

**TITAN MINING CORPORATION**

as Borrower

and

**CERTAIN SUBSIDIARIES OF THE BORROWER**

as Guarantors

and

**THE LENDERS FROM TIME TO TIME  
PARTY TO THIS AGREEMENT**

as Lenders

and

**NATIONAL BANK OF CANADA**

as Agent

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**US\$40,000,000 CREDIT FACILITIES**

**CREDIT AGREEMENT**

**DATED AS OF JUNE 6, 2022**

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**CREDIT AGREEMENT** dated as of June 6, 2022

**BETWEEN:**

**TITAN MINING CORPORATION**

as Borrower

- and -

**CERTAIN SUBSIDIARIES OF THE BORROWER**

as Guarantors

- and -

**THE LENDERS FROM TIME TO TIME PARTY  
TO THIS AGREEMENT**

as Lenders

- and -

**NATIONAL BANK OF CANADA**

as Agent

**WHEREAS** the Lenders have agreed to provide certain credit facilities to the Borrower,

**NOW THEREFORE**, for value received, the receipt and adequacy of which are hereby acknowledged by each Party, and intending to be legally bound by this Agreement, the Parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless otherwise specified, the following terms have the following meanings:

“**Acquisition**” means any transaction, or any series of related transactions by which any Obligor directly or indirectly, by means of a takeover bid, tender offer, amalgamation, merger or other business combination, plan of arrangement, purchase of assets, joint venture or otherwise: (a) purchases or otherwise acquires control of Equity Interests of any Person with the effect of that other Person becoming a Subsidiary of such Obligor or such Obligor otherwise acquires Control of such Person; or (b) any purchase or other acquisition of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

“**Adjusted Term SOFR**” means, for purposes of any calculation, the rate per annum equal to:

- (a) Term SOFR for such calculation; plus
- (b) the Term SOFR Adjustment.

“**Advance**” means an availment of the Revolving Credit by the Borrower by way of Base Rate Advance or SOFR Advance, deemed advances and conversions, renewals and rollovers of existing Advances. Any reference to the amount of Advances is a reference to the sum of all outstanding Base Rate Advances and SOFR Advances and the amount of any Advance for which the Borrower has failed to provide for payment under Section 9.7.

“**Advance Date**” means the date, which shall be a Business Day, of any Advance.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agent**” means National Bank of Canada, in its capacity as administrative agent for the Lenders under this Agreement, and any successor administrative agent appointed in accordance with this Agreement.

“**Agreement**” means this Credit Agreement, including all Schedules and Exhibits to this Credit Agreement. In any other Loan Document, “Agreement” means the Loan Document in which the term is used.

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

“**Anti-Terrorism Laws**” means (a) US Executive order No. 13224, the Patriot Act, the laws comprising or implementing the “Bank Secrecy Act”, 31 U.S.C. §§ 5311 et seq., the laws administered by OFAC and any similar law enacted by the United States of America, (b) *Combating Terrorism Act* (Canada), the *Criminal Code* (Canada), and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and/or (c) Sanctions, as the context requires.

“**Applicable Law**” means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, request, guideline or directive; or (d) any franchise, license, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the Property of that Person; in each case whether or not having the force of law.

“**Applicable Percentage**” means, with respect to any Lender at any time, the percentage of the total Commitments at such time represented by the Lender’s Commitment at such time. If any Commitments have terminated or expired, the Applicable Percentages in respect of the terminated or expired Commitments shall be determined based upon the relevant Commitments most recently in effect (prior to their termination or expiry), giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination. Each Lender’s Applicable Percentage as of the date of this Agreement is specified on Exhibit A.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Agent, in substantially the form of Exhibit B or any other form approved by the Agent.

“**Augusta Credit Agreement**” means the credit agreement dated as of November 30, 2018 between the Borrower and Augusta Investments, as amended and supplemented to the date hereof.

“**Augusta Guarantee Fee**” means the fee payable by the Borrower to Augusta Investments and Augusta LP in the [REDACTED] as consideration for the granting by Augusta Investments and Augusta LP of the Augusta Guarantees.

“**Augusta Guarantees**” means, collectively, the Augusta Investments Guarantee and the Augusta LP Guarantee.

“**Augusta Indemnities**” means, collectively, the Augusta Investments Indemnity and the Augusta LP Indemnity.

“**Augusta Investments**” means Augusta Investments Inc.

“**Augusta Investments Guarantee**” means the guarantee and indemnity of the Obligations granted by Augusta Investments in favour of the Agent in a principal amount of \$40,000,000.

“**Augusta Investments Indemnity**” means an indemnity agreement granted by the Borrower in favour of Augusta Investments whereby the Borrower agrees to indemnify and hold harmless Augusta Investments against all indebtedness, liabilities and obligations incurred by Augusta Investments under the Augusta Investments Guarantee, as amended, restated or otherwise modified in accordance with, and subject to, this Agreement.

“**Augusta Investments Obligations**” means the indebtedness, liabilities and obligations of the Borrower under the Augusta Investments Indemnity.

“**Augusta Investments Securities Accounts**” means the securities accounts maintained by Augusta Investments with [REDACTED] with account numbers [REDACTED]  
[REDACTED]

“**Augusta Investments Security**” means all security documents, guarantees and indemnities granted by the Borrower in favour of or for the benefit of Augusta Investments,

securing or intended to secure or support the repayment of the Augusta Investments Obligations, as amended, restated or otherwise modified in accordance with, and subject to, this Agreement.

**“Augusta Investments Subordination Agreement”** means the subordination agreement dated as of the Closing Date among the Agent, Augusta Investments and the Borrower pursuant to which the Augusta Investments Obligations and Augusta Investments Security are deeply subordinated in favour of the Secured Obligations and the Security.

**“Augusta LP”** means Augusta Ozama Investment Limited Partnership.

**“Augusta LP Guarantee”** means the guarantee and indemnity of the Obligations granted by Augusta LP in favour of the Agent in a principal amount of \$40,000,000.

**“Augusta LP Indemnity”** means an indemnity agreement granted by the Borrower in favour of Augusta LP whereby the Borrower agrees to indemnify and hold harmless Augusta LP against all indebtedness, liabilities and obligations incurred by Augusta LP under the Augusta LP Guarantee, as amended, restated or otherwise modified in accordance with, and subject to, this Agreement.

**“Augusta LP Obligations”** means the indebtedness, liabilities and obligations of the Borrower under the Augusta LP Indemnity.

**“Augusta LP Securities Account”** means the securities account maintained by Augusta LP with [REDACTED] with account number [REDACTED]

**“Augusta LP Security”** means all security documents, guarantees and indemnities granted by the Borrower in favour of or for the benefit of Augusta LP, securing or intended to secure or support the repayment of the Augusta LP Obligations, as amended, restated or otherwise modified in accordance with, and subject to, this Agreement.

**“Augusta LP Subordination Agreement”** means the subordination agreement dated as of the Closing Date among the Agent, Augusta LP and the Borrower pursuant to which the Augusta LP Obligations and Augusta LP Security are deeply subordinated in favour of the Secured Obligations and the Security.

**“Augusta Securities Accounts”** means, collectively, the Augusta Investments Securities Accounts and the Augusta LP Securities Account.

**“Augusta Subordination Agreements”** means, collectively, the Augusta Investments Subordination Agreement and the Augusta LP Subordination Agreement.

**“Available Credit Limit”** means \$40,000,000.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable:

- (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement; or
- (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 9.17(4).

“**Base Rate**” means, on any day, the greatest of:

- (a) the annual rate of interest established by the Agent as its reference rate for that day for commercial loans made by it in Canada in US Dollars;
- (b) [REDACTED] above the Federal Funds Effective Rate; and
- (c) Adjusted Term SOFR on such day (based upon a one-month Interest Period) [REDACTED]

provided that, if the Base Rate as so determined is less than the Floor, then the Base Rate shall be deemed to be the Floor.

“**Base Rate Advance**” means an Advance in US Dollars bearing interest based on the Base Rate, and includes availments that are deemed to be Base Rate Advances under this Agreement.

“**Basel III**” means (a) the agreements on capital requirements, leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and (b) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”;

“**Benchmark**” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “**Benchmark**” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 9.17(1).

“**Benchmark Replacement**” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Agent for the applicable Benchmark Replacement Date:

- (a) the sum of (i) Daily Simple SOFR and (ii) [REDACTED]; and
- (b) the sum of: (i) the alternate benchmark rate that has been selected by the Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for US Dollar-denominated syndicated credit facilities at such time.

“**Benchmark Replacement Date**” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c)

and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means, the period (if any):

- (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all

purposes hereunder and under any Loan Document in accordance with Section 9.17; and

- (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 9.17.

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**BNS Credit Agreement**” means the credit agreement dated as of April 3, 2018 among the Borrower, certain subsidiaries of the Borrower party thereto as guarantors, the persons party thereto as lender, and The Bank of Nova Scotia as agent of such lenders, as amended and supplemented to the date hereof.

“**Borrower**” means Titan Mining Corporation, a corporation incorporated under the laws of British Columbia.

“**Breakage Costs**” means all costs, losses and expenses incurred by any Lender by reason of the breakage of a SOFR Advance, all as set out in a certificate delivered to the Borrower by any Lender entitled to receive such reimbursement.

“**Business Day**” means any day that is not (a) a Saturday, Sunday or holiday (as defined in the *Interpretation Act* (Canada)) in Toronto, Ontario, or (b) any other statutory holiday in New York, New York; provided that, in the case of a SOFR Advance, a “Business Day” shall exclude any day that is not a U.S. Government Securities Business Day.

“**Canadian Benefit Plan**” means any deferred compensation, bonus, share option or purchase, savings, retirement savings, retirement benefit, profit sharing, medical, health, hospitalization, insurance or any other benefit, program, agreement or arrangement, funded or unfunded, formal or informal, written or unwritten, registered or unregistered, which is sponsored, maintained or contributed to or required to be contributed to by any Obligor, except a Canadian Pension Plan, a US Pension Plan, a US Welfare Plan or a Statutory Plan.

“**Canadian Dollars**” and “**C\$**” mean the lawful currency of Canada.

“**Canadian Pension Plan**” means a “registered pension plan”, as such term is defined in subsection 248(1) of the *Income Tax Act* (Canada), which is or was sponsored, administered or contributed to, or required to be contributed to, by any Obligor or under which any Obligor has or may incur any actual or contingent liability.

“**Capital Expenditure**” means any expenditure for fixed or capital assets (including by way of Capital Lease) that is required to be classified as a capital expenditure in accordance with GAAP or is of a type that has previously been classified as a capital expenditure by the relevant Person.

“**Capital Lease**” means any leasing or similar arrangement which, in accordance with GAAP, is classified as a capital lease or financing lease.

“**Capital Lease Obligations**” means, with respect to any Obligor, all monetary obligations of such Obligor under any Capital Lease included on the balance sheet of such Obligor.

“**Cash Collateral**” means a deposit of cash, Cash Equivalents or a letter of credit issued by a financial institution satisfactory to the Required Lenders, or to the beneficiaries of the letter of credit if it is not all Lenders, whose senior, unsecured, non-credit enhanced long term debt is rated A+ or the equivalent by at least two of DBRS, Moodys and S&P, all in a form satisfactory to them.

“**Cash Equivalents**” means instruments having the following characteristics:

- (a) marketable direct obligations issued by, or unconditionally guaranteed by, the Canadian government or the government of the United States of America, as the case may be, or issued by any agency of either government and backed by the full faith and credit of Canada or the United States of America, as the case may be, in each case maturing within one year from the date of acquisition;
- (b) certificates of deposit, time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or any bank with shareholders' equity of not less than \$500,000,000 that is organized under the laws of Canada or the United States of America;
- (c) commercial paper maturing within six months from the date of acquisition, that has at least two ratings of at least A-1+ by S&P, P-1 by Moody's, and R-1 (middle) by DBRS;
- (d) repurchase obligations of any Lender, any bank listed on Schedule I to the *Bank Act* (Canada) or any commercial bank satisfying the requirements of item (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the Canadian government or the United States government;
- (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any province, state, commonwealth or territory of Canada or the United States, or by any political subdivision or taxing authority of any such province, state, commonwealth or territory, that has at least two ratings of at least A by S&P and DBRS and A-2 by Moody's;
- (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender, any bank listed on Schedule I to the *Bank Act* (Canada) or any commercial bank satisfying the requirements of item (b) of this definition; and
- (g) shares of money market mutual or similar funds offered by any Lender, any bank listed on Schedule I to the *Bank Act* (Canada) or any commercial bank satisfying the requirements of item (b) of this definition as long as the funds have the highest ratings for similar investments from at least two of S&P, DBRS and Moody's.

**“Cash Management Services”** means any one or more of the following types of services or facilities provided to any Obligor by a Lender or any Lender Affiliate (a) ACH transactions, (b) cash management services, including controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit card processing services, (e) credit or debit cards, and (f) purchase cards (but only to the extent that, prior to the occurrence and continuance of any Default or Event of Default, the Borrower and the Obligor issuing such purchase cards notify the Agent in writing that such purchase cards are to be deemed Cash Management Services hereunder).

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority, including any such change resulting from any quashing by a Governmental Authority of an interpretation of any Applicable Law or (c) the making or issuance of any Applicable Law by any Governmental Authority. Notwithstanding the foregoing, (i) any provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, in each case, not announced or known and implemented before the Closing Date that are applicable to a Lender making a claim for compensation under Section 9.12, and (ii) all requests, rules, regulations, guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or other Governmental Authority, in each case pursuant to Basel III, and in each case only in the form adopted by such Governmental Authority asserting relevant jurisdiction over the Lender seeking compensation under Section 9.12, but excluding any such requests, rules, regulations, guidelines or directives to which a Lender making a claim for compensation under Section 9.12 is already subject as of the Closing Date, shall, in each case, be deemed a “Change in Law”.

**“Change of Control”** means (a) any Person or group of Persons acting jointly or otherwise in concert owns or acquires Equity Interests of the Borrower to which are attached 50% or more of the voting rights or economic interests attached to all Equity Interests of the Borrower or otherwise has or acquires Control of the Borrower, (b) a majority of the seats (except vacant seats) on the board of directors of the Borrower is occupied by Persons (i) who were neither nominated by the board of directors of the Borrower nor appointed by directors so nominated, or (ii) whose initial nomination occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any Person or group of Persons acting jointly or otherwise in concert, except a solicitation for the election of one or more directors by or on behalf of the board of directors of the Borrower, (c) the Borrower ceases to own, legally and beneficially, directly or indirectly, all of the issued and outstanding Equity Interests of a Material Subsidiary, (d) the Borrower ceases to own, legally and beneficially, directly or indirectly, the Empire State Mine or (e) Richard Warke ceases to Control Augusta Investments or Augusta LP.

**“Closing Date”** means the date on which all of the conditions specified in Section 4.1 are satisfied or waived by the Lenders.

**“Collateral”** means the property described in and subject to the Liens, privileges, priorities and security interests purported to be created by any Security.

**“Commitment”** means, for each Lender from time to time, the agreement to make Advances to the Borrower in the Lender’s Applicable Percentage of the maximum amount of the Available Credit Limit and, where the context requires, the maximum amount of Advances that the Lender has agreed to make, in each case, as set forth in Exhibit A, provided that, each Lender’s Commitment may change from time to time or be cancelled in accordance with this Agreement.

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

**“Compliance Certificate”** means a certificate in the form of Exhibit D.

**“Conforming Changes”** means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 9.17 and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“Consolidated”** means, when used to modify a financial term, test, covenant, ratio, statement, or report of a Person, the application or preparation of such financial term, test, covenant, ratio, statement, or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person.

**“Consolidated Debt”** means the Debt of the Borrower on a Consolidated basis.

**“Consolidated Net Income”** means, for any period, the Consolidated net income (loss) after tax of the Borrower for such period, all as determined in accordance with GAAP.

**“Constating Documents”** means, with respect to any Person, as applicable:

- (a) its certificate and/or articles of incorporation, association, amalgamation or continuance, memorandum of association, charter, declaration of trust, trust deed, partnership agreement, limited liability company agreement or other similar document;

- (b) its by-laws; and
- (c) all unanimous shareholder agreements, other shareholder agreements, voting trust agreements and similar arrangements applicable to the Person's Equity Interests;

all as in effect from time to time.

**“Contract”** means any agreement, contract, indenture, lease, deed of trust, license, option, undertaking, promise or other commitment or obligation, whether oral or written, expressed or implied, other than a Permit.

**“Contributing Lender”** is defined in Section 9.9(2).

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by Contract or otherwise. “Controlling” and “Controlled” have corresponding meanings.

**“Controlled Group”** in respect of any Obligor operating in the United States of America, means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with such Obligor or any of its Subsidiaries, are treated as a single employer under Section 414 of the Revenue Code.

**“Covered Entity”** means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**“Covered Party”** is defined in Section 11.20.

**“Daily Simple SOFR”** means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

**“DBRS”** means DBRS Limited, or any successor to it.

**“Debt”** means, with respect to any Person, the following amounts, each calculated in accordance with GAAP unless the context otherwise requires and without regard to any

interest component (whether actual or imputed) that is not due and payable, except as provided in item (c) below:

- (a) any obligation (including by way of overdraft or draft or order accepted representing an extension of credit) that would be considered to be indebtedness for borrowed money;
- (b) any obligation (whether or not with respect to the borrowing of money) that is evidenced by a bond, debenture, note or other similar instrument;
- (c) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances or similar instrument;
- (d) any obligation on which interest is customarily paid by that Person;
- (e) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person;
- (f) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the Ordinary Course of business);
- (g) all obligations of such Person pursuant to any Equity Interest of that Person (or of any Subsidiary of that Person) that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder), or on the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the Equity Interest, in whole or in part, on or before, or within one year after, the Maturity Date, for cash or securities constituting Debt;
- (h) the market value of any Derivative Transaction for which the market value is negative from that Person's perspective (that is, the Person is "out of the money"), where the market value is the aggregate amount that would have to be paid by that Person to its counterparty under the Derivative Transaction so as to preserve the economic equivalent of all payments or deliveries (whether the underlying obligation was absolute or contingent) to be made by both parties in respect of the obligations under the Derivative Transaction; that amount may be reduced to the extent that the market value of another Derivative Transaction entered into by that Person with the same counterparty is positive from that Person's perspective and a netting arrangement between that Person and its counterparty is in place;
- (i) any Capital Lease Obligation, synthetic lease obligation, obligation under sale and leaseback transaction or purchase money obligation;
- (j) all indebtedness of any other Person secured by a Lien on any Property of the specified Person, whether or not the indebtedness is assumed by the specified Person, except that the amount of the resulting Debt shall be the lesser of (i) the

Fair Market Value of the Property at the date of determination, and (ii) the amount of the indebtedness of the other Person;

- (k) the face amount of any letter of credit or letter of guarantee, performance bond, surety bond or similar instrument for which the Person has reimbursement obligations unless such instrument is fully collateralized with cash or Cash Equivalents;
- (l) the amount of the contingent liability under any guarantee in any manner of any part or all of an obligation of another Person of the type included in items (a) through (k) above; and
- (m) any other guarantee or other contingent liability of any part or all of an obligation of another Person, in each case only to the extent that the guarantee or other contingent liability is required by GAAP to be treated as a liability on a balance sheet of the guarantor or Person contingently liable;

provided that, current trade payables incurred in the Ordinary Course of the Borrower, the Augusta Investments Obligations and the Augusta LP Obligations do not constitute Debt.

“**Default**” means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**Defaulting Lender**” means, subject to Section 8.9(6), any Lender that:

- (a) has failed to (i) fully fund its share of any Advance or fulfill its obligations under Section 9.1 within two (2) Business Days of the date it is required to do so under this Agreement, or (ii) pay to the Agent or any Lender any other amount required to be paid by it under this Agreement (including under Section 9.1) within two (2) Business Days of the date when due, unless the payment is the subject of a good faith dispute;
- (b) has notified the Borrower, the Agent or any other Lender in writing that it does not intend to comply with its funding obligations under this Agreement (including Section 9.1), or has made a public statement to that effect (unless its notice or public statement relates to its obligation to fund an Advance and states that the Lender’s position is based on its determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified in its notice or public statement) cannot be satisfied); or
- (c) is an Insolvent Lender,

provided that a Lender shall cease to be a Defaulting Lender when none of aforementioned criteria continue to apply to it.

**“Depreciation and Amortization Expense”** means, for any period with respect to the Borrower on a Consolidated basis, depreciation, amortization, depletion and other like reductions to income of the Borrower on a Consolidated basis for such period not involving any outlay of cash, determined without duplication.

**“Derivative Transaction”** means any transaction or combination of transactions, including any related agreement, of a type commonly considered to be a derivative or hedging transaction, whether relating to one or more of interest rates, currencies, commodities, securities or any other matters and which is entered into in connection with protection against, or benefit from, fluctuation in any rate or price, including (a) any cap, collar, floor or option, (b) any forward contract, and (c) any rate swap, basis swap, commodity swap, cross-currency swap or other swap or contract for differences.

**“Dispute”** means any suit, action, dispute, investigation, claim, arbitration, legal, insolvency or other proceeding, appeal or application for review, whether at law, in equity or before any Governmental Authority, or any industrial or labour dispute, and includes any claim by any Governmental Authority regarding payment, collection, withholding or remittance of Taxes.

**“Downstream Guarantee”** means the multi-party unlimited guarantee dated as of the date hereof granted by the Borrower in favour of the Agent with respect to the debts, liabilities and obligations of the Guarantors under the Secured Documents.

**“Due Diligence Certificates”** means the certificates in substantially the form delivered on the Closing Date and identified as such and delivered by the Borrower from time to time hereunder pursuant to which information relevant to the perfection of the Liens granted under the Security is communicated, and **“Due Diligence Certificate”** means any one of them.

**“EBITDA”** means, for any period, Consolidated Net Income for such period, plus, to the extent deducted in calculating Consolidated Net Income for such period (without duplication):

- (a) Interest Expense;
- (b) Income Tax Expense;
- (c) Depreciation and Amortization Expense;
- (d) extraordinary or non-recurring charges, expenses or losses, as approved by the Lenders;
- (e) after tax losses attributable to dispositions of Property; and

- (f) any non-cash expenses and losses (including unrealized Derivative Transaction losses); a

less, to the extent included in Consolidated Net Income for such period (without duplication):

- (g) extraordinary or non-recurring income and gains;
- (h) any after-tax gains attributable to dispositions of Property or abandonments or reserves relating thereto for such period; and
- (i) any non-cash income and gains (including unrealized Derivative Transaction gains);

all of the foregoing as determined in conformity with GAAP on a Consolidated basis.

**“Eligible Assignee”** means any Person (other than a natural person, any Obligor or Affiliate of an Obligor, any Defaulting Lender or Affiliate of a Defaulting Lender, or any Person who would be a Defaulting Lender upon becoming a Lender), in respect of which any consent that is required by Section 10.2(1) has been obtained.

**“Eligible Securities”** means (a) Cash Equivalents, and (b) Equity Interests and other debt securities that (i) are listed upon the Toronto Stock Exchange, the New York Stock Exchange, the Nasdaq Stock Market or the London Stock Exchange and (ii) are freely tradeable and are not subject to any cease-trading order or any other trading restriction; provided that, Equity Interests of the Borrower shall not constitute “Eligible Securities”.

**“Empire State Mine”** means a zinc mine, including the construction or arrangement of related on-site and off-site infrastructure, to enable the production of zinc for transport and sale, located approximately 1.3 miles southwest of Fowler in St. Lawrence County, in the State of New York.

**“Engagement Letter”** means the engagement letter dated April 25, 2022 between National Bank of Canada and the Borrower.

**“Environmental Laws”** means, in any relevant jurisdiction, all (a) applicable federal, provincial, state, municipal or local statutes, laws, or by-laws, (b) legally enforceable ordinances, codes, rules, regulations, orders (including, without limitation, consent decrees and administrative orders), guidelines and requirements, and (c) doctrines of common law, in each case, relating to natural resources, dam safety, pollution or protection of the environment or human health and safety (including occupational health and safety), or imposing liability or standards of conduct concerning any Hazardous Materials, all as applicable in the relevant jurisdiction and as amended or replaced from time to time.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Obligor directly or indirectly resulting from or based upon (a) the violation of any Environmental Laws, (b) the generation, use, handling, collection, treatment, storage,

transportation, recovery, recycling or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release (including any actual or potential discharge, deposit, spill, leak, pumping, pouring, emission, emptying, injection, escape, leaching, seepage or disposal) of any Hazardous Materials into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing

**“Equity Interests”** means, with respect to any Person, any and all present and future shares, units, trust units, partnership, membership or other interests, participations or other equivalent rights in the Person’s equity or capital, however designated and whether voting or non-voting, and warrants, options or other rights to acquire any of the foregoing and Debt or other rights convertible into or exchangeable for any of the foregoing.

**“ERISA”** means the *Employee Retirement Income Security Act* of 1974 (United States) as amended from time to time, or any successor statute thereto, and the final, interim, temporary and other binding regulations and published and binding interpretations thereof.

**“Erroneous Payment”** is defined in Section 8.13(1).

**“Erroneous Payment Deficiency Assignment”** is defined in Section 8.13(4).

**“Erroneous Payment Return Deficiency”** is defined in Section 8.13(4).

**“Erroneous Payment Subrogation Rights”** is defined in Section 8.13(4).

**“Event of Default”** means any event listed in Section 7.1.

**“Excluded Property”** means (a) real Property and all related Property or assets located in the State of New York, in each case to the extent the perfection of a Lien thereon would require the payment of a mortgage recording tax and (b) the assets, property and undertaking of 1077615 US LLC and the Equity Interests of 1077615 US LLC, for so long as the Fair Market Value of the assets of 1077615 US LLC is less than or equal to \$100,000.

**“Excluded Swap Obligation”** means, with respect to any Obligor, any Swap Obligation if, and to the extent that, all or a portion of a guarantee of such Obligor of, or the grant by such Obligor of a Lien to secure, such Swap Obligation (or any guarantee thereof) is or has become illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof), including by virtue of such Obligor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time such guarantee or Lien becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or Lien is or becomes illegal.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient:

- (a) Taxes imposed on or measured by its net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of that Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in the jurisdiction imposing the Tax (or any political subdivision of the jurisdiction) or (ii) that are Other Connection Taxes;
- (b) any FATCA existing as of the Closing Date;
- (c) in the case of a Foreign Lender, any withholding Tax (which includes any Tax that a Foreign Lender is required to pay pursuant to Part XIII of the *Income Tax Act* (Canada)) that is required by Applicable Law to be withheld or paid in respect of any amount payable under any Loan Document to that Foreign Lender at the time it becomes a Party (or designates a new lending office) or is attributable to the Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 9.13(6), except:
  - (i) withholding Tax applicable to an assignee pursuant to a request by the Borrower under Section 9.14(2);
  - (ii) withholding Tax applicable to an assignee pursuant to an Assignment and Assumption made when an Event of Default has occurred and is continuing;
  - (iii) withholding Tax applicable to any other assignee to the extent that the Borrower has expressly agreed that any withholding Taxes shall be an Indemnified Tax;
  - (iv) withholding Tax imposed or assessed in respect of an Advance that was made on the premise that an exemption from that withholding tax would be available where the exemption is subsequently determined, or alleged by a taxing authority, not to be available; and
  - (v) to the extent that the Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from an Obligor with respect to that withholding Tax pursuant to Section 9.14(1).

“**Extension Date**” is defined in Section 2.7(1).

“**Extension Request**” is defined in Section 2.7(1).

“**Fair Market Value**” means (a) with respect to any asset or group of assets (other than a marketable security) at any date, the value of the consideration obtainable in a sale of such asset at such date assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time having regard

to the nature and characteristics of such asset, or, if such asset shall have been the subject of a relatively contemporaneous appraisal by an independent third party appraiser, the basic assumptions underlying which have not materially changed since its date, the value set out in such appraisal, and (b) with respect to any marketable security at any date, the closing sale price of such marketable security on the Business Day next preceding such date, as quoted on any recognized securities exchange or, if there is no such closing sale price of such marketable security, the final price for the purchase of such marketable security at face value quoted on such Business Day by a financial institution of recognized standing selected by the Agent which regularly deals in securities of such type.

“**FATCA**” means any United States federal withholding tax imposed or collected pursuant to sections 1471 through 1474 of the Revenue Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to section 1471(b) of the Revenue Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of those sections of the Revenue Code.

“**Federal Funds Effective Rate**” for any day, means the rate on overnight federal funds transactions calculated by the Federal Reserve Bank of New York as the federal funds effective rate, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or if such rate is not so published for any day that is a Business Day, the average of the quotations for that day on overnight federal funds transactions received by the Agent from three depository institutions of recognized standing selected by the Agent. If for any reason the Agent shall have determined, acting reasonably, that it is unable to ascertain the Federal Funds Effective Rate for any reason, including without limitation, the inability or failure of the Agent to obtain sufficient bids, publications or quotations in accordance with the terms hereof, National Bank of Canada’s announced Base Rate will apply. Notwithstanding the foregoing, the “**Federal Funds Effective Rate**” shall not be less than the Floor.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System of the United States of America.

“**Floor**” means a rate of interest equal to 0%.

“**Foreign Lender**” means any Lender that is not organized under the laws of the jurisdiction in which the Borrower is resident for tax purposes and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any Loan Document to be resident for income tax or withholding tax purposes in the jurisdiction in which the Borrower is resident for tax purposes by application of the laws of that jurisdiction. For purposes of this definition Canada and each Province and Territory thereof shall be deemed to constitute a single jurisdiction and the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“**GAAP**” means generally accepted accounting principles in effect from time to time in Canada, as established or adopted by the Accounting Standards Board (Canada) or any

successor body, including the International Financial Reporting Standards and Accounting Standards for Private Enterprises, but those standards shall not be considered to be relevant to any determination made under this Agreement unless and until they are adopted by the applicable Person.

“**Governmental Authority**” means the government of Canada or any other nation, or of any of its political subdivisions, whether provincial, territorial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

“**Guarantor**” means each Person that becomes party to the Upstream Guarantee from time to time. As of the Closing Date the Guarantors are 1100951 B.C. Ltd., Titan Mining (US) Corporation, Balmat Holding Corp. and Empire State Mines, LLC.

“**Hazardous Materials**” means any substance, product, liquid, waste, pollutant, chemical, contaminant, insecticide, pesticide, gaseous or solid matter, organic or inorganic matter, fuel, micro organism, ray, odour, radiation, energy, vector, plasma, constituent or other material which (a) is or becomes listed, regulated or addressed under any Environmental Laws, or (b) is, or is deemed to be, alone or in any combination, hazardous, hazardous waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination under any Environmental Laws, including asbestos, cyanide, petroleum and polychlorinated biphenyls, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Laws.

“**Income Tax Expense**” means, for any period, the aggregate, without duplication, of all Taxes on the income of the Borrower for such period, whether current or deferred and net of any incentive or similar tax credits, determined on a Consolidated basis in accordance with GAAP.

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of an Obligor under any Loan Document, and (b) to the extent not otherwise described in (a), Other Taxes.

“**Indemnitee**” is defined in Section 11.5(2).

“**Initial Advance**” means the first Advance.

“**Insolvent Lender**” means any Lender that (a) has been adjudicated as, or determined by an Governmental Authority having regulatory authority over such Person or its assets to be, insolvent, (b) becomes the subject of an insolvency, bankruptcy, dissolution, liquidation or reorganization proceeding, or (c) becomes the subject of an appointment of a receiver, receiver and manager, monitor, trustee or liquidator under the *Bank Act* (Canada), the *Canada Deposit Insurance Corporation Act* (Canada) or any applicable bankruptcy,

insolvency or similar law now existing or hereafter enacted; provided that a Lender shall not be an Insolvent Lender (i) solely by virtue of the ownership or acquisition by a Governmental Authority or instrumentality thereof of any Equity Interests in such Lender or a parent company thereof, or (ii) due to an Undisclosed Administration.

**“Intellectual Property”** means patents, trademarks, service marks, trade names, copyrights, trade secrets, industrial designs and other similar rights.

**“Interbank Reference Rate”** means, in respect of any currency, the interest rate expressed as a percentage per annum that is determined by the Agent at any time in accordance with banking industry rules on interbank compensation for use when calculating interest due by it or owing to it arising from correction of errors in transactions in that currency between it and other banks, but in any event not less than 0.00% per annum.

**“Interest Coverage Ratio”** means, with respect to any Rolling Period, the ratio of (a) EBITDA for such Rolling Period to (b) Interest Expense for such Rolling Period.

**“Interest Expense”** means, for any period, without duplication, the aggregate expense incurred or to be incurred by the Borrower on a Consolidated basis during such period for interest and other financing charges, calculated in accordance with GAAP.

**“Interest Period”** means, with respect to a SOFR Advance, the period commencing on the date of such Advance and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as the Borrower may elect; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the immediately succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (c) no Interest Period shall extend beyond any date that any principal payment or prepayment is scheduled to be due unless the aggregate principal amount of Base Rate Advances, minus the aggregate amount of any other principal payments or prepayments due during such Interest Period, is equal to or in excess of the amount of such principal payment or prepayment, and (d) no Interest Period shall extend beyond the Maturity Date. For purposes hereof, the date of an Advance initially shall be the date on which such Advance is made and, in the case of a converted or continued Advance, thereafter shall be the effective date of the most recent conversion or rollover of such Advance.

**“Intragroup Debt”** means all present and future debts, liabilities and obligations owing or remaining unpaid by any Obligor to another Obligor in respect of loans or advances made to the first Obligor by the other Obligor.

**“Intragroup Obligations”** means all present and future debts, liabilities and obligations of any kind owing or remaining unpaid by any Obligor to another Obligor, including Intragroup Debt.

“**KYC Laws**” means Applicable Law regarding anti-money laundering, anti-terrorist financing, government sanction and “know your client” matters, whether within Canada or elsewhere, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and Part II.1 of the *Criminal Code* (Canada), including any guidelines or orders thereunder.

“**Lender Affiliate**” means, (a) with respect to any Lender, (i) an Affiliate of such Lender, or (ii) any Person that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or an Affiliate of such Lender, and (b) with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“**Lender Termination Date**” means the first date on which:

- (a) all Commitments have expired or been terminated;
- (b) the principal of and interest on each Advance and all fees, indemnities and other amounts payable hereunder shall have been paid in full.

“**Lenders**” means each Person listed on Exhibit A and other lenders that from time to time become Lenders in accordance with Article 10, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“**Lien**” means:

- (a) with respect to any Property, any mortgage, debenture, deed of trust, lien (statutory or otherwise), deemed trust, pledge, hypothec, hypothecation, encumbrance, charge, assignment by way of security, consignment, security interest, royalty interest, adverse claim, defect of title or right to set off in, on or of the Property;
- (b) the interest of a vendor or a lessor under any conditional sale agreement, Capital Lease (or financial lease) or title retention agreement having substantially the same economic effect as any of the foregoing, relating to any Property;
- (c) with respect to Equity Interests, any purchase option, call or similar right of a third party, in respect of such Equity Interests;
- (d) any netting or set-off arrangement (except one arising by operation of law in the Ordinary Course), defeasance arrangement or reciprocal fee arrangement; and
- (e) any other arrangement having the effect of providing security.

“**Life of Mine Plan**” means the projected plan for the extraction of minerals for the life of the Empire State Mine.

**“Loan Documents”** means this Agreement, the Security, the Augusta Subordination Agreements, and the Engagement Letter, together with any other document, instrument or agreement (other than participation, agency or similar agreements among the Lenders or between any Lender and any other bank or creditor with respect to any indebtedness or obligations of any Obligor (as applicable) hereunder or thereunder) now or hereafter entered into in connection with this Agreement (excluding any document, instrument or agreement with respect to any Secured Hedge Arrangement and Secured Cash Management Services), as such documents, instruments or agreements may be amended, modified or supplemented from time to time.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, operations, Property, liabilities, business prospects, financial position or operating results of the Obligors, taken as a whole, (b) the ability of the Obligors, taken as a whole, to comply with the Loan Documents or (c) the validity or enforceability of a material provision of any Loan Document.

**“Material Contract”** means:

- (a) any Contract involving aggregate consideration payable to or by any Obligors of \$1,000,000 in any one year period, as listed on Schedule 5.1(24); or
- (b) any Contract to which any Obligor is a party that, if terminated, would impair the ability of the Obligor to carry on business in the Ordinary Course or would have a Material Adverse Effect.

**“Material Permit”** means any Permit:

- (a) any Permit that is listed on Schedule 5.1(23); or
- (b) any Permit issued to any Obligor that, if terminated, would impair the ability of the Obligor to carry on business in the Ordinary Course or would have a Material Adverse Effect.

**“Material Subsidiary”** means any Subsidiary, present or future, of the Borrower or of a Subsidiary of the Borrower, which has a direct or indirect right, title or interest in or to any Mining Property; provided that a Material Subsidiary shall nonetheless include 1077615 US LLC if at any time the Fair Market Value of its assets exceeds \$100,000. For the avoidance of doubt, once a Material Subsidiary, always a Material Subsidiary.

**“Maturity Date”** means December 6, 2023, as such date may be extended from time to time pursuant to Section 2.7.

**“Mine Plan”** means (a) the updated mine plan for the Empire State Mine in a format approved by the Lenders for such mine’s development and covering the Life of Mine Plan and (b) the Consolidated annual budget of the Borrower which shall include projected development, exploration and corporate expenses, approved by the Lenders, in their sole discretion.

**“Mining Licenses”** means, collectively, at any time, the mining or mineral concessions, mining claims and mining leases or mining lease agreements, whether owned or held under any other title, which are material to the conduct of exploration, mining and processing activities on or in each of the Mining Properties and all extensions, renewals, replacements, conversions or substitutions thereof.

**“Mining Operations”** means, at any particular time, the exploration, development, mining, construction, processing and milling operations carried out at the Mining Properties at such time.

**“Mining Properties”** means the Empire State Mine and such other lands, premises, Permits, mining licenses, mineral leases, and other rights to extract minerals from Property, now owned (or held under any other title) or hereafter acquired by the Borrower or its Subsidiaries, which relate to a mine, whether acquired in connection with a Permitted Acquisition or developed by the Borrower or its Subsidiaries, alone or with other Persons, and **“Mining Property”** means any one of them.

**“Moody’s”** means Moody’s Investors Service, or any successor to it.

**“Multiemployer Plan”** means any US Pension Plan that is a “multiemployer plan” plan described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA.

**“Net Recovery Event Proceeds”** shall mean, with respect to any Recovery Event, an amount in cash equal to the gross cash proceeds, net of reasonable costs and any taxes incurred in connection with such Recovery Event, received by the respective Person in connection with such Recovery Event.

**“Non-Consenting Lender”** means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders in accordance with Section 8.6(5) and (b) has been approved by the Required Lenders.

**“Non-Defaulting Lender”** means, at any time, each Lender that is not then a Defaulting Lender.

**“Non-Extending Lender”** is defined in Section 2.7(1).

**“Non-Funding Lender”** is defined in Section 9.9(2).

**“Non-Party Beneficiary”** means any Secured Party or Indemnitee that is not a Party.

**“Obligations”** means all debts, liabilities and obligations of the Obligors to the Agent and the Lenders under or in connection with this Agreement and the other Loan Documents, whether present or future, direct or indirect, joint or several, absolute or contingent, matured or not, at any time owing or remaining unpaid by the Obligors to the Agent and the Lenders.

“**Obligors**” means, collectively, the Borrower and the Guarantors. References to “the Obligors” shall be interpreted to mean “the Obligors or any of them.” At the date of this Agreement, the Obligors are those Persons listed in Schedule 5.1(19).

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

“**Ordinary Course**” means, with respect to an action taken by a Person, that the action is consistent with the past practices of the Person and is taken in the usual course of the normal day-to-day operations of the Person, but dealing with new customers or suppliers or adopting new business methods does not, in itself, constitute a departure from past practice.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between that Recipient and the jurisdiction imposing the Tax (other than connections arising from the Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Advance or Loan Document).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 9.14(2)).

“**Participant**” is defined in Section 10.4(1).

“**Parties**” means collectively the Borrower, the other Obligors, the Lenders and the Agent.

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

“**Payment in Full**” means the indefeasible payment in full in cash of all Secured Obligations and termination of the Commitments.

“**Payment Recipient**” is defined in Section 8.13(1)

“**PBGC**” means the Pension Benefit Guaranty Corporation or any Person succeeding to any or all of its functions under ERISA.

“**Permits**” means franchises, licenses, qualifications, authorizations, consents, certificates, registrations, exemptions, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, permits and other approvals, obtained from or required by a Governmental Authority.

“**Permitted Acquisition**” means an Acquisition by an Obligor if:

- (a) the Borrower has provided written notice of the Acquisition to the Agent at least fifteen (15) days prior to the consummation of such Acquisition;
- (b) the target of the Acquisition is in the same business or is in a related business of the Borrower;
- (c) no Default has occurred and is continuing or would result from the Acquisition;
- (d) if the Acquisition is of publicly traded Equity Interests through a takeover bid, the board of directors (or Persons performing similar functions) of the issuer of the Equity Interests being acquired has recommended acceptance of the bid;
- (e) any Person whose Equity Interests are subject to the Acquisition will become a, directly or indirectly, wholly-owned Subsidiary of the Borrower;
- (f) without limiting item (d) above, the Borrower will be in *pro forma* compliance with the financial covenants in Section 6.1 both at closing of the Acquisition and for the balance of the term of the Revolving Credit;
- (g) the Property that is the subject of the Acquisition is free of all Liens except Permitted Liens;
- (h) within thirty (30) days of closing the Acquisition, the Obligors comply with Section 3.1;
- (i) the target of the Acquisition is located in the United States of America or Canada and such other jurisdictions as may be consented to by all the Lenders from time to time;
- (j) the Lenders would not be restricted from financing, supporting or otherwise being involved in or associated with activities in any jurisdiction relevant to the Acquisition; and
- (k) the Agent shall have received all applicable information and documents relating to the Acquisition which is requested by the Agent, acting reasonably, before completing the Acquisition, including production and cashflow projections covering the four quarter period following the Acquisition and based upon historical financial data of the target of a recent date, taking into account such Acquisition, and prior to or upon the consummation of the Acquisition, the Borrower shall have delivered to the Agent a certificate of an officer of the Borrower confirming compliance with this definition of Permitted Acquisition, which certificate shall include such other documents relating to the Acquisition which are requested by the Agent and/or the Lenders, acting reasonably, including the material acquisition documents.

**“Permitted Debt”** means:

- (a) the Secured Obligations constituting Debt;
- (b) unsecured Debt owing in the Ordinary Course to trade suppliers;
- (c) obligations under Derivative Transaction that comply with Section 6.4(7);
- (d) guarantees and indemnities of Debt of any Obligor that is expressly permitted by this Agreement;
- (e) Capital Lease Obligations and Debt secured by Purchase Money Security Interests in an amount not to exceed \$20,000,000 in the aggregate at any time;
- (f) Intragroup Debt;
- (g) Debt in respect of letters of credit, letters of guarantee, surety bonds, performance bonds or guarantees and similar types of instruments issued in the Ordinary Course for government reclamation costs in an amount not to exceed \$2,500,000; and
- (h) other Debt not exceeding in the aggregate at any time outstanding \$5,000,000 (less the amount of Debt outstanding under clause (g) above) for all Obligors.

**“Permitted Distribution”** means payment of cash dividends by the Borrower with respect to its Equity Interests once per fiscal quarter provided that (i) the aggregate amount of all dividends paid in any fiscal quarter shall not exceed C\$1,500,000; (ii) at the time of the proposed payment, the Borrower has available liquidity of at least \$3,000,000 (by way of Unrestricted Cash and/or available credit under the Revolving Credit) calculated on a *pro forma* basis after giving effect to the proposed payment; and (iii) no dividends shall be declared or paid if a Default or Event of Default has occurred and is continuing at the time of the proposed payment or would result therefrom.

**“Permitted Liens”** means, with respect to any Person:

- (a) Liens for Taxes not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person and for which that Person has made adequate provision for payment of the contested amount and provided evidence of the provision to the reasonable satisfaction of the Agent;
- (b) undetermined or inchoate Liens, rights of distress and charges incidental to current operations that have not been filed or exercised and of which none of the Lenders has been given notice, or that relate to obligations not due or payable or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person and for which that Person has made adequate provision for payment of the contested amount and provided evidence of the provision to the reasonable satisfaction of the Agent;

- (c) reservations, limitations, provisos and conditions expressed in any original grants from the Crown or other grants of real property, or interests in real property, that do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (d) licences, easements, rights-of-way and rights in the nature of easements (including licences, easements, rights-of-way and rights in the nature of easements for sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) and zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, municipal and other Governmental Authorities that do not materially impair the use of the affected land for the purpose for which it is used by that Person;
- (e) minor title defects, encroachments or irregularities that in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (f) the right reserved to or vested in any municipality or Governmental Authority by the terms of any lease, license, franchise, grant or permit acquired by that Person or by any statutory provision to terminate the lease, license, franchise, grant or permit, or to require annual or other payments as a condition to its continuance;
- (g) the Lien resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers' compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the Ordinary Course;
- (h) security given to a public utility or any Governmental Authority when required by the utility or authority in connection with the operations of that Person in the Ordinary Course;
- (i) the Lien created by a judgment of a court of competent jurisdiction, as long as the judgment is being contested diligently and in good faith by appropriate proceedings or is being satisfied by that Person and has not caused a Default that is continuing and that Person has made adequate provision for payment of the contested amount and provided evidence of the provision to the reasonable satisfaction of the Agent;
- (j) the Security;
- (k) Purchase Money Security Interests and Liens securing Capital Lease Obligations, provided that such Liens secure Permitted Debt and do not attach to Excluded Property;

- (l) statutory liens incurred of pledges made in favour of any Governmental Authority to secure the performance of obligations of the Obligors under Environmental Laws to which any assets of the Obligors are subject;
- (m) pledges or deposits of cash or Cash Equivalent instruments to secure Debt permitted pursuant to paragraph (g) of the definition of “Permitted Debt”;
- (n) royalties on the production or profit from mining, provided such royalties are in existence on the Closing Date and set out in Schedule 5.1(37);
- (o) construction, workers’, materialmens’ or other like Lien created by law (in contrast with Liens voluntarily granted), arising in connection with construction or maintenance, shipping or storage in the Ordinary Course of business on current operations, in respect of obligations which are not yet overdue or which are being contested in good faith by proper proceedings diligently pursued and as to which adequate reserves have been established on the Borrower’s or a Subsidiary’s books and records and so long as assets of the Borrower or a Subsidiary have not been disposed of or are at risk of forfeiture pursuant to all such Liens;
- (p) the Liens on Property (excluding Excluded Property) that are described in Schedule 1.1; and
- (q) (i) Liens in favour of or for the benefit of Augusta Investments that secure the Augusta Investments Obligations, provided that such Liens shall be subject to the Augusta Investments Subordination Agreement; and (ii) Liens in favour of or for the benefit of Augusta LP that secure the Augusta LP Obligations, provided that such Liens shall be subject to the Augusta LP Subordination Agreement.

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity, and “**person**” has the same meaning.

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

“**Pledged Shares**” means the Equity Interests of the Obligors and other Persons that are specifically pledged as part of the Security from time to time.

“**Prohibited Transaction**” is defined in Section 5.1(30)(c).

“**Property**” means, with respect to any Person, any or all of its present and future undertaking, property and assets, whether tangible or intangible, real or personal, and includes rights under Contracts, Mining Licenses and Permits.

**“Purchase Money Security Interest”** means a Lien created or assumed by an Obligor securing Debt incurred to finance the unpaid acquisition price (including any installation costs or costs of construction) of personal Property (but, for certainty, excluding Equity Interests or in connection with an Acquisition), provided that in each case (a) such Lien does not at any time encumber any Property other than the Property financed or refinanced (to the extent the principal amount is not increased) by such Debt and proceeds thereof, (a) the amount of Debt secured thereby is not increased subsequent to such acquisition, (b) the principal amount of Debt secured by any such Lien at no time exceeds 100% of the original acquisition price (including installation costs) of such personal Property at the time it was acquired; and (c) such Lien is granted prior to or within 30 days after the purchase of such personal Property.

**“QFC”** has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**“QFC Credit Support”** is defined in Section 11.20.

**“Recipient”** means the Agent and any Lender, as applicable.

**“Recovery Event”** shall mean the receipt by the Borrower or any of its Subsidiaries of any insurance proceeds or expropriation (or condemnation) awards payable (a) by reason of theft, loss, physical destruction, damage, taking, expropriation (or condemnation) or any other similar event with respect to any property or assets of the Borrower or any of its Subsidiaries or (b) under any policy of insurance required to be maintained hereunder.

**“Register”** is defined in Section 10.3.

**“Related Non-Party Beneficiary”** means, with respect to any Lender, any Non-Party Beneficiary that is a Related Party to such Lender.

**“Related Parties”** means, with respect to any Person, its Affiliates and the directors, officers, employees, agents and advisors of the Person and of its Affiliates.

**“Relevant Governmental Body”** means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

**“Replacement Material Contract”** means any agreement replacing a Material Contract which is substantially similar to, or has substantially similar effect as, the Material Contract that it is replacing and otherwise in form and substance satisfactory to the Agent, acting reasonably.

**“Reportable Event”** means any of the events set forth in Section 4043 of ERISA, other than an event for which the provision of notice has been waived.

**“Representatives”** means, with respect to any Party, its Affiliates and, if applicable, its and their respective directors, officers, employees, agents and other representatives and advisors.

**“Required Lenders”** means, if there are two or fewer Lenders, all of the Lenders, and otherwise means two or more Lenders holding, in the aggregate, a minimum of 50.1% of the total Commitments. For the purpose of determining the number of Lenders, two or more Lenders that are Affiliates of each other shall be counted as one Lender. If any Lender is a Defaulting Lender at any time of determination, then that Lender and its Commitment shall be excluded in determining the Required Lenders.

**“Revenue Code”** means the United States Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto, and the regulations and published interpretations thereof.

**“Revolving Credit”** means the revolving credit of up to the Available Credit Limit established in favour of the Borrower pursuant to Section 2.1.

**“Rolling Period”** means each fiscal quarter of the Borrower taken together with the three immediately preceding fiscal quarters of the Borrower.

**“S&P”** means Standard & Poor’s Financial Services LLC, or any successor to it.

**“Sanctioned Person”** means any Person with whom any Party is prohibited or restricted from transacting or otherwise dealing under any Sanction, whether by reason of designation under such Sanction or otherwise, including as a result of being:

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

**“Sanctions”** means any applicable legislation, regulations, orders, economic or trade sanctions or restrictive measures or embargoes enacted, administered, imposed or enforced by OFAC (or any other part of the US Treasury Department), the US Department of State, the United Nations Security Council, the Parliament of Canada (including Global Affairs Canada and Public Safety Canada), the European Union, and/or any present or future member state thereof and/or the United Kingdom’s Her Majesty’s Treasury.

**“Secured Cash Management Obligations”** means all obligations, indebtedness and liabilities arising under or in connection with any Secured Cash Management Services.

**“Secured Cash Management Provider”** means any Lender or Lender Affiliate in its capacity as a provider of Cash Management Services. For the avoidance of doubt, a Person that ceases to be a Lender or Lender Affiliate (other than upon a Lender Termination Date) shall cease to be a Secured Cash Management Provider.

**“Secured Cash Management Service”** means any Cash Management Service provided by a Secured Cash Management Provider to the Borrower or any of its Subsidiaries.

**“Secured Documents”** means the Loan Documents and all documents, instruments or agreements with respect to any Secured Hedge Arrangement and Secured Cash Management Services.

**“Secured Hedge Arrangement”** means any Derivative Transaction between an Obligor and Person that is a Lender or Lender Affiliate at the time such Derivative Transaction is entered into. For the avoidance of doubt, (a) any Derivative Transaction entered into by an Obligor with a Person before such Person is a Lender or Lender Affiliate or after such Person ceases to be a Lender or Lender Affiliate shall not be a Secured Hedge Arrangement, (b) any Secured Hedge Arrangement shall continue as such notwithstanding that such Person ceases to be a Lender or Lender Affiliate, and (c) as at the Closing Date there are no outstanding Derivative Transactions between any Obligor and a Lender or Lender Affiliate.

**“Secured Hedge Counterparty”** means any Person party to a Secured Hedge Arrangement other than an Obligor, in such Person’s capacity as a party thereto. For the avoidance of doubt, (a) a Person shall remain a Secured Hedge Counterparty with respect to a Secured Hedge Arrangement if it ceases to be a Lender or a Lender Affiliate, and (b) such Secured Hedge Arrangement shall continue to have the benefit of the Security.

**“Secured Hedge Obligations”** means all obligations, indebtedness and liabilities arising under or in connection with Secured Hedge Arrangements; provided that amounts owing to or from a Person under Derivative Transactions that are not Secured Hedge Arrangements shall not be taken into account in calculating Secured Hedge Obligations.

**“Secured Obligations”** means, collectively, the Obligations, the Secured Hedge Obligations and the Secured Cash Management Obligations.

**“Secured Parties”** means the Agent, the Lenders, the Secured Hedge Counterparties and the Secured Cash Management Providers.

**“Security”** means all security documents and guarantees and indemnities made by the Obligors, Augusta Investments, Augusta LP or other Persons in favour of or for the benefit of the Agent and the Lenders, securing or intended to secure or support the repayment of the Secured Obligations, including the security documents and guarantees and indemnities described in Section 3.1.

**“SOFR”** means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**“SOFR Administrator”** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Advance**” means an Advance denominated in US Dollars which bears interest at a rate based on Adjusted Term SOFR, other than pursuant to the proviso to the definition of “Base Rate”.

“**Statutory Plan**” means any benefit plan that an Obligor is required by statute to participate in or contribute to in respect of any current or former employee, director, officer, shareholder, consultant or independent contractor of that Obligor, or any dependent of any of them, including the Canada Pension Plan and plans administered pursuant to applicable legislation regarding health, tax, workers’ compensation insurance and employment insurance.

“**Subsidiary**” of a Person means any Person Controlled by the first Person or by any Subsidiary of the first Person and, unless the context otherwise requires, “**Subsidiary**” shall mean a Subsidiary of the Borrower.

“**Supported QFC**” is defined in Section 11.20.

“**Swap Obligation**” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Taxes**” means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers’ compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed by any Governmental Authority (including federal, state, provincial, municipal and foreign Governmental Authorities), and whether disputed or not.

“**Term SOFR**” means:

- (a) for any calculation with respect to a SOFR Advance, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business

Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; and

- (b) for any calculation with respect to a Base Rate Advance on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “**Base Rate Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“**Term SOFR Adjustment**” means, for any calculation with respect to a Base Rate Advance or a SOFR Advance, a percentage per annum as set forth below for the applicable type of such Advance and (if applicable) Interest Period therefor:

Base Rate Advances:

[REDACTED]

SOFR Advances:

<u>Interest Period</u>	<u>Percentage</u>
One month	[REDACTED]
Three months	[REDACTED]
Six months	[REDACTED]

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

**“Total Leverage Ratio”** means, at any time, the ratio of (a) Consolidated Debt at such time to (b) EBITDA for the most recently completed Rolling Period.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment

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

**“Upstream Guarantee”** means the multi-party unlimited guarantee dated as of the date hereof granted by the Guarantors in favour of the Agent with respect to the debts, liabilities and obligations of the Borrower under the Secured Documents.

**“Unrestricted Cash”** means cash which is not subject to any Lien (other than the Security) or other restriction, and which is credited to: (a) deposit accounts in Canada or: (b) deposit accounts in the United States of America with a financial institution with which the Agent has a springing deposit account control agreement.

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

**“US Dollars”**, **“\$”** and **“USD”** mean the lawful currency of the United States of America.

**“U.S. Government Securities Business Day”** means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**“US Pension Plan”** means any employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Revenue Code (other than a Multiemployer Plan) that either (a) is sponsored, maintained or contributed by the Obligor or any member of a Controlled Group or (b) with respect to

which an Obligor or any member of a Controlled Group has or may have liability (contingent or otherwise).

“**US Welfare Plan**” means an employee welfare plan within the meaning of Section 3(1) of ERISA that is applicable to current or former employees of an Obligor resident in the United States of America.

“**U.S. Special Resolution Regimes**” is defined in Section 11.20.

## **1.2 Construction**

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

## **1.3 Certain Rules of Interpretation**

(1) In any Loan Document:

(a) the division into articles and sections and the insertion of headings and the Table of Contents are for convenience of reference only and shall not affect the construction or interpretation of the Loan Document;

(b) unless otherwise specified or the context otherwise requires:

(i) “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”;

(ii) all amounts expressed in this Agreement in terms of money shall refer to US Dollars;

(iii) any reference to a Person “directly or indirectly” owning, doing or having anything includes a Subsidiary of that Person owning, doing or having that thing; and

(iv) all references to specific times are references to Toronto, Ontario time.

(2) The definitions of terms shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless otherwise specified (a) any definition of or reference to any agreement, instrument or other document (including any definition of or reference to this Agreement) shall be construed as referring to that agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on amendments, supplements, restatements or modifications in any Loan Document), (b) any reference to

any Person shall be construed to include the Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of the Agreement, (d) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation shall, unless otherwise specified, refer to that law or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all Property, including cash, securities, accounts and contract rights.

- (3) If Section 7.1 specifies a grace period before an event or circumstance becomes an Event of Default (that is, the occurrence of the event or circumstance initially constitutes a Default but not an Event of Default), and if before the expiration of the grace period the event or circumstance is remedied in a manner that is satisfactory to the Agent (after consulting the Lenders if the Agent considers it appropriate to do so), then any Default arising from the occurrence of that event or circumstance will be deemed not to be "continuing." In any other case, any Default or Event of Default will be deemed to be "continuing" if it has not been waived by the Lenders.

#### **1.4 Knowledge**

Any reference to the knowledge of any Party means to the best of the knowledge, information and belief of the Party after reviewing all relevant records and making due inquiries regarding the relevant matter of all relevant Representatives of the Party.

#### **1.5 Performance on Business Days**

If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, the action is valid if taken on or by the next Business Day except that, in the case of a payment, if the next Business Day is in a different calendar month then the payment shall be made on the preceding Business Day.

#### **1.6 Accounting Terms**

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP. Except as otherwise expressly provided herein, all calculations of the components of the financial information for the purposes of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the Closing Date and used in the preparation of the Consolidated financial statements of the Borrower referred to in Section 6.3(1).

#### **1.7 Permitted Liens**

The designation of a Lien to be a Permitted Lien is not, and shall not be deemed to be, an acknowledgment by the Agent that the Lien shall have priority over the Security.

### **1.8 Third Party Beneficiaries.**

- (1) Except as set out in clause (2) below, this Agreement and the Security are for the sole benefit of the Parties and nothing in them, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement or the Security.
- (2) Each Non-Party Beneficiary shall be entitled to enjoy the benefit of those provisions of this Agreement and the Security that, by their terms, are in favour of such Non-Party Beneficiary (including all Liens granted for its benefit as a Secured Party). In furtherance thereof, each Party (a) accepts such provisions as agent and trustee for its Related Non-Party Beneficiaries, and (b) shall be entitled to enforce such provisions on behalf of its Related Non-Party Beneficiaries.
- (3) Notwithstanding clause (2) above or any other term of this Agreement or any Security, the consent of any Non-Party Beneficiary or other Person who is not a Party is not required to amend, modify or supplement this Agreement or any Security.

### **1.9 Rates.**

The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## **ARTICLE 2 THE REVOLVING CREDIT**

### **2.1 Amounts and Availment Options**

- (1) Subject to the terms and conditions of this Agreement, the Lenders shall provide, severally (not jointly and not jointly and severally), a credit facility referred to as the Revolving Credit for the use of the Borrower in the aggregate amount of up to the Available Credit Limit. Each Lender's obligation in respect of any Advance shall be limited to its respective Applicable Percentage of the Available Credit Limit.
- (2) At the option of the Borrower, the Revolving Credit may be used by requesting the Lenders to make Base Rate Advances and/or SOFR Advances.

### **2.2 Re-borrowing**

The Revolving Credit is a revolving credit and the principal amount of any Advance under the Revolving Credit that is repaid may be re-borrowed, if the Borrower is otherwise entitled to an Advance under the Revolving Credit.

### **2.3 Use of the Credit**

The Revolving Credit shall be used to repay Debt of the Borrower outstanding under the Augusta Credit Agreement and the BNS Credit Agreement, and to finance the working capital and general corporate requirements of the Borrower and its Subsidiaries, subject to the other terms of this Agreement.

### **2.4 Term and Repayment**

- (1) The Revolving Credit shall be repaid in full by the Borrower and cancelled on or before the Maturity Date.
- (2) The Revolving Credit (and Advances outstanding under it) shall, subject to the Borrower's reinvestment rights as set forth below, be permanently reduced by the Borrower with 100% of the Net Recovery Event Proceeds from any Recovery Event.
- (3) Within ten (10) days after the occurrence of any Recovery Event for which the Borrower or any of its Subsidiaries receive or for which the Borrower or any of its Subsidiaries, in good faith, expects to receive at least \$250,000 of Net Recovery Event Proceeds, the Borrower shall deliver a certificate to the Agent notifying the Agent of such Recovery Event and, notwithstanding the foregoing, so long as no Event of Default has occurred that is continuing, the Borrower may indicate in such certificate that the Borrower and/or its Subsidiaries, as the case may be, intend to reinvest all or a portion of such Net Recovery Event Proceeds in the purchase of assets useful in the business of the Borrower and its Subsidiaries within one hundred and eighty (180) days following the date of receipt of such proceeds (and, in connection therewith, shall thereafter promptly provide such other information with respect to such reinvestment as the Agent and/or the Lenders, acting reasonably, may from time to time request); provided that, if such certificate indicates such

an intention to reinvest, but within one hundred and eighty (180) days after the date of receipt by the Borrower or any of its Subsidiaries of such proceeds the Borrower or any of its Subsidiaries have not so reinvested all or any portion of such Net Recovery Event Proceeds (or an Event of Default occurs that is continuing), that portion of such Net Recovery Event Proceeds which has not been reinvested shall be applied as a mandatory repayment of the Revolving Credit (and Advances outstanding under it). All such repayments shall be applied to repay and permanently reduce the amount available under the Revolving Credit.

- (4) After the occurrence of any Recovery Event for which the Borrower or any of its Subsidiaries receives less than \$250,000 of Net Recovery Event Proceeds, the Borrower and/or its Subsidiaries may, so long as no Event of Default has occurred that is continuing, reinvest all or a portion of such Net Recovery Event Proceeds in the purchase of assets useful in the business of the Borrower and its Subsidiaries within one hundred and eighty (180) days following the date of receipt of such proceeds; provided that, if within one hundred and eighty (180) days after the date of receipt by the Borrower or any of its Subsidiaries of such proceeds the Borrower or any of its Subsidiaries have not so reinvested all or any portion of such Net Recovery Event Proceeds (or an Event of Default occurs that is continuing), that portion of such Net Recovery Event Proceeds which has not been reinvested shall be applied as a mandatory repayment of the Revolving Credit (and Advances outstanding under it). All such repayments shall be applied to repay and permanently reduce the amount available under the Revolving Credit.
- (5) The Borrower shall pay to the Agent for the account of the Lenders, to be applied as a mandatory prepayment of the Obligations, no later than two (2) Business Days after receipt or application thereof, one hundred percent (100%) of the net cash proceeds received by the Borrower (or any parent of the Borrower) or any of its Subsidiaries from any offering, private placement or other issuance of Equity Interests by the Borrower, other than any issuance by the Borrower of Equity Securities: (a) as consideration paid to the seller in connection with a Permitted Acquisition; or (b) the proceeds of which are used entirely to fund a Permitted Acquisition and related transaction expenses.
- (6) If at any time the amount of the outstanding Advances exceeds the Available Credit Limit, the Borrower shall immediately pay the Agent the amount by which the Available Credit Limit is exceeded.

## **2.5 Interest Rates and Fees**

- (1) The interest rate on (a) each SOFR Advance shall be equal to Adjusted Term SOFR for the Interest Period in effect for such SOFR Advance, [REDACTED] and (b) each Base Rate Advance shall be a rate per annum equal to the Base Rate from time to time, [REDACTED]

Each of the amounts specified above, shall be [REDACTED] if an Event of Default under Section 7.1(a) or 7.1(b) has occurred and is continuing, which increase shall be effective commencing upon the occurrence of such Event of Default and shall remain in effect for so long as such Event of Default continues, but the increased amounts shall not be secured by any mortgage of real property forming part of the Security to the extent

prohibited by Applicable Law. If an Event of Default is disclosed by a Compliance Certificate, any increase shall be applied beginning as of the end of the fiscal period to which the Compliance Certificate relates.

- (2) The Borrower shall pay interest and fees at the applicable rate specified in Section 2.5(1) to the Agent on Advances outstanding from time to time. The Borrower shall pay interest on Base Rate Advances on the 22<sup>nd</sup> day of each month. The Borrower shall pay interest on each SOFR Advance on the last day of the applicable Interest Period and, if the Interest Period is longer than three months, every three months after the date of the relevant SOFR Advance.
- (3) The Borrower shall pay a standby fee on the daily unadvanced portion of the Revolving Credit [REDACTED]. The standby fee shall be payable quarterly in arrears on the third Business Day after the end of each quarter. On termination of the Commitment, the Borrower shall also pay any accrued but unpaid standby fees.
- (4) The Agent shall distribute interest and fees to the Lenders based on their respective Applicable Percentages.

## 2.6 Other Fees

The Borrower shall, concurrently with the execution of this Agreement, pay the balance of the non-refundable upfront and any other fees to the Agent in accordance with the Engagement Letter. The Borrower shall also pay agency and other fees to the Agent from time to time in accordance with any fee agreement with the Agent.

## 2.7 Extension of Maturity Date

- (1) No earlier than 90 days and no later than 60 days prior to the Maturity Date (the unextended Maturity Date being referred to in this Section 2.7 as, an “**Extension Date**”), the Borrower may, subject to satisfaction of the conditions precedent for an Advance set forth in Sections 4.2(a) and 4.2(b), deliver to the Agent a request for an extension of the Extension Date for a period of 365 days after the then applicable Extension Date (the “**Extension Request**”); provided that the Borrower may withdraw an Extension Request, even if the Required Lenders have already consented to such Extension Request, by notice in writing delivered to the Agent not later than the close of business on the third Business Day prior to the Extension Date. The Agent shall promptly notify the Lenders of its receipt of any Extension Request, with particulars thereof. Within 30 days after the Agent has notified a Lender of its receipt of an Extension Request, such Lender shall notify the Borrower and the Agent of its election to extend or not extend the Extension Date as requested in such Extension Request (which election to extend or not extend shall be made by each such Lender in its sole and absolute discretion). Any failure by any Lender to notify the Borrower and the Agent of its election to extend or not extend the Extension Date as requested in such Extension Request shall be deemed to be a refusal to extend the Extension Date. Unless the Extension Request has been withdrawn by the Borrower in accordance with the proviso above, if the Required Lenders approve in writing the extension of the Extension Date requested in such Extension Request, the Extension Date shall

automatically and without any further action by any Person be extended for the period specified in such Extension Request; provided that each such extension shall be for a maximum of 365 days, and if an Extension Request has been made, but there are one or more Lenders which do not consent in writing to the Extension Request within 35 days after receipt of the notice of the Extension Request from the Agent (a “**Non-Extending Lender**”), then the Borrower shall be entitled to choose one of the following options, and the Borrower shall notify the Agent of its choice not later than 10 days prior to the Extension Date:

- (a) the Advances of any Non-Extending Lender shall be repaid on the Maturity Date (without giving effect to the extension requested in such Extension Request, with respect to the Non-Extending Lender only);
  - (b) at the sole expense of the Borrower, upon notice to such Lender and the Agent, the Commitments of any Non-Extending Lender shall be assigned to (and assumed by) an assignee permitted under Section 10.2 upon payment by the assignee to the Non-Extending Lender of an amount equal to the outstanding principal of the Advances, if any, accrued interest thereon, accrued fees and all other amounts payable to the Non-Extending Lender hereunder, provided that (i) such assignment does not conflict with any Applicable Law, and (ii) any assignee which becomes a Lender as a result of such an assignment shall be deemed to have consented to the applicable Extension Request and, therefore, shall not be a Non-Extending Lender; or
  - (c) the Borrower may withdraw the applicable Extension Request.
- (2) Any Non-Extending Lender shall provide to the Borrower its full co operation in facilitating the assignment of the Commitment of such Non-Extending Lender to an assignee permitted hereunder (which assignee may be another Lender, if such assignee Lender accepts such assignment) identified by the Borrower that is ready, willing and able to be an assignee with respect thereto. If an Extension Request has been made and if, within 35 days after receipt by the Lenders of the notice of the Extension Request from the Agent, the Required Lenders have not approved in writing the extension of the Extension Date requested in an Extension Request, the Extension Date shall not be extended pursuant to such Extension Request. The Agent shall promptly notify the Lenders and the Borrower of (a) any extension of the Extension Date pursuant to this Section 2.7, and (b) of any Lender which becomes a Non-Extending Lender.

### **ARTICLE 3 SECURITY**

#### **3.1 Security**

- (1) At all times, the Obligors shall have granted the Agent a first-priority Lien, subject only to Permitted Liens, in all of their present and after-acquired Property (except Excluded Property). The Security shall include the following documents and instruments in favour

of the Agent, all in form and substance satisfactory to the Agent and subject only to Permitted Liens:

- (a) the Upstream Guarantee and the Downstream Guarantee;
  - (b) security over all present and after-acquired Property (except Excluded Property) of each Obligor in the form of (i) an Ontario law governed general security agreement, (ii) a New York law governed general security agreement and/or (iii) other documents appropriate for the type of Property (except Excluded Property) and the jurisdictions in which such Property is located;
  - (c) pledges of all Equity Interests that are owned by Obligors from time to time (except Excluded Property);
  - (d) the Augusta Guarantees; and
  - (e) the Augusta Subordination Agreements.
- (2) The Borrower shall notify the Agent of any securities account or bank account that each Obligor holds from time to time and, if requested by the Agent, shall use commercially reasonable efforts to obtain a control agreement satisfactory to the Agent from the relevant securities intermediary or holder of bank account.
  - (3) If at any time any Person becomes a Material Subsidiary, then the Borrower shall promptly, and in any event not later than thirty (30) days thereafter, cause that Person to adopt this Agreement by delivering an agreement in the form of Exhibit E so as to be bound by all of the terms applicable to Obligors as if it had executed this Agreement as an Obligor, and deliver a joinder to the Upstream Guarantee, an updated Due Diligence Certificate and other security documents required to comply with Section 3.1(1), which shall form part of the Security. The Borrower shall also deliver or cause the delivery of any certificates representing the Equity Interests of such Material Subsidiary with endorsements executed in blank and take other steps that the Agent requires to perfect the Security relating to such Equity Interests.
  - (4) Each Obligor shall, promptly upon receipt, and in any event not later than thirty (30) days thereafter, deliver to the Agent certificates representing all Equity Interests of an Obligor or other Person in which it owns Equity Interests that it acquires after the date that it first delivers Equity Interests of the Obligor or other Person as part of the Security, together with any certificates representing the Equity Interests and endorsements executed in blank, and take other steps that the Agent requires to perfect the Security relating to the Equity Interests. If Equity Interests of an Obligor that have been pledged as part of the Security are subsequently transferred to another Obligor, the transferee shall promptly, and in any event not later than thirty (30) days thereafter, deliver a pledge of all of the transferred Equity Interests as part of the Security, deliver any certificates representing the Equity Interests with endorsements executed in blank and take other steps that the Agent requires to perfect the Security relating to the Equity Interests.

- (5) Each Obligor shall promptly, and in any event not later than thirty (30) days after the acquisition of any freehold or leasehold real property (except Excluded Property) or any Intellectual Property in which its interest is registered in a public office, grant to the Agent a fixed charge over that real property or a security interest in that Intellectual Property as part of the Security and cause the delivery of legal opinions and other supporting documents reasonably required by the Agent.
- (6) In order to perfect the Security and in connection with the delivery of any Security, the Borrower shall, in consultation with the Agent, and as directed by the Agent in the case of any uncertainty:
  - (a) concurrently with the execution of any document forming part of the Security, arrange to register, file or record the document and/or, if applicable, financing statements or other prescribed statements, obtain agreements of other Persons and take other actions, as may be necessary or desirable from time to time to perfect, preserve or protect the Security, wherever such registration, filing, recording, agreement or other action may be necessary or desirable;
  - (b) whenever necessary or desirable, including in the circumstances contemplated in Sections 6.4(12) and 6.4(13), in consultation with the Agent, arrange to renew or amend existing registrations, filings and recordings and make additional registrations, filings and recordings and take other actions as are necessary or desirable to maintain the Security as valid and effective security with the priority required by this Agreement; and
  - (c) cause documents, including title insurance policies, opinions of counsel and other supporting documents satisfactory to the Agent, acting reasonably, to be delivered to the Agent evidencing the actions taken and confirming that the provisions of this Section have been complied with.
- (7) Nothing in this Section 3.1 that contemplates the Obligors owning, establishing, acquiring or transferring Property, Equity Interests or Subsidiaries shall in any way modify any restriction on doing so elsewhere in this Agreement.

### **3.2 Obligations Secured by the Security**

- (1) The Security shall be in favour of the Agent for the benefit of the Secured Parties and shall secure the Secured Obligations *pari passu* with each other.
- (2) Notwithstanding such common security and prior to the Lender Termination Date, all decisions regarding the administration and enforcement of the Security shall be made by the Agent and the Lenders alone, and no Secured Hedge Counterparty or Secured Cash Management Provider shall have any voting rights under this Agreement or any other right whatsoever to participate in the administration or enforcement of the Security. For the avoidance of doubt but without limitation, prior to the Lender Termination Date any or all of the Security or any rights contained therein may be amended or released by the Agent without the consent of any Secured Hedge Counterparty or Secured Cash Management Provider, in those capacities.

- (3) Each Lender that is or becomes a Secured Hedge Counterparty or Secured Cash Management Provider shall be bound as such by virtue of its execution and delivery of this Credit Agreement or an Assignment and Assumption, as applicable, notwithstanding that such capacity as Secured Hedge Counterparty or Secured Cash Management Provider may not be identified on its signature line. Each Lender shall cause its Related Non-Party Beneficiaries to comply with the terms and conditions of the Loan Documents applicable to them and pay and perform their debts, liabilities and obligations thereunder.

## **ARTICLE 4 DISBURSEMENT CONDITIONS**

### **4.1 Conditions Precedent to Initial Advance**

The conditions precedent specified in this Section 4.1 must be satisfied at or before the time of the Initial Advance under this Agreement, unless waived by all the Lenders. Where delivery of documents is referred to, the documents must be delivered to the Agent, in form and substance satisfactory to the Lenders, duly executed by all parties and in full force and effect, and all matters disclosed by the documents must be satisfactory to the Lenders.

(1) Security and Other Principal Documents

- (a) The Agent must have received duly executed copies of this Agreement and the Engagement Letter.
- (b) The Agent must have received duly executed copies of the Due Diligence Certificate and the Security.
- (c) The Security must have been duly registered and otherwise perfected as required by the Agent.
- (d) The Agent must have received certificates representing the Pledged Shares which are certificated and endorsements executed in blank relating to those certificated Pledged Shares and, in the case of uncertificated Pledged Shares, evidence of other arrangements being made as required by the Agent to grant control over such Pledged Shares.

(2) Corporate and Other Information

- (a) The Agent must have received a certificate of each Obligor, Augusta Investments and Augusta LP attaching (i) copies of its Constating Documents (including, in the case of Augusta LP, the Constating Documents of its general partner), (ii) a list of its officers and directors with specimens of the signatures of those officers or directors who are executing Loan Documents on its behalf and (iii) copies of the corporate (or other equivalent) proceedings taken to authorize it to execute, deliver and perform its obligations under the Loan Documents.
- (b) The Agent must have received a certificate of good standing (or equivalent) for each Obligor, Augusta Investments and Augusta LP (including, in the case of

Augusta LP, a certificate of good standing of its general partner) for its jurisdiction of incorporation and for each jurisdiction where it carries on business.

- (c) The Borrower must have complied with Section 6.2(11).
- (d) The Agent must have received a certificate of the Borrower certifying that true and complete copies of all Material Contracts and all Material Permits have been provided to the Agent.
- (e) The Agent must have received a Compliance Certificate prepared on a *pro forma* basis after giving effect to the Initial Advance to be made on the Closing Date and confirming compliance with the financial covenants set out in Section 6.1.

(3) Due Diligence

- (a) Nothing shall have occurred (nor shall the Lenders become aware of any facts not previously known), which the Lenders shall determine is reasonably likely to have a material adverse change on the business, property, assets, liabilities, conditions (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole, or prospects of the Borrower and its Subsidiaries taken as a whole, from that set forth in financial statements for the period ending December 31, 2021 or the ability of the Obligors to perform their obligations under the Loan Documents.
- (b) The Agent not becoming aware of any information or other matter affecting the Obligors that, in the Agent's reasonable judgment, is inconsistent in a material and adverse manner with any such information or other matter disclosed to the Agent prior to the date hereof.
- (c) All Permits and all other third party consents and approvals that are necessary or advisable in connection with the execution, delivery and performance by the Obligors of the Loan Documents shall have been obtained.
- (d) The Agent must be satisfied that there is no pending or threatened Dispute that seeks to adjourn, delay, enjoin, prohibit or impose limitations on any aspect of the transactions contemplated by the Loan Documents or that has had, or could reasonably be expected to have, a Material Adverse Effect.
- (e) The Agent must have received evidence, in form and substance satisfactory to it (acting reasonably), that the Augusta Securities Accounts contain such Eligible Securities as are required to be in compliance with Section 6.2(13).

(4) Other Debt and Liens / Third Party Documents

- (a) The Agent shall have received evidence that all Debt of the Obligors not forming part of Permitted Debt (including, for certainty, all Debt outstanding under the Augusta Credit Agreement and the BNS Credit Agreement) has been paid and performed in full, or will be concurrently with the Initial Advance, and that any corresponding agreements to have provided such Debt shall have been terminated.

- (b) The Agent shall have received releases and discharges (in registrable form where appropriate) covering all Liens affecting any Property of the Obligors that are not Permitted Liens (including, for certainty, all Liens granted by the Obligors in connection with the Augusta Credit Agreement and the BNS Credit Agreement) or undertakings of the holders of such Liens to deliver releases and discharges promptly after the Initial Advance.
  - (c) The Obligors shall have granted the Agent a first-priority Lien, subject only to Permitted Liens, in all of their present and after-acquired Property (except Excluded Property), and the Agent shall have received all priority, subordination and intercreditor agreements necessary or advisable to establish such priority.
  - (d) The Agent must have received certificates of insurance or other evidence that the Obligors are complying with the covenants and conditions of the Loan Documents concerning insurance coverage.
- (5) Opinions. The Agent must have received the following favourable opinions, addressed to it:
- (a) opinion of Fasken Martineau DuMoulin LLP, Ontario and British Columbia counsel to the Obligors;
  - (b) opinion of Dorsey & Whitney LLP, US counsel to the Obligors;
  - (c) opinion of Fasken Martineau DuMoulin LLP, Ontario and British Columbia counsel to Augusta Investments and Augusta LP with respect to certain matters;
  - (d) opinion of Stirling LLP, British Columbia independent counsel to Augusta Investments and Augusta LP; and
  - (e) opinion of Harney Westwood & Riegels LP, British Virgin Islands independent counsel to Augusta Investments.
- (6) Other Matters. The following other conditions must be satisfied:
- (a) The Agent must have received payment of all fees that are payable under or in connection with the Engagement Letter and the Loan Documents and reimbursement of all expenses incurred, including legal fees and expenses, in connection with the Loan Documents.
  - (b) The conditions precedent set forth in Sections 4.2(a) and (b) shall have been satisfied and the Agent shall have received a certificate from an officer of the Borrower confirming the same.
  - (c) The Agent must have received other documents that the Agent may reasonably require.

## 4.2 Conditions Precedent to all Advances

In addition to the other conditions precedent specified in this Agreement, the obligation of the Lenders to make any Advance is subject to the following conditions precedent:

- (a) The representations and warranties made in Section 5.1 of this Agreement and in the other Loan Documents, except those expressly stated to be made as of a specific date, must be true and correct on and as of the Advance Date, with the same force and effect as if the representations and warranties had been made on and as of the Advance Date.
- (b) No Default may have occurred and be continuing on the Advance Date or result from making the Advance.
- (c) The Agent must have received timely notice as required under Section 9.5.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

### 5.1 Representations and Warranties

Each Obligor represents and warrants to the Lenders as specified in this Section 5.1.

- (1) Organization. It is duly incorporated or otherwise established and duly organized, validly existing and in good standing under the laws of its jurisdiction of formation. It is qualified to carry on business and, except for such jurisdictions in which the failure to so qualify would not reasonably be expected to have a Material Adverse Effect, in good standing in each jurisdiction where required by Applicable Law.
- (2) Powers. It has the corporate or analogous power and capacity to enter into and perform its obligations under each Loan Document to which it is or will be a party and to incur Obligations, and to own its Property and to carry on the business in which it is engaged.
- (3) Authorization. All necessary corporate or analogous action has been taken by it or on its part to authorize its execution and delivery of the Loan Documents to which it is or will be a party, the incurrence of Obligations and the performance of its obligations under those Loan Documents.
- (4) Absence of Conflict. The execution, delivery and performance by it of the Loan Documents to which it is or will be a party and the incurrence of Obligations will not:
  - (a) result in a breach of any of the provisions of, constitute a default under, conflict with, or cause the acceleration of any of its obligations under:
    - (i) any Material Contract, Permit or Mining License by which it or any of its business or any of its Property is bound or affected which breach, default or conflict would result in a Material Adverse Effect;

- (ii) its Constatting Documents or any resolution of its directors (or similar governing body) or holders of its Equity Interests; or
    - (iii) any Applicable Law;
  - (b) result in or require the creation or imposition of any Lien on any of its Property, except Permitted Liens; or
  - (c) result in the forfeiture of any of its Property.
- (5) No Consents Required. Except as contemplated in Section 3.1(6), no Permit is required, nor is any authorization, consent, approval or notice required under any Material Contract or Mining License to which it is a party or of which it has the benefit, in connection with its execution, delivery and performance of the Loan Documents to which it is or will be a party or the incurrence of Obligations.
- (6) No Restrictions on Borrowing Etc. Neither its power to borrow money, to give financial assistance by way of loan, guarantee or otherwise, or to create any Lien on any or all of its present and after-acquired Property to secure the Obligations and other debts, liabilities and obligations to the Agent, nor the power of its directors to authorize those actions, is restricted by its Constatting Documents or Applicable Law.
- (7) No Burdensome Restrictions. It is not a party to any Contract, the holder of any Permit or subject to any Applicable Law, compliance with which has had or could reasonably be expected to have a Material Adverse Effect.
- (8) Enforceability. The Loan Documents to which it is or will be a party have been or will be duly executed and delivered by it, and when executed and delivered will constitute its legal, valid and binding obligations, enforceable against it in accordance with their respective terms, subject to bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and to general principles of equity.
- (9) No Default. No Default has occurred and is continuing.
- (10) Compliance With Law. It is in compliance with all Applicable Law affecting it or its Property (other than immaterial non-compliance).
- (11) Debt. It has no Debt other than Permitted Debt.
- (12) Title. It has good and marketable title in fee simple to all real property that it purports to own, it has valid leasehold interests pursuant to valid and enforceable leases in all real and personal property that it purports to hold as lessee, and it has valid and indefeasible title to all personal and other property that it purports to own, in each case free and clear of all Liens except Permitted Liens.
- (13) Disputes. There are no Disputes pending, outstanding or, to its knowledge, threatened against it that could reasonably be expected to have a Material Adverse Effect. All actions, suits or proceeds pending or judgments existing as of the Closing Date that could

reasonably be expected to result in a potential liability in excess of \$500,000 are set forth in Schedule 5.1(13). No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, any other Loan Document or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

- (14) Financial Statements. All of its financial statements furnished to the Agent in connection with this Agreement:
- (a) were prepared in accordance with GAAP, consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal yearend adjustments and the lack of footnote disclosures; and
  - (b) present fairly in all material respects its financial condition as of the dates thereof and results of operations for the periods covered thereby.
- (15) Projections. Its most recent projections provided to the Agent, including forecasts, budgets, *pro formas* and business plans, were prepared in good faith based on assumptions that were believed to be reasonable and are believed to be reasonable estimates of the prospects of the business referred to in the projections.
- (16) Accuracy of Information. Taken as a whole, all information (including information in financial statements, but excluding projections) pertaining to the Obligors, Augusta Investments or Augusta LP that it has provided to the Agent, the Lenders, or any of them, is complete and accurate in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances in which the statements are made. There is no fact that it has not disclosed to the Agent and the Lenders in writing that has had or could reasonably be expected to have a Material Adverse Effect.
- (17) No Material Adverse Effect. Since the date of its most recent audited financial statements provided to the Agent, there has been no event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.
- (18) Intragroup Debt. As of the Closing Date or the most recently delivered Compliance Certificate, it has no Intragroup Debt except as disclosed in Schedule 5.1(18) as updated from time to time by each Compliance Certificate.
- (19) Property, Equity Interests, Etc. As of the Closing Date or the most recently delivered Compliance Certificate, Schedule 5.1(19), as updated from time to time by each Compliance Certificate, contains a complete and accurate organizational chart for the Obligors and a complete and accurate description of its name (including any French or combined French and English form of its name), its jurisdiction of incorporation, its history of mergers, amalgamations and changes of name, the ownership of all of its issued and outstanding Equity Interests, the nature of the business that it carries on, the locations of its registered office (and chief executive office, if different), the Equity Interests in

Obligors and other Persons that it owns, the location of its freehold and leasehold real property, the jurisdictions in which its other Property is located and its bank accounts and securities accounts.

- (20) Joint Ventures, Etc. Schedule 5.1(20) sets out, as of the Closing Date, each partnership, joint-venture, co-venture or other similar arrangement to which each Obligor is a party.
- (21) Pledged Shares. The Pledged Shares are validly issued as fully paid and non-assessable shares of the respective issuers. The consents of the directors, shareholders, partners or members of the respective issuers of Pledged Shares that will be delivered at or before the time that the Pledged Shares become part of the Security are the only consents that are necessary or desirable in connection with the pledges of the Pledged Shares as part of the Security (including the enforcement of the pledges), and will be kept in full force and effect as long as they remain so necessary or desirable.
- (22) Intellectual Property. It owns or is licensed or otherwise has the right to use all Intellectual Property that is necessary for the operation of its business, to its knowledge without material conflict with the rights of any other Person, except as specified on Schedule 5.1(22). As at the Closing Date or the most recently delivered Compliance Certificate, all Intellectual Property in which its interest is registered in any public office is listed on Schedule 5.1(22), as updated from time to time by each Compliance Certificate. If it is not the owner of any Intellectual Property used in its business, its right of use is not subject to termination unless the consequences of termination would not be material.
- (23) Permits. All Permits required to carry on its business (including those required under Environmental Laws) as currently conducted and as required for the Mining Operations in accordance with the Mine Plan are in full force and effect in all material respects. Each Obligor is in compliance with all such Permits other than Permits the absence of which could not reasonably be expected to have a Material Adverse Effect, and no Obligor is the subject of, or has received notice which could result in, any audit or investigation in respect of any Permit other than any audit or investigation the results of which could not reasonably be expected to have a Material Adverse Effect. As at the Closing Date, all Material Permits are described on Schedule 5.1(23), as updated from time to time by each Compliance Certificate.
- (24) Material Contracts. Each Material Contract to which it a party is in full force and effect and there have been no events that are continuing which, but for giving notice, lapse of time or any other condition subsequent, that would constitute a default of a material obligation thereunder; provided that this Section 5.1(24) does not apply (a) to Material Contracts that have terminated at the end of their term; (b) if, within thirty (30) days of termination of a Material Contract, such Material Contract has been replaced by a Replacement Material Contract, and (c) Material Contracts the breach or termination of which would not result in a Material Adverse Effect. As of the Closing Date, all Material Contracts are described on Schedule 5.1(24), as updated from time to time by each Compliance Certificate.

- (25) Mining Properties. Schedule 5.1(25), as updated from time to time by each Compliance Certificate, is a complete and accurate list of all Mining Properties in which each Obligor has an interest. Schedule 5.1(25), as so updated, discloses the nature of each Obligor's interests in respect thereof (whether owned, leased, licenced, etc.), together with a description of each applicable Mining License, as the case may be. All Mining Properties are owned, leased or licenced by the Obligors as set forth on such Schedule, as so updated, subject only to Permitted Liens.
- (26) Mining Licenses. Schedule 5.1(26), as updated from time to time by each Compliance Certificate, is a complete and accurate list of all Mining Licenses in which each Obligor has an interest or of which each Obligor has the benefit. All such Mining Licenses are valid and subsisting and no default exists under any of them that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Such Mining Licenses grant the relevant Obligor the exclusive and enforceable right to explore and/or extract minerals (as applicable) from the areas covered by them in accordance with the respective terms and conditions thereof including, for certainty, the Mining Properties. All Mining Licenses have been issued in the name of an Obligor and, except for Permitted Liens, all fees, including maintenance fees, and other payments due to any Governmental Authority in respect of the Mining Licenses have been paid in full on a timely basis, except as would not materially interfere with the use made by the applicable Obligor of the relevant Mining Licenses.
- (27) Environmental Matters. All facilities and property (including underlying groundwater) directly or indirectly owned, leased, used or operated by each Obligor are owned, leased used or operated in compliance with all Environmental Laws and, to the knowledge of the Borrower, all facilities and property (including underlying groundwater) previously owned, leased, used or operated by each Obligor were owned or leased in compliance with all Environmental Laws, except where any noncompliance would not reasonably be expected to have a Material Adverse Effect. There are no pending or, to the knowledge of the Borrower, threatened (a) claims, complaints, notices or requests for information received by any Obligor from any Governmental Authority with respect to any alleged violation of any Environmental Laws which alleged violation would reasonably be expected to have a Material Adverse Effect or (b) complaints, notices or inquiries to any Obligor from any Governmental Authority regarding potential liability under any Environmental Laws which potential liability would reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, there have been no releases of any Hazardous Materials or any escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials at, on, under or from any property now or previously owned, operated, used or leased by any Obligor in violation of Environmental Laws, except for releases of any Hazardous Materials which would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, no conditions exist at, on or under any property now or previously owned, operated, used or leased by any Obligor which, with the passage of time, or the giving of notice or both, would give rise to liability under any Environmental Laws, except for the existence of any such conditions which would not reasonably be expected to have a Material Adverse Effect.

(28) Taxes and Withholdings.

- (a) It has correctly and completely filed on a timely basis all material returns, elections and reports required to be filed by it regarding its Taxes under Applicable Law. It has paid all material Taxes due and payable by it, unless they are being contested diligently, in good faith and by appropriate proceedings, it has made adequate provisions or reserves for payment of the contested amount and it has provided evidence of the provisions or reserves for the contested amount that the Agent requires. It has made adequate provision for material Taxes payable by it for the current period and any previous period for which tax returns are not yet required to be filed. It is not subject to any audit by any Governmental Authority relating to Taxes.
- (b) It has deducted or withheld from any amount paid or credited, or deemed to be paid or credited, by it to or for the account or benefit of any Person, including past or present employees, officers or directors and any non-resident of the country in which it is resident, the amount of all material Taxes and other amounts required to be deducted or withheld from those payments under Applicable Law, has remitted the amounts deducted or withheld to the proper tax authorities within the time required under any Applicable Law and has correctly and completely filed on a timely basis all material returns and reports required to be filed by it regarding amounts deducted or withheld.
- (c) It has collected and remitted to the appropriate tax authority in accordance with Applicable Law all material amounts required to be collected and remitted in respect of sales tax, goods and services tax and similar Taxes, and has correctly and completely filed on a timely basis all material returns and material reports required to be filed by it regarding amounts collected.

(29) Canadian Pension and Other Plans. Each Obligor has established, operated and administered (including the payment, withholding and remitting of all required contributions in a timely manner) each Canadian Pension Plan and each Canadian Benefit Plan in compliance with all Applicable Law, except for such instances of non-compliance as, individually and in the aggregate, have not resulted in and are not reasonably likely to result in a Material Adverse Effect. There is no proceeding or claim (other than routine claims for benefits and related appeals) pending or, to the knowledge of the Borrower, threatened, against any Obligor with respect to any Canadian Pension Plan or Canadian Benefit Plan that, individually or in the aggregate, would be reasonably expected to result in a Material Adverse Effect. Except for matters that, individually or in the aggregate, could not reasonably be expected to be material, (a) all employer and employee payments, contributions and premiums required to be remitted or paid to or in respect of any Statutory Plan have been remitted or paid in a timely fashion to or in respect of the Statutory Plan in accordance with its terms and all Applicable Law and (b) all of its obligations that are due under each applicable Statutory Plan have been paid.

(30) ERISA. Except as could not reasonably be expected to result in material liability to any Obligor or any member a Controlled Group, (a) each Obligor and each member of its

respective Controlled Group has fulfilled its obligations under the minimum funding standards of and is in compliance in all respects with ERISA and the Revenue Code to the extent applicable to it and has not incurred any liability to the PBGC or under Title IV of ERISA, other than a liability to the PBGC for premiums under Section 4007 of ERISA; (b) no Obligor has any unfunded contingent liabilities with respect to any post-retirement benefits under a US Welfare Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA or as required under US State law requirements for health continuation coverage; (c) neither a Reportable Event nor a prohibited transaction described in Section 406 of ERISA or Section 4975 of the Revenue Code (a “**Prohibited Transaction**”) has with respect to any US Pension Plan; (iv) no notice of intent to terminate a US Pension Plan has been filed nor has any US Pension Plan been terminated; (d) no US Pension Plan has been terminated by the plan administration thereof nor by the PBGC and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any US Pension Plan; (e) no Obligor or any member of its Controlled Group has completely or partially withdrawn from a Multiemployer Plan; (f) no Obligor or any member of its Controlled Group has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; (g) no determination has been made that any US Pension Plan is, or is expected to be, in “at-risk” status (within the meaning of Section 403 of the Revenue Code or Section 303 of ERISA); and (h) no Obligor or any member of its Controlled Group has received any notice from, or provided notice to, any Multiemployer Plan concerning the imposition withdrawal liability or a determination that a Multiemployer Plan is, or is expected to be, “insolvent” (within the meaning of Section 4245 of ERISA), or in endangered or critical status (within the meaning of Section 432 of the Revenue Code or Section 305 of ERISA).

(31) Solvency.

- (a) Its Property, in aggregate, is at a fair valuation, sufficient, and, if disposed of at a fairly conducted sale under legal process, would be sufficient, to enable payment of all of its obligations and liabilities (including contingent liabilities), due and accruing due.
- (b) It is able to meet its obligations as they generally become due and it has not ceased paying its current obligations in the Ordinary Course as they generally become due.
- (c) It does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as they come due.
- (d) It is not engaged, and is not about to engage, in business or a transaction for which its Property would constitute an unreasonably small capital.
- (e) It is otherwise solvent under Applicable Law.

(32) Use of Proceeds. Except as expressly specified in this Agreement, no Advance will be used by, on behalf of or for the benefit of any Person except the Obligors. No Advance has been used by the Borrower, directly or, to the knowledge of the Borrower, indirectly, (a) in violation of any Sanctions, (b) which could result in the imposition of Sanctions against

any Person (including any Person participating in the transactions contemplated hereby, whether as an Obligor or otherwise) or (c) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws.

- (33) KYC Laws. The Borrower has adopted and maintains adequate procedures and controls to ensure that it and the other Obligors are in compliance with all KYC Laws.
- (34) Sanctions. None of the transactions contemplated by the Loan Documents, nor the execution and delivery thereof, violates any Sanctions and each Obligor is in compliance with all Sanctions. None of the Borrower, any Subsidiary or Affiliate of the Borrower or any director, officer, employee of the Borrower or any of its Subsidiaries or Affiliates is a Sanctioned Person and none of the Borrower and its Subsidiaries or Affiliates engages in any dealings or transactions with a Sanctioned Person, contrary to applicable Sanctions.
- (35) Labour and Employment. There is no collective bargaining agreement or other labour contract covering employees of the Obligors. There is no pending or, to the best of its knowledge, threatened strike, work stoppage, material unfair labour practice claims, or other material labour dispute against or affecting the Obligors or their employees. There are no controversies pending or threatened between any Obligor and any of its employees, other than employee grievances arising in the Ordinary Course of its business which would not reasonably be expected to have a Material Adverse Effect. The Obligors are in compliance in all material respects with all federal, provincial, state and local laws respecting employment and employment terms, conditions and practices, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect.
- (36) Expropriation. There is no present or threatened (in writing) expropriation (or condemnation) of any Mining Property.
- (37) Royalties. Except as set out in Schedule 5.1(37), there are no registered, unregistered, legal, beneficial or inchoate (a) royalty agreements or (b) other rights or claims for royalties of, or affecting, the Mining Properties.
- (38) Margin Stock. No Obligor is engaged principally in the business of, or has one of its important activities, extending credit for the purpose of “purchasing” or “carrying” “margin stock” (herein called “**Margin Stock**” and as each such term is defined or used, directly or indirectly, in Regulation U of the Federal Reserve Board), and no part of the proceeds of any Advance or any other extension of credit made hereunder will be used to purchase or carry any such Margin Stock or for any purpose which violates the provisions of Regulation T, U or X. Following the application of the proceeds of each Advance, not more than 25% of the value of the assets of Holdings and its Subsidiaries will be Margin Stock.
- (39) Investment Company. It is not required to be registered as an “investment company” nor is it a company “controlled” by an “investment company” within the meaning of the *Investment Company Act of 1940*, as amended.

- (40) 1077615 US LLC. As of the Closing Date, 1077615 US LLC has no Mining Properties other than the ownership interest of 1077615 US LLC of ninety-two (92) mining claims in Hidalgo County, New Mexico as set forth in the letter of Quarles & Brady LLP dated October 25, 2017 to the Bureau of Land Management, New Mexico State Office and the interest of 1077615 US LLC in the lease of and option to purchase the “Mary May” unpatented mining claim in Hidalgo County, New Mexico pursuant to the mining lease and option agreement between Anthony and Melba Sakowski and 1077615 US LLC, true copies of which letter and agreement have been provided to the Agent. As of the Closing Date, the Fair Market Value of the assets of 1077615 US LLC does not exceed \$100,000.

## **5.2 Survival of Representations and Warranties**

The representations and warranties made in this Agreement survive the execution of this Agreement and all other Loan Documents. No investigation by or on behalf of the Agent or Lenders at any time shall have the effect of waiving, diminishing the scope of, or otherwise affecting any, representation or warranty. Unless expressly stated to be made as of a specific date, they shall be deemed to be repeated as of the date of each Advance and as of the date of delivery of each Compliance Certificate. The Lenders shall be deemed to have relied upon all representations and warranties each time it makes an Advance as a condition of making an Advance and continuing to extend the Revolving Credit.

## **ARTICLE 6 COVENANTS**

### **6.1 Financial Covenants**

- (1) The Borrower shall at all times maintain an Interest Coverage Ratio of not less than 4.00:1.00.
- (2) The Borrower shall at all times maintain a Total Leverage Ratio of not more than 3.00:1.00.

### **6.2 Positive Covenants**

Each Obligor shall perform the covenants specified in this Section 6.2.

- (1) Payment of Obligations. It shall duly and punctually pay and perform the Obligations at the times and places and in the manner required by the terms of this Agreement or the other Loan Documents.
- (2) Use of Proceeds of Revolving Credit. In the case of the Borrower, it shall use the proceeds of Advances solely for the purposes set out in Section 2.3. The Borrower shall not use the proceeds of Advances for the purpose of accumulating and/or maintaining cash in depository or investment accounts outside the Ordinary Course of its business.
- (3) Maintenance of Existence and Status. Subject to Section 6.4(11), it shall maintain its existence and maintain its qualification to do business in all jurisdictions where it carries on business, except jurisdictions in which the failure to so qualify could not reasonably be expected to have a Material Adverse Effect.

(4) Operation of Business and Property.

- (a) It shall keep proper books of accounts and record.
- (b) It shall operate its business in accordance with sound business practices and in compliance with all Applicable Law (including those regarding ownership of Persons carrying on the type of business that it carries on), including Environmental Laws, Contracts and Mining Licenses to which it is a party, Permits and Mining Licenses to which it or its Property is subject and the terms of Permitted Liens (except where the failure to do so would have an immaterial impact on the business of the Obligors or the Mining Operations).
- (c) It shall maintain in good standing and shall obtain, as and when required, all Permits and Contracts that it requires to permit it to acquire, own, operate and maintain its business and Property and perform its obligations under the Loan Documents to which it is or will be a party (except where the failure to comply would have an immaterial impact on the business of the Obligors or the Mining Operations).
- (d) It shall maintain its Property so as to preserve and protect such Property and the earnings, income and profits therefrom.
- (e) It shall keep the Permits and Mining Licenses in full force and effect at all times, including, without limitation, paying all fees and other charges required to be paid under or in connection with such Permits and Mining Licenses, and it shall defend its respective right, title and interest in, to and under such Permits and Mining Licenses against any adverse or competing claim (except where the failure to do so would have an immaterial impact on the business of the Obligors or the Mining Operations).

- (5) Inspection. It shall, from time to time, upon reasonable notice (unless a Default has occurred and is continuing), permit Representatives of the Lenders to inspect any of its Property and to examine and take extracts from its financial books, accounts and records, including accounts and records stored in computer data banks and computer software systems, and to discuss its financial condition with its senior officers and its auditors, the reasonable expense of all of which shall be paid by the Borrower; provided that, unless an Event of Default has occurred and is continuing, the Agent and the Lenders shall be limited to one inspection of the Empire State Mine per calendar year. The Borrower shall furnish to the Agent such information relevant to the Lenders' rights under this Agreement as the Agent, shall at any time and from time to time, in its sole discretion, request. The Agent is authorized to discuss the affairs, finances and business of the Obligors with any officers or directors of the Obligors or any Affiliate of the Obligors, or with those employees of the Obligors with whom the Agent has determined in its commercially reasonable judgment to be necessary or desirable to converse, and to discuss the financial condition of the Obligors with their independent chartered accountants. Any such discussions shall be without liability to the Agent or to such accountants. The Borrower shall pay to or reimburse the Agent for all reasonable fees, costs, and expenses incurred by the Agent in the exercise of its rights hereunder.

(6) Insurance.

- (a) The Obligors shall keep their Property properly housed and insured against such risks and in such amounts as are customarily insured against by Persons engaged in businesses similar to that of the Obligors with such companies and which insurance shall include the Agent as loss payee or additional insured, as applicable. The Agent (and all officers, employees or agents designated by the Agent) is irrevocably made, constituted and appointed as each Obligor's true and lawful attorney (and agent) for the purpose of making, settling and adjusting claims under such policies of insurance, endorsing the names of such Obligor on any cheque, draft, instrument or other item of payment for the proceeds of such policies of insurance and making all determinations and decisions with respect to such policies of insurance; provided however that the Agent shall exercise such rights only upon and following and during the occurrence of an Event of Default.
- (b) The Obligors shall maintain, at their expense, such public liability and third party property damage insurance as is customary for Persons engaged in businesses similar to that of the Obligors.
- (c) If the Obligors at any time or times hereafter fail to obtain or maintain any of the policies of insurance required above or to pay any premium in whole or in part relating thereto, the Agent, without waiving or releasing any obligation or default by the Obligors hereunder, may (but shall be under no obligation to) obtain and maintain such policies of insurance and pay such premiums and take such other actions with respect thereto as the Agent, in its sole discretion, deems advisable. All sums disbursed by the Agent in connection with any such actions, including, without limitation, court costs, expenses, other charges relating thereto and reasonable legal fees and disbursements shall form part of the Obligations.

(7) Taxes and Withholdings.

- (a) It shall pay all Taxes as they become due and payable unless they are being contested diligently and in good faith by appropriate proceedings and it has made adequate provision for payment of the contested amount and it shall provide evidence of the provision for the contested amount that the Agent requires.
- (b) It shall withhold from each payment made to any of its past or present employees, officers or directors, and to any non-resident of the country in which it is resident, the amount of all Taxes and other deductions required to be withheld and pay the amount withheld to the proper tax or other receiving officers within the time required under any Applicable Law.
- (c) It shall collect from all Persons the amount of all Taxes required to be collected from them and remit the amount collected to the proper tax or other receiving officers within the time required under any Applicable Law.

(8) Canadian Pension Plans and US Pension Plans. Maintain all Canadian Pension Plans and US Pension Plans relating to each Obligor in compliance with all Applicable Laws except

where the failure to do so would not result and could not reasonably be expected to result in a material liability to an Obligor.

- (9) ERISA. Except as could not reasonably be expected to result in material liability to any Obligor, promptly pay and discharge all obligations and liabilities arising under ERISA or the Revenue Code of a character which if unpaid or unperformed could reasonably be expected to result in the imposition of a Lien other than a Permitted Lien against any of its properties. Promptly notify the Agent of (a) the occurrence of any Reportable Event or Prohibited Transaction with respect to a US Pension Plan, (b) receipt of any notice from the PBGC of its intention to seek termination of any US Pension Plan or appointment of a trustee therefor, (c) an Obligor's (or member of its Controlled Group) intention to terminate or withdraw from any US Pension Plan or Multiemployer Plan which would result in the incurrence by it or any Subsidiary of any material liability, fine or penalty, (d) the occurrence of any event with respect to any US Pension Plan or Multiemployer Plan which would result in the incurrence by it or any Subsidiary of any material liability, fine or penalty, (e) any material increase in its contingent liability with respect to any post-retirement US Welfare Plan benefit under a US Welfare Plan other than liability for continuation coverage described in Part 6 of Subtitle B of Title 1 of ERISA or as required under US state law requirements for health continuation coverage, (f) a determination that any US Pension Plan is, or is expected to be, in "at-risk" status (within the meaning of Section 403 of the Revenue Code or Section 303 of ERISA), (g) the receipt by any Obligor or any member of its Controlled Group of any notice, or the receipt by any Multiemployer Plan from any Obligor or any member of its Controlled Group, concerning the imposition withdrawal liability or a determination that a Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), or in endangered or critical status (within the meaning of Section 432 of the Revenue Code or Section 305 of ERISA) and (h) the filing pursuant to Section 412(c) of the Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any US Pension Plan.
- (10) Environmental Matters. It shall observe and comply at all times and in all material respects with the provisions of all Environmental Laws applicable to it and its Property and shall provide evidence of ongoing compliance with those Environmental Laws that the Agent, acting reasonably, requires from time to time including, if so requested by the Agent, upon reasonable cause, having one or more environmental site assessment and/or compliance audits (each consisting of a non-intrusive phase one site assessment and recommendations with respect to the findings of the compliance audit, and other audits or investigations recommended in each phase one site assessment, including an intrusive phase two assessment) conducted and reported upon by an independent consultant engaged by the Obligors and acceptable to the Agent, acting reasonably. Without limiting the foregoing, it shall generate, treat, store or dispose of any Hazardous Materials only in the Ordinary Course of its business and in compliance in all material respects with all applicable Environmental Laws.
- (11) Know Your Client Matters. It shall promptly provide all information, including information concerning its direct and indirect holders of Equity Interests and other Persons exercising Control over it, and its and their respective directors and officers, including

supporting documentation and other evidence, as may be requested by the Agent or any prospective assignee or participant of the Agent, in order to comply with the requesting Person's policies and procedures relating to KYC Laws.

- (12) Anti-Corruption and Sanctions. It shall, and shall cause each other Obligor and its and their respective directors, officers and employees to, comply with all Anti-Corruption Laws and Sanctions.
- (13) Augusta Securities Account. It shall ensure that the Augusta Securities Accounts shall at all times contain Eligible Securities having an aggregate Fair Market Value of not less than an amount equal to (a) the aggregate principal amount of all of the Obligations outstanding at any such time; multiplied by (b) two.

### **6.3 Financial Reporting and Notice Requirements**

- (1) Financial Reports and Other Information. The Borrower shall deliver or cause the delivery of the following reports to the Agent. All financial statements shall be prepared in accordance with GAAP and other reports shall be in a form satisfactory to the Agent.
  - (a) As soon as practicable and in any event within forty-five (45) days after the end of each of the first three fiscal quarters, the Borrower shall deliver its interim unaudited Consolidated financial statements as at the end of the quarter, including balance sheet, statement of income and retained earnings, statement of changes in financial position and management discussion and analysis.
  - (b) As soon as practicable and in any event within ninety (90) days after the end of each of its fiscal years, the Borrower shall deliver its Consolidated annual financial statements (and the annual financial statements of other Obligors where prepared separately), including balance sheet, statement of income and retained earnings, statement of changes in financial position and management discussion and analysis. The financial statements shall be audited by an internationally recognized accounting firm and shall include a copy of the auditor's letter to the Borrower.
  - (c) The Borrower shall deliver a Compliance Certificate concurrently with the delivery of each of its quarterly and annual financial statements specified in Sections 6.3(1)(a) and 6.3(1)(b).
  - (d) As soon as practicable and in any event by no later than the earlier of (a) thirty (30) days after the end of each month and (b) delivery of the report described below to the board of directors of the Borrower, the Borrower shall deliver a monthly operating report on the development and operation of the Empire State Mine, in form satisfactory to the Lenders, acting reasonably.
  - (e) As soon as practicable and in any event by no later than (i) one hundred and twenty (120) days after the end of each fiscal year of each of Augusta Investments and Augusta LP, the Borrower shall deliver annual financial statements of each of Augusta Investments and Augusta LP, including balance sheet, statement of income and retained earnings, and statement of changes in financial position (which shall

be prepared on a “notice to reader basis” by Walsh King LLP) and (ii) fifteen (15) days after the end of each month, an investment portfolio statement for each of the Augusta Securities Accounts, which shall include a list of all Eligible Securities held therein and the Fair Market Value thereof as at the end of such month.

- (f) As soon as practicable and in any event within ninety (90) days after the end of each of its fiscal years, the Borrower shall provide the Agent with a copy of its annual Mine Plan for the next fiscal year and financial forecasts for that fiscal year, in each case with financial projections for the Borrower on a Consolidated basis, which shall include a projected income statement, projected balance sheet, projected statement of changes in funds, estimates of Capital Expenditures and tax losses and deferrals, all broken down quarterly, and otherwise in detail acceptable to the Agent.
- (g) The Borrower shall, promptly upon the filing, publishing, delivery or reporting by or on behalf of the Borrower or any other Obligor of any release, report, statement (including financial statements) or document to any regulatory authority, provide a copy of each such release, report, statement or document to the Agent.
- (h) The Borrower shall promptly provide all other information reasonably requested by the Agent from time to time concerning the business, financial condition and Property of the Obligors and evidencing compliance by the Obligors with their obligations under the Loan Documents.

If there is any relevant change in a subsequent period from the accounting policies, practices and calculation methods used by the Borrower in preparing any part of its financial statements, the Borrower shall provide the Agent with all information that the Agent requires to ensure that reports provided to the Agent after any such change are comparable to reports for the immediately preceding fiscal year. In addition, all calculations made for the purposes of this Agreement shall continue to be made based on the accounting policies, practices and calculation methods that were used in preparing the Borrower’s financial statements for periods prior to such change, unless and until the Parties agree, acting reasonably, on amendments to this Agreement to reflect those changes.

(2) Requirements for Notice.

- (a) The Borrower shall promptly, and in any event within three (3) Business Days, notify the Agent on learning of any Default and shall from time to time provide the Agent with all information requested by any Lender concerning the status of the Default.
- (b) The Borrower shall promptly, and in any event within five (5) Business Days, notify the Agent on learning of any default under any Material Contract, Material Permit or a Mining License (either by an Obligor or by any other party), or of any event that, with or without the giving of notice, lapse of time or any other condition subsequent, would constitute a default or would otherwise allow the termination of

any Material Contract, Material Permit or Mining License or the imposition of any material sanction on any party to a Material Contract, Material Permit or Mining License, and shall from time to time provide the Agent with all information requested by any Lender, acting reasonably, concerning the status of the default.

- (c) The Borrower shall promptly, and in any event within five (5) Business Days, notify the Agent on learning of any Dispute affecting any Obligor, and of any other circumstance affecting any Obligor, the result of which has had or could reasonably be expected to have a Material Adverse Effect, and shall from time to time provide the Agent with all information requested by any Lender, acting reasonably, concerning the status of the Dispute or circumstance.
- (d) The Borrower shall promptly, and in any event within five (5) Business Days, notify the Agent on (i) learning of Hazardous Materials located on, above or below the surface of any land that any Obligor occupies or controls (except those being stored, used and otherwise handled and existing in compliance in all material respects with Applicable Law), or contained in the soil or water constituting that land (in excess of levels prescribed under Applicable Law, or that would constitute an actual or potential breach of or non-compliance in any material respect with any Applicable Law), and (ii) the occurrence of any reportable release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials that has occurred on or from the land. The Borrower shall promptly thereafter provide the Agent with details, including cost, of the work required to remove, clean up or otherwise remedy the matters referred to in the notice.
- (e) The Borrower shall promptly, and in any event within five (5) Business Days, notify the Agent and provide copies upon receipt of all material written claims, complaints, notices or inquiries relating to the condition of its facilities and Property or compliance or non-compliance with Environmental Laws. The Borrower shall provide the Agent with details, including cost, of the work required to remove, clean up or otherwise remedy the matters referred to in such notice, claim, complaint, notice or inquiry.
- (f) The Borrower shall promptly, and in any event within five (5) Business Days, notify the Agent of any other event or occurrence that could reasonably be expected to have a Material Adverse Effect.
- (g) The Borrower shall promptly, and in any event within five (5) Business Days, notify the Agent of the commencement or the written threat of any expropriation, compulsory purchase or condemnation of any material assets, property or undertaking of any Obligor or of the institution of any proceedings related thereto.
- (h) The Borrower shall promptly, and in any event within five (5) Business Days, notify the Agent of the Fair Market Value of the assets of 1077615 US LLC exceeding \$100,000.

## 6.4 Negative Covenants

No Obligor shall do any of the things specified in this Section 6.4.

### (1) Liens.

- (a) No Obligor shall create, incur, assume, cause or permit any Lien upon or in respect of any of its Property, except for Permitted Liens.
- (b) No Obligor shall do or permit anything to adversely affect the ranking or validity of the Security except by incurring a Permitted Lien.

### (2) Debt and Payments of Debt.

- (a) No Obligor shall create, incur, assume or permit the existence of any Debt except Permitted Debt.
- (b) No Obligor shall prepay, redeem, defease, repurchase or otherwise acquire any of its Debt. For greater certainty, no amounts may be paid under any Augusta Indemnity unless and until Payment in Full.

### (3) Payments of Dividends and Fees.

- (a) No Obligor shall declare or pay any dividend, return of capital or other distribution (in cash, securities or other Property) of, on or in respect of, any Equity Interests of any Obligor except for (i) payments to another Obligor; and (ii) Permitted Distributions.
- (b) No Obligor shall retire, redeem, retract, purchase, or otherwise acquire its Equity Interests except from another Obligor, reduce its stated capital or make any payment of any kind whatsoever to effect any of the foregoing except to another Obligor.
- (c) No Obligor shall pay any management, consulting or similar fee or any bonus payment or comparable payment (including, for certainty, the Augusta Guarantee Fee), or make any payment by way of gift or other gratuity, to: (x) any director or officer of such Obligor (but excluding wages, payments made in connection with long-term incentive plans, and bonuses, in each case paid in the ordinary course of business and consistent with past practice); (y) any Affiliate of such Obligor (other than another Obligor) or a director or officer thereof; or (z) in the case of the Augusta Guarantee Fee, Augusta Investments or Augusta LP, except if:
  - (i) in the case of any management, consulting or similar fee: (A) such fee reflects the fair market value of services actually performed by the payees; and (B) no Default or Event of Default has occurred and is continuing at the time of the proposed payment or would result therefrom; and

- (ii) in the case of the Augusta Guarantee Fee or any other bonus payment or comparable payment, or gift or other gratuity: (A) at the time of the proposed payment, the Borrower has available liquidity of at least \$3,000,000 (by way of Unrestricted Cash and/or available credit under the Revolving Credit) calculated on a pro forma basis after giving effect to the proposed payment; and (B) no Default or Event of Default has occurred and is continuing at the time of the proposed payment or would result therefrom; provided that, the aggregate amount of the Augusta Guarantee Fee paid by all Obligor in any fiscal year shall [REDACTED]
- (4) Financial Assistance. No Obligor shall make any loan to or acquire Debt of any other Person, guarantee, provide an indemnity in respect of, endorse or otherwise become liable for any debt, liability or obligation of any other Person, or give other financial assistance of any kind to any other Person, except for:
  - (a) guarantees and indemnities given as part of the Security;
  - (b) guarantees of debts, liabilities and obligations of other Obligor that are Permitted Debt;
  - (c) loans and advances to employees of the Obligor not exceeding an aggregate of \$500,000 outstanding at any time for all Obligor;
  - (d) financial assistance by way of extending trade credit to its customers in the Ordinary Course;
  - (e) endorsement of negotiable instruments for collection or deposit in the Ordinary Course; and
  - (f) the Augusta Investments Indemnity, subject to the Augusta Investments Subordination Agreement, and the Augusta LP Indemnity, subject to the Augusta LP Subordination Agreement.
- (5) Acquisition of Property. No Obligor shall acquire any Property of any Person (including any Equity Interests), or agree to do so except for:
  - (a) Property acquired in connection with a Permitted Acquisition;
  - (b) Property acquired through transactions contemplated in the definition of Permitted Liens;
  - (c) acquisitions of Cash Equivalents in the Ordinary Course; and
  - (d) other Property as contemplated by the Mine Plan.
- (6) Subsidiaries and Equity Interests. No Obligor shall have any Subsidiaries or hold or acquire Equity Interests of any other Person except:

- (a) other Obligor as specified on Schedule 5.1(19) as of the Closing Date, subject to changes permitted under Section 6.4(11);
  - (b) the Equity Interests in any other Person that it owns as of the Closing Date as specified in Schedule 5.1(19);
  - (c) Equity Interests of a Subsidiary that is wholly-owned by the Borrower, directly or indirectly, that is newly established after the Closing Date and, if it is a Material Subsidiary, the Borrower has complied with Section 3.1(3); and
  - (d) any Equity Interest or Subsidiary acquired through a Permitted Acquisition or resulting from any merger, amalgamation, consolidation, corporate reorganization or other transaction among Obligor permitted under Section 6.4(11).
- (7) Derivative Transactions. No Obligor shall enter into any Derivative Transaction except for the purposes of prudent management of its interest rate, foreign currency or commodity price exposure and not for speculative purposes.
- (8) Dispositions of Property. No Obligor shall sell, lease, sell and lease-back, surrender or otherwise dispose of any of its Property or any rights or interests in its Property or agree to do so except for:
- (a) sales of inventory, product or produced or unprocessed minerals, metals or other mineral or extracted materials disposed of in the Ordinary Course;
  - (b) the sale, surrender or other disposition of obsolete or redundant equipment; and
  - (c) so long as no Default has occurred that is continuing, sales, leases and other dispositions between Obligor.
- (9) Business. No Obligor shall carry on any business except the business carried on by the Obligor at the Closing Date as described in Schedule 5.1(19).
- (10) Arm's Length Transactions. No Obligor shall enter into any transaction of any kind with a Related Party of such Obligor, except on a commercially reasonable basis as if it were dealing with the Person on an arm's length basis.
- (11) Mergers and Dissolutions. No Obligor shall consolidate, amalgamate or merge with any other Person, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing Constatng Documents, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution, except in each case for a transaction involving only one or more Obligor if the Borrower gives the Agent at least thirty (30) days' prior written notice of the transaction and promptly takes whatever steps and delivers whatever documents (including opinions of counsel satisfactory to the Agent) are reasonably required to ensure that the Lenders' position is not adversely affected as a result; provided that, no Change of Control may occur and any such transaction may not be completed until the Agent is assured, in its sole discretion, that Lenders' position will not be adversely affected as a result. Notwithstanding the foregoing, the Borrower may not

liquidate, wind-up or dissolve itself, or permit itself to be liquidated, wound-up or dissolved.

- (12) Changes of Name. No Obligor shall change its name, adopt a French form of name or change its jurisdiction of incorporation or formation without providing the Agent with at least thirty (30) days' prior written notice of the change and promptly taking other steps, if any, as the Agent reasonably requests to maintain the Security and the other Loan Documents so that the Lenders' position is not adversely affected.
- (13) Changes of Location. No Obligor shall permit its chief executive office or any of its tangible Property to be located out of the respective jurisdictions specified on Schedule 5.1(19) as of the Closing Date (except for goods in transit, and goods that are normally used in more than one jurisdiction if the latter goods are equipment or are inventory leased or held for lease by it) without providing the Agent with at least thirty (30) days' prior written notice of the change and promptly taking any other steps that the Agent reasonably requests to maintain the Security and the other Loan Documents so that the Lenders' position is not adversely affected.
- (14) Change of Year End. No Obligor shall change its fiscal year end.
- (15) Change of Auditors. No Obligor shall change its auditors, unless an internationally recognized accounting firm is appointed.
- (16) Change of Control. No Obligor shall enter into, or agree to enter into, any transaction that would result in, nor shall any Obligor otherwise cause or permit, a Change of Control.
- (17) Material Contracts.
  - (a) No Obligor shall assign (except to another Obligor or as part of the Security) or terminate any Material Contract (except at the expiry of its term by lapse of time) or accept the surrender of any Material Contract to which it is a party, except, so long as the termination of such Material Contract would not result in a Material Adverse Effect, then if, within thirty (30) days of such termination, such Material Contract has been replaced by a Replacement Material Contract.
  - (b) No Obligor shall cause or permit any material amendment or material modification to, grant any material waiver of any material term of, or grant any material consent or material concession under, any Material Contract to which it is a party.
- (18) Restrictive Agreements. No Obligor shall enter into any Contract restricting (a) the ability of any Obligor to comply with the Loan Documents, including by creating or causing the creation of Liens to secure payment of the Obligations and other debts, liabilities and obligations to the Agent, (b) the ability of any Obligor to amend, supplement, restate or replace any Loan Document or (c) the ability of any Obligor to make payments of any kind to any other Obligor.

- (19) Joint-Ventures, Etc. Except as set out in Schedule 5.1(20), no Obligor shall enter into any partnership, joint-venture, co-venture, profit-sharing or other similar arrangement or association.
- (20) Sanctions. The Borrower shall not use any part of the proceeds of any Advance directly or, to the knowledge of the Borrower, indirectly, (a) in violation of any Sanctions, (b) in any manner which will result in the imposition of Sanctions against any Person (including any Person participating in the transactions contemplated hereby, whether as an Obligor or otherwise) or (c) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws.
- (21) Defined Benefit Pension Plan. No Obligor shall establish, sponsor, administer, contribute to, participate in, or assume any liability (including any contingent liability) under any Canadian Pension Plan that contains a “defined benefit provision” as such term is defined under the *Income Tax Act* (Canada).
- (22) Bank Accounts. The Borrower shall not and shall not suffer or permit any Obligor to maintain any bank account (except operating accounts that have an aggregate balance not in excess of an amount necessary to cover day-to-day operating needs of the Borrower and its Subsidiaries) with any financial institution other than a Lender or Bank of Montreal.
- (23) Augusta Indemnities. No Obligor shall cause or permit any amendment or other modification to either Augusta Indemnity, without the Agent’s prior written consent.
- (24) Augusta Security. No Obligor shall grant or suffer to exist any Lien in favour of or for the benefit of Augusta Investments or Augusta LP on any assets or property of the Obligors or their Subsidiaries unless (a) the Agent also has a Lien on such assets or property and (b) such Lien is subject to an Augusta Subordination Agreement.

## **6.5 Use of Insurance Proceeds**

- (1) Unless otherwise specified in Section 2.4(2) or in this Section 6.5, all proceeds of insurance required to be maintained by the Obligors under the terms of this Agreement shall be paid to the Agent to be applied by it on account of the Secured Obligations.
- (2) Proceeds of liability insurance shall be paid to the Person to whom the affected Obligor is liable.
- (3) Unless otherwise specified in Section 2.4(2), the proceeds of business interruption insurance shall be paid to the Agent to be applied by it on account of the Secured Obligations as they fall due from time to time (including as a result of any demand for payment of the Secured Obligations), without prejudice to the Borrower’s rights to further Advances under the Revolving Credit, subject to the terms and conditions hereof. If the Revolving Credit is repaid in full at any time, the proceeds may be used to carry on the business of the Obligors as long as the Agent is satisfied, acting reasonably, that adequate provision has been made for payment of the Secured Obligations.

- (4) All insurance proceeds held by the Agent shall, unless and until the proceeds are applied to payment of the Secured Obligations, be held as part of the Security.

## **6.6 Intragroup Obligations**

- (1) If and for as long as a Default has occurred and is continuing or would result from payment of Intragroup Obligations by one Obligor to another, the payment of Intragroup Obligations is hereby postponed until Payment in Full, and:
- (a) any Obligor that is indebted to another Obligor shall neither make nor be entitled to make, and any Obligor to whom the Intragroup Obligations are owed shall not receive or be entitled to receive, any payment, prepayment or other compensation in respect of the Intragroup Obligations, and if an Obligor to whom the Intragroup Obligations are owed receives any payment, prepayment or other compensation in respect of the Intragroup Obligations contrary to this Section 6.6, the payment, prepayment or compensation shall be held by the recipient Obligor in trust for the Lenders, separate and apart from its own property, and shall be immediately paid over to the Agent for application to the Secured Obligations; and
  - (b) no Obligor to whom Intragroup Obligations are owed shall be entitled to accelerate the time for payment of the Intragroup Obligations, petition the indebted Obligor into bankruptcy or participate in any bankruptcy proceeding of the indebted Obligor, initiate or participate in any similar proceeding (including a proceeding in respect of the indebted Obligor under the *Companies' Creditors Arrangement Act* (Canada)), or initiate or participate in any proceeding claiming judgment for payment or performance of any of those Intragroup Obligations.

If, based on any future consent of all of the Lenders, any Obligor holds security for any Intragroup Obligations, each Obligor acknowledges that, under the terms of such security it has given, all Intragroup Obligations owing to it are assigned as security to the Agent. Upon any Secured Obligations becoming due and payable under Section 7.2, the Agent may terminate the postponement in Section 6.6(1) as to any or all Intragroup Obligations, in which case those Intragroup Obligations shall be paid to the Agent or as it directs free of any set off, counterclaim, defence or other right that the Obligors, or any of them, owing Intragroup Obligations may assert against the Obligors, or any of them, to whom Intragroup Obligations are owed.

## **6.7 Performance of Obligations**

If any Obligor has failed to perform or cause to be performed any of its covenants or agreements in any Loan Document (after demand for performance has been made if no Event of Default has occurred and is continuing), the Agent may, on the instructions of the Required Lenders, but shall be under no obligation to, perform or cause to be performed (or further perform or cause to be performed) any of those covenants or agreements in any manner deemed fit by the Required Lenders, without waiving any rights to enforce the Loan Documents as a result. Any amounts paid by the Agent as aforesaid shall be reimbursed by the Lenders in accordance with their Applicable Percentages, shall be repaid

by the Borrower to the Agent on behalf of the Lenders on demand and until so repaid shall be secured by the Security.

## **ARTICLE 7 DEFAULT**

### **7.1 Default**

Each of the following events shall constitute an Event of Default under this Agreement:

- (a) the Borrower fails to pay or provide for any amount of principal (including any amount in accordance with Section 9.7) when due;
- (b) the Borrower fails to pay any other Obligation within three (3) Business Days of when due;
- (c) an Obligor, Augusta Investments or Augusta LP makes any representation, warranty or certification under any of the Loan Documents, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document, that is incorrect, incomplete or misleading when made or deemed to be made; provided that, if such false representation, warranty or certification is capable of being corrected, and the Obligor, Augusta Investments or Augusta LP, as the case may be, causes such representation, warranty or certification to be corrected by no later than ten (10) days after it is made or deemed made, the falseness of such representation, warranty or certification or statement shall not constitute an Event of Default;
- (d) there is a breach of Section 6.2(13), 6.3(2) or 6.4;
- (e) there is a breach of any other provision of any Loan Document (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 7.1) that is not corrected or otherwise satisfied within ten (10) days after the Borrower, Augusta Investments or Augusta LP, as the case may be, learns of the breach or the Agent gives written notice of the breach, whichever is earlier;
- (f) a default or other event or circumstance occurs in connection with Debt of any Obligor, other than the Obligations, in an aggregate amount of \$1,000,000 or more, if the effect is to cause or permit the acceleration of the due date of that Debt (whether or not acceleration actually occurs) or to require the prepayment, repurchase, redemption or defeasance of that Debt before its scheduled maturity, or any Obligor fails to pay any such Debt when due;
- (g) Augusta Investments, Augusta LP, any Obligor or any other party to a Loan Document denies its obligations under any Loan Document or claims any Loan Document to be invalid, unenforceable or withdrawn in whole or in part, including by purporting to terminate any guarantee or indemnity forming part of the Security;

- (h) the performance of any Loan Document becomes unlawful, any Loan Document or any provision of any Loan Document is invalidated or made unenforceable by any Applicable Law, any Loan Document is determined to be invalid or unenforceable by any Governmental Authority, in each case in whole or in part;
- (i) any Lien on any Property that individually or in the aggregate has a Fair Market Value in excess of \$500,000 purported to be created by the Security ceases to be a valid, perfected Lien in the collateral described in the relevant document, having first priority but for Permitted Liens, except as a result of being released by the Agent in accordance with this Agreement, and the Borrower or any applicable Obligor shall have failed to remedy such default within ten (10) Business Days of receipt of notice thereof from the Agent;
- (j) Augusta Investments, Augusta LP or any Obligor does not, is unable to, or admits its inability to meet or pay its obligations as they generally become due, ceases or threatens to cease to carry on its business (except as expressly permitted in this Agreement), declares any moratorium on its obligations, proposes a compromise or arrangement between it and any creditor, or otherwise becomes insolvent;
- (k) Augusta Investments, Augusta LP or any Obligor makes an assignment in bankruptcy, makes a proposal to its creditors or files notice of its intention to do so, institutes any other proceeding under Applicable Law (including any applicable corporations legislation to the extent the relief sought under such corporations legislation relates to or involves the compromise, settlement, adjustment or arrangement of debt) seeking to adjudicate it a bankrupt or an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors, composition of it or its debts or any other similar relief;
- (l) Augusta Investments, Augusta LP or any Obligor applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver and manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or a substantial part of its Property;
- (m) any petition is filed, application made or other proceeding instituted against or in respect of Augusta Investments, Augusta LP or any Obligor in any jurisdiction seeking any of the results described in Sections 7.1(k) and 7.1(l), and Augusta Investments, Augusta LP or such Obligor files an answer admitting the material allegations made against it or fails to defend the proceeding diligently and in good faith by appropriate proceedings, or the relief sought in the proceeding is granted (whether or not subject to appeal), or the proceeding is not dismissed or stayed within sixty (60) days of being instituted;
- (n) any writ of execution, enforcement charge, garnishment, attachment or other similar process in connection with any judgment representing claims in an aggregate of \$1,000,000 or more for all Obligors at any time are issued or levied or claimed against any of their Property and are not released, bonded, satisfied,

discharged, vacated, stayed or accepted for payment by an insurer within sixty (60) days after their entry, commencement or levy;

- (o) if a final judgement, execution, writ of seizure and sale, sequestration or decree for the payment of money due shall have been obtained or entered against an Obligor in an amount in excess of \$1,000,000 (individually or in the aggregate for all Obligors) and such judgement, execution, writ of seizure and sale, sequestration or decree shall not have been and remain vacated, satisfied, bonded, discharged or stayed within sixty (60) days;
- (p) a Change of Control occurs;
- (q) the expropriation, abandonment or condemnation of the Empire State Mine or any other Mining Property that constitutes a mine or any material part thereof;
- (r) the cessation of production or operations at the Empire State Mine or any other Mining Property that constitutes a mine for a period of thirty (30) consecutive days;
- (s) any Material Permit expires or is withdrawn, cancelled, terminated, or modified to the material detriment of the Obligors or their Property or their business taken as a whole, and is not reinstated or replaced within ten (10) days afterwards without material impairment to the Obligors or their Property or businesses taken as a whole;
- (t) a default by an Obligor or any other party to any Material Contract occurs, or any other event occurs under any Material Contract, and continues without being waived after any applicable grace period specified in the Material Contract, if the effect of the default or other event (if not waived) is to terminate, or permit the termination of, the Material Contract (unless such Material Contract has been replaced by a Replacement Material Contract within thirty (30) days) or if the default or other event results in a declaration of non-performance being issued or similar step being taken with respect to an Obligor and the termination or similar step would have a Material Adverse Effect;
- (u) the institution of any steps by any Obligor or any applicable regulatory authority to terminate a Canadian Pension Plan if, as a result of such termination, any such Obligor may be required to make an additional contribution to such Canadian Pension Plan that would be reasonably expected to have a Material Adverse Effect;
- (v) any of the following events shall occur or exist under ERISA with respect to any Obligor or any member of a Controlled Group: (i) any Reportable Event shall occur; (ii) complete or partial withdrawal from any Multiemployer Plan shall occur; (iii) any Prohibited Transaction shall occur; (iv) the filing of a notice of intent to terminate a US Pension Plan, the treatment of a US Pension Plan amendment as a termination under Section 4041(e) of ERISA, or the commencement of proceedings by the PBGC to terminate a US Pension Plan; (v) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; (vi) a determination that any US Pension Plan is, or

is expected to be, in “at-risk” status (within the meaning of Section 403 of the Revenue Code or Section 303 of ERISA), (vii) the receipt by any Obligor or any member of its Controlled Group of any notice, or the receipt by any Multiemployer Plan from any Obligor or any member of its Controlled Group, concerning the imposition of withdrawal liability or a determination that a Multiemployer Plan is, or is expected to be, “insolvent” (within the meaning of Section 4245 of ERISA), or in endangered or critical status (within the meaning of Section 432 of the Revenue Code or Section 305 of ERISA), (viii) a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA, (ix) any material increase in contingent liability with respect to any post-retirement US Welfare Plan benefit under a US Welfare Plan other than liability for continuation coverage described in Part 6 of Subtitle B of Title 1 of ERISA or as required under US state law requirements for health continuation coverage or (x) the filing pursuant to Section 412(c) of the Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any US Pension Plan; in each case above, such event or condition (together with all other events or conditions identified above), could subject such Obligor or any member of a Controlled Group to any tax, penalty or other liability which would reasonably be expected to result in a an additional liability or obligation in excess of \$500,000 or have a Material Adverse Effect;

- (w) the occurrence of an “Event of Default”, “Termination Event” or any other event specified in a Secured Hedge Arrangement that entitles the Secured Hedge Counterparty thereto to cause its early termination in accordance with the terms thereof; or
- (x) an event or circumstance occurs that has a Material Adverse Effect.;

## **7.2 Acceleration and Termination of Rights**

- (1) If any Event of Default occurs and is continuing, the Lenders shall be under no further obligation to make Advances and the Agent may, in its discretion, give notice to the Borrower (a) declaring the Lenders’ obligations to make Advances to be terminated, in which case they shall terminate immediately, and/or (b) declaring the Obligations or any of them to be due and payable, in which case they shall be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are expressly waived by the Borrower.
- (2) Notwithstanding Section 7.2(1), upon the occurrence of an Event of Default in Sections 7.1(j), 7.1(k), 7.1(l) or 7.1(m), then without prejudice to the other rights of the Lenders, without any notice or action of any kind by the Agent or the Lenders, and without presentment, demand or protest, the Lenders’ obligation to make Advances shall immediately terminate and the Obligations shall immediately become due and payable.

### **7.3 Remedies**

On the occurrence of any event by which any of the Obligations become due and payable under Section 7.2, the Agent may take any action or proceedings in compliance with Applicable Law that the Required Lenders in their sole discretion deem expedient to enforce the Security, all without any additional notice, presentment, demand, protest or other formality, all of which are expressly waived by the Obligors.

### **7.4 Interest After Stay of Proceedings**

If a stay of proceedings is obtained or ordered in respect of the Borrower under the provisions of the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada), then without prejudice to the Lenders' rights to contest the stay, the Borrower agrees to continue to pay interest and fees on all amounts due to the Lenders in accordance with this Agreement. The Borrower acknowledges that permitting the Borrower to continue to use the proceeds of Advances after a stay is obtained or ordered constitutes valuable consideration in the same way that permitting the Borrower to use leased premises constitutes valuable consideration.

### **7.5 Saving**

Neither the Agent nor any Lender shall be under any obligation to the Obligors or any other Person to realize any collateral that is subject to the Security or enforce all or any part of the Security or to allow any of the collateral to be sold, dealt with or otherwise disposed of. Neither the Agent nor any Lender shall be responsible or liable to the Obligors or any other Person for any loss or damage upon the realization or enforcement of, the failure to realize or enforce the Security or any part of it, the failure to allow any of the collateral to be sold, dealt with or otherwise disposed of or any act or omission on their respective parts or on the part of any director, officer, Agent, servant or adviser in connection with any of the foregoing, except that the Agent or a Lender may be responsible or liable for any loss or damage arising from its wilful misconduct or gross negligence.

### **7.6 Third Parties**

No Person dealing with any Lender, the Agent or any other Representative of the Lenders is required to determine (a) whether the Security has become enforceable, that the powers that the Lenders, the Agent or the other Representative are purporting to exercise have become exercisable, or any Obligations remain outstanding, (b) as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, (c) otherwise as to the propriety or regularity of any sale or other disposition or any other dealing with the collateral charged by the Security or any part of it, or (d) how any payment to the Lenders, the Agent or any other Representative has been or will be applied. Any Person who acquires collateral charged by the Security from the Lenders, the Agent or any other Representative in good faith will acquire it free from any interest of the Obligors.

## **7.7 Power of Attorney**

Each Obligor irrevocably constitutes and appoints any Representative of the Agent its due and lawful attorney with full power of substitution in its name and on its behalf to enforce any right, title or interest of the Agent in, to or under all or any part of the Security or any obligation to that Obligor or remedy available to that Obligor. This appointment is irrevocable to the maximum extent permitted by Applicable Law. The Agent shall only exercise its rights under this power of attorney after the occurrence of and during the continuance of an Event of Default, except that the Agent may exercise its rights under this power of attorney from the date of this Agreement with respect to the preparation and filing of financing statements and such other documents and instruments as may be required to register or give notice of or perfect or preserve its Lien.

## **7.8 Remedies Cumulative**

The rights and remedies of the Agent under the Loan Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by Applicable Law. Any single or partial exercise by the Agent and/or Lenders of any right or remedy for a default or breach of any agreement, term, covenant or condition in this Agreement shall not be deemed to be a waiver of or to alter, affect, or prejudice any other right or remedy or other rights or remedies to which they may be lawfully entitled for the same default or breach. Any waiver by the Lenders or the Agent of the strict observance, performance or compliance with any term, covenant, condition or other matter contained in any Loan Document and any indulgence granted, either expressly or by course of conduct, by the Lenders or the Agent shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Lenders or the Agent under this Agreement or any other Loan Document or instrument executed pursuant to this Agreement as a result of any other default or breach hereunder or thereunder.

## **7.9 Set-Off or Compensation**

If an Event of Default has occurred and is continuing, each Lender and each of its Affiliates is authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by that Lender or any of its Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations to that Lender, irrespective of whether or not the Lender has made any demand under this Agreement or any other Loan Document and although the obligations of the Obligor may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding the deposit or obligated to an Obligor. If a Defaulting Lender or its Affiliate exercises any such right of set off, (a) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 8.9 and, pending payment, shall be segregated by the Defaulting Lender or its Affiliate from its other funds and deemed to be held in trust for the benefit of the Agent and the Lenders, and (b) the Defaulting Lender shall promptly provide the Agent with a statement describing in reasonable detail the Obligations owing to the Defaulting

Lender as to which the right of set off was exercised. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Agent after any such set-off and application, but the failure to give notice shall not affect the validity of the set-off and application. If any Affiliate of a Lender exercises any rights under this Section 7.9, it shall share the benefit received in accordance with Section 7.10 as if the benefit had been received by the Lender of which it is an Affiliate.

## **7.10 Direct Payments**

- (1) If any Secured Party, by exercising any right of set-off or counterclaim or otherwise, obtains any payment or other reduction that might result in that Secured Party receiving payment of a proportion of the aggregate amount of its Secured Obligations greater than its *pro rata* share of them as provided in this Agreement, then the Secured Party receiving the payment or other reduction shall (x) notify the Agent of that fact, and (y) purchase (for cash at face value) participations in the Secured Obligations owing to the other Secured Parties, or make other adjustments as shall be equitable, so that the benefit of all those payments shall be shared by the Secured Parties rateably in accordance with the aggregate amount of Secured Obligations owing to them, provided that:
  - (a) if any participation is purchased and all or any portion of the payment giving rise to it is recovered, the participation shall be rescinded and the purchase price restored to the extent of the recovery, without interest;
  - (b) the provisions of this Section shall not be construed to apply to:
    - (i) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender);
    - (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances to any assignee or participant, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply);
    - (iii) any payment in respect of Secured Hedge Obligations or Secured Cash Management Obligations made while no Event of Default has occurred and is continuing;
    - (iv) any netting under or as between Secured Hedge Arrangements;
    - (v) netting as between bank accounts maintained buy a Lender and/or its Lender Affiliates; and
    - (vi) any payment to which a Lender is entitled as a result of any form of credit protection obtained by that Lender.

- (2) The Obligors consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Obligor rights of set-off and counterclaim and similar rights of Lenders with respect to that participation as fully as if the Lender were a direct creditor of each Obligor in the amount of the participation.

## **ARTICLE 8 THE AGENT AND THE LENDERS**

### **8.1 Authorization of Agent**

- (1) Each Lender hereby irrevocably appoints National Bank of Canada as the Agent to act on its behalf as the Agent under the Loan Documents and authorizes the Agent to take the actions on its behalf and to exercise the powers that are delegated to the Agent by the terms of the Loan Documents, together with actions and powers that are reasonably incidental to them. The use of the term “Agent” in any Loan Document with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligation arising under agency doctrine of any Applicable Law. Instead, the term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties.
- (2) Without limiting Section 8.1(1), each Lender grants to the Agent:
  - (a) a power of attorney for the purposes of Applicable Laws in respect of the Security, to sign documents comprising the Security from time to time as the party accepting the grant of the Security; and
  - (b) the right to delegate its authority as attorney to any other Person, whether or not an officer or employee of the Agent.

In addition, each Lender hereby authorizes and directs the Agent to enter into and perform its obligations under each of the Augusta Subordination Agreements.

### **8.2 Rights as a Lender**

The Person serving as the Agent shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise them as though it were not the Agent and, unless otherwise expressly indicated or unless the context otherwise requires, the term “Lender” or “Lenders” includes the Person serving as the Agent in its individual capacity. That Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate of an Obligor as if the Person were not the Agent and without any duty to account to the Lenders.

### **8.3 Exculpatory Provisions**

- (1) The Agent shall not have any duties or obligations except those expressly specified in the Loan Documents. Without limiting the generality of the foregoing, the Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
  - (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or another number or percentage of the Lenders that is expressly provided for in the Loan Documents), but the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Applicable Law; and
  - (c) shall not, except as expressly specified in the Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as the Agent or any of its Affiliates in any capacity.
- (2) The Agent shall not be liable for any action taken or not taken by it (a) with the consent or at the request of the Required Lenders (or another number or percentage of the Lenders that is necessary, or that the Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (b) in the absence of its own gross negligence or wilful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Agent by the Borrower or a Lender.
- (3) Except as otherwise expressly specified in this Agreement, the Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with any Loan Document, (b) the contents of any certificate, report or other document delivered under or in connection with any Loan Document, (c) the performance or observance of any of the covenants, agreements or other terms or conditions in any Loan Document or the occurrence of any Default, (d) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (e) the satisfaction of any condition specified in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Agent.

#### **8.4 Reliance by Agent**

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying on it. In determining compliance with any condition to the making of an Advance, that by its terms must be fulfilled to the satisfaction of the Lenders, the Agent may presume that the condition is satisfactory to the Lenders unless the Agent has received notice to the contrary from any Lender before the making of the Advance. The

Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with their advice.

## **8.5 Delegation of Duties**

The Agent may perform any and all of its duties and exercise its rights and powers under any Loan Document by or through any one or more sub-agents appointed by the Agent from among the Lenders (including the Person serving as Agent) and their respective Affiliates. The Agent and any sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Agent shall apply to any sub-agent and to the Related Parties of the Agent and any sub-agent, and shall apply to their respective activities in connection with the syndication of the Revolving Credit as well as activities as Agent.

## **8.6 Administration of the Revolving Credit**

- (1) Any reference in this Agreement to the Agent means, where the Agent is also a Lender, the agency department of that Lender specifically responsible for acting as Agent under and in connection with this Agreement. In acting as Agent, the agency department will be treated as a separate entity from any other department or division of the Lender in question. Without limiting the foregoing, the Agent shall not be deemed to have notice of a document or information received by any other department or division of that Lender, nor will that Lender be deemed to have notice of a document or information received by the Agent.
- (2) Unless otherwise specified in this Agreement, the Agent shall perform the following duties:
  - (a) Subject to Section 8.4, the Agent shall ensure that all conditions precedent to any Advance have been fulfilled in accordance with the terms of this Agreement, unless waived in accordance with this Agreement.
  - (b) The Agent shall take delivery of each Lender's share of an Advance and disburse all Advances in accordance with Article 9.
  - (c) The Agent shall use reasonable efforts to collect all sums due and payable by the Borrower pursuant to this Agreement and shall remit all payments to the Lenders in accordance with this Agreement.
  - (d) The Agent shall hold the Security and all other Loan Documents on behalf of the Lenders, maintain records showing all Advances made by the Lenders, all payments made by the Borrower to the Agent, all remittances made by the Agent to the Lenders and all fees and other sums received by the Agent and, except for records and documents relating to the fees payable under the Engagement Letter, allow each Lender and its advisors to examine those records and documents at its own expense. The Agent shall provide each Lender with copies of this Agreement, the Security and other Loan Documents (except the Engagement Letter) in customary record books and/or CD's, which shall be provided at the expense of the Borrower.

Otherwise, the Agent shall provide any Lender, upon reasonable notice and at the Lender's expense, with copies of records and documents held by the Agent in connection with this Agreement that the Lender may reasonably require from time to time.

- (e) The Agent shall following receipt of any material written notice or other material written communication from an Obligor pursuant to this Agreement, deliver that notice or other communication to each Lender.
  - (f) The Agent shall forward to each Lender, on request, an up-to-date loan status report.
  - (g) The Agent shall notify each Lender on learning of the occurrence of a Default. The Agent shall have no other duty or obligation whatsoever to provide any notice to the Lenders concerning the creditworthiness of any Obligor. Each Lender shall notify the Agent of any Default of which it becomes aware.
- (3) The Agent may, notwithstanding and without limiting Section 3.1(6), take all necessary steps to comply with registration requirements so that the Security remains perfected under Applicable Laws, but each Lender shall notify the Agent of any circumstance that might affect the perfection of the Security of which the Lender becomes aware.
- (4) The Agent may take the following actions only with the prior consent of the Required Lenders, subject to Sections 8.6(5), 8.6(6) and 8.6(7) or unless otherwise expressly specified in this Agreement:
- (a) amend, modify or waive any term of this Agreement or any other Loan Document, including waiver of a Default if the subject matter of the waiver does not fall within the matters covered by Section 8.6(5), or exercise any right of approval conferred on the Lenders by this Agreement;
  - (b) notify any Obligor of any matter of which notice may be required or desirable under or in connection with the Loan Documents, except that the Agent shall, without direction from the Lenders, give the Borrower notice of any payment that is due or overdue under the terms of this Agreement unless the Agent considers that it should request the direction of the Required Lenders, in which case the Agent shall promptly request that direction;
  - (c) declare an Event of Default, declare the Obligations to be immediately due and payable, take action to enforce performance of the Obligations or to realize on the Security including by appointment of a receiver, the exercise of powers of sale given by the Security or by Applicable Law or foreclosure proceedings, and/or pursue any other legal remedy; and
  - (d) pay insurance premiums, Taxes and any other sum reasonably required to protect the interests of the Lenders.

- (5) The Agent may take the following actions only with the unanimous consent of the Lenders, unless otherwise specified in this Agreement:
- (a) reduce the rate or amount of any interest or fee payable under this Agreement, or postpone payment of any interest or fee, except to the extent that waiver of a Default may in effect result in waiver of any post-Default increase in interest or fees or that an amendment relating to a financial covenant that determines which of various specified interest or fee rates applies may in effect cause a reduction, postponement or waiver of interest or fees;
  - (b) increase the amount of the Revolving Credit or change the several liability of the Lenders;
  - (c) waive payment of any part of the Obligations, or postpone the date for or reduce the amount of any payment under Section 9.7 or any scheduled repayment (including the maturity date) or mandatory prepayment or reduction of the Revolving Credit;
  - (d) change the currency in which Advances are made by the Lenders or payments are made by the Borrower;
  - (e) subject to Section 8.6(7), discharge any Property from the Lien of any Security, release any obligation to provide or perfect Security or release any Obligor generally from its obligations as an Obligor;
  - (f) amend the definition of "Required Lenders," this Section 8.6(5) or any other provision of this Agreement that specifies the number or percentage of Lenders required to make any decision under or in connection with this Agreement;
  - (g) amend any aspect of this Agreement that would affect the sharing of payments specified in this Agreement;
  - (h) waive an Event of Default under Sections 7.1(j), 7.1(k), 7.1(l) or 7.1(m).
- (6) Except as expressly contemplated in this Agreement, no Lender's Commitment or Applicable Percentage may be amended without the consent of that Lender. In addition, no amendment, modification or waiver affecting the rights or obligations of the Agent may be made without its respective consent. No amendment to the definition of "Defaulting Lender" or Section 8.9 may be made without the consent of the Agent. An amendment, modification or waiver affecting the Engagement Letter may be made only by the parties to it.
- (7) Notwithstanding Sections 8.6(4), 8.6(5) and 8.6(6), the Agent may, without the consent of any Lender or Obligor, make amendments to the Loan Documents that are for the sole purpose of curing any ambiguity, defect or inconsistency that is clerical or not material, but shall promptly notify the Lenders and the Borrower if it does so. The Agent may also, without the consent of any Lender, discharge any Security and/or release any Obligor other than the Borrower to the extent necessary to allow completion of any sale or other

disposition of Property (including Equity Interests of an Obligor) or any corporate reorganization permitted by this Agreement or in respect of which the Lenders or Required Lenders have, as applicable, consented or waived the requirements of this Agreement.

- (8) As between the Obligors, on the one hand, and the Agent and the Lenders, on the other hand:
- (a) all statements, certificates, consents and other documents that the Agent purports to deliver on behalf of the Lenders or the Required Lenders shall be binding on each Lender, and the Obligors shall not be required to ascertain or confirm the authority of the Agent in delivering the documents;
  - (b) all certificates, statements, notices and other documents that are delivered by the Obligors to the Agent in accordance with this Agreement shall be deemed to have been duly delivered to each Lender; and
  - (c) all payments that are delivered by the Borrower to the Agent in accordance with this Agreement shall be deemed to have been received by each Lender entitled to payment.
- (9) Except in its own right as a Lender, the Agent shall not be required to advance its own funds for any purpose, and in particular, shall not be required to pay with its own funds insurance premiums, taxes or public utility charges or the cost of repairs or maintenance with respect to the Property that is the subject matter of the Security, nor shall it be required to pay with its own funds the fees of solicitors, counsel, auditors, experts or Agent s engaged by it as permitted by the Loan Documents.

## **8.7 Acknowledgments, Representations and Covenants of Lenders**

- (1) Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on documents and information that it from time to time deems appropriate, continue to make its own decisions in taking or not taking action under or based upon any Loan Document or any related agreement or any document furnished under any Loan Document.
- (2) Each Lender represents and warrants that it has full power and authority, and has taken all action necessary, to execute and deliver this Agreement, to consummate the transactions contemplated by this Agreement and to be a Lender.
- (3) Each Lender agrees to indemnify the Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Applicable Percentage (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Agent in any way relating to or arising out of the Loan Documents or the transactions contemplated in them. However, no

Lender shall be liable for any portion of those losses, claims, damages, liabilities and related expenses that results from the Agent's gross negligence or wilful misconduct. The Agent shall not be required to take or continue any action unless the Agent has received sufficient funds or arrangements satisfactory to it for indemnification to cover the cost of the proposed action.

- (4) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Sections 11.5(1) or 11.5(2) to be paid by it to the Agent (or any sub-agent or Related Party of the Agent), each Lender severally agrees to pay to the Agent (or any subagent or Related Party) that Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of the unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any sub-agent) in connection with that capacity. The obligations of the Lenders under this Section are subject to the other provisions of this Agreement concerning several liability of the Lenders.
- (5) Each Lender acknowledges and confirms that if the Agent does not receive payment in accordance with this Agreement, it shall not be the Agent's obligation to maintain the Revolving Credit in good standing, nor shall any Lender have recourse to the Agent in respect of any amounts owing to the Lender under this Agreement.
- (6) Each Lender acknowledges and agrees that its obligation to advance its Applicable Percentage of Advances in accordance with the terms of this Agreement is independent and in no way related to the obligation of any other Lender.
- (7) Each Lender acknowledges receipt of a copy of this Agreement, the Security (to the extent that the Security has been delivered), and acknowledges that it is satisfied with the form and content of those documents.
- (8) Each Lender that is a "foreign bank" as defined in the *Bank Act* (Canada) represents and warrants that it is an "authorized foreign bank" as defined in that Act and that it is acting through a branch in Canada.

## **8.8 Collective Action of the Lenders**

Each Lender acknowledges that to the extent permitted by Applicable Law, the Security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally, and also acknowledges that its rights under the Loan Documents are to be exercised not severally, but by the Agent upon the decision of the Required Lenders (or another number or percentage of the Lenders as is expressly provided for in the Loan Documents). Accordingly, notwithstanding any other provision contained in any Loan Document, each Lender agrees that it shall not be entitled to take any action, including any declaration of Default, but that any such action shall be taken only by the Agent with the prior written agreement of the Required Lenders (or another number or percentage of the Lenders that is expressly provided for in the Loan

Documents). Each Lender also agrees that, upon any such written agreement being given, it shall co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take any action on behalf of the Lenders that it deems appropriate or desirable in the interest of the Lenders.

## **8.9 Defaulting Lenders**

- (1) Notwithstanding any other provision of this Agreement, if any Lender becomes a Defaulting Lender, then the provisions of this Section 8.9 shall apply to the extent permitted by Applicable Law until the Lender is no longer a Defaulting Lender.
- (2) The Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as specified in the definition of "Required Lenders."
- (3) Any payment of principal, interest, fees or other amounts received by the Agent for the account of the Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 7 or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 7.9 shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by the Defaulting Lender to the Agent under this Agreement; *second*, as the Borrower may request (so long as no Default exists), to the funding of any Advance in respect of which the Defaulting Lender has failed to fund its portion as required by this Agreement, as determined by the Agent; *third*, if so determined by the Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to satisfy the Defaulting Lender's potential future funding obligations with respect to Advances under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against the Defaulting Lender as a result of the Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against the Defaulting Lender as a result of the Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to the Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) the payment is a payment of the principal amount of any Advance in respect of which the Defaulting Lender has not fully funded its appropriate share (including pursuant to Section 9.1), and (y) the Advances were made at a time when the conditions in Section 4.2 were satisfied or waived, the payment shall be applied solely to pay the Advances by and other amounts owing to all Non-Defaulting Lenders (including pursuant to Section 9.1) on a *pro rata* basis before being applied to the payment of any Advances or other amounts owing to the Defaulting Lender, until all Advances and all unfunded or contingent obligations pursuant to Section 9.1 are held by the Lenders *pro rata* in accordance with their respective Commitments without giving effect to Section 8.9(5). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender (including any amount paid by the Borrower to the Agent for the account of the Defaulting Lender) that

are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 8.9(3) shall be deemed paid to and redirected by the Defaulting Lender, and each Lender irrevocably consents to that.

- (4) No Defaulting Lender shall be entitled to receive any standby fee for any period during which that Lender is a Defaulting Lender, and the Borrower shall not be required to pay any standby fee that otherwise would have been required to be paid to that Defaulting Lender. With respect to any standby fee not required to be paid to any Defaulting Lender pursuant to the immediately preceding sentence, the Borrower shall (i) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to the Defaulting Lender with respect to the Defaulting Lender's obligations pursuant to Section 9.1 that has been reallocated to that Non-Defaulting Lender pursuant to Section 8.9(5), and (ii) not be required to pay the remaining amount of any such fee.
- (5) All or any part of the Defaulting Lender's obligations pursuant to Section 9.1 shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to the Defaulting Lender's Commitment) but only to the extent that reallocation does not cause the aggregate of the Advances made by, and obligations pursuant to Section 9.1 of, any Non-Defaulting Lender to exceed its Commitment. No reallocation shall constitute a waiver or release of any claim of any Party against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of the Non-Defaulting Lender's increased exposure following reallocation.
- (6) If the Borrower and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the Parties, whereupon as of the effective date specified in that notice and subject to any conditions specified in it (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Advances of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Advances and obligations pursuant to Section 9.1 to be held pro rata by the Lenders in accordance with their respective Commitments (without giving effect to Section 8.9(5)), whereupon the Lender will cease to be a Defaulting Lender. No adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender and, except to the extent otherwise expressly agreed by the affected Parties, no change from Defaulting Lender to Lender will constitute a waiver or release of any claim of any Party arising from that Lender having been a Defaulting Lender.

#### **8.10 Successor Agent**

- (1) The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower if no Default has occurred and is continuing, to appoint a successor, which shall be a Lender having an office in Toronto, Ontario or an Affiliate of any such Lender with an office in Toronto, Ontario. The Agent may also be removed at any time by the Required Lenders upon thirty (30) days' notice to the Agent and the Borrower as long as the Required Lenders, in consultation with the Borrower, appoint and

obtain the acceptance of a successor within those thirty (30) days, which shall be a Lender having an office in Toronto, Ontario or an Affiliate of any such Lender with an office in Toronto, Ontario.

- (2) If no successor has been appointed by the Required Lenders and has accepted the appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent that meets the qualifications specified in Section 8.10(1) and that is not a Defaulting Lender, provided that if the Agent notifies the Borrower and the Lenders that no qualifying Person has accepted that appointment, then the resignation shall nonetheless become effective in accordance with the retiring Agent's notice and (a) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents (except that the retiring Agent shall continue to hold the Security on behalf of the Lenders until such time as a successor Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for in Section 8.10(1).
- (3) Upon a successor's appointment as Agent, the successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Agent, and the former Agent shall be discharged from all of its duties and obligations under the Loan Documents (if not already discharged from them as provided in Section 8.10(2)). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and the successor. After the termination of the service of the former Agent, the provisions of this Article 8 and of Section 11.5 shall continue in effect for the benefit of the former Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Agent was acting as Agent.

#### **8.11 No Other Duties, Etc.**

Notwithstanding anything in this Agreement to the contrary, no Bookrunner, Arranger or holder of a similar title specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender.

#### **8.12 Provisions Operative Between Lenders and Agent Only**

Except for Sections 8.6(7), 8.6(8), 8.7(2), 8.7(6), 8.9 to 8.11 inclusive and this Section 8.12, the provisions of this Article relating to the rights and obligations of the Lenders and the Agent *inter se* shall be operative as between the Lenders and the Agent only, and the Obligors shall not have any rights under or be entitled to rely for any purpose on those provisions.

#### **8.13 Erroneous Payments by the Agent.**

- (1) If the Agent (a) notifies a Lender or other Secured Party, or any Person who has received funds on behalf of a Lender or other Secured Party under or pursuant to any of the Secured

Documents (any such Lender, other Secured Party or other recipient (and each of their respective successors and assigns), a “**Payment Recipient**”) that the Agent has determined in its sole discretion (whether or not after receipt of any notice under Section 8.13(2)) that any funds (as set forth in such notice from the Agent) received by such Payment Recipient from the Agent or any of its Affiliates were erroneously or mistakenly transmitted or paid to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, other Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and (b) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent pending its return or repayment as contemplated below in this Section 8.13(1) and held in trust for the benefit of the Agent, and such Lender or other Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than three Business Days thereafter (or such later date as the Agent may, in its sole discretion, specify in writing), return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of (x) in respect of an Erroneous Payment in US Dollars, the Federal Funds Effective Rate, and in respect of an Erroneous Payment in Canadian Dollars or any other currency, at a fluctuating rate per annum equal to the overnight rate at which Canadian Dollars or funds in the currency of such Erroneous Payment, as the case may be, may be borrowed by the Agent in the interbank market in an amount comparable to such Erroneous Payment (as determined by the Agent), and (y) a rate determined by the Agent in accordance with banking industry rules or prevailing market practice for interbank compensation from time to time in effect. A notice of the Agent to any Payment Recipient under this Section 8.13(1) shall be conclusive, absent manifest error.

- (2) Without limiting the immediately preceding Section 8.13(1), each Lender or other Secured Party, or any Person who has received funds on behalf of a Lender or other Secured Party (and each of their respective successors and assigns) under or pursuant to any of the Secured Documents, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, paid, or received, in error or by mistake (in whole or in part), then in each such case:
  - (a) it acknowledges and agrees that (i) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent express

written confirmation from the Agent to the contrary), or (ii) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

- (b) such Lender or other Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in the immediately preceding clauses (x),(y) and (z)) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this Section 8.13(2).

For the avoidance of doubt, the failure to deliver a notice to the Agent pursuant to this Section 8.13(2) shall not have any effect on a Payment Recipient's obligations pursuant to Section 8.13(1) or on whether or not an Erroneous Payment has been made.

- (3) Each Lender or other Secured Party hereby authorizes the Agent to set-off, net and apply any and all amounts at any time owing to such Lender or other Secured Party under any Secured Document, or otherwise payable or distributable by the Agent to such Lender or other Secured Party under any Secured Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Agent has demanded to be returned under Section 8.13(1).
- (4) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor in accordance with Section 8.13(1), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon the Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto):
  - (a) such Lender shall be deemed to have assigned its Advances (but not any of its Commitments) under the Revolving Credit in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the Advances (but not any of its Commitments) of the Revolving Credit, the "**Erroneous Payment Deficiency Assignment**") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment;
  - (b) the Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment;
  - (c) upon such deemed acquisition, the Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such

Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and any of its Commitments which shall survive as to such assigning Lender;

- (d) the Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment; and
- (e) the Agent will reflect in the Register its ownership interest in the Advances subject to the Erroneous Payment Deficiency Assignment.

For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement. Subject to Section 10.2 (including the requirements that any assignee be an Eligible Assignee, but excluding, in all events, any other assignment consent or approval requirements (whether from the Borrower or otherwise)), the Agent may, in its discretion, sell any Advances acquired pursuant to an Erroneous Payment Deficiency Assignment and, upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Advance (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Agent on or with respect to any such Advances acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such loans are then owned by the Agent) and (y) may, in the sole discretion of the Agent, be reduced by any amount specified by the Agent in writing to the applicable Lender from time to time.

- (5) The parties hereto agree that (x) irrespective of whether the Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or other Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Secured Documents with respect to such amount (the “**Erroneous Payment Subrogation Rights**”) (provided that the Obligors’ Secured Obligations under the Secured Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Secured Obligations in respect of Advances that have been assigned to the Agent under an Erroneous Payment Deficiency Assignment), and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrower or any other Obligor; provided that this Section 8.13(5) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the obligations of the Borrower relative to the amount (and/or timing for payment) of the obligations that would have been payable had such Erroneous Payment not been made by the Agent;

provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from (i) the Borrower or any other Obligor or (ii) the proceeds of realization from the enforcement of one or more of the Secured Documents against or in respect of one or more of the Obligors; provided that, in each case, such funds were received by the Agent for the purpose of discharging such Secured Obligations.

- (6) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value”, “good consideration” for the Erroneous Payment or change of position by such Payment Recipient, any defense that the intent of the Agent was that such Payment Recipient retain the Erroneous Payment in all events, or any doctrine or defense similar to any of the foregoing.
- (7) Each party’s obligations, agreements and waivers under this Section 8.13 shall survive the resignation or replacement of the Agent, or any assignment or transfer of rights or obligations by, or the replacement of, a Lender or an Affiliate thereof the termination of the Commitments and/or the repayment, satisfaction or discharge of all Secured Obligations (or any portion thereof) under any Secured Document.
- (8) For purposes of this Section 8.13, each Lender:
  - (a) agrees it is executing and delivering this Agreement with respect to this Section 8.13 both on its own behalf and as agent for and on behalf of its Affiliates referred to in this Section 8.13 and any Person receiving funds under or pursuant to any of the Secured Documents on behalf of such Lender or any of such Affiliates;
  - (b) represents, warrants, covenants and agrees that its Affiliates referred to in this Section 8.13 and any Person receiving funds under or pursuant to any of the Secured Documents on behalf of such Lender or any of such Affiliates are bound by the provisions of this Section 8.13; and
  - (c) agrees that any matter or thing done or omitted to be done by such Lender, its Affiliates, or any Person receiving funds under or pursuant to any of the Secured Documents on behalf of such Lender or any of such Affiliates which are the subject of this Section 8.13 will be binding upon such Lender and such Lender does hereby indemnify and save the Agent and its Affiliates harmless from any and all losses, expenses, claims, demands or other liabilities of the Agent and its Affiliates resulting from the failure of such Lender, its Affiliates or such Persons to comply with their obligations under and in respect of this Section 8.13.
- (9) Except pursuant to an Erroneous Payment Deficiency Assignment or the exercise of any Erroneous Payment Subrogation Rights (or any equivalent equitable subrogation rights), the Borrower and any other Obligor shall not have any liability to the Agent or any other

Secured Party for any Erroneous Payment or any interest, loss, cost or damages related thereto or arising therefrom under any provision of this Agreement or any other Secured Document or under any legal principle or theory, whether arising by law or in equity.

## **ARTICLE 9**

### **DETAILS REGARDING ADVANCES, PAYMENTS, INTEREST AND FEES**

#### **9.1 Lenders' Obligations Relating to Revolving Credit**

It is the intention of the Parties that the ultimate credit risk and exposure of each Lender be in accordance with its Applicable Percentage of the entire amount of Revolving Credit. Accordingly, upon the Obligations becoming due and payable under Section 7.2, each Lender shall do all things, including purchases of participations in Advances made by other Lenders, that are necessary to ensure that result. Any such action on the part of the Lenders shall be binding on the Borrower.

#### **9.2 Evidence of Indebtedness**

The Agent shall maintain records concerning the Obligations and each Lender shall maintain records concerning those Advances it has made. The records maintained by the Agent, shall constitute *prima facie* evidence of the Obligations and all related details, but the Agent may correct any error or omission in their respective records. The corrected records will then constitute *prima facie* evidence and the error or omission shall not adversely affect the obligation of the Borrower to pay the Obligations in accordance with this Agreement.

#### **9.3 Calculation and Other Matters Regarding Interest and Fees**

- (1) All interest on Base Rate Advances and SOFR Advances shall accrue from day to day and shall be payable in arrears, calculated on the actual number of days elapsed from and including the date of Advance or the previous date on which interest was due in accordance with Section 2.5, as the case may be, to but excluding the date on which interest is due. If interest is not paid on the date it is due, the principal amount shall continue to bear interest at the rate that is applicable to the particular type of Advance from time to time in accordance with Section 2.5(1), both before and after maturity, default and judgment, and overdue interest shall bear interest at the same rate, compounded monthly, and be payable on demand. Notwithstanding the immediately preceding sentence, upon the expiry of the Interest Period applicable to any SOFR Advance, the principal amount and any overdue interest with respect to that SOFR Advance shall bear interest calculated at the rates applicable to Base Rate Advances.
- (2) Interest and fees shall be calculated on the basis of a calendar year unless otherwise specified. Interest calculated with reference to Adjusted Term SOFR shall be calculated on the basis of a year of 360 days. Any rate that is calculated with reference to a period (the "**deemed interest period**") that is less than the actual number of days in the calendar year of calculation is, for the purposes of the *Interest Act* (Canada), equivalent to a rate based on a calendar year calculated by multiplying that rate of interest by the actual number of days in the calendar year of calculation and dividing by the number of days in the deemed

interest period. All calculations of interest and fees under the Loan Documents shall be made on the basis of the nominal rates described in this Agreement and not on the basis of effective yearly rates or on any other basis that gives effect to the principle of deemed reinvestment. The Parties acknowledge that there is a material difference between the stated nominal rates and effective yearly rates taking into account reinvestment, and that they are capable of making the calculations required to determine effective yearly rates.

- (3) In this Section 9.3, any reference to a “calendar year” means the calendar year in which the period for which the calculation in question falls. If the period falls in two calendar years, one of which is a leap year, the calculation shall be done separately for the parts of the period that fall in each calendar year and the calculated amounts for each period shall be added.
- (4) The standby fee shall be calculated daily on the undrawn amount of the Revolving Credit (notwithstanding the Available Credit Limit may be less than the Revolving Credit at such time) at the rate for calculation of the standby fee specified in Section 2.5(3), beginning on the date of this Agreement, and each payment shall cover the period from and including the date of this Agreement or the previous date on which the standby fee was due in accordance with Section 2.5(3), as the case may be, to but excluding the date on which the standby fee is due.
- (5) If an Obligor fails to pay when due any amount payable under any Loan Document for which interest is not otherwise provided in this Agreement or another relevant Loan Document, that Obligor shall, on demand, pay interest on the overdue amount to the Agent from and including the due date up to but excluding the date of actual payment, both before and after demand, default or judgment, at the rate of interest determined from time to time in accordance with Section 2.5(1) that is applicable to Base Rate Advances (if the amount is denominated in US Dollars), in each case compounded monthly.
- (6) The Parties intend to comply with Applicable Law relating to usury. Notwithstanding any other provision of this Agreement or any other Loan Document, in no event shall any Loan Document require the payment or permit the collection of interest or other amounts in an amount or at a rate in excess of the amount or rate that is permitted by Applicable Law or in an amount or at a rate that would result in the receipt by the Lenders or the Agent of interest at a criminal rate, as the terms “interest” and “criminal rate” are defined under the *Criminal Code* (Canada). Where more than one Applicable Law applies to any Obligor, that Obligor shall not be obliged to make payment in an amount or at a rate higher than the lowest permitted amount or rate. If from any circumstance whatever, fulfilment of any provision of any Loan Document would result in exceeding the highest rate or amount permitted by Applicable Law for the collection or charging of interest, the obligation to be fulfilled shall be reduced to reflect the highest permitted rate or amount. If from any circumstance the Agent or the Lenders shall ever receive anything of value as interest or deemed interest under any Loan Document that would result in exceeding the highest lawful rate or amount of interest permitted by Applicable Law, the amount that would be excessive interest shall be applied to the reduction of the principal amount of the Revolving Credit, and not to the payment of interest, or if the excessive interest exceeds the unpaid principal balance of the Revolving Credit, the amount exceeding the unpaid balance shall

be refunded to the Borrower. In determining whether or not the interest paid or payable under any specified contingency exceeds the highest lawful rate, the Obligors, the Agent and the Lenders shall, to the maximum extent permitted by Applicable Law, (a) characterize any non-principal payment as an expense, fee or premium rather than as interest, (b) exclude voluntary prepayments and their effects, (c) amortize, prorate, allocate and spread the total amount of interest throughout the term of the Revolving Credit so that interest does not exceed the maximum amount permitted by Applicable Law, and/or (d) allocate interest between portions of the Obligations to the end that no portion shall bear interest at a rate greater than that permitted by Applicable Law. For the purposes of the *Criminal Code* (Canada), the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles and if there is any dispute, the determination of a Fellow of the Canadian Institute of Actuaries appointed by the Agent shall be conclusive.

- (7) Without limiting the foregoing, the Borrower confirms that it fully understands and is able to calculate each rate of interest applicable to the credit facility hereunder based on the methodology for calculating per annum rates provided for in this Agreement. The Agent agrees that if requested in writing by the Borrower it shall calculate the nominal and effective per annum rate of interest on any Advance outstanding at any time and provide such information to the Borrower promptly following such request; provided that, any error in any such calculation, or any failure to provide such information on request, shall not relieve the Borrower of any of its obligations under the Credit Agreement or any other Loan Document, nor result in any liability to the Agent or any Lender. The Borrower hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to the Loan Documents, that the interest payable under the Loan Documents and the calculation thereof has not been adequately disclosed to it, whether pursuant to Section 4 of the *Interest Act* (Canada) or any other Applicable Law or legal principle.

#### **9.4 Conversions, Rollovers, Renewals, Repayments and Reductions**

- (1) Subject to the other terms of this Agreement, the Borrower may from time to time:
- (a) convert all or any part of the outstanding amount of any SOFR Advance into a Base Rate Advance in the same principal amount, or *vice versa*;
  - (b) rollover all or any part of the outstanding amount of any SOFR Advance at the end of the Interest Period as a new SOFR Advance or rollover; and
  - (c) in circumstances not mentioned in items (a) or (b) immediately above, concurrently repay one Advance and obtain a different type of Advance.
- (2) Subject to giving notice required by Section 9.5, the Borrower may from time to time repay Advances outstanding under the Revolving Credit without penalty, except that:
- (a) The Borrower must prepay all Lenders under the Revolving Credit *pro rata* and must prepay the same Advance made by each applicable Lender.

- (b) SOFR Advances may not be paid before the end of the applicable Interest Periods unless the Borrower indemnifies the relevant Lenders for any loss or expense that the Lenders incur as a result, including any Breakage Costs.

No voluntary payment by the Borrower shall affect the Borrower's obligation to make all other principal payments required by this Agreement in full when due, until the Revolving Credit is repaid in full and cancelled.

- (3) The Borrower may cancel the Revolving Credit, or from time to time permanently reduce the committed amount of the Revolving Credit [REDACTED]. The Borrower shall do so by giving not less than three (3) Business Days' irrevocable notice to the Agent and paying all accrued and unpaid standby fees on the amount cancelled or reduced to the effective date of cancellation or reduction. Any reduction must be applied *pro rata* to the respective Commitments of the Lenders under the Revolving Credit that is reduced. The Borrower shall have no right to any reinstatement of any previously committed amount of the Revolving Credit after any cancellation or reduction.

### **9.5 Notice of Advances and Payments**

- (1) The Borrower shall give the Agent irrevocable notice, in the form attached as Exhibit C, of any request for any Advance to it. The Borrower shall also give the Agent irrevocable notice in the same form of any payment by it of any Advance (whether resulting from repayment, prepayment, rollover or conversion).
- (2) Notice for SOFR Advances shall be given not later than the third Business Day before the Advance Date or date of payment. Notice for a Base Rate Advance shall be given on or before the Business Day before the Advance Date or date of payment.
- (3) Notices shall be given not later than 11:00 a.m. on the date for notice. Payments (except those being made solely from the proceeds of rollovers and conversions) must be made before 1:00 p.m. on the date for payment. If a notice or payment is not given or made by those times, it shall be deemed to have been given or made on the next Business Day, unless all Lenders affected by the late notice or payment agree, in their sole discretion, to accept a notice or payment at a later time as being effective on the date it is given or made.
- (4) Without limiting Section 11.5, the Borrower shall indemnify the Agent and the Lenders for all costs that they incur if the Borrower gives notice requesting an Advance or notice of a payment and subsequently fails to complete the Advance or payment or the conditions of the Advance are not satisfied before the time specified in Section 9.8(4) on the proposed Advance Date.

### **9.6 Size and Term of Advances**

- (1) Each Base Rate Advance shall be in an [REDACTED]. Each SOFR Advance shall be in an [REDACTED].

- (2) In its notice requesting a SOFR Advance, the Borrower shall select an Interest Period of one, three or six months (subject to availability) to apply to any particular SOFR Advance.
- (3) The Agent may, in circumstances of market disruption or illiquidity, restrict the term or maturity dates of SOFR Advances. There shall not at any time be SOFR Advances outstanding with more than six different maturity dates. No Interest Period may end on a date that is not a Business Day, after the Maturity Date, or after a date on which the Revolving Credit is required to be reduced if that would adversely affect the Borrower's ability to make the reduction.

### **9.7 Payment of SOFR Advances**

- (1) The Borrower shall provide for payment to the Agent at the Branch of Account of the amount of each SOFR Advance for value on the last day of the applicable Interest Period by giving notice under Section 9.5 requesting a rollover or conversion if the Borrower is otherwise entitled to an Advance, or by delivery of payment.
- (2) If the Borrower fails to provide for payment in accordance with Section 9.7(1), and if the Borrower is otherwise entitled to an Advance but for failing to give notice under Section 9.5 due to inadvertence, the Agent may deem a Base Rate Advance to have been made in the case of failure to provide for a SOFR Advance. If the Agent deems an Advance to have been made, the Agent shall immediately give notice to the Borrower and the Lenders.
- (3) If the Borrower fails to provide for payment in accordance with Section 9.7(1) and if the Agent does not deem an Advance to have been made under Section 9.7(2), then without limiting the Lenders' other rights, the Borrower shall pay interest on the amount for which it has not provided for payment at a rate of interest per annum equal to the rate applicable to Base Rate Advances (in the case of a SOFR Advance) as determined in accordance with Section 2.5(1), compounded monthly. Interest shall be calculated from and including the date on which payment was to have been provided, up to but excluding the date the payment and all interest, both before and after demand, default and judgment, is provided by the Borrower.

### **9.8 Co-ordination of Base Rate and SOFR Advances**

- (1) The Agent shall advise each Lender of its receipt of a notice pursuant to Section 9.5 requesting a Base Rate or SOFR Advance on the day that notice is received from the Borrower and shall, as soon as possible, advise each Lender of that Lender's share of the Advance. Each Lender's share shall be based on its Applicable Percentage, but if the Agent determines that a Lender's Applicable Percentage would result in its share of an Advance not being a whole multiple of \$1,000, the Agent may increase or reduce the amount to be advanced by that Lender in the Agent's sole discretion to the extent necessary to make the amount a whole multiple.
- (2) The Interest Period applicable to a SOFR Advance shall be identical for each Lender.
- (3) Each Lender shall deliver its share of the Advance to the Agent not later than 11:00 a.m. on the Advance Date, for value on that date.

- (4) If the Agent determines that all the conditions precedent to an Advance specified in this Agreement have been met, it shall advance to the Borrower before 2:00 p.m. on the Advance Date the amount delivered by each Lender, by crediting an account maintained by the Borrower with the Agent or initiating a wire transfer in accordance with instructions received from the Borrower. If the conditions precedent to the Advance are not met by 2:00 p.m. on the Advance Date, the Agent shall return the funds to the Lenders or invest them in an overnight investment as orally instructed by each Lender until the Advance is made. The Agent is not required to advance any amount to the Borrower that the Agent has not actually received from a Lender.

## **9.9 Failure of Lender to Fund**

- (1) Unless the Agent has received notice from a Lender before the proposed date of any Advance that the Lender will not make available to the Agent its share of the Advance, the Agent may assume that the Lender has made its share available on that date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon that assumption, make available to the Borrower a corresponding amount. In that event, if a Lender has not in fact made its share of the applicable Advance available to the Agent, then the applicable Lender shall pay to the Agent immediately on demand that corresponding amount, with interest for each day from and including the date the amount is made available to the Borrower to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation. If the Lender pays that amount to the Agent, then the amount shall constitute the Lender's Advance. If the Lender does not do so immediately, the Borrower shall pay to the Agent immediately on demand the corresponding amount with interest at the interest rate applicable to the Advance in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make its payment to the Agent.
- (2) Notwithstanding Section 9.9(1), if any Lender fails to deliver its share of any Advance to the Agent (that Lender being the "**Non-Funding Lender**") and no steps have been taken to address the failure through provisions of this Agreement relating to Defaulting Lenders, the Agent shall immediately give notice of that failure by the Non-Funding Lender to the Borrower and the other Lenders and indicate to the other Lenders that any Lender (individually a "**Contributing Lender**" and collectively the "**Contributing Lenders**") may make available to the Agent all or any portion of the Non-Funding Lender's share of that Advance in place of the Non-Funding Lender, but in no way shall any other Lender or the Agent be obliged to do so. A Contributing Lender shall make funds available to the Agent as soon as possible for delivery by the Agent to the Borrower. If more than one Contributing Lender gives notice that it is prepared to make funds available and the aggregate of the funds that the Contributing Lenders are prepared to make available exceeds the amount of the Advance that the Non-Funding Lender failed to make, then each Contributing Lender shall make available a portion of that Advance based on the Contributing Lenders' relative Commitments to the Revolving Credit. If a Contributing Lender makes funds available in the place of a Non-Funding Lender, then the Non-Funding Lender shall pay the Contributing Lender, immediately on demand, the amount advanced on its behalf together with interest at the rate applicable to that Advance from the date of

advance to the date of payment, and the Non-Funding Lender shall then be entitled to receive all interest paid in respect of the Advance by the Borrower. The failure of any Lender to deliver its Applicable Percentage of any Advance to the Agent as required shall not relieve any other Lender of its obligation to deliver its Applicable Percentage of any Advance as required.

#### **9.10 Payments by the Borrower**

- (1) Except as otherwise specified in this Agreement, all payments made by or on behalf of the Borrower shall be made to and received by the Agent and shall be distributed by the Agent to the Lenders promptly upon receipt by the Agent. Except as otherwise provided in this Agreement (including Section 9.12), the Agent shall distribute:
  - (a) payments of interest in accordance with each Lender's Applicable Percentage of the Revolving Credit; and
  - (b) repayments of principal in accordance with each Lender's Applicable Percentage of the Revolving Credit;
- (2) If an Event of Default shall have occurred and be continuing, all payments or proceeds received by the Agent hereunder or under any other Secured Document in respect of any of the Secured Obligations (including, but not limited to, Secured Cash Management Obligations and Secured Hedge Arrangements that are owing to any Secured Party), including, but not limited to all proceeds received by the Agent in respect of any sale of, any collection from, or other realization upon, all or any part of the Collateral, shall, subject to Section 8.9, be applied as follows:
  - (a) *first*, to the payment of all reasonable and documented costs and expenses of such sale, collection or other realization, including reasonable and documented compensation to the Agent and its agents and outside counsel, and all other reasonable and documented expenses, liabilities and advances made or incurred by the Agent in connection therewith, and all amounts for which the Agent is entitled to indemnification hereunder or under any other Loan Document (in its capacity as Agent and not as a Lender), and to the payment of all reasonable and documented costs and expenses paid or incurred by the Agent in connection with the exercise of any right or remedy hereunder or under any other Loan Document, all in accordance with the terms hereof or thereof;
  - (b) *second*, to the extent of any excess of such payments or proceeds, to the rateable payment of any accrued interest, fee or commission due but unpaid under this Agreement;
  - (c) *third*, to the extent of any excess of such payments or proceeds, to the rateable payment of the Obligations, Secured Hedge Obligations and the Secured Cash Management Obligations;
  - (d) *fourth*, to the extent of any excess of such payments or proceeds, to the payment of any other amount due but unpaid under the Secured Documents; and

- (e) *fifth*, to the extent of any excess of such payments or proceeds, to the payment to or upon the order of the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

Notwithstanding the foregoing, in no event shall payments or proceeds received by the Agent from a Guarantor or in respect of its Collateral be applied against Excluded Swap Obligations of such Guarantor.

- (3) If the Agent does not distribute a Lender's share of a payment made by the Borrower to that Lender for value on the day that payment is made or deemed to have been made to the Agent, the Agent shall pay to the Lender on demand an amount equal to the product of (a) the Interbank Reference Rate per annum multiplied by (b) the Lender's share of the amount received by the Agent from the Borrower and not distributed to the Lender, multiplied by (c) a fraction, the numerator of which is the number of days that have elapsed from and including the date of receipt of the payment by the Agent to but excluding the date on which the payment is made by the Agent to the Lender and the denominator of which is 365. The Agent shall be entitled to withhold any Tax applicable to any payment as required by Applicable Law.
- (4) The Agent may debit accounts, credits and other balances maintained by the Borrower from time to time with the Agent or its Affiliates to facilitate or otherwise obtain payment of interest, fees and other Obligations owing by the Borrower.

#### **9.11 Payments by Agent**

- (1) For certainty, the following provisions shall apply to payments made by the Agent to the Lenders:
  - (a) The Agent shall be under no obligation to make any payment to any Lender (whether in respect of principal, interest, fees or otherwise) until an amount in respect of that payment has been received by the Agent from the Borrower.
  - (b) If the Agent receives less than the full amount of any payment of principal, interest, fees or other amount owing by the Borrower under this Agreement, the Agent shall have no obligation to remit to each Lender any amount except that Lender's Applicable Percentage of the amount actually received by the Agent.
  - (c) If any Lender advances more or less than its Applicable Percentage of the Revolving Credit, that Lender's entitlement to that payment shall be increased or reduced, as the case may be, in proportion to the amount actually advanced by that Lender.
  - (d) Except as specified in any applicable Assignment and Assumption, if a Lender's share of an Advance has been advanced, or a Lender's Commitment has been outstanding, for less than the full period to which any payment (except a payment of principal) by the Borrower relates, that Lender's entitlement to that payment shall be reduced in proportion to the length of time the Lender's share of the

relevant Advance or the Lender's Commitment, as the case may be, has actually been outstanding.

- (e) The Agent, acting reasonably and in good faith and after consultation with the Lenders in the case of any dispute, shall determine in all cases the amount of all payments to which each Lender is entitled and that determination shall be binding and conclusive in the absence of manifest error.

On request, the Agent shall deliver a statement detailing any of the payments to the Lenders.

- (2) Unless the Agent has received notice from the Borrower before the date on which any payment is due to the Agent for the account of any Lender that the Borrower will not make that payment, the Agent may assume that the Borrower has made the payment on that date in accordance with this Agreement and may, in reliance upon that assumption, distribute the amount due to the Lenders. In that event, if the Borrower has not in fact made the payment, then each Lender severally agrees to repay to the Agent immediately on demand the amount distributed to that Lender, with interest for each day from and including the date the amount is distributed to it to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation.

#### **9.12 Increased Costs, Etc.**

- (1) If any Change in Law from time to time shall:
  - (a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;
  - (b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Advance made by it, or change the basis of taxation of payments to the Lender in respect of this Agreement or any Advance, except for Indemnified Taxes or Other Taxes covered by Section 9.13 and the imposition, or any change in the rate, of any Excluded Tax payable by that Lender; or
  - (c) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or any Advance made by that Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any Advance (or of maintaining its obligation to make any Advance), or to reduce the amount of any sum received or receivable by the Lender under this Agreement (whether of principal, interest or any other amount), then upon request of the Lender from time to time the Borrower will pay to that Lender an additional amount or amounts that will compensate the Lender for the additional costs incurred or reduction suffered.

- (2) If any Lender determines in its sole and absolute discretion that any Change in Law affecting the Lender or any lending office of the Lender or its holding company (or other

Controlling Person), if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of its holding company (or other Controlling Person), if any, as a consequence of this Agreement, the Commitments of the Lender or any Advance made by the Lender, to a level below that which the Lender or its holding company (or other Controlling Person) could have achieved but for that Change in Law (taking into consideration the Lender's policies and the policies of its holding company (or other Controlling Person) with respect to capital adequacy, each from time to time), then from time to time the Borrower will pay to that Lender an additional amount or amounts that will compensate that Lender or its holding company (or other Controlling Person) for the reduction suffered.

- (3) A certificate of a Lender specifying the amount or amounts necessary to compensate the Lender or its holding company (or other Controlling Person), as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts determined based on methods of averaging and attribution in its sole and absolute discretion, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt of the certificate.
- (4) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand compensation, except that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months before the date that the Lender notifies the Borrower of the Change in Law giving rise to the increased costs or reductions and of the Lender's intention to claim compensation, unless the Change in Law giving rise to the increased costs or reductions is retroactive, in which case the nine month period referred to above shall be extended to include the period of retroactive effect.

### **9.13 Taxes**

- (1) Any and all payments by or on account of any obligation of an Obligor under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law requires the deduction or withholding of any Tax from any such payment by an Obligor or the Agent (as determined in the good faith discretion of the Obligor or Agent, respectively), then the applicable Obligor or the Agent shall be entitled to make the deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Obligor shall be increased as necessary so that after the deduction or withholding has been made (including deductions and withholdings applicable to additional sums payable under this Section) the Agent or applicable Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.
- (2) The Obligors shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law or, at the option of the Agent, promptly reimburse the Agent for the payment of any Other Taxes.

- (3) The Obligors shall jointly and severally indemnify the Agent and each Lender, within ten (10) days after demand, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Agent or that Lender or required to be withheld or deducted from a payment to the Agent or that Lender and any reasonable expenses arising from or with respect to the Indemnified Taxes, whether or not they were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of the payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.
- (4) Each Lender shall severally indemnify the Agent, within ten (10) days after demand therefor, for (a) any Indemnified Taxes attributable to such Lender (but only to the extent that the Obligors have not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Obligors to do so), (b) any Taxes attributable to such Lender's failure to comply with the maintenance of the Register and (c) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this Section 9.13(4).
- (5) As soon as practicable after any payment of Taxes by an Obligor to a Governmental Authority pursuant to this Section 9.13, the Obligor shall deliver to the Agent the original or a certified copy of a receipt issued by the Governmental Authority evidencing payment, a copy of the return reporting the payment or other evidence of the payment reasonably satisfactory to the Agent.
- (6) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which that jurisdiction is a party, with respect to payments under any Loan Document shall, at the request of the Borrower, deliver to the Borrower (with a copy to the Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrower or the Agent, all properly completed and executed documentation prescribed by Applicable Law that will permit the payments to be made without withholding or at a reduced rate of withholding. In addition, (a) any Lender, if requested by the Borrower or the Agent, shall deliver other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Agent that will enable the Borrower or the Agent to determine whether or not that Lender is subject to withholding or information reporting requirements, and (b) any Lender shall notify the Borrower and the Agent in writing within five (5) Business Days of ceasing to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the *Income Tax Act* (Canada) or any successor provision.

- (7) If a payment made to a Lender under any Loan Document would be subject to FATCA if that Lender were to fail to comply with the applicable reporting requirements (including those contained in section 1471(b) or 1472(b) of the Revenue Code, as applicable), the Lender shall deliver to the Borrower and the Agent at the time or times prescribed by Applicable Law or reasonably requested by the Borrower or the Agent, documentation prescribed by Applicable Law (including as prescribed by section 1471(b)(3)(C)(i) of the Revenue Code) and additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations relating to FATCA and to determine that the Lender has complied with its obligations relating to FATCA or to determine the amount to deduct and withhold from the payment.
- (8) If any Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 9.13 (including by the payment of additional amounts pursuant to this Section), or that, because of the indemnification, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the indemnifying Party an amount equal to the refund or reduction (but only to the extent of indemnification), net of all out-of-pocket expenses of the Agent or Lender, as the case may be, and without interest (other than any net after Tax interest paid by the relevant Governmental Authority with respect to any such refund). The indemnifying Party, upon the request of the indemnified Party, shall repay to the indemnified Party the amount paid over pursuant to this Section 9.13(8) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if the indemnified Party is required to repay the refund or reduction to the Governmental Authority. Notwithstanding anything to the contrary in this Section 9.13(8), in no event will the indemnified Party be required to pay any amount to an indemnifying Party pursuant to this Section 9.13(8) the payment of which would place the indemnified Party in a less favorable net after-Tax position than the indemnified Party would have been in if the Tax subject to indemnification and giving rise to such refund or reduction had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section shall not be construed to require any indemnified Party to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying Party or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

#### **9.14 Mitigation Obligations; Replacement of Lenders**

- (1) If any Lender requests compensation under Section 9.12, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 9.13, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Advances or to assign its rights and obligations under this Agreement to another of its offices, branches or Affiliates, if, in the judgment of the Lender, doing so (a) would eliminate or reduce amounts payable pursuant to Section 9.12 or 9.13, as the case may be, in the future and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

- (2) If any Lender requests compensation under Section 9.12 or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 9.13 and in each case the Lender has declined or is unable to comply with Section 9.14(1), if any FATCA is imposed on any payment to a Lender under or in connection with this Agreement (whether the payment is made directly or through another financial institution), if any Lender's obligations are suspended pursuant to Section 9.16 or if any Lender becomes a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon ten (10) days' notice to that Lender and the Agent, require the Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.2), all of its interests, rights (other than its existing rights under Sections 9.12, 9.13 and 11.5) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that will assume those obligations (which assignee may be another Lender, if a Lender accepts the assignment), provided that:
- (a) the Borrower pays the Agent the assignment fee specified in Section 10.2(1)(e);
  - (b) the Lender receives payment of an amount equal to the outstanding principal of its Advances, accrued interest, accrued fees and all other amounts payable to it under the Loan Documents (including any Breakage Costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) from any assignee and/or the Borrower;
  - (c) in the case of any assignment resulting from a claim for compensation under Section 9.12 or payments required to be made pursuant to Section 9.13, the assignment will result in a reduction in future compensation or payments;
  - (d) any assignment does not conflict with Applicable Law; and
  - (e) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the assignee consents to the applicable waiver, amendment or consent.
- (3) A Lender shall not be required to make any such assignment or delegation or accept repayment if, before completion, as a result of a waiver by the Lender or otherwise, the circumstances entitling the Borrower to require the assignment and delegation or repayment cease to apply.

## **9.15 Illegality**

If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make or maintain any Advance (or to maintain its obligation to make any Advance), or to determine or charge interest based upon any particular rate, then, on notice by that Lender to the Borrower through the Agent, any obligation of the Lender with respect to the activity that is unlawful shall be suspended until the Lender notifies the Agent and the Borrower that the circumstances giving rise to that determination no longer exist. Upon receipt of that notice, the Borrower shall, upon demand from that Lender (with a copy to the Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any

Advances in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if doing so will avoid the need for that notice and will not, in the good faith judgment of the Lender, otherwise be materially disadvantageous to the Lender.

#### **9.16 Pricing Disconnect.**

If prior to the commencement of any Interest Period for a SOFR Advance, the Agent is advised by the Required Lenders that Adjusted Term SOFR for such Interest Period does not adequately and fairly reflect the cost to those Lenders of funding or maintaining that Advance, then the Agent will promptly notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain SOFR Advances shall be suspended until the Agent (upon the instruction of the Required Lenders) revokes the notice. Upon receipt of that notice, the Borrower may revoke any pending request for a borrowing, conversion or continuation of SOFR Advances or, failing that, will be deemed to have converted its request into a request for a borrowing of Base Rate Advances in the amount specified in the request.

#### **9.17 Term SOFR Fallback**

- (1) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (a) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (b) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis. No Secured Hedge Arrangement shall be deemed to be a “Loan Document” for purposes of this Section 9.17.
- (2) Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming

Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

- (3) Notices; Standards for Decisions and Determinations. The Agent will promptly notify the Borrower and the Lenders of (a) the implementation of any Benchmark Replacement and (b) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 9.17(4) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 9.17, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 9.17.
- (4) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (a) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (i) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (ii) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (b) if a tenor that was removed pursuant to clause (a) above either (i) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (ii) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.
- (5) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Advance, or a conversion to or continuation of SOFR Advance, to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for an Advance of or conversion to a Base Rate Advance. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

**ARTICLE 10**  
**ADDITIONAL LENDERS, SUCCESSORS AND ASSIGNS**

**10.1 Successors and Assigns, Third Party Beneficiaries**

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns permitted by this Agreement, except that no Obligor may assign or otherwise transfer any of its rights or obligations under any Loan Document without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations under this Agreement except (a) to an Eligible Assignee in accordance with the provisions of Section 10.2, (b) by way of participation in accordance with the provisions of Section 10.4, or (c) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.5 (and any other attempted assignment or transfer by any Party shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the Parties, their respective successors and permitted assigns, subagents contemplated by this Agreement, Participants to the extent provided in Section 10.4 and, to the extent expressly contemplated by this Agreement, the Related Parties of each of the Agent, any sub-agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

**10.2 Assignments by Lenders**

- (1) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Advances at the time owing to it), provided that:
  - (a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Advances at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Advances outstanding under the Commitment) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Advances of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to the assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless the Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consent to a lower amount (each consent not to be unreasonably withheld or delayed);
  - (b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;
  - (c) any assignment must be approved by the Agent (which is not to be unreasonably withheld or delayed) unless the proposed assignee is itself already a Lender;

- (d) any assignment must be approved by the Borrower (which is not to be unreasonably withheld or delayed) unless the proposed assignee is itself already a Lender with the same type of Commitment or a Default has occurred and is continuing; and
  - (e) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee [REDACTED] and the Eligible Assignee, if it is not a Lender, shall deliver any administrative questionnaire required by the Agent.
- (2) In addition to the other conditions specified in this Agreement, no assignment of rights and obligations of a Defaulting Lender shall be effective until the parties to the assignment have made additional payments to the Agent in an amount sufficient, upon distribution of the payments as appropriate to (a) pay and satisfy in full all payment liabilities then owed by the Defaulting Lender to the Agent and each Lender, with accrued interest, and (b) acquire (and fund as appropriate) its full pro rata share of all Advances, including obligations under Section 9.1, in accordance with its Applicable Percentage. Distribution of payments may be by outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Agent, the applicable pro rata share of Advances previously requested but not funded by the Defaulting Lender, to each of which the applicable assignor and assignee hereby irrevocably consent. If, notwithstanding the foregoing, any assignment of the rights and obligations of a Defaulting Lender becomes effective under Applicable Law without compliance with this Section 10.2(2), then the assignee shall be deemed to be a Defaulting Lender for all purposes of this Agreement until compliance occurs.
- (3) Subject to acceptance and recording by the Agent pursuant to Section 10.3, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee shall be a Party and, to the extent of the interest assigned by the Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including the Security, and the assigning Lender shall, to the extent of the interest assigned by the Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, it shall cease to be a Party) but shall continue to be entitled to the benefits of Sections 9.12, 9.13 and 11.5, and shall continue to be liable for any breach by it of this Agreement and any other liability by reason of having been a Defaulting Lender, with respect to facts and circumstances occurring before the effective date of the assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.2 shall be treated for purposes of this Agreement as a sale by that Lender of a participation in those rights and obligations in accordance with Section 10.4. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Advance to the Borrower.

### **10.3 Register**

The Agent shall maintain at one of its offices in Toronto, Ontario a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names

and addresses of the Lenders, and the Commitments of, and principal amounts of the Advances owing to, each Lender from time to time (the “**Register**”). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

#### **10.4 Participations**

- (1) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than a natural person, an Obligor or any Affiliate of an Obligor) (each, a “**Participant**”) in all or a portion of that Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Advances owing to it). However, (a) the Lender’s obligations under this Agreement shall remain unchanged, (b) the Lender shall remain solely responsible to the other Parties for the performance of its obligations and (c) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with that Lender in connection with its rights and obligations under this Agreement. Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Advance to the Borrower. Each Lender shall be responsible for any repayment to the Agent required under Section 9.12(2) with respect to any payment made by the Lender to its Participant(s).
- (2) Subject to Section 10.4(3), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 9.12 and 9.13 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.2. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 7.9 as though it were a Lender, provided the Participant agrees to be subject to Section 7.10 as though it were a Lender.
- (3) A Participant shall not be entitled to receive any greater payment under Sections 9.12 and 9.13 than the applicable Lender would have been entitled to receive with respect to the participation sold to that Participant, unless the sale of the participation to the Participant is made with the Borrower’s prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 9.13 unless the Borrower is notified of the participation sold to that Participant and the Participant agrees, for the benefit of the Borrower, to comply with that Section as though it were a Lender.

#### **10.5 Certain Pledges**

Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of that Lender, but no pledge or assignment shall release the Lender from any of its obligations under any Loan Document or substitute any pledgee or assignee for the Lender as a Party.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

### **11.1 Severability, Etc.**

If, in any jurisdiction, any provision of any Loan Document or its application to any circumstance is restricted, prohibited or unenforceable, that provision shall, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of the affected Loan Document, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.

### **11.2 Amendment, Supplement or Waiver**

No amendment, supplement or waiver of any provision of any Loan Document, nor any consent to any departure by an Obligor from any provision, shall in any event be effective unless it is in writing, makes express reference to the affected provision and is signed by the Agent and the applicable Lenders, or by the Agent with any approval of any applicable Lenders, all as required by Sections 8.6(4), 8.6(5), 8.6(6) and 8.6(7), as applicable. It shall be effective only in the specific instance and for the specific purpose for which it is given. No waiver or act or omission of the Agent or any Lender shall extend to or be taken in any way to affect any subsequent Default or other matter or their resulting rights.

### **11.3 Governing Law and Agent for Service**

- (1) Each of the Loan Documents, except for those that expressly provide otherwise, and any Dispute (whether in contract, tort or otherwise) based upon, arising out of or relating to any Loan Document, except for those that expressly provide otherwise, shall for all purposes be governed by and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in Ontario. Each Obligor irrevocably and unconditionally (a) agrees that it will not commence any litigation or other proceeding against the Agent, any Lender or their respective Related Parties relating to any Dispute (whether in contract, tort or otherwise) based upon, arising out of or relating to any Loan Document in any forum other than the courts of the Province of Ontario and (b) submits, for itself and its Property, to the exclusive jurisdiction of the courts of the Province of Ontario, and any appellate court from any of those courts, in any litigation or other proceeding based upon, arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each Party irrevocably and unconditionally agrees that all claims in respect of any such litigation or other proceeding may be heard and determined in those courts. Each Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any litigation or other proceeding relating to this Agreement or any other Loan Document against any Obligor or its Property in the courts of any jurisdiction. Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or in the future have to the laying of venue

of any litigation or other proceeding arising out of or relating to this Agreement or any other Loan Document in any court of the Province of Ontario. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defence of an inconvenient forum to the maintenance of litigation or other proceedings in any such court.

- (2) Each Obligor other than the Borrower hereby nominates, constitutes and appoints the Borrower as its agent for service, to act as such and as such to sue and be sued, plead and be impleaded in any court in Ontario. This appointment shall be irrevocable without the written appointment of a substitute agent in Ontario acceptable to the Agent. Service on the Borrower (or a substitute agent) of process or of papers and notices relating to proceedings in any court in Ontario shall be sufficient service on all Obligors.

#### **11.4 Waiver of Jury Trial, Consequential Damages Etc.**

- (1) Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to any Loan Document or the transactions contemplated by it (whether based on contract, tort or any other theory).
- (2) To the fullest extent permitted by Applicable Law, the Obligors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated by it (or any breach of it), the transactions contemplated by the Loan Documents, any Advance or the use of its proceeds. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Loan Documents or the transactions contemplated by them.
- (3) Each Obligor agrees that none of the Agent or the Lenders shall have any liability to it in relation to any due diligence investigations conducted by any of them in connection with the transactions contemplated by the Loan Documents or be under any obligation whatsoever to disclose to it any information received or facts disclosed by any investigations. Each Obligor also agrees that it is not relying, will not rely, and will not be deemed, in any respect whatsoever, to have relied upon the facts received by and information disclosed to any of the Agent or the Lenders under or in connection with due diligence investigations.
- (4) Each Obligor (a) certifies that no Representative of any other Person has represented, expressly or otherwise, that the other Person would not, in the event of litigation, seek to enforce the foregoing waivers and (b) acknowledges that it and the other Parties have been induced to enter into the Loan Documents by, among other things, the waivers and certifications in this Section.

## 11.5 Expenses and Indemnity

- (1) The Borrower shall pay (a) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Agent, in connection with the preparation, negotiation, execution, delivery and administration of the Loan Documents or any amendments, modifications or waivers of their provisions (whether or not the transactions contemplated by them are consummated), and (b) all out-of-pocket expenses incurred by the Agent or any Lender, including the fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with Advances, including those incurred during any workout, restructuring or negotiations in respect of the Obligations. Without limiting the foregoing, the Borrower shall promptly pay all invoices issued by legal counsel to the Agent and/or any Lender, as applicable, and any of them may debit any account maintained by the Borrower with them to pay such invoices.
- (2) The Borrower shall indemnify the Agent (and its sub-agents), each Lender and each Related Party of any of the foregoing Persons (each of whom is called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person (except an Indemnitee) arising out of, in connection with, or as a result of (a) the execution or delivery of any Loan Document or any agreement or instrument contemplated by it, the performance or non-performance by the Parties of their respective obligations under any Loan Document or the consummation or non-consummation of the transactions contemplated by the Loan Documents, (b) any Advance or the use or proposed use of its proceeds, (c) non-compliance with Environmental Laws, any actual or alleged presence or release of Hazardous Materials on, under or from any property currently or historically owned or operated by any Obligor or its Subsidiaries, or any actual or alleged Environmental Liability related in any way to any Obligor or its Subsidiaries or (d) any actual or prospective claim, litigation, order, requirement of any Governmental Authority, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a Governmental Authority, third party or an Obligor and regardless of whether any Indemnitee is a party thereto; provided that, the indemnity shall not, as to any Indemnitee, be available to the extent that its losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from its gross negligence or wilful misconduct or (y) result from a claim brought by the Borrower or any other Obligor against an Indemnitee for breach in bad faith of that Indemnitee’s obligations under any Loan Document, if the Obligor has obtained a final and non-appealable judgment in its favour on that claim as determined by a court of competent jurisdiction.
- (3) All amounts due under this Section 11.5 shall be payable promptly after demand. A certificate of the Agent or a Lender specifying the amount or amounts owing to the Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section,

including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

## **11.6 Currency**

All payments made under this Agreement shall be made in the currency in which the obligation requiring payment arose.

## **11.7 Currency Indemnity**

If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Agent or any Lender under any Loan Document or for the payment of damages in respect of any breach of any Loan Document, or under or in respect of a judgment or order of another court or tribunal for the payment of those amounts or damages, and the judgment or order is expressed in a currency (the “**Judgment Currency**”) other than the currency payable under the relevant Loan Document, judgment or order (the “**Agreed Currency**”), the party against whom the judgment or order is made shall indemnify and hold the Agent and the Lenders harmless against any deficiency in terms of the Agreed Currency in the amounts received by the Agent and the Lenders arising or resulting from any variation as between (a) the actual rate of exchange at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the actual rate of exchange at which the Agent or Lender is able to purchase the Agreed Currency with the amount of the Judgment Currency actually received by the Agent or Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent obligation from the other obligations of the Obligor under the Loan Documents, shall apply irrespective of any indulgence granted by the Agent or any Lender and shall be secured by the Security.

## **11.8 Notices**

- (1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 11.8(3)), all notices and other communications provided for in this Agreement shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or email (which email notice shall be sent with a “read receipt” request to qualify as a valid notice hereunder) to the addresses or telecopier numbers specified on Schedule 11.8 or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to an Obligor other than the Borrower, in care of the Borrower. Those addresses shall apply to notices under all Loan Documents, unless otherwise expressly provided.
- (2) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier or email shall be deemed to have been given when sent (except that, if not given on a Business Day before 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 11.8(3), shall be effective as provided in that Section.

- (3) Notices and other communications to the Lenders may be delivered or furnished by electronic communication (including Debtdomain, Intralinks, Syndtrak or a substantially similar electronic transmission system, e-mail and internet or intranet websites) pursuant to procedures approved by the Agent, except that the foregoing shall not apply to notices to any Lender of Advances to be made if the Lender has notified the Agent that it is incapable of receiving notices relating to Advances by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it by electronic communications pursuant to procedures approved by it, but approval of those procedures may be limited to particular notices or communications.
- (4) Unless the Agent otherwise prescribes, (a) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), except that if a notice or other communication is not sent before 5:00 p.m. on a Business Day in the city where the recipient is located, the notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient and (b) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (a) of notification that the notice or communication is available and identifying the website address.
- (5) Any Party may change its address or telecopier number for notices and other communications by notice to the other Parties.
- (6) Any method of communication contemplated in Section 11.8(3) (the "**Platform**") is provided "as is" and "as available." The Agent does not warrant the adequacy of the Platform and expressly disclaims liability for errors or omissions in information that is distributed through the Platform. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by the Agent in connection with the Platform or information distributed through it. In no event shall the Agent or any of its Related Parties have any liability to any Obligor, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the transmission of information through the Platform.

### **11.9 Time of the Essence**

Time is of the essence of this Agreement.

### **11.10 Further Assurances**

The Obligors shall, at the request of the Agent, promptly do, execute, deliver or cause to be done, executed or delivered all further acts, documents and matters that may, in the reasonable opinion of the Agent (or the Required Lenders or Lenders, as applicable), be

necessary or desirable in order to fully perform and carry out the purpose and intent of the Loan Documents.

### **11.11 Term of Agreement**

Except as otherwise provided in this Agreement, it shall remain in full force and effect until the indefeasible payment and performance in full in cash of all of the Obligations and the termination of all Commitments. The obligations of the Obligors in Sections 9.9, 9.12, 9.13, 11.5 and 11.7 and the obligations of the Lenders in Section 8.7(3) shall continue for the benefit of those to whom the obligations are owed notwithstanding the termination of this Agreement, the Commitments or any particular person's role as Obligor, Agent or Lender.

### **11.12 Counterparts, Facsimiles and Records**

- (1) Any Loan Document may be executed in counterparts (and by different Parties in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of any Loan Document by telecopy or by sending a scanned or other copy by electronic mail or similar means shall be effective as delivery of an originally executed counterpart of that Loan Document.
- (2) The words "execution," "signed," "signature," and words of similar meaning in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada or its Uniform Electronic Evidence Act, as the case may be.
- (3) The Agent and Lenders may create and store copies of Loan Documents in any form as part of their business records, including by microfilm, photocopy and electronic image. Copies may be held in place of original documents and substituted for original documents for any purpose.
- (4) Notwithstanding this Section 11.12, from time to time the Agent may require that originally executed versions of any Loan Document be delivered.

### **11.13 Treatment of Certain Information: Confidentiality**

- (1) Each of the Agent and the Lenders agrees to maintain the confidentiality of Information, except that Information may be disclosed (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom disclosure is made will be informed of the confidential nature of the Information and instructed to keep the Information confidential),

(b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other Party, (e) in connection with the exercise of any remedies under any Loan Document or any action or proceeding relating to any Loan Document or the enforcement of rights under the Loan Documents, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Derivative, credit-linked note or similar transaction relating to the Borrower and the Obligations, (g) with the consent of the Borrower or (h) to the extent Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Agent or any Lender on a non-confidential basis from a source other than an Obligor.

- (2) For purposes of this Section, “**Information**” means all information received in connection with any Loan Document from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that was available to the Agent or any Lender on a non-confidential basis before such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if the Person has exercised the same degree of care to maintain the confidentiality of the Information as the Person would accord to its own confidential information. In addition, the Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the Revolving Credit as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom disclosure is made will be informed of the confidential nature of the Information and instructed to make available to the public only such Information as the Person normally makes available in the course of its business of assigning identification numbers.
- (3) In addition, and notwithstanding anything in this Agreement to the contrary, the Agent may provide customary information including details of the Obligors, the amount, term, purpose, pricing and repayment requirements of the Revolving Credit and the principal covenants contained in this Agreement to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.
- (4) Each Obligor also consents to:
  - (a) the holder of any Lien on any Property of the Obligor providing the Agent with a statement of the amount required to obtain a release of the Lien and the Agent providing the holder with a redacted copy or details of the Obligor’s consent; and
  - (b) the Agent providing any judgment creditor or person who has an interest in Property of an Obligor that is subject to the Security with a statement of the amount required to obtain a release of the Security.

#### **11.14 Entire Agreement**

This Agreement and the other Loan Documents constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersede all prior correspondence, agreements, negotiations, discussions and understandings, whether written or oral. Except as expressly specified in this Agreement and the other Loan Documents, there are no representations, warranties, conditions or other agreements or acknowledgments, whether direct or collateral, express or implied, written or oral, statutory or otherwise, that form part of or affect the Loan Documents or the agreements referred to in them, that induced any Party to enter into the Loan Documents or the agreements referred to in them, or on which reliance is placed by any Party. Without limiting the foregoing, the commitment letter and term sheet from the Agent to the Borrower dated November 22, 2017, accepted by the Borrower on November 30, 2017, are cancelled and superseded.

#### **11.15 Paramountcy**

If there is any conflict or inconsistency between the terms of this Agreement and the terms of any other Loan Document, the provisions of this Agreement shall govern to the extent necessary to remove the conflict or inconsistency.

#### **11.16 Language**

The Parties have required that the Loan Documents be in the English language, but without prejudice to documents that may from time to time be drawn up in French only, or in both French and English. Les Parties ont exigé que cette convention et tout document de sûreté, hypothèque, contrat, document ou avis y afférent soient rédigés en langue anglaise, mais sans que cette disposition n'affecte toutefois la validité de tout tel document qui pourrait à l'occasion être rédigé en français seulement ou à la fois en français et en anglais.

#### **11.17 Limitation Periods**

To the extent that any limitation period applies to any claim for payment of obligations or remedy for enforcement of obligations under any Loan Document, the Obligors agree that:

- (a) any limitation period is expressly excluded and waived entirely if permitted by Applicable Law;
- (b) if a complete exclusion and waiver of any limitation period is not permitted by Applicable Law, any limitation period is extended to the maximum length permitted by Applicable Law;
- (c) any limitation period applying to a Loan Document expressed to be payable on demand shall not begin before an express demand for payment of the relevant obligations is made in writing by the Agent to the relevant Obligor;
- (d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment by any Obligor of its relevant obligations; and

- (e) each Loan Document is a “business agreement” as defined in the *Limitations Act, 2002* (Ontario) if that Act applies to it.

#### **11.18 Services Provided and Conflicts of Interest**

- (1) The Lenders and Agent shall not be responsible for providing or arranging services to the Obligors except providing and administering the Revolving Credit on the terms set out herein, respectively. The services of the Agent and Lenders do not include the provision of general corporate finance advisory services. The responsibility of the Agent and Lenders is solely contractual in nature and they do not owe the Obligors any fiduciary duty as a result of the Loan Documents.
- (2) The Obligors acknowledge that the Agent, the Lenders and/or one or more of their respective Affiliates may now and in the future provide debt financing, equity capital or other services (including financial advisory services) to other Persons with whom the Obligors may have conflicting interests. Subject to the provisions of this Agreement, the Agent, the Lenders and their respective Affiliates will not disclose confidential information obtained from the Obligors in connection with the performance of services for others. Similarly, the Agent, the Lenders and their respective Affiliates have no obligation to disclose the existence of or use for the Obligors’ benefit confidential information that they have obtained or may obtain from any other Person.
- (3) The Obligors also acknowledge that the Agent, the Lenders and their respective Affiliates engage in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, the Agent, the Lenders and their respective Affiliates may provide investment banking and other financial services to other Persons with which the Obligors may have commercial or other relationships, and/or acquire, hold or sell, for their own accounts and the accounts of customers, the Obligors’ equity, debt and other securities and financial instruments (including bank loans and other obligations) and those of other Persons with which the Obligors may have commercial or other relationships. All rights in respect of securities and financial instruments held by the Agent, the Lenders and their respective Affiliates or their respective customers, including any voting rights, will be exercised by the holder of the rights in its sole discretion.
- (4) The Agent, the Lenders and their respective Affiliates are not responsible to provide the Obligors with advice relating to legal, regulatory, accounting or tax matters. The Obligors acknowledge that (a) they have relied and will continue to rely on the advice of their own legal, regulatory, accounting and tax advisors for all matters relating to the Revolving Credit and otherwise and (b) they have not received or relied upon advice from the Agent, the Lenders and their respective Affiliates or advisors regarding legal, regulatory, accounting or tax matters.
- (5) The Obligors acknowledge that no client or near-client relationship has been or will be established between the Obligors and any legal counsel to the Agent or Lenders as a result of their representation of the Agent or Lenders, including by reason of any confidential information regarding any Obligor being provided to legal counsel to the Agent or Lenders

or by reason of any Obligor paying or reimbursing the Agent or Lenders for fees, charges or disbursements of legal counsel to the Agent or Lenders. The Obligors also acknowledge that legal counsel to the Agent or Lenders shall not be prevented from (a) continuing to act for the Agent and Lenders in connection with the Revolving Credit and the Loan Documents, including any enforcement of the Security, for any reason including any client or near-client relationship that may exist now or in the future between legal counsel to the Agent or Lenders and any Obligor, or (b) acting for any other Person whose interests conflict with the interests of any Obligor unless the Obligors establish, without the benefit of any presumption, that counsel has provided the other Person, to the detriment of the Obligors, with confidential information regarding the Obligors that they have received as a result of acting as legal counsel to the Agent or Lenders.

- (6) Nothing in this Section 11.18 affects the rights of any Obligor under or in connection with agreements or arrangements other than the Loan Documents to which any Obligor or any of the Agent, the Lenders and/or one or more of their respective Affiliates or legal counsel are parties.

#### **11.19 Excluded Swap Obligations.**

Notwithstanding anything to the contrary contained herein or in any other Secured Document, any Excluded Swap Obligations of an Obligor shall be excluded from:

- (a) the definition of “Obligations” or “Secured Obligations” (or any similar defined term) in any Secured Document as it pertains to such Obligor, and no Lien granted by a such Obligor under any Secured Document shall secure any Excluded Swap Obligations; and
- (b) the definition of “Guaranteed Obligations” in each of the Upstream Guarantee and the Downstream Guarantee as it pertains to such Obligor, and no Excluded Swap Obligations shall be guaranteed or indemnified by such Obligor under any Secured Document.

#### **11.20 Acknowledgement Regarding Any Supported QFCs.**

To the extent that the Secured Documents provide support, through a guarantee or otherwise, for any Derivative Transaction or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the Parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Secured Documents and any Supported QFC may in fact be stated to be governed by the laws of, *inter alia*, the Province of Ontario). In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under

such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Secured Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Secured Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the Parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

*[SIGNATURE PAGES FOLLOW]*

**IN WITNESS OF WHICH**, the Parties have duly executed this Agreement.

**TITAN MINING CORPORATION**, as Borrower

By: (s) Purni Parikh  
Name: Purni Parikh  
Title: Sr. VP, Corporate Affairs

By: (s) Michael McClelland  
Name: Michael McClelland  
Title: CFO

**1100951 B.C. LTD.**, as Guarantor

By: (s) Michael McClelland  
Name: Michael McClelland  
Title: CFO

By: (s) Susy Horna  
Name: Susy Horna  
Title: Corporate Secretary

**TITAN MINING (US) CORPORATION**, as  
Guarantor

By: (s) Purni Parikh  
Name: Purni Parikh  
Title: Director

By: (s) Michael McClelland  
Name: Michael McClelland  
Title: CFO

**BALMAT HOLDING CORP.**, as Guarantor

By: (s) Purni Parikh  
Name: Purni Parikh  
Title: Director

By: (s) Michael McClelland  
Name: Michael McClelland  
Title: CFO

**EMPIRE STATE MINES, LLC**, by its sole member, **BALMAT HOLDING CORP.**, as Guarantor

By: (s) Michael McClelland  
Name: Michael McClelland  
Title: CFO

By: (s) Susy Horna  
Name: Susy Horna  
Title: Secretary

**NATIONAL BANK OF CANADA**, as Lender

By: (s) Authorized Signatory

Name: Authorized Signatory

Title: Director

By: (s) Authorized Signatory

Name: Authorized Signatory

Title: Managing Director

**NATIONAL BANK OF CANADA**, as Agent

By: (s) Authorized Signatory

Name: Authorized Signatory

Title: Director

By: (s) Authorized Signatory

Name: Authorized Signatory

Title: Managing Director

**EXHIBIT A**  
**COMMITMENTS AND APPLICABLE PERCENTAGES**

<u>Lender</u>	<u>Commitment</u>	<u>Applicable Percentage</u>
National Bank of Canada	██████████	██████

**EXHIBIT B**  
**ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [**Insert name of Assignor**] (the “**Assignor**”) and [**Insert name of Assignee**] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the credit agreement dated as of June 6, 2022 between Titan Mining Corporation and others as Obligors, National Bank of Canada, as Agent, and the Lenders party thereto, as amended, supplemented, restated or replaced from time to time (the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit and guarantees included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan-transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor:  [ ]
2. Assignee:  [ ] [name is an Affiliate/Approved Fund of [*identify Lender*]<sup>1</sup>]
3. Borrower(s):  [ ]
4. Agent:  [ ], as the administrative agent under the Credit Agreement
5. Credit Agreement:  [The [amount] Credit Agreement dated as of [ ] among [name of Borrower(s)], the Lenders parties thereto, [name of Agent], as Agent, and the other agents parties thereto]

---

<sup>1</sup> Select as applicable.

6. Assigned Interest: [ ]

Aggregate Amount of Commitment/Advances for all Lenders	Amount of Commitment/Advances Assigned <sup>2</sup>	Percentage Assigned of Commitment/Advances <sup>3</sup>	CUSIP Number
\$	\$	%	
\$	\$	%	
\$	\$	%	

[7. Trade Date: [ ]]<sup>4</sup>

[7. Trade Date: [ ]]

Effective Date: [ ], 20[ ] [TO BE INSERTED BY AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: \_\_\_\_\_

Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: \_\_\_\_\_

Title:

[Consented to and]<sup>5</sup> Accepted:

<sup>2</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>3</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Advances of all Lenders thereunder.

<sup>4</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

<sup>5</sup> To be added only if the consent of the Agent is required by the terms of the Credit Agreement.

**[NAME OF AGENT]**, as Agent

By: \_\_\_\_\_  
Title:

**[Consented to:]<sup>6</sup>**

**[NAME OF RELEVANT PARTY]**

By: \_\_\_\_\_  
Title:

---

<sup>6</sup> To be added only if the consent of the Borrower and/or other parties is required by the terms of the Credit Agreement.

[ ]<sup>7</sup>

**STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement,<sup>8</sup> (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 6.3 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Agent or any other Lender, and (v) if it is a Foreign Lender,<sup>9</sup> attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform

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<sup>7</sup> Describe Credit Agreement at option of Agent.

<sup>8</sup> The term “Loan Document” should be conformed to the term used in the Credit Agreement.

<sup>9</sup> The concept of “Foreign Lender” should be conformed to the section in the Credit Agreement governing withholding taxes and gross up.

in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

**EXHIBIT C**  
**NOTICE OF ADVANCE, PAYMENT, ROLLOVER OR CONVERSION**

**TO:** National Bank of Canada  
Corporate Customer Service – CCM Loan Admin  
130 King Street West, Suite 3200  
Toronto, ON M5X 1J9

Attention: [REDACTED]  
Email: [REDACTED]  
Email: [REDACTED]

**COPY TO:** National Bank of Canada  
130 King Street West, Suite 3200  
Toronto, ON M5X 1J9

Attention: [REDACTED]  
Email: [REDACTED]

Copy to:

Attention: [REDACTED]  
Email: [REDACTED]

We refer to Section 9.5(1) of the credit agreement dated as of June 6, 2022 between Titan Mining Corporation and others as Obligors, National Bank of Canada, as Agent, and the Lenders party thereto, as amended, supplemented, restated or replaced from time to time (the “**Credit Agreement**”). All capitalized terms used in this certificate and defined in the Credit Agreement have the meanings defined in the Credit Agreement.

1. Request for Advance

The undersigned hereby irrevocably requests as follows:

(a) that an Advance be made under the Revolving Credit as follows [*check one or more*]:

new Advance under the Revolving Credit

rollover of existing Advance(s) under the Revolving Credit

conversion of existing Advance(s) to another type of Advance

(b) the Advance Date shall be \_\_\_\_\_;

(c) the Advance shall be in the form of [*check one or more and complete details*]:

Base Rate Advance Amount: \_\_\_\_\_

SOFR Advance Amount: \_\_\_\_\_

End of Interest Period: \_\_\_\_\_

(d) the proceeds of the Advance shall be [*specify that funds are to be deposited in a designated account maintained by the Borrower with the Lender or are to be transferred by wire in accordance with instructions attached*].

2. The undersigned hereby confirms as follows:

(a) the representations and warranties made in Section 5.1 of the Credit Agreement, except those expressly stated to be made as of a specific date, are true on and as of the date of this notice with the same effect as if they had been made on and as of the date of this notice;

(b) no Default has occurred and is continuing on the date of this notice or will result from the Advance(s) requested in this notice;

(c) the undersigned will immediately notify you if it becomes aware of the occurrence of any event that would mean that the statements in the immediately preceding items (a) and (b) would not be true if made on the Advance Date;

(d) all other conditions precedents in Section 4.1 of the Credit Agreement have been fulfilled.

3. Notice of Payment, Rollover or Conversion

The undersigned hereby irrevocably notifies you of the following under the Revolving Credit:

(a) the payment, rollover or conversion, or extension of a maturity date under [*check one or more*]:

reduction in Advances under Revolving Credit

rollover of existing Advance(s) as the same type of Advance under Revolving Credit

conversion of existing Advance(s) to another type of Advance under Revolving Credit

Describe requested payment, rollover or conversion, or extension of a maturity date: \_\_\_\_\_

(b) the payment, rollover and/or conversion date shall be \_\_\_\_\_.

**DATED** \_\_\_\_\_.

**TITAN MINING CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT D  
COMPLIANCE CERTIFICATE**

**TO:** National Bank of Canada  
Corporate Customer Service – CCM Loan Admin  
130 King Street West, Suite 3200  
Toronto, ON M5X 1J9

Attention: [REDACTED]  
Email: [REDACTED]  
Email: [REDACTED]

**COPY TO:** National Bank of Canada  
130 King Street West, Suite 3200  
Toronto, ON M5X 1J9

Attention: [REDACTED]  
Email: [REDACTED]

Copy to:

Attention: [REDACTED]  
Email: [REDACTED]

We refer to Section 6.3(1)(c) of the credit agreement dated as of June 6, 2022 between Titan Mining Corporation and others as Obligors, National Bank of Canada, as Agent, and the Lenders party thereto, as amended, supplemented, restated or replaced from time to time (the “**Credit Agreement**”). All capitalized terms used in this certificate and defined in the Credit Agreement have the meanings defined in the Credit Agreement. This Compliance Certificate relates to the Borrower’s fiscal period ended \_\_\_\_\_ (the “**Period End**”).

1. The Borrower hereby certifies that:
  - (a) the representations and warranties made in Section 5.1 of the Credit Agreement, except those expressly stated to be made as of a specific date but including those made with respect to the financial statements for the Period End, are true on and as of the date of this Compliance Certificate with the same effect as if those representations and warranties had been made on and as of that date; and
  - (b) no Default has occurred and is continuing on the date of this Compliance Certificate. *[Note: Amend and provide details if there is a Default.]*
2. The Borrower hereby certifies that, as of the Period End:
  - (a) the Interest Coverage Ratio was \_\_\_\_:1:00.

- (b) the Total Leverage Ratio was \_\_\_\_:1:00.
  - (c) the aggregate principal amount of all outstanding Capital Lease Obligations and Debt secured by Purchase Money Security Interests at the Period End was \$ \_\_\_\_\_;
  - (d) the aggregate principal amount of all outstanding Debt in respect of letters of credit, letters of guarantee, surety bonds, performance bonds or guarantees and similar types of instruments issued in the Ordinary Course for government reclamation costs at the Period End was \$ \_\_\_\_\_;
  - (e) the aggregate principal amount of all outstanding Debt permitted pursuant to clause (h) of the definition of “Permitted Debt” at the Period End was \$ \_\_\_\_\_;
  - (f) the aggregate amount of Net Recovery Event Proceeds during the fiscal quarter ending on the Period End is \$ \_\_\_\_\_, which is required by Section 2.4(2) to be reinvested in assets useful in the business of the Borrower as set out therein or to permanently reduce the Revolving Credit;
  - (g) the aggregate loans and advances to employees of the Obligors at Period End is \$ \_\_\_\_\_, pursuant to Section 6.4(4)(c); and
  - (h) pursuant to Section 6.4(22), the operating accounts at financial institutions that are not Lenders that are used to cover day-to-day operating needs of the Borrower and its Subsidiaries, together with the average daily balance in each such account during the fiscal quarter ending on the Period End, are listed on Appendix A.
3. Appendix B attached sets out in reasonable detail the calculation of each of the Interest Coverage Ratio and the Total Leverage Ratio, together with particulars of each of the definitions and elements included in the determination thereof.
  4. Appendix C attached sets out all of the Eligible Securities on deposit in each of the Augusta Securities Accounts and the Fair Market Value thereof as at the Period End.
  5. [*select as appropriate*: Appendix D attached is an update of Schedule 5.1(18) to the Credit Agreement as of the Period End. / There has been no change to the information contained in the version of Schedule 5.1(18) [appended to the Credit Agreement *OR* delivered in the Compliance Certificate dated [date]].]
  6. [*select as appropriate*: Appendix E attached is an update of Schedule 5.1(19) to the Credit Agreement as of the Period End. / There has been no change to the information contained in the version of Schedule 5.1(19) [appended to the Credit Agreement *OR* delivered in the Compliance Certificate dated [date]].]
  7. [*select as appropriate*: Appendix F attached is an update of Schedule 5.1(22) to the Credit Agreement as of the Period End. / There has been no change to the information contained

in the version of Schedule 5.1(22) [appended to the Credit Agreement *OR* delivered in the Compliance Certificate dated [date]].]

8. [select as appropriate: Appendix G attached is an update of Schedule 5.1(23) to the Credit Agreement as of the Period End. / There has been no change to the information contained in the version of Schedule 5.1(23) [appended to the Credit Agreement *OR* delivered in the Compliance Certificate dated [date]].]
9. [select as appropriate: Appendix H attached is an update of Schedule 5.1(24) to the Credit Agreement as of the Period End. / There has been no change to the information contained in the version of Schedule 5.1(24) [appended to the Credit Agreement *OR* delivered in the Compliance Certificate dated [date]].]
10. [select as appropriate: Appendix I attached is an update of Schedule 5.1(25) to the Credit Agreement as of the Period End. / There has been no change to the information contained in the version of Schedule 5.1(25) [appended to the Credit Agreement *OR* delivered in the Compliance Certificate dated [date]].]
11. [select as appropriate: Appendix J attached is an update of Schedule 5.1(26) to the Credit Agreement as of the Period End. / There has been no change to the information contained in the version of Schedule 5.1(26) [appended to the Credit Agreement *OR* delivered in the Compliance Certificate dated [date]].]

**DATED** \_\_\_\_\_.

**TITAN MINING CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT E**  
**AGREEMENT OF NEW OBLIGOR SUPPLEMENT TO CREDIT AGREEMENT**

**THIS AGREEMENT** supplements the credit agreement dated as of June 6, 2022 between Titan Mining Corporation and others as Obligor, National Bank of Canada, as Agent, and the Lenders party thereto, as amended, supplemented, restated or replaced from time to time (the “**Credit Agreement**”).

**RECITALS:**

- A. Capitalized terms used and not defined in this Agreement have the respective meanings defined in the Credit Agreement.
- B. The Credit Agreement contemplates that certain further Subsidiaries of the Borrower shall become Obligor in certain circumstances.
- C. [●] (the “**New Subsidiary**”) is required by the Credit Agreement to become an Obligor.
- D. Security and other documents required by Section 3.1(3) of the Credit Agreement have been delivered by or in respect of the New Subsidiary.

**THEREFORE**, for value received, and intending to be legally bound by this Agreement, the parties agree as follows:

- 1. The New Subsidiary hereby acknowledges and agrees to the terms of the Credit Agreement and agrees to be bound by all obligations of an Obligor under the Credit Agreement as if it had been an original signatory to it.
- 2. The Agent acknowledges that the New Subsidiary shall be an Obligor as of the date of this Agreement.

**IN WITNESS OF WHICH**, the undersigned have executed this Agreement as of the [●] day of [●].

**NATIONAL BANK OF CANADA, as Agent**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Exh E-1

***[NEW SUBSIDIARY]***

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1.1  
PERMITTED LIENS**

Nil.

## SCHEDULE 5.1(13) DISPUTES

The Borrower received notice on October 10, 2017 that Aviano Financial Group LLC (“**Aviano**”), a creditor of Star Mountain Resources, Inc. (“**Star Mountain**”), intended to amend a pre-existing action initially filed in February 2017 in Colorado against Star Mountain to collect debts owing by Star Mountain to Aviano [REDACTED]. The amended action of Aviano against Star Mountain was filed in the state of Colorado on October 12, 2017, adding claims for damages and a claim to set aside the conveyance of the Empire State Mine by Star Mountain to Titan Mining (US) Corporation (by way of the acquisition of all of the issued and outstanding shares of Balmat Holding Corp.) alleging that it was a fraudulent conveyance. In addition, the Aviano notice stated that it intends to file an analogous action in New York alleging fraudulent conveyance, naming Star Mountain and the Borrower as defendants. As at the date hereof, no litigation has been commenced by Aviano against any Obligor. Pursuant to the purchase agreement dated December 30, 2016 (the “**Purchase Agreement**”), Star Mountain has agreed to indemnify the Borrower against certain claims, including the proposed action by Aviano against the Borrower. On or about February 21, 2018, Star Mountain filed a Voluntary Petition for Non-Individuals Filing Bankruptcy in the United States Bankruptcy Court for the District of Arizona.

The Borrower believes that the claim of fraudulent conveyance is wholly without merit and Star Mountain has informed the Borrower that Star Mountain believes that the claim of fraudulent conveyance is wholly without merit and that it intends to defend against the amended action and assert counterclaims against Aviano.

On or about March 12, 2018, the Borrower received a letter from legal counsel to SGS Acquisition Company Limited (“**SGS**”) dated March 9, 2018. The letter states that in 2016, SGS filed an action in the U.S. District Court for the District of Colorado against certain parties and Star Mountain. No Obligor is named party in this case. SGS alleges Titan Mining (US) Corporation (a) has obligations to SGS under mutual indemnification provisions to Star Mountain for the breach of any representations, warranties or breaches of covenants under the Purchase Agreement and (b) failed to conduct its due diligence in connection with the Purchase Agreement, which interfered with SGS’s ability to recover from Star Mountain. SGS is not a party to the Purchase Agreement. SGS states that “the net economic benefits lost to SGS resulting from Star Mountain’s acts, and by extension, the Borrower, amount to approximately \$28.3 million.” The Borrower believes these claims are wholly without merit.

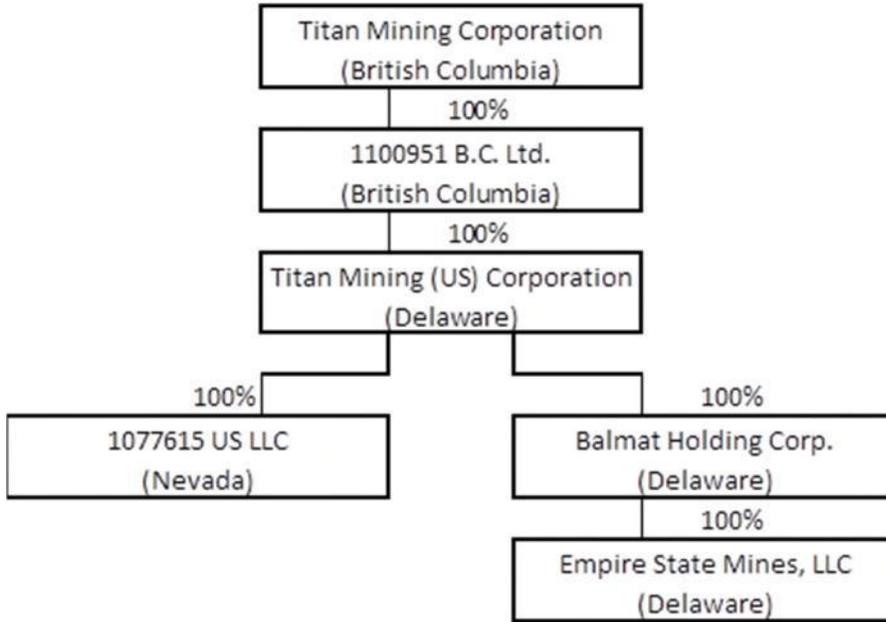
**SCHEDULE 5.1(18)  
INTRAGROUP DEBT**

	<b>Titan Mining Corporation</b>	<b>1100951 B.C. Ltd.</b>	<b>Titan Mining (US) Corporation</b>	<b>Balmat Holding Corp</b>	<b>Empire State Mines, LLC</b>	<b>1077615 US LLC</b>	<b>Total</b>
<b>Investment in Subsidiary</b>	-	-	██████████	-	-	-	██████████
<b>Intercompany Receivable</b>	██████████	██████████	██████████	██████████	██████████	-	██████████
<b>Intercompany payable</b>	-	██████████	██████████	██████████	██████████	██████████	██████████

**SCHEDULE 5.1(19)**  
**OBLIGORS AND DETAILS OF EQUITY INTERESTS, PROPERTY, ETC.**

**Organizational Chart**

The following chart identifies the Borrower's Subsidiaries (including jurisdiction of incorporation/ formation):



Name of Obligors	Jurisdiction of Incorporation	History of Mergers, Amalgamations Changes of Name	Direct and Indirect Holders of its Equity Interest	Nature of Business	CEO Office Address	Registered Address	Equity Interest in Obligors and Others	Location of Property	Bank Accounts	Securities Accounts
<b>Titan Mining Corporation</b>	British Columbia, Canada	Titan Mining Corporation changed its name from Triton Mining Corporation on November 10, 2016.	Publicly held	Holding Company	Suite 555 999 Canada Place Vancouver, BC V6C 3E1	Fasken Matineau DuMoulin LLP Suite 2900 550 Burrard St. Vancouver, BC V6C 0A3	100% interest in 1100951 BC Ltd.	Leasehold interest in: 555-999 Canada Place, Vancouver, BC; 181 Bay St. Suite 2915, Toronto, ON	██████████ ██████████ ██████████ ██████████ ██████████	None
<b>1100951 B.C. Ltd.</b>	British Columbia, Canada	N/A	Titan Mining Corporation (100 common shares)	Holding Company	Suite 555 999 Canada Place Vancouver, BC V6C 3E1	Fasken Matineau DuMoulin LLP Suite 2900 550 Burrard Street Vancouver, BC V6C 0A3	100% interest in Titan Mining (US) Corporation	N/A	N/A	None
<b>Titan Mining (US) Corporation</b>	Delaware, USA	N/A	1100951 BC Ltd. (500 common shares)	Holding Company	Suite 555 999 Canada Place Vancouver, BC V6C 3E1408	Registered Agent Solutions, Inc. 1679 S. Dupont Highway, Suite 100 Dover, County of Kent, DE 19901	100% interest in Balmat Holding Corp. 100% interest in 1077615 US LLC	N/A	N/A	None
<b>Balmat Holding Corp.</b>	Delaware, USA	N/A	Titan Mining (US) Corporation (222 common shares)	Holding Company	Suite 555 999 Canada Place Vancouver, BC V6C 3E1	Corporate Creations Network Inc. 3411 Silverside Road Tatnall Building Suite 104 Wilmington, DE 19810	100% interest in Empire State Mines, LLC (f/k/a St. Lawrence Zinc Company, LLC)	N/A	N/A	None
<b>Empire State Mines, LLC</b>	Delaware, USA	N/A	Balmat Holding Corp. (1 unit; sole member)	Owner and operator of the Empire State Mine	Suite 555 999 Canada Place Vancouver, BC V6C 3E1	Corporate Creations Network Inc. 3411 Silverside Road Tatnall Building Suite 104 Wilmington, DE 19810	N/A	Empire State Mine located in the Balmat- Edwards mining district in northern New York State.	██████████ ██████████ ██████████ ██████████ ██████████	None

**SCHEDULE 5.1(20)**  
**JOINT VENTURES, ETC.**

None

**SCHEDULE 5.1(22)**  
**INTELLECTUAL PROPERTY**

None

**SCHEDULE 5.1(23)  
MATERIAL PERMITS**

The extraction of minerals in New York State is governed by the New York State Mined Land Reclamation Law and the rules and regulations adopted thereunder. A Mined Land Reclamation Permit must be obtained from the Division of Mineral Resources within the NYSDEC in order to extract minerals from lands within the state. Such permits are issued for annual terms of up to five years and may be renewed upon application. Permit holders must submit annually to the NYSDEC a fee based upon the total acreage covered by the permit, up to a maximum [REDACTED]. To the best of the Borrower’s knowledge, all permits required to operate the Empire State Mine are active and in place.

Major environmental permits required for the operation of the Empire State Mine are set out below:

<b>Permit Type</b>	<b>Permit</b>	<b>Permit Number</b>	<b>Expiration</b>
Air	Registration to Operate a Zinc Mining and Milling Complex (amended)	6-4038-00024/02001	9/30/2024
Water	SPDES Water Discharge Permit	NY0001791	5/31/2019 2019 – expiry extended – permit under technical review
Water	Water Withdrawal Permit	6-4038-00024/02001	4/30/2031
Mining	Mining Permit	6-4038-00024/00006	7/31/2025
Storage	NYSDEC Petroleum Bulk Storage	PBS#6-451770	9/26/2023
Radiation	Certificate for Density Gauge	44023174	9/15/2022
Public Water Supply	No permit required, but regulated by NYS Dept. of Health. Registered ID #NY4430004 US Department of Transportation	Registered ID #NY4430004	None
Haz Mat Transport	Registration – Pipeline and Haz Mat Safety Administration	051422 550 065D	6/30/2022
Explosives	US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF – FEL) – (issued to individuals)	Hance Lic# 2-41368-5	02/23
Blasting	NY State Certificate of Competence – (issued to individuals)	Hance 08-4885, Baderman 01-4709	03/23

**SCHEDULE 5.1(24)**  
**MATERIAL CONTRACTS**

- (a) Promissory Note dated December 30, 2016 between Star Mountain Resources Inc. and Titan Mining (US) Corporation.
- (b) Promissory Note Amendment dated October 2, 2017 between Star Mountain Resources Inc. and Titan Mining (US) Corporation.
- (c) Off-Take Contract signed February 23, 2018 between Empire State Mines, LLC (f/k/a St. Lawrence Zinc Company, LLC) and Glencore Ltd.
- (d) Boart Longyear – master agreement dated January 7, 2017 to provide drilling services. Individual statement of work programs are authorized under this agreement (extended through October 31, 2024).
- (e) ALS Geochemistry Analysis – contract dated January 12, 2022 with Empire State Mines, LLC.

**SCHEDULE 5.1(25)  
MINING PROPERTIES**

The 2,699 acres of surface rights owned by Empire State Mines, LLC (f/k/a St. Lawrence Zinc Company, LLC) are divided among the Fowler, Edwards and Pierrepont townships in St. Lawrence County, New York, containing, respectively 1,754, 703 and 242 acres. There are 51,428 acres of mineral rights located in St. Lawrence and Franklin Counties that are comprised of multiple individual parcels in selected areas in and around the Empire State Mine Project.

**Mineral Tenure Information**

<u>Assessor Parcel Number</u>	<u>Town</u>	<u>Surface (acres)</u>	<u>Mineral (acres)</u>
119.001-1-8	Pierrepont	80.4	
119.001-1-10	Pierrepont	102.1	
119.001-1-11	Pierrepont	0.52	
119.001-1-12	Pierrepont	59.3	
119.001-1-18./1	Pierrepont		1.4
174.004-3-2	Edwards	0.85	
174.004-4-2	Edwards	10.37	
174.004-4-1	Edwards	1.35	
175.003-3-1.1	Edwards	71.6	
175.003-3-19.1	Edwards	3.4	
175.002-1-5.1	Edwards	370.2	
175.002-1-33	Edwards	161.7	
175.002-1-34.1	Edwards	72.2	
175.002-1-32.1	Edwards	11.7	
175.002-1-34./1	Edwards		74
1.044-18	Edwards		100
175.002-1-25./1	Edwards		92.2
175.001-1-4./1	Edwards		165
175.002-1-5./1	Edwards		1044
175.003-1-1./2	Edwards		72
175.003-1-1./4	Edwards		18.8
175.003-3-1.1/1	Edwards		70
175.003-3-1.1/4	Edwards		
175.003-3-10./1	Edwards		115
175.003-3-13./2	Edwards		53.1
175.004-1-3./1	Edwards		58
175.004-1-6./1	Edwards		20
175.004-1-7./1	Edwards		63.8
175.004-1-11./1	Edwards		97.4
175.004-1-14./2	Edwards		62
187.002-2-1./1	Edwards		30
187.002-2-1./2	Edwards		80.9
188.001-1-15./2	Edwards		25

<u>Assessor Parcel Number</u>	<u>Town</u>	<u>Surface (acres)</u>	<u>Mineral (acres)</u>
188.001-1-15./3	Edwards		169.1
188.001-1-17./1	Edwards		65.6
188.001-1-27./1	Edwards		73.8
188.002-1-2./1	Edwards		36
174.004-1-18	Fowler	89.3	89.3
187.001-1-5	Fowler	2.5	
187.001-1-21.2	Fowler	44.49	
186.004-1-44	Fowler	705.3	
186.004-1-33.11	Fowler	86.5	
186.004-1-31	Fowler	61.6	
187.003-1-2	Fowler	82.3	
187.003-1-1	Fowler	1.6	
187.069-1-38	Fowler	0.7	
187.003-1-4.11	Fowler	63.8	
187.003-1-4.121	Fowler	124.7	
187.003-2-1.1	Fowler	45.2	
199.001-2-52	Fowler	445	
186.002-1-14.11/3	Fowler		146.6
186.002-1-14.11/4	Fowler		144
187.003-1-3./1	Fowler		0.01
187.003-1-4.11/2	Fowler		
187.003-1-4.11/3	Fowler		0.01
187.003-1-4.11/5	Fowler		
187.003-1-4.11/7	Fowler		
187.003-1-4.11/9	Fowler		
187.003-1-4.11/10	Fowler		
187.003-1-4.11/11	Fowler		
187.003-1-4.11/12	Fowler		
187.003-1-4.11/13	Fowler		
187.003-1-4.11/14	Fowler		
187.003-1-4.11/15	Fowler		
187.003-1-4.11/17	Fowler		
187.003-1-4.11/18	Fowler		
187.003-1-4.11/20	Fowler		
187.003-1-4.11/21	Fowler		
199.001-2-43.1/2	Fowler		
187.003-1-50.2	Fowler	16.08	16.08
Owned Fee		2715.08	2983.08
Parcels			

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**SCHEDULE 5.1(26)  
MINING LICENSES**

Mineral rights may be acquired from the owner by lease, option or purchase. Leases may be renewable and also may be subject to the payment of royalties to the land owner. Average royalties for the Empire State Mine mineral production are estimated to be 0.3% over the life of the mine.

Leases generally have an initial 20-year term, renewable for an additional 20 years, and are subject to a 4% NSR royalty (the “**NSR Royalty**”). One primary lease holding and five smaller leases are included in the Empire State Mine land package that covers 20% of the mineral rights of the major area of the Mahler Mineral Resource. Three leases are held in the area around the Hyatt Mine and 11 leases are held in the Pierrepont Mine area, covering 515 and 1,049 acres respectively. Leases comprising 300 acres are also held in the Emeryville and Talcville exploration areas.

Optioned mineral rights have a renewable 5-year initial term. Option payments are \$4 per acre per year.

A list of leases and options with expiration dates is set out in the table below. Several lease and option agreements have expired; however, Empire State Mines, LLC continues to make payments to the relevant rights holders and expects to commence negotiations for new lease agreements with respect to the expired leases and options. It cannot be assumed that the lease agreement or option agreement will extend beyond the expiration date, despite acceptance of payment by lessors or option grantors, as the case may be.

**Lease List with Expiration Dates Organized by Area**

*Empire State Mine Area*

Current Leases

<b>Name</b>	<b>Type</b>	<b>Expiration Date</b>	<b>Payment Anniversary</b>	<b>Acres</b>	<b>Acres</b>	<b>NSR</b>	<b>Notes</b>
Karen and Brooke E. Bishop Lease (1.19 Ac)	Lease	6/15/2037	6/15/2018	1.19	20 years: renewable for additional 20 years	4%	Lease payment with escalator schedule
Davis (Robert and Peggy) Lease (0.5 Ac)	Lease	26/05/2030	26/05/2017	0.5	20 years: renewable for additional 20 years	4%	Lease payment with escalator schedule
Davis (Stanley and Carol) Lease (14.4 Ac)	Lease	6/12/2026	6/12/2017	12.28+2.12	20 years: renewable for additional 20 years	4%	
Hull Lease	Lease	30/04/2017	30/04/2017	20	20 years: renewable for additional 20 years	4%	<b>RENEWED</b> 30/04/2017

Name	Type	Expiration Date	Payment Anniversary	Acres	Acres	NSR	Notes
Manning Lease	Lease	1/10/2027	1/10/2017	0.65	20 years: renewable for additional 20 years	4%	
Timothy J. Sweeney (Lease)	Lease	16/07/2030	16/07/2017	1.91	20 years: renewable for additional 20 years	4%	Lease payment with escalator schedule
Brian Tripp Lease (0.79Ac)	Lease	6/12/2026	6/12/2017	0.79	20 years: renewable for additional 20 years	4%	
Brian Tripp Lease (19 Ac)	Lease	5/9/2039	5/9/2039	19	20 years: renewable for additional 20 years	4%	
Warriner Lease	Lease	18/01/2031	18/01/2017	80.82	20 years: renewable for additional 20 years	4%	
Yerdon Lease	Lease	10/7/2027	7/7/2017	0.3	20 years: renewable for additional 20 years	4%	
Zira Lease	Lease	27/07/2027	25/07/2017	0.93	20 years: renewable for additional 20 years	4%	

### Expired Lease

Name	Type	Expiration Date	Payment Anniversary	Acres	Term	NSR	Notes
St. Lawrence Ore Lease	Lease	25/01/2010	25/01/2017	135	20 years: NOT renewable	4%	Expired 1/25/2010 however minimum annual payment was made on time
Brian Tripp Lease (90Ac)	Lease	22/03/2021	22/03/2017	90	20 years: renewable for additional 20 years	4%	Expired 3/22/2021 however royalty payment made 3/22/2021
Whitman Lease	Lease	10/2/2018	10/2/2017	30	20 years: renewable for additional 20 years	4%	Expired 10/2/2018; however royalty payments made every year

### *Hyatt Mine Area*

### Current Leases

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Name	Type	Expiration Date	Payment Anniversary	Acres	Acres	NSR	Notes
Cole Lease	Lease	2/19/2041	2/19/2041	94	20 years: renewable for additional 20 years	4%	
Jenne Lease	Lease	2/19/2041	2/19/2041	111	20 years: renewable for additional 20 years	4%	

### Expired Leases

Name	Type	Expiration Date	Payment Anniversary	Acres	Term	NSR	Notes
Kelly Freeman Lease	Lease	2/5/2015	2/5/2017	310	20 years: renewable for additional 20 years	4%	Expired 2/5/2015; however royalty payments have been made on time every year

### *Pierrepoint Mine Area*

### Current Option and Leases

Name	Type	Expiration Date	Payment Anniversary	Acres	Term	NSR	Notes
Edwards Lease	Lease	3/6/2039	3/6/2039	96	20 years: renewable for additional 20 years	4%	
Alan Latimer Lease	Lease	7/7/2023	7/7/2017	20	20 years: renewable for additional 20 years	4%	
Walter Planty Option (64.39 Ac)	Lease	10/30/2039	10/30/2039	64.39	20 years: renewable for additional 20 years	0%	New Lease signed 10/30/2019
Spellacy Lease	Lease	9/18/2040	9/18/2040	324.67	20 years: renewable for additional 20 years	0%	
Wells Lease	Lease	10/1/2029	16/04/2017	178	40 years: NOT renewable	4% zinc; 5% lead	Lease payment date 4/16 (changed from 7/23) used for all Wells leases taken directly from original index file cards

Name	Type	Expiration Date	Payment Anniversary	Acres	Term	NSR	Notes
Daniel Davis Lease	Lease	7/25/2040	7/25/2040	78	20 years: renewable for additional 20 years	4%	New Lease with Daniel Davis signed 7/25/2020
Barrigar, Larry & Elaine, Lease	Lease	7/2/2039	7/2/2039	124 W'y side of road	20 years: renewable for additional 20 years	4%	
Pusateri, Linda, Etal., Lease	Lease	7/29/2039	7/29/2039	156 E'y side of road	20 years: renewable for additional 20 years		

### Expired Options and Leases

Name	Type	Expiration Date	Payment Anniversary	Acres	Term	NSR	Notes
Barkley Lease	Lease	30/07/1999		78	20 years: renewable for additional 20 years	4%	
Barrigar Lease	Lease	24/07/1999	7/7/2017	280	20 years: renewable for additional 20 years	4%	
Caswell Lease	Lease	5/11/2002	5/11/2017	98	20 years: renewable for additional 20 years	4%	First 20-year term has expired; however lease is renewable for 20 years and payments have been made on time each year
Hutchinson Lease	Lease	1/10/2002	1/10/2017	37	20 years: renewable for additional 20 years	4%	First 20-year term has expired; however lease is renewable for 20 years and payments have been made on time each year
Stiles Lease	Lease	27/09/2002	27/09/2017	32	20 years: renewable for additional 20 years	4%	Expired

Name	Type	Expiration Date	Payment Anniversary	Acres	Term	NSR	Notes
Thivierge Lease	Lease	27/08/2002	27/08/2017	66	20 years: renewable for additional 20 years	4%	First 20-year term has expired; however lease is renewable for 20 years and payments have been made on time each year, Letter of intent and new Lease mailed to owner 5/2/2022 for their review and signature
Van Brocklin Lease	Lease	27/07/2002	27/07/2017	100	20 years: renewable for additional 20 years	4%	First 20-year term has expired; however lease is renewable for 20 years and payments have been made on time each year.; Letter of intent and new Lease mailed to owner 4/7/2022 for their review and signature

*Exploration Areas*

Current Options and Leases

Name	Type	Expiration Date	Payment Anniversary	Acres	Term	NSR	Notes
Gilbert Lease	Lease	22/03/2031	22/03/2017	96.4 <sup>(1)</sup>	20 years: renewable for additional 20 years	4%	The lease portion of the agreement was signed – with escalator
Gouverneur Talc Co Lease	Lease	28/06/2030	None	2,500	20 years	4%	Renewed for an additional 20 years 6/28/2010-06/28/30
James Morrill Lease	Lease	8/9/2029	8/9/2017	464	20 years: renewable for additional 20 years	4%	

Stanley Morrill Lease	Lease	8/9/2029	8/9/2017	266.22	20 years: renewable for additional 20 years	4%	
St. Lawrence County Option	Option	11/3/2024	20/04/2017	85.5 & 30	5-year option	4%	Option payment with escalator schedule
Emery Webb Lease	Lease	22/09/2029	22/09/2017	181.46	20 years: renewable for additional 20 years	4%	
Wight, Gary Lease	Lease	6/26/2039	6/26/2039	157.5	20 years: renewable for additional 20 years	4%	
Whitaker, Joan Lease	Lease	6/12/2039	6/12/2039	157.5	20 years: renewable for additional 20 years	4%	
Wight, Lee, Lease	Lease	7/5/2039	7/5/2039	157.5	20 years: renewable for additional 20 years	4%	
Love, Linda Lease	Lease	6/13/2039	6/13/2039	157.5	20 years: renewable for additional 20 years	4%	
Bogardus, Peter & Penny Lease	Lease	11/12/2039	11/12/2039	162.2	20 years: renewable for additional 20 years	4%	
Brown Lease	Lease	9/9/2039	9/9/2039	165	20 years: renewable for additional 20 years	4%	
Susan Emrich, Amy Emrich, Elizabeth Turner-Katalina Option	Option	11/1/2022	11/1/2022	229.04	3 year option	4%	
Lansing Dodge Lease	Lease	10/8/2039	10/8/2039	22,000	20 years: renewable for additional 20 years	4%	
Marjory Tyler Lease	Lease	11/6/2039	11/6/2039	183	20 years: renewable for additional 20 years	4%	
Webb, Alan Lease	Lease	9/18/2039	9/18/2039	46	20 years: renewable for additional 20 years	4%	

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## Expired Options and Leases

Name	Type	Expiration Date	Payment Anniversary	Acres	Term	NSR	Notes
Aleta Billings Heirs Option	Option	4/6/2015	4/6/2017	157.5	5-year option	4%	Expired 4/6/2015
Aleta Billings Heirs Option	Option	25/06/2015	25/06/2017	157.5	5-year option	4%	Expired 25/06/2015
Aleta Billings Heirs Option	Option	15/07/2015	15/07/2017	157.5	5-year option	4%	Expired 15/07/2015
Bogardus, Peter & Penny Options	Option	2/9/2015	2/9/2017	162.2	5-year option	4%	Expired
Bogardus, Ryan Option	Option	8/9/2015	8/9/2017	162.2	5-year option	4%	Expired 8/9/2015 Option payment with escalator schedule
Cromwell Heir Option	Option	16/06/2016	16/06/2017	369	5-year option	4%	Expired 16/06/2016
Cromwell Heir Option	Option	21/10/2016	21/10/2017	369	5-year option	4%	Expired
Lawrence Emrich Heirs Options	Option	17/08/2015	17/08/2017	229.04	5-year option	4%	
Gilbert Option	Option	3/3/2016	3/3/2017	0 <sup>(1)</sup>	5-year option	4%	Expired 3/3/2016 Option with escalator
Lansing-Dodge Option	Option	15/09/2015	15/09/2017	22,000	5-year option	4%	
Steven A. Sullivan Option	Option	28/10/2012	28/10/2017	158.8 (98.45 [60.00+38 .45] + 60.35)	3-year option	4%	Expired 28/10/2012
Marjory Tyler Option	Option	2/12/2015	2/12/2017	183	5-year option	4%	
Webb, Alan Option	Option	26/07/2015	26/07/2017	46	5-year option	4%	

Source: SLZ (2017)

### Notes:

- (1) The area covered by the Gilbert Lease is 96.4 acres and is subject to agreement with two heirs of the original lessor. One of the heirs has signed the lease referred to above as the Gilbert Lease and, in respect of the other heir, the option has expired and is shown above as the Gilbert Option. The total acreage for the Gilbert Lease and Gilbert Option is 96.4 acres which has been reflected in the Gilbert Lease row for the purposes of this table.

**SCHEDULE 5.1(37)**  
**ROYALTIES**

The NSR Royalty (as defined in Schedule 5.1(26)).

**SCHEDULE 11.8  
ADDRESSES FOR NOTICE**

If to the Obligors:

Titan Mining Corporation  
Suite 555, 999 Canada Place  
Vancouver, BC V6C 3E1

Attention: Chief Financial Officer

If to the Agent:

National Bank of Canada  
Corporate Customer Service – CCM Loan Admin  
130 King Street West, Suite 3200  
Toronto, ON M5X 1J9

Attention: [REDACTED]  
Email: [REDACTED]  
Email: [REDACTED]

If to National Bank of Canada:

National Bank of Canada  
130 King Street West, Suite 3200  
Toronto, ON M5X 1J9

Attention: [REDACTED]  
Email: [REDACTED]

Copy to:

Attention: [REDACTED]  
Email: [REDACTED]