sources, I have stated the source and verily believe such information to be true.

(g) granting such other relief as may be required.

6. All dollar amounts in this Affidavit are expressed in millions of United States dollars unless otherwise stated.

OVERVIEW

7. The Debtors are a group of affiliated entities engaged in iron ore mining operations at the Mary River mine (the “**Mine**”), which is one of the highest-grade iron ore mines in the world and is located in the Qikiqtani Region of Nunavut on Baffin Island, Canada. The day-to-day mining operations are carried out by BIM LP, through its general partner BIM Corp. (collectively, “**Baffinland**”). Baffinland is the largest private sector employer in Nunavut, employing approximately 1,200 people, including approximately 300 Inuit employees.

8. The Mine contains among the highest-grade iron ore deposits ever discovered, with historic average iron content mined in excess of 67%. Baffinland began mining operations at the Mine in 2014 and reached commercial production the following year.

9. The Debtors’ financial difficulties are the product of several converging factors: (a) high debt-servicing costs from substantial outstanding indebtedness; (b) significant capital expenditures and commitments incurred in connection with a proposed railway, which was ultimately rejected by the federal Minister of Northern Affairs; (c) constrained transportation and shipping limits imposed under existing regulatory approvals; and (d) the high operating costs associated with the current operations model.

10. Despite undertaking significant cost-reduction and efficiency measures, including reductions in working capital commitments, renegotiation of key supplier contracts, and a workforce reduction of more than 20% in 2024, the Debtors remain unable to generate sufficient revenue to service their outstanding debt obligations and cover their fixed operating costs at the

current transportation and shipping caps. Moreover, prospective investors have been reluctant to provide further equity capital, and the Debtors have been unable to refinance their existing indebtedness on acceptable terms. As a result, the Debtors are currently operating on a week-to-week basis from a cash-flow perspective.

11. For the year-ended December 31, 2025, Baffinland and 123 Canada Inc., on a consolidated basis, reported a net loss of \$102.4 million and their current liabilities exceeded their current assets by \$761 million. As described under the heading “Financial Statements” below, NIO, on a consolidated basis, reported a net loss of \$545.1 million for the year ended December 31, 2025. This figure includes a \$423 million goodwill impairment loss relating to the value of the Mine. Since NIO’s consolidated financial statements include a significant non-cash impairment charge, this Affidavit relies on the consolidated financial statements of Baffinland and 123 Canada Inc. to more accurately represent the Debtors’ financial position.

12. The Debtors are in breach of their senior secured credit facility, which has led to cross-defaults under their term credit facility, and their senior secured notes, which mature July 15, 2026. The Debtors also owe approximately \$87 million in past-due trade payables. The Debtors do not have sufficient liquidity to repay these obligations.

13. The Mine’s operations are entirely dependent on arctic diesel and jet fuel, which can only be delivered by sea during the annual shipping window of mid-July to mid-October. If adequate supply is not secured before the window closes, the Mine would be forced to curtail or shut down operations entirely. The current crisis in the Middle East has caused diesel prices to surge by approximately 50–70% since January 2026 and has created significant risk of physical supply shortages due to disruptions in global refining capacity and trade flows. Since seallift procurement requires lead time and global competition for fuel is intense, Baffinland must act promptly to

secure committed volumes and vessel capacity. The Debtors currently lack the liquidity to procure the fuel required.

14. In these circumstances, the Debtors require the protection of the CCAA to stabilize their operations, preserve the going-concern value of their business, secure debtor-in-possession financing and pursue a viable restructuring for the benefit of all stakeholders, including pursuing a sale and investment solicitation process. Absent such protection, the Debtors face the risk that creditors will take enforcement action, which would disrupt ongoing operations and diminish the value of their assets. Moreover, a disruption to the Mine would have far-reaching consequences, not only for creditors of the Debtors, but also for Inuit communities, Inuit businesses that provide services to the mine, the approximately 1,200 workers who depend on the continued operation of the mine and the broader Nunavut economy more generally.

15. The remainder of this Affidavit is presented in two parts: Part I sets out the Debtors' financial circumstances, including: (a) an overview of the corporate structure and governance of the Debtors; (b) a description of the Debtors' business and operations, including transportation and shipping constraints and impediments to expansion; (c) the financial position of the Debtors as reflected in their most recent financial statements; (d) the indebtedness of the Debtors, including their secured and unsecured debt obligations, contingent liabilities, and other material agreements; and (e) the source of the Debtors' financial difficulties, the cost-reduction measures undertaken to date, and the urgency of this application. Part II describes the relief sought by the Applicants under the Initial Order and at the Comeback Hearing. A table of contents is set out below.

hard-wall camp and 210-bed camp; 1.35 MW diesel generators (8.1 MW total) which provide electricity to the site; an explosives plant; a truck wash plant; full-service maintenance facilities and parts warehouses; and water and waste treatment plants. Physical infrastructure at the Milne Inlet port includes: a 120-bed camp; 1.35 MW diesel generators (9.5 MW total) which provide electricity to the site; ore dock and ship loading facilities; and a freight dock. Baffinland owns and maintains all site infrastructure.

(iii) Production Capacity and Impediments to Expansion

38. Production from the Mine is currently constrained by regulatory approvals governing the volume of iron ore that can be transported to and shipped from Milne Inlet, as well as the number of vessels permitted to enter Milne Inlet.

39. Production capacity at the Mine is measured in millions of metric tonnes per annum (or Mtpa), which is a unit of measurement used to quantify the production or processing capacity of a mine, representing the total mass of ore that a mine is designed to produce or handle over the course of one year. The Mine currently produces 4.2 Mtpa of iron ore, though Baffinland has the capacity to produce in excess of this amount and it has always been its objective to build the infrastructure to support expanded production capacity.

40. The Mine was originally approved by the federal Minister of Northern Affairs and the Nunavut Impact Review Board on December 28, 2012. At that time, Baffinland envisioned constructing an approximately 150-kilometre railway from the mine south to a deep-water port at Steensby Inlet, which would allow year-round (or near year-round) shipping (the “**Steensby Railway**”). However, for regulatory and financial reasons, Baffinland was only able to ultimately transport 4.2 Mtpa of iron ore along the Tote Road and ship that same volume from Milne Inlet port, a capacity subsequently increased to 6 Mtpa between 2018 and 2024. That increased capacity has since expired, and Baffinland’s permitted volume has reverted to 4.2 Mtpa.

41. The map below displays the current transportation route from the Mine to the port at Milne Inlet along the Tote Road, and the proposed Steensby Railway.



42. In 2013, following a decline in iron ore prices and a shortage of investment capital, Baffinland pivoted from the Steensby Railway and port development project due to the estimated construction cost of approximately \$5.7 billion. The regulatory approvals for the Steensby Railway, however, remained intact.

43. In 2018, Baffinland sought approval to increase its production capacity by constructing a 110-kilometre railway running north, parallel to the Tote Road, to the port at Milne Inlet, which would increase the quantity of iron ore shipped through Milne Inlet to 12 Mtpa (the “**Milne Railway**”). The original estimated cost was \$910 million, substantially less than the Steensby Railway, and capital costs were intended to be funded from a combination of operating cash flows, additional equity contributions, and new debt.

44. After approximately four years of review (impacted, in part, by the COVID-19 pandemic), the Nunavut Impact Review Board recommended in May 2022 that the Milne Railway should not proceed, concluding that increased production and shipping activity in Milne Inlet could lead to negative effects on the marine environment, fish, caribou and other wildlife, and that these effects could impact Inuit harvesting, culture, land use, and food security. The federal Minister of Northern Affairs accepted this recommendation and rejected the proposal on November 16, 2022.

45. Following this rejection, Baffinland revived plans to finance and build the Steensby Railway project, which benefits from several layers of regulatory approval accumulated since 2012. Recent estimates suggest the cost of the Steensby Railway and port will be at least \$4 billion. Once completed, the Steensby Railway would enable production and shipping to increase to approximately 22 Mtpa and significantly reduce operating costs. Despite significant progress made on the financing for the Steensby Railway, Baffinland does not currently have sufficient capital committed to advance the project.

46. As described below under the heading “Source of Baffinland’s Financial Difficulties”, Baffinland’s constrained transportation and shipping capacity, together with the expenditures it incurred in pursuing the Milne Railway Proposal, have contributed to the Debtors’ deteriorating financial position.

(iv) Regulatory Approval

47. The principal regulatory instrument governing the Mine is Nunavut Impact Review Board Project Certificate No. 005, as amended by Amendment 005 dated November 17, 2023 (collectively, the “**Project Certificate**”), a copy of which is attached as **Exhibit “F”** to my Affidavit. It is under the Project Certificate that Baffinland has approval to transport 4.2 Mtpa of iron ore along the Tote Road and ship that same volume from Milne Inlet port.

***The Debtors Urgently Need
Approval of a Full DIP
Facility, Not a Band-Aid
Interim Solution***

C. NEED FOR DIP FINANCING

42. The Debtors require Court approval of the DIP Facility to continue operations at the Mine and to fund the costs of these CCAA Proceedings. As described above, the Mine is one of the northernmost mining operations in the world, located within the Arctic Circle on Baffin Island in the Qikiqtani Region of Nunavut. Most supplies, fuel, equipment, and materials necessary for an entire year of operations must be delivered during a narrow shipping window from mid-July to mid-October, when the arctic sea at Milne Inlet briefly thaws to permit vessel access. The workforce operates on a fly-in/fly-out basis from across Canada, and the Debtors are reliant on a small number of highly specialized suppliers capable of operating in the Arctic environment.

43. The Debtors' primary source of operating cash flow are receipts under the Offtake Agreements with IRH. However, the revenues generated from these offtake payments are insufficient to cover the Debtors' fixed operating costs at current transportation and shipping levels that are capped at 4.2 Mpta. This structural shortfall is compounded by the substantial cash outlays that far exceed revenues during the June to September period each year to procure materials and secure sealift vessels.

44. 44. The need for the DIP Facility is particularly acute because the Debtors are entering the most cash-intensive period of their annual operating cycle where they will have to make significant expenditures and commitments for sealift materials and equipment, the purchase and shipment of specialized arctic diesel and jet fuel (the exact amount will vary based on the prevailing commodity prices near the time of shipment), labour costs, and vendor expenses. In addition, the Debtors need to make commitments for other expenditures in the ordinary course of business. As explained above, certain sealift vessel operators have indicated that they will not confirm shipments unless and until a full DIP Facility is in place, and many suppliers have advised that they will demand upfront cash payments until the DIP Facility is approved.

45. The Debtors have deferred entering into contracts and procuring goods that would ordinarily have been in place at this point in the year, owing to a reluctance to assume commitments they may be unable to satisfy. A DIP Facility is needed to enable the Debtors to enter into those contracts and make commitments for the upcoming weeks.

46. The consequences of not getting approval of the DIP Facility would be significant. Absent the DIP Facility, the Debtors will have a negative cash balance as of the end of next week and will be unable to continue operations, maintain their assets, or complete any value-maximizing transaction. If the Debtors cannot procure sufficient materials via sealift from July to October 2026, the Mine will be forced to curtail or cease operations entirely and a significant number employees may need to be placed on leave. Baffinland is the largest private sector employer in Nunavut, employing approximately 1,200 people, including approximately 300 Inuit employees. A disruption to the Mine would have far-reaching consequences not only for creditors and stakeholders, but also for the Inuit communities, Inuit businesses that provide services to the Mine, the workers who depend on the continued operation of the Mine, and the broader Nunavut economy. Moreover, if these events were to transpire, recoveries for stakeholders would be materially and adversely impacted.

47. The Cash Flow Forecasts attached to the Monitor's Second Report demonstrate that the Debtors lack the liquidity to fund their operations and the near- and long-term expenditures required to keep the Mine operational. The DIP Facility was sized to address the Debtors' liquidity needs during these CCAA Proceedings based on the Cash Flow Forecasts. Without approval of the DIP Facility, the Debtors will not have the funds to operate the Mine and Milne Port over the next year. The DIP Facility is thus both appropriate and necessary to preserve the going-concern value of the Debtors' business and to maximize recoveries for all stakeholders.

stakeholders that long-term committed financing has been secured. During the four-week bridge period, the Debtors are required to pay only interest and out-of-pocket legal expenses; there is no exit fee or penalty. Nothing prevents the DIP Facility from being replaced by another facility if the Objecting Bidder is ultimately successful. Importantly, all proposals received in the DIP Process made the extension of a bridge facility of \$110 million conditional upon approval of the full loan facility. That is not at all a unique feature of the EDC DIP Facility.

B. THE DEBTORS URGENTLY REQUIRE A FULLY COMMITTED DIP FACILITY

(i) An “Interim Bridge” Does not Remedy Near and Long Term Supply Issues

16. The Objecting Bidder suggests in the cross-motion that the Court should defer approving any DIP facility at this stage and, instead, approve only an interim bridge facility (the details of which remain unknown to me). This position fundamentally misunderstands the pressing needs of the Debtors and the unique operating context of the Mine. As I have explained in my previous Affidavits, the Mine's remote Arctic location means that all supplies, fuel, and equipment must be shipped during a narrow summer open-water window at Milne Inlet lasting only approximately 72 days. During this period, the Debtors' operations and logistics teams must oversee the transport of thousands of tonnes of goods, fuel, and materials to the Mine.

17. The urgency is dictated by immutable operational deadlines, not litigation strategy. There are only two sealifts delivering to the Mine during the open-water window this summer. The first is set to depart on July 8, 2026 and the second will depart in August. The Debtors have no practical ability to change this schedule. All goods and materials must be on those ships, or they do not get delivered to the Mine, which would seriously (and, potentially fatally) jeopardize the ability of the Mine to operate in the coming year.

18. As of today, the Debtors have only been able to obtain and containerize roughly 20% of the goods and materials that will go on the first shipment set for July 8. There is currently

insufficient cargo on the first sealift for it to depart for the Mine, and there will be insufficient space on the second sealift for the Debtors to recover the shortfall. The diverse array of supplies the Debtors must purchase, receive and containerize, including tires, engines, foodstuffs, safety equipment, clothing, medical supplies, fuel, and a multitude of spare parts creates added complexity. A further complicating factor is that some materials (*e.g.*, explosive compounds for blasting) must not be on the same ship as certain other materials. Prior to and since the CCAA filing on May 15, 2026, the Debtors' procurement work has slowed tremendously because suppliers are reluctant or unwilling to do business with us on workable terms, as I explain below.

19. The charge of \$110 million obtained on June 5, 2026 is merely a time-limited stopgap and insufficient as a long-term or even medium-term solution. Many of the Debtors' suppliers are relatively small and, in some cases, unsophisticated parties for whom a security charge does not provide sufficient comfort. The charge has helped marginally, but what suppliers require is evidence of available cash.

20. The issue extends beyond the supplies needed to facilitate the sealift. The Debtors filed for CCAA protection with \$87 million in past-due trade payables. Historically, the Debtors managed cash outlays by ordering goods on consignment. Suppliers are now refusing consignment terms, instead demanding significant upfront cash payments or evidence of committed financing beyond the week of July 3, 2026. The Debtors are currently booking contracts with suppliers now, but unless suppliers can see that funds exist to honour those contractual obligations, they are refusing to place orders on their end, which is causing material delay and risk.

21. Neither the Objecting Bidder's proposed "Interim Bridge DIP" nor the court-ordered charge provides sufficient liquidity beyond the week of July 3, 2026. A short four-week bridge facility is

inadequate because it fails to demonstrate to stakeholders and suppliers that the Debtors have the financial capacity to honour their contractual obligations beyond that date.

22. Without long-term committed financing that provides confidence to all stakeholders and suppliers, the Debtors will be unable to procure the goods and services urgently required to operate the Mine. In those circumstances, the Mine will be forced to curtail or entirely cease operations in the coming year. If the Mine is not fully operational, all stakeholder recoveries will be impaired and the Debtors' ability to conduct a robust SISP will be compromised.

(ii) An "Interim Bridge DIP" Does Not Remedy Employee Uncertainty

23. Employee attrition compounds the urgency. The Debtors' workforce is flown in and out of the Mine on a rotational basis from across Canada. Already, at least 19 employees have quit, due in part to concerns about being stranded at the Mine with no ability to get home if the Debtors do not secure proper financing. Local media, particularly in Nunavut, have been following these proceedings closely, reporting on the Debtors imminently running out of cash. This coverage has contributed to the low employee confidence in our business and has undermined our efforts to communicate that it is business as usual during the CCAA proceedings. For example, I have attached as **Exhibit "A"** to this Affidavit a number of recent news articles concerning the ongoing CCAA Proceedings.

24. The Debtors need to be able to credibly tell their employees that the financing obtained through the CCAA process is not "interim" or "temporary." The most effective message to bring stability and confidence is that the Debtors and EDC, representing the Government of Canada, have reached an agreement ensuring the Mine's operation in 2026, 2027 and beyond. Any "Interim Bridge DIP" proposed by the Objecting Bidder does not compare qualitatively or quantitatively.

25. Moreover, the Debtors expect to seek approval of a Key Employee Retention Plan and/or Key Employee Incentive Plan ("KERP" and "KEIP"). Many proposed KERP recipients hold highly specialized technical roles relating to the Mine's operations and procurement. They possess years of accretive knowledge about the business and its complexities. In my view, these individuals are effectively irreplaceable. The training time, market constraints, relationship continuity, and loss of institutional knowledge would irreparably harm the business and impair stakeholder recoveries.

26. I have very serious concerns that, without the timely approval of a KERP and KEIP, the Debtors will lose key personnel with technical and operational expertise that cannot be replaced. I and other members of the management team need the assurances that a KERP provides. The Debtors have been unable to seek approval of the KERPs because they do not have the committed financing needed to fund them. This approval cannot happen unless the EDC DIP Facility is approved.

(iii) The "Interim Bridge DIP" Contributes to Community Concerns

27. Community confidence is also at stake. The Debtors' operations have a disproportionate impact on the Baffin Island and Nunavut economy. Community members are watching these CCAA proceedings closely. It is of the utmost importance that the Debtors maintain the confidence of the local community, including the Qikiqtani Inuit Association ("QIA"). To do so, the Debtors must be able to present a comprehensive restructuring solution that includes sufficient committed DIP financing to ensure ordinary course operations for this year and beyond.

C. THE DIP PROCESS WAS FAIR AND REASONABLE

28. The Objecting Bidder alleges in the cross-motion that the DIP Process was flawed and that the Debtors engaged in a "bait and switch" by negotiating a larger DIP facility with EDC than was indicated to other bidders, while refusing to negotiate in good faith with the Objecting Bidder.

Court File No. CL-26-00000219-0000

**Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation
and 12334992 Canada Inc.**

SECOND REPORT OF THE MONITOR

June 4, 2026

72. As set out above, irrespective of which Final DIP Proposal was chosen by the Debtors and is ultimately approved by the Court, based on stakeholder feedback and the Monitor's observations of the CCAA Proceedings to date (including through its participation in the meetings of the Operating Committee, which includes representatives from the Debtors' two shareholder groups), the Monitor believes that the Debtors would benefit from the appointment of an experienced CRO. The Monitor will work with stakeholders in identifying an appropriate CRO and will make a recommendation to the Court in that regard.

Whether the Debtors' Management has the confidence of its major creditors

73. The Monitor notes that the Debtors' business is complex and relies on a number of complicated contractual and strategic relationships with various stakeholder groups. The Debtors' Management play a critical role and have extensive experience in managing these relationships and the Monitor is of the view that they are therefore important to the go-forward business of the Debtors.

Whether the DIP Financing Agreement would enhance the prospects of a viable compromise or arrangement being made in respect of the Debtors

74. While section 11.2(4) of the CCAA refers to a "compromise or arrangement", given the variety of ways in which successful going-concern outcomes are now structured in proceedings under the CCAA, including asset sales, and "reverse vesting order" transactions, the Monitor is respectfully of the view that it is appropriate for the Court to take a broader view of this factor and expand it to consider these other approaches.

75. Without the DIP Facility, the Debtors would, in the very near future, exhaust their available liquidity resources and be unable to pay its obligations as they become due, in particular during the crucial upcoming Sealift Season, continue operations, maintain their assets, undertake the SISP or complete any transaction. The Monitor is of the view that approval of the DIP Financing Agreement will enhance the prospects of the business and operations of the Debtors being preserved and a successful going-concern outcome being achieved.

The nature and value of the Debtors' property

76. The Debtors' assets are described in the First Van Tonder Affidavit and consist primarily of the Mine operation. The market value of the Debtors' property will be finally determined through the SISP.
77. Nothing has come to the attention of the Monitor in respect of the nature of the Debtors' property that, in the Monitor's view, requires particular consideration in connection with the DIP Charge.

Whether any creditor would be materially prejudiced by the DIP Charge

78. The proposed DIP Facility would provide the Debtors the opportunity to undertake the SISP and to complete a transaction.
79. The DIP Financing Agreement is conditional on the DIP Charge being granted. The Monitor notes that secured creditors of the Debtors would be primed by any DIP Charge granted. The Monitor further notes that this would be true regardless of which of the three Final DIP Proposals was chosen by the Debtors.

Court File No. CL-26-00000219-0000

**Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation
and 12334992 Canada Inc.**

SUPPLEMENT TO THE SECOND REPORT OF THE MONITOR

June 9, 2026

8. This Supplemental Report has been prepared to provide to the Court with information concerning the following:
 - (a) The Agreed Terms of Adjournment;
 - (b) A side-by-side comparison between the DIP Financing Agreement, the Final DIP Proposal from the DIP Lender, and the Final DIP Proposal from the Ad Hoc DIP Group (the “**DIP Comparison Chart**”);
 - (c) The June 6 Letter and June 8 Responding Letter (each as defined below);
and
 - (d) The Litigation Timetable (defined below).

AGREED TERMS OF ADJOURNMENT

9. At the June 5 Hearing, counsel to the Monitor described the terms of the agreed upon adjournment of the DIP Approval and Related Relief Hearing and the Cross-Motion (the “**Agreed Terms of Adjournment**”). Attached hereto as **Appendix “C”** is an email from counsel to the Monitor setting out the Agreed Terms of Adjournment between the Company, the Senior Secured Lenders, the DIP Lender and the Energy and Minerals Group (the “**Adjournment Parties**”). The Agreed Terms of Adjournment were sent to the Adjournment Parties.
10. The Monitor notes that the materials delivered by the Senior Secured Lenders in conjunction with the Cross-Motion make references to a potential “stand alone” DIP facility that is separate and apart from the Final DIP Proposal provided by the Ad Hoc DIP Group. Based on the Monitor’s observations of the Debtors interactions with their employees, suppliers and other key stakeholders, and for the reasons set out in the affidavits of Ms. Van Tonder filed in these CCAA Proceedings, the Monitor is of the view that a “stand alone” DIP facility will not provide the stability and certainty needed for the Debtors to procure crucial supplies and transport them to Baffin Island during the upcoming Sealift Season.

***The Debtors and the
Monitor Ran a Fair and
Competitive DIP
Solicitation Process that
Concluded on May 30***

- (f) The EDC Proposal is cost competitive with the other proposals received in terms of the costs of borrowing.
- (g) The EDC Proposal provides the Debtors with certainty as to the identity of their lender and does not impose additional administrative hurdles in obtaining approvals from a broad base of disparate lenders.
- (h) The EDC Proposal provides the largest loan facility among the three bidders which provides the greatest flexibility to the Debtors and increased certainty that the Debtors will be able to continue operating in the ordinary course throughout the CCAA proceeding. This, in turn, should provide for the greatest opportunity to enhance value for all stakeholders.

E. THE DIP SOLICITATION PROCESS

(i) *Pre-Filing Solicitation Process*

51. To address the Debtors' anticipated liquidity needs during these CCAA proceedings, FTI, in its capacity as the Debtors' financial advisor, commenced a competitive debtor-in-possession financing solicitation process (the "**DIP Process**"). I understand that the DIP Process will be addressed in the Monitor's Second Report.

52. Prior to the commencement of the CCAA proceedings, FTI contacted four parties to solicit their interest in providing a DIP facility to the Debtors: (a) Opps XII BLIM Holdings, L.P., an entity affiliated with Oaktree Capital Management LP ("**Oaktree**") and Hartree Partners, LP ("**Hartree**"), the Debtors' secured lenders under a working capital facility; (b) Export Development Canada ("**EDC**"), the Debtors' secured lenders under a term loan facility; (c) JP Morgan Chase; and (d) the Royal Bank of Canada. The holders of secured notes issued by Baffinland due 2026 (the "**2026 Notes**") were not approached in the pre-filing DIP Process because the Debtors were, at

that time, pursuing efforts to recapitalize the 2026 Notes. Had those recapitalization efforts succeeded, the Debtors hoped that the commencement of these CCAA proceedings would not have been necessary.

53. Each party was provided with a form of non-disclosure agreement (each, an "**NDA**") on or about April 30, 2026. EDC signed its NDA on May 8, 2026. JP Morgan signed an NDA on May 6, 2026. RBC ultimately did not sign an NDA. Oaktree/Hartree did not sign an NDA until May 23, 2026, despite having received a draft on April 30, 2026.

54. As described above, the Debtors filed for CCAA protection on May 15, 2026 without DIP financing in place. Although one non-binding DIP proposal had been received prior to filing, it was not capable of execution. This was primarily because it did not include any economic terms and contained onerous terms and conditions. Ultimately, the Debtors, in consultation with FTI, determined that the Debtors had sufficient cash flow to allow them to commence CCAA proceedings and that the Debtors' financial circumstances and defaults under the senior secured debt warranted an immediate filing, with a renewed DIP Process to be launched after the Initial Order was granted. At the Initial Order hearing, the Debtors advised the Court that they would seek approval of DIP financing at the comeback hearing scheduled for May 25, 2026.

(ii) Post-Filing DIP Process

55. Following the commencement of the CCAA Proceedings, the Monitor initiated a post-filing competitive DIP Process. I understand that on or around May 15, 2026, the Monitor sent a DIP solicitation letter to six prospective bidders, including JP Morgan, RBC, EDC, Oaktree and Hartree, certain holders of the 2026 Notes (the "**Ad Hoc Group**"), and IRH, substantially in the form attached as **Exhibit "C"** to this Affidavit (the "**Process Letter**"). The Process Letter invited parties to submit final, executed bridge financing term sheets, together with a draft form of term sheet prepared by the Debtors, by 5 p.m. on May 20, 2026.



Exhibit C to the Affidavit of Joshua Gordon sworn June 4, 2026 (Objecting Bidder's Motion Record June 4, 2026, Tab 2C), p. B-1-661.

Corporate Finance

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May 15, 2026

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park Bank of America Tower
New York, NY 10036
Attention: Mr. Ira S. Dizengoff

Dear Mr. Dizengoff:

Re: Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation and 12334992 Canada Inc. (together, the “**Applicants**”)

Pursuant to an order made by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 15, 2026, the Applicants and Baffinland Iron Mines LP (together, the “**Debtors**”) were granted protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and FTI Consulting Canada Inc. was appointed monitor (in such capacity, the “**Monitor**”). A copy of the Initial Order and other Court materials filed publicly in these CCAA proceedings are available on the Monitor’s website at: <https://cfcanada.fticonsulting.com/baffinland>.

The principal purpose of these CCAA proceedings is to provide the Debtors with the stability and breathing room necessary to continue operations on a going-concern basis while they pursue a refinancing, recapitalization, restructuring plan, investment, or sale solicitation process (or any combination of the foregoing) designed to maximize value for the benefit of all stakeholders.

The Debtors and the Monitor are undertaking a competitive interim financing solicitation process (“**DIP Financing Process**”) to include the Debtors’ working capital requirements, general corporate purposes, post-filing expenses and expansion plans during these CCAA proceedings.

Interested parties must execute a non-disclosure agreement, in form and substance satisfactory to the Debtors and the Monitor.

Participants in the DIP Financing Process will receive both an interim financing budget and a form of interim financing term sheet.

The Monitor and the Debtors will be available to engage with parties participating in the DIP Financing Process to discuss same.

Final, definitive, executed interim financing term sheets, along with a blackline to a form of the interim financing term sheet, must be submitted to the Debtors and the Monitor by no later than 5:00 pm (Toronto time) on May 20, 2026 (the “Deadline Date”) via email to the email addresses set out below:

Jeffrey Rosenberg

Greg Watson

Email: Jeffrey.Rosenberg@fticonsulting.com Email: Greg.Watson@fticonsulting.com

The Debtors, in consultation with the Monitor, will consider all executed interim financing term sheets received prior to the Deadline Date, which will include a consideration of various factors, including:

- The size of each interim financing facility;
- The cash costs associated with each interim financing proposal;
- The terms, conditions, covenants and events of defaults in each interim financing proposal;
- The relative degree of potential operational disruption resulting from each interim financing proposal; and
- The continued availability of margin and hedging arrangements under each interim financing proposal.

The Monitor and the Debtors may, following receipt of any interim financing proposal, seek clarification with respect to any of the terms or conditions of the interim financing proposal and/or request and negotiate one or more amendments to such interim financing proposal prior to selecting an interim financing proposal.

Following the Deadline Date, the Debtors, in consultation with the Monitor, will review the interim financing proposals received. The selected proposal in the DIP Financing Process will require Court approval. The Debtors are not obliged to accept any offer. The Monitor and the Debtors reserve the right to evaluate all offers, to negotiate their terms and to reject any and all offers and to amend the DIP Financing Process as it considers appropriate.

If you have any questions, please do not hesitate to contact Jeffrey Rosenberg or Greg Watson.

Yours very truly,



Jeffrey Rosenberg, Senior Managing Director

FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND 12334992 CANADA INC.

DIP FACILITY LOAN AGREEMENT

DATED AS OF ■, 2026

WHEREAS Baffinland Iron Mines Corporation and Baffinland Iron Mines LP (collectively, the "**Borrowers**") have requested the DIP Lender (defined below) to provide funding in order to assist with proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to be commenced before the Ontario Superior Court of Justice – Commercial List (the "**Court**") in accordance with the terms and conditions set out herein (the "**CCAA Proceeding**");

AND WHEREAS the DIP Lender has agreed to provide the DIP Facility (defined below) in accordance with the terms and conditions set out below.

NOW THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms:** A capitalized term not defined in the body of this Agreement has the meaning ascribed to it in the Definitions section below.
2. **Interpretation:** In this Agreement, words signifying the singular number include the plural and *vice versa*, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

References in this Agreement to Sections or Schedules are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise.
3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America.
4. **Borrowers:** Baffinland Iron Mines Corporation ("**BIM Corp**") and Baffinland Iron Mines LP ("**Baffin LP**").
5. **Guarantors:** Means Nunavut Iron Ore, Inc. and 12334992 Canada Inc. (collectively, the "**Guarantors**" and collectively with the Borrowers, the "**Obligors**").
6. **DIP Lender:** ■ (the "**DIP Lender**").
7. **DIP Facility:** The DIP Lender agrees to establish in favour of the Borrowers a debtor-in-possession revolving credit facility (the "**DIP Facility**") in the principal amount equal to \$300,000,000 (the "**Loan Amount**").

The DIP Facility is a revolving credit facility and, accordingly, amounts Advanced pursuant to Section 8 may be repaid and reborrowed by the Borrowers until the Maturity Date.

8. **DIP Advances:** An initial advance under the DIP Facility in the principal amount of **[\$25,000,000]** (the "**Initial Advance**") shall be made available to the Borrowers and shall be deposited into the Borrowers' Account (defined below) on the date of the Initial Order, provided the Initial Advance Conditions are satisfied as of such date.
- Advances under the DIP Facility, other than the Initial Advance (each, an "**Advance**") require a written notice to be delivered to the DIP Lender, at least two Business Days prior to the requested date of the Advance, or such shorter period as may be agreed by the DIP Lender in advance (each, an "**Advance Notice**"), which has been approved by the Monitor and executed by an officer of the Borrowers setting out: (a) the proposed amount of the requested Advance; (b) the date the Advance is required; and (c) certification that the representations and warranties contained herein are true and correct in all material respects as of such date.
- The DIP Lender shall deposit into the Borrowers' Account the amount requested by the Borrowers pursuant to the Advance Notice on the requested date of the Advance; provided that the conditions in section 16 are satisfied as of such date; other in in respect of the Initial Advance which shall be deposited into the Borrowers' Account on the date of the Initial Order; provided the Initial Advance Conditions are satisfied as of such date.
9. **Use of Proceeds:** The proceeds of the DIP Facility shall be used solely by the Borrowers in accordance with the Approved Cash Flow, which shall include provision for payment of (i) the fees of the Monitor and its counsel and counsel for the Borrowers, (ii) interest owing to the DIP Lender under this Agreement, (iii) expenses payable under the DIP Facility and ordinary course payments for the Borrowers' working capital needs during the CCAA Proceeding, including, post-filing accounts payable in the ordinary course of the Business and Priority Payables, (iv) royalty payments under the Royalty Agreements, and (v) amounts payable under the Benefits Agreement. No proceeds may be used for any other purpose except with the prior written approval of the DIP Lender, acting reasonably.
10. **Assignment by the Borrowers:** The Borrowers shall not be permitted to assign this Agreement without the prior written consent of the DIP Lender.
11. **Evidence of Indebtedness:** The DIP Lender shall maintain a register evidencing Advances and repayments under the DIP Facility and all other amounts owing from time to time hereunder. The DIP Lender register constitutes, in the absence of manifest error, *prima facie* evidence of the Indebtedness of the Borrowers to the DIP Lender pursuant to the DIP Facility.

19. **Borrowers' Account:** Advances shall be deposited into a bank account to be designated by the Borrowers (the "**Borrowers' Account**") and utilized by the Borrowers in accordance with the terms of this Agreement.
20. **Repayment and Maturity Date:** All DIP Obligations shall be due and payable on the earliest of the occurrence of any of the following:
- (a) conversion of the CCAA Proceeding into a proceeding under the *Bankruptcy and Insolvency Act* (Canada);
 - (b) the occurrence of an Event of Default which is continuing and has not been cured within **[30]** days of the Borrowers receiving written notice of such Event of Default from the DIP Lender and the DIP Lender has notified the Obligors pursuant to Section 28 that it has elected to accelerate all amounts owing; or
 - (c) the date which is ■ months after the closing of a Restructuring Transaction, or combination of Restructuring Transactions that generated sufficient proceeds to repay the DIP Obligations,
- (such earliest date, the "**Maturity Date**").
- The DIP Lender's commitment to make Advances under the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be fully repaid no later than the Maturity Date, without the DIP Lender being required to make demand upon the Borrowers or Guarantors or to give notice that the DIP Facility has expired and that the obligations thereunder are due and payable.
21. **Payments:** All payments of principal and expenses hereunder, if applicable, shall be made for value in the full amount due at or before 12:00 noon on the day such amount is due by deposit or transfer thereof to the DIP Lender or as the DIP Lender may direct. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment. Each payment to be made by the Borrowers under this Agreement shall be made in full without deduction, set-off or counterclaim of any kind or for any reason. If any expenses incurred by the Borrowers after the date of this Agreement are not paid by the Borrowers, the DIP Lender may, but shall have no duty to do so, pay all such expenses whereupon such amounts shall be added to and form part of the DIP Obligations and shall reduce the availability under the DIP Facility.
22. **Indemnity:** The Obligors agree to indemnify and hold harmless the DIP Lender, solely in its capacity as lender under the DIP Facility and not in any other capacity, and its Affiliates, partners and officers, directors, employees, representatives, advisors, solicitors and agents (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), claims, losses,

SCHEDULE A
APPROVED CASH FLOW

Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation and 12334992 Canada Inc. (collectively, the “Company”)

Assumptions to the Cash Flow Forecast

The Company's cash flow forecast (the "Forecast") is presented in millions of United States dollars. Any estimates in Canadian dollars have been translated at a foreign exchange rate of 1.38:1.

In preparing this cash flow forecast, the Company has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast includes assumptions described below with respect to the requirements and impact of a filing under the Companies' Creditors Arrangement Act. Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

- [1] **Purpose:** The purpose of the Forecast is to estimate the Company's liquidity requirements during the period May 30, 2026 to August 28, 2026 (the "**Forecast Period**").
- [2] **Receipts:** Receipts from the Company's off-take financing partner are based on forecast invoice amounts under the 2026 off-take agreement. Off-take receipts are received throughout the year, while inventory buyback and shipping sales occur during July to October each year. The Company has hedged approximately half of its 2026 production. Commercial Payments relate to shipping and freight costs associated with delivering sales.
- [3] **Labour:** Forecast based on planned production levels at Mary River Mine and management and overhead labour required to support same. The Company is current with all labour costs and related CRA payments.
- [4] **Vendor Payments:** Disbursements to commercial vendors, freight suppliers, government entity payments and various other operating costs required to facilitate continued mine operations. Includes an estimated amount that may be required to be paid to critical vendors for pre-filing amounts. Also includes amounts owed to the Qikiqtani Inuit Association and related parties in accordance with the Benefits Agreement as of May 15, 2026.
- [5] **Sealift Purchases:** Disbursements for consumables, freight, fuel and vendor pre-payment amounts required for shipment of goods to the Mary River Mine during the Sealift window.
- [6] **Sustaining Capital Costs:** Capital costs necessary to support and maintain operations at the Mary River Mine.
- [7] **Overhead Costs:** Payments for office general and administrative expenses, land lease payment to the QIA and insurance instalment payments.
- [8] **Exploration:** Exploration costs are associated with location identification, discovery, and quantity and quality assessments of deposits in the Mary River Mine area.
- [9] **Steensby Project Costs:** Costs to advance the Steensby project, as well as stripping costs for movement of surface material usable towards the Steensby Railway.
- [10] **Other Costs:** Professional Fees, Interest costs, and costs to support LC issuance.
- [11] **Liquidity:** The Company estimates it will require approximately \$201 million of liquidity for the period May 30, 2026 to August 28, 2026 under the set of assumptions outlined above and included in the Forecast. The Forecast assumes, among other things, that (i) the company continues on a growth oriented mining plan and continues to incur associated stripping costs in order to achieve 22 Mtpa of iron ore production capacity by 2030, (ii) all major sealift items (fuel, parts, tires) continue to be cash purchased (and not brought to site on consignment), and (iii) major site services and related overheads remain unchanged. Note that the Forecast does not include amounts for interest, fees or other cost of capital considerations.

not send the DIP Budget to Oaktree/Hartree at that time because they had not yet signed an NDA. In any event, both EDC and Oaktree/Hartree had, in their capacity as lenders to the Debtors, received prior iterations of a potential DIP budget over the preceding months outside of the DIP Process and as such are familiar with the financial affairs of the Debtors.

60. The Ad Hoc Group were the only party that did not receive the full DIP Budget and corporate presentation. Because the 2026 Noteholders wished to continue trading the 2026 Notes, they indicated that they did not want to be in receipt of material non-public information contained in those materials (other than the 13-week cash flows). Instead, at the request of the Ad Hoc Group, this information was provided to Houlihan Lokey (the financial advisors to the Ad Hoc Group) on May 17, 2026, pursuant to a NDA executed by Houlihan Lokey on May 16, 2026.

61. Given the significant interest in providing DIP funding expressed by prospective lenders, the Monitor, in consultation with the Debtors, extended the bid submission deadline to 5 p.m. on May 25, 2026. This extension was granted to provide the bidders with additional time to prepare their best proposals and to help ensure a more robust and competitive process. I advised the Court of this extension in my Comeback Affidavit.

62. On May 25, 2026, the Debtors received three DIP term sheets: one from His Majesty in Right of Canada as represented by EDC, one from IRH, and a joint-proposal from Oaktree/Hartree and certain of the Ad Hoc Group.

63. Following receipt of the DIP term sheets, the Debtors and their counsel, in consultation with the Monitor, reviewed and discussed the comparative benefits and risks associated with the three proposals. Through those discussions, the Debtors identified certain issues that warranted further discussion and engagement with each of the bidders. In an effort to ensure fair and equitable treatment among the three bidders participating in the DIP solicitation process, each

**Exhibit "F" to the Affidavit
of Joshua Gordon dated
June 4, 2024 (Objecting
Bidder's Joint Motion
Record)
p. B-1-856**

From: Rosenberg, Jeffrey <Jeffrey.Rosenberg@fticonsulting.com>
Sent: Wednesday, May 27, 2026 9:48 AM
To: mkonyukhova@stikeman.com; Jacobs, Ryan <rjacobs@cassels.com>
Cc: Watson, Greg <greg.watson@fticonsulting.com>; mwasserman@osler.com
Subject: CCAA Proceedings of Baffinland Iron Mines Corporation et al. (the "Applicants") (Court File No. CL-26-00000219-0000) – Applicants' Issues List in respect of Interim Financing Proposal

CAUTION: External Email

Please find attached the Applicants' issues list in respect of the interim financing proposal that you submitted in connection with the interim financing solicitation process being conducted by the Applicants.

Please provide responses to the issues identified by **no later than 3:00 p.m. (Toronto time) today, May 27, 2026.**

Thank you, Jeff

Jeffrey Rosenberg
Senior Managing Director

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Project O – DIP Proposal – Secured Lenders

The following is a list of the key business and legal issues arising from our review of Oaktree Capital Management, L.P. and Hartree Partners, LP (collectively, “**Oaktree**”) and the ad hoc group of holders of 8.750% senior secured notes due 2026 issued by Baffinland Iron Mines Corporation (collectively, the “**Noteholders**” and together with Oaktree, the “**Secured Lenders**”) comments to the bid draft DIP Facility Term Sheet (the “**Term Sheet**”) of Baffinland Iron Mines Corporation and Baffinland Iron Mines LP (collectively, “**BIM**”). This list does not constitute a comprehensive list of issues or comments on the Term Sheet. Capitalized terms used but undefined herein have the meanings ascribed to them in the Term Sheet.

#	Issue	Bid Draft Term Sheet	Oaktree and Noteholder Draft	BIM Comments
1.	DIP Facility	\$300M revolving DIP Facility.	<p>\$300M delayed draw term facility. Lenders are severally and not jointly liable.</p> <p>The DIP Lenders also proposed an interim financing facility in the amount of \$70M with an initial advance of \$50M. The terms of this facility include an Exit Fee of \$1.2M payable upon repayment, unless refinanced before maturity.</p>	<p>Unclear what happens if a DIP Lender fails to fund. Especially given there is no termination right for the Borrower if this occurs.</p> <p>DIP Facility expected to be a revolver.</p> <p>Anticipating potential litigation in connection with the DIP - the DIP should contemplate a potential interim financing in the amount of \$110M at BIM’s option, not subject to fees for an initial four week period and be freely assignable in a refinancing.</p>
2.	DIP Advances	No cap on subsequent advances, need only satisfy the Subsequent	Initial Advance Conditions require (i) a stay of proceedings until at least September 30, 2026, (ii)	This level of conditionality on the Initial Advance is not aligned with committed financing.

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		Advance Conditions (essentially no EoD and Amended and Restated Initial Order has been issued).	advance notice of at least 3 Business Days, (iii) DIP lenders must have received officer's certs and resolutions in a form satisfactory to them and be satisfied that no encumbrances rank ahead of the DIP Charge and (iv) the Borrowers must provide a list of all material licenses and permits required for the continued operation of the Business.	
3.	Use of Proceeds	DIP Facility to be used in accordance with Approved Cash Flow, which includes royalty payments under Royalty Agreements and amounts payable under the Benefits Agreement.	DIP Facility to be used in accordance with the Approved Cash Flow Forecast, including pre and post-filing expenses payable to the DIP Lenders or their advisors under the Senior Credit Agreement and the Indenture, royalty payments and amounts payable under the Benefits Agreement. BIM and Monitor professional fees are only to be paid if in the Approved Cash Flow Forecast.	The use of proceeds are inconsistent with the covenants which preclude Royalty Payments to shareholders of Borrowers. Pre-filing amounts cannot be paid under DIP. BIM professional fees cannot be subject to approval by the DIP Lender. Monitor cannot have any limitation on its role in this case or otherwise fetter its rights by restricting its ability to pay its fees and the fees of its counsel.

4.	Interest and Fees	Interest on DIP Facility to be proposed by DIP lenders.	<p>Interest rate to be Adjusted Term SOFR (as defined in the Senior Credit Agreement)¹ plus 7.00%.</p> <p>Upfront fee of 3.00% payable on the total Loan Amount which PIKs. Unclear whether this fee reduces total availability.</p> <p>Borrowers are to pay all reasonable fees of advisors which include: (i) Stikeman, (ii) Paul Weiss, (iii) a financial advisor, (iv) Akin, (v) Cassels and (vi) Houlihan Lokey, in connection with the DIP and a potential Restructuring Transaction. All accrued expenses will be paid in full through a deduction from the initial advance. Third party fees are to be paid within 2 Business Days of being invoiced.</p>	<p>Best and final pricing terms should be delivered in next round.</p> <p>Secured Lenders to provide an estimate of all professional fees and expenses until maturity and how much is currently outstanding. This is an excessive number of advisors. Secured Lenders to confirm if payment of fees are guaranteed by Secured Lenders.</p>
5.	Financial Reporting	Approved Cash Flows to be attached to the Term Sheet and approved by the DIP Lender.	Approved Cash Flows may be revised in a form acceptable to the Required DIP Lenders. No further amounts past the 13-week Approved Cash Flow Forecast	BIM requires committed funding for the anticipated 24 month SISP process, based on its cash projections previously shared.

¹ Adjusted Term SOFR is defined in the Senior Credit Agreement as Term SOFR for the relevant interest period (e.g. approximately 3.6% today) plus 0.10%-0.25% depending on the applicable SOFR term, subject to a 2% floor.

		No variance reporting.	may be rolled-forward unless the DIP Lenders approve. Revised cash flows provided from time to time. Variance reports deliverable every second week. A negative variance of more than 10% in any two-week period is an Event of Default.	The Approved Cash Flow is to be in a form originally acceptable to the Secured Lenders, acting reasonably. An agreed form of variance report is to be delivered every 4 weeks. If such variance report does not show a negative variance of more than 15% (excluding the impact of the Secured Lender's professional fees and expenses and commodity price fluctuations) the applicable cash flows will not be subject to rejection by the Secured Lenders.
6.	Repayment and Maturity	Revolving facility must be repaid upon the earlier to occur of (i) an Event of Default which is not cured for 30 days, (ii) conversion to a BIA proceeding, or (iii) some period after the completion of a Restructuring Transaction.	DIP Facility must be repaid upon the earlier to occur of (i) an Event of Default (some limited cure periods on some Events of Default), (ii) 1 year after the date of the DIP Term Sheet, subject to two extension of 3 months each if the DIP Lenders approve of the new budget and a 2% extension fee which PIKs, or (iii) conversion of the CCAA Proceedings into proceedings under the BIA.	A number of EoDs have a hair trigger on default; reasonable cure periods are required. Outside date for SISP process and potential extension periods are too short given proposed SISP process length. BIM requires at least 2 months to design SISP process and 24 months from its initiation.
7.	Prepayments	No mandatory prepayment provision.	BIM required to prepay DIP Facility in the event it disposes of collateral outside of the ordinary course of business or receives any insurance proceeds or any	Standard carve-outs for insurance proceeds and cash from disposal of obsolete goods being used to replace damaged or obsolete assets to be included.

			cash received outside of the ordinary course of business.	Cash received outside of ordinary course of business should not be required to be paid to the DIP Lenders.
8.	Representations	Limited set of reps provided.	Scope of reps greatly expanded, including, among others: (i) title rep, (ii) licence rep, (iii) insurance rep, (iv) no default under Material Contracts rep, (v) no litigation rep, (vi) no omissions rep, and (vii) a SISP and Steensby expansion reporting rep.	To discuss if added reps are capable of being made; however, some are duplicative and unworkable. Scope of reps to be pared back substantially and standard materiality, reasonability and knowledge qualifiers to be added.
9.	Covenants	Limited set of positive and negative covenants.	Scope of positive covenants greatly expanded, including, among others, covenants to: (i) deliver information requested by the DIP Lenders, (ii) provide the DIP Lenders with drafts of all motion materials, (iii) pay all DIP Lender expenses at least every two weeks, (iv) continue operations in the ordinary course, ensure fuel is obtained, ship all products for sale and not change employee head count, (v) disclaim all contracts not within the Approved Cash Flow Forecast, (vi) establish a risk management program and provide the DIP Lenders with a right of first refusal on any hedges, (vii) take all actions to maintain all licenses and to	Scope of covenants extremely restrictive and duplicative in a number of places. Covenants to be pared back substantially and standard materiality, reasonability and knowledge qualifiers added to avoid unnecessary Events of Default and allow BIM to operate its business. 6Mt permit is not held by the business. DIP Lenders should not have a right of first refusal on hedges. This would prevent BIM from obtaining hedges on market terms.

			<p>obtain and preserve the permit to allow for transportation of 6Mt, and (viii) enter into a KERP/KEIP by June 5, 2026 in form satisfactory to DIP Lenders.</p> <p>Scope of negative covenants likewise greatly expanded, including prohibitions on (i) royalty payments to shareholders, (ii) payments to Glencore, and (iii) taking any action which may impair the ability of the Obligor to utilize operating losses.</p>	
10.	SISP	<p>Deadline for commencement of SISP to be six months after the issuance of the Initial Order.</p> <p>SISP to close no later than 24 months after the commencement of the SISP.</p>	<p>SISP process to be in form acceptable to the DIP Lenders, must be commenced within 3 months of the Second Amended and Restated Initial Order. Final deadline for SISP is 1 year after its commencement.</p>	<p>BIM requires at least 2 months to design SISP process and 24 months from its initiation.</p>
11.	Events of Default	<p>Standard set of Events of Default</p>	<p>Scope of Events of Default greatly expanded, including, among others, (i) cross default with any Material Contract, or an amendment thereto, (ii) default upon failure to pay DIP Lender expenses within 2 Business Days of invoices therefor, (iii) a 10%</p>	<p>As with the added covenants, the added Events of Default are extremely onerous, duplicative and serve as another tool for the DIP Lenders to control the operations of the business.</p>

			<p>cumulative negative variance from the DIP Budget, (iv) any order granted against BIM in excess of \$100,000, and (v) any event that materially affects the Obligors as determined by the DIP Lenders in their sole discretion.</p> <p>Upon an Event of Default occurring the DIP Lenders can accelerate the repayment of the DIP Facility, including the Commitment Fee. There are no general cure periods on defaults and very limited cure periods on certain specified defaults.</p>	
12.	Termination	BIM is entitled to terminate in the event the DIP Lender fails to fund or upon the full payment of the DIP Obligations.	BIM is only entitled to terminate the Term Sheet upon the <u>indefeasible</u> payment of the DIP Obligations.	<p>The effect of this change is to allow the DIP Lenders to not fund and preclude BIM from terminating the DIP Facility.</p> <p>Additionally, even after BIM repays all of the DIP Obligations, the DIP Facility (and the security granted in connection therewith) will not be terminated/released until it has been determined to have been indefeasibly repaid. Lenders have used the addition of “indefeasible” repayment to not release security for up to six months.</p>

13.	Assignment	Silent on DIP Lender assignment.	DIP Lenders entitled to assign prior to Initial Advance and are only severally liable for obligations.	This creates ability for DIP Lenders to avoid funding by assigning to parties without adequate liquidity to fund draws. It also creates the potential for a large number of DIP Lenders – creating potential material administrative impediment to approvals. A similar issue arises in respect of the various Supermajority DIP Lender approval requirements. To ensure potential interim financing can be provided during potential litigation in connection with the DIP, DIP should be capable of refinance without fees for a limited duration.
14.	Steensby	Silent on Steensby.	The DIP Lenders will only approve allocations to Steensby if a binding bid in the SISF has been provided which repays in full the DIP and the obligations to the senior secured creditors in full and the bidder consents to the Steensby Expansion, in addition to other conditions.	This will preclude any payments on Steensby, including those necessary to maintain authorizations. Please confirm if this is still the Secured Lenders' position.
15.	Operating Plan	Silent on operating plan.	BIM required to provide a business plan for approval by the Secured Lenders.	This overly restricts BIM's ability to manage its operations during the CCAA proceedings; adequate oversight is provided by the Approved Cash Flow.

16.	Syndication	Silent on syndication.	No backstop provisions included.	If loan is to be syndicated customary lender backstop provisions are required to ensure certainty of funding, including restrictions on eligible lenders, and defaulting lender provisions.
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**Exhibit "H" to the
Affidavit of Joshua
Gordon dated June 3,
2026 (Objecting Bidder's
Motion Record)
p. B-1-884**

From: Renner, Natalie <nrenner@dwpv.com>

Sent: Thursday, May 28, 2026 8:22 PM

To: pyang@stikeman.com; idizengoff@akingump.com; mlahaie@akingump.com; lcharleston@akingump.com; nethridge@akingump.com; Jacobs, Ryan <rjacobs@cassels.com>; Wunder, Michael <mwunder@cassels.com>; mkonyukhova@stikeman.com; lcopen@stikeman.com; Brian Bolin (bbolin@paulweiss.com) <bbolin@paulweiss.com>; jgraham@paulweiss.com

Cc: Project Canary <projectcanary@osler.com>; Greg Watson <greg.watson@fticonsulting.com>; Rosenberg, Jeffrey <jeffrey.rosenberg@fticonsulting.com>; Renner, Natalie <nrenner@dwpv.com>; Cutler, Steven <SCutler@dwpv.com>; Hyman, Scott <SHyman@dwpv.com>; Nicholls, Robert <rnicholls@dwpv.com>

Subject: Project Canary - Confidential - DIP Term Sheet - OTH AGH

CAUTION: External Email

All,

Please find attached a turn of the DIP Term Sheet, with a blackline against the version you circulated. Please return your best and final terms by no later than **Saturday, May 30, 2026 at 2:00 PM (Toronto time)**. This will be the final set of terms that will be considered by the Debtors before they identify a successful party to move forward to finalize a definitive agreement.

The Debtors remain available to address any questions you have in advance of Saturday. However, please note that the term sheet will not be subject to negotiation during any such discussions. If you would like assistance in arranging a meeting, please let us know.

Best regards,
Natalie

Natalie Renner She, Her

T 416.367.7489

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Bio | vCard

DAVIES

155 Wellington Street West

Toronto, ON M5V 3J7

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DAVIES WARD PHILLIPS & VINEBERG LLP

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DIP FACILITY LOAN AGREEMENT**DATED AS OF May ■, 2026**

WHEREAS Baffinland Iron Mines Corporation and Baffinland Iron Mines LP (collectively, the "**Borrowers**") have requested the DIP Lenders (defined below) to provide funding in order to assist with proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") ~~to~~ ~~be~~ ~~that~~ ~~were~~ commenced before the Ontario Superior Court of Justice – Commercial List (the "**Court**") in accordance with the terms and conditions set out herein (the "**CCAA Proceeding**");

AND WHEREAS the DIP Lenders have agreed to provide the DIP Facility (defined below) in accordance with the terms and conditions set out below.

NOW THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms:** A capitalized term not defined in the body of this Agreement has the meaning ascribed to it in the Definitions section below.
2. **Interpretation:** In this Agreement, words signifying the singular number include the plural and *vice versa*, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

References in this Agreement to Sections or Schedules are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise.
3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America.
4. **Borrowers:** Baffinland Iron Mines Corporation ("**BIM Corp**") and Baffinland Iron Mines LP ("**Baffin LP**" and, together with BIM Corp, the "**Borrowers**").
5. **Guarantors:** ~~Means~~ Nunavut Iron Ore, Inc. and 12334992 Canada Inc. (collectively, the "**Guarantors**" and collectively with the Borrowers, the "**Obligors**").
6. **DIP Lenders:** The institutions described in Schedule A (on behalf of themselves and their affiliates and managed funds) hereby commit to provide the DIP Facility, on a joint and several ~~and not joint~~ basis (collectively, in the respective amounts set forth adjacent to each such institution's name in Schedule A "**DIP Lenders**") upon the terms and conditions set forth in this Agreement ~~(collectively, the~~ ¹ As between themselves, DIP

¹ Note to Draft: It is uncompetitive for the Borrowers to seek redress against individual DIP Lenders. The DIP Lenders' obligations should be joint and several vis-à-vis the Borrowers. The DIP Lenders are free to

Lenders²⁾ respective commitments are set forth adjacent to each DIP Lender's name in Schedule A.

An institution acceptable to the Required DIP Lenders shall act as administrative agent and as collateral agent for the DIP Facility (in such capacities, the "DIP Agent").

An institution acceptable to the Required DIP Lenders shall act as fronting lender (the "Fronting Lender") pursuant to which the Fronting Lender shall fund each Advance on behalf of the DIP Lenders and subsequently assign such funded DIP Loans to the DIP Lenders pursuant to arrangements agreed by the Fronting Lender and the each of the DIP Lenders. The Fronting Lender shall be a "DIP Lender" for all purposes herein ~~so long as the Fronting Lender holds commitments in respect of the DIP Facility or any DIP Loans.~~

Upon the Borrowers' acceptance of this Agreement, this Agreement shall be amended and restated to include the DIP Agent and the Fronting Lender as parties hereto and to, among other things, add customary agency provisions for the benefit of the DIP Agent and fronting lender provisions for the benefit of the Fronting Lender, in each case, that are acceptable to the Borrowers, the DIP Agent, the Required DIP Lenders and the Fronting Lender (solely with respect to the fronting lender provisions), in each case, acting reasonably.

7. **DIP Facility:** The DIP Lenders agree to establish in favour of the Borrowers a debtor-in-possession delayed draw term loan facility (the "DIP Facility" and, the loans thereunder, the "DIP Loans") in the principal amount equal to \$[300 million] (the "Loan Amount").² No amount capitalized as principal hereunder shall reduce the availability of the full Loan Amount to the Borrowers.
8. **DIP Advances:** ~~An initial advance~~ Advances under the DIP Facility in the aggregate principal amount of up to \$50.110 million (the "~~Initial Advance~~ Bridge Advances") shall be made available to the Borrowers ~~and shall be deposited into the Borrowers' Account (defined below) within one (1) Business Day after~~ during the four week period beginning on the date of the ~~entry of the~~ Second Amended and Restated Initial Order (defined below), provided the "Bridge Period", subject to satisfaction of the Subsequent Advance Conditions (other than the first advance under the DIP Facility (the "Initial Advance"), which shall be advanced to the Borrower on the date of the Second Amended and Restated Initial Order and is subject to the Initial Advance Conditions ~~are satisfied as of such date).~~

DIP Lenders' obligations should be joint and several vis-à-vis the Borrowers. The DIP Lenders are free to make their own arrangements among each other.

² Note to Draft: Consider size of the DIP Facility Amount in connection with expected DIP Advisor Fees to be incurred during the CCAA Proceeding and to account for a KERF in the range of [X], each of which are not yet accounted for in the financial model.

Notwithstanding anything else to the contrary herein, fees accruing on or levied in relation to or in respect of the Bridge Advances, and professional fees or expenses payable in connection with the Bridge Advances shall not be payable by the Obligors, and none of the Obligors shall be liable for the payment of such amounts, whether as Indebtedness or as an obligation or liability of any kind, nor shall such amounts form a part of the DIP Obligations during the Bridge Period. For greater certainty, interest shall accrue and be payable on the Bridge Advances pursuant to the terms hereof. In the event the DIP Facility is not refinanced or otherwise assigned by the DIP Lenders, the DIP Agent or the Fronting Lender during the Bridge Period, the fees that have accrued or would have otherwise been payable to the DIP Lenders, the DIP Agent or the Fronting Lender pursuant to the terms hereof and any professional fees or expenses that would have otherwise been payable hereunder by the Borrowers, in each case but for the limitations provided herein, shall be deemed to have accrued and shall be payable from the date of the Initial Advance to but excluding the last day of the Bridge Period and shall form a part of the DIP Obligations. If the Bridge Facility is so refinanced or otherwise assigned, no such fees or professional fees and expenses shall be owing or payable by any Obligor.

Subsequent advances under the DIP Facility (each, a "**Subsequent Advance**") shall be made available to the Borrowers and shall be deposited into the Borrowers' Account (defined below) every other week (or as otherwise agreed by the Borrowers and the Required DIP Lenders), with each Subsequent Advance being in an amount no less than \$20 million ~~against the Approved Cash Flow Forecast,~~³ in each case subject to the satisfaction of the Subsequent Advance Conditions (as defined below). The sum of the Initial Advance and the Subsequent Advances shall not exceed the Loan Amount. The timing and amount of each Subsequent Advance shall be determined based on the funding needs of the Borrowers as set forth in the Approved Cash Flow Forecast, and Subsequent Advances shall only be available and provided hereunder after the Borrowers have received the entirety of the Initial Advance.

Advances under the DIP Facility, other than the Initial Advance (each, an "**Advance**") require a written notice to be delivered to the DIP Agent and the DIP Lenders, at least three (3) Business Days prior to the requested date of the Advance, or such shorter period as may be agreed by the Required DIP Lenders in advance (each, an "**Advance Notice**"), which has been ~~approved by the Monitor and~~ executed by an officer of the Borrowers setting out: (a) the proposed amount of the requested Advance; (b) the date the Advance is required; and (c) certification that the representations and warranties contained herein are true and correct in all material respects as of such date.

³ Note to Draft: Advances are required to be made in accordance with the Approved Cash Flow Forecast elsewhere.

Each Advance, on behalf of and at the request of each of the DIP Lenders, shall be provided by and funded to the DIP Agent by the Fronting Lender and subsequently assigned to the DIP Lenders pursuant to arrangements agreed by the Fronting Lender and each DIP Lender. The Fronting Lender shall deposit into the Borrowers' Account the amount requested by the Borrowers pursuant to the Advance Notice on the requested date of the Advance, net of all fees, costs and expenses to be paid in connection with such Advance pursuant to a funds direction to be delivered ~~prior~~prior to the date of such Advance; provided that (x) with respect to the Initial Advance, the Initial Advance Conditions are satisfied as of such date and (y) with respect to each Advance after the Initial Advance, the applicable conditions described in this section 8 and the applicable Subsequent Advance Conditions are satisfied as of such date.

9. **Use of Proceeds:** The proceeds of the DIP Facility shall be used solely by the Borrowers in accordance with the Approved Cash Flow Forecast (subject to Permitted Variances), which shall include provision for payment, in all respects subject to and to the extent included in the Approved Cash Flow Forecast (subject to Permitted Variances), of (i) the fees of the Monitor and its counsel and counsel for the ~~Borrowers~~Obligors, (ii) interest, fees (including the Commitment/Funding Fee) and other amounts owing to the DIP Lenders under this Agreement, (iii) ~~pre and~~ post-filing expenses payable to the DIP Lenders or to the extent constituting Permitted Advisor Payments, their advisors under the ~~Senior Credit Agreement, the Indenture, or the~~ DIP Facility ~~(including, without limitation, those set forth in section 13)~~, and ordinary course payments for the Borrowers' working capital needs during the CCAA Proceeding, including, post-filing accounts payable in the ordinary course of the Business ~~and~~, Priority Payables and in respect of the pursuit of the SISP, (iv) royalty payments under each of the Royalty Agreements when due and payable under such Royalty Agreement, (v) cash collateral required to support letters of credit issued by financial institutions, (vi) Pre-Approved Steensby Capex, and ~~(vii)~~ amounts payable under the Benefits Agreement, ~~in each case, under clauses (i) through (v), as set forth in the Approved Cash Flow Forecast (subject to Permitted Variances)~~.⁴ Without the prior written consent of the Required DIP Lenders ~~(subject to the Supermajority DIP Lender Budget Consent Right)~~, no proceeds may be used, and no expenditures shall be made, for any purpose that is not included in the Approved Cash Flow Forecast (subject to Permitted Variances).
10. **Assignment by** The Borrowers shall not be permitted to assign their interests in this Agreement without the prior written consent of ~~each~~the Required DIP

⁴ Note to Draft: Deleted language is duplicative of lead-in language.

the Borrowers: ~~Lender~~Lenders, not be unreasonably withheld.

11. **Evidence of Indebtedness:** The DIP Agent shall maintain a register evidencing Advances and repayments under the DIP Facility and all other amounts owing from time to time hereunder. The DIP Agent register constitutes, in the absence of manifest error, *prima facie* evidence of the Indebtedness of the Borrowers to the DIP Lenders pursuant to the DIP Facility.

12. **Interest; Fees** All amounts owing by the Borrowers hereunder to the DIP Lenders on account of the principal, overdue interest and expenses shall bear interest at a rate per annum equal to ~~Adjusted Term SOFR (which, for purposes of this Agreement, shall have the meaning given to such term in the Senior Credit Agreement, treating the DIP Loans as SOFR Loans thereunder and utilizing a one-month Interest Period as set forth below)~~ 1 month Term SOFR from time to time plus ~~7.00~~4.75%, payable entirely in cash on each Interest Payment Date (the "**Interest Rate**"). To the extent permitted by Law, effective upon the occurrence of and during the continuance of an Event of Default, all overdue amounts owing to the DIP Lenders hereunder by the Borrowers on account of principal, overdue interest and expenses shall bear interest at the Interest Rate plus an additional 2% per annum (the Interest Rate, as increased, the "**Default Rate**").

All interest hereunder shall be computed on the basis of a year of 360 days and shall accrue and be calculated daily and payable in cash, monthly in arrears on the last Business Day of each month (each, an "**Interest Payment Date**"); provided that unless otherwise agreed by the Required DIP Lenders, interest accruing at the Default Rate shall be payable in cash on demand, both before and after demand and judgment.

In the case of an Advance, the first "**Interest Period**" shall commence on and include the date of such Advance and shall end on and exclude the next following Interest Payment Date. Thereafter, in the case of such Advance, the Interest Period shall commence on and include the Interest Payment Date and end on and exclude the next Interest Payment Date or the Maturity Date, whichever is earlier.

~~Upon entry of the Second Amended and Restated Initial Order~~ If the DIP Facility is not refinanced or otherwise assigned by the DIP Lenders during the Bridge Period, on the day following the Bridge Period, the Borrowers shall pay a fee (the "**Commitment/Funding Fee**") of ~~3.00~~1.75% of the Loan Amount to the DIP Lenders on a pro rata basis, which such Commitment/Funding Fee shall be payable in kind and capitalized on the principal amount of the DIP Loans on such date.

The Commitment/Funding Fee shall constitute part of the DIP Obligations, shall be secured by the DIP Charge, and shall bear interest at the Interest Rate ~~(or, after the occurrence and during the continuance of an Event of Default, the Default Rate).~~

Notwithstanding anything to the contrary in this section 12, this section

12 is subject to the restrictions on interest, fees and expenses imposed under section 8 with respect to Bridge Advances.

13. **Other Costs and Expenses:** ~~The Borrower~~ Subject to the limitations in Section 8, the Borrowers shall pay all reasonable and documented third-party out-of-pocket costs and expenses of the DIP Agent, the DIP Lenders and the Fronting Lender for all due diligence and all reasonable and documented fees, out-of-pocket expenses and disbursements of advisors (which, for the avoidance of doubt, shall include (i) Stikeman Elliott LLP, as counsel to the Senior Lenders, (ii) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as special counsel to the Senior Lenders, (iii) a financial advisor to the Senior Lenders, (iv) Akin Gump Strauss Hauer & Feld LLP, as counsel to the Holder AHG, (v) Cassels Brock & Blackwell LLP, as counsel to the Holder AHG and (vi) Houlihan Lokey, as financial advisor to the Holder AHG), and notwithstanding anything to the contrary herein which reasonable and documented fees, out-of-pocket expenses and disbursements of advisors shall not exceed \$■ per month (such amounts, "Permitted Advisor Payments"),⁵ in each case, incurred post-CCAA filing in connection with the preparation, negotiation and consummation of this Agreement ~~or any other Restructuring Transaction~~, the administration of the DIP Facility and participation in the CCAA Proceeding, including any reasonable and documented third-party costs and out-of-pocket expenses incurred by the DIP Agent, the DIP Lenders and the Fronting Lender in connection with the enforcement of any of the rights and remedies available hereunder or under the DIP Security (such post CCAA-filing expenses, collectively, the "**DIP Lender Expenses**"). The DIP Lender Expenses shall form part of the DIP Obligations secured by the DIP Charge (as defined below). All accrued DIP Lender Expenses incurred post CCAA-filing and prior to date of the Initial Advance (~~including prior to the filing of the CCAA Proceeding~~) shall be paid in full through deduction from the Initial Advance.
14. **Approved Cash Flow Forecast:** Attached hereto as Schedule B is a detailed cash flow projection (the "**Initial Cash Flow Forecast**"), which is in form and substance satisfactory to the Required DIP Lenders and which may include, *inter alia*, provision for payments on account of any interest and expenses which may be payable under the DIP Facility, rent and other occupancy costs, supplier payments, cash collateral required to support letters of credit issued by financial institutions, post-filing accounts payable in the ordinary course of the Business, Priority Payables, payments of amounts payable under the Royalty Agreements and the Benefits Agreement, and the costs and expenses associated with the CCAA Proceeding.
- The Borrowers, with the assistance of the Monitor, shall, from time to time as required by this Agreement, present the DIP Lenders with a

⁵ Note to Draft: Please provide a figure for the DIP Lender's professional advisor fees. This will affect the net proceeds available to the Borrower.

~~revised budget in a form acceptable to the Required DIP Lenders (subject to the Supermajority DIP Lender Budget Consent Right) cash flow in a substantially similar form~~ (the "Updated Cash Flow Forecast"). Upon the written approval of the Required DIP Lenders ~~(subject to the Supermajority DIP Lender Budget Consent Right)~~, the Updated Cash Flow shall thereafter be deemed to be the effective ~~budget~~ cash flow forecast (the "Approved Cash Flow Forecast") for the purposes hereof. Until such time as the Required DIP Lenders ~~(subject to the Supermajority DIP Lender Budget Consent Right)~~ approve an Updated Cash Flow Forecast, the prior Approved Cash Flow Forecast shall remain in effect ~~for disbursement lines in the Operating Disbursements section set forth in the then applicable Initial Cash Flow Forecast or Approved Cash Flow Forecast, as applicable; provided that no other amounts may be "rolled forward" past the 13-week period contemplated by such Approved Cash Flow Forecast, and no additional amounts may be expended thereon except as expressly approved in a subsequently approved Updated Cash Flow Forecast.~~⁶ The DIP Lenders shall be under no obligation to approve any Updated Cash Flow Forecast notwithstanding any prior approval of any prior or then-current Approved Cash Flow Forecast, recognizing that if no such approval is given the then prior Approved Cash Flow Forecast shall remain in effect.⁷

The DIP Lenders agree to provide for approvals in allocations in the Approved Cash Flow Forecast to capital expenditures in connection with Pre-Approved Steensby CapEx.

~~Notwithstanding any other provision of this Agreement, neither the DIP Agent nor the DIP Lenders shall be obligated to make any advance under the DIP Facility which does not comply with or adhere to the Approved Cash Flow Forecast.~~

~~For the avoidance of doubt, the Approved Cash Flow Forecast will include payment of all reasonable and documented out of pocket fees and expenses of advisors to EDC, the Senior Agents, the Senior Lenders and the Holder AHG (which, for the avoidance of doubt, shall include (i) Stikeman Elliott LLP, as counsel to the Senior Lenders, (ii) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as special counsel to the Senior Lenders, (iii) a financial advisor to the Senior Lenders, (iv) Akin Gump Strauss Hauer & Feld LLP, as counsel to the Holder AHG, (v) Cassels Brock & Blackwell LLP, as counsel to the Holder AHG and (vi) Houlihan Lokey, as financial advisor to the Holder AHG).~~

In addition to Pre-Approved Steensby CapEx, the DIP Lenders agree to provide for approvals in allocations in the Approved Cash Flow Forecast to capital expenditures in connection with the Steensby Expansion or any additional exploration costs at such time as the

⁶ Note to Draft: Limiting the roll-forward to opex will starve the business intended to be operated in the ordinary course. It is not competitive.

⁷ Note to Draft: Deleted items are duplicative of the above.

Borrowers have (i) obtained one or more bona fide, binding, irrevocable bids in the SISF that provide for (A) the repayment in full in cash of the DIP Facility and the obligations under the Senior Credit Agreement and the Senior Secured Notes on or prior to the closing of such sale transaction, and (B) the consent of such bidder(s) to pursue the Steensby Railway project and related financing process (the "Steensby Expansion") and further exploration, with a plan for execution which is reasonably acceptable to the Required DIP Lenders; (ii) submitted to the DIP Lenders supporting plans including engineering, design and operations acceptable to the Required DIP Lenders; and (iii) liquidity which is reasonably acceptable to the Required DIP Lenders; ~~provided, however, that the approval of the Supermajority DIP Lenders shall be required with respect to allocations of more than \$95 million to the Steensby Expansion or exploration in any Updated Cash Flow Forecast (the "Supermajority DIP Lender Budget Consent Right").~~

15. **Conditions Precedent to the Initial Advance:**

The DIP Lenders' obligation to make the Initial Advance hereunder from the Loan Amount is subject to, and conditional upon, the satisfaction of all of the following conditions precedent (the "**Initial Advance Conditions**"):

- (a) the Court shall have issued the Second Amended and Restated Initial Order in form and substance satisfactory to the DIP Agent, the Required DIP Lenders and the Fronting Lender, acting reasonably, among other things:
 - (i) authorizing and approving this Agreement;
 - (ii) granting the DIP Charge and the priority of the DIP Charge contemplated in this Agreement;
 - (iii) granting a stay of proceedings until no earlier than September 30, 2026; and
 - (~~v~~iv) providing for provisional execution, or other satisfactory protection, in respect of any and all Advances made and/or Liens and/or charges granted for the DIP Loans, including the DIP Charge;

and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) ~~and no notices of the foregoing shall have been filed,~~ unless otherwise agreed by the Required DIP Lenders, in their ~~sole~~ reasonable discretion;

- (b) ~~all reasonable and documented third party expenses payable to the DIP Agent, the DIP Lenders and the Fronting Lender hereunder will be paid from the proceeds of the Initial Advance~~

- ~~on the date of the Initial Advance; and~~[\[reserved\]](#);⁸
- (c) ~~the DIP Lenders shall have received an Advance Notice in accordance with the terms hereof~~[\[reserved\]](#);
- (d) no Default or Event of Default shall have occurred and be continuing or will occur as a result of the Initial Advance; [and](#)
- (e) ~~the DIP Agent and the Required DIP Lenders~~ [there](#) shall be satisfied that there are no Encumbrances on the Collateral ranking in priority to or *pari passu* with the DIP Charge other than as expressly permitted by the terms hereof;
- ~~⁹(f) the Obligors shall have delivered to the DIP Agent customary officer's certificates and authorizing directors' resolutions, in form and substance satisfactory to the Required DIP Lenders; and~~
- (g) ~~the Borrowers shall have provided to the DIP Agent and the Required DIP Lenders a list of all material licences and permits required for the continued operation of the Business into the foreseeable future, including their current status, renewal and such other material items related thereto (the "Material Licences and Permits Schedule").~~

16. **Conditions Precedent to Advances of the Loan Amount (other than the Initial Advance):**

The DIP Lenders' agreement to make any additional Advances available from the Loan Amount is subject to, and conditional upon, the satisfaction of all of the following conditions precedent (the "Subsequent Advance Conditions"):

- (a) the Second Amended and Restated Initial Order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) ~~and no notices of the foregoing shall have been filed,~~ unless otherwise agreed by the Required DIP Lenders, in their ~~sole~~[reasonable](#) discretion;
- (b) ~~the Second Amended and Restated Initial Order has not been amended, restated or modified in a manner that materially adversely affects the rights, remedies or interests of the DIP Lenders without the prior written consent of the Required DIP Lenders; provided that any such modification which would require the consent of a given DIP Lender under section 33 hereof be subject to such DIP Lenders' consent;~~[\[reserved\]](#)
- (c) the DIP Lenders shall have received an Advance Notice in accordance with the terms hereof;

⁸ [Note to Draft: The Initial Advance will occur during the Bridge Period and so no fees, etc. should be payable.](#)

⁹ [Note to Draft: Deleted deliveries are overly burdensome. The key permit for the mine is the Project Certificate. There are otherwise a very large number of permits. It is not workable in context and will consume too much management time for little benefit. DIP Lenders have also not provided a compelling reason as to why the list is necessary.](#)

- (d) subject to section 8, all reasonable and documented third-party expenses payable to the DIP Agent, the DIP Lenders and the Fronting Lender hereunder out-of-pocket DIP Lender Expenses have been paid or will be paid from the proceeds of the requested Advance on the date of the applicable Advance;
- (e) there shall be no Encumbrances on the Collateral ranking in priority to or *pari passu* with the DIP Charge other than as expressly permitted by the terms hereof;
- (f) no Default or Event of Default shall have occurred and be continuing or will occur as a result of the requested Advance;
- (g) ~~the Obligors shall be in compliance in all material respects with all covenants and obligations contained in this Agreement~~ [reserved]; ¹⁰
- (h) ~~an updated Approved Cash Flow Forecast has been agreed to between the Borrowers and the Required DIP Lenders (subject to the Supermajority DIP Lender Budget Consent Right), and the Borrowers are in compliance with the current Approved Cash Flow Forecast (subject to Permitted Variances) as at the date of the proposed Advance;~~ ¹¹
- (i) ~~the Obligors shall be in compliance with the SISP Milestones;~~
- (j) ~~the Borrowers shall have delivered to the DIP Agent and the Required DIP Lenders, in the Advance Notice (or in a supplemental certificate executed by an officer of the Borrowers and delivered concurrently therewith), either (i) an updated Material Licences and Permits Schedule reflecting any additions, deletions, lapses, suspensions, revocations or changes in status to any of the items listed therein since the date of the most recent Material Licences and Permits Schedule delivered to the Required DIP Lenders, or (ii) a certification that the most recent Material Licences and Permits Schedule delivered to the Required DIP Lenders remains true and correct in all material respects as of the date of the requested Advance; and~~
- (k) ~~all conditions precedent in section 15 immediately above in this Agreement shall have been and continue to be satisfied on the date of such Advance.~~ (i) [reserved]. ¹²

17. **DIP Charge:** All of the obligations of the Obligors under or in connection with the DIP Facility, including without limitation, all principal, interest, fees and ~~amounts owing in respect of reasonable and documented third-party expenses of the DIP Agent, the DIP Lenders and the Fronting~~ DIP

¹⁰ Note to Draft: Breach of covenant is an EoD, so it subsumed by (f).

¹¹ Note to Draft: The requirement to agree an updated cash flow (vs. rolling) effectively makes this a single draw facility at the discretion of the DIP Lenders which is not acceptable.

¹² Note to Draft: Non-compliance with SISP Milestones is an Event of Default which is already a draw condition.

Lender Expenses (collectively, the "**DIP Obligations**"), shall be secured by a Court-ordered charge on the Collateral in favour of the DIP Agent, for the benefit of the DIP Lenders (the "**DIP Charge**").

The DIP Charge shall rank ahead of any and all Encumbrances on the Collateral other than (i) the administration charge not exceeding \$5.0 million, ~~to be granted by the Court and~~ (ii) the directors and officers charge not exceeding \$20.4 million, ~~to be granted by the Court and~~ (iii) in respect of the Cash Collateral (as defined in the Amended and Restated Initial Order) (collectively, the "**Priority Charges**"). ~~All Collateral will be free and clear of all Encumbrances, except for Permitted Liens, in each case unless otherwise consented by the Required DIP Lenders (acting reasonably).~~¹³

18. **DIP Security:** The Guarantors hereby guarantee in favour of the DIP Agent, for the benefit of the DIP Lenders, the payment and performance of the DIP Obligations of the Borrowers ~~pursuant to the terms set forth in Schedule C hereto.~~¹⁴
- The DIP Lenders shall be permitted to request DIP Security (in form and substance reasonably satisfactory to the Required DIP Lender) from the Obligors at any time. The DIP Security shall continue as a first priority Encumbrance on the Collateral in favour of the DIP Agent, for the benefit of the DIP Lenders, subject to subordination only in respect of the Priority Charges and Priority Payables. For greater certainty, the delivery of DIP Security shall not be a condition precedent to the Initial Advance or any other advances of the Loan Amount as set out in sections 15 and 16.
19. **Hedging Obligations [Reserved]:**¹⁵ ~~Notwithstanding anything herein to the contrary, Hedging Obligations owing to any DIP Lender may be secured by liens which are equal in priority to the DIP Security.~~
20. **Borrowers' Account:** Advances shall be deposited into a bank account to be designated by the Borrowers (the "**Borrowers' Account**") and utilized by the Borrowers in accordance with the terms of this Agreement. At the request of the DIP Lenders, the Borrowers shall put in place a blocked account agreement in favour of the DIP Agent (for the benefit of the DIP Lenders) thereon on such terms as are acceptable to the Required DIP Lenders, in their discretion. Any such blocked account agreement shall not impose a payment block absent the occurrence of an Event of Default that is continuing.
21. **Repayment and Maturity Date:** All DIP Obligations shall be due and payable on the earliest of the occurrence of any of the following:

¹³ Note to Draft: Deletion covered by negative covenants.

¹⁴ Note to Draft: Detailed guarantee provisions are unnecessary in the context of a court approved DIP.

¹⁵ Note to Draft: Hedging and ranking of related security to be discussed post-DIP.

- (a) conversion of the CCAA Proceeding into a proceeding under the *Bankruptcy and Insolvency Act* (Canada);
- (b) the ~~occurrence of an Event of Default and~~ date which is fifteen (15) days after a demand for payment is made by the DIP Agent (at the request of the Required DIP Lenders) following the occurrence of any Event of Default that is continuing as of such date;
- (c) the closing of a Restructuring Transaction or combination of Restructuring Transactions; or
- (d) the date that is ~~twelve~~ eighteen (18) months after the ~~date of this Agreement~~ granting of the Second Amended and Restated Initial Order, subject to the extensions set forth below (the "Stated Maturity Date")

(such earliest date, the "Maturity Date").

The Stated Maturity Date may be extended ~~two times~~ one time by the Borrowers for up to ~~threesix (36)~~ three (3) months ~~each time~~, provided that (i) the Borrowers deliver a written extension request to the DIP Agent not less than ten (10) days prior to the then applicable Stated Maturity Date, (ii) no Default or Event of Default exists on the then applicable Stated Maturity Date, (iii) the Borrowers shall have paid an extension fee on the date of each such extension equal to ~~two~~ one percent (~~21~~ 1%) of the DIP Loans outstanding at such time, payable in-kind on the date of such extension to the DIP Agent on behalf of the DIP Lenders on a pro rata basis and capitalized on the principal amount of the DIP Loans as of such date and (iv) the Borrowers shall have provided to the DIP Agent and the DIP Lenders an Updated Cash Flow Forecast ~~as approved by the Monitor and~~ which shall be in form and substance satisfactory to the Required DIP Lenders ~~(subject to the Supermajority DIP Lender Budget Consent Right) in their sole discretion~~ acting reasonably, through and including the date to which the Stated Maturity Date is extended.

The DIP Lenders' commitment to make Advances under the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be fully repaid no later than the Maturity Date, without the DIP Lenders being required to make demand upon the Borrowers or Guarantors or to give notice that the DIP Facility has expired and that the obligations thereunder are due and payable.

22. **Payments:**

All payments of principal, interest and expenses hereunder, if applicable, shall be made for value in the full amount due at or before 12:00 noon on the day such amount is due by deposit or transfer thereof to the DIP Agent or as the DIP Lenders may direct. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment. Each payment to be made by the Borrowers under this Agreement shall be made in full without deduction, set-off or

counterclaim of any kind or for any reason. If any expenses incurred by the Borrowers after the date of this Agreement are not paid by the Borrowers, the DIP Agent may, but shall have no duty to do so, pay all such expenses whereupon such amounts shall be added to and form part of the DIP Obligations and shall reduce the availability under the DIP Facility. Unless otherwise consented to in writing by the Required DIP Lenders, the net cash proceeds of any sale, realization or disposition of, or with respect to, any of the Collateral (including obsolete, excess or worn-out Collateral) out of the ordinary course of business, ~~any cash or other proceeds received out of the ordinary course of business~~ (for greater certainty, net of transaction fees and applicable taxes in respect thereof), or any insurance proceeds (net of expenses incurred by the applicable Obligor in connection therewith, including transaction fees and applicable taxes in respect thereof) (each "**Net Proceeds**") paid to the Borrowers or Guarantors in respect of ~~such~~ Collateral, shall be paid to the DIP Agent (for the benefit of the DIP Lenders) and applied to reduce the DIP Obligations ~~(for greater certainty, net of transaction fees and applicable Taxes in respect thereof)~~. Any amounts ~~and permanently reduce and cancel an equivalent portion of the Facility Amount in an amount equal to the Net Proceeds of such sale, realization, disposition or insurance; provided that, in lieu of such prepayment, the applicable Obligor shall be permitted to apply such Net Proceeds within 180 days after the receipt thereof by such Obligor to, or to contract to, repair or replace the affected Collateral, subject to such Obligor's written notice thereof to the DIP Lender promptly following the sale, realization, disposition or casualty event in respect of insurance proceeds. Any such amount repaid may not be reborrowed.~~

23. **Indemnity:**

~~The~~ Subject to section 8, the Obligors agree to indemnify and hold harmless the DIP Agent, the DIP Lenders, the Fronting Lender and their respective Affiliates, partners and officers, directors, employees, representatives, advisors, solicitors and agents (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or reasonable and documented third-party expenses of any kind or nature whatsoever which may be incurred by any of the Indemnified Persons (collectively, the "**Claims**") as a result of, in connection with or in any way related to the DIP Facility, the priority of the DIP Charge, the proposed or actual use of the proceeds of the DIP Facility or this Agreement; provided, however, that the Obligors shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any Claim (a) to the extent it resulted from the gross negligence, wilful misconduct ~~or~~, bad faith or breach of agreement of any Indemnified Person as finally determined by a court of competent jurisdiction, ~~or~~ (b) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the Obligors, or (c) arising from any appeal, motion to stay, vary, amend, or other proceeding brought by any party challenging the Second Amended and Restated Initial Order, to the

extent such challenge relates to the DIP Facility, and only if the Bridge Facility is refinanced or otherwise assigned during the Bridge Period. The Obligors shall not be responsible or liable to any Indemnified Person or any other person for consequential or punitive damages. Notwithstanding anything to the contrary herein, the indemnities granted under this Agreement shall survive any termination of the DIP Facility.

24. **Representations and Warranties:**

Each Obligor represents and warrants to the DIP Agent and DIP Lenders, upon which the DIP Agent and each of the DIP Lenders has relied in entering into this Agreement that:

- (a) such Obligor is validly formed and existing under the laws of its jurisdiction of incorporation or formation;
- (b) such Obligor has the power and capacity, ~~and the legal right,~~ to own or lease and operate its property, to carry on its business as now conducted and as proposed to be conducted, ~~and subject to Court approval of this Agreement, to enter into, execute, deliver and perform its obligations under this Agreement;~~¹⁶
- (c) ~~such Obligor has taken all necessary action to authorize the execution, delivery and performance of this Agreement. Subject to the issuance of the Initial Order, Amended and Restated Initial Order or Second Amended and Restated Initial Order, as applicable, and the terms thereof, no consent or authorization of, filing with, notice to or other act by, or in respect of, any governmental authority or any other person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement; [reserved];~~¹⁷
- (d) this Agreement and the transactions contemplated by this Agreement:
 - (i) are within the powers of such Obligor and, subject to the granting of the Second Amended and Restated Initial Order, ~~as applicable,~~ constitute legal, valid and binding obligations of such Obligor, enforceable against it in accordance with the terms hereof;
 - (ii) have been duly authorized, executed and delivered by or on behalf of such Obligor; and
 - (iii) subject to the granting of the Second Amended and Restated Initial Order, as applicable, do not and will not conflict with, contravene, violate or result in a breach of: (A) any of the terms or provisions of such Obligor's constating documents or by-laws, (B) any ~~material contracts or instruments~~ Material Contracts to which such Obligor is a party or pursuant to which any of its assets or property may be affected or (c) any

¹⁶ Note to Draft: Deleted text covered by (d).

¹⁷ Note to Draft: Deleted text covered by (d).

applicable Law;

- (e) the Business of such Obligor has been and will continue to be conducted in material compliance with all applicable Laws ([including environmental laws](#)) of each jurisdiction in which the Business has been or is being carried on subject to the provisions of the CCAA and any Court order made after the date of the Initial Order;
- (f) ~~such Obligor and its properties and businesses comply in all material respects, and the use of its properties comply in all material respects, with all applicable environmental laws; such Obligor has no knowledge of any facts which result in, or constitute, or are likely to give rise to, non-compliance with any environmental laws in any material respect;~~ [\[reserved\]](#); ¹⁸
- (g) such Obligor owns, leases or has the lawful right to use all of the material properties and undertaking necessary for the conduct of the business of such Obligor;
- (h) such Obligor has obtained any material Authorizations for the operation of the Business, which Authorizations remain, and after entering into the DIP Facility will remain, in full force and effect. No proceedings have been commenced to revoke or amend any such Authorizations;
- (i) such Obligor does not have any defined benefit pension plans or similar plans and is in material compliance with all applicable Law respecting its employees' employment and all collective bargaining agreements to which it is a party or otherwise bound;
- (j) ~~except as otherwise disclosed to the DIP Lenders in writing prior to the date hereof,~~ such Obligor is current on its [post-filing](#) payment obligations for rent and other occupancy costs and expenses in respect of any premises that it leases;
- (k) all of such Obligor's obligations (including fiduciary, funding, investment and administrative obligations, if any) required to be performed in connection with such Obligor's employee benefit plans have been performed on a timely basis;
- (l) such Obligor has filed all Tax returns which were required to be filed and paid all Taxes (including interest and penalties) which are due and payable, [except as disclosed to the DIP Lenders prior to the date hereof](#) ¹⁹ or for charges, fees or dues which are [not material in amount or which are not delinquent or if delinquent are being contested in good faith by appropriate proceedings](#);
- (m) such Obligor and each of its subsidiaries has good and valid title to, or legally binding property right in, or valid leasehold interests

¹⁸ [Note to Draft: Otherwise covered.](#)

¹⁹ [Note to Draft: Covers amounts potentially owed pursuant to Greenhouse Gas Pollution Pricing Act.](#)

in, all material real property necessary or used in the ordinary conduct of its business, in each case free and clear of all ~~Liens~~Encumbrances other than those ~~Liens~~Encumbrances permitted by section 4.10 of the Indenture and "Permitted Liens" under the Indenture (as same exists on the date of this Agreement) and except for minor defects in title as ~~could~~would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the operations, financial condition, ~~and/or future prospects~~ of the Obligors taken as a whole;

- (n) all information provided by or on behalf of such Obligor to the DIP Lenders for the purposes of or in connection with this Agreement or any transaction contemplated herein is, true and accurate in all material respects on the date as of which such information was provided, not incomplete and does not omit to state any fact necessary to make such information (taken as a whole) not materially misleading at such time, in light of the circumstances under which such information was provided; ~~and~~
- (o) ~~none of the Obligors owns or controls, directly or indirectly, any subsidiaries which are not Obligors. [reserved];~~
- (p) each Obligor maintains adequate insurance coverage, as is customary with companies in the same or similar business of such type, in such amounts and against such risks as is prudent for a business of its nature with financially sound and reputable insurers and that contain reasonable coverage and scope;
- (q) except for those defaults which are stayed by the Initial Order, Amended and Restated Initial Order or the Second Amended and Restated Initial Order and/or as disclosed to the DIP Lenders in writing, all Material Contracts are in full force and effect ~~and are valid, binding and enforceable~~ in accordance with their terms, ~~and the Obligors do not have any knowledge of any default that has occurred and is continuing thereunder (other than those defaults arising as a result of or relating to the insolvency of the Obligors or any of their affiliates or the commencement of the CCAA Proceeding);~~subject to the stay of proceedings granted by the Court in the CCAA Proceedings;
- (r) except as disclosed to the DIP Lenders in writing ~~by the Obligors~~, there are no agreements of any kind (i) between the Obligors and any other third party or any holder of debt or Equity Securities of the Obligors with respect to any Restructuring Transaction, which remain in force and effect as of the date hereof, or (ii) between the Borrowers and any related party;
- (s) other than potential proceedings in connection with the Second Amended and Restated Initial Order to be sought by the Borrower, or this DIP Facility, or as stayed pursuant to the Initial Order, Amended and Restated Initial Order or the Second Amended and Restated Initial Order, there is not now pending or, to the knowledge of any of the senior officers of the Obligors,

threatened against the Obligors, nor has any Obligor received notice in respect of, any ~~material~~-claim, potential claim, litigation, action, suit, arbitration or other proceeding by or before any court, tribunal, governmental entity or regulatory body, in each case that would reasonably be expected to be material and adverse to the Obligors, taken as a whole;

- (t) each Obligor has maintained and paid current its obligations, as applicable, for payroll, source deductions, harmonized, goods and services and retail sales tax, and is not in arrears of its statutory obligations to pay or remit any amount in respect of these obligations;
- (u) ~~the Obligors have valid leasehold interests in all leases, subleases or assignments of leases, and each such lease is in full force and effect, and the Obligors do not have knowledge of any default that has occurred (other than in connection with the CCAA Proceeding);~~[reserved];²⁰
- (v) ~~the Borrowers have not taken or omitted to take any action that could materially impact their continued operations, including (i) failing to procure any essential products needed before the shipping window closes, (ii) ceasing their mining operations, or (iii) reducing their workforce;~~[reserved];²¹
- (w) ~~any information provided by the Borrowers to the DIP Agent and the DIP Lenders on the status of the SISP, the Steensby Railway project and related financing process (the "Steensby Expansion") to date, including any reporting required pursuant hereto, is accurate and complete, and the Obligors have disclosed all material information in respect of such processes to the DIP Agent and the DIP Lenders; and~~[reserved]²²; and
- (x) ~~no Default or Event of Default has occurred and is continuing~~[reserved].

25. **Affirmative Covenants:**

In addition to all other covenants and obligations contained herein, each Obligor agrees and covenants to perform and do each of the following until the DIP Facility is fully repaid or assigned with the written consent of the Required DIP Lenders:

- (a) submit to the Court the Second Amended and Restated Initial Order, and any other Court orders which are being sought by the ~~Obligor~~Obligors in a form confirmed in advance to be satisfactory to the Required DIP Lenders (acting reasonably) subject to any amendments that are required by the Court or the Obligors that are acceptable to the Required DIP Lenders (acting reasonably);

²⁰ Note to Draft: Covered by reps above.

²¹ Note to Draft: Too broad.

²² Note to Draft: Subsumed by (n).

- (b) comply with the provisions of all Court orders made in the CCAA Proceeding, including the Initial Order, Amended and Restated Initial Order and the Second Amended and Restated Initial Order;
- (c) use commercially reasonable efforts²³ to allow each of the DIP Agent, DIP Lenders and their respective employees, agents, advisors and representatives access to all ~~collateral~~Collateral, information and documentation of the Obligors, to visit, inspect and conduct examinations of any of such ~~collateral~~Collateral, information and documentation (including any books and records) and discuss its business operations, properties and financial and other conditions with its officers, employees and independent public accountants, in each case, as may be reasonably requested by the DIP Agent or Required DIP Lenders, during normal business hours, in each case subject to applicable privacy laws and solicitor-client privilege; provided that visits to Nunavut shall be subject to such limitations as the Borrowers may from time to time determine, including due to cost, interference with operations, sealift, shipping season and the SISP;
- (d) ~~upon the reasonable request of the Required DIP Lenders, provide updates regarding the status of the CCAA Proceeding, including any information which may otherwise be confidential, subject to same being maintained as confidential by the DIP Lenders; [reserved];²⁴~~
- (e) preserve, renew, maintain and keep in full force its corporate existence and its material Authorizations required in respect of the Business or any of the Collateral;
- (f) keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Business and affairs of the Obligors;
- (g) conduct the Business and preserve, protect and maintain the Collateral in the ordinary course of Business;
- (h) operate and maintain its respective properties and businesses in all material respects in accordance with industry practice and in all material respects in accordance with applicable ~~law~~Law and all Court orders made in the CCAA Proceeding, including the Initial Order, Amended and Restated Initial Order and the Second Amended and Restated Initial Order;
- (i) ~~maintain in full force all policies and contracts of insurance that are now in effect (or renewals thereof) under which the Obligor,~~

²³ Note to Draft: Given the location of the mine in Nunavut, some qualifier is required.

²⁴ Note to Draft: subsumed by (f).

- ~~the Business or any of the Collateral is insured~~[reserved]²⁵;
- (j) except to the extent otherwise agreed by the Required DIP Lenders (acting reasonably), pay all applicable Priority Payables and all other amounts necessary to preserve the Collateral to avoid any Encumbrance thereon and to carry on the business of each Obligor in the ordinary course;
- (k) promptly notify the DIP Lenders of the occurrence of any Default or Event of Default ~~or of any event or circumstance which could reasonably be expected to result in a material adverse change to the Approved Cash Flow Forecast~~;
- (l) comply in all material respects with all applicable Laws, rules and regulations applicable to its business, including environmental laws;
- (m) ~~deliver to the DIP Agent the reporting and other information from time to time reasonably requested by the DIP Agent or the Required DIP Lenders, and any other information pertaining to the business and affairs of the Obligors as reasonably requested by the DIP Agent or any DIP Lender;~~[reserved]²⁶
- (n) use the proceeds of the DIP Facility in a manner consistent with the restrictions set out herein and in all cases in accordance with the Approved Cash Flow Forecast (subject to Permitted Variances);
- (o) [reserved]²⁷
- (p) [reserved]²⁸
- (~~o~~) ~~duly and punctually pay or cause to be paid to the DIP Agent on behalf of the DIP Lenders all principal, interest, fees and other amounts payable by it under this Agreement on the dates, at the places and in the amounts set forth herein;~~
- (~~p~~) ~~authorize the Monitor to (i) meet and communicate with the DIP Agent and DIP Lenders and (ii) provide regular reports to the DIP Agent and DIP Lenders with respect to the DIP Facility and the CCAA Proceeding;~~
- (q) ~~comply at all times with the SISP Milestones~~[reserved]²⁹;
- (r) on or prior to 5:00 p.m. (Toronto time) on the Monday of every ~~second~~fourth calendar week beginning after the date of this Agreement (each, a "Testing Period"), the Obligors shall have delivered to the DIP Agent and DIP Lenders (x) an Updated

²⁵ Note to Draft: Covered by insurance covenant below.

²⁶ Note to Draft: Subsumed by (c).

²⁷ Note to Draft: Covered by EODs.

²⁸ Note to Draft: The Borrower cannot authorize the Monitor – ~~it is~~ an independent court officer.

²⁹ Note to Draft: Covered by EODs.

- Cash Flow Forecast ~~that is satisfactory to the Required DIP Lenders (subject to the Supermajority DIP Lender Budget Consent Right)~~ and (y) a Variance Report;³⁰
- (s) ~~the Obligors shall have delivered to the DIP Lenders a business plan that is in form and substance satisfactory to the Required DIP Lenders by no later than the date that is three (3) months after the issuance of the Initial Order; and~~[reserved];
- (t) ~~On or prior to June 5, 2026 (or such later date as may be agreed to by the Borrowers and the Required DIP Lenders), the Obligors shall have entered into a key employee retention plan and/or a key employee incentive plan in form and substance acceptable to the Required DIP Lenders.~~ [reserved];
- (u) at all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is customary for the business of the Obligors with financially sound and reputable insurers in coverage and scope acceptable to the Required DIP Lenders, acting reasonably, and, if requested by the Required DIP Lenders, cause the DIP Agent to be listed as ~~the~~a loss payee or additional insured (as applicable) on such insurance policies and notify the DIP Lenders of any claims or losses exceeding ~~\$1,000,000~~2,000,000. The Approved Cash Flow Forecast shall permit funding sufficient to pay the premiums in respect of such insurance;
- (v) provide the DIP Agent, ~~and~~ the DIP Lenders ~~and~~(by email to their counsel being sufficient) with draft copies of, and the opportunity to ~~comment on,~~review all motions, applications, proposed Court orders and other materials or documents that the Obligors intend to file in the CCAA Proceeding ~~at least five (5) Business Days~~ prior to ~~any~~ such filing or, ~~where it is not practically possible to do so within such time,~~ as soon as possible on or prior to the date on which such motion, application, proposed Court ~~order~~Order or other material or document is served on the service list in respect of the CCAA Proceeding;
- (w) promptly provide notice to the DIP Agent, the DIP Lenders and their counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract, and of any material notices, orders, decisions, letters, or other documents, materials, information or correspondence received from any regulatory authority having jurisdiction over any Obligor, in each case which would have a material adverse effect on the Obligors' ability to perform under this Agreement and subject to any disclosure restrictions at Law or contained in any Court order or that, in the opinion of the Obligors (in consultation with the Monitor), each acting reasonably, are necessary to protect the

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Note to Draft: Deleted language does not permit the approve cash flow to roll.

Borrowers' restructuring process;

- (x) ~~promptly upon becoming aware thereof, provide details of any pending, or threatened claims, potential claims, litigation, actions, suits, arbitrations, other proceedings or notices received in respect of same, against any Obligor by or before any court, tribunal, Governmental Authority or regulatory body, which would be reasonably likely to result, individually or in the aggregate, in a judgment in excess of \$1,000,000; [reserved];³¹~~
- (y) take all commercially reasonable actions necessary or available to defend ~~the any~~ Court orders in the CCAA Proceedings from any appeal, reversal, ~~modification~~modifications, amendment, stay or vacating not expressly consented to in writing in advance by the Required DIP Lenders, to the extent relating to the DIP Facility or the DIP Charge;
- (z) continue business operations in all material respects in the ordinary course ensuring full utilization of the shipping window, including (i) ensuring fuel and other necessary products for operations are secured for continued operations and (ii) shipping out all ready-to-ship product for sale; and the Borrowers will not materially change employee head count or staffing requirements except as may be needed to optimize cost structure and operations subject to the Approved Cash Flow Forecast and the prior written consent of the Required DIP Lenders;
- (aa) maintain ~~and take all action to ensure~~ all material licences and permits required for the ~~foreseeable~~ operation of ~~its business that may be required will be acquired, procured, or otherwise obtained and remain~~the Business in the ordinary course during the term of the DIP Facility in full force and effect; ~~the Borrowers shall use commercially reasonable efforts to~~ defend each against revocation or amendment thereof; ~~and the Borrowers, upon request of the Required DIP Lenders, will take all action as may be needed to obtain and preserve the permit to allow for the transportation of up to 6 million tonnes per annum of ore; that would reasonably be expected to be material and adverse to the rights and remedies of the DIP Lenders pursuant to the terms hereof;~~³²
- (bb) ~~maintain in good repair, working order and condition all material properties and assets used or useful in the business of the Borrowers and make all such appropriate repairs thereto~~[reserved];³³
- (cc) ~~take all commercially reasonable efforts to disclaim all contracts~~

³¹ Note to Draft: Subsumed in (c).

³² Note to Draft: Borrower does not have a 6 mtpa permit.

³³ Note to Draft: Subsumed in (g).

- ~~that are not within the Approved Cash Flow Forecast~~[\[reserved\]](#)³⁴
- (dd) ~~act diligently and in good faith in the pursuit of the CCAA Proceeding~~[\[reserved\]](#)³⁵
- (ee) ~~establish a risk management program for all business variables that can reasonably affect business operations in consultation with the Required DIP Lenders, and the DIP Lenders shall have a right of first refusal on any Hedging Obligations; and~~[\[reserved\]](#);
- (ff) ~~execute and deliver such loan and security documentation as may be reasonably requested by the DIP Agent or the Required DIP Lenders from time to time~~[\[reserved\]](#);
- (gg) ~~provide the DIP Agent and DIP Lenders and their advisors from time to time, on a confidential basis, with such information regarding the progress of the Obligors' pursuit of a Restructuring Transaction and the Steensby Expansion as may be reasonably requested by the Required DIP Lenders, subject to any disclosure restrictions contained in any Court order, or that, in the opinion of the Obligors (in consultation with the Monitor), each acting reasonably, are necessary to protect the Borrowers' restructuring process; and~~[\[reserved\]](#)³⁶; and
- (hh) [subject to Section 8](#), promptly pay all DIP Lender Expenses [to the DIP Lender](#) no less frequently than every two weeks, provided that the DIP Lenders shall use commercially reasonable efforts to provide reasonable estimates of such expenses for purposes of the Approved Cash Flow Forecast.

26. **Negative Covenants:**

Each Obligor covenants and agrees not to do the following, other than with the prior written consent of the Required DIP Lenders from and after the date hereof:

- (a) make any payment of principal or interest in respect of Indebtedness ~~other than with respect to the DIP Obligations or otherwise provided herein~~ or declare or pay any dividends or make any other distribution, in each case, except as expressly provided for in the Approved Cash Flow Forecast [\(subject to Permitted Variances\)](#);
- (b) except as set forth in any Court order that is acceptable to the Required DIP Lenders, ~~incur or permit to exist~~ [\(acting reasonably\) or any equipment lease or financing lease obligations covered by an Approved Cash Flow Forecast](#), incur any Indebtedness (including, without limitation, any capital lease obligation, equipment lease or financing lease obligation), ~~or provide or seek or support a motion by another party to provide~~

³⁴ [Note to Draft: Management, in consultation with the Monitor, will decide as to which contracts are disclaimed.](#)

³⁵ [Note to Draft: What does "in pursuit of the CCAA Proceeding" mean?](#)

³⁶ [Note to Draft: Information requests covered elsewhere.](#)

~~such Indebtedness~~ subject to Permitted Variances;

(c) [reserved];³⁷

(~~e~~d) except for the Priority Charges, the DIP Charge, and any Encumbrance existing prior to the date hereof and ranking subordinate to the DIP Charge, or as set forth in any Court order that is acceptable to the Required DIP Lenders, ~~create, permit to exist any Encumbrance, or provide or seek or support a motion by another party to provide an Encumbrance, upon any Collateral;~~

(acting reasonably), (~~d~~) create or permit to exist any ~~Liens~~ Encumbrances on any of its properties or assets other than the Permitted Liens;³⁸

(e) make any payments or use any monies (including, without limitation, proceeds of the DIP Facility) outside of the ordinary course of Business, unless provided for in the Approved Cash Flow Forecast (subject to Permitted Variances);

(f) make any investments in, ~~acquisitions of~~ or loans to or guarantee the Indebtedness or obligations of any other Person, entity or assets, except as expressly provided for in the Approved Cash Flow Forecast (subject to Permitted Variances);

(g) except between Obligors, ~~enter into or continue performance under~~ any transaction with any affiliate or any of its or its affiliates' respective direct or indirect equity holders, senior officers, directors, managers or employees, except in the ordinary course of business for a bona fide business purpose and not for any other purpose, except as expressly provided for herein or in the Approved Cash Flow Forecast;³⁹

(h) ~~enter into or continue performance under any transaction which does not provide for fair and reasonable terms which are no less favorable than those that would be obtained in arm's-length transactions of a similar type~~ [reserved];⁴⁰

(~~i~~) ~~notwithstanding anything in the Initial Cash Flow Forecast or any Approved Cash Flow Forecast,~~ make any type of payment, or otherwise satisfy any claim, to any direct or indirect shareholder of the Borrowers arising under or related to any royalty agreement;

(i) [reserved];⁴¹

³⁷ Note to Draft: Covered by below.

³⁸ Note to Draft: The Company will be seeking KERP charges, but the amounts are still being determined.

³⁹ Note to Draft: As previously drafted, it conflicted with KERP, KEIP, etc.

⁴⁰ Note to Draft: Covered above.

⁴¹ Note to Draft: Royalties included in cash flow.

- (j) make any type of payment, or otherwise satisfy any claim, purported claim, liability, or other obligation, including without limitation of any pre-CCAA filing claim, that is not expressly provided for by the Approved Cash Flow Forecast (subject to Permitted Variances);
- (k) change its jurisdiction of incorporation or registered office;
- (l) change its name, fiscal year end or accounting policies or amend its organizational documents;
- (m) cease to carry on the Business as currently being conducted or materially change its operations or business practices;
- (n) sell, assign, lease, convey or otherwise dispose of or transfer any ~~of its~~ material property, assets or undertakings, except for iron ore product or disposition of obsolete, redundant or ancillary assets obsolete, redundant, worn out or ancillary assets or as may be approved by the Court ~~with the prior written consent of the Required DIP Lenders;~~
- (o) except as otherwise contemplated in any Court order ~~and approved by the Required DIP Lenders or as expressly, as~~ contemplated by the Approved Cash Flow Forecast or as contemplated hereby, establish or make any retention or bonus payments, increase compensation or severance entitlements or other benefits payable to directors, senior officers or senior management, or pay any bonuses whatsoever;
- (p) enter into any settlement agreement or agree to any settlement arrangements with any regulatory authority or in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against the Obligor;
- (q) enter into any amalgamation, reorganization, liquidation, dissolution, winding-up, merger or other similar transaction or series of transactions, allow any change of control to occur, or create or acquire any new subsidiary or become a general partner in any partnership that does not provide for the full repayment of the obligations under the DIP Facility;
- (r) amend, supplement, revoke, terminate or discharge or seek to amend, supplement, revoke, terminate or discharge, the Initial Order, Amended and Restated Initial Order or the Second Amended and Restated Initial Order, except to amend and restate the Amended and Restated Initial Order as may be permitted by this Agreement;
- (s) apply for or consent to, any Court order, or amendment or modification to an existing Court order which adversely affects or ~~could~~ would reasonably be expected to adversely affect the DIP Agent or the DIP Lenders hereunder;
- (t) file or support the confirmation of any plan of arrangement or

liquidation, in each case, that treats the DIP Obligations as "affected" without the consent of the Required DIP Lenders;

- (u) ~~(i) enter into any material transaction or material agreements or (ii) amend or modify any existing agreements or transaction terms, in each case, including royalty agreements, Alternative Offtake and Service Agreements, or similar agreements, without the consent of the Required DIP Lenders; [reserved];⁴²~~
- (v) ~~satisfy the delivery or other performance obligations and/or payment obligations under its contracts with Glencore plc or any of its affiliates, including, without limitation, any obligations to process or deliver iron ore; [reserved];~~
- (w) ~~take (or omit to take) any action to the extent such action could reasonably be expected to materially impair or otherwise adversely affect the ability of the Obligors to utilize any net operating losses, tax credit carry forwards, built-in losses, basis, deductions or other tax attributes or benefit, in each case, without the prior written consent of the Required DIP Lenders; [reserved];~~
- (x) ~~issue any Equity Securities, create any new class of Equity Securities, amend any terms of its existing Equity Securities, or consent to or take any steps in furtherance of the exercise of any conversion right under any Equity Securities issued by it, other than in connection with a Restructuring Transaction approved pursuant to a Court order; [reserved];~~
- (y) seek, obtain, support, make or permit to be made any Court order or any change, amendment or modification to any Court order that would reasonably be expected to materially affect the rights or protections of the DIP Agent or the DIP Lenders under or in connection with the DIP Facility or the DIP Charge, except with the prior written consent of the Required DIP Lenders, in their sole discretion;
- (z) seek or consent to the lifting of the stay of proceedings in the Initial Order, Amended and Restated Initial Order or the Second Amended and Restated Initial Order, as applicable, in favour of the Borrowers, or seek or consent to the appointment of a receiver or trustee in bankruptcy or any similar official in any jurisdiction;
- (aa) ~~make any changes to the composition of the board of directors of the Borrowers (including the addition, removal or replacement of directors, other than a resignation by a director), other than pursuant to a Court order and with the Required DIP Lenders' approval (in their sole discretion); [reserved];~~
- (bb) ~~negotiate or enter into any other interim financing facility;~~

⁴² Note to Draft: Covenant too broad.

~~or~~[reserved];⁴³ or

- (cc) ~~pay any professional or advisory fees (including any legal fees or expenses) of any other Person (other than the Borrowers, the DIP Agent, the DIP Lenders and the Monitor) that are not provided for in the Approved Cash Flow Forecast, except pursuant to the terms of a binding support agreement with such Person with respect to a Restructuring Transaction that is acceptable to the Required DIP Lenders, or as may otherwise be agreed to by the Required DIP Lenders and the Borrowers (in consultation with the Monitor).~~[reserved].⁴⁴

27. **Sales and Investment Solicitation Process; Expansion:**

Unless otherwise agreed by the Supermajority Required DIP Lenders, the Borrowers and the DIP Lenders agree that the Borrowers (in consultation with the Monitor and the DIP Lenders) shall pursue a sales and investment solicitation process ~~in form and substance acceptable to the Borrowers and the Supermajority DIP Lenders~~ (the "**SISP**") approved pursuant to a Court order in respect of potential Restructuring Transactions and any such SISP shall include the following milestones (collectively, the "**SISP Milestones**"):

- (a) the deadline for the commencement of the SISP will be no later than 3 months after the issuance of the Second Amended and Restated Initial Order;
- (b) the deadline for the receipt of first round bids in connection with the SISP will be no later than 6 months after the issuance of the Second Amended and Restated Initial Order;
- (c) the Borrowers shall complete all site visits for bidders prior to October 31, 2026; and
- (d) the final deadline for the closing of a transaction resulting from the SISP will be no later than ~~42~~18 months after the commencement of the SISP,

provided that the Borrowers may extend each of the foregoing dates in accordance with the Court order approving the SISP, ~~which Court order shall be in form and substance acceptable to the Supermajority DIP Lenders; provided further however that nothing herein shall prohibit the pursuit of a Restructuring Transaction pursuant to a Court approved plan at any time. For the avoidance of doubt, any DIP Lender or the DIP Agent may participate as a bidder in connection with any SISP in respect of potential Restructuring Transactions or Alternative Offtake and Service Agreements.~~

28. **Events of Default:**

The occurrence of any one or more of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:

⁴³ Note to Draft: Limits on Indebtedness are already imposed elsewhere.

⁴⁴ Note to Draft: There are already covenants that require payments to be made only in accordance with the approved cash flow

- (a) any Court order is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacating, amendment or restatement which (i) stays, reverses, vacates or otherwise modifies this Agreement or (ii) adversely affects or would reasonably be expected to adversely affect the ~~interest of the DIP Agent or DIP Lenders in a material manner~~enforceability of any material term of this Agreement or the DIP Charge, unless the DIP Agent or Required DIP Lenders, as applicable, have given their prior written consent thereto, including the issuance of a Court order:
- (i) appointing a receiver and manager, receiver, interim receiver or similar official in respect of an Obligor;
 - (ii) terminating, lifting or amending the stay imposed within the CCAA Proceeding in a manner which, in the opinion of the Required DIP Lenders, acting reasonably, is materially prejudicial to the DIP Lenders;
 - (iii) granting any other claim or Encumbrance of equal or priority status to that of the DIP Charge, other than the Priority Charges or the Priority Payables; or
 - (iv) prejudicially affecting the DIP Agent, DIP Lenders or the Collateral;
- (b) failure of an Obligor to diligently oppose any party that brings an application or motion for any of the relief set out in subsection 27(a) above and/or the failure to secure the dismissal of such motion or application within 30 days from the date that such application or motion is brought (provided no affirmative Court order is issued on such motion or application during such period);
- (c) the CCAA Proceeding is terminated or converted to bankruptcy proceedings;
- (d) failure of the Borrowers to pay (i) principal, interest or other amounts arising hereunder when due pursuant to this Agreement ~~or any other document entered into in connection herewith~~, or (ii) any reasonable and documented ~~third-party expenses~~DIP Lender Expenses payable to the DIP Agent, the DIP Lenders or the Fronting Lender within ~~two~~five (25) Business Days of being invoiced therefor, provided that such invoices are delivered no more frequently than every two weeks, and such failure, in the case of each of items (i) and (ii), remains unremedied for more than two (2) Business Days;
- ~~(e) any Obligor ceases to carry on or maintain the Business or its assets in the ordinary course of the Business in compliance with the covenants contained in this Agreement, except where such cessation is otherwise consented to in advance in writing by the Required DIP Lenders;~~
- (e) [reserved];

- (f) any representation or warranty made or given hereunder by any Obligor shall be incorrect or misleading in any material respect when made;
- (g) any material violation or breach of any court order by an Obligor;
- (h) material failure of an Obligor to (x) perform or comply with any term or covenant of this Agreement and such failure shall continue ~~uncured~~ for more than five (5) Business Days after the earlier to occur of (i) any one or more of the Obligors having knowledge of such Event of Default or (ii) written notice of such Event of Default from the DIP Agent to the Borrowers, in either case, at the direction of the Required DIP Lenders to the Borrowers or (y) achieve the SISP milestones in accordance with section 26;
- (i) any proceeding, motion or application is commenced or filed by the Obligors, or if commenced by another party, is supported or otherwise consented to by the Obligors, seeking the invalidation, subordination or other challenging of the terms of the DIP Facility, the DIP ~~Lenders'~~ Charge, or this Agreement;
- (j) ~~an Obligor makes any payments of any kind not permitted by this Agreement, the Approved Cash Flow Forecast (subject to Permitted Variances) or any order of the Court or any failure to remain in compliance with the Approved Cash Flow Forecast, subject to Permitted Variances;~~[reserved];⁴⁵
- (k) any plan is filed or sanctioned by the Court in a form and in substance that is not acceptable to the Required DIP Lenders if such plan does not either provide for the repayment of the obligations under the DIP Facility in full by the Maturity Date, or designate the DIP Lenders as unaffected by such plan;
- (l) any Obligor shall file a motion seeking, or take any action supporting a motion seeking, or the Court shall issue, an order, authorizing the sale or liquidation of its assets unless, in each case, either (i) the Required DIP Lenders consent to the filing of such motion, (ii) it relates to the SISP, or (ii) the Court order approving such sale or liquidation contemplates payment in full in cash of all the DIP Obligations;
- (m) ~~any event or occurrence that materially adversely affects the Obligors, their business or their assets, in each case taken as a whole, as determined by the Required DIP Lenders in their sole discretion~~[reserved];⁴⁶
- (n) ~~a default (other than a default resulting from the insolvency of the Borrowers or the commencement of the CCAA Proceeding by the Borrowers, including, for greater certainty, as a result of~~

⁴⁵ Note to Draft: Subsumed by (h).

⁴⁶ Note to Draft: The following are subjective and hair triggered.

- ~~failure to pay pre-filing amounts as a result of the commencement of the CCAA Proceeding) under any Material Contract, or any material amendment of any Material Contract unless agreed to by the Required DIP Lenders in writing; [reserved];~~
- (o) any change of control of any one or more of the Obligors that does not provide for the full repayment of the obligations under the DIP Facility, without the consent of the Required DIP Lenders;
- (p) any Authorization issued to any Obligor is terminated, revoked, or suspended and such termination, revocation, or suspension has or ~~could~~would reasonably be expected to have a material adverse effect on the operations, ~~financial condition,~~ and/or ~~future prospects~~ financial condition of the Obligors taken as a whole;
- (q) ~~any Obligor does not comply with any term or condition of the SISP, including without limitation not satisfying any milestone action required to be completed in the SISP by the date on which such milestone action item is required to be completed under the SISP and remaining in compliance with such action item thereafter, as applicable; [reserved];⁴⁷~~
- (r) ~~the priority of the Liens as contemplated hereby created pursuant to or under the DIP Security in favor of the DIP Agent for the benefit of the DIP Lenders is varied without the consent of the DIP Agent at the direction of the DIP Lenders or any of such Liens does not have the priority required hereunder for any reason in any jurisdiction; [reserved];~~
- (s) ~~any Obligor commences an action or any other proceeding in any proceeding or in any other court (i) to obtain any form of relief against the DIP Agent or DIP Lenders (or any one or more of them) including without limitation a proceeding to recover damages from the DIP Agent or the DIP Lenders or to obtain payment of any amounts purported to be owing by the DIP Agent or the DIP Lenders (or any one or more of them) to any Obligor if the DIP Agent or the DIP Lenders (or any one or more of them) disputes any of the same or (ii) to challenge in any way the enforceability of this Agreement or any document entered in connection herewith or the Liens granted under or pursuant to the DIP Security; [reserved];⁴⁸~~
- (t) any Obligor seeks, or consents to, any amendment of the SISP without the prior written consent of the DIP Agent at the direction of the Supermajority Required DIP Lenders;

⁴⁷ Note to Draft: Deleted language covered by (h).

⁴⁸ Note to Draft: This would prevent borrowers from affording themselves protection against a defaulting or breaching lender.

- (u) the expiry without further extension of the stay of proceedings in the CCAA Proceeding;
- (v) ~~the denial or purported repudiation by any Obligor of the legality, validity, binding nature, or enforceability of this Agreement or any document entered into in connection herewith, or any Obligor commencing any action or proceeding in any proceeding for a declaration or order to such effect;~~[\[reserved\]](#);
- (w) ~~this Agreement or any other document entered into in connection herewith (and for certainty including without limitation the DIP Security) ceases to be enforceable~~[\[reserved\]](#);
- (x) ~~except as stayed by order of the Court, the entry of one or more final judgements, writs of execution, garnishments or attachments representing a claim or claims in excess of \$100,000 or the equivalent amount thereof in any other currency, in the aggregate, against any Obligor or the property and assets of any Obligor which are subject to the Liens in favor of the DIP Agent for the benefit of the DIP Lenders that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after its or their entry, commencement or levy;~~[\[reserved\]](#)⁴⁹;
- (y) ~~any Obligor shall enter into or become liable under any other debtor in possession financing facility~~[\[reserved\]](#);
- (z) ~~any Obligor shall incorporate, create, or organize any new subsidiaries after the date of this Agreement; or~~[\[reserved\]](#);
- (aa) ~~(i) any changes by any Obligor to the composition of its board of directors or (ii) any Obligor retains or appoints a chief restructuring officer or Person in a similar role, in each case without the prior consent of the Required DIP Lenders or a Court order.~~[\[reserved\]](#);
- (bb) (i) a Variance Report or Updated Cash Flow Forecast is not delivered within ~~twofive~~ (25) Business Days of the day on which such Variance Report or Updated Cash Flow Forecast is required to be delivered pursuant to this Agreement, or (ii) there shall exist a cumulative negative variance in excess of the Permitted Variance for the period from the date of the Initial Order to the last day of the applicable testing period, measured relative to the Approved Cash Flow Forecast then in effect;~~or~~;
- (cc) ~~any Court order is issued pointing a chief restructuring advisor or similar role, or expending the role of the Monitor, in each case, without the consent of the Required DIP Lenders.~~[\[reserved\]](#);

[provided that, except for \(a\), where no cure period is provided in the](#)

⁴⁹

[Note to Draft: These are too broad and hair trigger, and some are already covered \(e.g., a through a covenant not to incur Indebtedness\). They will not permit the Borrowers to operate the business in the ordinary course in a debtor-in-possession context.](#)

foregoing, it shall not be an Event of Default until fifteen (15) days have elapsed since the Borrowers have received written notice from the DIP Agent of the occurrence of the putative Event of Default.

29. **Remedies:**

Upon the occurrence and continuance of an Event of Default, the DIP Agent (acting at the direction of the Required DIP Lenders) or the Required DIP Lenders may elect on prior written notice to the Borrowers and the Monitor to:

- (a) set-off, consolidate or accelerate all amounts outstanding under the DIP Facility (including the Commitment/Funding Fee) and declare such amounts to be immediately due and payable;
- (b) terminate the DIP Facility;
- (c) apply for a Court order, on terms satisfactory to the Monitor and the Required DIP Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrowers, to take all necessary steps in the CCAA Proceeding to realize on the Collateral, including applying to the Court for the appointment of a receiver, interim receiver or receiver and manager over the Borrowers or all or certain of their Collateral, or for the appointment of a trustee in bankruptcy in respect of the Borrowers;
- (d) exercise the powers and rights of a secured party; and
- (e) exercise all such other rights and remedies available to the DIP Lenders hereunder, or pursuant to the Initial Order or otherwise in accordance with applicable Law.

The DIP Agent (acting at the direction of the Required DIP Lenders) may use (for certainty, on the instructions of the Required DIP Lenders in accordance with the definition thereof and section ~~33~~34) any or all of the DIP Obligations as a credit bid and/or to pay for some or all of the purchase price (including any deposit payable in connection with such transaction) in connection with (a) any purchase of some or all of the properties and assets of the Borrowers and the Guarantors (or any one or more of them), (b) any Restructuring Transaction agreed to by the Borrowers (in consultation with the Monitor) and the Required DIP Lenders, in each case subject to any Court order and such reasonable terms and conditions as may be required in the opinion of the Borrowers (in consultation with the Monitor), each acting reasonably, to protect the Borrowers' restructuring process.

30. **Taxes:**

All payments by an Obligor under this Agreement, including any payments required to be made from and after the exercise of any remedies available to the DIP Agent and/or the DIP Lenders upon the occurrence and continuance of an Event of Default, shall be made free and clear of, without reduction for or on account of, any present or future Taxes; provided, however, that if any Taxes are required by applicable Law to be withheld ("**Withholding Taxes**") from any amount payable to the DIP Lenders under this Agreement, the amounts so

payable to the DIP Lenders shall be increased to the extent necessary to yield to the DIP Lenders on a net basis after payment of all Withholding Taxes, the amount payable hereunder at the rate or in the amount specified hereunder and the Obligors shall provide evidence satisfactory to the Required DIP Lenders that the Taxes have been so withheld and remitted.

If the Borrowers pay an additional amount to the DIP Lenders to account for any Withholding Taxes, the DIP Lenders shall reasonably cooperate with the Borrowers to obtain a refund of the amounts so withheld, including filing income tax returns in applicable jurisdictions, claiming a refund of such Withholding Tax and providing evidence of entitlement to the benefits of any applicable tax treaty. The amount of any refund so received, and interest paid by the tax authority with respect to any refund, shall be paid over by the DIP Lenders to the Borrowers promptly. If reasonably requested by the Borrowers, the DIP Lenders shall apply to the relevant taxing authority to obtain a waiver from such withholding requirement, and the DIP Lenders shall cooperate with the Borrowers and assist the Borrowers to minimize the amount of Withholding Tax required, in each case at the Borrowers' sole expense.

31. **Termination by Borrowers** The Borrowers shall be entitled to terminate this Agreement upon notice to the DIP Lenders ~~at:~~ (a) in the event that the DIP Lenders have failed to fund any Advance in full when required to do so under this Agreement or (b) any time following the ~~indefeasible~~ payment in full⁵⁰ in immediately available funds of all of the outstanding DIP Obligations. Effective immediately upon such termination, all obligations of the Borrowers and the DIP Lenders under this Agreement shall cease, except for those obligations that explicitly survive termination. For greater certainty, all outstanding DIP Obligations in respect of all Advances funded prior to such termination shall become immediately due and payable concurrently with such termination and the DIP Lenders shall not be required to make any further extensions of credit under this Agreement.
32. **Further Assurances:** The Obligors shall, at their own expense, from time to time do, execute and deliver or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the Required DIP Lenders may reasonably request for the purpose of giving effect to this Agreement.
33. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties related to the subject matter hereof. To the extent there is any

⁵⁰ Note to Draft: The Borrowers must be released upon "full payment" of the obligations – not indefeasible payment.

inconsistency between this Agreement and any other documents entered into in connection herewith, this Agreement shall prevail.

34. **Amendments and Waivers:**

No waiver or delay on the part of the DIP Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement.

All consents, waivers or amendments to or in connection with this Agreement and the DIP Facility and the transactions contemplated hereby or thereby must be in writing and if approved in writing by the DIP Agent at the direction of the Required DIP Lenders shall be binding on all of the DIP Lenders including those Lenders which did not execute any such consent, waiver or amendment; and any matters, documents or other things required to be acceptable or satisfactory to the DIP Lenders are and shall be deemed to be acceptable and satisfactory to all the DIP Lenders if acceptable or satisfactory to the DIP Agent at the direction of the Required DIP Lenders; provided that and for certainty, no consent, waiver or amendment shall be binding on the DIP Lenders unless each of the DIP Lenders executes a consent, waiver or amendment for any of the following matters: (a) increase the amount of any Lender's DIP Facility commitment amount; (b) ~~change to the Maturity Date;~~ (c) ~~postpone or delay the date for payment of any principal, interest or other DIP Obligations;~~ (d) reduce the principal amount owing by the Borrowers or the rate of interest or any other fees applicable to amounts owing or to become owing hereunder or under the other documents in connection herewith; (e) change the pro rata commitments of any of the DIP Lenders in connection with the DIP Facility; (f) amend this section ~~3334~~, the definition of "Required DIP Lenders", the definition of "Supermajority DIP Lenders" or any provision providing for consent or other action by all or any specific percentage or portion of the DIP Lenders; (g) discharge any Obligor from its payment obligations under hereunder or under any other document in connection herewith or release any DIP Security except as may be expressly provided for in this Agreement; or (h) amend the terms and conditions of the application of proceeds of any repayments or the sharing of payments; provided further that any consent, amendment, waiver or other modification with respect to this Agreement that would adversely and disproportionately modify the rights of any DIP Lender (in its capacity as such) under the DIP Facility compared to other DIP Lenders shall require the prior written consent of each such affected DIP Lender. Notwithstanding anything to the contrary contained herein, any consent, amendment, waiver or other modification that subordinates, or has the direct or indirect effect of subordinating, (x) any DIP Obligations in right of payment to any other Indebtedness for borrowed money or (y) any ~~Liens~~Encumbrances securing the DIP Obligations to any ~~Liens~~Encumbrances securing any other Indebtedness for borrowed money, in each case, shall require the prior written consent of the Supermajority DIP Lenders.

In addition, the Required DIP Lenders shall consult all other DIP

Lenders in connection with any consent, waiver, amendment or other modification requiring the consent of the Required DIP Lenders.

35. **Severability:** Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
36. **No Third Party Beneficiary:** No Person, other than the Obligors and the DIP Lenders are entitled to rely upon this Agreement and the parties expressly agree that this Agreement does not confer rights upon any party not a signatory hereto.
37. **Counterparts and Facsimile Signatures:** This Agreement may be executed in any number of counterparts delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Agreement by signing any counterpart of it.
38. **Assignment:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Upon the Borrowers' acceptance of this Agreement, this Agreement shall be amended and restated to include provisions pursuant to which DIP Lenders may assign DIP Loans and/or sell participations in DIP Loans. ~~Any DIP Lender may assign its rights and obligations under the DIP Facility, in whole or in part, to any Person acceptable to such DIP Lender, in its sole and absolute discretion, in each case subject to Borrower' consent, not to be unreasonably withheld provided that no Event of Default has occurred and is then continuing.~~
39. **Notices:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the Person as set forth below:

in the case of a notice to the Obligors at:

c/o Baffinland Iron Mines Corporation
360 Oakville Place Dr., Suite 300
Oakville, Ontario L6H 6K8

Attention: Mark O'Brien
Email: mark.obrien@baffinland.com

with a copy (which shall not constitute notice) to:

Davies Ward Phillips & Vineberg LLP
155 Wellington St. W.
Toronto, ON M5V 3J7

Attention: Natalie Renner and Rob Nicholls

Email: nrenner@dwpv.com and rnicholls@dwpv.com

in the case of a notice to the DIP Agent at:

■

Attention: ■

Email: ■

in the case of a notice to the DIP Lenders at the notice information set forth in Schedule A, with copies to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Attention: Brian S. Hermann; Brian Bolin; Joseph Graham
Email: bhermann@paulweiss.com; bbolin@paulweiss.com;
jgraham@paulweiss.com

and

Stikeman Elliott LLP
199 Bay St. #5300
Toronto, ON M5L 1B9

Attention: Maria Konyukhova; Logan Copen
Email: mkonyukhova@stikeman.com;
lcopen@stikeman.com

and

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10022

Attention: Ira Dizengoff; Meredith Lahaie; Lucas Charleston
Email: idizengoff@akingump.com;
mlahaie@akingump.com; lcharleston@akingump.com

and

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
Toronto, Ontario
M5H 0B4

Attention: Ryan Jacobs and Michael Wunder
Email: rjacobs@cassels.com and
mwunder@cassels.com

In either case, with a copy to the Monitor:

FTI Consulting Canada Inc.

Attention: Jeffrey Rosenberg

Email: Jeffrey.rosenberg@fticonsulting.com

With a copy to, which shall not constitute notice:

Osler, Hoskin & Harcourt LLP
 First Canadian Place, 100 King St. W. #6200
 Toronto, ON M5H 1H1

Attention: Marc Wasserman and Michael De Lellis

Email: mwasserman@osler.com and mdelellis@osler.com

Any notice delivered or transmitted to a Person as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

In the event that any amount required to be paid hereunder is due on a day which is not a Business Day, such amount shall be paid on the next following Business Day with applicable interest adjustments.

40. **Governing Law and Jurisdiction:** This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein.
41. **Definitions:** For the purposes of this Agreement, unless context otherwise requires, the following terms have the respective meanings set out below, and grammatical variations of such terms have corresponding meanings:
- "**Advance**" has the meaning given to that term in section 8;
- "**Advance Notice**" has the meaning given to that term in section 8;
- "**Affiliate**" of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;
- "**Agreement**" means this Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;
- "**Amended and Restated Initial Order**" means the order of the Court

entered on May 25, 2026;

~~"Alternative Offtake and Service Agreements" means offtake, service or other agreements in respect of the business of the Borrowers;~~

"Approved Cash Flow Forecast" has the meaning given to that term in section 14;

"Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Collateral or the Business;

"Benefits Agreement" means the impact benefits agreement between BIM Corp. and the Qikiqtani Inuit Association dated September 6, 2013, as amended on October 22, 2018, and as may be further amended, supplemented or amended and restated from time to time;

"Borrowers" has the meaning given to that term in the recitals;

"Borrowers' Account" has the meaning given to that term in section 19;

"Business" means the business of iron ore mining at the Mary River Mine on Baffin Island in Nunavut, Canada;

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario [or in New York, New York](#);

"CAA" has the meaning given to that term in the recitals;

"CAA Proceeding" has the meaning given to that term in the recitals;

"Collateral" means all now-owned and hereafter-acquired assets and property of the Obligor, real and personal, tangible or intangible and all proceeds therefrom, including the Borrowers' Account and all assets used in the Business;

"Commodity Agreement" means, with respect to any Person, any commodity future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is a party or a beneficiary;

"Commitment/Funding Fee" has the meaning given to that term in section 12;

"Court" has the meaning given to that term in the recitals;

"Currency Agreement" means, with respect to any Person, any foreign exchange future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is a party or a beneficiary;

"Default" means the occurrence or existence of any event, fact or circumstances, that with the giving of notice, passage of time, or both, would constitute an Event of Default;

"Default Rate" has the meaning given to that term in section 12;

"DIP Agent" has the meaning given to that term in section 6;

"DIP Charge" has the meaning given to that term in section 17;

"DIP Facility" has the meaning given to that term in section 7;

"DIP Lenders" has the meaning given to that term in section 6;

"DIP Lender Expenses" has the meaning given to that term in section 13;

"DIP Obligations" has the meaning given to that term in section 17;

"DIP Security" means the DIP Charge and any and all security documents granted by the Obligors providing for a security interest in the Collateral and related personal property security registrations made in favour of the DIP Agent, for the benefit of the DIP Lenders, in connection with such security interest together with such confirmations, financing statements, renewals, amendments, discharges, insurance endorsements, opinions or other documents as may be reasonably requested by the Required DIP Lenders as security for the DIP Obligations;

"EDC" means Export Development Canada;

"EDC Credit Agreement" means that certain credit agreement dated as of October 7, 2022 (as amended pursuant to an amendment dated September 27, 2023, an amendment dated March 26, 2024, an amendment dated May 27, 2025 and an amendment dated November 24, 2025), by and among the Borrowers, as borrowers, the guarantors party thereto and EDC, as lender;

"Encumbrances" means any hypothec, encumbrance, lien, charge, pledge, deposit arrangement, mortgage, title retention agreement, trust, deemed trust, security interest of any nature, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege, or any other arrangement or condition that in substance or effect secures payment or performance of an obligation, or any contract to create any of the foregoing;

"Event of Default" has the meaning given to that term in section 27;

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"Hedging Obligations" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement;

"Holder AHG" means an ad hoc group of Holders providing DIP Loans hereunder.

"Holders" means holders of the notes under the Indenture.

"Indebtedness" of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, including by way of overdraft and drafts or orders accepted as representing extensions of credit, (b) all obligations of such Person evidenced by bonds, debentures, the face amount of all letters of credit, letters of guarantee and similar instruments, notes or other similar instruments, (c) all indebtedness, liabilities and obligations secured by an Encumbrance on any asset of such Person, whether or not the same is otherwise indebtedness, liabilities or obligations of such Person, (d) all indebtedness, liabilities and obligations of others which is, directly or indirectly, guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, (e) all indebtedness, liabilities and obligations in respect of financial instruments which are classified as a liability on the balance sheet of such Person, and (f) all obligations of such Person to otherwise assure a creditor against loss (for certainty, Hedging Obligations incurred by an Obligor in the ordinary course shall not be considered Indebtedness for purposes of this Agreement);

"Indemnified Persons" has the meaning given to that term in section 22;

"Indenture" means that certain Senior Secured Notes Indenture, dated as of June 27, 2018 (as amended, amended and restated or otherwise modified from time to time prior to the date of this Agreement), by and among the Borrowers, as issuers and the Indenture Agent;

"Indenture Agent" means Wilmington Trust, National Association, as trustee and collateral;

"Initial Advance" has the meaning given to that term in section 8;

"Initial Advance Conditions" has the meaning given to that term in section 15;

"Initial Order" means the order of the Court entered on May 15, 2026;

"Interest Payment Date" has the meaning given to that term in section 14;

"Interest Period" has the meaning given to that term in section 12;

"Interest Rate Agreement" means, with respect to any Person, any interest rate future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is a party or a beneficiary;

"Interest Rate" has the meaning given to that term in section 12;

"Law" means any federal, provincial, county, territorial, district, municipal, local or foreign, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order,

judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

"**Loan Amount**" has the meaning given to that term in section 7;

~~"**Maturity Date**" has the meaning given to that term in section 20;~~

"**Material Contract**" means any contract, license or agreement: (i) to which a Borrower or Guarantor is a party or is bound; (ii) which is material to, or necessary in, the operation of the business of a Borrower or Guarantor; and (iii) which such Borrower or Guarantor cannot promptly replace by an alternative and comparable contract with comparable commercial terms;

~~"**Stated Maturity Date**" has the meaning given to that term in section 2020;~~

"**Monitor**" means FTI Consulting Canada Inc., as the court-appointed monitor of the Borrowers and Nunavut Iron Ore Mines, Inc.;

"**Obligors**" has the meaning given to that term in section 5;

"**Permitted Liens**" means (i) the Permitted Priority Liens; (ii) the DIP Charge; (iii) any charges created under the Initial Order or other Court order subsequent and subordinated in priority to the DIP Charge; (iv) Liens Encumbrances existing prior to the ~~Filing Date; and filing date;~~ (v) inchoate statutory Liens Encumbrances arising after the ~~Filing Date filing date~~ in respect of any accounts payable arising after the ~~Filing Date filing date~~ in the ordinary course of business; (vi) miner's liens incurred in the ordinary course of business; and (vii) Liens in the ordinary course of the business in relation to obligations that do not secured Indebtedness;

"**Permitted Priority Liens**" means (i) the Priority Charges; (ii) any Lien Encumbrance in respect of amounts payable by the Borrowers for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits), income tax and workers compensation claims, in each case solely to the extent such amounts are given priority by applicable Law and only to the extent that the priority of such amounts has not been subordinated to the DIP Charge granted by the Court; and (iii) such other Liens Encumbrances existing as of the Filing Date that have not been subordinated to the DIP Charge granted by the Court.

~~"**Permitted Variance**" means, for each Testing Period, (A) a negative variance of (i) not more than 10.0% of projected receipts for such Testing Period; (ii) more than 10.0% of projected receipts for the 10% relative to the aggregate net cash flow on a cumulative period basis commencing on the date of the initial Approved Cash Flow Forecast and ending on the last day of such Testing Period; (iii) more than 10.0% of projected disbursements for such Testing Period; and (iv) more than 10.0% of projected disbursements for the cumulative period commencing on the date of the initial Approved Cash Flow Forecast and ending on the last day of such Testing Period or (B) to the extent any Approved Cash Flow Forecast sets forth a permitted variance with~~

~~respect to a specific line item, such variance as specified therein;~~ provided that for the purposes of determining any net cash flow, the fees, costs and expenses payable to the Monitor, the Obligors, the DIP Lenders, the DIP Agent, the Fronting Lender or their respective advisors shall be excluded from such net cash flow;

"Person" means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee;

"Pre-Approved Steensby CapEx" means ■;

"Priority Charges" has the meaning given to that term in section 17;

"Priority Payables" means HST, all sales Tax and any amount payable or accrued by a Borrower which is secured by an Encumbrance which ranks or is capable of ranking prior to or *pari passu* with the Encumbrances created in connection with the DIP Charge (other than the Priority Charges) including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, construction trusts or construction liens, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the Encumbrances created in connection with the DIP Charge;

"Restructuring Transaction" means any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, plan or other material transaction of, or in respect of, the Obligors, or any of them, or all or a material portion of their Business, assets or obligations;

"Required DIP Lenders" means, as of any time of determination, DIP Lenders holding more than 50% of the sum of all DIP Loans outstanding and undrawn commitments in effect with respect thereto (without taking into account any commitments temporarily held by the Fronting Lender for the account of the ultimate Lenders) at such time;

"Royalty Agreements" means, collectively, (i) the royalty agreement entered into among the Borrowers, 15877580 Canada Inc., ArcelorMittal Canada Inc., 15877563 Canada Inc. and 15877482 Canada Inc. dated March 25, 2024 and (ii) the royalty agreement entered into among the Borrowers, 16572367 Canada Inc., 15877563 Canada Inc. and 15877482 Canada Inc.;

"Second Amended and Restated Initial Order" means an order, or orders, of the Court, in form and substance satisfactory to the Required DIP Lenders and obtained on application made on notice to the service list in the CCAA Proceeding and to such Persons as the Required DIP Lenders and Obligors determine, acting reasonably, among other things, amending and restating the Amended and Restated Initial Order, approving the DIP Facility, granting the DIP Charge and granting the Obligors an extension of the stay of proceedings;

"Senior Agents" means, collectively, Alter Domus (US) LLC, as

administrative agent and Wilmington Trust, National Association, as the collateral agent, in each case, under the Senior Credit Agreement;

"Senior Credit Agreement" means that certain revolving credit agreement dated as of May 26, 2017 (as amended by the first amendment dated June 27, 2018, the second amendment dated October 25, 2019, the third amendment dated February 14, 2022, the fourth amendment dated March 26, 2024, the fifth amendment dated May 27, 2025 and the sixth amendment dated November 24, 2025), by and among the Borrowers, as borrowers, the guarantors party thereto, the Senior Lenders and the Senior Agents;

"Senior Lenders" means the lenders under the Senior Credit Agreement;

"Senior Secured Notes" means the senior secured notes issued under the Indenture;

"SISP" has the meaning given to that term in section 26;

"SISP Milestones" has the meaning given to that term in section 26;

"~~Steensby Expansion~~ Stated Maturity Date" has the meaning given to that term in section ~~23~~20;

"~~Subsequent Advance~~ Steensby Expansion" has the meaning given to that term in section ~~8~~14;

"~~Supermajority DIP Lender Budget Consent Right~~ Subsequent Advance" has the meaning given to that term in section ~~44~~8;

"Supermajority DIP Lenders" means, as of any time of determination, DIP Lenders holding not less than 66.67% of the sum of all DIP Loans outstanding and undrawn commitments in effect with respect thereto (without taking into account any commitments temporarily held by the Fronting Lender for the account of the ultimate Lenders) at such time; ~~provided that, at all times, "Supermajority DIP Lenders" must include at least three (3) DIP Lenders, which DIP Lenders are not affiliates of each other.~~

"Tax" and **"Taxes"** means any taxes, duties, fees, premiums and assessments imposed by any Governmental Authority, including all interest, penalties, fines or additions to tax imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

"Updated Cash Flow" has the meaning given to that term in section 14;

"Variance Report" means a report ~~with calculations in form and substance satisfactory to the Required DIP Lenders and the Monitor~~

~~acting reasonably~~ setting forth for all Obligors (i) actual receipts and disbursements for the preceding ~~two-week~~four-week period (each such period, a Testing Period) for each line item in the Approved Cash Flow Forecast for such previous ~~two-week~~four-week period, and (ii) actual receipts and disbursements on a cumulative basis since the beginning of the period covered by the then operative Approved Cash Flow Forecast, in each case as against the then operative Approved Cash Flow Forecast, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof in the then operative Approved Cash Flow Forecast. Each Variance Report shall include reasonably detailed explanations for any variances for either receipts or disbursements, in each case exceeding five percent (5%) of the Approved Cash Flow Forecast for each line item in the Approved Cash Flow Forecast and all items on a cumulative basis during the relevant period; and

"Withholding Taxes" has the meaning given to that term in section 29.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

BORROWERS:

**BAFFINLAND IRON MINES
CORPORATION**

by _____

**BAFFINLAND IRON MINES LP, by its
general partner, BAFFINLAND IRON
MINES CORPORATION**

by _____

GUARANTORS:

NUNAVUT IRON ORE, INC.

by _____

12334992 CANADA INC.

by _____

[Signature Page – DIP Term Sheet]

35. In the mark-ups, the Debtors square-bracketed the \$300 million figure and included a footnote directing prospective lenders to "consider the size of the DIP Facility Amount" and noted that advisory fees and a KERP were not accounted for in the Debtors' financial models. In that same mark-up, the Debtors requested financing from all parties for 18, rather than 12 months.

36. The Debtors advised all parties to submit their best and final proposals by May 30, 2026. Three bids were received on that date: the EDC Proposal, the Objecting Bidder proposal, and the IRH proposal. The Objecting Bidder's proposal did not make any change to the size of the DIP facility despite our comments.

37. The Debtors reviewed the bids in consultation with the Monitor. After thorough deliberations, the Debtors selected the EDC Proposal as the superior DIP proposal and advised EDC that it was the successful party on June 2, 2026. Between May 30 and the selection of the EDC Proposal on June 2, the Debtors did not negotiate the terms of any bid nor engage with any bidder. This was to help ensure the integrity and consistency of the process.

38. The suggestion by the Objecting Bidder in the cross-motion that the Debtors engaged in "bait and switch" tactics is unfounded. The very same DIP Budget was provided to all parties. The Debtors' sealift expenditures were clearly set out in that DIP Budget, which showed that the Debtors' funding needs could well exceed \$300 million. The Debtors asked for an 18-month maturity date to allow it to implement any transaction resulting from the SISF. All of the participants in the DIP Process are sophisticated parties with significant knowledge of the Debtors because of their prior relationships with us. The Objecting Bidder is no exception. It had the same opportunity as every other bidder to propose a facility that appropriately met the Debtors' needs, as reflected in the DIP Budget. All parties had the information and means to determine the Debtors' cash needs, particularly given the Debtors' significant cash outlays during the June through September sealift season each year.

The Debtors and the Monitor Agree that the EDC Facility is the Superior Proposal that Emerged from that Competitive and Rigorous Process

D. THE DIP FACILITY

48. The Debtors are asking this Court to approve the EDC Proposal as the DIP Facility to allow the Debtors to meet their cash flow requirements during the CCAA proceeding.

49. The primary terms of the term sheet of the selected DIP Facility (*i.e.*, the EDC Proposal) are summarized immediately below:

Summary of Key Terms of EDC Proposal	
DIP Lender	His Majesty in Right of Canada, as represented by EDC
Maximum DIP Facility Amount	\$400M revolving facility, upsized to \$475M if an offtake agreement is not in place for 2026/2027
Interest and Fees	Citibank prime rate + 4.75% per annum (currently approximately 11.5% in aggregate) Upfront fee of 2% of the total Facility Amount Commitment Fee of 1.5% payable on the average Unused Commitment, which does not include the additional \$75M of availability unless or to the extent the DIP Facility is upsized
Security/ Charge	DIP Facility and Obligor indemnification obligations to be included in the DIP Charge which will have priority over all encumbrances other than the Administration Charge, the D&O Charge and cash collateral posted as security for letters of credit
Permitted Variance	Variances of not more than 10% from the aggregate net cash flow covered by the then current Approved Cash Flow on a cumulative basis
Maturity	1 year after the Second ARIO, with a six-month extension if a Restructuring Transaction has been approved by the court in exchange for a fee of 1% of the Facility Amount
Other Material Provisions	Option to use up to \$75M of the upsized availability to provide credit support to a potential offtaker if necessary to maintain or replace offtake arrangements. \$110M bridge available for the first 4 weeks following the date of the Second ARIO. Only interest and out of pocket legal expenses of the DIP Lenders are payable in connection with the Bridge Advance if it is refinanced within 4 weeks

50. As explained in greater detail below, the DIP Facility that the Debtors ask the Court to approve is the EDC Proposal (as defined below). The Debtors selected the EDC Proposal for the following principal reasons:

- (a) The EDC Proposal secures a highly credible, well-capitalized lending partner whose reputation is expected to instil confidence among stakeholders. Critically, EDC's interests are fundamentally aligned with those of the Debtors and their broader stakeholder community, ensuring that the restructuring process is driven toward an outcome that maximizes value for all parties rather than serving the narrow objectives of any single constituency.
- (b) The EDC Proposal provides far greater funding certainty relative to the next most viable proposal and does not impose an unreasonable set of covenants and controls which would result in a significant risk of non-compliance by the Debtors.
- (c) The EDC Proposal allows management to focus on operating the business and advancing a SISP and does not impair the Debtors' operational flexibility during the CCAA proceeding nearly to the same extent as the next most viable proposal.
- (d) The EDC Proposal does not provide the DIP Lender with a disproportionate amount of control over the CCAA proceeding and SISP. Moreover, the DIP Lender is aligned with the Debtors' objectives of maximizing value for the benefit of all stakeholders. It is manifestly not a strategic party in the Debtors' CCAA proceeding.
- (e) The EDC Proposal provides \$110 million in immediate bridge financing to allow the Debtors to meet their immediate cash needs without any exit or commitment fee. This feature of the EDC Proposal ensures that to the extent there is a dispute about whether EDC should prevail as the ultimate DIP lender, the parties opposed to the EDC Proposal can adjudicate their concerns without causing undue prejudice to any party.

- (f) The EDC Proposal is cost competitive with the other proposals received in terms of the costs of borrowing.
- (g) The EDC Proposal provides the Debtors with certainty as to the identity of their lender and does not impose additional administrative hurdles in obtaining approvals from a broad base of disparate lenders.
- (h) The EDC Proposal provides the largest loan facility among the three bidders which provides the greatest flexibility to the Debtors and increased certainty that the Debtors will be able to continue operating in the ordinary course throughout the CCAA proceeding. This, in turn, should provide for the greatest opportunity to enhance value for all stakeholders.

E. THE DIP SOLICITATION PROCESS

(i) *Pre-Filing Solicitation Process*

51. To address the Debtors' anticipated liquidity needs during these CCAA proceedings, FTI, in its capacity as the Debtors' financial advisor, commenced a competitive debtor-in-possession financing solicitation process (the "**DIP Process**"). I understand that the DIP Process will be addressed in the Monitor's Second Report.

52. Prior to the commencement of the CCAA proceedings, FTI contacted four parties to solicit their interest in providing a DIP facility to the Debtors: (a) Opps XII BLIM Holdings, L.P., an entity affiliated with Oaktree Capital Management LP ("**Oaktree**") and Hartree Partners, LP ("**Hartree**"), the Debtors' secured lenders under a working capital facility; (b) Export Development Canada ("**EDC**"), the Debtors' secured lenders under a term loan facility; (c) JP Morgan Chase; and (d) the Royal Bank of Canada. The holders of secured notes issued by Baffinland due 2026 (the "**2026 Notes**") were not approached in the pre-filing DIP Process because the Debtors were, at

throughout the DIP Process and promptly responded to information requests, having regard to the tight timelines imposed by the DIP Process and the Debtors' imminent liquidity needs.

69. Following receipt of the final bids on May 30, 2026, the management team of the Debtors, including their Operating Committee which has authority to approve the selection of the DIP facility, consulted with their advisors and counsel on the selection of the best bid available to the Debtors in the circumstances. In consultation with the Monitor and its counsel, and the Debtors counsel, and following extensive consideration and analysis, the Operating Committee exercised their business judgment to select the EDC Proposal as the DIP Facility.

70. After the EDC Proposal was selected as the DIP Facility, counsel for the Debtors and counsel for the Monitor engaged with counsel for EDC to clarify certain ambiguous or seemingly erroneous language in the EDC Proposal. The clarifications made to the EDC Proposal during this brief time period confirmed the Debtors' selection of the EDC Proposal as the best proposal available in the circumstances. A blackline of the final EDC Proposal the Debtors ask this Court to approve as compared to the EDC Proposal that was received on May 30, 2026 is attached hereto as **Exhibit "F"**.

F. ASSESSMENT OF THE DIP PROPOSALS

(i) *DIP Proposals Received on May 30, 2026*

71. The Company ultimately received three proposals for DIP financing on May 30, 2026 in connection with the DIP Process described above:

- (a) a DIP financing proposal dated May 30, 2026 from IRH (the "**IRH Proposal**");
- (b) a DIP financing proposal dated May 30, 2026 from a syndicate of lenders (the "**Oaktree Proposal**"); and

(c) the EDC Proposal.

72. Attached as **Confidential Exhibit “G”** is a copy of each of the three bids received as part of the competitive DIP Process.

73. The Debtors have selected the EDC Proposal as the best DIP Facility available to the Debtors in the circumstances. The principal reasons underpinning the Debtors’ assessment of each Proposal is explained below. There are numerous other reasons informing the Debtors’ assessment of each Proposal which are not described in this Affidavit for the sake of brevity.

74. The Monitor advised the Debtors that it believed that the IRH Proposal did not include terms that provided the Debtors with sufficient certainty in their ability to obtain timely access to funds from IRH. Given the critical operating window the Debtors are currently facing because of the time-limited shipping window described above, certainty around the Debtors’ timely access to funding is of paramount importance. In the circumstances, the Debtors agreed with the Monitor’s assessment and did not support the selection of the IRH Proposal.

75. Although there are drafting differences between the Oaktree and EDC Proposals on any number of matters, the Debtors’ main criteria for assessing the Oaktree and EDC Proposals included the following:

- (a) funding risk and flexibility of the loan;
- (b) the cost of borrowing to the Debtors;
- (c) the Debtors’ ability to operate in the ordinary course of business and maximize stakeholder value during the CCAA proceeding, including through the implementation of a SISP;

- (d) the ability of the Debtors to perform their obligations under the loan facility in the ordinary course of business;
- (e) certainty concerning the identity of lenders and counterparty risk more generally; and
- (f) the stability provided by the DIP Proposal and whether it would inspire stakeholder confidence.

76. The Oaktree Proposal, while offering a modestly lower headline interest rate, was more restrictive in nearly every other dimension. In the judgement of the Debtors, the combination of, among other things, subjective events of default and covenants, the near absence of cure periods, and the controls exerted over the CCAA proceeding and the SISP process, would create substantial operational and funding risk. For instance, the Oaktree Proposal included no materiality qualifier on covenant compliance, and an event of default would be triggered by any event or occurrence that, in the sole discretion of the lenders, would materially adversely affect the Debtors, their business, or their assets, in each case taken as a whole. Moreover, the several (not joint) liability structure and broad syndication rights further compounded the uncertainty of available funding.

(ii) The EDC Proposal

77. As described in greater detail below, the Debtors identified the EDC Proposal as the successful bid because, in its considered judgment, the EDC Proposal stands to provide a facility with greater flexibility and funding certainty, simpler compliance requirements, and greater stability. The Debtors believe that it will allow management to focus on operating the business and advancing a SISP for the benefit of all of their stakeholders without being distracted by constant negotiations with the DIP lender over compliance with onerous terms. It also signals to

the Debtors' stakeholders that there is Government of Canada support for the Mine and its going-concern.

(a) Flexibility and Funding Certainty

78. In the exercise of their business judgement, the Debtors concluded that the EDC Proposal provides a loan facility that gives more flexibility to the Debtors and provides more certainty that the Debtors' liquidity needs will be met over the course of the CCAA proceeding as compared to the Oaktree Proposal. In this regard, the EDC Proposal provides the Debtors with a loan facility of up to \$475 million, comprised of two portions. The first portion is a revolving facility of up to \$400 million.¹

79. The second portion is a contingent facility of up to \$75 million that is made available if IRH fails to make payments under the Offtake Agreements and/or if a new offtake arrangement is not entered by September 30, 2026. As noted above, the Offtake Agreements provide the Debtors with their primary source of operating cash flow and those agreements expire in October 2026. The Debtors believe that this contingent facility in the EDC Proposal provides meaningful protection against the Debtors' offtake risk, for the benefit of all stakeholders.

80. In particular, to provide the Debtors with additional flexibility in the event the Offtake Agreement is not renewed by September 30, 2026 (or in the event of non-payment under the Offtake Agreements), the DIP Facility allows the Debtors to either draw down this contingent facility directly or, not draw some portion or all of such facility and instead offer up such undrawn amount as credit support to attract a potential new offtaker to secure a continued source of operating cash flow.

¹ Commitment Fee of 1.5% is payable on the average Unused Commitment, which does not include the additional \$75M of availability unless or to the extent the DIP Facility is upsized.

81. Further, in the judgment of the Debtors, the overall quantum of the EDC Proposal provides additional flexibility and funding certainty. Although the Debtors requested a loan facility of up to \$300 million, the Debtors believe that there is significant additional stability and predictability associated with accepting the larger loan facility in the EDC Proposal. A larger facility provides a critical cushion against unforeseen shifts in commodity markets, including fluctuations in commodity prices, fuel costs, and other input expenses, that could materially increase operating expenditures beyond current projections. Without this additional headroom, the Debtors could be exposed to the risk of a liquidity shortfall at a time when their ability to access alternative financing on reasonable terms is severely constrained by the CCAA proceeding. In this respect, I note that the DIP Budget that was shared with each of the proposed DIP Lenders contemplated expenditures until the end of 2027 that exceeded \$300 million. Moreover, all prospective bidders were advised that the financial model supporting the Debtors' request for a DIP facility of \$300 million did not account for key-employee retention plans or DIP advisor fees and expenses. In light of the foregoing, the EDC Proposal recognizes that the Debtors may have a need for flexibility in their ordinary course operations over the next several months as the CCAA proceeding continues to unfold.

82. The larger facility also provides the Debtors with greater predictability and stability, ensuring that funds will be available if operational costs deviate from projections without the need to seek additional financing outside of a competitive process on potentially more onerous terms. In the context of a CCAA proceeding, where market conditions can shift rapidly and the Debtors' bargaining position with respect to incremental financing is inherently weaker, the certainty afforded by a larger committed facility is a material advantage. The additional capacity serves as a buffer for the Debtors' ongoing operations, reducing the likelihood of disruption and providing stakeholders with confidence that the restructuring can proceed in an orderly manner regardless of short-term market volatility.

(b) Ability to Operate the Business and Maximize Value for Stakeholders

83. The EDC Proposal is also preferable in light of the less onerous representations, covenants, and events of default demanded by the proposed DIP Lender. Taken together, the overall effect of these terms in the EDC Proposal provides the proposed DIP Lender with some but not a disproportionate level of control over the CCAA Proceedings, the SISF, and the operations of the business. The Mine's operations, including its procurement and sealift activities, are highly technical and specialized in nature. The EDC Proposal preserves the Debtors' ability to manage and operate the business by drawing on their institutional knowledge and expertise. In the aggregate, the Debtors assessed that there was a significantly lower risk of the Debtors being unable to comply with the terms of the EDC Proposal as compared to the Oaktree Proposal.

84. Although both the EDC and Oaktree Proposals allow the loan facility to be used only in accordance with the "Approved Cash Flow" subject to "Permitted Variances", the definition of "Permitted Variances" is markedly more flexible under the EDC Proposal. The Debtors will be more capable of complying with these funding requirements, thereby reducing the compliance burden on the business. The Debtors anticipate that this flexibility will allow management to focus on operating the business rather than being distracted by repeated requests to their lenders for waivers, or worse, being in default. The importance of flexible variance thresholds is heightened by the Debtors' significant exposure to commodity price risk. Key inputs and outputs of the Mine's operations are subject to commodity price fluctuations. These fluctuations could easily produce meaningful variances between the Approved Cash Flow projections and actual results, even where management has operated the business prudently, in the ordinary course, and in accordance with the approved budget. A more restrictive definition of Permitted Variances would expose the Debtors to the risk of technical non-compliance driven not by mismanagement or unusual operations, but rather by exogenous market movements beyond their control.

(c) Identity of the Lender

85. The identity of the counterparty under the EDC Proposal was a significant factor in the Debtors' selection of the DIP Facility. Funding under the EDC Proposal is backstopped by the Government of Canada. There can be no question that the Government of Canada has the financial capacity to honour the full commitment under the EDC Proposal. This stands in contrast to other potential lenders whose obligations to fund are several and not joint, and their ability to fund may be subject to contingencies. These uncertainties could imperil the Debtors' access to liquidity at a critical juncture and impose additional administrative burdens associated with securing approvals from a diffuse lender group.

(d) Stability and Stakeholder Confidence

86. The selection of the EDC Proposal aligns the interests of the Debtors with those of their principal regulator. Continuing to have the Government of Canada as a direct financial stakeholder in the Debtors' restructuring means that the Government's interests will be more closely aligned with the successful expansion and development of the Debtors' business - an alignment that the Debtors believe will yield tangible benefits as the CCAA proceedings advance and the SISF unfolds.

87. This alignment is especially significant given that a number of the Debtors' operations, particularly on Baffin Island, engage directly with sensitive Inuit relations and environmental stewardship. The Government of Canada's willingness to serve as the Debtors' lending partner during this critical period sends a powerful signal to all stakeholders, including Inuit communities, regulators, and potential participants in the SISF, that the Government has confidence in the Debtors' long-term vision for responsible resource development on Baffin Island in Canada's critical and strategic mineral industries. That vote of confidence from the sovereign is not something any private lender can replicate.

(e) Cost of Borrowing

88. The Debtors assess that the EDC and Oaktree Proposals are competitive from a cost of borrowing standpoint, subject to certain unknown variables such as professional fees. As a result, this was not a determining factor on its own.

(f) Bridge Facility

89. As explained above, the EDC Proposal makes available a \$110M bridge facility as part of the DIP loan that is available for four weeks beginning on the date of the Second ARIO. This feature allows for any dispute in respect of the EDC Proposal to be adjudicated before this Court, while at the same time providing the Debtors with the funds they critically need to make sealift expenditures and commitments during the upcoming open-water window. During the four-week bridge period, the Debtors do not have to pay any fees (such as the upfront facility fee or commitment fee) that would normally accrue on the DIP Facility. The EDC Proposal also does not include any exit fees if it is ultimately refinanced by another party.

90. All of the EDC, Oaktree, and IRH Proposals received in the DIP Process made the extension of the bridge facility of \$110 million conditional upon the approval of the full loan facility. As a result, under the DIP Facility, the bridge funding of \$110 million is only guaranteed if the Court approves the full DIP Facility.

91. For all of these and other reasons, the Operating Committee, exercising its business judgment, assessed the EDC Proposal as clearly superior to the alternative proposals received through the Monitor's competitive DIP Process.

(g) Impact on Creditors

92. The Debtors believe that the EDC Proposal is in the best interests of their stakeholders as a whole for a variety of reasons, including because it provides the necessary liquidity to pursue a value-maximizing SISP while preserving the going-concern value of the business. The Debtors have strong reason to believe that the potential value capable of being realized through a fair, transparent, and orderly SISP will be substantial. Approval of the DIP Facility will accordingly preserve and enhance value for all stakeholders, including by improving the prospects of meaningful recovery for the lenders' syndicate and other creditor constituencies.

93. In selecting a DIP proposal, the Debtors were acutely aware and considered that both the Oaktree Proposal and the EDC Proposal were advanced by existing secured creditors of the Debtors. In practical terms, this meant that whichever proposal was selected, the DIP Facility would necessarily prime at least one of the Debtors' secured creditor groups. Recognizing that priming was an unavoidable consequence of any available DIP financing, the Debtors instead focused their analysis on those factors that meaningfully differentiated the proposals, including the terms, flexibility, and overall benefit to the business and its creditors.

G. RELIEF SOUGHT

(i) *Approval of the DIP Facility and DIP Charge*

94. For the reasons described above, the Debtors request that this Court approve the DIP Facility provided by EDC is attached as **Exhibit "H"**. I believe the DIP Facility represents the best terms the Debtors could achieve in the circumstances based on the competitive DIP Process.

95. The DIP Facility requires that all obligations of the Debtors thereunder be secured by the DIP Charge. The DIP Charge is capped at \$475 million; however, it secures only the aggregate outstanding advances under the DIP Facility to the extent actually drawn and remaining unpaid.

Court File No. CL-26-00000219-0000

**Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation
and 12334992 Canada Inc.**

SECOND REPORT OF THE MONITOR

June 4, 2026

45. On May 29, 2026, the Monitor, the Debtors and each of their respective counsel held calls with representatives of each Potential DIP Lender in advance of the Final DIP Proposal Deadline.
46. The Monitor received inquiries from the Potential DIP Lenders concerning discretionary and non-discretionary “Steensby Project Costs” and “Exploration Costs” which were set out in the financial information provided. As such, in the evening of May 29, 2026, the Monitor advised the Potential DIP Lenders of its view as to what quantum of “Steensby Project Costs” and “Exploration Costs” is either necessary to spend or discretionary to spend.
47. On May 30, 2026,¹ the Monitor and the Debtors received the Final DIP Proposals from the Potential DIP Lenders, copies of which are attached to the Third Van Tonder Affidavit as **Confidential Exhibit “G”**.
48. On June 1, 2026, the Operating Committee convened a meeting, at which time counsel to the Debtors, and the Monitor, presented their respective views as to the viability of the bids. The Monitor informed the Debtors and the Operating Committee that the IRH Final DIP Proposal did not contain sufficient certainty of funding in the context of these complex CCAA Proceedings and that it did not support the selection of the IRH Final DIP Proposal by the Debtors, notwithstanding that it had a more favourable interest rate and cost features.

¹ The Monitor notes that the Final DIP Proposal from the Ad Hoc DIP Group was received after the 2:00 p.m. deadline. However, given the tight timelines in the DIP Solicitation Process, and to ensure that the Final DIP Proposals from all Potential DIP Lenders were given fair consideration, the DIP Proposal from the Ad Hoc DIP Group was considered alongside the two other Final DIP Proposals received.

49. The Monitor provided its view that the Final DIP Proposals received from the DIP Lender and the Ad Hoc DIP Group were both viable proposals for the Debtors. Management and counsel for the Debtors indicated that the DIP Lender provided the superior proposal. The Monitor further indicated that it is of the view that the Final DIP Proposal received from the DIP Lender was superior on balance, and the Monitor would support its acceptance by the Debtors.
50. The Operating Committee ultimately selected the Final DIP Proposal from the DIP Lender, subject to the clarification of certain provisions, as it was determined, in the business judgement of the Operating Committee, to be the superior proposal.
51. On June 3, 2026, the Debtors entered into the DIP Financing Agreement with the DIP Lender, subject to Court approval. The Third Van Tonder Affidavit sets out in detail the Debtors' rationale for selecting the DIP Financing Agreement.

THE AMENDED AND RESTATED INITIAL ORDER

THE DIP FINANCING AGREEMENT AND DIP CHARGE

52. A blackline between the DIP Financing Agreement and the Draft DIP Term Sheet is attached as **Appendix "G"**. A blackline between the DIP Financing Agreement and the Final DIP Proposal submitted by EDC is attached as **Appendix "H"**.
53. Subject to the terms and conditions of the DIP Financing Agreement, the DIP Lender has agreed to lend to BIM and BIM LP (the "**Borrowers**") a maximum principal amount of \$400 million in a Finished Product Funding Scenario (which amount will be increased to a maximum of \$475 million in a Finished Product Non-Funding Scenario), for payment of the following items (in each case in accordance with the Approved Cash Flow, excluding any Excess Exploration and Expansion Expenses, and in accordance with the orders of the Court in the CCAA Proceedings), among others:

The Monitor's Comments & Recommendation

68. Section 11.2(4) of the CCAA, sets out certain factors that should be considered, among other things, in deciding whether to make an order granting an interim financing charge. These factors, and the Monitor's comments thereon, are addressed in turn below.

The period during which Debtors are expected to be subject to the CCAA Proceedings

69. Should the SARIO be granted, the Debtors and the Monitor intend to develop and seek approval of the SISP as soon as possible and within 60 days of the issuance of the SARIO. It is intended that the closing of a transaction or transactions is to occur within 18 months of the issuance of the Initial Order.
70. Based on the Debtors' cash flow forecasts (not including the Excess Exploration and Expansion Expenses) and the estimated timing for the SISP as set out above, it is believed that the DIP Financing Agreement provides sufficient liquidity to fund the Debtors' operations and the costs of the CCAA Proceedings until the completion of the SISP.

How the Debtors' business and affairs are to be managed during the CCAA Proceedings

71. The Debtors have certain experienced management personnel who are important to the business. The Monitor understands that these management personnel intend to remain in place to manage the business and affairs of the Debtors during the CCAA Proceedings. Management reports to the Operating Committee who has ultimate decision-making authority for the Debtors.

72. As set out above, irrespective of which Final DIP Proposal was chosen by the Debtors and is ultimately approved by the Court, based on stakeholder feedback and the Monitor's observations of the CCAA Proceedings to date (including through its participation in the meetings of the Operating Committee, which includes representatives from the Debtors' two shareholder groups), the Monitor believes that the Debtors would benefit from the appointment of an experienced CRO. The Monitor will work with stakeholders in identifying an appropriate CRO and will make a recommendation to the Court in that regard.

Whether the Debtors' Management has the confidence of its major creditors

73. The Monitor notes that the Debtors' business is complex and relies on a number of complicated contractual and strategic relationships with various stakeholder groups. The Debtors' Management play a critical role and have extensive experience in managing these relationships and the Monitor is of the view that they are therefore important to the go-forward business of the Debtors.

Whether the DIP Financing Agreement would enhance the prospects of a viable compromise or arrangement being made in respect of the Debtors

74. While section 11.2(4) of the CCAA refers to a "compromise or arrangement", given the variety of ways in which successful going-concern outcomes are now structured in proceedings under the CCAA, including asset sales, and "reverse vesting order" transactions, the Monitor is respectfully of the view that it is appropriate for the Court to take a broader view of this factor and expand it to consider these other approaches.

75. Without the DIP Facility, the Debtors would, in the very near future, exhaust their available liquidity resources and be unable to pay its obligations as they become due, in particular during the crucial upcoming Sealift Season, continue operations, maintain their assets, undertake the SISP or complete any transaction. The Monitor is of the view that approval of the DIP Financing Agreement will enhance the prospects of the business and operations of the Debtors being preserved and a successful going-concern outcome being achieved.

The nature and value of the Debtors' property

76. The Debtors' assets are described in the First Van Tonder Affidavit and consist primarily of the Mine operation. The market value of the Debtors' property will be finally determined through the SISP.
77. Nothing has come to the attention of the Monitor in respect of the nature of the Debtors' property that, in the Monitor's view, requires particular consideration in connection with the DIP Charge.

Whether any creditor would be materially prejudiced by the DIP Charge

78. The proposed DIP Facility would provide the Debtors the opportunity to undertake the SISP and to complete a transaction.
79. The DIP Financing Agreement is conditional on the DIP Charge being granted. The Monitor notes that secured creditors of the Debtors would be primed by any DIP Charge granted. The Monitor further notes that this would be true regardless of which of the three Final DIP Proposals was chosen by the Debtors.

80. The Monitor recognizes that the proposed DIP Charge would prime creditors holding a significant amount of the Debtors' secured debt. However, the Monitor is of the view that any prejudice is outweighed by the Debtors' desperate need for stability and funding to continue their ordinary course operations, procure supplies necessary to operate the mine that need to be received during the Sealift Season and to undertake a SISP to maximize value for the benefit of all stakeholders. Committed funding, which can only be obtained through the super priority DIP Charge, is of vital importance to enable the Debtors' workforce and suppliers to have confidence in the Debtors' ability to achieve their restructuring goals.
81. In addition, the amount of the Bridge Advances is based on the June Forecast with a view to ensuring that the Debtors would have sufficient funds to operate until a final determination is made by the Court on whether the DIP Facility is successfully challenged. The Bridge Advances have been structured in a manner such that only interest and out-of-pocket legal expenses would be paid should the DIP Facility be refinanced. This structure is intended to limit prejudice to any party seeking to challenge the approval of the DIP Facility in respect of any arguments it may wish to make as part of litigation before the Court.
82. In the near term, it is the Monitor's view that approval of the DIP Charge, in the context of the Bridge Period, results in as little prejudice as possible to creditors in a scenario where the DIP Facility may be refinanced as a result of potential litigation, but in the circumstances where the Debtors need immediate funding to continue operations.

Other potential considerations – Terms and Pricing

83. The Monitor has reviewed data on the terms of interim financings approved in proceedings under the CCAA based on information publicly available. A summary of such data in respect of interim financings approved from January 1, 2020, to May 1, 2026, is attached hereto as **Appendix "I"**.

84. Based on the information available, the Monitor has compared the cost of the DIP Facility to that of other approved interim financings of a similar size. As illustrated in the chart below, the cost of the DIP Facility appears to be within the range of costs, in terms of annualized interest and fees, for interim financings of similar size approved in other CCAA proceedings:

DIP Facility Summary

DIP Financing facilities greater than USD \$35 million

	DIP Size (\$ USD million)	Interest (%)	Fee(s) as % of DIP Facility
Average	99.3	9.4%	2.3%
Minimum	39.9	4.5%	0.5%
Maximum	445.7	13.0%	5.0%

85. Based on the foregoing, the Monitor is of the view that the terms of the DIP Financing Agreement are within market parameters in respect of interest and fees.

The Monitor's Recommendation

86. As noted earlier in this Second Report, three Final DIP Proposals resulted from the DIP Solicitation Process. The proposals received from EDC and the Ad Hoc DIP Group were viable proposals. The proposal received from IRH was not.
87. The Monitor's view is as follows:
- (a) The interest rates and fees contained in the two viable proposals were generally competitive;
 - (b) The EDC Final DIP Proposal provided additional funding of up to \$75 million in the event of a Finished Product Non-Funding Scenario, providing additional operational certainty for the Debtors;
 - (c) Although both viable proposals contained restrictive covenants, the EDC Final DIP Proposal provided additional flexibility for the Debtors in the operation of their business;

- (d) EDC is an existing secured creditor of the Debtors and is familiar with their business and operations;
- (e) The Monitor recognizes that the proposed DIP Charge would prime creditors holding a significant amount of the Debtors' secured debt. However, as set out above, the Monitor is of the view that any prejudice is outweighed by the benefits of the DIP Facility;
- (f) Further, in the near term, any prejudice caused to other secured creditors by being primed by the DIP Facility and DIP Charge is ameliorated by the concept of the Bridge Period and the "without prejudice" nature of any Court approval of the DIP Facility; and
- (g) The Debtors require the stability provided by the DIP Facility and the ability to draw on the Bridge Advances while litigation is pursued with respect to the DIP Facility.

88. Based on the foregoing, the Monitor respectfully recommends that the Court grant the Debtors' request for approval of the DIP Financing Agreement and the granting of the DIP Charge, recognizing that a process will be put in place to litigate issues relating to the DIP Facility.

PAYMENTS TO CRITICAL SUPPLIERS

89. In the SARIO, the Applicants are seeking the authority (but not the requirement) to pay certain pre-filing amounts with the consent of the Monitor.

Appendix D

DIP Comparison Chart

DIP Proposal Comparison Chart

In the Matter of Nunavut Iron Ore, Inc. et al. (Court File No.: CL-26-00000219-0000)

Set forth below is a summary analysis of selected material provisions of (1) the Final DIP Proposal of the DIP Lender, (2) the Final DIP Proposal of the Ad Hoc DIP Group, and (3) the DIP Financing Agreement entered into with the DIP Lender. All capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the second report of FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation and 12334992 Canada Inc, dated June 4, 2026 or the applicable DIP proposal.

Topic	Final DIP Proposal of the DIP Lender dated May 30, 2026 (EDC)	DIP Financing Agreement dated June 3, 2026 (EDC)	Final DIP Proposal of the Ad Hoc DIP Group dated May 30, 2026 (Oaktree/AHG)
Facility Type	Revolving facility (amounts repaid may be reborrowed).	<i>Same as Final DIP Proposal of the DIP Lender.</i>	Delayed draw term loan.
Facility Size	US\$475M. Loan Amount may reduce to US\$400M if IRH enters into new offtake agreement by August 31, 2026. No credit support mechanic contemplated.	US\$400M. Loan Amount may increase to US\$475M if IRH does not enter into new offtake agreement by September 30, 2026. Additional US\$75M Facility Amount may be offered as credit support to offtake provider.	US\$300M.
Interest Rate	Approx. 11.5% (Citibank prime + 4.75%).	<i>Same as Final DIP Proposal of the DIP Lender.</i>	Approx. 10.8% (Adjusted Term SOFR + 7.00%).
Fees	<u>Upfront fee</u> : 2% of Loan Amount / \$8M (Only payable if the DIP	<i>Same as Final DIP Proposal of the DIP Lender.</i>	<u>Upfront fee</u> : 3% of Loan Amount / \$9M (PIKs) (Only payable if the DIP Facility is not refinanced and

	<p>Facility is not refinanced during the Bridge Period).</p> <p><u>Commitment Fee:</u> 1.5% of Unused Commitment computed on the basis of a calendar year, which shall accrue and be calculated daily and be payable in cash at the Maturity Date (Only payable if the DIP Facility is not refinanced during the Bridge Period).</p> <p><u>Extension Fee:</u> Outside Maturity Date of the DIP Facility is one year after the date of the Second ARIO, which may be extended for up to six months in exchange for an extension fee of 1% of the Loan Amount (extension requires court approval of a Restructuring Transaction in form and substance acceptable to the DIP Lender).</p>		<p>repaid fully in cash within 60 days of the Initial Advance).</p> <p><u>Commitment Fee:</u> N/A.</p> <p><u>Extension Fee:</u> Outside Maturity Date is 1 year after the date of the Second ARIO which may be extended twice by three months each (requires Required DIP Lenders' budget approval and extension fee on each extension of 2% of the DIP Loans outstanding at such time (PIK)).</p> <p>In addition to the two, three month extensions, the Maturity Date may be extended for three months, without the requirement for payment of an extension fee, if a binding SISP offer acceptable to the Required DIP Lenders has been received prior to the Maturity Date.</p>
Costs During \$110M Bridge Facility	<p>Interest and out-of-pocket legal expenses payable; fees of other professionals not payable if Bridge Facility fully refinanced during the Bridge Period.</p> <p>Borrowers shall not solicit or accept any alternative proposals for interim financing during the Bridge Period.</p>	<i>Same as Final DIP Proposal of the DIP Lender</i> , other than reasonable, documented out-of-pocket legal expenses payable (rather than out-of-pocket legal expenses payable).	Interest and out-of-pocket expenses of advisors; fees can be PIK.

Commitment Structure	Single lender: His Majesty in Right of Canada, as represented by EDC.	<i>Same as Final DIP Proposal of the DIP Lender.</i>	<p>DIP Lenders contemplated: Brigade Capital Management, LP, Citadel Advisors LLC, Polen Capital Credit, LLC, Opps XII BLIM Holdings, LP, Hartree Partners, LP. DIP Agent and Fronting Lender to be determined.</p> <p>Utilizes a “Fronting Lender” who will make the advances to the Company.</p> <p>There is the potential for the DIP Lenders to change through the exercise of the assignment provisions contemplated in the DIP proposal.</p>
Syndication/Assignment	Not syndicated; one lender.	<i>Same as Final DIP Proposal of the DIP Lender.</i>	<p>Funding obligations on a several and not joint basis, but subject to use of a Fronting Lender.</p> <p>Assignable to affiliates and entities that DIP Lenders manage or advise, without advance borrower consent.</p>
Governance	N/A; one lender.	<i>Same as Final DIP Proposal of the DIP Lender.</i>	Certain consents require supermajority approval of the DIP Lenders (i.e. at least three unaffiliated DIP Lenders and 66% of the DIP Loans).
Cash Flow Variances	Cumulative variances of up to 10% permitted during the cash flow period.	<i>Same as Final DIP Proposal of the DIP Lender, except the definition of “Permitted Variance” carves out fees and expenses of the Monitor</i>	Receipts less than 90% of forecast or disbursements greater than

	Definition of “Permitted Variance” carves out fees and expenses of the DIP Lender and their respective advisors.	and the DIP Lender and their respective advisors (not just the DIP Lender).	110% per four-week period trigger default. Definition of “Permitted Variance” contemplates that the Required DIP Lenders may require a 0% variance with respect to certain disbursement line items in the Approved Cash Flow Forecast. Definition of “Permitted Variance” carves out fees and expenses of Obligors, Monitor, the DIP Lender and their respective advisors.
Advance Requirements	Advances in two-week intervals (or as otherwise agreed). Require one business days’ notice for draws.	<i>Same as Final DIP Proposal of the DIP Lender.</i>	Advances in two-week intervals (or as otherwise agreed). Minimum draw of US\$20,000,000. Requires three business days’ notice for draws.
Cure Periods	Cure period of five Business Days for any Event of Default.	<i>Same as Final DIP Proposal of the DIP Lender.</i>	No general cure period for any Event of Default; five Business Day cure period for breach of covenants.
Events of Default/Covenants	Events of Default/Covenants include: - Standard Events of Default and covenants; - Any order is issued, amended, stayed or varied that is not	<i>Same as Final DIP Proposal of the DIP Lender, other than:</i> - Any order materially adversely affecting the DIP Lender (rather than any order) is issued, amended, stayed or	Events of Default/Covenants include: - Standard Events of Default and covenants; - Any order adversely affecting the DIP Charge or enforceability of DIP Facility

	<p>satisfactory to the DIP Lender; and</p> <ul style="list-style-type: none"> - Court orders must be in a form acceptable to the DIP Lender acting reasonably; - Prohibition on disclaiming, cancelling or terminating any Material Contract; - Failure to maintain in good standing and in full force and effect all material letters of credit; and - Prohibition on completing deliveries or processing of material on account of prepay or similar arrangements. 	<p>varied, that is not satisfactory to the DIP Lender;</p> <ul style="list-style-type: none"> - Failure to use commercially reasonable efforts to cause the issuers of letters of credit posted to secure the Borrowers' obligations to renew such letters of credit; and - Prohibition on completing deliveries or processing material on account of prepay or similar arrangements (other than in accordance with finished product funding arrangements with a Finished Product Funder). 	<p>is issued, amended, stayed or varied, that is not satisfactory to the Required DIP Lenders;</p> <ul style="list-style-type: none"> - KERP must be entered into by on or prior to June 5, 2026 in form and substance satisfactory to the Required DIP Lenders (notably this date has passed and no KERP has been established); - Prohibition on making any royalty payments to shareholders; - Prohibition on making any changes to the board of directors of the Borrowers (other than a resignation); - Prohibition on retaining a chief restructuring officer or Monitor with expanded powers; - Notice of any challenge to the Second ARIO is filed; - Deliver a business plan in form and substance satisfactory to the Required DIP Lenders within 3 months of the date of the Initial Order; - Prohibition on entering into any material transaction or
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			material agreements, or materially amending any Material Contract.
Hedging	Borrowers must not enter into any currency, interest rate, commodity or forward, futures, swap, options or other hedging arrangements, other than for ordinary course risk management purposes, without the consent of the DIP Lender.	<i>Same as Final DIP Proposal of the DIP Lender.</i>	Borrowers must use best efforts to implement hedging program working in consultation with the DIP Lenders.
SISP Requirements	SISP to be granted within 60 days of Second ARIO, milestones of SISP to be determined in SISP order (which must be in a form acceptable to the DIP Lender, acting reasonably). Financial advisor to conduct the SISP to be selected on or prior to June 30, 2026.	<i>Same as Final DIP Proposal of the DIP Lender, other than to commence a process of identifying a financial advisor to conduct the SISP (rather than a financial advisor being selected on or prior to June 30, 2026).</i>	SISP to be commenced within three months of Second ARIO, first round of bids within six months, site visits by October 31, 2026 and closing within 18 months. Required DIP lenders have an explicit right to credit bid.
Use of Proceeds	In accordance with Approved Cash Flow (excluding Excess Exploration and Expansion Expenses).	<i>Same as Final DIP Proposal of the DIP Lender.</i>	In accordance with Approved Cash Flow Forecast; further restricted by negative covenants.
Treatment of Steensby expansion	Borrowers are permitted to fund the Steensby expansion, in accordance with the Approved Cash Flow, except for “Excess Exploration and Expansion Expenses”. Excess Exploration and Expansion Expenses are defined as expenditures by the Obligors on	<i>Same as Final DIP Proposal of the DIP Lender, other than Excess Exploration and Expansion Expenses are defined as: (i) expenditures by the Obligors on exploration activities that either: (a) exceed amounts necessary to preserve the assets or Authorizations of the Obligors,</i>	US\$20M is pre-approved for Steensby and \$10M for exploration costs. DIP Lenders may approve additional Steensby Expansion and exploration costs in their sole discretion and any allocations of more than \$95M to the Steensby

	<p>exploration activities or expansion of operations, including Steensby, that are in excess of amounts necessary to preserve the assets and Authorizations of the Obligors.</p>	<p>including preserving existing assets and Authorizations that are strictly necessary for Steensby expansion, or (b) exceed US\$10M in aggregate from the date of the DIP Financing Agreement; and (ii) expenditures of the Obligors on expansion of operations in amounts that either: (a) exceed the amounts necessary to preserve the assets or Authorizations of the Obligors, including preserving existing assets and Authorizations that are strictly necessary for Steensby expansion, or (b) exceed US\$ 20M in aggregate from the date of the DIP Financing Agreement.</p>	<p>expansion or exploration require Supermajority DIP Lender approval.</p>
<p>Termination Rights in favour of Debtors</p>	<p>May terminate upon failure by the DIP Lender to fund or at any time following payment of all amounts owing under facility.</p>	<p><i>Same as Final DIP Proposal of the DIP Lender.</i></p>	<p>Debtors may only terminate upon indefeasible repayment in full.</p> <p>No liability of any party for consequential, special or punitive damages.</p>



Baffinland Iron Mine DIP Term Sheet Summary

**Draft – For Discussion Purposes Only and Subject to Change
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DIP Term Sheet Cost Comparison

DIP Term Sheet Comparison - Including Pre-Approved Steensby Capex per Term Sheets 1-Jun-26

Figures in USD \$ millions

	EDC	IRH	Oaktree / Hartree + Ad Hoc Group
Facility Size	400.0		300.0
Month DIP Facility is exceeded	n/a		Aug-2027
12-Month Facility Comparison (i.e. to May 31, 2027)			
Interest Costs	23.7		22.6
Facility Fee	8.0		9.0
Standby Fee [1]	2.6		–
Illustrative Professional Fees	12.0		12.0
Total Interest and Fees	46.3		43.6
DIP Financing Ending Balance [2]	260		275
Excess Availability (Shortfall) [3]	143		46
Effective Annual Cost (excl. professional fees)	16%		15%

- Standby Fee calculated under the Finished Product Funding Scenario for EDC (i.e. \$400M Facility Amount). If the Finished Product Non-Funding Scenario arises, or the election of Finished Product Funding Scenario does not occur until the outside date of August 31, 2026, approximately \$300,000 of incremental standby fees would accrue and be payable based on the increased Facility Amount of \$475M.
- DIP Financing Ending Balance includes principal advances plus accrued paid-in-kind fees
- Excess Availability (Shortfall) is the undrawn principal amount on each DIP Facility

DIP Term Sheet Cost Comparison

DIP Term Sheet Comparison - Including Pre-Approved Steensby Capex per Term Sheets 1-Jun-26

	EDC	IRH	Oaktree / Hartree + Ad Hoc Group
<i>Figures in USD \$ millions</i>			
Facility Size	400.0		300.0
Month DIP Facility is exceeded	n/a		Aug-2027
18-Month Facility Comparison (i.e. to November 30, 2027)			
Interest Costs	42.8		41.0
Facility Fee	8.0		9.0
Standby Fee [1]	3.0		–
Extension Fee	4.0		12.5
Illustrative Professional Fees	18.0		18.0
Total Interest and Fees	75.8		80.4
DIP Financing Ending Balance [2]	397		408
Excess Availability (Shortfall) [3]	10		(69)
Effective Annual Cost (excl. professional fees)	14%		15%

- Standby Fee calculated under the Finished Product Funding Scenario for EDC (i.e. \$400M Facility Amount). If the Finished Product Non-Funding Scenario arises, or the election of Finished Product Funding Scenario does not occur until the outside date of August 31, 2026, approximately \$300,000 of incremental standby fees would accrue and be payable based on the increased Facility Amount of \$475M.
- DIP Financing Ending Balance includes principal advances plus accrued paid-in-kind fees
- Excess Availability (Shortfall) is the undrawn principal amount on each DIP Facility

DIP Term Sheet Comparison

DIP Term Sheet Comparison - Including Pre-Approved Steensby Capex per Term Sheets 1-Jun-26

Figures in USD \$ millions

As at: 6/26/2026 7/31/2026 8/28/2026 Sep-26 Oct-26 Nov-26 Dec-26 Jan-27 Feb-27 Mar-27 Apr-27 May-27 Jun-27 Jul-27 Aug-27 Sep-27 Oct-27 Nov-27 Dec-27

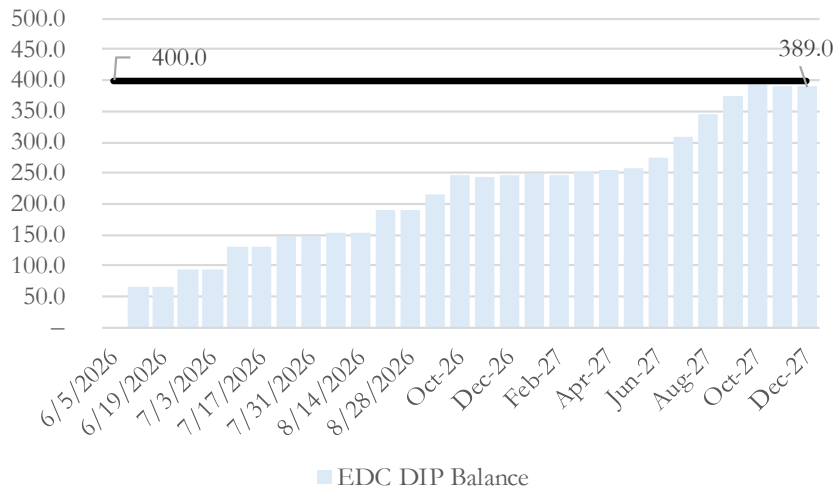
DIP Financing Principal Amount of Aggregate Advances

EDC	95	146	190	216	248	245	246	248	245	251	254	257	274	309	344	374	393	390	389
IRH	[REDACTED]																		
OT/HT/AHG	95	141	179	204	234	234	234	234	234	234	234	254	254	286	319	349	369	369	369

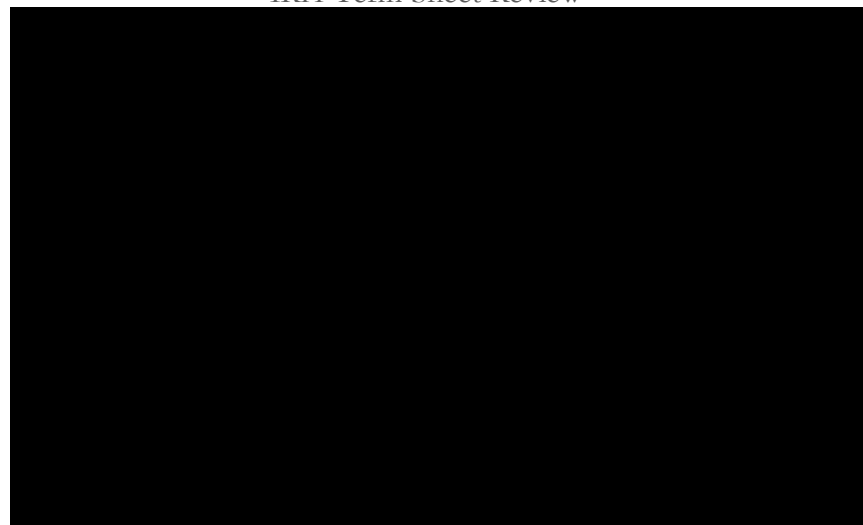
Excess Availability (Shortfall) Facility Size

EDC	400	305	254	210	184	152	155	154	152	155	149	146	143	126	91	56	26	7	10	11
IRH	[REDACTED]																			
OT/HT/AHG	300	205	159	121	96	66	66	66	66	66	66	66	46	46	14	(19)	(49)	(69)	(69)	(69)

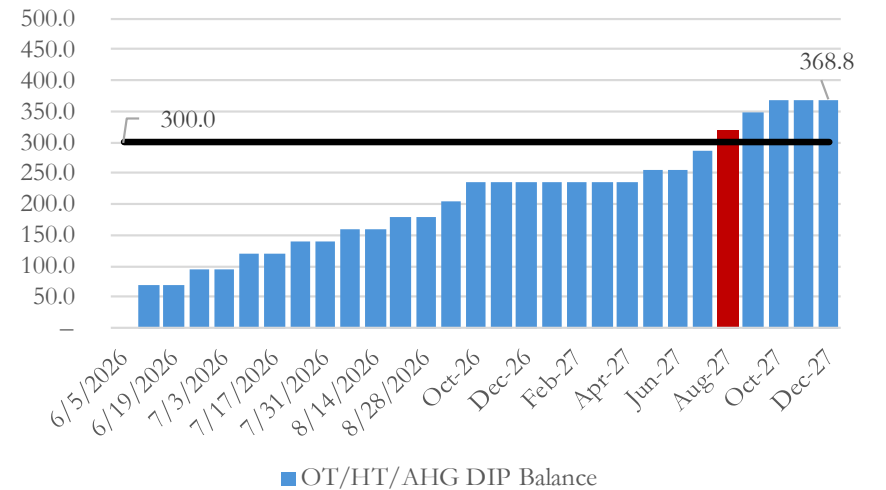
EDC Term Sheet Review



IRH Term Sheet Review



OT/HT/AHG Term Sheet Review



2. **Professional Fees:** Note EDC and IRH professional fees are paid in cash and therefore included in principal amount of aggregate advances, while OT/HT/AHG professional fees are assumed to be paid by the DIP Lender as a Deemed Draw, but do not impact the principal amount of aggregate advances under the OT/HT/AHG DIP Facility.

DIP FACILITY LOAN AGREEMENT

DATED AS OF May 1, 2026

WHEREAS Baffinland Iron Mines Corporation and Baffinland Iron Mines LP (collectively, the "**Borrowers**") have requested the DIP Lenders (defined below) to provide funding in order to assist with proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") that were commenced before the Ontario Superior Court of Justice – Commercial List (the "**Court**") in accordance with the terms and conditions set out herein (the "**CCAA Proceeding**");

AND WHEREAS the DIP Lenders have agreed to provide the DIP Facility (defined below) in accordance with the terms and conditions set out below.

NOW THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms:** A capitalized term not defined in the body of this Agreement has the meaning ascribed to it in the Definitions section below.
2. **Interpretation:** In this Agreement, words signifying the singular number include the plural and *vice versa*, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

References in this Agreement to Sections or Schedules are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise.
3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America.
4. **Borrowers:** Baffinland Iron Mines Corporation ("**BIM Corp**") and Baffinland Iron Mines LP ("**Baffin LP**" and, together with BIM Corp, the "**Borrowers**").
5. **Guarantors:** Nunavut Iron Ore, Inc. and 12334992 Canada Inc. (collectively, the "**Guarantors**" and collectively with the Borrowers, the "**Obligors**").
6. **DIP Lenders:** The institutions described in Schedule A (on behalf of themselves and their affiliates and managed funds) hereby commit to provide the DIP Facility, on a several and not joint basis, in the respective amounts set forth adjacent to each such institution's name in Schedule A upon the terms and conditions set forth in this Agreement (collectively, the "**DIP Lenders**").

An institution acceptable to the Required DIP Lenders shall act as administrative agent and as collateral agent for the DIP Facility (in such capacities, the “**DIP Agent**”).

An institution acceptable to the Required DIP Lenders shall act as fronting lender (the “**Fronting Lender**”) pursuant to which the Fronting Lender shall fund each Advance on behalf of the DIP Lenders and subsequently assign such funded DIP Loans to the DIP Lenders pursuant to arrangements agreed by the Fronting Lender and each of the DIP Lenders. The Fronting Lender shall be a “DIP Lender” for all purposes herein so long as the Fronting Lender holds commitments in respect of the DIP Facility or any DIP Loans.

Upon the Borrowers’ acceptance of this Agreement, this Agreement shall be amended and restated to include the DIP Agent and the Fronting Lender as parties hereto and to, among other things, add customary agency provisions for the benefit of the DIP Agent and fronting lender provisions for the benefit of the Fronting Lender, in each case, that are acceptable to the Borrowers, the DIP Agent, the Required DIP Lenders and the Fronting Lender (solely with respect to the fronting lender provisions), in each case, acting reasonably.

7. **DIP Facility:** The DIP Lenders agree to establish in favour of the Borrowers a debtor-in-possession delayed draw term loan facility (the “**DIP Facility**” and, the loans thereunder, the “**DIP Loans**”) in the principal amount equal to \$300 million (the “**Loan Amount**”). No amount capitalized as principal hereunder shall reduce the availability of the full Loan Amount to the Borrowers.

8. **DIP Advances:** Advances under the DIP Facility in the aggregate principal amount of up to \$110 million (the “**Bridge Advances**”) shall be made available to the Borrowers during the four week period beginning on the date that is one Business Day after the date of the Second Amended and Restated Initial Order (the “**Bridge Period**”), subject to satisfaction of the Subsequent Advance Conditions (other than the first advance under the DIP Facility (the “**Initial Advance**”). The Initial Advance of \$70 million shall be advanced to the Borrowers on the date of the Second Amended and Restated Initial Order, subject to satisfaction of the Initial Advance Conditions. Interest shall accrue and be payable on the Bridge Advances pursuant to the terms hereof.

Subsequent advances under the DIP Facility, including during the Bridge Period (each, a “**Subsequent Advance**”) shall be made available to the Borrowers subject to satisfaction, at the time of each Subsequent Advance, of the Subsequent Advance Conditions, and shall be deposited into the Borrowers’ Account (defined below) every other week (or as otherwise agreed by the Borrowers and the Required DIP Lenders), with each Subsequent Advance being in an amount no less than \$20 million, in each case subject to the satisfaction of the Subsequent Advance Conditions (as defined below). The sum of the Initial Advance and the Subsequent Advances shall not exceed the Loan Amount. The timing and

amount of each Subsequent Advance shall be determined based on the funding needs of the Borrowers as set forth in the Approved Cash Flow Forecast, and Subsequent Advances shall only be available and provided hereunder after the Borrowers have received the entirety of the Initial Advance.

Advances under the DIP Facility, other than the Initial Advance (each, an "**Advance**") require a written notice to be delivered to the DIP Agent and the DIP Lenders, at least three (3) Business Days prior to the requested date of the Advance, or such shorter period as may be agreed by the Required DIP Lenders in advance (each, an "**Advance Notice**"), which has been executed by an officer of the Borrowers setting out: (a) the proposed amount of the requested Advance; (b) the date the Advance is required; and (c) certification that the representations and warranties contained herein are true and correct in all material respects as of such date.

Each Advance, on behalf of and at the request of each of the DIP Lenders, shall be provided by and funded to the DIP Agent by the Fronting Lender and subsequently assigned to the DIP Lenders pursuant to arrangements agreed by the Fronting Lender and each DIP Lender. The Fronting Lender shall deposit into the Borrowers' Account the amount requested by the Borrowers pursuant to the Advance Notice on the requested date of the Advance, net of all fees, costs and expenses to be paid in connection with such Advance pursuant to a funds direction to be delivered prior to the date of such Advance; provided that (x) with respect to the Initial Advance, the Initial Advance Conditions are satisfied as of such date and (y) with respect to each Advance after the Initial Advance, the applicable conditions described in this section 8 and the applicable Subsequent Advance Conditions are satisfied as of such date.

9. **Use of Proceeds:** The proceeds of the DIP Facility shall be used solely by the Borrowers in accordance with the Approved Cash Flow Forecast, which shall include provision for payment, in all respects subject to and to the extent included in the Approved Cash Flow Forecast, of (i) the fees of the Monitor and its counsel and counsel for the Obligors, (ii) interest, fees (including the Commitment/Funding Fee) and other amounts owing to the DIP Lenders under this Agreement, (iii) DIP Lender Expenses and ordinary course payments for the Borrowers' working capital needs during the CCAA Proceeding, including, post-filing accounts payable in the ordinary course of the Business and Priority Payables and in respect of the pursuit of the SISP, (iv) royalty payments under each of the Royalty Agreements when due and payable under such Royalty Agreement but excluding, for the avoidance of doubt, any payments which are Prohibited Payments, (v) cash collateral required to support letters of credit issued by financial institutions, (vi) Pre-Approved Steensby CapEx, and (vii) amounts payable under the Benefits Agreement. Without the prior written consent of the Required DIP Lenders (subject to the Supermajority DIP Lender Budget Consent Right), no proceeds may be used, and no expenditures shall be made, for any purpose that is not included in the Approved Cash Flow Forecast. The foregoing list is illustrative and shall be subject to,

and not construed as superseding in any respect, the prohibitions on payments provided for in Section 26 hereof and the consent rights of the DIP Lenders with respect to the Approved Cash Flow Forecast.

10. **Assignment by the Borrowers:** The Borrowers shall not be permitted to assign their interests in this Agreement without the prior written consent of each DIP Lender.
11. **Evidence of Indebtedness:** The DIP Agent shall maintain a register evidencing Advances and repayments under the DIP Facility and all other amounts owing from time to time hereunder. The DIP Agent register constitutes, in the absence of manifest error, *prima facie* evidence of the Indebtedness of the Borrowers to the DIP Lenders pursuant to the DIP Facility.
12. **Interest; Fees** All amounts owing by the Borrowers hereunder to the DIP Lenders on account of the principal, overdue interest and expenses shall bear interest at a rate per annum equal to Adjusted Term SOFR (which, for purposes of this Agreement, shall have the meaning given to such term in the Senior Credit Agreement, treating the DIP Loans as SOFR Loans thereunder and utilizing a one-month Interest Period as set forth below) plus 7.00%, payable entirely in cash on each Interest Payment Date (the "**Interest Rate**"). To the extent permitted by Law, effective upon the occurrence of and during the continuance of an Event of Default, all outstanding amounts owing to the DIP Lenders hereunder by the Borrowers on account of principal, overdue interest and expenses shall bear interest at the Interest Rate plus an additional 2% per annum (the Interest Rate, as increased, the "**Default Rate**").
- All interest hereunder shall be computed on the basis of a year of 360 days and shall accrue and be calculated daily and payable in cash, monthly in arrears on the last Business Day of each month (each, an "**Interest Payment Date**"); provided that unless otherwise agreed by the Required DIP Lenders, interest accruing at the Default Rate shall be payable in cash on demand, both before and after demand and judgment.
- In the case of an Advance, the first "**Interest Period**" shall commence on and include the date of such Advance and shall end on and exclude the next following Interest Payment Date. Thereafter, in the case of such Advance, the Interest Period shall commence on and include the Interest Payment Date and end on and exclude the next Interest Payment Date or the Maturity Date, whichever is earlier.
- On the date which is 60 days following the date on which the Initial Advance is made, the Borrowers shall, solely to the extent the DIP Facility has not been repaid or refinanced in full in cash as of such date, pay a fee (the "**Commitment/Funding Fee**") of 3.00% of the Loan Amount to the DIP Lenders on a pro rata basis, which such Commitment/Funding Fee shall be payable in kind and capitalized on the principal amount of the DIP Loans on such date.
- The Commitment/Funding Fee shall constitute part of the DIP Obligations, shall be secured by the DIP Charge, and shall bear interest at the Interest

Rate (or, after the occurrence and during the continuance of an Event of Default, the Default Rate).

13. **Other Costs and Expenses:** The Borrower shall pay (either in cash or through Deemed Draws, as defined below) all reasonable and documented third-party out-of-pocket costs and expenses of the DIP Agent, each DIP Lender and the Fronting Lender for all due diligence and all reasonable and documented fees, out-of-pocket expenses and disbursements of advisors (which, for the avoidance of doubt, shall include (i) Stikeman Elliott LLP, as counsel to the Senior Lenders, (ii) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as special counsel to the Senior Lenders, (iii) a financial advisor to the Senior Lenders, (iv) Akin Gump Strauss Hauer & Feld LLP, as counsel to the Holder AHG, (v) Cassels Brock & Blackwell LLP, as counsel to the Holder AHG and (vi) Houlihan Lokey, as financial advisor to the Holder AHG), incurred in connection with the preparation, negotiation and consummation of this Agreement or any other Restructuring Transaction, the administration of the DIP Facility and participation in the CCAA Proceeding, including any reasonable and documented third-party costs and out-of-pocket expenses incurred by the DIP Agent, the DIP Lenders and the Fronting Lender in connection with the enforcement of any of the rights and remedies available hereunder or under the DIP Security (collectively, the "**DIP Lender Expenses**"). The DIP Lender Expenses shall form part of the DIP Obligations secured by the DIP Charge (as defined below). The Borrowers may, by providing notice to the DIP Lenders, opt to have DIP Lender Expenses paid directly by the applicable DIP Lender to its advisors, *provided* that any such payment by any DIP Lender to any such advisor will result in a dollar-for-dollar increase in the principal amount outstanding under the DIP Facility owed to the applicable paying DIP Lender, effective as of the date of such payment (a "**Deemed Draw**").
14. **Approved Cash Flow Forecast:** Attached hereto as Schedule B is a detailed cash flow projection (the "**Initial Cash Flow Forecast**"), which is in form and substance satisfactory to the Required DIP Lenders and which may include, *inter alia*, provision for payments on account of any interest and expenses which may be payable under the DIP Facility, rent and other occupancy costs, supplier payments, cash collateral required to support letters of credit issued by financial institutions, post-filing accounts payable in the ordinary course of the Business, Priority Payables, payments of amounts payable under the Royalty Agreements (but excluding, for the avoidance of doubt, any royalty payments which are Prohibited Payments) and the Benefits Agreement, and the costs and expenses associated with the CCAA Proceeding. The foregoing list is illustrative and shall be subject to, and not construed as superseding in any respect, the prohibitions on payments provided for in Section 26 hereof and the consent rights of the DIP Lenders with respect to the Approved Cash Flow Forecast.
- The Borrowers, with the assistance of the Monitor, shall, from time to time as required by this Agreement, present the DIP Lenders with a revised cash flow forecast in a substantially similar form (the "**Updated Cash**

Flow Forecast"). Upon the written approval of the Required DIP Lenders (subject to the Supermajority DIP Lender Budget Consent Right), the Updated Cash Flow Forecast shall thereafter be deemed to be the effective cash flow forecast (the "**Approved Cash Flow Forecast**") for the purposes hereof. Until such time as the Required DIP Lenders (subject to the Supermajority DIP Lender Budget Consent Right) approve an Updated Cash Flow Forecast, the prior Approved Cash Flow Forecast shall remain in effect, with disbursement lines in the Operating Disbursements section (each, an "**OpEx Cost**") set forth in the then applicable Initial Cash Flow Forecast or Approved Cash Flow Forecast, as applicable, being rolled forward at the end of the period covered by such prior Approved Cash Flow Forecast, and all other line items being limited to any unused portion of the amount set forth for such line item in the prior Approved Cash Flow Forecast. The DIP Lenders shall be under no obligation to approve any Updated Cash Flow Forecast notwithstanding any prior approval of any prior or then-current Approved Cash Flow Forecast, recognizing that if no such approval is given the then-prior Approved Cash Flow Forecast shall remain in effect subject to the foregoing limitations.

Notwithstanding any other provision of this Agreement, neither the DIP Agent nor the DIP Lenders shall be obligated to make any advance under the DIP Facility unless the Borrowers are in compliance with the Approved Cash Flow Forecast (which may, for the avoidance of doubt and in the event that a Subsequent Cash Flow Forecast is not approved as required hereunder, be the prior Approved Cash Flow Forecast subject to the limitations on rolling-forward set forth above).

The DIP Lenders agree to approve allocations in the Approved Cash Flow Forecasts in respect of capital expenditures for the Steensby Railway project and related financing process (the "**Steensby Expansion**") and exploration costs in an aggregate amount not to exceed the Pre-Approved Steensby CapEx amount. This obligation shall not require and shall not be construed as requiring any approvals in any respect in excess thereof; *provided* that the DIP Lenders shall, subject to agreement with the Borrowers on the terms of the SISP, the views of their financial advisors, and further understanding regarding non-discretionary spending with respect to the Steensby Expansion and exploration costs, discuss with the Borrowers approving additional amounts to be allocated to the Steensby Expansion and exploration costs with such allocations to remain subject to the Required DIP Lenders' sole discretion (subject to the Supermajority DIP Lender Budget Consent Right); *provided, however*, that the DIP Lenders shall agree to approve additional capital expenditures in connection with the Steensby Expansion or any additional exploration costs at such time as the Borrowers have (i) obtained one or more bona fide, binding, irrevocable bids in the SISP that provide for (A) the repayment in full in cash of the DIP Facility and the obligations under the Senior Credit Agreement and the Senior Secured Notes on or prior to the closing of such sale transaction, and (B) the consent of such bidder(s) to pursue the Steensby Expansion and further exploration, with a plan for execution which is reasonably acceptable to the Required DIP Lenders;

(ii) submitted to the DIP Lenders supporting plans including engineering, design and operations acceptable to the Required DIP Lenders; and (iii) liquidity which is reasonably acceptable to the Required DIP Lenders; *provided, however*, that the approval of the Supermajority DIP Lenders shall be required with respect to allocations of more than \$95 million to the Steensby Expansion or exploration in any Updated Cash Flow Forecast (the “**Supermajority DIP Lender Budget Consent Right**”).

15. **Conditions
Precedent to
the Initial
Advance:**

The DIP Lenders’ obligation to make the Initial Advance hereunder from the Loan Amount is subject to, and conditional upon, the satisfaction of all of the following conditions precedent (the “**Initial Advance Conditions**”):

- (a) the Court shall have issued the Second Amended and Restated Initial Order in form and substance satisfactory to the DIP Agent, the Required DIP Lenders and the Fronting Lender, acting reasonably, among other things:
 - (i) authorizing and approving this Agreement;
 - (ii) granting the DIP Charge and the priority of the DIP Charge contemplated in this Agreement;
 - (iii) granting a stay of proceedings until no earlier than September 30, 2026; and
 - (iv) providing for provisional execution, or other protection satisfactory to the Required DIP Lenders, in respect of any and all Advances made and/or Liens and/or charges granted for the DIP Loans, including the DIP Charge;and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) and no notices of the foregoing shall have been filed, unless otherwise agreed by the Required DIP Lenders, in their sole discretion;
- (b) the DIP Lenders shall have received an Advance Notice in accordance with the terms hereof;
- (c) no Default or Event of Default shall have occurred and be continuing or will occur as a result of the Initial Advance;
- (d) there shall be no Encumbrances on the Collateral ranking in priority to or *pari passu* with the DIP Charge other than as expressly permitted by the terms hereof;
- (e) the Obligors shall have delivered to the DIP Agent customary officer’s certificates and authorizing directors’ resolutions, in form and substance satisfactory to the Required DIP Lenders; and
- (f) the Borrowers shall have confirmed to the DIP Agent and the Required DIP Lenders that all Authorizations which the Borrowers

held as of the filing date of the CCAA Proceedings (the “Filing Date”) remain in place.

16. **Conditions
Precedent to
Subsequent
Advances:**

The DIP Lenders’ agreement to make Subsequent Advances, including during the Bridge Period, is subject to, and conditional upon, the satisfaction of all of the following conditions precedent (the “**Subsequent Advance Conditions**”):

- (a) the Second Amended and Restated Initial Order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) and no notices of the foregoing shall have been filed, unless otherwise agreed by the Required DIP Lenders, in their sole discretion;
- (b) the Second Amended and Restated Initial Order has not been amended, restated or modified in a manner that materially adversely affects the rights, remedies or interests of the DIP Lenders without the prior written consent of the Required DIP Lenders; *provided* that any such modification which would require the consent of a given DIP Lender under section 34 hereof be subject to such DIP Lenders’ consent;
- (c) the DIP Lenders shall have received an Advance Notice in accordance with the terms hereof;
- (d) all reasonable and documented third-party expenses payable to the DIP Agent, the DIP Lenders and the Fronting Lender hereunder have been paid by the Borrowers in cash or via a Deemed Draw, or will be paid from the proceeds of the requested Advance on the date of the applicable Advance;
- (e) there shall be no Encumbrances on the Collateral ranking in priority to or *pari passu* with the DIP Charge other than as expressly permitted by the terms hereof;
- (f) no Default or Event of Default shall have occurred and be continuing or will occur as a result of the requested Advance;
- (g) the Borrowers shall have confirmed to the DIP Agent and the Required DIP Lenders that all Authorizations which the Borrowers held as of the Filing Date remain in place; and
- (h) the Borrowers are in compliance with the Approved Cash Flow Forecast (subject to Permitted Variances) as of the date of the proposed Subsequent Advance (which may, for the avoidance of doubt and in the event that a Subsequent Cash Flow Forecast is not approved as required hereunder, be the prior Approved Cash Flow Forecast subject to the limitations on rolling-forward set forth in Section 14 above).

17. **DIP Charge:** All of the obligations of the Obligors under or in connection with the DIP Facility, including without limitation, all principal, interest, fees and DIP Lender Expenses (collectively, the "**DIP Obligations**"), shall be secured by a Court-ordered charge on the Collateral in favour of the DIP Agent, for the benefit of the DIP Lenders (the "**DIP Charge**").
- The DIP Charge shall rank ahead of any and all Encumbrances on the Collateral other than (i) the administration charge not exceeding \$5.0 million, (ii) the directors and officers charge not exceeding \$20.4 million, and (iii) in respect of the Cash Collateral (as defined in the Amended and Restated Initial Order) (collectively, the "**Priority Charges**"), in each case unless otherwise consented by the Required DIP Lenders.
18. **DIP Security:** The Guarantors hereby guarantee in favour of the DIP Agent, for the benefit of the DIP Lenders, the payment and performance of the DIP Obligations of the Borrowers pursuant to the terms set forth in Schedule C hereto.
- The DIP Lenders shall be permitted to request DIP Security (in form and substance reasonably satisfactory to the Required DIP Lender) from the Obligors at any time. The DIP Security shall continue as a first priority Encumbrance on the Collateral in favour of the DIP Agent, for the benefit of the DIP Lenders, subject to subordination only in respect of the Priority Charges and Priority Payables. For greater certainty, the delivery of DIP Security shall not be a condition precedent to the Initial Advance or any other advances of the Loan Amount as set out in sections 15 and 16.
19. **Hedging Program** The Borrowers will use best efforts to implement a hedging program, working in consultation with the DIP Lenders, to manage volatility and protect the cost position of the business including, without limitation, with respect to iron ore and fuel.
20. **Borrowers' Account:** Advances shall be deposited into a bank account to be designated by the Borrowers (the "**Borrowers' Account**") and utilized by the Borrowers in accordance with the terms of this Agreement. At the request of the DIP Lenders, the Borrowers shall put in place a blocked account agreement in favour of the DIP Agent (for the benefit of the DIP Lenders) thereon on such terms as are acceptable to the Required DIP Lenders, in their discretion. Any such blocked account agreement shall not impose a payment block unless the Required DIP Lenders (or the DIP Agent acting at the instruction of the Required DIP Lenders) provide instruction to impose such a block, which instruction may not be given unless an Event of Default has occurred and is continuing.
21. **Repayment and Maturity Date:** All DIP Obligations shall be due and payable on the earliest of the occurrence of any of the following:
- (a) conversion of the CCAA Proceeding into a proceeding under the *Bankruptcy and Insolvency Act* (Canada);

- (b) the occurrence of an Event of Default and a demand for payment by the DIP Agent (at the request of the Required DIP Lenders) following such occurrence and the expiration of any applicable cure period if such Event of Default is continuing as of the date of such request, unless the Required DIP Lenders (or the DIP Agent acting at the direction of the Required DIP Lenders) shall have rescinded such demand for payment;
- (c) the closing of a Restructuring Transaction or combination of Restructuring Transactions; or
- (d) [the date that is twelve (12) months after the granting of the Second Amended and Restated Initial Order, subject to the extensions set forth below (the "**Stated Maturity Date**")]

(such earliest date, the "**Maturity Date**").

The Stated Maturity Date may be extended two times (without counting the Additional Extension, as defined below) by the Borrowers for up to three (3) months each time, provided that (i) the Borrowers deliver a written extension request to the DIP Agent not less than ten (10) days prior to the then applicable Stated Maturity Date, (ii) no Default or Event of Default exists on the then applicable Stated Maturity Date, (iii) the Borrowers shall have paid an extension fee (the "**Extension Fee**") on the date of each such extension equal to two percent (2%) of the DIP Loans outstanding at such time, payable in-kind on the date of such extension to the DIP Agent on behalf of the DIP Lenders on a pro rata basis and capitalized on the principal amount of the DIP Loans as of such date and (iv) the Borrowers shall have provided to the DIP Agent and the DIP Lenders an Updated Cash Flow Forecast as approved by the Monitor and which shall be in form and substance satisfactory to the Required DIP Lenders (subject to the Supermajority DIP Lender Budget Consent Right), through and including the date to which the Stated Maturity Date is extended; *provided* that if a binding offer has been obtained in the SISF which is acceptable to the Required DIP Lenders prior to the Maturity Date and at the time such an extension is sought, the Borrowers may, only once and subject to satisfaction of the requirements set forth in the foregoing provisos (i), (ii), and (iv), extend the Maturity Date for an additional three (3) months (the "**Additional Extension**") without paying an Extension Fee for such extension.

The DIP Lenders' commitment to make Advances under the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be fully repaid no later than the Maturity Date, without the DIP Lenders being required to make demand upon the Borrowers or Guarantors or to give notice that the DIP Facility has expired and that the obligations thereunder are due and payable.

22. **Payments:**

All payments of principal, interest and expenses hereunder, if applicable, shall be made for value in the full amount due at or before 12:00 noon on the day such amount is due by deposit or transfer thereof to the DIP Agent or as the DIP Lenders may direct. Payments received after such time shall

be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment. Each payment to be made by the Borrowers under this Agreement shall be made in full without deduction, set-off or counterclaim of any kind or for any reason. If any expenses incurred by the Borrowers after the date of this Agreement are not paid by the Borrowers, the DIP Agent may, but shall have no duty to do so, pay all such expenses whereupon such amounts shall be added to and form part of the DIP Obligations and shall reduce the availability under the DIP Facility. Unless otherwise consented to in writing by the Required DIP Lenders, the net cash proceeds of any sale, realization or disposition of, or with respect to, any of the Collateral (including obsolete, excess or worn-out Collateral) out of the ordinary course of business (for greater certainty, net of transaction fees and applicable taxes in respect thereof), or any insurance proceeds (net of expenses incurred by the applicable Obligor in connection therewith, including transaction fees and applicable taxes in respect thereof) (each "**Net Proceeds**") paid to the Borrowers or Guarantors in respect of Collateral, shall be paid to the DIP Agent (for the benefit of the DIP Lenders) and applied to prepay the DIP Obligations (or, if no DIP Obligations are then outstanding, reduce the commitments of the DIP Lenders ratably) in an amount equal to the Net Proceeds of such sale, realization, disposition or insurance proceeds. Any such amount repaid may not be reborrowed.

Notwithstanding the foregoing, in lieu of such prepayment, the applicable Obligor shall be permitted to apply such Net Proceeds within [30] days after the receipt thereof by such Obligor to, or to contract to, repair or replace the affected Collateral, subject to such Obligor's written notice thereof to the DIP Lender promptly following the sale, realization, disposition or casualty event in respect of insurance proceeds; *provided*, that any Net Proceeds shall be held in a segregated account until such time as they are utilized for repayment or reinvestment as permitted in this Section 22, and not otherwise disbursed.

23. **Indemnity;
Limitation of
Liability:**

The Obligors agree to indemnify and hold harmless the DIP Agent, the DIP Lenders, the Fronting Lender and their respective Affiliates, partners and officers, directors, employees, representatives, advisors, solicitors and agents (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or reasonable and documented third-party expenses of any kind or nature whatsoever which may be incurred by any of the Indemnified Persons (collectively, the "**Claims**") as a result of, in connection with or in any way related to the DIP Facility, the priority of the DIP Charge, the proposed or actual use of the proceeds of the DIP Facility or this Agreement; provided, however, that the Obligors shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any Claim (a) to the extent it resulted from the gross negligence, wilful misconduct, bad faith, or material breach of this Agreement of any Indemnified Person as finally

determined by a court of competent jurisdiction, or (b) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the Obligors. Notwithstanding anything to the contrary herein, the indemnities granted under this Agreement shall survive any termination of the DIP Facility.

No party hereto shall be liable to any other party hereto for consequential, special, or punitive damages arising under this Agreement.

24. **Representations and Warranties:** Each Obligor represents and warrants to the DIP Agent and DIP Lenders, upon which the DIP Agent and each of the DIP Lenders has relied in entering into this Agreement that:
- (a) such Obligor is validly formed and existing under the laws of its jurisdiction of incorporation or formation;
 - (b) such Obligor has the power and capacity to own or lease and operate its property, to carry on its business as now conducted and as proposed to be conducted, and subject to Court approval of this Agreement, to enter into, execute, deliver and perform its obligations under this Agreement;
 - (c) such Obligor has taken all necessary action to authorize the execution, delivery and performance of this Agreement. Subject to the issuance of the Second Amended and Restated Initial Order and the terms thereof, no consent or authorization of, filing with, notice to or any other act by, or in respect of, any governmental authority or other person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity, or enforceability of this Agreement;
 - (d) this Agreement and the transactions contemplated by this Agreement:
 - (i) are within the powers of such Obligor and, subject to the granting of the Second Amended and Restated Initial Order, constitute legal, valid and binding obligations of such Obligor, enforceable against it in accordance with the terms hereof;
 - (ii) have been duly authorized, executed and delivered by or on behalf of such Obligor; and
 - (iii) subject to the granting of the Second Amended and Restated Initial Order, as applicable, do not and will not conflict with, contravene, violate or result in a breach of: (A) any of the terms or provisions of such Obligor's constating documents or by-laws, (B) any Material Contracts to which such Obligor is a party or pursuant to which any of its assets or property may be affected or (c) any applicable Law;
 - (e) the Business of such Obligor has been and will continue to be conducted in material compliance with all applicable Laws (including environmental laws) of each jurisdiction in which the Business has been or is being carried on subject to the provisions

of the CCAA and any Court order made after the date of the Initial Order, and such Obligor has no knowledge of any facts which result in, constitute, or are likely to give rise to, non-compliance with any Laws in any material respect;

- (f) such Obligor owns, leases or has the lawful right to use all of the material properties and undertaking necessary for the conduct of the business of such Obligor;
- (g) such Obligor has obtained and/or maintained any material Authorizations for the operation of the Business, which Authorizations remain, and after entering into the DIP Facility will remain, in full force and effect, and no proceedings have been commenced to revoke or amend any such Authorizations;
- (h) such Obligor does not have any defined benefit pension plans or similar plans and is in material compliance with all applicable Law respecting its employees' employment and all collective bargaining agreements to which it is a party or otherwise bound;
- (i) such Obligor is current on its post-filing payment obligations for rent and other occupancy costs and expenses in respect of any premises that it leases;
- (j) all of such Obligor's obligations (including fiduciary, funding, investment and administrative obligations, if any) required to be performed in connection with such Obligor's employee benefit plans have been performed on a timely basis;
- (k) such Obligor has filed all Tax returns which were required to be filed and paid all Taxes (including interest and penalties) which are due and payable, except (i) as disclosed to the DIP Lenders' advisors on [], 2026 at []am/pm or (ii) for charges, fees, or dues which are not material in amount or which are not delinquent or, if delinquent, are being contested in good faith if adequate reserves for payment of such obligations in the event that such contests are unsuccessful;
- (l) such Obligor and each of its subsidiaries has good and valid title to, or legally binding property right in, or valid leasehold interests in, all material real property necessary or used in the ordinary conduct of its business, in each case free and clear of all Encumbrances other than Permitted Liens and except for minor defects in title as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the operations or financial condition of the Obligors taken as a whole;
- (m) all information provided by or on behalf of such Obligor to the DIP Lenders, including with respect to the Steensby Expansion and the status of the SISP, for the purposes of or in connection with this Agreement or any transaction contemplated herein, is true and accurate in all material respects on the date as of which such information was provided, not incomplete and does not omit to state any fact necessary to make such information (taken as a

- whole) not materially misleading at such time, in light of the circumstances under which such information was provided;
- (n) none of the Obligor owns or controls, directly or indirectly, any subsidiaries which are not Obligors.
 - (o) each Obligor maintains adequate insurance coverage, as is customary with companies in the same or similar business of such type, in such amounts and against such risks as is prudent for a business of its nature with financially sound and reputable insurers and that contain reasonable coverage and scope;
 - (p) except for those defaults which are stayed by the Initial Order, Amended and Restated Initial Order or the Second Amended and Restated Initial Order, or as disclosed to the DIP Lenders in writing on or after the date hereof, all Material Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms, and the Obligors do not have any knowledge of any default that has occurred and is continuing thereunder (other than those defaults arising as a result of or relating to the insolvency of the Obligors or any of their affiliates or the commencement of the CCAA Proceeding);
 - (q) except as disclosed to the DIP Lenders in writing on or after the date hereof, there are no agreements of any kind (i) between the Obligors and any other third party or any holder of debt or Equity Securities of the Obligors with respect to any Restructuring Transaction, which remain in force and effect as of the date hereof, or (ii) between the Borrowers and any related party;
 - (r) other than potential proceedings in connection with the Second Amended and Restated Initial Order to be sought by the Borrower, or this DIP Facility, or as stayed pursuant to the Initial Order, Amended and Restated Initial Order or the Second Amended and Restated Initial Order, there is not now pending or, to the knowledge of any of the senior officers of the Obligors, threatened against the Obligors, nor has any Obligor received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration or other proceeding by or before any court, tribunal, governmental entity or regulatory body, in each case that would reasonably be expected to be material and adverse to the Obligors, taken as a whole;
 - (s) each Obligor has maintained and paid current its obligations, as applicable, for payroll, source deductions, harmonized, goods and services and retail sales tax, and is not in arrears of its statutory obligations to pay or remit any amount in respect of these obligations;
 - (t) the Borrowers have not taken or omitted to take any action that would reasonably be expected to materially impact their continued operations, including (i) failing to procure any essential products needed before the shipping window closes (such as critical spare parts and any equipment, consumables, and supplies which are

otherwise unable to be delivered during other months), (ii) ceasing their mining operations, or (iii) reducing their workforce in a manner which would reasonably be expected to cause such a material adverse impact; and

- (u) no Default or Event of Default has occurred and is continuing.

25. **Affirmative Covenants:**

In addition to all other covenants and obligations contained herein, each Obligor agrees and covenants to perform and do each of the following until the DIP Facility is fully repaid or assigned with the written consent of the Required DIP Lenders:

- (a) submit to the Court the Second Amended and Restated Initial Order, and any other Court orders which are being sought by the Obligors in a form confirmed in advance to be satisfactory to the Required DIP Lenders subject to any amendments that are required by the Court that are acceptable to the Required DIP Lenders (acting reasonably);
- (b) comply with the provisions of all Court orders made in the CCAA Proceeding, including the Initial Order, Amended and Restated Initial Order and the Second Amended and Restated Initial Order;
- (c) use commercially reasonable efforts to allow each of the DIP Agent, DIP Lenders and their respective employees, agents, advisors and representatives access to all Collateral, information and documentation of the Obligors, to visit, inspect and conduct examinations of any of such Collateral, information and documentation (including any books and records) and discuss its business operations, properties and financial and other conditions with its officers, employees and independent public accountants, in each case, as may be reasonably requested by the DIP Agent or Required DIP Lenders, during normal business hours, in each case subject to applicable privacy laws and solicitor-client privilege; *provided* that visits to Nunavut by any of the foregoing parties shall be subject to such limitations as the Borrowers reasonably determine are necessary including due to cost, interference with operations, sealift, shipping season, and the SISP;
- (d) preserve, renew, maintain and keep in full force its corporate existence and its material Authorizations required in respect of the Business or any of the Collateral;
- (e) keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Business and affairs of the Obligors, including with respect to updates regarding the CCAA Proceeding, the SISP, and the Steensby Expansion;
- (f) conduct the Business and preserve, protect and maintain the Collateral in the ordinary course of Business;
- (g) operate and maintain its respective properties and businesses in all material respects in accordance with industry practice and in all

material respects in accordance with applicable Law and all Court orders made in the CCAA Proceeding, including the Initial Order, Amended and Restated Initial Order and the Second Amended and Restated Initial Order;

- (h) except to the extent otherwise agreed by the Required DIP Lenders (acting reasonably), pay all applicable Priority Payables and all other amounts necessary to preserve the Collateral to avoid any Encumbrance thereon and to carry on the business of each Obligor in the ordinary course;
- (i) promptly notify the DIP Lenders of the occurrence of any Default or Event of Default;
- (j) comply in all material respects with all applicable Laws, rules and regulations applicable to its business, including environmental laws;
- (k) use the proceeds of the DIP Facility in a manner consistent with the restrictions set out herein and in all cases in accordance with the Approved Cash Flow Forecast (subject to Permitted Variances);
- (l) duly and punctually pay or cause to be paid to the DIP Agent on behalf of the DIP Lenders all principal, interest, fees, and other amounts payable by it under this Agreement on the dates, at the places and in the amounts set forth herein;
- (m) on or prior to 5:00 p.m. (Toronto time) on the Monday of every [fourth] calendar week beginning after the date of this Agreement (each, a “**Testing Period**”), the Obligors shall have delivered to the DIP Agent and DIP Lenders (x) an Updated Cash Flow Forecast and (y) a Variance Report;
- (n) the Obligors shall have delivered to the DIP Lenders a business plan that is in form and substance satisfactory to the Required DIP Lenders by no later than the date that is three (3) months after the issuance of the Initial Order; and
- (o) On or prior to June 5, 2026 (or such later date as may be agreed to by the Borrowers and the Required DIP Lenders), the Obligors shall have entered into a key employee retention plan and/or a key employee incentive plan in form and substance acceptable to the Required DIP Lenders.
- (p) at all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is customary for the business of the Obligors with financially sound and reputable insurers in coverage and scope acceptable to the Required DIP Lenders, acting reasonably, and, if requested by the Required DIP Lenders, cause the DIP Agent to be listed as a loss payee or additional insured (as applicable) on such insurance policies and notify the DIP Lenders of any claims or losses exceeding \$2,000,000. The Approved Cash Flow Forecast shall permit

- funding sufficient to pay the premiums in respect of such insurance;
- (q) provide the DIP Agent and the DIP Lenders (by email to their counsel being sufficient) with draft copies of, and the opportunity to comment on, all motions, applications, proposed Court orders and other materials or documents that the Obligors intend to file in the CCAA Proceeding at least two (2) Business Days prior to such filing or, where it is not practically possible to do so within such time, as soon as possible prior to the date on which such motion, application, proposed Court order or other material or document is served on the service list in respect of the CCAA Proceeding;
 - (r) promptly provide notice to the DIP Agent, the DIP Lenders and their counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract, and of any material notices, orders, decisions, letters, or other documents, materials, information or correspondence received from any regulatory authority having jurisdiction over any Obligor, in each case which would reasonably be expected to have a material adverse effect on the Obligors' operations, business, or ability to perform under this Agreement and subject to any disclosure restrictions at Law or contained in any Court order or that, in the opinion of the Obligors (in consultation with the Monitor), each acting reasonably, are necessary to protect the Borrowers' restructuring process;
 - (s) promptly upon becoming aware thereof, provide details of any pending, or threatened claims, potential claims, litigation, actions, suits, arbitrations, other proceedings or notices received in respect of same, against any Obligor by or before any court, tribunal, Governmental Authority or regulatory body, which would be reasonably likely to result, individually or in the aggregate, in a judgment in excess of \$1,000,000;
 - (t) take all commercially reasonable actions necessary or available to defend any Court orders in the CCAA Proceedings from any appeal, reversal, modifications, amendment, stay or vacating not expressly consented to in writing in advance by the Required DIP Lenders relating to the DIP Facility or the DIP Charge;
 - (u) continue business operations in all material respects in the ordinary course ensuring full utilization of the shipping window, including (i) ensuring fuel and other necessary products for operations are secured for continued operations and (ii) shipping out all ready-to-ship product for sale; and the Borrowers will not materially change employee head count or staffing requirements except as may be needed to optimize cost structure and operations subject to the Approved Cash Flow Forecast and the prior written consent of the Required DIP Lenders;
 - (v) maintain all Authorizations during the term of the DIP Facility in full force and effect and use commercially reasonable efforts to

defend each such Authorization against revocation or amendment thereof, including by complying with the terms thereof;

- (w) maintain in good repair, working order and condition all material properties and assets used or useful in the business of the Borrowers and make all such appropriate repairs thereto;
- (x) consult with the DIP Lenders from time to time at their reasonable request regarding which contracts are to be disclaimed in the CCAA Proceedings;
- (y) execute and deliver such loan and security documentation as may be reasonably requested by the DIP Agent or the Required DIP Lenders from time to time;
- (z) promptly pay or cause to be paid, as set forth in section 13 hereof, all DIP Lender Expenses no less frequently than every two weeks, provided that the DIP Lenders shall use commercially reasonable efforts to provide reasonable estimates of such expenses for purposes of the Approved Cash Flow Forecast.

26. **Negative Covenants:**

Each Obligor covenants and agrees not to do the following, and not to permit any of its subsidiaries to do the following, in each case other than with the prior written consent of the Required DIP Lenders from and after the date hereof:

- (a) make any payment of principal or interest in respect of Indebtedness (other than the DIP Facility) or declare or pay any dividends or make any other distribution in respect of its equity interests, in each case, except as expressly provided in the Approved Cash Flow Forecast (without regard to Permitted Variances);
- (b) except as set forth in any Court order that is acceptable to the Required DIP Lenders, incur or permit to exist any Indebtedness (including, without limitation, any capital lease obligation, equipment lease, financing lease obligation, or debtor in possession financing other than the DIP Facility) other than as expressly provided in the Approved Cash Flow Forecast (without regard to Permitted Variances);
- (c) except as set forth in any Court order that is acceptable to the Required DIP Lenders, create, incur, or permit to exist any Encumbrance, or provide or seek to support a motion by another party to provide an Encumbrance, upon any of its properties or assets, in each case other than Permitted Liens;
- (d) make any payments or use any monies (including, without limitation, proceeds of the DIP Facility) outside of the ordinary course of Business, unless provided for in the Approved Cash Flow Forecast (subject to Permitted Variances);
- (e) make any investments in, acquisitions of, or loans to, or guarantee the Indebtedness or obligations of, any other Person, entity or

- assets, except as expressly provided in the Approved Cash Flow Forecast (without regard to Permitted Variances);
- (f) except between Obligor, enter into or continue performance under any transaction with any affiliate or any of its or its affiliates' respective direct or indirect equity holders, senior officers, directors, managers or employees, except in the ordinary course of business for a bona fide business purpose and not for any other purpose, except as expressly provided in the Approved Cash Flow Forecast (without regard to Permitted Variances);
 - (g) enter into or continue performance under any transaction which does not provide for fair and reasonable terms which are no less favorable than those that would be obtained in arm's-length transactions of a similar type;
 - (h) make any Prohibited Payments;
 - (i) make any type of payment, or otherwise satisfy any claim, purported claim, liability, or other obligation, including without limitation of any pre-CCAA filing claim, that is not expressly provided for by the Approved Cash Flow Forecast;
 - (j) change its jurisdiction of incorporation or registered office;
 - (k) change its name, fiscal year end or accounting policies or amend its organizational documents;
 - (l) cease to carry on the Business as currently being conducted or materially change its operations or business practices;
 - (m) sell, assign, lease, convey or otherwise dispose of or transfer any material property, assets or undertakings, except for iron ore product or disposition of obsolete, redundant or ancillary assets or as may be approved by the Court with the prior written approval of the Required DIP Lenders;
 - (n) except as otherwise required under any Court order which is acceptable to the Required DIP Lenders or as expressly provided for in the Approved Cash Flow Forecast or this Agreement, establish or make any retention or bonus payments, increase compensation or severance entitlements or other benefits payable to directors, senior officers or senior management, or pay any bonuses whatsoever;
 - (o) enter into any settlement agreement or agree to any settlement arrangements with any regulatory authority or in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against the Obligor;
 - (p) enter into any amalgamation, reorganization, liquidation, dissolution, winding-up, merger or other similar transaction or series of transactions, allow any change of control to occur, or create or acquire any new subsidiary or become a general partner

- in any partnership that does not provide for the full repayment of the obligations under the DIP Facility;
- (q) amend, supplement, revoke, terminate or discharge or seek to amend, supplement, revoke, terminate or discharge, the Initial Order, Amended and Restated Initial Order or the Second Amended and Restated Initial Order, except to amend and restate the Amended and Restated Initial Order as may be permitted by this Agreement;
 - (r) apply for or consent to, any Court order, or amendment or modification to an existing Court order which adversely affects or would reasonably be expected to adversely affect the DIP Agent or the DIP Lenders;
 - (s) file or support the confirmation of any plan of arrangement or liquidation, in each case, that treats the DIP Obligations as “affected” without the consent of the Required DIP Lenders;
 - (t) (i) enter into any material transaction or material agreements or (ii) amend or modify any existing agreements or transaction terms, in each case, including royalty agreements or similar agreements, without the consent of the Required DIP Lenders; *provided* that no such consent shall be needed to amend or modify any contract if such amendment or modification (i) does not affect the pre- or post-petition priority or value of any claim held by any DIP Lender, (ii) does not negatively impact the Borrowers’ net cash flows or liquidity, and (iii) would not reasonably be expected to negatively impact the terminal value of the business from the perspective of potential purchasers;
 - (u) without the consent of the Required DIP Lenders, satisfy the delivery or other performance obligations and/or payment obligations under its contracts with Glencore plc or any of its affiliates, including, without limitation, any obligations to process or deliver iron ore;
 - (v) take (or omit to take) any action to the extent such action would reasonably be expected to materially impair or otherwise adversely affect the ability of the Obligors to utilize any net operating losses, tax credit carry-forwards, built-in losses, basis, deductions or other tax attributes or benefit, in each case, without the prior written consent of the Required DIP Lenders;
 - (w) issue any Equity Securities, create any new class of Equity Securities, amend any terms of its existing Equity Securities, consent to or take any steps in furtherance of the exercise of any conversion right under any Equity Securities issued by it, or incorporate, create, or organize any new subsidiaries other than in connection with a Restructuring Transaction approved pursuant to a Court order which is acceptable to the Required DIP Lenders;
 - (x) seek, obtain, support, make or permit to be made any Court order or any change, amendment or modification to any Court order that

would reasonably be expected to materially affect the rights or protections of the DIP Agent or the DIP Lenders under or in connection with the DIP Facility or the DIP Charge, except with the prior written consent of the Required DIP Lenders, in their sole discretion;

- (y) seek or consent to the lifting of the stay of proceedings in the Initial Order, Amended and Restated Initial Order or the Second Amended and Restated Initial Order, as applicable, in favour of the Borrowers, or seek or consent to the appointment of a receiver or trustee in bankruptcy or any similar official in any jurisdiction;
- (z) make any changes to the composition of the board of directors of the Borrowers (including the addition, removal or replacement of directors, other than a resignation by a director), other than pursuant to a Court order acceptable to the Required DIP Lenders or with the Required DIP Lenders' approval (in their sole discretion); or
- (aa) interfere with the Monitor in any efforts it undertakes to (i) meet and communicate with the DIP Agent and DIP Lenders and (ii) provide regular reports to the DIP Agent and DIP Lenders with respect to the DIP Facility and the CCAA Proceeding.

27. **Sales and Investment Solicitation Process; Expansion:**

Unless otherwise agreed by the Supermajority DIP Lenders, the Borrowers and the DIP Lenders agree that the Borrowers (in consultation with the Monitor and the DIP Lenders) shall pursue a sales and investment solicitation process in form and substance acceptable to the Borrowers and the Supermajority DIP Lenders (the "**SISP**") approved pursuant to a Court order in respect of potential Restructuring Transactions and any such SISP shall include the following milestones (collectively, the "**SISP Milestones**"):

- (a) the deadline for the commencement of the SISP will be no later than 3 months after the issuance of the Second Amended and Restated Initial Order;
- (b) the deadline for the receipt of first round bids in connection with the SISP will be no later than 6 months after the issuance of the Second Amended and Restated Initial Order;
- (c) the Borrowers shall complete all site visits for bidders prior to October 31, 2026; and
- (d) the final deadline for the closing of a transaction resulting from the SISP will be no later than 12 months after the commencement of the SISP,

provided that the Borrowers may extend each of the foregoing dates in accordance with the Court order approving the SISP, which Court order shall be in form and substance acceptable to the Supermajority DIP Lenders; provided further however that nothing herein shall prohibit the pursuit of a Restructuring Transaction pursuant to a Court approved plan at any time. For the avoidance of doubt, any DIP Lender or the DIP Agent may participate as a bidder in connection with any SISP in respect of

potential Restructuring Transactions[or Alternative Offtake and Service Agreements].

28. **Events of Default:**

The occurrence of any one or more of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:

- (a) any Court order is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacating, amendment or restatement which (i) stays, reverses, vacates or otherwise modifies this Agreement or (ii) adversely affects or would reasonably be expected to adversely affect the enforceability of this Agreement or the DIP Charge unless the DIP Agent or Required DIP Lenders, as applicable, have given their prior written consent thereto, including the issuance of a Court order:
 - (i) appointing a receiver and manager, receiver, interim receiver or similar official in respect of an Obligor;
 - (ii) terminating, lifting or amending the stay imposed within the CCAA Proceeding in a manner which, in the opinion of the Required DIP Lenders, acting reasonably, is materially prejudicial to the DIP Lenders;
 - (iii) granting any other claim or Encumbrance of equal or priority status to that of the DIP Charge, other than the Priority Charges or the Priority Payables; or
 - (iv) prejudicially affecting the DIP Agent, DIP Lenders or the Collateral;
- (b) failure of an Obligor to diligently oppose any party that brings an application or motion for any of the relief set out in subsection 27(a) above and/or the failure to secure the dismissal of such motion or application within 30 days from the date that such application or motion is brought (provided no affirmative Court order is issued on such motion or application during such period);
- (c) the CCAA Proceeding is terminated or converted to bankruptcy proceedings;
- (d) failure of the Borrowers to (i) pay principal, interest or other amounts when due pursuant to this Agreement or any other document entered into in connection herewith, or (ii) pay or cause to be paid any reasonable and documented DIP Lender Expenses within two (2) Business Days of being invoiced therefor (either in cash or via Deemed Draws), *provided* that such invoices are delivered no more frequently than every two weeks, and such failure, in the case of each of items (i) and (ii), remains unremedied for more than two (2) Business Days;
- (e) any Obligor ceases to carry on or maintain the Business or its assets in the ordinary course of the Business in compliance with the covenants contained in this Agreement, except where such

- cessation is otherwise consented to in advance in writing by the Required DIP Lenders;
- (f) any representation or warranty made or given hereunder by any Obligor shall be incorrect or misleading in any material respect when made;
 - (g) any material violation or breach of any court order by an Obligor;
 - (h) failure of an Obligor to (x) perform or comply with any term or covenant of this Agreement and such failure shall continue for more than five (5) Business Days after the earlier to occur of (i) any one or more of the Obligors having knowledge of such Event of Default or (ii) written notice of such Event of Default from the DIP Agent to the Borrowers, in either case, at the direction of the Required DIP Lenders to the Borrowers or (y) achieve the SISP milestones in accordance with section 26;
 - (i) any proceeding, motion or application is commenced or filed by the Obligors, or if commenced by another party, is supported or otherwise consented to by the Obligors, seeking the invalidation, subordination or other challenging of the terms of the DIP Facility, the DIP Lenders' Charge, or this Agreement;
 - (j) any Obligor makes any payments of any kind not permitted by this Agreement, the Approved Cash Flow Forecast or any order of the Court;
 - (k) any plan is filed or sanctioned by the Court in a form and in substance that is not acceptable to the Required DIP Lenders if such plan does not either provide for the repayment of the obligations under the DIP Facility in full by the Maturity Date, or designate the DIP Lenders as unaffected by such plan;
 - (l) any Obligor shall file a motion seeking, or take any action supporting a motion seeking, or the Court shall issue, an order, authorizing the sale or liquidation of its assets unless, in each case, either (i) the Required DIP Lenders consent to the filing of such motion, or (ii) the Court order approving such sale or liquidation contemplates payment in full in cash of all the DIP Obligations;
 - (m) any event or occurrence that materially adversely affects the Obligors, their business or their assets, in each case taken as a whole, as determined by the Required DIP Lenders in their sole discretion;
 - (n) a default (other than a default resulting from the insolvency of the Borrowers or the commencement of the CCAA Proceeding by the Borrowers, including, for greater certainty, as a result of failure to pay pre-filing amounts as a result of the commencement of the CCAA Proceeding) under any Material Contract, or any material amendment of any Material Contract unless agreed to by the Required DIP Lenders in writing;

- (o) any change of control of any one or more of the Obligors that does not provide for the full repayment in cash of the obligations under the DIP Facility without the consent of the Required DIP Lenders;
- (p) any Authorization issued to any Obligor is terminated, revoked, or suspended and such termination, revocation, or suspension has or would reasonably be expected to have a material adverse effect on the operations, financial condition, and/or future prospects of the Obligors taken as a whole;
- (q) any Obligor does not comply with any term or condition of the SISP;
- (r) the priority of the Liens as contemplated hereby created pursuant to or under the DIP Security in favor of the DIP Agent for the benefit of the DIP Lenders is varied without the consent of the DIP Agent at the direction of the DIP Lenders or any of such Liens does not have the priority required hereunder for any reason in any jurisdiction;
- (s) any Obligor commences an action or any other proceeding in any proceeding or in any other court to (i) obtain any form of relief against the DIP Agent or DIP Lenders (or any one or more of them) including without limitation a proceeding to recover damages from the DIP Agent or the DIP Lenders or to obtain payment of any amounts purported to be owing by the DIP Agent or the DIP Lenders (or any one or more of them) to any Obligor if the DIP Agent or the DIP Lenders (or any one or more of them) disputes any of the same or (ii) challenge in any way the enforceability of this Agreement or any document entered in connection herewith or the Liens granted under or pursuant to the DIP Security; *provided*, for the avoidance of doubt, that an Obligor's enforcement of this Agreement against any DIP Lender shall not be an Event of Default under this clause 28(s);
- (t) any Obligor seeks, or consents to, any amendment of the SISP without the prior written consent of the DIP Agent at the direction of the Supermajority DIP Lenders;
- (u) the expiry without further extension of the stay of proceedings in the CCAA Proceeding;
- (v) the denial or purported repudiation by any Obligor of the legality, validity, binding nature, or enforceability of this Agreement or any document entered into in connection herewith, or any Obligor commencing any action or proceeding in any proceeding for a declaration or order to such effect;
- (w) this Agreement or any other document entered into in connection herewith (and for certainty including without limitation the DIP Security) ceases to be enforceable;
- (x) except as stayed by order of the Court, the entry of one or more final judgements, writs of execution, garnishments or attachments representing a claim or claims in excess of \$100,000 or the

equivalent amount thereof in any other currency, in the aggregate, against any Obligor or the property and assets of any Obligor which are subject to the Liens in favor of the DIP Agent for the benefit of the DIP Lenders that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after its or their entry, commencement or levy;

- (y) (i) a Variance Report or Updated Cash Flow Forecast is not delivered within two (2) Business Days of the day on which such Variance Report or Updated Cash Flow Forecast is required to be delivered pursuant to this Agreement, or (ii) there shall exist any variance in excess of any Permitted Variance, including any Permitted Variance specific to any disbursement line item as set forth in the definition of "Permitted Variance"; or
- (z) the retaining or appointment of either (i) a chief restructuring officer or Person in a similar role or (ii) a Monitor with expanded powers, in each case other than with the prior consent of the Required DIP Lenders or pursuant to a Court order which is acceptable to the Required DIP Lenders.

29. **Remedies:**

Upon the occurrence and continuance of an Event of Default, the DIP Agent (acting at the direction of the Required DIP Lenders) or the Required DIP Lenders may elect on prior written notice to the Borrowers and the Monitor to:

- (a) set-off, consolidate or accelerate all amounts outstanding under the DIP Facility (including the Commitment/Funding Fee) and declare such amounts to be immediately due and payable;
- (b) terminate the DIP Facility;
- (c) apply for a Court order, on terms satisfactory to the Monitor and the Required DIP Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrowers, to take all necessary steps in the CCAA Proceeding to realize on the Collateral, including applying to the Court for the appointment of a receiver, interim receiver or receiver and manager over the Borrowers or all or certain of their Collateral, or for the appointment of a trustee in bankruptcy in respect of the Borrowers;
- (d) exercise the powers and rights of a secured party; and
- (e) exercise all such other rights and remedies available to the DIP Lenders hereunder, or pursuant to the Initial Order or otherwise in accordance with applicable Law.

The DIP Agent (acting at the direction of the Required DIP Lenders) may use (for certainty, on the instructions of the Required DIP Lenders in accordance with the definition thereof and section 34) any or all of the DIP Obligations as a credit bid and/or to pay for some or all of the purchase price (including any deposit payable in connection with such transaction) in connection with (a) any purchase of some or all of the properties and

assets of the Borrowers and the Guarantors (or any one or more of them), (b) any Restructuring Transaction agreed to by the Borrowers (in consultation with the Monitor) and the Required DIP Lenders, in each case subject to any Court order and such reasonable terms and conditions as may be required in the opinion of the Borrowers (in consultation with the Monitor), each acting reasonably, to protect the Borrowers' restructuring process.

30. **Taxes:** All payments by an Obligor under this Agreement, including any payments required to be made from and after the exercise of any remedies available to the DIP Agent and/or the DIP Lenders upon the occurrence and continuance of an Event of Default, shall be made free and clear of, without reduction for or on account of, any present or future Taxes; provided, however, that if any Taxes are required by applicable Law to be withheld ("**Withholding Taxes**") from any amount payable to the DIP Lenders under this Agreement, the amounts so payable to the DIP Lenders shall be increased to the extent necessary to yield to the DIP Lenders on a net basis after payment of all Withholding Taxes, the amount payable hereunder at the rate or in the amount specified hereunder and the Obligors shall provide evidence satisfactory to the Required DIP Lenders that the Taxes have been so withheld and remitted.
- If the Borrowers pay an additional amount to the DIP Lenders to account for any Withholding Taxes, the DIP Lenders shall reasonably cooperate with the Borrowers to obtain a refund of the amounts so withheld, including filing income tax returns in applicable jurisdictions, claiming a refund of such Withholding Tax and providing evidence of entitlement to the benefits of any applicable tax treaty. The amount of any refund so received, and interest paid by the tax authority with respect to any refund, shall be paid over by the DIP Lenders to the Borrowers promptly. If reasonably requested by the Borrowers, the DIP Lenders shall apply to the relevant taxing authority to obtain a waiver from such withholding requirement, and the DIP Lenders shall cooperate with the Borrowers and assist the Borrowers to minimize the amount of Withholding Tax required, in each case at the Borrowers' sole expense.
31. **Termination by Borrowers** The Borrowers shall be entitled to terminate this Agreement upon notice to the DIP Lenders at any time following the indefeasible payment in full in immediately available funds of all of the outstanding DIP Obligations. Effective immediately upon such termination, all obligations of the Borrowers and the DIP Lenders under this Agreement shall cease, except for those obligations that explicitly survive termination. For greater certainty, all outstanding DIP Obligations in respect of all Advances funded prior to such termination shall become immediately due and payable concurrently with such termination and the DIP Lenders shall not be required to make any further extensions of credit under this Agreement.

32. **Further Assurances:** The Obligors shall, at their own expense, from time to time do, execute and deliver or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the Required DIP Lenders may reasonably request for the purpose of giving effect to this Agreement.
33. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties related to the subject matter hereof. To the extent there is any inconsistency between this Agreement and any other documents entered into in connection herewith, this Agreement shall prevail.
34. **Amendments and Waivers:** No waiver or delay on the part of the DIP Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement.
- All consents, waivers or amendments to or in connection with this Agreement and the DIP Facility and the transactions contemplated hereby or thereby must be in writing and if approved in writing by the DIP Agent at the direction of the Required DIP Lenders shall be binding on all of the DIP Lenders including those Lenders which did not execute any such consent, waiver or amendment; and any matters, documents or other things required to be acceptable or satisfactory to the DIP Lenders are and shall be deemed to be acceptable and satisfactory to all the DIP Lenders if acceptable or satisfactory to the DIP Agent at the direction of the Required DIP Lenders; provided that and for certainty, no consent, waiver or amendment shall be binding on the DIP Lenders unless each of the DIP Lenders executes a consent, waiver or amendment for any of the following matters: (a) increase the amount of any Lender's DIP Facility commitment amount; (b) change to the Maturity Date other than as expressly provided for herein; (c) postpone or delay the date for payment of any principal, interest or other DIP Obligations; (d) reduce the principal amount owing by the Borrowers or the rate of interest or any other fees applicable to amounts owing or to become owing hereunder or under the other documents in connection herewith; (e) change the pro rata commitments of any of the DIP Lenders in connection with the DIP Facility; (f) amend this section 34, the definition of "Required DIP Lenders", the definition of "Supermajority DIP Lenders" or any provision providing for consent or other action by all or any specific percentage or portion of the DIP Lenders; (g) discharge any Obligor from its payment obligations hereunder or under any other document in connection herewith or release any DIP Security except as may be expressly provided for in this Agreement; or (h) amend the terms and conditions of the application of proceeds of any repayments or the sharing of payments; provided further that any consent, amendment, waiver or other modification with respect to this Agreement that would adversely and disproportionately modify the rights of any DIP Lender (in its capacity as such) under the DIP Facility compared to other DIP Lenders shall require

the prior written consent of each such affected DIP Lender. Notwithstanding anything to the contrary contained herein, any consent, amendment, waiver or other modification that subordinates, or has the direct or indirect effect of subordinating, (x) any DIP Obligations in right of payment to any other Indebtedness for borrowed money or (y) any Encumbrances securing the DIP Obligations to any Encumbrances securing any other Indebtedness for borrowed money, in each case, shall require the prior written consent of the Supermajority DIP Lenders.

In addition, the Required DIP Lenders shall consult all other DIP Lenders in connection with any consent, waiver, amendment or other modification requiring the consent of the Required DIP Lenders.

35. **Severability:** Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
36. **No Third Party Beneficiary:** No Person, other than the Obligors and the DIP Lenders are entitled to rely upon this Agreement and the parties expressly agree that this Agreement does not confer rights upon any party not a signatory hereto.
37. **Counterparts and Facsimile Signatures:** This Agreement may be executed in any number of counterparts delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Agreement by signing any counterpart of it.
38. **Assignment:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Upon the Borrowers' acceptance of this Agreement, this Agreement shall be amended and restated to include provisions pursuant to which DIP Lenders may assign DIP Loans and/or sell participations in DIP Loans. Any DIP Lender may assign its rights and obligations under the DIP Facility (i) to any Eligible Assignee or (ii) to any other person, subject, solely in the case of this clause (ii) and solely to the extent that no Event of Default has occurred and is continuing at the time of such assignment, the Borrowers' prior consent (not to be unreasonably withheld).
- Notwithstanding anything to the contrary herein, any DIP Lender may, without the consent of any other party hereto, pledge or grant a security interest in all or any portion of its rights under this Agreement to secure obligations of such DIP Lender to any financing counterparty; *provided* that such pledge or grant of a security interest does not release such DIP Lender from any of its obligations hereunder or substitute any such pledgee or grantee for such DIP Lender as a party hereto.

39. **Notices:**

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the Person as set forth below:

in the case of a notice to the Obligor at:

c/o Baffinland Iron Mines Corporation
360 Oakville Place Dr., Suite 300
Oakville, Ontario L6H 6K8

Attention: Mark O'Brien
Email: mark.obrien@baffinland.com

with a copy (which shall not constitute notice) to:

Davies Ward Phillips & Vineberg LLP
155 Wellington St. W.
Toronto, ON M5V 3J7

Attention: Natalie Renner and Rob Nicholls
Email: nrenner@dwpv.com and rnicholls@dwpv.com

in the case of a notice to the DIP Agent at:

■

Attention: ■
Email: ■

in the case of a notice to the DIP Lenders at the notice information set forth in Schedule A, with copies to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Attention: Brian S. Hermann; Brian Bolin; Joseph M. Graham
Email: bhermann@paulweiss.com; bbolin@paulweiss.com; jgraham@paulweiss.com

and

Stikeman Elliott LLP
199 Bay St. #5300
Toronto, ON M5L 1B9

Attention: Maria Konyukhova; Logan Copen
Email: mkonyukhova@stikeman.com;
lcopen@stikeman.com

and

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10022

Attention: Ira Dizengoff; Meredith Lahaie; Lucas Charleston
Email: idezengoff@akingump.com;
mlahaie@akingump.com; lcharleston@akingump.com

and

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
Toronto, Ontario
M5H 0B4

Attention: Ryan Jacobs and Michael Wunder
Email: rjacobs@cassels.com and mwunder@cassels.com

In either case, with a copy to the Monitor:

FTI Consulting Canada Inc.

Attention: Jeffrey Rosenberg
Email: Jeffrey.rosenberg@fticonsulting.com

With a copy to, which shall not constitute notice:

Osler, Hoskin & Harcourt LLP
First Canadian Place, 100 King St. W. #6200
Toronto, ON M5H 1H1

Attention: Marc Wasserman and Michael De Lellis
Email: mwasserman@osler.com and mdelellis@osler.com

Any notice delivered or transmitted to a Person as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

In the event that any amount required to be paid hereunder is due on a day which is not a Business Day, such amount shall be paid on the next following Business Day with applicable interest adjustments.

40. **Governing Law and Jurisdiction:** This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein.
41. **Definitions:** For the purposes of this Agreement, unless context otherwise requires, the following terms have the respective meanings set out below, and grammatical variations of such terms have corresponding meanings:
- "**Advance**" has the meaning given to that term in section 8;
- "**Advance Notice**" has the meaning given to that term in section 8;
- "**Affiliate**" of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;
- "**Agreement**" means this Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;
- "**Amended and Restated Initial Order**" means the order of the Court entered on May 25, 2026;
- ["**Alternative Offtake and Service Agreements**" means offtake, service or other agreements in respect of the business of the Borrowers];
- "**Approved Cash Flow Forecast**" has the meaning given to that term in section 14;
- "**Authorization**" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Collateral or the Business;
- "**Benefits Agreement**" means the impact benefits agreement between BIM Corp. and the Qikiqtani Inuit Association dated September 6, 2013, as amended on October 22, 2018, and as may be further amended, supplemented or amended and restated from time to time;
- "**Borrowers**" has the meaning given to that term in the recitals;
- "**Borrowers' Account**" has the meaning given to that term in section 20;
- "**Business**" means the business of iron ore mining at the Mary River Mine on Baffin Island in Nunavut, Canada;
- "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario or New York, New York;
- "**CCAA**" has the meaning given to that term in the recitals;
- "**CCAA Proceeding**" has the meaning given to that term in the recitals;
- "**Collateral**" means all now-owned and hereafter-acquired assets and property of the Obligors, real and personal, tangible or intangible and all

proceeds therefrom, including the Borrowers' Account and all assets used in the Business;

"Commodity Agreement" means, with respect to any Person, any commodity future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is a party or a beneficiary;

"Commitment/Funding Fee" has the meaning given to that term in section 12;

"Court" has the meaning given to that term in the recitals;

"Currency Agreement" means, with respect to any Person, any foreign exchange future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is a party or a beneficiary;

"Default" means the occurrence or existence of any event, fact or circumstances, that with the giving of notice, passage of time, or both, would constitute an Event of Default;

"Default Rate" has the meaning given to that term in section 12;

"DIP Agent" has the meaning given to that term in section 6;

"DIP Charge" has the meaning given to that term in section 17;

"DIP Facility" has the meaning given to that term in section 7;

"DIP Lenders" has the meaning given to that term in section 6;

"DIP Lender Expenses" has the meaning given to that term in section 13;

"DIP Obligations" has the meaning given to that term in section 17;

"DIP Security" means the DIP Charge and any and all security documents granted by the Obligors providing for a security interest in the Collateral and related personal property security registrations made in favour of the DIP Agent, for the benefit of the DIP Lenders, in connection with such security interest together with such confirmations, financing statements, renewals, amendments, discharges, insurance endorsements, opinions or other documents as may be reasonably requested by the Required DIP Lenders as security for the DIP Obligations;

"EDC" means Export Development Canada;

"EDC Credit Agreement" means that certain credit agreement dated as of October 7, 2022 (as amended pursuant to an amendment dated September 27, 2023, an amendment dated March 26, 2024, an amendment dated May 27, 2025 and an amendment dated November 24, 2025), by and among the Borrowers, as borrowers, the guarantors party thereto and EDC, as lender;

"Eligible Assignee" means (x) any DIP Lender or Affiliate or Related Fund of any DIP Lender, and (y) any SPC as long as the applicable DIP Lender remains obligated in respect of its commitments hereunder,

provided that no Obligor or any Affiliate of any Obligor shall be an Eligible Assignee.

"Encumbrances" means any hypothec, encumbrance, lien, charge, pledge, deposit arrangement, mortgage, title retention agreement, trust, deemed trust, security interest of any nature, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege, or any other arrangement or condition that in substance or effect secures payment or performance of an obligation, or any contract to create any of the foregoing;

"Event of Default" has the meaning given to that term in section 28;

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"Hedging Obligations" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement;

"Holder AHG" means an ad hoc group of Holders providing DIP Loans hereunder.

"Holders" means holders of the notes under the Indenture.

"Indebtedness" of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, including by way of overdraft and drafts or orders accepted as representing extensions of credit, (b) all obligations of such Person evidenced by bonds, debentures, the face amount of all letters of credit, letters of guarantee and similar instruments, notes or other similar instruments, (c) all indebtedness, liabilities and obligations secured by an Encumbrance on any asset of such Person, whether or not the same is otherwise indebtedness, liabilities or obligations of such Person, (d) all indebtedness, liabilities and obligations of others which is, directly or indirectly, guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, (e) all indebtedness, liabilities and obligations in respect of financial instruments which are classified as a liability on the balance sheet of such Person, and (f) all obligations of such Person to otherwise assure a creditor against loss (for certainty, Hedging Obligations incurred by an Obligor in the ordinary course shall not be considered Indebtedness for purposes of this Agreement);

"Indemnified Persons" has the meaning given to that term in section 22;

"Indenture" means that certain Senior Secured Notes Indenture, dated as of June 27, 2018 (as amended, amended and restated or otherwise

modified from time to time prior to the date of this Agreement), by and among the Borrowers, as issuers and the Indenture Agent;

"Indenture Agent" means Wilmington Trust, National Association, as trustee and collateral;

"Initial Advance" has the meaning given to that term in section 8;

"Initial Advance Conditions" has the meaning given to that term in section 15;

"Initial Order" means the order of the Court entered on May 15, 2026;

"Interest Payment Date" has the meaning given to that term in section 12;

"Interest Period" has the meaning given to that term in section 12;

"Interest Rate Agreement" means, with respect to any Person, any interest rate future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is a party or a beneficiary;

"Interest Rate" has the meaning given to that term in section 12;

"Law" means any federal, provincial, county, territorial, district, municipal, local or foreign, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

"Loan Amount" has the meaning given to that term in section 7;

"Material Contract" means any contract, license or agreement: (i) to which a Borrower or Guarantor is a party or is bound; and (ii) which is material to or necessary in the operation of any Borrower or Guarantor.

"Maturity Date" has the meaning given to that term in section 21;

"Stated Maturity Date" has the meaning given to that term in section 20;

"Monitor" means FTI Consulting Canada Inc., as the court-appointed monitor of the Borrowers and Nunavut Iron Ore Mines, Inc.;

"Obligors" has the meaning given to that term in section 5;

"Permitted Liens" means (i) the Permitted Priority Liens; (ii) the DIP Charge; (iii) any charges created under the Initial Order or other Court order subsequent and subordinated in priority to the DIP Charge; (iv) Encumbrances existing prior to the Filing Date which are subordinate to the DIP Charge; (v) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business; and (vi) miner's liens incurred in the ordinary course of business.

"Permitted Priority Liens" means (i) the Priority Charges; (ii) any Encumbrance in respect of amounts payable by the Borrowers for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits),

income tax and workers compensation claims, in each case solely to the extent such amounts are given priority by applicable Law and only to the extent that the priority of such amounts has not been subordinated to the DIP Charge granted by the Court; and (iii) such other Encumbrances existing as of the Filing Date that have not been subordinated to the DIP Charge granted by the Court.

“Permitted Variance” means, for each Testing Period, variances in actual receipts and disbursements in amounts such that (a) (i) actual receipts are not less than 90% of projected receipts for (1) such Testing Period and (2) the cumulative period commencing on the date of the initial Approved Cash Flow Forecast and ending on the last day of such Testing Period; (ii) actual disbursements are not more than 110% of projected disbursements for (1) such Testing Period and (2) the cumulative period commencing on the date of the initial Approved Cash Flow Forecast and ending on the last day of such Testing Period, and (b) to the extent any Approved Cash Flow Forecast specifies a lower permitted variance amount (which may be 0%) with respect to a specific disbursement line item, actual disbursements during the applicable Testing Period for such disbursement line item are not higher, on a percentage basis as compared to projected disbursements for such disbursement line item during such Testing Period, than such specified variance amount. For purposes of measuring the foregoing variances, the fees, costs, and expenses payable to the Monitor and its advisors and the advisors of the Obligors, as well as the DIP Lender Expenses, shall be excluded from disbursements. No amounts disbursed (x) in violation of any provision of this Agreement or (y) for a purpose which is not included in any line item in the Approved Cash Flow Forecast for the applicable Testing Period shall constitute Permitted Variances regardless of whether the other tests set forth in this definition have been satisfied.

“Person” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee;

“Pre-Approved Steensby CapEx” means capital expenditures in connection with (a) the Steensby Expansion in an aggregate amount not to exceed \$20 million and (b) exploration costs not to exceed \$10 million.

“Priority Charges” has the meaning given to that term in section 17;

“Priority Payables” means HST, all sales Tax and any amount payable or accrued by a Borrower which is secured by an Encumbrance which ranks or is capable of ranking prior to or *pari passu* with the Encumbrances created in connection with the DIP Charge (other than the Priority Charges) including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, construction trusts or construction liens, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the Encumbrances created in connection with the DIP Charge;

“Prohibited Payments” means any payment or satisfaction of any claim on account of (i) obligations owed (or which satisfaction of which would result in payment to) any direct or indirect beneficial owner of equity interests in any Obligor, including under any royalty agreement; (ii) any transaction which does not provide for fair and reasonable terms which are no less favorable than those that would be obtained in arm’s-length transactions of a similar type, except between Obligors; and (iii) obligations incurred prior to the Filing Date unless otherwise approved by the Monitor and the Court;

“Related Fund” means, with respect to any Lender that is an investment fund, any other entity that is managed or advised by such DIP Lender or the same investment advisor as such DIP Lender or by an Affiliate of such investment advisor;

“Required DIP Lenders” means, as of any time of determination, DIP Lenders holding more than 50% of the sum of all DIP Loans outstanding and undrawn commitments in effect with respect thereto (without taking into account any commitments temporarily held by the Fronting Lender for the account of the ultimate Lenders) at such time;

“Restructuring Transaction” means any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, plan or other material transaction of, or in respect of, the Obligors, or any of them, or all or a material portion of their Business, assets or obligations;

“Royalty Agreements” means, collectively, (i) the royalty agreement entered into among the Borrowers, 15877580 Canada Inc., ArcelorMittal Canada Inc., 15877563 Canada Inc. and 15877482 Canada Inc. dated March 25, 2024 and (ii) the royalty agreement entered into among the Borrowers, 16572367 Canada Inc., 15877563 Canada Inc. and 15877482 Canada Inc.;

“Second Amended and Restated Initial Order” means an order, or orders, of the Court, in form and substance satisfactory to the Required DIP Lenders and obtained on application made on notice to the service list in the CCAA Proceeding and to such Persons as the Required DIP Lenders and Obligors determine, acting reasonably, among other things, amending and restating the Amended and Restated Initial Order, approving the DIP Facility, granting the DIP Charge and granting the Obligors an extension of the stay of proceedings;

“Senior Agents” means, collectively, Alter Domus (US) LLC, as administrative agent and Wilmington Trust, National Association, as the collateral agent, in each case, under the Senior Credit Agreement;

“Senior Credit Agreement” means that certain revolving credit agreement dated as of May 26, 2017 (as amended by the first amendment dated June 27, 2018, the second amendment dated October 25, 2019, the third amendment dated February 14, 2022, the fourth amendment dated March 26, 2024, the fifth amendment dated May 27, 2025 and the sixth amendment dated November 24, 2025), by and among the

Borrowers, as borrowers, the guarantors party thereto, the Senior Lenders and the Senior Agents;

“Senior Lenders” means the lenders under the Senior Credit Agreement;

“Senior Secured Notes” means the senior secured notes issued under the Indenture;

“SISP” has the meaning given to that term in section 27;

“SISP Milestones” has the meaning given to that term in section 27;

“SPC” means, with respect to any Lender, any special purpose vehicle identified in writing from time to time to the Administrative Agent and the Borrower that is formed for the purpose of providing all or any portion of the DIP Facility that such Lender would otherwise be obligated to make pursuant to this Agreement.

“Stated Maturity Date” has the meaning given to that term in section 21 hereof.

“Steensby Expansion” has the meaning given to that term in section 24;

“Subsequent Advance” has the meaning given to that term in section 8;

“Supermajority DIP Lender Budget Consent Right” has the meaning given to that term in section 14;

“Supermajority DIP Lenders” means, as of any time of determination, DIP Lenders holding not less than 66.67% of the sum of all DIP Loans outstanding and undrawn commitments in effect with respect thereto (without taking into account any commitments temporarily held by the Fronting Lender for the account of the ultimate Lenders) at such time; provided that, at all times, “Supermajority DIP Lenders” must include at least three (3) DIP Lenders, which DIP Lenders are not affiliates of each other.

“Tax” and **“Taxes”** means any taxes, duties, fees, premiums and assessments imposed by any Governmental Authority, including all interest, penalties, fines or additions to tax imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

“Updated Cash Flow” has the meaning given to that term in section 14;

“Variance Report” means a report in a form satisfactory to the Required DIP Lenders and the Monitor acting reasonably setting forth for all Obligors (i) actual receipts and disbursements for the preceding Testing Period for each line item in the Approved Cash Flow Forecast for such Testing Period, and (ii) actual receipts and disbursements on a cumulative

basis since the beginning of the period covered by the then operative Approved Cash Flow Forecast, in each case as against the then operative Approved Cash Flow Forecast, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof in the then operative Approved Cash Flow Forecast. Each Variance Report shall include reasonably detailed explanations for any variances for either receipts or disbursements, in each case exceeding five percent (5%) of the Approved Cash Flow Forecast for each line item in the Approved Cash Flow Forecast and all items on a cumulative basis during the relevant period; and

"Withholding Taxes" has the meaning given to that term in section 30.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

BORROWERS:

BAFFINLAND IRON MINES CORPORATION

by _____

BAFFINLAND IRON MINES LP, by its general partner, BAFFINLAND IRON MINES CORPORATION

by _____

GUARANTORS:

NUNAVUT IRON ORE, INC.

by _____


12334992 CANADA INC.

by _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

DIP LENDERS:

**BRIGADE CAPITAL MANAGEMENT,
LP, AS INVESTMENT ADVISOR TO ITS
VARIOUS FUNDS AND ACCOUNTS**

by  _____

Patrick Criscillo

Chief Financial Officer

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

DIP LENDERS:

POLEN CAPITAL CREDIT, LLC, on behalf of certain funds and accounts it manages and/or advises

by



Name: Elizabeth Duggan

Title: Authorized Signatory

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

DIP LENDERS:

**HARTREE PARTNERS, LP
BY ITS GENERAL PARTNER,
HARTREE PARTNERS GP, LLC**

By _____

OPPS XII BLIM Holdings, L.P.

By: Oaktree Fund GP IIA, LLC

Its: General Partner

By: Oaktree Fund GP II, L.P.

Its: Managing Member

By: David Nicoll _____

Name: David Nicoll
Title: Authorized Signatory

By: Ross Rosenfelt _____

Name: Ross Rosenfelt
Title: Authorized Signatory

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

DIP LENDERS:

**HARTREE PARTNERS, LP
BY ITS GENERAL PARTNER,
HARTREE PARTNERS GP, LLC**

By  _____
AE077B232204449...

OPPS XII BLIM Holdings, L.P.

By: Oaktree Fund GP IIA, LLC

Its: General Partner

By: Oaktree Fund GP II, L.P.

Its: Managing Member

By: _____

By: _____

SCHEDULE A
DIP FACILITY COMMITMENTS

DIP Lender	DIP Commitment	Notice Information
Brigade Capital Management, LP	\$30,000,000	
Polen Capital Credit, LLC	\$45,000,000	
Opps XII BLIM Holdings, L.P.	\$180,000,000	Oaktree Capital Management 555 South Flower Street, 36 th Floor Los Angeles, CA 90071 Attention: David Nicoll Email: dnicoll@oaktreecapital.com
Hartree Partners, LP	\$45,000,000	Hartree Partners, LP 1185 Avenue of the Americas, New York, NY 10036 Attention: Scott Potolsky Email: HMFI- notices@hartreepartners.com CC: legalNY@hartreepartners.com
Total	\$300,000,000	

SCHEDULE B

APPROVED CASH FLOW FORECAST

Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation and 12334992 Canada Inc. (collectively, the “Company”)**Assumptions to the Cash Flow Forecast**

The Company's cash flow forecast (the "Forecast") is presented in millions of United States dollars. Any estimates in Canadian dollars have been translated at a foreign exchange rate of 1.38:1.

In preparing this cash flow forecast, the Company has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast includes assumptions described below with respect to the requirements and impact of a filing under the Companies' Creditors Arrangement Act. Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

- [1] **Purpose:** The purpose of the Forecast is to estimate the Company's liquidity requirements during the period May 30, 2026 to August 28, 2026 (the "**Forecast Period**").
- [2] **Receipts:** Receipts from the Company's off-take financing partner are based on forecast invoice amounts under the 2026 off-take agreement. Off-take receipts are received throughout the year, while inventory buyback and shipping sales occur during July to October each year. The Company has hedged approximately half of its 2026 production. Commercial Payments relate to shipping and freight costs associated with delivering sales.
- [3] **Labour:** Forecast based on planned production levels at Mary River Mine and management and overhead labour required to support same. The Company is current with all labour costs and related CRA payments.
- [4] **Vendor Payments:** Disbursements to commercial vendors, freight suppliers, government entity payments and various other operating costs required to facilitate continued mine operations. Includes an estimated amount that may be required to be paid to critical vendors for pre-filing amounts. Also includes amounts owed to the Qikiqtani Inuit Association and related parties in accordance with the Benefits Agreement as of May 15, 2026.
- [5] **Sealift Purchases:** Disbursements for consumables, freight, fuel and vendor pre-payment amounts required for shipment of goods to the Mary River Mine during the Sealift window.
- [6] **Sustaining Capital Costs:** Capital costs necessary to support and maintain operations at the Mary River Mine.
- [7] **Overhead Costs:** Payments for office general and administrative expenses, land lease payment to the QIA and insurance instalment payments.
- [8] **Exploration:** Exploration costs are associated with location identification, discovery, and quantity and quality assessments of deposits in the Mary River Mine area.
- [9] **Steensby Project Costs:** Costs to advance the Steensby project, as well as stripping costs for movement of surface material usable towards the Steensby Railway.
- [10] **Other Costs:** Professional Fees, Interest costs, and costs to support LC issuance.
- [11] **Liquidity:** The Company estimates it will require approximately \$201 million of liquidity for the period May 30, 2026 to August 28, 2026 under the set of assumptions outlined above and included in the Forecast. The Forecast assumes, among other things, that (i) the company continues on a growth oriented mining plan and continues to incur associated stripping costs in order to achieve 22 Mtpa of iron ore production capacity by 2030, (ii) all major sealift items (fuel, parts, tires) continue to be cash purchased (and not brought to site on consignment), and (iii) major site services and related overheads remain unchanged. Note that the Forecast does not include amounts for interest, fees or other cost of capital considerations.

SCHEDULE C

LOAN GUARANTY

(a) Each Guarantor hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, and absolutely and unconditionally and irrevocably guarantees to the DIP Agent for the ratable benefit of the DIP Lenders and the other secured parties (the “**Guaranty**”) the full and prompt payment, when and as the same shall become due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the DIP Obligations (collectively the “**Guaranteed Obligations**”). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. If any or all of the Guaranteed Obligations becomes due and payable hereunder, each Guarantor, unconditionally and irrevocably, promises to pay such indebtedness to the DIP Agent and/or the DIP Lenders or the other secured parties, on demand, together with any and all expenses which may be incurred by the DIP Agent and the DIP Lenders in collecting any of the Guaranteed Obligations, to the extent reimbursable in accordance with this Agreement.

(b) Guaranty of Payment. This Guaranty is a guaranty of payment and not of collection. Each Guarantor waives any right to require the DIP Agent or any DIP Lender to sue any Borrower, any other Guarantor or any other Person obligated for all or any part of the Guaranteed Obligations (each, an “**Obligated Party**”), or otherwise to enforce its rights in respect of any collateral securing all or any part of the Guaranteed Obligations. The DIP Agent may enforce this Loan Guaranty upon the occurrence and during the continuance of an Event of Default.

(c) No Discharge or Diminishment of Guaranty.

(i) Except as otherwise provided for herein, the obligations of each Guarantor hereunder are unconditional, irrevocable and absolute and not subject to any reduction, limitation, impairment or termination for any reason, including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Obligated Party; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, or their assets or any resulting release or discharge of any obligation of any Obligated Party; (iv) the existence of any claim, setoff or other rights which any Guarantor may have at any time against any Obligated Party, the DIP Agent, any DIP Lender or any other Person, whether in connection herewith or in any unrelated transactions; (v) any direction as to application of payments by any Borrower or by any other party; (vi) any other continuing or other guaranty, undertaking or maximum liability of a Guarantor or of any other party as to the Guaranteed Obligations; (vii) any payment on or in reduction of any such other guaranty or undertaking; (viii) any dissolution, termination or increase, decrease or change in personnel by the Borrowers or (ix) any payment made to the DIP Agent or any DIP Lender on the Guaranteed Obligations which any such DIP Agent or DIP Lender repays to any Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

(ii) Except for termination of a Guarantor’s obligations hereunder, the obligations of each Guarantor hereunder are not subject to any defense (other than defense of payment resulting in a payment in full in cash of the Guaranteed Obligations)

or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(iii) Further, the obligations of any Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the DIP Agent or any DIP Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of the Borrowers for all or any part of the Guaranteed Obligations or any obligations of any other Guarantor or of other Person liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the DIP Agent or any DIP Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity.

(d) Defenses Waived. To the fullest extent permitted by applicable law and except for termination of a Guarantor's obligations hereunder, each Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any other Guarantor or arising out of the disability of the Borrowers or any other Guarantor or any other party or the unenforceability of all or any part of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower or any other Guarantor. Without limiting the generality of the foregoing, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, including notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Guaranty, and notices of the existence, creation or incurrence of new or additional Guaranteed Obligations, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person, including any right to require the DIP Agent or any DIP Lender to (i) proceed against any Borrower, any other Guarantor or any other party, (ii) proceed against or exhaust any security held from any Borrower, any other Guarantor or any other party or (iii) pursue any other remedy in any DIP Agent's or DIP Lenders' power whatsoever. The DIP Agent may, at its election, foreclose on any collateral held by it by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent permitted by applicable law), accept an assignment of any such collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, and the DIP Agent may, at its election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, or any security, without affecting or impairing in any way the liability of such Guarantor under this Guaranty. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Obligated Party or any security.

(e) Authorization. The Guarantors authorize the DIP Agent and the DIP Lenders without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time, to:

(i) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Guaranteed Obligations (including any increase or decrease in the principal amount thereof or the rate of interest or fees thereon), any security therefor, or any liability incurred directly or indirectly in respect thereof, and this Guaranty shall apply to the Guaranteed Obligations as so changed, extended, renewed or altered;

(ii) take and hold security for the payment of the Guaranteed Obligations and sell, exchange, release, impair, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(iii) exercise or refrain from exercising any rights against any Obligor or others or otherwise act or refrain from acting;

(iv) release or substitute any one or more endorsers, Guarantors, or the Borrowers, or other obligors;

(v) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrowers to their creditors other than the DIP Agent or DIP Lenders;

(vi) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Borrowers to the DIP Agent or DIP Lenders regardless of what liability or liabilities of the Borrowers remain unpaid;

(vii) consent to or waive any breach of, or any act, omission or default under, this Agreement or any of the instruments or agreements referred to herein, or otherwise amend, modify or supplement this Agreement or any related documents or other such instruments or agreements; and/or

(viii) take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of the Guarantors from their respective liabilities under this Loan Guaranty.

(f) Rights of Subrogation. Any indebtedness of the Borrowers now or hereafter owing to any Guarantor is hereby subordinated to the Obligations owing to the DIP Agent and the DIP Lenders; and if the DIP Agent so requests at a time when an Event of Default exists, all such indebtedness of the Borrowers to such Guarantor shall be collected, enforced and received by such Guarantor for the benefit of the DIP Agent and the DIP Lenders and be paid over to the DIP Agent on behalf of the DIP Lenders on account of the Guaranteed Obligations, but without affecting or impairing in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(g) Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or otherwise, each Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the

Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the other Guarantors forthwith on demand by the DIP Agent.

(h) Liability Cumulative. The liability of each Guarantor under this Loan Guaranty is in addition to and shall be cumulative with all liabilities of such Guarantor to the DIP Agent and the DIP Lenders under this Agreement and any related documents to which such Guarantor is a party or in respect of any obligations or liabilities of the other Guarantors, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

***This Court has the
Jurisdiction to Approve
the Full EDC Facility***



CANADA

CONSOLIDATION

CODIFICATION

Companies' Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to May 26, 2026

À jour au 26 mai 2026

Last amended on December 12, 2024

Dernière modification le 12 décembre 2024

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

1997, c. 12, s. 124; 2001, c. 9, s. 576; 2005, c. 47, s. 128; 2007, c. 29, s. 106, c. 36, s. 65.

11.11 [Repealed, 2005, c. 47, s. 128]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a)** the period during which the company is expected to be subject to proceedings under this Act;
- (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;

Déclaration : organisme agissant à titre de créancier

(4) En cas de différend sur la question de savoir si l'organisme administratif cherche à faire valoir ses droits à titre de créancier dans le cadre de la mesure prise, le tribunal peut déclarer, par ordonnance, sur demande de la compagnie et sur préavis à l'organisme, que celui-ci agit effectivement à ce titre et que la mesure est suspendue.

1997, ch. 12, art. 124; 2001, ch. 9, art. 576; 2005, ch. 47, art. 128; 2007, ch. 29, art. 106, ch. 36, art. 65.

11.11 [Abrogé, 2005, ch. 47, art. 128]

Financement temporaire

11.2 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie sont grevés d'une charge ou sûreté — d'un montant qu'il estime indiqué — en faveur de la personne nommée dans l'ordonnance qui accepte de prêter à la compagnie la somme qu'il approuve compte tenu de l'état de l'évolution de l'encaisse et des besoins de celle-ci. La charge ou sûreté ne peut garantir qu'une obligation postérieure au prononcé de l'ordonnance.

Priorité — créanciers garantis

(2) Le tribunal peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

Priorité — autres ordonnances

(3) Il peut également y préciser que la charge ou sûreté n'a priorité sur toute autre charge ou sûreté grevant les biens de la compagnie au titre d'une ordonnance déjà rendue en vertu du paragraphe (1) que sur consentement de la personne en faveur de qui cette ordonnance a été rendue.

Facteurs à prendre en considération

(4) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

- a)** la durée prévue des procédures intentées à l'égard de la compagnie sous le régime de la présente loi;
- b)** la façon dont les affaires financières et autres de la compagnie seront gérées au cours de ces procédures;
- c)** la question de savoir si ses dirigeants ont la confiance de ses créanciers les plus importants;
- d)** la question de savoir si le prêt favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie;

- (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 charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor – initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

1997, c. 12, s. 124; 2005, c. 47, s. 128; 2007, c. 36, s. 65; 2019, c. 29, s. 138.

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a) an agreement entered into on or after the day on which proceedings commence under this Act;
- (b) an eligible financial contract; or
- (c) a collective agreement.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

- e) la nature et la valeur des biens de la compagnie;
- f) la question de savoir si la charge ou sûreté causera un préjudice sérieux à l'un ou l'autre des créanciers de la compagnie;
- g) le rapport du contrôleur visé à l'alinéa 23(1)b).

Facteur additionnel : demande initiale

(5) Lorsqu'une demande est faite au titre du paragraphe (1) en même temps que la demande initiale visée au paragraphe 11.02(1) ou durant la période visée dans l'ordonnance rendue au titre de ce paragraphe, le tribunal ne rend l'ordonnance visée au paragraphe (1) que s'il est également convaincu que les modalités du financement temporaire demandé sont limitées à ce qui est normalement nécessaire à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

1997, ch. 12, art. 124; 2005, ch. 47, art. 128; 2007, ch. 36, art. 65; 2019, ch. 29, art. 138.

Cessions

11.3 (1) Sur demande de la compagnie débitrice et sur préavis à toutes les parties au contrat et au contrôleur, le tribunal peut, par ordonnance, céder à toute personne qu'il précise et qui y a consenti les droits et obligations de la compagnie découlant du contrat.

Exceptions

(2) Le paragraphe (1) ne s'applique pas aux droits et obligations qui, de par leur nature, ne peuvent être cédés ou qui découlent soit d'un contrat conclu à la date à laquelle une procédure a été intentée sous le régime de la présente loi ou par la suite, soit d'un contrat financier admissible, soit d'une convention collective.

Facteurs à prendre en considération

(3) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

- a) l'acquiescement du contrôleur au projet de cession, le cas échéant;
- b) la capacité de la personne à qui les droits et obligations seraient cédés d'exécuter les obligations;
- c) l'opportunité de lui céder les droits et obligations.

**9354-9186 Québec inc. and
9354-9178 Québec inc.** *Appellants*

v.

**Callidus Capital Corporation,
International Game Technology,
Deloitte LLP, Luc Carignan,
François Vigneault, Philippe Millette,
Francis Proulx and François Pelletier**
Respondents

and

**Ernst & Young Inc.,
IMF Bentham Limited (now known as
Omni Bridgeway Limited),
Bentham IMF Capital Limited (now known
as Omni Bridgeway Capital (Canada)
Limited), Insolvency Institute of Canada and
Canadian Association of Insolvency and
Restructuring Professionals** *Interveners*

- and -

**IMF Bentham Limited (now known as Omni
Bridgeway Limited) and
Bentham IMF Capital Limited (now known
as Omni Bridgeway Capital (Canada)
Limited)** *Appellants*

v.

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**9354-9186 Québec inc. et
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c.

**Callidus Capital Corporation,
International Game Technology,
Deloitte S.E.N.C.R.L., Luc Carignan,
François Vigneault, Philippe Millette,
Francis Proulx et François Pelletier** *Intimés*

et

**Ernst & Young Inc.,
IMF Bentham Limited (maintenant
connue sous le nom d’Omni Bridgeway
Limited), Corporation Bentham IMF
Capital (maintenant connue sous le nom de
Corporation Omni Bridgeway Capital
(Canada)), Institut d’insolvabilité du Canada
et Association canadienne des professionnels
de l’insolvabilité et de la réorganisation**
Intervenants

- et -

**IMF Bentham Limited (maintenant
connue sous le nom d’Omni Bridgeway
Limited) et Corporation Bentham IMF
Capital (maintenant connue sous le nom de
Corporation Omni Bridgeway Capital
(Canada))** *Appelantes*

c.

**Callidus Capital Corporation,
International Game Technology,
Deloitte S.E.N.C.R.L., Luc Carignan,
François Vigneault, Philippe Millette,
Francis Proulx et François Pelletier** *Intimés*

et

Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier.

Joseph Reynaud and Nathalie Nouvet, for the interveners Ernst & Young Inc.

Sylvain Rigaud, Arad Mojtahedi and Saam Pousht-Mashhad, for the interveners the Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals.

The reasons for judgment of the Court were delivered by

THE CHIEF JUSTICE AND MOLDAVER J.—

I. Overview

[1] These appeals arise in the context of an ongoing proceeding instituted under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“CCAA”), in which substantially all of the assets of the debtor companies have been liquidated. The proceeding was commenced well over four years ago. Since then, a single supervising judge has been responsible for its oversight. In this capacity, he has made numerous discretionary decisions.

[2] Two of the supervising judge’s decisions are in issue before us. Each raises a question requiring this Court to clarify the nature and scope of judicial discretion in CCAA proceedings. The first is whether a supervising judge has the discretion to bar a creditor from voting on a plan of arrangement where they determine that the creditor is acting for an improper purpose. The second is whether a supervising judge can approve third party litigation funding as interim financing, pursuant to s. 11.2 of the CCAA.

[3] For the reasons that follow, we would answer both questions in the affirmative, as did the supervising judge. To the extent the Court of Appeal disagreed

Game Technology, Deloitte S.E.N.C.R.L., Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx et François Pelletier.

Joseph Reynaud et Nathalie Nouvet, pour l’intervenante Ernst & Young Inc.

Sylvain Rigaud, Arad Mojtahedi et Saam Pousht-Mashhad, pour les intervenants l’Institut d’insolvabilité du Canada et l’Association canadienne des professionnels de l’insolvabilité et de la réorganisation.

Version française des motifs de jugement de la Cour rendus par

LE JUGE EN CHEF ET LE JUGE MOLDAVER —

I. Aperçu

[1] Ces pourvois s’inscrivent dans le contexte d’une instance toujours en cours introduite sous le régime de la *Loi sur les arrangements avec les créanciers de compagnies*, L.R.C. 1985, c. C-36 (« LACC »), dans le cadre de laquelle la quasi-totalité des éléments d’actif des compagnies débitrices ont été liquidés. L’instance a été introduite il y a plus de quatre ans. Depuis, un seul juge surveillant a été chargé de sa supervision. À ce titre, il a rendu de nombreuses décisions discrétionnaires.

[2] Deux de ces décisions du juge surveillant font l’objet du présent pourvoi. Chacune d’elles soulève une question exigeant de notre Cour qu’elle précise la nature et la portée du pouvoir discrétionnaire exercé par les tribunaux dans les instances relevant de la LACC. La première est de savoir si le juge surveillant dispose du pouvoir discrétionnaire d’interdire à un créancier de voter sur un plan d’arrangement s’il estime que ce créancier agit dans un but illégitime. La deuxième porte sur le pouvoir du juge surveillant d’approuver le financement du litige par un tiers à titre de financement temporaire, en vertu de l’art. 11.2 de la LACC.

[3] Pour les motifs qui suivent, nous sommes d’avis de répondre à ces deux questions par l’affirmative, à l’instar du juge surveillant. Dans la mesure où la

[41] Among these objectives, the CCAA generally prioritizes “avoiding the social and economic losses resulting from liquidation of an insolvent company” (*Century Services*, at para. 70). As a result, the typical CCAA case has historically involved an attempt to facilitate the reorganization and survival of the pre-filing debtor company in an operational state — that is, as a going concern. Where such a reorganization was not possible, the alternative course of action was seen as a liquidation through either a receivership or under the BIA regime. This is precisely the outcome that was sought in *Century Services* (see para. 14).

[42] That said, the CCAA is fundamentally insolvency legislation, and thus it also “has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm’s financial distress . . . and enhancement of the credit system generally” (Sarra, *Rescue! The Companies’ Creditors Arrangement Act*, at p. 14; see also *Ernst & Young Inc. v. Essar Global Fund Ltd.*, 2017 ONCA 1014, 139 O.R. (3d) 1 (“*Essar*”), at para. 103). In pursuit of those objectives, CCAA proceedings have evolved to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state, but rather involve some form of liquidation of the debtor’s assets under the auspices of the Act itself (Sarra, “The Oscillating Pendulum: Canada’s Sesquicentennial and Finding the Equilibrium for Insolvency Law”, at pp. 19-21). Such scenarios are referred to as “liquidating CCAAs”, and they are now commonplace in the CCAA landscape (see *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, 435 D.L.R. (4th) 416, at para. 70).

[41] Parmi ces objectifs, la LACC priorise en général le fait d’« éviter les pertes sociales et économiques résultant de la liquidation d’une compagnie insolvable » (*Century Services*, par. 70). C’est pourquoi les affaires types qui relèvent de cette loi ont historiquement facilité la restructuration de l’entreprise débitrice qui n’a pas encore déposé de proposition en la maintenant dans un état opérationnel, c’est-à-dire en permettant qu’elle poursuive ses activités. Lorsqu’une telle restructuration n’était pas possible, on considérait qu’il fallait alors procéder à la liquidation par voie de mise sous séquestre ou sous le régime de la LFI. C’est précisément le résultat qui était recherché dans l’affaire *Century Services* (voir par. 14).

[42] Cela dit, la LACC est fondamentalement une loi sur l’insolvabilité, et à ce titre, elle a aussi [TRADUCTION] « comme objectifs simultanés de maximiser le recouvrement au profit des créanciers, de préserver la valeur d’exploitation dans la mesure du possible, de protéger les emplois et les collectivités touchées par les difficultés financières de l’entreprise [. . .] et d’améliorer le système de crédit de manière générale » (Sarra, *Rescue! The Companies’ Creditors Arrangement Act*, p. 14; voir aussi *Ernst & Young Inc. c. Essar Global Fund Ltd.*, 2017 ONCA 1014, 139 O.R. (3d) 1 (« *Essar* »), par. 103). Afin d’atteindre ces objectifs, les procédures intentées sous le régime de la LACC ont évolué de telle sorte qu’elles permettent des solutions qui évitent l’émergence, sous une forme restructurée, de la société débitrice qui existait avant le début des procédures, mais qui impliquent plutôt une certaine forme de liquidation des actifs du débiteur sous le régime même de la Loi (Sarra, « The Oscillating Pendulum : Canada’s Sesquicentennial and Finding the Equilibrium for Insolvency Law », p. 19-21). Ces cas, qualifiés de [TRADUCTION] « procédures de liquidation sous le régime de la LACC », sont maintenant courants dans le contexte de la LACC (voir *Third Eye Capital Corporation c. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, 435 D.L.R. (4th) 416, par. 70).

in circumstances where a debtor corporation will never emerge from bankruptcy, only the latter purpose is relevant (see para. 67). Similarly, under the CCAA, when a reorganization of the pre-filing debtor company is not a possibility, a liquidation that preserves going-concern value and the ongoing business operations of the pre-filing company may become the predominant remedial focus. Moreover, where a reorganization or liquidation is complete and the court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take centre stage. As we will explain, the architecture of the CCAA leaves the case-specific assessment and balancing of these remedial objectives to the supervising judge.

(2) The Role of a Supervising Judge in CCAA Proceedings

[47] One of the principal means through which the CCAA achieves its objectives is by carving out a unique supervisory role for judges (see Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at pp. 18-19). From beginning to end, each CCAA proceeding is overseen by a single supervising judge. The supervising judge acquires extensive knowledge and insight into the stakeholder dynamics and the business realities of the proceedings from their ongoing dealings with the parties.

[48] The CCAA capitalizes on this positional advantage by supplying supervising judges with broad discretion to make a variety of orders that respond to the circumstances of each case and “meet contemporary business and social needs” (*Century Services*, at para. 58) in “real-time” (para. 58, citing R. B. Jones, “The Evolution of Canadian Restructuring: Challenges for the Rule of Law”, in J. P. Sarra, ed., *Annual Review of Insolvency Law 2005* (2006), 481, at p. 484). The anchor of this discretionary authority is s. 11, which empowers a judge “to make any order that [the judge] considers appropriate in the circumstances”. This section has been described as “the engine” driving the statutory scheme (*Stelco*

la société débitrice ne s’extirpera jamais de la faillite, seul le dernier objectif est pertinent (voir par. 67). Dans la même veine, sous le régime de la LACC, lorsque la restructuration d’une société débitrice qui n’a pas déposé de proposition est impossible, une liquidation visant à protéger sa valeur d’exploitation et à maintenir ses activités courantes peut devenir l’objectif réparateur principal. En outre, lorsque la restructuration ou la liquidation est terminée et que le tribunal doit décider du sort des actifs résiduels, l’objectif de maximiser le recouvrement des créanciers à partir de ces actifs peut passer au premier plan. Comme nous l’expliquerons, la structure de la LACC laisse au juge surveillant le soin de procéder à un examen et à une mise en balance au cas par cas de ces objectifs réparateurs.

(2) Le rôle du juge surveillant dans les procédures intentées sous le régime de la LACC

[47] Un des principaux moyens par lesquels la LACC atteint ses objectifs réside dans le rôle particulier de surveillance qu’elle réserve aux juges (voir Sarra, *Rescue! The Companies' Creditors Arrangement Act*, p. 18-19). Chaque procédure fondée sur la LACC est supervisée du début à la fin par un seul juge surveillant. En raison de ses rapports continus avec les parties, ce dernier acquiert une connaissance approfondie de la dynamique entre les intéressés et des réalités commerciales entourant la procédure.

[48] La LACC mise sur la position avantageuse qu’occupe le juge surveillant en lui accordant le vaste pouvoir discrétionnaire de rendre toute une gamme d’ordonnances susceptibles de répondre aux circonstances de chaque cas et de « [s’adapter] aux besoins commerciaux et sociaux contemporains » (*Century Services*, par. 58) en « temps réel » (par. 58, citant R. B. Jones, « The Evolution of Canadian Restructuring : Challenges for the Rule of Law », dans J. P. Sarra, dir., *Annual Review of Insolvency Law 2005* (2006), 481, p. 484). Le point d’ancrage de ce pouvoir discrétionnaire est l’art. 11, qui confère au juge le pouvoir de « rendre toute ordonnance qu’il estime indiquée ». Cette disposition a été décrite

address either of these issues. However, nothing in our reasons should be read as endorsing the Court of Appeal’s analysis of them.

C. Bluberi’s LFA Should Be Approved as Interim Financing

[84] In our view, the supervising judge made no error in approving the LFA as interim financing pursuant to s. 11.2 of the *CCAA*. Interim financing is a flexible tool that may take on a range of forms. As we will explain, third party litigation funding may be one such form. Whether third party litigation funding should be approved as interim financing is a case-specific inquiry that should have regard to the text of s. 11.2 and the remedial objectives of the *CCAA* more generally.

(1) Interim Financing and Section 11.2 of the *CCAA*

[85] Interim financing, despite being expressly provided for in s. 11.2 of the *CCAA*, is not defined in the Act. Professor Sarra has described it as “refer[ring] primarily to the working capital that the debtor corporation requires in order to keep operating during restructuring proceedings, as well as to the financing to pay the costs of the workout process” (*Rescue! The Companies’ Creditors Arrangement Act*, at p. 197). Interim financing used in this way — sometimes referred to as “debtor-in-possession” financing — protects the going-concern value of the debtor company while it develops a workable solution to its insolvency issues (p. 197; *Royal Oak Mines Inc., Re* (1999), 6 C.B.R. (4th) 314 (Ont. C.J. (Gen. Div.)), at paras. 7, 9 and 24; *Boutiques San Francisco Inc. v. Richter & Associés Inc.*, 2003 CanLII 36955 (Que. Sup. Ct.), at para. 32). That said, interim financing is not limited to providing debtor companies with immediate operating capital. Consistent with the remedial objectives of the *CCAA*, interim financing

pas nécessaire de se prononcer sur l’une ou l’autre de ces questions. Cependant, rien dans les présents motifs ne doit être interprété comme souscrivant à l’analyse que la Cour d’appel a faite de ces questions.

C. L’AFL de Bluberi devrait être approuvé à titre de financement temporaire

[84] À notre avis, le juge surveillant n’a commis aucune erreur en approuvant l’AFL à titre de financement temporaire en vertu de l’art. 11.2 de la *LACC*. Le financement temporaire est un outil souple qui peut revêtir différentes formes. Comme nous l’expliquerons, le financement d’un litige par un tiers peut constituer l’une de ces formes. La question de savoir s’il y a lieu d’approuver le financement d’un litige par un tiers à titre de financement temporaire commande une analyse fondée sur les faits de l’espèce qui doit tenir compte du libellé de l’art. 11.2 et des objectifs réparateurs de la *LACC* de façon plus générale.

(1) Le financement temporaire et l’art. 11.2 de la *LACC*

[85] Bien qu’il soit expressément prévu par l’art. 11.2 de la *LACC*, le financement temporaire n’est pas défini dans la Loi. La professeure Sarra l’a décrit comme [TRADUCTION] « vis[ant] principalement le fonds de roulement dont a besoin la société débitrice pour continuer de fonctionner pendant la restructuration ainsi que les fonds nécessaires pour payer les frais liés au processus de sauvetage » (*Rescue! The Companies’ Creditors Arrangement Act*, p. 197). Utilisé de cette façon, le financement temporaire — parfois appelé financement de [TRADUCTION] « débiteur-exploitant » — protège la valeur d’exploitation de la compagnie débitrice pendant qu’elle met au point une solution viable à ses problèmes d’insolvabilité (p. 197; *Royal Oak Mines Inc., Re* (1999), 6 C.B.R. (4th) 314 (C.J. Ont. (Div. gén.)), par. 7, 9 et 24; *Boutiques San Francisco Inc. c. Richter & Associés Inc.*, 2003 CanLII 36955 (C.S. Qc), par. 32). Cela dit, le financement temporaire ne se limite pas à fournir un fonds de roulement

at its core enables the preservation and realization of the value of a debtor's assets.

[86] Since 2009, s. 11.2(1) of the *CCAA* has codified a supervising judge's discretion to approve interim financing, and to grant a corresponding security or charge in favour of the lender in the amount the judge considers appropriate:

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

[87] The breadth of a supervising judge's discretion to approve interim financing is apparent from the wording of s. 11.2(1). Aside from the protections regarding notice and pre-filing security, s. 11.2(1) does not mandate any standard form or terms.⁵ It simply provides that the financing must be in an amount that is "appropriate" and "required by the company, having regard to its cash-flow statement".

⁵ A further exception has been codified in the 2019 amendments to the *CCAA*, which create s. 11.2(5) (see *Budget Implementation Act, 2019, No. 1*, s. 138). This section provides that at the time an initial order is sought, "no order shall be made under subsection [11.2](1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period". This provision does not apply in this case, and the parties have not relied on it. However, it may be that it restricts the ability of supervising judges to approve LFAs as interim financing at the time of granting an Initial Order.

immédiat aux compagnies débitrices. Conformément aux objectifs réparateurs de la *LACC*, le financement temporaire permet essentiellement de préserver et de réaliser la valeur des éléments d'actif du débiteur.

[86] Depuis 2009, le par. 11.2(1) de la *LACC* a codifié le pouvoir discrétionnaire du juge surveillant d'approuver le financement temporaire et d'accorder une charge ou une sûreté correspondante, d'un montant qu'il estime indiqué, en faveur du prêteur :

Financement temporaire

11.2 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie sont grevés d'une charge ou sûreté — d'un montant qu'il estime indiqué — en faveur de la personne nommée dans l'ordonnance qui accepte de prêter à la compagnie la somme qu'il approuve compte tenu de l'état de l'évolution de l'encaisse et des besoins de celle-ci. La charge ou sûreté ne peut garantir qu'une obligation postérieure au prononcé de l'ordonnance.

[87] L'étendue du pouvoir discrétionnaire du juge surveillant d'approuver le financement temporaire ressort du libellé du par. 11.2(1). Abstraction faite des protections concernant le préavis et les sûretés constituées avant le dépôt des procédures, le par. 11.2(1) ne prescrit aucune forme ou condition type⁵. Il prévoit simplement que le financement doit être d'un montant qui est « indiqué » et qui tient compte de « l'état de l'évolution de l'encaisse et des besoins de [la compagnie] ».

⁵ Une autre exception a été codifiée dans les modifications apportées en 2019 à la *LACC* qui créent le par. 11.2(5) (voir *Loi n° 1 d'exécution du budget de 2019*, art. 138). Cet article prévoit que, lorsqu'une ordonnance relative à la demande initiale a été demandée, « le tribunal ne rend l'ordonnance visée au paragraphe [11.2](1) que s'il est également convaincu que les modalités du financement temporaire demandé sont limitées à ce qui est normalement nécessaire à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période ». Cette disposition ne s'applique pas en l'espèce, et les parties ne l'ont pas invoquée. Toutefois, il se peut qu'elle ait pour effet d'empêcher les juges surveillants d'approuver des AFL à titre de financement temporaire au moment où l'ordonnance relative à la demande initiale est rendue.

[88] The supervising judge may also grant the lender a “super-priority charge” that will rank in priority over the claims of any secured creditors, pursuant to s. 11.2(2):

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[89] Such charges, also known as “priming liens”, reduce lenders’ risks, thereby incentivizing them to assist insolvent companies (Innovation, Science and Economic Development Canada, *Archived — Bill C-55: clause by clause analysis*, last updated December 29, 2016 (online), cl. 128, s. 11.2; Wood, at p. 387). As a practical matter, these charges are often the only way to encourage this lending. Normally, a lender protects itself against lending risk by taking a security interest in the borrower’s assets. However, debtor companies under CCAA protection will often have pledged all or substantially all of their assets to other creditors. Accordingly, without the benefit of a super-priority charge, an interim financing lender would rank behind those other creditors (McElcheran, at pp. 298-99). Although super-priority charges do subordinate secured creditors’ security positions to the interim financing lender’s — a result that was controversial at common law — Parliament has indicated its general acceptance of the trade-offs associated with these charges by enacting s. 11.2(2) (see M. B. Rotsztain and A. Dostal, “Debtor-In-Possession Financing”, in S. Ben-Ishai and A. Duggan, eds., *Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c. 47 and Beyond* (2007), 227, at pp. 228-29 and 240-50). Indeed, this balance was expressly considered by the Standing Senate Committee on Banking, Trade and Commerce that recommended codifying interim financing in the CCAA (pp. 100-104).

[90] Ultimately, whether proposed interim financing should be approved is a question that the supervising judge is best-placed to answer. The CCAA

[88] Le juge surveillant peut également accorder au prêteur une « charge super prioritaire » qui aura priorité sur toute réclamation des créanciers garantis, en vertu du par. 11.2(2) :

Priorité — créanciers garantis

(2) Le tribunal peut préciser, dans l’ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

[89] Ces charges, également appelées « superprivilèges », réduisent les risques des prêteurs, les incitant ainsi à aider les compagnies insolubles (Innovation, Sciences et Développement économique Canada, *Archivé — Projet de loi C-55 : analyse article par article*, dernière mise à jour le 29 décembre 2016 (en ligne), cl. 128, art. 11.2; Wood, p. 387). Sur le plan pratique, ces charges constituent souvent le seul moyen d’encourager ce type de prêt. Généralement, le prêteur se protège contre le risque de crédit en prenant une sûreté sur les éléments d’actifs de l’emprunteur. Or, les compagnies débitrices qui sont sous la protection de la LACC ont souvent donné en gage la totalité ou la presque totalité de leurs actifs à d’autres créanciers. En l’absence d’une charge super prioritaire, le prêteur qui accepte d’apporter un financement temporaire prendrait rang derrière les autres créanciers (McElcheran, p. 298-299). Bien que la charge super prioritaire subordonne les sûretés des créanciers garantis à celle du prêteur qui apporte un financement temporaire — un résultat qui a suscité la controverse en common law — le législateur a signifié son acceptation générale des transactions allant de pair avec ces charges en adoptant le par. 11.2(2) (voir M. B. Rotsztain et A. Dostal, « Debtor-In-Possession Financing », dans S. Ben-Ishai et A. Duggan, dir., *Canadian Bankruptcy and Insolvency Law : Bill C-55, Statute c. 47 and Beyond* (2007), 227, p. 228-229 et 240-250). En effet, cet équilibre a été expressément pris en considération par le Comité sénatorial permanent des banques et du commerce, qui a recommandé la codification du financement temporaire dans la LACC (p. 111-115).

[90] Au bout du compte, la question de savoir s’il y a lieu d’approuver le financement temporaire projeté est une question à laquelle le juge surveillant est le

sets out a number of factors that help guide the exercise of this discretion. The inclusion of these factors in s. 11.2 was informed by the Standing Senate Committee on Banking, Trade and Commerce’s view that they would help meet the “fundamental principles” that have guided the development of Canadian insolvency law, including “fairness, predictability and efficiency” (p. 103; see also Innovation, Science and Economic Development Canada, cl. 128, s. 11.2). In deciding whether to grant interim financing, the supervising judge is to consider the following non-exhaustive list of factors:

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (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 charge; and
- (g) the monitor’s report referred to in paragraph 23(1)(b), if any.

(CCAA, s. 11.2(4))

[91] Prior to the coming into force of the above provisions in 2009, courts had been using the general discretion conferred by s. 11 to authorize interim financing and associated super-priority charges

mieux placé pour répondre. La LACC énonce un certain nombre de facteurs qui encadrent l’exercice de ce pouvoir discrétionnaire. L’inclusion de ces facteurs dans le par. 11.2 reposait sur le point de vue du Comité sénatorial permanent des banques et du commerce selon lequel ils permettraient de respecter les « principes fondamentaux » ayant guidé la conception des lois en matière d’insolvabilité au Canada, notamment « l’équité, la prévisibilité et l’efficacité » (p. 115; voir également Innovation, Sciences et Développement économique Canada, cl. 128, art. 11.2). Pour décider s’il y a lieu d’accorder le financement temporaire, le juge surveillant doit prendre en considération les facteurs non exhaustifs suivants :

Facteurs à prendre en considération

(4) Pour décider s’il rend l’ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

- a) la durée prévue des procédures intentées à l’égard de la compagnie sous le régime de la présente loi;
- b) la façon dont les affaires financières et autres de la compagnie seront gérées au cours de ces procédures;
- c) la question de savoir si ses dirigeants ont la confiance de ses créanciers les plus importants;
- d) la question de savoir si le prêt favorisera la conclusion d’une transaction ou d’un arrangement viable à l’égard de la compagnie;
- e) la nature et la valeur des biens de la compagnie;
- f) la question de savoir si la charge ou sûreté causera un préjudice sérieux à l’un ou l’autre des créanciers de la compagnie;
- g) le rapport du contrôleur visé à l’alinéa 23(1)b).

(LACC, par. 11.2(4))

[91] Avant l’entrée en vigueur en 2009 des dispositions susmentionnées, les tribunaux utilisaient le pouvoir discrétionnaire général que confère l’art. 11 pour autoriser le financement temporaire

[96] That said, insofar as third party litigation funding agreements are not *per se* illegal, there is no principled basis upon which to restrict supervising judges from approving such agreements as interim financing in appropriate cases. We acknowledge that this funding differs from more common forms of interim financing that are simply designed to help the debtor “keep the lights on” (see *Royal Oak*, at paras. 7 and 24). However, in circumstances like the case at bar, where there is a single litigation asset that could be monetized for the benefit of creditors, the objective of maximizing creditor recovery has taken centre stage. In those circumstances, litigation funding furthers the basic purpose of interim financing: allowing the debtor to realize on the value of its assets.

[97] We conclude that third party litigation funding agreements may be approved as interim financing in CCAA proceedings when the supervising judge determines that doing so would be fair and appropriate, having regard to all the circumstances and the objectives of the Act. This requires consideration of the specific factors set out in s. 11.2(4) of the CCAA. That said, these factors need not be mechanically applied or individually reviewed by the supervising judge. Indeed, not all of them will be significant in every case, nor are they exhaustive. Further guidance may be drawn from other areas in which third party litigation funding agreements have been approved.

[98] The foregoing is consistent with the practice that is already occurring in lower courts. Most notably, in *Crystallex*, the Ontario Court of Appeal approved a third party litigation funding agreement in circumstances substantially similar to the case at bar. *Crystallex* involved a mining company that had the right to develop a large gold deposit in Venezuela. *Crystallex* eventually became insolvent and (similar to *Bluberi*) was left with only a single significant asset: a US\$3.4 billion arbitration claim against Venezuela. After entering CCAA protection,

[96] Cela dit, dans la mesure où les accords de financement de litige par un tiers ne sont pas illégaux *en soi*, il n’y a aucune raison de principe qui permet d’empêcher les juges surveillants d’approuver ce type d’accord à titre de financement temporaire dans les cas qui s’y prêtent. Nous reconnaissons que cette forme de financement diffère des formes plus courantes de financement temporaire qui visent simplement à aider le débiteur à [TRADUCTION] « payer les frais courants » (voir *Royal Oak*, par. 7 et 24). Toutefois, dans des circonstances semblables à celles en l’espèce, lorsqu’il existait un seul élément d’actif susceptible de monétisation au bénéfice des créanciers, l’objectif visant à maximiser le recouvrement des créanciers a occupé le devant de la scène. En pareilles circonstances, le financement de litige favorise la réalisation de l’objectif fondamental du financement temporaire : permettre au débiteur de réaliser la valeur de ses éléments d’actif.

[97] Nous concluons que les accords de financement de litige par un tiers peuvent être approuvés à titre de financement temporaire dans le cadre des procédures fondées sur la LACC lorsque le juge surveillant estime qu’il serait juste et approprié de le faire, compte tenu de l’ensemble des circonstances et des objectifs de la Loi. Cela implique la prise en considération des facteurs précis énoncés au par. 11.2(4) de la LACC. Cela dit, ces facteurs ne doivent pas être appliqués machinalement ou examinés individuellement par le juge surveillant. En effet, ils ne seront pas tous importants dans tous les cas, et ils ne sont pas non plus exhaustifs. Des enseignements supplémentaires peuvent être tirés d’autres domaines où des accords de financement de litige par un tiers ont été approuvés.

[98] Ce qui précède est compatible avec la pratique qui a déjà cours devant les tribunaux d’instance inférieure. Plus particulièrement, dans *Crystallex*, la Cour d’appel de l’Ontario a approuvé un accord de financement de litige par un tiers dans des circonstances très semblables à celles en l’espèce. Cette affaire mettait en cause une société minière ayant le droit d’exploiter un grand gisement d’or au Venezuela. *Crystallex* est finalement devenue insolvable, et (comme *Bluberi*) il ne lui restait plus qu’un seul élément d’actif important : une réclamation

DIP FACILITY LOAN AGREEMENT

DATED AS OF May ■, 2026

WHEREAS Baffinland Iron Mines Corporation and Baffinland Iron Mines LP (collectively, the "Borrowers") have requested the DIP Lenders (defined below) to provide funding in order to assist with proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") ~~to~~ ~~be~~ ~~that~~ ~~were~~ commenced before the Ontario Superior Court of Justice – Commercial List (the "Court") in accordance with the terms and conditions set out herein (the "CCAA Proceeding");

AND WHEREAS the DIP Lenders have agreed to provide the DIP Facility (defined below) in accordance with the terms and conditions set out below.

NOW THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms:** A capitalized term not defined in the body of this Agreement has the meaning ascribed to it in the Definitions section below.
2. **Interpretation:** In this Agreement, words signifying the singular number include the plural and *vice versa*, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

References in this Agreement to Sections or Schedules are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise.
3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America.
4. **Borrowers:** Baffinland Iron Mines Corporation ("BIM Corp") and Baffinland Iron Mines LP ("Baffin LP" and, together with BIM Corp, the "Borrowers").
5. **Guarantors:** ~~Means~~ Nunavut Iron Ore, Inc. and 12334992 Canada Inc. (collectively, the "Guarantors" and collectively with the Borrowers, the "Obligors").
6. **DIP Lenders:** The institutions described in Schedule A (on behalf of themselves and their affiliates and managed funds) hereby commit to provide the DIP Facility, on a joint and several ~~and not joint~~ basis (collectively, in the respective amounts set forth adjacent to each such institution's name in Schedule A "DIP Lenders") upon the terms and conditions set forth in this Agreement ~~(collectively, the "1~~ As between themselves, DIP

¹ Note to Draft: It is uncompetitive for the Borrowers to seek redress against individual DIP Lenders. The DIP Lenders' obligations should be joint and several vis-à-vis the Borrowers. The DIP Lenders are free to

Lenders²⁾ respective commitments are set forth adjacent to each DIP Lender's name in Schedule A.

An institution acceptable to the Required DIP Lenders shall act as administrative agent and as collateral agent for the DIP Facility (in such capacities, the "DIP Agent").

An institution acceptable to the Required DIP Lenders shall act as fronting lender (the "Fronting Lender") pursuant to which the Fronting Lender shall fund each Advance on behalf of the DIP Lenders and subsequently assign such funded DIP Loans to the DIP Lenders pursuant to arrangements agreed by the Fronting Lender and the each of the DIP Lenders. The Fronting Lender shall be a "DIP Lender" for all purposes herein ~~so long as the Fronting Lender holds commitments in respect of the DIP Facility or any DIP Loans.~~

Upon the Borrowers' acceptance of this Agreement, this Agreement shall be amended and restated to include the DIP Agent and the Fronting Lender as parties hereto and to, among other things, add customary agency provisions for the benefit of the DIP Agent and fronting lender provisions for the benefit of the Fronting Lender, in each case, that are acceptable to the Borrowers, the DIP Agent, the Required DIP Lenders and the Fronting Lender (solely with respect to the fronting lender provisions), in each case, acting reasonably.

7. **DIP Facility:** The DIP Lenders agree to establish in favour of the Borrowers a debtor-in-possession delayed draw term loan facility (the "DIP Facility" and, the loans thereunder, the "DIP Loans") in the principal amount equal to \$[300 million] (the "Loan Amount").² No amount capitalized as principal hereunder shall reduce the availability of the full Loan Amount to the Borrowers.
8. **DIP Advances:** ~~An initial advance~~ Advances under the DIP Facility in the aggregate principal amount of up to \$50.110 million (the "~~Initial Advance~~ Bridge Advances") shall be made available to the Borrowers ~~and shall be deposited into the Borrowers' Account (defined below) within one (1) Business Day after~~ during the four week period beginning on the date of the ~~entry of the~~ Second Amended and Restated Initial Order (defined below), provided the "Bridge Period", subject to satisfaction of the Subsequent Advance Conditions (other than the first advance under the DIP Facility (the "Initial Advance"), which shall be advanced to the Borrower on the date of the Second Amended and Restated Initial Order and is subject to the Initial Advance Conditions ~~are satisfied as of such date).~~

DIP Lenders' obligations should be joint and several vis-à-vis the Borrowers. The DIP Lenders are free to make their own arrangements among each other.

² Note to Draft: Consider size of the DIP Facility Amount in connection with expected DIP Advisor Fees to be incurred during the CCAA Proceeding and to account for a KERF in the range of [X], each of which are not yet accounted for in the financial model.

Lender Expenses (collectively, the "**DIP Obligations**"), shall be secured by a Court-ordered charge on the Collateral in favour of the DIP Agent, for the benefit of the DIP Lenders (the "**DIP Charge**").

The DIP Charge shall rank ahead of any and all Encumbrances on the Collateral other than (i) the administration charge not exceeding \$5.0 million, ~~to be granted by the Court and~~ (ii) the directors and officers charge not exceeding \$20.4 million, ~~to be granted by the Court and~~ (iii) in respect of the Cash Collateral (as defined in the Amended and Restated Initial Order) (collectively, the "**Priority Charges**"). ~~All Collateral will be free and clear of all Encumbrances, except for Permitted Liens, in each case unless otherwise consented by the Required DIP Lenders (acting reasonably).~~¹³

18. **DIP Security:** The Guarantors hereby guarantee in favour of the DIP Agent, for the benefit of the DIP Lenders, the payment and performance of the DIP Obligations of the Borrowers ~~pursuant to the terms set forth in Schedule C hereto.~~¹⁴
- The DIP Lenders shall be permitted to request DIP Security (in form and substance reasonably satisfactory to the Required DIP Lender) from the Obligors at any time. The DIP Security shall continue as a first priority Encumbrance on the Collateral in favour of the DIP Agent, for the benefit of the DIP Lenders, subject to subordination only in respect of the Priority Charges and Priority Payables. For greater certainty, the delivery of DIP Security shall not be a condition precedent to the Initial Advance or any other advances of the Loan Amount as set out in sections 15 and 16.
19. **Hedging Obligations [Reserved]:**¹⁵ ~~Notwithstanding anything herein to the contrary, Hedging Obligations owing to any DIP Lender may be secured by liens which are equal in priority to the DIP Security.~~
20. **Borrowers' Account:** Advances shall be deposited into a bank account to be designated by the Borrowers (the "**Borrowers' Account**") and utilized by the Borrowers in accordance with the terms of this Agreement. At the request of the DIP Lenders, the Borrowers shall put in place a blocked account agreement in favour of the DIP Agent (for the benefit of the DIP Lenders) thereon on such terms as are acceptable to the Required DIP Lenders, in their discretion. Any such blocked account agreement shall not impose a payment block absent the occurrence of an Event of Default that is continuing.
21. **Repayment and Maturity Date:** All DIP Obligations shall be due and payable on the earliest of the occurrence of any of the following:

¹³ Note to Draft: Deletion covered by negative covenants.

¹⁴ Note to Draft: Detailed guarantee provisions are unnecessary in the context of a court approved DIP.

¹⁵ Note to Draft: Hedging and ranking of related security to be discussed post-DIP.

- (a) conversion of the CCAA Proceeding into a proceeding under the *Bankruptcy and Insolvency Act* (Canada);
- (b) the ~~occurrence of an Event of Default and~~ date which is fifteen (15) days after a demand for payment is made by the DIP Agent (at the request of the Required DIP Lenders) following the occurrence of any Event of Default that is continuing as of such date;
- (c) the closing of a Restructuring Transaction or combination of Restructuring Transactions; or
- (d) the date that is ~~twelve~~eighteen (1218) months after the ~~date of this Agreement~~granting of the Second Amended and Restated Initial Order, subject to the extensions set forth below (the "Stated Maturity Date")

(such earliest date, the "Maturity Date").

The Stated Maturity Date may be extended ~~two times~~one time by the Borrowers for up to ~~three~~six (36) months ~~each time~~, provided that (i) the Borrowers deliver a written extension request to the DIP Agent not less than ten (10) days prior to the then applicable Stated Maturity Date, (ii) no Default or Event of Default exists on the then applicable Stated Maturity Date, (iii) the Borrowers shall have paid an extension fee on the date of each such extension equal to ~~two~~one percent (21%) of the DIP Loans outstanding at such time, payable in-kind on the date of such extension to the DIP Agent on behalf of the DIP Lenders on a pro rata basis and capitalized on the principal amount of the DIP Loans as of such date and (iv) the Borrowers shall have provided to the DIP Agent and the DIP Lenders an Updated Cash Flow Forecast ~~as approved by the Monitor and~~ which shall be in form and substance satisfactory to the Required DIP Lenders ~~(subject to the Supermajority DIP Lender Budget Consent Right) in their sole discretion~~acting reasonably, through and including the date to which the Stated Maturity Date is extended.

The DIP Lenders' commitment to make Advances under the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be fully repaid no later than the Maturity Date, without the DIP Lenders being required to make demand upon the Borrowers or Guarantors or to give notice that the DIP Facility has expired and that the obligations thereunder are due and payable.

22. **Payments:**

All payments of principal, interest and expenses hereunder, if applicable, shall be made for value in the full amount due at or before 12:00 noon on the day such amount is due by deposit or transfer thereof to the DIP Agent or as the DIP Lenders may direct. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment. Each payment to be made by the Borrowers under this Agreement shall be made in full without deduction, set-off or

Written Submissions of
Export Development
Canada.
p. F9

Court File No. CL-26-00000219-0000

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND
IRON MINES CORPORATION, AND 12334992 CANADA INC.

APPLICANTS

WRITTEN SUBMISSIONS OF EXPORT DEVELOPMENT CANADA

(Motion Returnable June 10, 2026)

June 8, 2026

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Lawyers for Export Development Canada

TO: **THE SERVICE LIST**

of such a facility by the AHC or any other lender does not engage this section. In addition, the provision does not apply to any interim financing facility in excess of \$40 million. Any interim financing facility in this case, even for the first four weeks, will exceed \$40 million.

10 Pursuant to the Intercreditor Agreement, the obligations under the pre-filing loan made by EDC in the amount of US\$75 million are “Pari Passu Obligations”, having the same second-ranking priority and the same security as the 8.750% senior secured notes.⁶ EDC’s US\$75 million secured loan is a market, long-term, and very material economic interest in this case.

Amount of EDC DIP Loan

11 The EDC DIP Loan is in a principal amount of US\$400 million (increasing to US\$475 million in certain circumstances to fund non-forecasted shortfalls that could arise if funding from the company’s current off-take counterparty falls away). The primary reason for the deviation in the EDC DIP Facility from the US\$300 million in the company’s own form of DIP Facility Loan Agreement is timing.⁷ EDC’s review of the company’s cash flow forecast information suggests interim funding requirements approach US\$400 million in the fourth quarter of 2027. This is relevant because the EDC DIP Loan provides for a 12-month term (to June 2027) with a 6-month potential extension period (to December 2027). The principal amount of the EDC DIP Loan is intended to account for this extension period based on EDC’s and its advisors’ own review of the company’s cash flow forecast.⁸ There were no ‘backroom’ DIP negotiations, as suggested by the AHC.

⁶ Affidavit of Celeste van Tonder sworn May 14, 2026 at Exhibit “Y”.

⁷ Affidavit of Celeste van Tonder sworn May 14, 2026 at Exhibit “E”.

⁸ Affidavit of Celeste van Tonder sworn June 3, 2026 at Exhibit “H”.

***The Benefits For All
Stakeholders of the EDC
Facility Outweigh the
Prejudice to the Objecting
Bidder***

Assets

86. As at December 31, 2025, Baffinland and 123 Canada Inc.'s total assets, on a consolidated basis, were \$2,685.9 million and consisted of the following:

	December 31, 2025 (\$ in millions)
Current Assets	
Cash	\$7.6
Restricted cash & cash equivalents	\$4.6
Short-term investments	\$3.9
Trade and other receivables	\$77.4
Inventories	\$363.0
Prepaid and other expenses and deferred financing costs	\$15.5
Total Current Assets	\$472.0
Non-Current Assets	
Restricted cash & cash equivalents	\$3.3
Mining interests	\$725.3
Exploration and evaluation assets	\$59.0
Property, plant and equipment	\$1,301.1
Other assets	\$42.0
Long-term ore inventory	\$27.3
Goodwill	\$55.9
Total Assets	\$2,685.9

(b) Liabilities

87. As at December 31, 2025, Baffinland and 123 Canada Inc.'s total liabilities, on a consolidated basis, were \$1,460.6 million, and consisted of the following:

	December 31, 2025 (\$ in millions)
Current Liabilities	
Accounts payable and accrued liabilities	\$229.9
Deferred revenue	\$223.6
Debt	\$775.5
Lease liabilities	\$3.7
Rehabilitation provision	\$0.3
Total Current Liabilities	\$1,233.0
Non-Current Liabilities	

	December 31, 2025 (\$ in millions)
Debt	\$ -
Lease liabilities	\$7.6
Rehabilitation provision	\$76.7
Deferred gain on partial disposition of mining interest	\$74.4
Deferred tax liabilities	\$68.9
Total Liabilities	\$1,460.6

88. For the year ended December 31, 2025, Baffinland and 123 Canada Inc. reported a net loss of \$102.4 million, with current liabilities exceeding current assets by \$761 million, primarily as a result of long-term secured debt coming due and being reclassified as a current liability.

D. INDEBTEDNESS OF THE DEBTORS

(i) Secured Obligations

89. Baffinland's secured debt totals approximately \$777 million in the aggregate principal amount. This debt is primarily owing to (a) holders of senior secured notes due 2026, (b) Opps XII BLIM Holdings, L.P., an entity affiliated with Oaktree Capital Management LP ("**Oaktree**"), and Hartree under a loan and letter of credit facility, and (c) Export Development Canada ("**EDC**") under a term loan facility, each as described further below.

90. Copies of summaries of personal property security searches in Ontario and Nunavut in respect of each of the Debtors dated April 5, 2026 and April 3, 2026, respectively, are attached to my Affidavit as **Exhibits "M" to Exhibit "Q"** (collectively, the "**PPSA Search Summaries**"). There are no security registrations for NIO in Nunavut, and for 123 Canada Inc. in either Ontario or Nunavut.

91. The secured debt and its respective priority rankings on a distribution, pursuant to the Intercreditor Agreement (defined below) are summarized in the below chart and detailed further below:

CITATION: Re Crystallex International Corporation, 2012 ONSC 2125
COURT FILE NO.: CV-11-9532-00CL
DATE: 20120416

**SUPERIOR COURT OF JUSTICE - ONTARIO
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CRYSTALLEX INTERNATIONAL CORPORATION

BEFORE: Newbould J.

COUNSEL: Markus Koehnen, Andrew J.F. Kent and Jeffrey Levine, for Crystallex
International Corporation

Richard B. Swan, S. Richard Orzy and Emrys Davis, for Computershare Trust
Company of Canada

David R. Byers and Maria Konyukhova, for Ernst & Young Inc., Monitor

Shayne Kukulowicz, for Tenor Special Situations Fund LP

John T. Porter, for Juan Antonio Reyes

Robert Frank, for Forbes & Manhattan Inc. and Aberdeen International Inc.

DATE HEARD: April 5, 2012

ENDORSEMENT

[1] Crystallex moves for four orders, the first being an order approving DIP financing pursuant to a credit agreement between Crystallex and Tenor Special Situation I, LLC (“Tenor”), the second being an order extending the stay referred to in paragraph 16 of the Initial Order dated

December 23, 2011 until July 16, 2012 or such further date as may be ordered, the third being an order approving a Management Incentive Plan (“MIP”) and a Retention Advance Agreement in favour of Robert Fung and the fourth being an order to approve the actions of the Monitor referred to in the second and third reports of the Monitor.

[2] The noteholders of Crystallex¹ oppose the Tenor DIP facility. They propose a DIP loan which they would make for a smaller amount and for a shorter term than the Tenor DIP facility. They also oppose the MIP. In order to preserve any appeal rights they may have and may want to assert, they do not consent to an order approving the actions of the Monitor in the second and third reports, but take no position in opposition to the order sought.

[3] A shareholder, Mr. J.A. Reyes appeared on the motion to support the Tenor DIP facility and in principle the MIP, but has some concerns regarding the terms of the MIP.

[4] Forbes & Manhattan Inc. and Aberdeen International Inc., creditors owed approximately \$2.5 million by Crystallex, oppose the Tenor DIP facility and the MIP.

Background to the Financing

[5] The history of the business of Crystallex and its mining project in Venezuela has been the subject of prior decisions in cases brought by the Noteholders. The evidence on the record before me indicates in summary as follows.

[6] The principal asset of Crystallex was its right to develop the Las Cristinas gold project in Venezuela. Las Cristinas is one of the largest undeveloped gold deposits in the world containing measured and indicated gold resources of approximately 20.76 million ounces.

[7] In September 2002 Crystallex obtained the right to mine the Las Cristinas project through a Mining Operation Contract (the “MOC”) with the Corporacion Venezolana de Guayana (the “CVG”), a state-owned Venezuelan corporation. Crystallex complied with all of its obligations

¹ The noteholders in question are hedge funds that represent approximately 77% of the outstanding notes. It is they who have caused Computershare to take action on their behalf in the prior actions against Crystallex and in this CCAA proceeding.

[17] In accordance with paragraph 12 of the Initial Order, Crystallex, with the assistance of its counsel and its financial advisor, commenced a process to seek DIP financing of \$35 million with a term of December 13, 2014.

[18] With the approval of the Monitor, Crystallex hired a financial advisor, Skatoff & Company, LLC based in New York City. Mr. Skatoff is an independent financial advisory firm focused on debt advisory services, financial restructuring advisory services, financing advisory services and M&A services.

[19] Crystallex, in consultation with Mr. Skatoff and on its recommendation, prepared a set of bid procedures to govern the solicitation of bids to provide DIP financing to Crystallex. The bid procedures were approved by the Monitor. The bid procedures are referred to in some detail in my endorsement of January 25, 2012. They included a provision whereby the DIP lender could obtain a “back-end entitlement” of up to 49% of the arbitration proceeds.

[20] The bid procedures provided that Crystallex would only consider bids from qualified bidders. A qualified bidder was one who, among other things, complied with certain participation requirements including the submission of a participation package.

[21] As a result of the DIP financing auction, a small number of qualified bidders ultimately submitted proposals for the DIP financing. Among the bidders were the three hedge funds that hold approximately 77% of Crystallex’s senior unsecured notes.

[22] Ultimately Mr. Skatoff recommended, and the board of Crystallex agreed, to accept the terms of the Tenor DIP financing now before the court for approval.

Proposed Tenor DIP financing

[23] The Tenor DIP facility contains the following material financial terms:

- (a) Tenor will advance \$36 million to Crystallex due and payable on December 31, 2016. This period for the loan is based on Crystallex’s arbitration counsel’s

assessment of the likely timing of a decision from the arbitral tribunal and collection of the award.

- (b) The advances will be in four tranches, being \$9 million upon execution of the loan documentation and approval of the facility by court order in Ontario, the second being \$12 million upon any appeal of the Ontario court order approving the facility being dismissed and upon a U.S court order approving the facility, the third being \$10 million when Crystallex has less than \$2.5 million in cash and the fourth being \$5 million when Crystallex again has less than \$2.5 million in cash.
- (c) The loans are to be used to (i) repay an interim bridge loan of \$3.25 million advanced by Tenor with court approval of January 20, 2012 and payable on April 16, 2012, (ii) fees and expenses in connection with the facility, (iii) general corporate expenses of Crystallex including expenses of the restructuring proceedings and of the arbitration in accordance with cash flow statements and budgets of Crystallex approved by Tenor from time to time.
- (d) Crystallex will pay Tenor a \$1 million commitment fee.
- (e) \$35 million of the loan amount will bear PIK interest (payment in kind, meaning it is capitalized and payable only upon maturity of the loan or upon receipt of the proceeds of the arbitration) at the rate of 10% per annum compounded semi-annually.
- (f) Tenor will receive additional compensation equal to 35% of the net proceeds of any arbitral award or settlement, conditional upon the second tranche of the loan being advanced. Net proceeds of the award or settlement is defined as the amount remaining after payment of principal and interest on the DIP loan, taxes and proven and allowed unsecured claims against Crystallex, including the noteholders, the latter of which will have a special charge for the unsecured amounts owing. Alternatively, Tenor can convert the right to additional

compensation to 35% of the common shares of Crystallex. This conversion right is apparently driven by tax considerations.

[24] The Tenor DIP facility also provides for the governance of Crystallex to be changed to give Tenor a substantial say in the governance of Crystallex. More particularly:

- (a) Crystallex shall have a reduced five person board of directors, being two current Crystallex directors, two nominees of Tenor and an independent director selected by agreement of Crystallex and Tenor.
- (b) The independent director shall be chair of the board of directors and shall not have a second-casting or tie-breaking vote.
- (c) The independent director shall be appointed a special managing director and shall have all the powers of the board of directors to (i) the conduct of the reorganization proceedings in Canada and in the U.S. and the efforts of Crystallex to reorganize the pre-filing claims of the unsecured creditors, (ii) any matters relating to the rights of Crystallex and Tenor as against the other under the facility, (iii) the administration of the MIP to the extent not otherwise delegated to the bonus pool committee under the MIP, and (iv) to retain any advisor in respect of these matters. The special manager shall first consult with a non-board advisory panel, consisting of the three Crystallex directors who will step down from the board, and consider in good faith their recommendations.
- (d) With respect to matters that may not at law be delegable to the special managing director, he will be required to obtain board approval. If the Tenor nominees use their votes to block that approval, Tenor will forfeit its 35% additional compensation.

[25] The Tenor DIP facility contains proscribed rights of Tenor in the event of default. Tenor may seize and sell assets other than the arbitration proceeding (i.e. any cash and unsold mining

equipment). It may not sell the arbitration claim. If there is a default before any arbitration award, Tenor would have the right to apply to court to have the Monitor or a Canadian receiver and manager appointed to take control of the arbitration proceedings. If such application were not granted, Tenor would be entitled to exercise the rights and remedies of a secured creditor pursuant to an order, the loan documentation or otherwise at law.

Proposed Noteholders DIP Loan and Plan

[26] The noteholders propose a DIP loan of \$10 million with a simple interest rate of 1% repayable on October 15, 2012. This was essentially the same as the interim bridge loan of \$10 million with simple interest of 1% proposed by the noteholders that would have been repaid on April 16, 2012 that was not accepted by Crystallex. It is quite clear that the interest rate is far below market in the circumstances of Crystallex, and it is referred to in the noteholders factum as “exceptionally favourable”.

[27] During the process to find a DIP lender satisfactory to Crystallex and its advisors, the noteholders were asked to increase their proposed loan to \$35 million but they refused. However, in his affidavit Mr. Mattoni on behalf of the noteholders stated that the noteholders would in the future be prepared under certain circumstances, if required by the court, to advance a DIP loan on the same terms as the Tenor DIP facility. He stated that the noteholders would do so in the event that prior to October 1, 2012, the court orders that such long-term financing is appropriate and necessary. The noteholders would reserve their ability as creditors to continue to oppose the need for such a loan and any stay extensions or attempts to secure such long-term financing outside of a plan of compromise. The \$10 million which they provided in interim financing would be repaid from this financing such that the net effect of the financing would be the same as that of the Tenor DIP facility. During argument on this motion, Mr. Swan said that the noteholders were not prepared to agree to such a \$35 million facility at this time but only at some future time as the \$10 million facility they now proposed became due.

[28] The noteholders have also now proposed a restructuring plan, said to be in response to the Tenor DIP and the MIP. This was first proposed by Mr. Mattoni in his affidavit of March 27, 2012 as a proposal of the noteholders. At that time, he did not have any internal authority from

order such security if a consideration of those factors led to an opposite conclusion. But in my view those factors are not the only factors that can be considered, as section 11.2(4) directs a court to consider the listed factors “among other things”. One of the considerations that in my view can be taken into account is the exercise or lack thereof of business judgment by the board of directors of a debtor corporation in considering DIP financing.

(i) Consideration of the Tenor DIP facility

[36] In this case, the Crystallex board took legal advice from its solicitors McMillan LLP and financial advice from Mr. Skatoff. I am satisfied that they carefully considered the relevant matters leading to the decision to accept the terms of the Tenor DIP financing, including giving consideration to the noteholders’ proposed DIP financing of \$10 million to October, 2012, and that they acted on an informed basis and in good faith with a view to the best interests of Crystallex and its stakeholders. See the affidavits of Mr. Fung at paras. 52 to 67 and the reply affidavit of Mr. van’t Hof at paras. 9 to 12. That being said, I must consider the contentions of the parties and the factors as set out in section 11.2 (4).

[37] The noteholders have made a number of objections to the Tenor DIP financing.

[38] They contend that Crystallex should have sought sufficient financing to pay the noteholders in full, as was attempted prior to the CCAA filing. The evidence indicates, however, that Mr. Skatoff attempted to do so with the market but the message he received back consistently was that the market had no interest in paying out existing noteholders at 100 cents on the dollar in a context where the notes were trading at a significant discount to par. Mr. Mattoni himself said on cross-examination that he did not believe it would be possible to raise sufficient money on the market to pay out the noteholders, as did the noteholder’s financial expert witness Mr. Glenn Sauntry.

[39] Mr. Mattoni in his affidavit states that the Tenor DIP facility was a pre-ordained coronation rather than the result of a competitive bidding process. There is no evidentiary basis for this suggestion. It is clear from the evidence of Mr. Skatoff, Mr. Fung and Mr. van't Hof and from the Monitor's report that there was a robust competitive bidding process and that full consideration right up to the last minute was given to other bidders. The Monitor stated in its report that from its observation of the process, it saw no evidence that Tenor was afforded preferential treatment over other participants in the process. It is also clear that the noteholders' \$10 million bid was considered by the board of Crystallex and, based on advice from its advisors, not accepted. Thus any complaint from the noteholders on this score could only be that the Tenor bid was higher than market pricing for the facility. They had no such evidence and on cross-examination their financial expert Mr. Sauntry acknowledged that he could not say that the Tenor bid was not reflective of market pricing.

[40] The noteholders also complain that Mr. Skatoff did not undertake a valuation of Crystallex. The response of Crystallex is that it was not Mr. Skatoff's job to do that. In light of the fact that the main asset of Crystallex is the arbitration claim, Mr. Skatoff in my view would be in a poor position to value Crystallex.

[41] Mr. Sauntry in his report attempted to value the arbitration claim in different ways. He is not a lawyer and has no knowledge of the treaties involved or of the merits of the arbitration claim. He made assumptions in his cash flow analysis that, based on the reply expert report of Mr. Dellepiane, which I have no reason to doubt as he was intimately involved in the preparation of the arbitration claim, indicate Mr. Sauntry's lack of knowledge of the basis of the claim. Regarding Mr. Sauntry's analysis in (i) implying a value to the arbitration claim from an analysis of the Tenor DIP proposal and stating that in substance that proposal is a sale of a percentage of Crystallex's assets to Tenor and (ii) using the market value of Crystallex's securities as a proxy for enterprise value, I accept the reply affidavit of Mr. Skatoff, and in particular paragraphs 34 to 41, as reason to doubt Mr. Sauntry's analysis. As well, Mr. Sauntry's evidence on cross-examination, and in particular that referred to in paragraphs 8 to 12 of the Summary of Key Points From Cross-examinations, indicates little reliability should be placed on Mr. Sauntry's evidence.

case, the debtor wanted to obtain financing to complete the construction of a golf course development without proposing an arrangement or compromise with its creditors.

[46] The noteholders seize upon a statement made by Mr. Fung in his affidavit filed on the initial application leading to the Initial Order in which he said:

Crystallex strongly desires to pursue the arbitration and have stayed all claims against it until the arbitration has been settled or Crystallex has realized on an arbitration award, at which point Crystallex expects that all creditors would be paid in full to the extent of their proven claims.

[47] While there is no doubt that Mr. Fung made that statement, I think it needs to be considered in light of the reality agreed by the parties that the only way any of the creditors will receive any substantial cash payment is from the proceeds of the arbitration. This would be the case whether a plan of arrangement could be agreed or not. Also Mr. Mattoni agreed on cross-examination that Crystallex's goal of pursuing the arbitration and using the proceeds to pay creditors in full did not prevent Crystallex from giving creditors some additional benefit in a plan of arrangement.

[48] Moreover, often statements are made in CCAA proceedings about the intention of a party that later change. Mr. Koehnen made clear in argument that Crystallex has every intention to attempt to negotiate a plan of arrangement with the noteholders and that this has already been going on now on a without prejudice basis. He said the purpose of the stay to July 16, 2012 is to negotiate a compromise with the noteholders during that time period. I accept that statement. The situation is not the same as in *Cliffs Over Maple Bay*.

[49] Is the Tenor DIP facility a plan of arrangement or compromise requiring a vote? In my view it is not.

[50] A "plan of arrangement" or a "compromise" is not defined in the CCAA. It is, however, to be an arrangement or compromise between a debtor and its creditors. The Tenor DIP facility is not on its face such an arrangement or compromise between Crystallex and its creditors. Importantly the rights of the noteholders are not taken away from them by the Tenor DIP facility.

The noteholders are unsecured creditors. Their rights are to sue to judgment and enforce the judgment. If not paid, they have a right to apply for a bankruptcy order under the BIA. Under the CCAA, they have the right to vote on a plan of arrangement or compromise. None of these rights are taken away by the Tenor DIP.

[51] I note that in this case the practical exercise of the rights of the noteholders is very problematical because of issues raised in Mr. Fung's confidential affidavit no. 2.

[52] The noteholders contend that giving Tenor 35% of the arbitration proceedings will take away from Crystallex a substantial amount of equity making a compromise more difficult and less available for the unsecured creditors.

[53] In *Re Calpine Canada Energy Inc.* (2007) 35 C.B.R. (5th) 1 (Alta. Q.B.), leave to appeal denied (2007) 35 C.B.R. (5th) 27, it was contended that a settlement of several claims in a complex cross-border restructuring constituted a plan of arrangement or compromise and thus required a vote under the CCAA by the creditors affected. It was contended that the settlement left less assets available for the Canadian unsecured creditors. In rejecting this contention, Romaine J. stated the following:

12. The primary objection is that the GSA [global settlement agreement] amounts to a plan of arrangement and, therefore, requires a vote by the Canadian creditors. The Opposing Creditors support their submissions by isolating particular elements of the GSA and characterizing them as either a compromise of their rights or claims or as examples of imprudent concessions made by the CCAA Debtors in the negotiation of the GSA. These specific objections will be analyzed in the next part of these reasons, but, taken together, they fail to establish that the GSA is a compromise of the rights of the Opposing Creditors for two major reasons:

(b) the Opposing Creditors blur the distinction between compromises validly reached among the parties to the GSA and the effect of those compromises on creditors who are not parties to the GSA. ... If rights to a judicial determination of an outstanding issue have not been terminated by the GSA, which instead provides a mechanism for their efficient and timely resolution, those rights are not compromised.

of the debtor. There is a provision allowing the court to remove directors, which I shall later discuss.

[64] Any DIP lender wants to obtain as much control as possible over the affairs of the debtor during the term of the DIP financing, and terms are often imposed to that end. In this case, given the extreme hostility of the noteholders to the board and management of Crystallex over its actions over the few years prior to the arbitration being commenced, it is not surprising that Tenor has demanded what it has. The fact that Tenor at the last minute changed the governance terms that it was prepared to live with, and that the Crystallex board was not happy with the change, does not in itself mean that those terms should not be approved.

[65] To put up the financing and have it subject to change by the noteholders or Crystallex would make no economic sense to Tenor or to any other DIP lender in the circumstances of this case. Like the noteholders and shareholders, Tenor will only be able to have its loan repaid from the proceeds of the arbitration, and it has bargained for what it perceives to be necessary protection for that. I agree with the noteholders that the CCAA is not about protecting new DIP lenders. However, the issue is whether the protections negotiated in order to obtain the DIP loan from Tenor are reasonable or excessive.

[66] Even if there were a prospect of money being raised by Crystallex in some fashion to pay out the noteholders prior to an arbitration award or settlement, which on the evidence I have referred to is not the case, including the issues referred to in Mr. Fung's confidential affidavit no. 2, and the opinion of Freshfields, as a practical matter this is not a case in which the noteholders have any realistic steps to try to cash out now before the arbitration claim is dealt with.² A restructuring under the CCAA, or any bankruptcy of Crystallex, is not going to change that. The market cap of Crystallex is far too small to repay the noteholders, even if they were given 100% of the equity of Crystallex.

[67] The terms of the Tenor Dip facility give Tenor no right to conduct the reorganization proceedings in Canada and in the U.S. or interfere with the efforts of Crystallex to reorganize the

² The fact that the noteholders have an opinion questioning some of what Freshfields says does not change that.

pre-filing claims of the unsecured creditors. That will be in the hands of the independent/special managing director who will be required to consult with the non-board advisory panel consisting of the three directors of Crystallex who will step down from the board. With respect to matters that may not at law be delegable to the special managing director, he will be required to obtain board approval and if the Tenor nominees use their votes to block that approval, Tenor will forfeit its 35% additional compensation. Tenor is obviously not going to want to put itself in that position.

[68] Tenor recognizes that it cannot conduct the arbitration proceeding. Under the terms of the Tenor DIP facility, if there is a default before any arbitration award, Tenor would have the right to apply to court to have the Monitor or a Canadian receiver and manager appointed to take control of the arbitration proceedings. Whether it would make such an application is a question mark, and likely would depend on whether Crystallex were put into bankruptcy. There would likely be no other reason for wanting someone other than the Crystallex board to have control over the conduct of the arbitration.

[69] As a practical matter, the conduct of the arbitration will no doubt be in the hands of Freshfields who have the knowledge and expertise. Mr. Mattoni in his affidavit filed on behalf of the noteholders agreed that the arbitration is really in the hands of litigation counsel. As well, the management personnel of Crystallex that have been involved in the claim in presenting evidence and instructing counsel regarding the evidentiary issues are going to have to continue to be involved in order to prosecute the claim. Their failure to do so would compromise the claim.

[70] If any director, whether nominees of Crystallex or of Tenor, is unreasonably impairing the possibility of a viable compromise, the court under s. 11.5(1) of the CCAA has the power to remove such director. That section provides:

11.5 (1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

compromise. Mr. Swan said in argument that the noteholders were not being altruistic in this proposal, but merely wanted to maintain the status quo while a plan is being negotiated.

[86] The problem that the board of Crystallex had with this proposal was based on the advice of Mr. Skatoff. He advised the board that if Crystallex needed additional financing in October 2012, it would be difficult to return to the market for financing because there was only so much time and energy that bidders were willing to devote to a transaction. Having devoted the time and failed, bidders would be highly reluctant to spend additional time again. In his affidavit, Mr. Skatoff stated that if Crystallex accepted the \$10 million DIP financing it would be highly challenged if not entirely impeded in any subsequent exercise to raise additional financing from parties other than the noteholders.

[87] The noteholders contend that Mr. Skatoff's views on the difficulty of any future financing if the noteholders' proposed DIP loan is approved is "complete puffery" as he said on cross-examination that the parties with whom he negotiated never told him that they would absolutely not participate in a financing in the fall of 2012 if it were necessary. I think this is oversimplification and I do not accept it. Mr. Skatoff also said on cross-examination-

I know what the facts are in terms of the financing market and how it views Crystallex. ...I believe that the company, if it were to accept a \$10,000,000 financing, would need to go to the market in the very near term to start to address what happens if that \$10,000,000 needed to be refinanced when... we reached October of 2012. And I believe in the construct of my experience with this situation over the last three months that if the company were to accept that \$10,000,000, we would need to go back out to the market in the very near term to raise capital to possibly refinance that money in the event that \$10,000,000 couldn't be extended, that the company would have a very difficult time in convincing potential financing parties to undertake to spend additional time and resources in evaluating potential financing, as we have been able to convince them to do over the last couple months.

[88] I accept that evidence as reliable. Common sense would indicate that persons who spent time and energy on pursuing a \$36 million facility for a three year term only to see a 6 month

facility for \$10 million being accepted would be very reluctant to go through the process again in the next few months.

[89] This is particularly the case, in my view, when the proposed interest rate by the noteholders is only 1%, clearly below the market rate.³ The market would see that rate, as would any reasonable observer, as being used for some purpose to further the ends of the noteholders. Hedge funds are not in the business of lending money at less than market rates. The rate no doubt was proposed to assist an argument that the court should accept the noteholders' proposed loan. Why would the noteholders propose that? The answer, I believe, is that it would assist in removing, or seriously eroding, the chance of Crystallex going to the market in time for a new loan by October and thus further make Crystallex beholden to the noteholders in October, as stated by Mr. van't Hof and Mr. Skatoff. I do not view the noteholders proposed loan as being a *bona fide* loan at market rates but rather a loan to gain tactical advantage.

[90] Thus, I do not see the noteholders proposed \$10 million 1% six month facility as maintaining the status quo. I accept the evidence of Mr. Skatoff that it would seriously erode the chances of Crystallex obtaining any third party financing in October.

[91] Had the noteholders been prepared to lend now on the basis of the terms of the Tenor DIP facility, that would have been a preferable outcome, even if it was not made within the terms of the bid process approved by the Monitor, as it would not have involved the insertion of any third party into the process. Unfortunately, it was made clear during argument that the noteholders were not prepared at this time to do so. The uncertainty of a short six month loan when it is clear that financing for a much longer term is required by Crystallex to prosecute the arbitration is something to be avoided.

(iii) Position of the Monitor

[92] I have previously referred to portions of the Monitor's report. The Monitor concludes that on the basis that Crystallex, with assistance of Mr. Skatoff, conducted a canvas of the market and determined that the Tenor Bid was the best available bid generated out of the process to meet its

³ The Monitor calculates the savings in interest over the Tenor loan to October 15, 2012 to be approximately \$300,000.

objectives, the Monitor supports approval of the Tenor DIP Loan. This position of the Monitor is subject to this court's determination of the validity of the noteholders' legal arguments, on which the Monitor expresses no view as these are legal issues to be determined by the Court.

[93] It is the case, as the Monitor points out, that the introduction of a third party, Tenor, with consent rights to certain actions will add complexity to the negotiation of a CCAA plan. I entirely agree with the Monitor that a mutually acceptable CCAA plan is preferable to continued expensive and protracted legal disputes between the Noteholders and Crystallex. However, in spite of the encouragement of the Monitor and of the court over the last while to see if a settlement could be reached, that has unfortunately not occurred.

(iv) Conclusion on DIP loan

[94] Taking into account all of the forgoing, I approve the Tenor DIP facility.

(v) Request for stay

[95] The noteholders ask that in the event that the Tenor DIP facility is approved, the order should be stayed pending an appeal to the Court of Appeal. The parties have already had discussion through the Monitor with the Court of Appeal which has agreed as I understand it to move as expeditiously as possible with any appeal from my decision.

[96] A judge whose decision is to be appealed can stay the order on such terms as are just. On motions for stays, courts apply the *RJR Macdonald* test and will order stays in restructuring and insolvency proceedings to allow sufficient to for consideration of an appeal.

[97] At first blush during the argument, I was inclined to agree with the noteholders that a stay would be appropriate pending an appeal, assuming that it could be dealt with expeditiously. However, argument from Crystallex gave me pause, particularly when the cash flow needs of Crystallex are considered. The cash flow projections as shown in the Monitor's report indicate that as of the end of the week ending April 13, 2012, Crystallex had only \$346,000, and that during the following week, it had cash requirements of approximately \$6 million, including

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Inca One Gold Corp. (Re)***,
2024 BCSC 1478

Date: 20240814
Docket: S243645
Registry: Vancouver

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

- and -

In the Matter of the Plan of Compromise and Arrangement of Inca One Gold Corp.

Before: **The Honourable Justice Fitzpatrick**

Reasons for Judgment

Counsel for the Petitioner, Inc One Gold Corp.:	R. Clark, K.C. B. La Borie
Counsel for the Monitor, FTI Consulting Canada Inc.:	C. Brousseau
Counsel for OCIM Metals and Mining SA:	P.J. Reardon L. Hiebert
Counsel for Equinox Gold Corp.:	P. Rubin
Counsel for Westmount Capital:	D. Gruber
Place and Dates of Hearing:	Vancouver, B.C. July 22 and 25, 2024
Place and Date of Ruling with Written Reasons to Follow:	Vancouver, B.C. July 25, 2024
Place and Date of Judgment:	Vancouver, B.C. August 14, 2024

INTRODUCTION

[1] On June 3, 2024, I granted an initial order in favour of the petitioner, Inca One Gold Corp. (“Inca One”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [CCAA]. FTI Consulting Canada Inc. was appointed as the monitor (the “Monitor”).

[2] After successfully continuing these proceedings at the comeback hearing, Inca One now seeks an extension of the stay to continue its restructuring efforts and approval of interim financing to allow that to continue.

[3] Inca One’s senior secured creditor, OCIM Metals and Mining SA (“OCIM”) has other plans. OCIM agrees that the stay should continue, but with interim financing to be provided by it, under strict conditions that would result in OCIM having significant control in these proceedings. In addition, OCIM seeks an order to approve a sales and investment solicitation process (“SISP”) immediately, which is opposed by Inca One.

[4] After hearing considerable arguments by both sides, other interested stakeholders, and the Monitor, I opted for a middle course. This course would allow Inca One more time and the interim financing that it sought. However, I also only granted Inca One a short extension – to August 26, 2024 - to provide Inca One with a further opportunity to establish to the Court and the stakeholders a more credible and realistic basis upon which to delay the implementation of a SISP.

[5] These are the reasons for my order.

BACKGROUND FACTS

[6] Inca One is a public company, based in Vancouver. It provides industrial, manufacturing and trading services through Peruvian subsidiaries in relation to gold milling facilities in Peru.

[7] Essentially, the Peruvian operations are divided into two separate holdings:

[18] The most concern arose in OCIM's corner. In response, OCIM presented its own views as to the outcome of this application, along with forcefully asserting to Inca One that it wished to be repaid as soon as possible. OCIM seeks approval of its own interim financing on terms, which I will discuss below. In addition, as a condition of the interim financing, OCIM requires approval of a SISP to commence immediately, which is to be conducted by the Monitor under certain expanded powers in the ARIO. OCIM also seeks an extension of the stay to October 31, 2024.

[19] The issues to be addressed are fundamentally around how these CCAA proceedings should progress:

- a) which interim financing should be approved?
- b) should the SISP be approved and if so, when? and
- c) what length of stay is appropriate?

Interim Financing / SISP

[20] All parties and the Monitor agree that interim financing is necessary for Inca One to continue funding its operations and restructuring efforts, in both the short and long term. In that sense, a detailed analysis of the s. 11.2 factors in the CCAA is not necessary.

[21] The question is - who should be the interim lender?

[22] 401's financial proposal would provide USD\$1 million at an interest rate of 20% per annum. Drawdown fees (5%) and standby charge (2%) fees apply. The effective annualized rate is 36%, which the Monitor notes is higher than the normal range, but driven by the short term loan and nature of the collateral.

[23] Warrants are due to 401 if there is a re-listing of Inca One on the TSX Venture Exchange, although there is likely little, if any value in such warrants. The 401 financing is due upon the earlier of a demand, implementation of a plan, termination of the CCAA proceedings, or November 30, 2024.

proceed with the refinancing only if no SISP was being undertaken at the same time, since a sale of the assets would eliminate the need for such refinancing.

[53] On the second day of this application, Westmount’s counsel came armed with instructions. Counsel indicated that Westmount would prefer that no SISP be implemented but, if that was required, Westmount would “live with it”.

[54] In that event, both secured creditors – OCIM and Equinox – continued to support a parallel course that would involve the commencement of the SISP, while Inca One pursued the Westmount transaction. This position was largely based on their conclusion that, without the SISP, there was little hope of repayment and that the Westmount deal was, at this point, only a “hail Mary” not sufficiently credible to stand as the only option being pursued.

[55] My first observation is that this Court, and others across Canada, have been generally unreceptive to efforts by major creditors to insert controls into the proceeding that are not appropriate. This is particularly true of interim financing proposals which have been rejected for that reason: *Quest University Canada (Re)*, 2020 BCSC 318 at paras. 97–100; *Tacora Resources Inc. (Re)*, 2023 ONSC 6126 at paras. 123–125; *Essar Steel Algoma Inc. et al Re*, 2017 ONSC 3331 at paras 19–21; and *Essar Steel Algoma Inc. (Re)*, 2017 ONSC 4652 at para. 9(e). SISPs are another source of such attempts by creditors to indirectly and inappropriately seek a benefit through the proceedings.

[56] Inca One argues, I think correctly, that OCIM’s conditions of financing, as above, would result in the course and control of these proceedings being wrested away from it and would effectively turn this proceeding into a receivership.

[57] I would add another concern. My interpretation of OCIM’s conditions are that they are designed, to a degree, to remove the discretion of the Court in terms of what orders may be granted in this proceeding, including in relation to its own court officer, the Monitor. In my view, such controls cannot stand as appropriate in the

sense that they would denude or hamstring this Court of the means by which it exercises its statutory mandate under the CCAA.

[58] In my view, OCIM's conditions are also contrary to the overall policy objectives of the CCAA. The oft-quoted words from *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 are apt here:

[70] The general language of the CCAA should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

[71] It is well established that efforts to reorganize under the CCAA can be terminated and the stay of proceedings against the debtor lifted if the reorganization is “doomed to failure” (see *Chef Ready*, at p. 88; *Philip's Manufacturing Ltd., Re* (1992), 1992 CanLII 2174 (BC CA), 9 C.B.R. (3d) 25 (B.C.C.A.), at paras. 6-7). However, when an order is sought that does realistically advance the CCAA's purposes, the ability to make it is within the discretion of a CCAA court.

[Emphasis added.]

[59] OCIM and Equinox do not advance any “doomed to fail” argument in terms of Inca One's prospects.

[60] OCIM's proposal though does have the real prospect of lessening Inca One's chance to achieve a successful restructuring. Having said that, I agree with the caution expressed by both OCIM and Equinox, supported by the Monitor, that the Westmount transaction at present is tentative at best and may not result in any transaction at all, while time is wasting.

[61] Both OCIM and Equinox refer to potential prejudice they may face arising from any further delay in implementing the SISP, although the extent of and nature of that prejudice is, as yet, unclear.

[62] I take Inca One's counsel's submissions at this application as essentially acknowledging that Inca One's options to restructure are narrowing as time marches on and that the Westmount deal, such as it is, stands as the only result that may avoid a sale of the assets, either as a going concern, or by a liquidation.

[63] In the circumstance, I have concluded that the implementation of a SISP is not warranted at this time. Inca One continues to pursue the Westmount transaction and, in my view, should be given more time to do so, while avoiding any negative repercussions that may be visited upon those funding efforts arising from a parallel SISP.

[64] I also conclude that the 401 interim financing should also be approved rather than OCIM's proposal. Since I have rejected a SISP at this time, the OCIM proposal falls away in any event. However, even without that consequence, I would have rejected OCIM's onerous and inappropriate conditions. They effectively strangle Inca One's management in terms of pursuing its restructuring options, without any justification. They also tie the Court's hands in terms of its duty to supervise these proceedings, which is wholly objectionable.

Length of Stay

[65] Having granted the above relief, the question then becomes what length of time should Inca One be granted?

[66] The "breathing room" that is normally afforded in a CCAA proceeding is intended to allow a debtor the time and flexibility to carry out a supervised restructuring of an organized sales process: *North American Tungsten Corporation Ltd.*, 2015 BCSC 1376 at para. 25; *1057863 B.C. Ltd. (Re)*, 2020 BCSC 1359 at paras. 35 and 118, citing *Timminco Limited (Re)*, 2012 ONSC 2515 at para. 15.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: **Quest University Canada (Re),
2020 BCSC 318**

Date: **20200306**
Docket: S200586
Registry: Vancouver

In the Matter of the **COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, as amended**

- and -

In the Matter of the **SEA TO SKY UNIVERSITY ACT, S.B.C. 2002, C. 54**

- and -

In the Matter of A **PLAN OF COMPROMISE AND ARRANGEMENT OF QUEST
UNIVERSITY CANADA**

Petitioner

Before: **The Honourable Madam Justice Fitzpatrick**

Reasons for Judgment

Counsel for the Petitioner:	J.R. Sandrelli V.L. Cross
Counsel for the Monitor PricewaterhouseCoopers Inc.:	V.L. Tickle
Counsel for Capilano University:	K. Mak
Counsel for SESA-BC Holding Ltd. and RCM Capital Management Ltd.:	K.M. Jackson
Counsel for Vanchorverve Foundation:	W.W. MacLeod
Counsel for Bank of Montreal:	S.A. Poisson
Counsel for The Toronto Dominion Bank:	B. Dumanowski, A/S

- f) whether any creditor would be materially prejudiced as a result of the charge; and
- g) the monitor's report, if any.

[37] The above factors are also engaged in respect of VF's interim financing application, with the addition of other considerations as they relate to VF's concurrent application to remove four governors from Quest's Board and appoint four of its nominees as new governors in their place.

[38] With respect to the removal of four of Quest's governors on the Board and their replacements, VF relies on s. 11.5(1) of the CCAA:

(1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

(2) The court may, by order, fill any vacancy created under subsection (1).

[39] Finally, with respect to VF's application to approve a SISF, the Court must exercise its statutory discretion in light of the statutory objectives under the CCAA toward granting an order that is appropriate in the circumstances: CCAA, s.11.

THE COMPETING FINANCING PROPOSALS

[40] The competing proposals by Quest and VF are similar in most respects, but also differ in very material ways. In this context, I will also outline the relief sought by VF in relation to the removal of some of Quest's governors, since that relief is integrally tied to the financing proposed by Burley.

RCM's Proposal

[41] After the Initial Order was granted, with the assistance of the Monitor, Quest sourced interim financing from several parties. Quest's President, George Iwama, states that two proposals for interim financing were received from well-recognized

and experienced lenders in the field of interim financing who are independent of Quest.

[42] Both Quest and the Monitor concluded that RCM's offer was more competitive and involved the least risk. On January 18, 2020, Quest entered into a commitment letter with RCM with respect to a \$5 million secured loan. Quest intends to use the RCM funds to fund its operational deficit for the current academic year and to continue to meet its normal course obligations while a plan is implemented in the course of these proceedings. The cash-flow statement before me supports that the amount of this financing is appropriate.

[43] The RCM financing does not contain any unusual features. The terms of the commitment letter and the now settled loan documentation include what are normal commercial terms.

[44] In addition, the RCM loan and charge would rank in priority only subject to the Administration Charge and certain secured interests, such as PMSIs. It would rank behind the D&O Charge granted in the Initial Order.

VF's Proposal

[45] As previously stated, the Burley financing has similar financial terms to that of RCM. However, one important difference is that the Burley commitment letter contains a condition precedent, namely:

The board of governors of [Quest] being comprised of individuals that are acceptable to the Lender in its sole and unfettered discretion.

[46] As part of the Burley financing proposal, VF seeks an order removing four governors from Quest's Board (Mary Jo Larson, Chief Dale Harry, Stuart Louie and Claude Rinfret). In addition, VF seeks an order appointing four governors to Quest's Board (Christopher Richardson, Bill Woodson, David McMillan and Alpha Bugembe).

[47] The result of granting this relief would be to appoint VF's nominees to act as the majority of Quest's governors. The other present governors are Anna Lippman,

Sheila Biggers and David Kerr. Mr. Kerr was just appointed on January 21, 2020 and brings considerable business and finance expertise to his role.

DISCUSSION RE FINANCING / GOVERNANCE PROPOSALS

[48] I will address the issues within the context of the ss. 11.2(4) factors and s. 11.5 of the CCAA.

Period of CCAA proceedings

[49] Both financing proposals anticipate the same timeline for the completion of the restructuring process. Both financings provide for sufficient funding over the cash-flow period to the end of May 2020, a date when Quest anticipates that a much clearer picture will emerge as to what options are before it and its stakeholders.

Management of Quest's affairs / Confidence of Quest management

[50] These are the most substantial factors to be considered in light of the allegations raised by VF in respect of Quest's Board. I will consider the s. 11.2(4) factors together with VF's application to remove four of the governors under s. 11.5 of the CCAA.

[51] VF does not allege that the governors they seek to remove have acted inappropriately. Rather, VF contends that Quest's Board is "unreasonably impairing ... the possibility of a viable compromise or arrangement" within the meaning of s. 11.5 of the CCAA.

[52] VF's evidence in support is found in the Affidavit #1 of Leslie Brandlmayr sworn January 23, 2020. Ms. Brandlmayr is a director of VF and a managing director, compliance, of Benefic.

[53] Ms. Brandlmayr states that VF has lost faith and confidence in Quest's board. She points to the annual operating deficits and negative cash flows due to Board "incompetence". She says that the Board has failed to take any meaningful steps to improve Quest's financial position on a long term basis, including by increasing student enrollment and decreasing subsidies to students. She also refers to what

[94] The Monitor does not support the Burley proposal, essentially echoing my own concerns as to the independence of Burley/Mr. Trouton from Mr. Bromley and Quest. In addition, on the matter of the replacement of the four governors, the Monitor disagrees with that relief, stating that the Board is very focussed on the task ahead, including improving enrollment and addressing the cash deficits.

[95] The Monitor states in its First Report that removal of the governors may significantly impair the ability of Quest to put forward any restructuring proposal:

6.7.3 ... In this case, Burley is stipulating who the new board members would be and is effectively seeking control of the board. Further, Burley is seeking the replacement of specific board members: Mary Jo Larson, Claude Rinfret, Stuart Louie and Chief Dale Harry. The Monitor notes that the first three of these board members have significant legal and financial training which is in contrast to the composition of the remaining board members. Removal of these board members seems counter-productive to the interests of Quest and appears would be potentially crippling at a time when Quest requires this expertise to navigate these CCAA proceedings. The Monitor also notes that these are the same four governors that Mr. Bromley had requested be replaced in November 2019.

[96] The Monitor recommends that the Court approve the RCM financing as representing the best option in terms of pursuing a successful restructuring. It is the Monitor's view that the interim financing facility should be provided by an independent lender with no association to VF/Mr. Bromley or Quest.

The Court as Gatekeeper

[97] In *Great Basin Gold Ltd.*, I also addressed the situation where there were competing applications to approve interim financing. In that case, I commented on the need to consider financing proposals carefully to ensure that they are reasonable and appropriate. The court must closely scrutinize any such proposal that it put forward as a means to advance the interests of one particular stakeholder, or which may have that effect. I stated:

[179] I recognize that in some restructuring proceedings, certain stakeholders may use existing leverage, to the extent that they have it, to take advantage of the chaos and uncertainty that are inherent in these situations. Strategies might be employed to secure for themselves advantages that they would not otherwise obtain. These advantages inevitably come at the expense of other stakeholders in the proceedings.

These advantages are also almost always court approved so that they cannot be later revisited. In those circumstances, the court must be constantly vigilant against such strategies. ...

...

[181] Even so, the Court remains the gatekeeper in terms of ensuring that the terms of any such agreements are reasonable and appropriate in the circumstances. Input from stakeholders participating in the process will be critical although the entire stakeholder group must be considered. Critical to the court's analysis will be evidence of the debtor company's actions in the face of these proposals. What is the underlying reason for these transactions? What due diligence was done in the face of these proposals? What negotiations took place? What are the true consequences of not obtaining this relief? What alternatives, if any, are available?

[98] To similar effect are the comments of Newbould J. in *Crystallex*:

[63] The noteholders also contend that Tenor has been given control over Crystallex and the restructuring process by reason of the changes in the corporate governance required by the Tenor DIP facility. There is no doubt that Tenor has been given substantial governance rights, including the right to name two of the five directors and the right to agree on who the independent director shall be. An issue is whether the governance provisions are too intrusive for a DIP loan, which according to the case law relied on by the noteholders should not be excessive or inappropriate. ...

[99] I readily conclude that VF's motivation in making its application to approve Burley's financing proposal is a not-so-transparent attempt to seize control of Quest's Board. While not supported by any direct evidence, there is sufficient evidence here to support a reasonable inference that those efforts are at least intended to secure control of the future sale and development of Quest's development lands for VF's own benefit or the benefit of other organizations with which VF or Mr. Bromley are involved.

[100] In my view, such a strategy is unreasonable and inappropriate in the circumstances and it may significantly disadvantage others' interests in this proceeding. Quest clearly has other options, namely with RCM, which will better serve its interests and the interests of its stakeholders as a whole. I agree with the Monitor that the RCM financing represents the most appropriate option here.

[101] I approve the RCM financing proposal, on the terms sought.

CITATION: Tacora Resources Inc. (Re), 2023 ONSC 6126
COURT FILE NO.: CV-23-00707394-00CL
DATE: 20231030

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TACORA RESOURCES INC.

BEFORE: **KIMMEL J.**

COUNSEL: *Ashley Taylor, Eliot Kolers, Lee Nicholson, Natasha Rambaran and RJ Reid*, for the Applicant, Tacora Resources Inc.

Alan Merskey, Jane Dietrich and Ryan Jacobs, for the Monitor (FTI Consulting Canada Inc.)

Robert Chadwick, Caroline Descours, Peter Kolla and Carlie Fox, for Cargill, Incorporated and Cargill International Trading Pte Ltd.

Richard Swan, Sean Zweig and Alexander Payne, for the Ad Hoc Group of Senior Noteholders and the Indenture Trustee

Natasha MacParland, for Crossingbridge Advisors, LLC

Joe Thorne, for 1128349 B.C. Ltd.

HEARD: October 24, 2023

ENDORSEMENT – COME-BACK HEARING
(ARIO AND SOLICITATION ORDER)

The Come-Back Motion

[1] The court made an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") in respect of Tacora Resources Inc. ("Tacora" or the "company") on October 10, 2023 (the "Initial Order"). The come-back hearing was originally scheduled for October 19, 2023, but was adjourned to October 24, 2023 by order dated October 13, 2023 to afford the company and the participating stakeholders additional time to address certain issues of disagreement among them, and in particular their disagreement over the terms and source of debtor in possession ("DIP") financing that the company needs to carry out its intended restructuring efforts.

[2] The court's October 13, 2023 order adjourning the come-back hearing also extended the expiry of the stay of proceedings provided for in the Initial Order from October 20, 2023 to October 27, 2023 (the "Stay Period"). A further stay extension order was granted on October 27, 2023

[58] The AHG continued to communicate with the company about the changes that it was proposing to make to the AHG DIP. It was also asked to consider making changes requested by the company. There was an exchange of emails that eventually resulted in the final revised draft AGH DIP Proposal being transmitted on Sunday October 8, 2023, which was accompanied by a redline version showing the changes to the September 11, 2023 AHG DIP. The AHG made it clear that they were prepared to stand behind the September 11, 2023 AHG DIP (that was never implemented) with necessary amendments to account for the delay in the CCAA filing etc. That continued to be their position at the hearing.

iv. The Decision to Execute the Cargill DIP Facility

[59] The October 7, 2023 Cargill DIP term sheet (with the increased funding amount that Cargill International agreed to on October 8, 2023) and the October 8, 2023 AHG DIP Proposal were compared and considered side by side at the Tacora October 8, 2023 Board meeting with the benefit of a detailed review and analysis prepared by Greenhill.

[60] Below is a summary of the comparison of costs, expenses and key terms and conditions of the AHG DIP Proposal to the Cargill DIP term sheet (ultimately accepted by the company and reflected in the Cargill DIP Facility). As a matter of convenience, this summary has been extracted from the Monitor's Pre-Filing Report dated October 9, 2023, which concluded that the Cargill DIP term sheet:

- a. requires a significantly smaller DIP amount and DIP Charge, thereby reducing the potential prejudice to existing creditors;
- b. has significantly lower costs, including lower aggregate interest, lower DIP fees and lower DIP Expenses. Greenhill's comparison indicated the cost of the Cargill DIP to be less than half the cost of the AHG DIP Proposal and that it represented an overall estimated \$7 million in cost savings;
- c. has significantly more favourable Permitted Variance parameters and similar tests under its terms, conditions and covenants;
- d. provides for significantly less potential operational disruption through the continuation of the various existing Cargill arrangements, including the margin and hedging arrangements which would likely not be available under the AHG DIP; and
- e. provides certainty in respect of the KERP.

[61] In addition to the comparison of the two DIP financing proposals that were available to the company on October 8, 2023, the Monitor compared the cost of the Cargill DIP Facility to that of other court approved interim financings, and concluded that: The cost of the Cargill DIP Facility appears to be within the range of costs, in terms of annualized interest and fees, for interim financings of similar size approved in other CCAA proceedings. The Monitor also expressed the

view that the terms of the Cargill DIP Facility are within market parameters in respect of interest and fees.

[62] Even the AHG concedes that there are elements of the Cargill DIP Facility that are more favourable to the AHG DIP Proposal. The primary “flaws” that the AHG identifies stem from the treatment and implications of the Offtake Agreement and the fact that the noteholders’ debt will be “primed” to the extent of the Cargill DIP Facility (which will be at least \$75 million and possibly as much as \$100 million). This latter consideration will be discussed in more detail in the sections of this endorsement that follow, dealing with the CCAA requirements and the claimed prejudice to the AHG. The AHG’s concerns about the Offtake Agreement also tie into the third area of criticism regarding the ulterior purpose of Cargill’s DIP Facility, which the AHG says is to protect that Offtake Agreement, and will also be discussed later in this endorsement.

[63] After going through the various features that rendered the Cargill DIP Facility superior to the AHG DIP Proposal, Mr. Bandhari of Greenhill testified in his second affidavit that it was for these reasons that the Board determined, following the advice and recommendations of the company’s advisors, that the company should proceed with the Cargill DIP Facility. All of the Board members and both Greenhill and the Monitor concluded that the terms of the Cargill DIP term sheet were superior to the revised AHG DIP Proposal. This conclusion is not seriously challenged. As noted above, the AHG’s challenges to the Cargill DIP Facility are on other grounds.

[64] It was for these reasons that on October 9, 2023 following the Board’s approval, Tacora executed the Cargill DIP Facility.

v. The Board Process and Governance Concerns

[65] The Monitor expressed the view that “there is no better alternative to the [Cargill] DIP Financing Agreement at this time”. The Monitor did not recommend the approval of the AHG DIP Proposal. The clear recommendations in both reports from the Monitor is a strong indicator of the fairness of both the process by which DIP financing was solicited, analyzed, and selected, and the terms of the Cargill DIP Agreement itself.

[66] The AHG suggests that the “*Soundair*” principles for approval of a sale (or sale process) should be applied by analogy to the court’s consideration of the DIP Process and whether it was fair and reasonable in the circumstances. No authority or precedent was offered for this suggestion and the specific factors do not directly correlate. I find that analogy to be strained and unhelpful.

[67] However, I agree with the more general suggestion that, as part of the court’s exercise of its discretion in approving the Cargill DIP Financing under the ARIO, the court can and should consider whether the DIP Process that the company and its advisors engaged in to solicit possible DIP financing options was fair and reasonable. The company also suggests that the court can and should consider whether the Board exercised its reasonable business judgment in its decision to accept the Cargill DIP agreement.

[68] The AHG points to what it describes as several serious process, governance, and substantive problems underlying the request by Tacora for the approval of the Cargill DIP Facility.

CITATION: Tacora Resources Inc. (Re), 2024 ONSC 2454
COURT FILE NO.: CV-23-00707394-00CL
DATE: 20240426

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TACORA RESOURCES INC.**

BEFORE: KIMMEL J.

COUNSEL: *Ashley Taylor/Lee Nicholson/Philip Yang/Natasha Rambaran*, for the Applicant,
Tacora Resources Inc.

Robert Chadwick/Caroline Descours, for Cargill, Incorporated and Cargill
International Trading Pte Ltd.

*Marc Wasserman/ Jeremy Dacks/ Michael De Lellis/ Ben Muller/ Carla Breadon/
Shaan Tolani*, for the Consortium Noteholders Group

Alan Merskey /Jane Dietrich/ / Ryan Jacobs, for the Monitor, FTI Consulting
Canada Inc.

John Leslie/David Seifer, Caterpillar Financial Services Ltd.

Natasha MacParland/Chenyang Li, for Crossing Bridge Advisors

Joe Thorne, for 1128349 BC Ltd.

Gerry Apostolatos, for Quebec North Shore and Labrador Railway Inc.

HEARD: April 25, 2024 (adjourned from April 23, 2024)

ENDORSEMENT
(STAY EXTENSION AND DIP APPROVAL)

[1] Counsel have used various analogies for what appears to be a recurring motion for approval of Debtor in Possession, or "DIP", financing and the extension of the CCAA Stay Period, which is now before the court for the third time. For the third time, the court is faced with competing DIP proposals from Cargill International Trading Pte Ltd. ("Cargill"), a

- b. The Interim DIP Agreement between Tacora and Cargill Incorporated dated March 18, 2024 that was entered into following a hearing that day (see the court's endorsement in this matter dated March 25, 2024).

[14] In both instances, the AHG had proposed alternative DIP financing. In the first instance, Tacora was seeking approval of the Cargill DIP Facility and the AHG opposed it, on many of the same grounds as it now opposes the Cargill Amended and Restated DIP Agreement.

[15] In the second instance, Tacora was seeking approval of a Replacement DIP Agreement with a consortium (including members of the AHG) that was behind the then proposed Investor Transaction. Cargill opposed the requested court approval of the Investor Transaction and reverse vesting order ("RVO") sought by Tacora to implement it, and opposed the Replacement DIP being put in place on an interim basis.

[16] The motion for the approval of the Replacement DIP was adjourned to be heard at the same time as the motion for the approval of the Investor Transaction that was scheduled to return before the court on April 10-12, 2024. The Cargill Interim DIP Agreement that was signed shortly after that.

[17] However, literally at the eleventh hour before the return of those and other motions on April 10, 2024 (at 11:08 p.m. on April 9, 2024), the Monitor advised the court that it had just been advised: "that the consortium is not in a position to proceed with the Investor Transaction and as a result we understand the company will not be proceeding with the motion for approval of the Investor Transaction. We expect to issue a report to the service list in the morning and will appear before you for your directions and to address any further matters."

[18] On April 11, 2024 Tacora scheduled a return to court on April 16, 2024 to seek approval of a further DIP facility and an extension of the Stay Period, but that motion was adjourned at the request of the company to April 23, 2024 (and then April 25, 2024 for reasons noted earlier) after it was advised on April 15, 2024 that the AHG would be delivering a competing DIP proposal. In light of this, the company wanted some additional time to continue discussions with both parties (Cargill and the AHG) about the DIP financing options.

[19] Tacora engaged in multiple rounds of negotiations with both lender groups and was able to improve the terms originally presented in each DIP proposal. Consideration was also given to the possibility of joint DIP Financing.

The Cargill Amended and Restated DIP Agreement

a) Tacora Board Approval

[20] At the conclusion of the negotiations and with the two improved competing DIP options before them, Tacora's Board of Directors, with the advice of its legal and financial advisors and the support of the Monitor, determined that the Cargill Amended and Restated DIP Agreement was the preferred DIP financing option over the AHG Alternative DIP Proposal.

[21] The Board considered various factors, including, among other things, the costs and expenses of each proposal, the company's cash flow forecast and anticipated timeline to enter and consummate another going-concern transaction, potential risks of each DIP proposal, potential prejudice to the company's stakeholders and the views of the Monitor. The Board approved the Cargill Amended and Restated DIP Agreement, which it viewed as the best DIP facility available to the company in the circumstances.

[22] The Monitor's Eighth Report dated April 21, 2024 provides the following additional insights into the factors considered:

- a. Given each of the DIP Proposals provided sufficient funding for Tacora during the next stage of the CCAA Proceeding, in selecting a DIP Proposal, further consideration was given by the Tacora Board to whether any creditor would be materially prejudiced and whether the loan would enhance the prospects of a viable restructuring and provide stability to Tacora during the next stage of this CCAA proceeding.
- b. Iron ore price volatility and a limited ability to hedge during the CCAA Proceeding have each had a significant negative impact on the Applicant's liquidity position. Tacora is in critical need of additional financing to continue operating while its Board of Directors continue to explore its strategic alternatives to determine next steps and seeks to emerge from these CCAA Proceedings in a timely manner.
- c. The Board carefully considered the two DIP Proposals having regard to the Applicant's circumstances and the legal requirements imposed under the CCAA and exercised its business judgment in selecting the Cargill Amended and Restated DIP Agreement because it was considered by the Board to provide the most stability and certainty for the company while it evaluates options to advance the CCAA proceedings and emerge on a timely basis. The Monitor concurs with this view.

[23] While the Board's independent decision to approve the Cargill DIP Facility is not determinative of the ultimate decision of the court about whether to approve the Cargill Amended and Restated DIP Agreement, it is a relevant consideration. See *Crystallex International Corp, Re*, 2012 ONCA 404, 293 O.A.C. 102, at para. 85, aff'g *Crystallex International Corp, Re*, 2012 ONSC 2125, 91 C.B.R. (5th) 169, at para. 35.

b) Comparison of Cargill and AHG Competing DIP Proposals

[24] The Tacora Board received a summary comparison of the economic terms of the competing DIP Proposals from the two lender groups. The AHG suggests that this comparison demonstrates that the AHG Alternative DIP Proposal was superior economically. However, my high level assessment, having listened to those submissions and reviewed the comparison charts that I was directed to, is that the overall effects of the economic terms of the Cargill Amended

1991 CarswellOnt 205
Ontario Court of Appeal

Royal Bank v. Soundair Corp.

1991 CarswellOnt 205, [1991] O.J. No. 1137, 27 A.C.W.S. (3d) 1178,
46 O.A.C. 321, 4 O.R. (3d) 1, 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76

**ROYAL BANK OF CANADA (plaintiff/respondent) v. SOUNDAIR CORPORATION
(respondent), CANADIAN PENSION CAPITAL LIMITED (appellant)
and CANADIAN INSURERS' CAPITAL CORPORATION (appellant)**

Goodman, McKinlay and Galligan JJ.A.

Heard: June 11, 12, 13 and 14, 1991

Judgment: July 3, 1991

Docket: Doc. CA 318/91

Counsel: *J. B. Berkow* and *S. H. Goldman* , for appellants Canadian Pension Capital Limited and Canadian Insurers' Capital Corporation.

J. T. Morin, Q.C. , for Air Canada.

L.A.J. Barnes and *L.E. Ritchie* , for plaintiff/respondent Royal Bank of Canada.

S.F. Dunphy and *G.K. Ketcheson* , for Ernst & Young Inc., receiver of respondent Soundair Corporation.

W.G. Horton , for Ontario Express Limited.

N.J. Spies , for Frontier Air Limited.

Galligan J.A. :

1 This is an appeal from the order of Rosenberg J. made on May 1, 1991. By that order, he approved the sale of Air Toronto to Ontario Express Limited and Frontier Air Limited, and he dismissed a motion to approve an offer to purchase Air Toronto by 922246 Ontario Limited.

2 It is necessary at the outset to give some background to the dispute. Soundair Corporation ("Soundair") is a corporation engaged in the air transport business. It has three divisions. One of them is Air Toronto. Air Toronto operates a scheduled airline from Toronto to a number of mid-sized cities in the United States of America. Its routes serve as feeders to several of Air Canada's routes. Pursuant to a connector agreement, Air Canada provides some services to Air Toronto and benefits from the feeder traffic provided by it. The operational relationship between Air Canada and Air Toronto is a close one.

3 In the latter part of 1989 and the early part of 1990, Soundair was in financial difficulty. Soundair has two secured creditors who have an interest in the assets of Air Toronto. The Royal Bank of Canada (the "Royal Bank") is owed at least \$65 million dollars. The appellants Canadian Pension Capital Limited and Canadian Insurers' Capital Corporation (collectively called "CCFL") are owed approximately \$9,500,000. Those creditors will have a deficiency expected to be in excess of \$50 million on the winding up of Soundair.

4 On April 26, 1990, upon the motion of the Royal Bank, O'Brien J. appointed Ernst & Young Inc. (the "receiver") as receiver of all of the assets, property and undertakings of Soundair. The order required the receiver to operate Air Toronto and sell it as a going concern. Because of the close relationship between Air Toronto and Air Canada, it was contemplated that the receiver would obtain the assistance of Air Canada to operate Air Toronto. The order authorized the receiver:

months of trying to sell the airline, is strong evidence that the price in it was reasonable. In a deteriorating economy, I doubt that it would have been wise to wait any longer.

25 I mentioned earlier that, pursuant to an order, 922 was permitted to present a second offer. During the hearing of the appeal, counsel compared at great length the price contained in the second 922 offer with the price contained in the OEL offer. Counsel put forth various hypotheses supporting their contentions that one offer was better than the other.

26 It is my opinion that the price contained in the 922 offer is relevant only if it shows that the price obtained by the receiver in the OEL offer was not a reasonable one. In *Crown Trust Co. v. Rosenberg*, supra, Anderson J., at p. 113 [O.R.], discussed the comparison of offers in the following way:

No doubt, as the cases have indicated, situations might arise where the disparity was so great as to call in question the adequacy of the mechanism which had produced the offers. It is not so here, and in my view that is substantially an end of the matter.

27 In two judgments, Saunders J. considered the circumstances in which an offer submitted after the receiver had agreed to a sale should be considered by the court. The first is *Re Selkirk* (1986), 58 C.B.R. (N.S.) 245 (Ont. S.C.), at p. 247:

If, for example, in this case there had been a second offer of a substantially higher amount, then the court would have to take that offer into consideration in assessing whether the receiver had properly carried out his function of endeavouring to obtain the best price for the property.

28 The second is *Re Beauty Counsellors of Canada Ltd.* (1986), 58 C.B.R. (N.S.) 237 (Ont. S.C.), at p. 243:

If a substantially higher bid turns up at the approval stage, the court should consider it. Such a bid may indicate, for example, that the trustee has not properly carried out its duty to endeavour to obtain the best price for the estate.

29 In *Re Selkirk* (1987), 64 C.B.R. (N.S.) 140 (Ont. S.C.), at p. 142, McRae J. expressed a similar view:

The court will not lightly withhold approval of a sale by the receiver, particularly in a case such as this where the receiver is given rather wide discretionary authority as per the order of Mr. Justice Trainor and, of course, where the receiver is an officer of this court. Only in a case where there seems to be some unfairness in the process of the sale or *where there are substantially higher offers which would tend to show that the sale was improvident* will the court withhold approval. It is important that the court recognize the commercial exigencies that would flow if prospective purchasers are allowed to wait until the sale is in court for approval before submitting their final offer. This is something that must be discouraged.

[Emphasis added.]

30 What those cases show is that the prices in other offers have relevance only if they show that the price contained in the offer accepted by the receiver was so unreasonably low as to demonstrate that the receiver was improvident in accepting it. I am of the opinion, therefore, that if they do not tend to show that the receiver was improvident, they should not be considered upon a motion to confirm a sale recommended by a court-appointed receiver. If they were, the process would be changed from a sale by a receiver, subject to court approval, into an auction conducted by the court at the time approval is sought. In my opinion, the latter course is unfair to the person who has entered bona fide into an agreement with the receiver, can only lead to chaos, and must be discouraged.

31 If, however, the subsequent offer is so substantially higher than the sale recommended by the receiver, then it may be that the receiver has not conducted the sale properly. In such circumstances, the court would be justified itself in entering into the sale process by considering competitive bids. However, I think that that process should be entered into only if the court is satisfied that the receiver has not properly conducted the sale which it has recommended to the court.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND 12334992 CANADA INC.

Court File No. CL-26-00000219-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

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