

CAPSTONE COPPER CORP. and CAPSTONE MINING CORP.
as Borrowers

- and -

CANADIAN IMPERIAL BANK OF COMMERCE
as Administrative Agent, Co-Lead Arranger and Joint Bookrunner

- and -

THE BANK OF NOVA SCOTIA
as Co-Lead Arranger, Joint Bookrunner and Syndication Agent

- and -

ING CAPITAL LLC
as Co-Lead Arranger and Joint Bookrunner

- and -

**NATIONAL BANK OF CANADA and WELLS FARGO BANK, N.A., CANADIAN
BRANCH**
as Documentation Agents

- and -

**CANADIAN IMPERIAL BANK OF COMMERCE, THE BANK OF NOVA SCOTIA,
ING CAPITAL LLC, WELLS FARGO BANK, N.A., CANADIAN BRANCH, CITIBANK,
N.A., CANADIAN BRANCH, BANK OF MONTREAL, NATIONAL BANK OF
CANADA, ROYAL BANK OF CANADA and THE SEVERAL LENDERS FROM TIME
TO TIME PARTY THERETO**
as Lenders

**FOURTH AMENDED AND RESTATED
CREDIT AGREEMENT**

Dated as of May 12, 2022

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SCHEDULE O FORM OF ACCORDION AGREEMENT

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FOURTH AMENDED AND RESTATED CREDIT AGREEMENT dated as of May 12, 2022 among Capstone Copper Corp., a corporation continued under the laws of the Province of British Columbia (formerly known as Mantos Copper (Bermuda) Limited) (together with its successors and assigns, “**Capstone Copper**”) and Capstone Mining Corp., a corporation amalgamated under the laws of the Province of British Columbia (together with its successors and assigns, “**Capstone Mining**” and, together with Capstone Copper, the “**Borrowers**”, and each, a “**Borrower**”), the lending institutions from time to time parties hereto as Lenders (each, a “**Lender**” and, collectively, the “**Lenders**”) and Canadian Imperial Bank of Commerce as administrative agent (the “**Administrative Agent**”).

WHEREAS Capstone Mining, the Administrative Agent and certain lenders entered into a third amended and restated credit agreement dated as of January 16, 2015 (as amended by a first amending agreement dated as of April 19, 2017, by a second amending agreement dated as of July 25, 2019, by a third amending agreement dated as of February 19, 2021, by a fourth amending agreement dated March 24, 2021, and by the consent agreement dated August 18, 2021, the “**Existing Credit Agreement**”);

AND WHEREAS the parties hereto wish to enter into this agreement in order to amend and restate the Existing Credit Agreement subject to the terms and conditions of this agreement for the purposes of, *inter alia*, adding Capstone Copper as a Borrower thereunder, providing for an increase in the Credit Limit and extending the Maturity Date (as defined in the Existing Credit Agreement);

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

ARTICLE 1 INTERPRETATION

1.1 Defined Terms

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

“**\$**” denotes U.S. dollars.

“**0840559**” means 0840559 B.C. Ltd., a company incorporated under the laws of British Columbia.

“**0908113**” means 0908113 B.C. Ltd., a company incorporated under the laws of British Columbia.

“**Accommodation**” means any extension of credit by a Finance Party to a Borrower under this agreement including, for greater certainty, the extension of credit by way of a Loan, a Bankers’ Acceptance or a Letter.

“**Accordion Agreement**” means an agreement in the form of Schedule O hereto (or in such other form having substantially similar effect as the Administrative Agent may accept) duly completed, executed and delivered by the Borrowers, an Accordion Lender and the Administrative Agent pursuant to Section 2.7(d).

“**Accordion Effective Date**” means in respect of an increase to the Credit Facility requested by the Borrower in accordance with Section 2.7, the date on which an Accordion Agreement has been duly executed and delivered by each of the applicable Accordion Lender(s), the Administrative Agent and the Borrowers and received by the Administrative Agent.

“**Accordion Lender**” means a Lender or a proposed new Lender acceptable to the Administrative Agent and the Issuing Lenders, acting reasonably, that has agreed to accept an additional Individual Commitment with respect to the Credit Facility or an initial Individual Commitment with respect to the Credit Facility designated in an Accordion Notice delivered to the Administrative Agent pursuant to and in accordance with Section 2.7(a).

“**Accordion Notice**” shall have the meaning ascribed thereto in Subsection 2.7(a).

“**Acquisition**” means:

- (a) if the acquisition is a share purchase, a Borrower shall Control the entity being acquired immediately following the completion of such acquisition; or
- (b) if the acquisition is an asset purchase, all or substantially all of the assets of the vendor (or of a division or unit of the vendor) are being acquired.

“**Additional Full Security Guarantor**” means any direct or indirect Subsidiary of Capstone Copper (other than the Excluded Entities) which has become a Full Security Guarantor pursuant to Section 11.1(t).

“**Additional Guarantors**” means the Additional Full Security Guarantors and the Additional Partial Security Guarantors.

“**Additional Partial Security Guarantor**” means any direct or indirect Subsidiary of Capstone Copper (other than the Excluded Entities) which has become a Partial Security Guarantor pursuant to Section 11.1(u).

“**Adjusted Term SOFR Rate**” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR Rate for such calculation plus (b) the applicable Term SOFR Adjustment; provided, in each case, that if the Adjusted Term SOFR

Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this agreement.

“**Administrative Agent**” means Canadian Imperial Bank of Commerce, in its capacity as administrative agent of the Finance Parties, and any successor thereto pursuant to Section 14.12.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

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

“**Agent Accounts**” means the Administrative Agent’s payment accounts, the details of which are as set forth in Schedule L.

“**Agreed Environmental Requirements**” means any policy, statement or guidelines of whatsoever nature relating to environmental, health and safety or similar issues and issued from time to time by the World Bank Group or the International Finance Corporation.

“**Alternate Base Rate Canada**” means, at any particular time, the variable rate of interest per annum, calculated on the basis of a year of 365 or 366 days, as the case may be, which is equal to the greater of (a) the Base Rate Canada at such time and (b) the aggregate of (i) the Federal Funds Effective Rate at such time and (ii) ½ of 1% per annum. In no circumstances shall the Alternate Base Rate Canada be less than zero.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction applicable to a Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“**Anti-Money Laundering Laws**” means any laws or regulations relating to money laundering or terrorist financing, including, without limitation, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *Bank Secrecy Act*, 31 U.S.C. Sections 5301 et seq.; the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001, Pub. L. 107-56 (a/k/a the *USA Patriot Act*); Laundering of Monetary Instruments, 18 U.S.C. Section 1956; Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity, 18 U.S.C. Section 1957; the Financial Recordkeeping and Reporting of Currency and Foreign

Transactions Regulations, 31 C.F.R. Part 103; and any similar laws, regulations or executive orders currently in force or hereafter enacted.

“**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 (whether or not having the force of law, but if not having the force of law, one with which a responsible Canadian or foreign chartered bank or financial institution would comply); or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Official Body, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person.

“**Applicable Rate**” means, for a particular Fiscal Quarter, the rate per annum used to determine the interest rate on various types of Loans, the rate used to calculate acceptance fees pursuant to Section 7.6 or the rate used to calculate standby fees pursuant to Section 7.5 or the rate used to calculate Letter issuance fees pursuant to Section 7.8 by reference to the ranges in which the Total Leverage Ratio falls as set forth in Schedule K hereto and as determined and as effective pursuant to Section 7.7. The Applicable Rate shall be set at Level I until otherwise changed in accordance with Section 7.7.

“**Assignment After Default**” means any assignment pursuant to Section 16.5(c) after the occurrence of a Default.

“**Available Credit**” means, at any particular time and in respect of any particular Credit Facility, the aggregate of the amount, if any, by which the amount of such Credit Facility at such time exceeds the aggregate amount of credit outstanding under such Credit Facility at such time.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) 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 (y) 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 clause (a) of Section 3.13.

“**BA Discounted Proceeds**” means, in respect of any Bankers’ Acceptances to be accepted by a Lender on any day, an amount (rounded to the nearest whole cent and with one-half of one cent being rounded up) calculated on such day by multiplying:

- (a) the aggregate face amount of such Bankers' Acceptances; by
- (b) the amount determined by dividing one by the sum of one plus the product of:
 - (i) the BA Rate which is applicable to such Bankers' Acceptance (expressed as a decimal); and
 - (ii) a fraction, the numerator of which is the number of days remaining in the term of such Bankers' Acceptances and the denominator of which is 365;

with the amount as so determined being rounded up or down to the fifth decimal place and .000005 being rounded up.

"BA Proceeds" means, with respect to a particular Bankers' Acceptance, the BA Discounted Proceeds with respect thereto less the aggregate amount of the acceptance fees in respect of such Bankers' Acceptance calculated in accordance with Section 7.7.

"BA Rate" means:

- (a) with respect to an issue of Bankers' Acceptances with the same maturity date to be accepted by a Schedule I Lender hereunder, the discount rate per annum, calculated on the basis of a year of 365 days, (i) equal to, as determined by the Administrative Agent, the arithmetic average (rounded upwards to the nearest multiple of 0.01%) of the discount rates that appear on the Reuters Screen CDOR Page at or about 10:00 a.m. (Toronto time) on the date of issue and acceptance of such Bankers' Acceptances, for bankers' acceptances having a comparable face value and an identical maturity date to the face value and maturity date of such issue of Bankers' Acceptances or (ii) if such Page does not appear, the discount rate per annum, calculated on the basis of a year of 365 days, determined by the Administrative Agent as being the arithmetic average (rounded upwards to the nearest multiple of 0.01%) of the discount rates of the Schedule I Reference Lenders determined in accordance with their normal practices at or about 10:00 a.m. (Toronto time) on the date of issue and acceptance of such Bankers' Acceptances, for bankers' acceptances having a comparable face value and an identical maturity date to the face value and maturity date of such issue of Bankers' Acceptances; and
- (b) with respect to an issue of Bankers' Acceptances with the same maturity date to be accepted by a Schedule II or III Lender hereunder, the lesser of (i) the discount rate per annum, calculated on the basis of a year of 365 days, determined by the Administrative Agent as being the arithmetic average (rounded upwards to the nearest multiple of 0.01%) of the discount rates of the Schedule II and III Reference Lenders determined in accordance with their normal practices at or about 10:00 a.m. (Toronto

time) on the date of issue and acceptance of such Bankers' Acceptances, for bankers' acceptances having a comparable face value and an identical maturity date to the face value and maturity date of such issue of Bankers' Acceptances and (ii) the BA Rate with respect to an issue of Bankers' Acceptances with the same maturity date to be accepted by a Schedule I Lender hereunder plus 0.1% per annum; in each case as concerns clauses (i) and (ii) in no event shall the BA Rate be less than zero.

"BA Rate Loan" shall have the meaning ascribed thereto in Section 3.11.

"Bail-In Action" means the exercise of any Write-down and Conversion Powers by the applicable Resolution Authority in respect of an Affected Financial Institution.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bankers' Acceptance" means a bill of exchange subject to the *Bills of Exchange Act* (Canada) or a depository bill subject to the *Depository Bills and Notes Act* (Canada) (a) drawn by the Borrowers, or either of them, and accepted by a Lender, (b) denominated in Canadian dollars, (c) having a term to maturity of one or three months and that corresponds to the term of an Interest Period (subject to availability and the right of the Administrative Agent, in its discretion, to restrict the term or maturity dates applicable to Bankers' Acceptances), (d) issued and payable only in Canada and (e) having a face amount of not less than Cdn.\$1,000,000 or an integral multiple of Cdn.\$1,000 in excess thereof.

"Banking Day" means (x) any day, other than Saturday and Sunday, on which banks generally are open for business in Vancouver, British Columbia and Toronto, Ontario and (y) (i) when used in respect of Base Rate Canada Loans, any such day which is also a day on which banks generally are open for business in New York City, New York and (ii) when used in respect of Term Benchmark Loans, any such day other than 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.

"Base Rate Canada" means the variable rate of interest per annum determined by the Administrative Agent from time to time as its base rate for United States dollar

loans made by the Administrative Agent in Canada from time to time, being a variable per annum reference rate of interest adjusted automatically upon change by the Administrative Agent, calculated on the basis of a year of 365 or 366 days, as the case may be. If the Base Rate Canada shall be less than zero, the Base Rate Canada shall be deemed to be zero for the purpose of this agreement.

“Base Rate Canada Loan” means monies lent by the Lenders to a Borrower hereunder in United States dollars and upon which interest accrues at a rate referable to the Alternate Base Rate Canada.

“Benchmark” means, initially, with respect to any Term Benchmark Loan, 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 clause (b) of Section 3.13.

“Benchmark Replacement” means the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (a) the sum of (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points);
or
- (b) the sum of (i) the alternate benchmark rate that has been selected by the Administrative Agent and a 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 Credit 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 Administrative Agent and a Borrower giving due consideration to (i) 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 (ii) 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 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 (a) the date of the public statement or publication of information referenced therein and (b) 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) (x) 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 Credit Document in accordance with Section 3.13 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 3.13.

“**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.

“**Borrower Account**” means the bank account maintained by the Borrowers, or either of them, at Bank of Montreal, the details of each of which are as set forth in the Borrowers’ Perfection Certificate or such other bank account maintained a Borrower with a Lender which is agreed in writing between the relevant Borrower and the Administrative Agent.

“**Branch of Account**” means the office of the Administrative Agent at 199 Bay Street, Toronto, Ontario M5L 1G9 or such other address as the Administrative Agent may designate from time to time.

“**Canadian Dollar Equivalent**” means the Exchange Equivalent in Canadian dollars of any amount of any other currency.

“**Capital Lease**”, as applied to any Person, shall mean any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with

generally accepted accounting principles, is, or is required to be, accounted for as a finance lease obligation on the balance sheet of that Person.

“**Capstone Barbados**” means Capstone Resources (Barbados) Ltd., a company existing under the laws of Barbados.

“**Capstone BC**” means Capstone Mexico Mining Corp., a company incorporated under the laws of British Columbia.

“**Capstone Chile**” means Capstone Mining Chile SpA, a company incorporated under the laws of Chile.

“**Capstone Luxembourg**” means Capstone Luxembourg Finance, a private limited liability company formed under the laws of Luxembourg.

“**Capstone Mexico**” means Capstone Gold, S.A. de C.V., a company incorporated under the laws of Mexico.

“**Capstone MSD**” means Capstone Resources MSD Ltd., a company existing under the laws of Barbados.

“**Capstone MSD Guarantee**” means the full recourse guarantee of Capstone Mining dated March 24, 2021 in favour of WPM guaranteeing the obligations of Capstone MSD under the Santo Domingo Stream Agreement.

“**Capstone PV**” means Capstone PV Mining Corp., a company incorporated under the laws of British Columbia.

“**Capstone Silver and Gold Contract**” means the silver and gold purchase contract dated as of November 20, 2008 between Silverstone, Minto, Kutcho, and Capstone Mining.

“**Capstone US**” means Capstone US Mining Corp., a company incorporated under the laws of Delaware.

“**Cash**” means, at any particular time, for any Person, the aggregate of cash and Cash Equivalents of such Person determined on a consolidated basis at such time.

“**Cash Equivalents**” means (i) securities issued or directly and fully guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof with maturities of 12 months or less from the date of acquisition, (ii) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank incorporated in the United States or Canada having capital and surplus in excess of \$500,000,000 in the case of any commercial bank incorporated in the United States or Cdn.\$500,000,000 in the case of any commercial bank incorporated in Canada, (iii) repurchase obligations for

underlying securities of the types described in clauses (i) and (ii) entered into with any financial institution meeting the qualifications specified in clause (ii) above, (iv) commercial paper or other debt securities rated A-1 or the equivalent thereof by Moody's or S&P and in each case maturing within one year after the date of acquisition, (v) investment funds investing at least 95% of their assets in securities of the types described in clauses (i) to (iv) above and (vi) readily marketable direct obligations issued by any state of the United States or province of Canada or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's, S&P or Dominion Bond Rating Service with maturities of 24 months or less from the date of acquisition.

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

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

“Change in Law” means the occurrence, after the date of this agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Official Body or (c) the making or issuance of any Applicable Law by any Official Body or the making or issuance of any request, guideline or directive (whether or not having the force of law but, if not having the force of law, one with which a responsible Canadian or foreign chartered bank or financial institution would comply) by any Official Body provided that notwithstanding anything herein to the contrary, (x) the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or other non-United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a **“Change in Law”**, regardless of the date enacted, adopted or issued.

“Chilean Exploration Projects” means, collectively, the mining projects owned by certain Excluded Entities and other Persons (for certainty such other Persons being non-Subject Entities) located to the north and the south of the Santo Domingo Project.

“Code” means the Internal Revenue Code of 1986 of the United States, as amended from time to time, and any successor statute and including all regulations issued under all such statutes.

“Conforming Changes” means, with respect to either the use or administration of Term SOFR Rate or the use, administration, adoption or implementation of any

Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Banking Day,” the definition of “U.S. Government Securities Business Day”, the definition of “Interest Period” or any similar or analogous definition (including the addition of a concept of “interest period”), the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative 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 Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this agreement and the other Credit Documents).

“**Contaminant**” means any substance or material, the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the environment is prohibited, regulated, controlled, or licensed by any Governmental Entity under any Environmental Laws including without limitation, any contaminant, pollutant, hazardous, corrosive or toxic substance, flammable material, explosive material, radioactive material, dangerous goods or substance, gas, microwaves, waste, urea formaldehyde, mercury, asbestos materials, hydrocarbon contaminant, deleterious substance, noxious substance, and compounds known as chlorobiphenyls, and hazardous waste.

“**Contributing Lender**” has the meaning ascribed thereto in Section 3.3.

“**Control**”, in respect of a corporation, has the meaning given thereto in the *Business Corporations Act* (British Columbia) and in respect of any other Person means the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of shares or voting interest or by contract or otherwise and “**Controlled**” shall have a similar meaning.

“**Conversion Notice**” shall have the meaning ascribed thereto in Section 6.4.

“**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**” has the meaning ascribed thereto in Section 16.16.

“**Cozamin Intercreditor Agreement**” means the intercreditor agreement dated as of February 19, 2021 between, inter alia, WPM, the Administrative Agent, Capstone Mining and Capstone Barbados.

“**Cozamin Stream Agreement**” means the precious metals purchase agreement dated as of December 11, 2020 between WPM, Capstone Mining and Capstone Barbados.

“**Credit Documents**” means this agreement, the Guarantees, the Security Documents, the Confirmations of Guarantee and Security, the Fee Letter and all instruments and agreements executed and delivered by the Obligors in favour of the Finance Parties from time to time in connection with this agreement or any other Credit Document but shall not include Secured Hedging Agreements or the Cash Management Agreements.

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

“**Credit Facility**” means the revolving term credit facility established by the Lenders in favour of the Borrowers pursuant to Section 2.1.

“**Credit Limit**” means \$500,000,000 or the Canadian Dollar Equivalent thereof, as may be reduced pursuant to Section 2.4 or increased pursuant to Section 2.7.

“**Daily Simple SOFR**” means, for any day, a rate per annum equal to SOFR for the day, with the conventions for this rate (which will include a lookback) being established by the Administrative 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 Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

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

“**Defaulting Lender**” has the meaning ascribed thereto in Section 3.3.

“**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.

“**Derivative Exposure**” in relation to any Person (the “**relevant party**”) and any counterparty of the relevant party at any time means the amount which would be payable by the relevant party to that counterparty, or by that counterparty to the

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

“**Designated Account**” means with respect to transactions in a particular currency under the Credit Facility, an account of either Borrower maintained by the Administrative Agent at the Branch of Account for the purposes of transactions in such currency under the Credit Facility.

“**Distribution**” means:

- (a) the declaration, payment or setting aside for payment of any dividend or other distribution on or in respect of any Shares in the capital of a Borrower, other than a dividend declared, paid or set aside for payment a Borrower which is payable in shares of the relevant Borrower;
- (b) the redemption, retraction, purchase, retirement or other acquisition, in whole or in part, of any Shares in the capital of a Borrower or any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for Shares in the capital of a Borrower, including, without limitation, options, warrants, conversion or exchange privileges and similar rights; and
- (c) the payment of interest or the repayment of principal with respect to any Indebtedness of a Borrower which is subordinated to the Secured Obligations.

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

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

“**EBITDA**” means, for any particular Fiscal Quarter, Net Income for such Fiscal Quarter plus, to the extent deducted in determining Net Income, the aggregate of:

- (a) Interest Expenses for such Fiscal Quarter;
- (b) consolidated income tax expenses of Capstone Copper for such Fiscal Quarter;
- (c) consolidated depreciation and amortization expenses and other non-cash expenses of Capstone Copper (which shall include, for certainty, Capstone Copper’s non-cash stock options) for such Fiscal Quarter; and

- (d) unrealized derivative financial instrument gains or losses of a Subject Entity.

The calculation of EBITDA shall be adjusted, without duplication, for non-cash revenues and expenses of Capstone Copper on a consolidated basis including, without limitation, deferred revenue and the difference between accrued and cash reclamation costs. For greater certainty, EBITDA shall not be adjusted for any change in any non-cash operating working capital. The determination of EBITDA for all purposes hereunder shall be determined exclusive of any EBITDA attributable to any Excluded Entity. The determination of EBITDA shall exclude any extraordinary, unusual or non-recurring gains or loss (including, for certainty and without limitation, any gains or losses from the sale of any mining property or any part hereof or any insurance proceeds).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of a Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the last condition precedent to effectiveness of this agreement pursuant to Section 12.2 is fully satisfied as determined by the Administrative Agent, unless as otherwise waived by the Administrative Agent on the instructions of the Lenders in their sole discretion. For the avoidance of doubt, the Execution Date may occur prior to the Effective Date to the extent conditions precedent to effectiveness of this agreement set forth in Section 12.2 are not satisfied or waived as afore-said on the Execution Date.

“EMA” means the *Environmental Management Act* (British Columbia), as amended from time to time, and any successor statute.

“Employee Benefit Plan” means any employee benefit plan maintained or contributed to by any Subject Entity that are not Pension Plans, including any profit sharing, savings, supplemental retirement, retiring allowance, severance, pension, deferred compensation, welfare, bonus, incentive compensation, phantom stock, supplementary unemployment benefit plan or arrangement and any life, health, dental and disability plan or arrangements in which the employees or former

employees of any Subject Entity participate or are eligible to participate, in each case whether written or oral, funded or unfunded, insured or self-insured, reported or unreported, but excluding all stock option or stock purchase plans.

“**Endeavour Royalty**” means the royalty granted by Capstone Mining and Capstone Mexico in favour of Endeavour Silver Corp. pursuant to the following agreements: (i) the Upper and Lower Concession Division Agreement made and entered into as of September 8, 2017 between Capstone Mining, Mining Opco, S.A. de C.V., Capstone Mexico, Endeavour Silver Corp. and Minera Oro Silver de Mexico S.A. de C.V., and (ii) the net smelter return royalty agreement dated as of July 23, 2020 between Capstone Mexico and Minera Oro Silver de Mexico, S.A. de C.V.

“**Enforcement Date**” means the date on which the Administrative Agent notifies the Borrowers, pursuant to and as then authorized by Section 13.1, that all Indebtedness of the Borrowers to the Lenders hereunder has become immediately due and payable or on which such Indebtedness automatically becomes due and payable pursuant to Section 13.1, whichever occurs first or, if all Indebtedness of the Borrowers to the Lenders hereunder has been repaid in full and all commitments of the Lenders hereunder have terminated, the date on which the Administrative Agent notifies an Obligor that the Administrative Agent is entitled to enforce a Guarantee or the Security in accordance with the terms of one or more of the Secured Hedging Agreements or Cash Management Agreements to which such Obligor is a party.

“**Environmental Laws**” means the Agreed Environmental Requirements and all applicable federal, state, provincial or local statutes, laws, ordinances, codes, rules, regulations, decrees and orders regulating, relating to or imposing liability or standards of conduct concerning public health or protection of the environment (including, without limitation, the EMA, as amended).

“**ERISA**” means the *Employee Retirement Income Security Act* of 1974 of the United States, as amended from time to time, and any successor statute and including all regulations issued under all such statutes.

“**ERISA Affiliate**” shall mean Person that is a member of a group of which Capstone Copper is a member and which group is treated as a single employer under Section 414(b), (c) or (m) of the Code; or Section 4001(a)(14) of ERISA, if such Person is a U.S. entity with employees resident in the United States.

“**ERISA Companies**” means Capstone Copper and ERISA Affiliates and “**ERISA Company**” means any of the ERISA Companies.

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

“**Exchange Equivalent**” means, as of any particular date, with reference to any amount (the “**original amount**”) expressed in a particular currency (the “**original currency**”), the amount expressed in another currency which would be required to

buy the original amount of the original currency using the quoted spot rates at which the principal office in Toronto of the Administrative Agent offers to provide such other currency in exchange for such original currency at 12:00 noon (Toronto time) on such date.

“**Execution Date**” means the date upon which this agreement is executed and delivered (or otherwise released from escrow) by the Borrowers, the Administrative Agent and the Lenders.

“**Excluded Assets**” means:

- (a) all Investments (including, but not limited to Shares in the Excluded Entities and Indebtedness owing to the Subject Entities by the Excluded Entities which is permitted hereby) in the Excluded Entities owned by any Subject Entity;
- (b) all assets (be they real or personal) of the Excluded Entities and Non-Guarantor Subsidiaries (if applicable);
- (c) the Joint Venture Interests; and
- (d) all assets of Capstone Luxembourg other than its cash, accounts receivables, debt instruments (including, without limitation, promissory notes) and bank accounts and any proceeds of the foregoing.

“**Excluded Entities**” means:

- (a) 0908113, Far West, Capstone Chile, Capstone Resources MSD Ltd., Far West Mining Ltd., FWM Exploration (Chile) Ltd., Far West Exploration S.A., Mantoverde S.A., Minera Santo Domingo SCM, Mantos Copper Delaware LLC, and any existing or future Subsidiaries thereof and, subject to Section 11.1(aa), NumCo; and
- (b) any Subsidiary (other than Subsidiaries existing on the date hereof) and its Holding Company Subsidiary designated as an Excluded Entity by the Borrowers, or either of them, if such Subsidiary at the time of acquisition or organization or any time thereafter obligated as a borrower with respect to any project financing, provided that at the time of such designation:
 - (i) the financial covenants set out in Sections 11.1(o)-(q) would be met, on a pro forma basis;
 - (ii) no Default or Event of Default has occurred and is continuing; or
 - (iii) a Borrower delivers to the Administrative Agent a certificate addressed to the Administrative Agent certifying (I) that such Subsidiary is obligated as a borrower with respect to a project financing and otherwise providing a brief overview of such project

financing and (II) the matters set forth in clauses (i) – (iii) above, and as concerns clauses (i) and (ii) above, accompanied by a calculation worksheet.

“Excluded Entity Indebtedness” means all Indebtedness (including all obligations and liabilities) present or future, existing as of the date hereof or incurred hereafter, absolute or contingent, matured or not, of the Excluded Entities.

“Excluded Entity Indebtedness Creditors” means the creditors under the Excluded Entity Indebtedness.

“Excluded Entity Indebtedness Pledge Agreement” means any share, debt or cash collateral pledge agreement (or other types of agreements or instruments with similar effect) entered into by a Subject Entity for the sole purpose of pledging the Shares of, or debt issued by an Excluded Entity as collateral security in support of Excluded Entity Indebtedness or Excluded Entity Support, or pledging Cash as collateral security to secure Excluded Entity Indebtedness or Excluded Entity Support (other than Non-Recourse Indebtedness).

“Excluded Entity Support” means:

- (a) any secured Indebtedness and/or other obligations issued by any Subject Entity that is incurred to finance (or support the financing of) the creation, development, construction, expansion, operation, improvement or acquisition by an Excluded Entity of any property or other asset; provided that such Indebtedness and/or other obligations are without recourse to any Subject Entity or to any property or assets of any Subject Entity (other than any assets subject to an Excluded Entity Indebtedness Pledge Agreement that are owned by any Subject Entity) (collectively being **“Non-Recourse Indebtedness”**); and
- (b) any: (i) liabilities and other obligations arising under or resulting from completion or performance guarantees, completion undertakings, cost overrun support, base and contingent or other equity funding commitments (whether in the form of capital contributions or loans or other extensions of credit) or support in respect of debt service and other reserves, in each case provided by any Subject Entity for the benefit of any Excluded Entity in connection with any Excluded Entity Indebtedness, (ii) agreements by any Subject Entity to provide corporate, management, marketing, administrative, technical, services related to shared facilities, marketing, engineering, procurement, construction, operation and/or maintenance services to any Excluded Entity on an arm’s length basis (and any liability or other obligations of such Subject Entity under such agreement), or (iii) any agreement to reimburse or otherwise compensate any person in respect of any liability or obligation referenced in (i) and (ii).

“**Excluded Swap Obligation**” means, with respect to any Obligor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Obligor (whether pursuant to Article 15 hereof or a Guarantee) of, or the grant by such Obligor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the *Commodity Exchange Act* (7 U.S.C. § 1 et seq.) (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) 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 of such Obligor or the grant of such security interest becomes effective with respect to such related 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 security interest is or becomes illegal.

“**Excluded Taxes**” means, with respect to any Finance Party or any other recipient of any payment to be made by or on account of any obligation of the Borrowers under any Finance Document, (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Finance Party, in which its applicable lending office is located, (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Finance Party is located and (c) in the case of a Foreign Lender (other than (i) an assignee pursuant to a request by a Borrower, (ii) an assignee pursuant to an assignment and assumption made pursuant to Section 16.5 or (iii) any other assignee to the extent that a Borrower has expressly agreed that any withholding tax shall be an Indemnified Tax), any withholding tax that (A) is not imposed or assessed in respect of an Accommodation that was made on the premise that an exemption from such withholding tax would be available where the exemption is subsequently determined, or alleged by a taxing authority, not to be available and (B) is required by Applicable Law to be withheld or paid in respect of any amount payable hereunder or under any Finance Document to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 8.6, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from a Borrower with respect to such withholding tax pursuant to Section 8.6 and (d) any U.S. federal withholding tax imposed under FATCA. For greater certainty, for purposes of item (c) above, a withholding tax includes any Tax that a Foreign Lender is required to pay pursuant to Part XIII of the *Tax Act* or any successor provision thereto.

“**Existing Letters**” has the meaning ascribed thereto in Schedule P.

“**Exposure**” means, with respect to a particular Finance Party at a particular time, the amount of the Secured Obligations owing to such Finance Party at such time, determined by such Finance Party in good faith in accordance with Section 14.19.

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

“**Far West**” means Far West Mining Ltd., a company incorporated under the laws of British Columbia.

“**FATCA**” means Sections 1471 through 1474 of the Code as in effect on the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and, in each case, any current or future regulations or current official interpretations thereof.

“**FDIC**” means Federal Deposit Insurance Corporation

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

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

“**Fee Letter**” means the fee letter dated as of May 12, 2022 between the Borrowers and Canadian Imperial Bank of Commerce, The Bank of Nova Scotia and ING Capital LLC, as Co-Lead Arrangers.

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

“**Finance Parties**” means the Administrative Agent, the Lenders, the Issuing Lender and the Qualified Secured Hedge Lenders.

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

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

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

“**Floating Charge Collateral**” means (i) all funds from time to time on deposit in the bank accounts of the Full Security Obligors and (ii) all Shares from time to time held by the Full Security Obligors that are traded on a recognized stock exchange in Canada or the United States of America.

“**Floor**” means the benchmark rate floor, if any, provided in this agreement initially (as of the execution of this agreement, the modification, amendment or renewal of this agreement or otherwise) with respect to the Adjusted Term SOFR Rate. For the avoidance of doubt the initial Floor for the Adjusted Term SOFR Rate shall be 0%.

“**Foreign Lender**” means any Lender that is not organized under the laws of the jurisdiction in which a 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 Finance Document to be resident for income tax or withholding tax purposes in the jurisdiction in which such 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.

“**Full Security Guarantors**” means Capstone Luxembourg, Capstone Mexico, Capstone BC, 0840559, Capstone PV, Capstone Zacatecas Mining Ltd., Pinto Valley, Capstone US, SMARRCO, [Redacted – Commercially sensitive information], Capstone Resources (Barbados) Ltd., Vertex Insurance Corp., Capstone Copper, Capstone Mining., Mantos Copper (UK) No. 1 Limited, Mantos Copper (UK) No. 2 Limited, Mantos Copper Holding SpA, Mantos Copper S.A. and each Additional Full Security Guarantor and “**Full Security Guarantor**” means any one of the Full Security Guarantors.

“**Full Security Obligors**” means the Obligors other than the Holding Company Subsidiaries.

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

“**Guarantees**” means, collectively, (x) the guarantee by the Borrowers in Article 15 hereof and (y) the one or more guarantees to be entered into by the Guarantors in favour of the Administrative Agent for the benefit of the Finance Parties, each in form and substance satisfactory to the Administrative Agent and pursuant to which

the Guarantors shall guarantee the Secured Obligations of the Borrowers on a full recourse basis.

“**Guarantors**” means the Full Security Guarantors and the Partial Security Guarantors and “**Guarantor**” means any one of the Guarantors.

“**Hazardous Materials**” means:

- (a) any petroleum product, asbestos, polychlorinated biphenyl (PCB), natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel; or
- (b) any pollutant or contaminant or hazardous or toxic chemical, material or substance within the meaning of any applicable federal, state, provincial or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous or toxic waste, substance or material or concerning the environment or public health, all as in effect on the applicable date.

“**Hedging Agreement**” means any present or future swap, hedging, foreign exchange or other derivative transaction entered into by any Obligor which constitutes any precious metal or other commodity hedging transaction (including, without limitation, any Restricted Forward Sale Transaction), spot or forward foreign exchange transaction, interest rate swap transaction, currency swap transaction, forward rate transaction, rate cap transaction, rate floor transaction, rate collar transaction, and any other exchange or rate protection transaction, any combination of such transactions or any option with respect to any such transaction entered into by any Obligor.

“**High Yield Indebtedness**” means Indebtedness of a Borrower which is evidenced by the issuance of notes, bonds, debentures, other forms of debt securities or similar instruments in a public offering or private placement and which satisfies the following criteria:

- (a) such Indebtedness, at the time of incurrence, matures at least twelve months after the Maturity Date and there are no scheduled principal repayments thereof until such time;
- (b) the instrument which evidences such Indebtedness (and/or the indenture or other form of agreement pursuant to which such Indebtedness was issued) contains no covenants (including for certainty, financial covenants) and events of default which are more onerous in any material respect than the covenants (including for certainty, financial covenants) and events of default in Article 11 and Article 13 hereof;
- (c) the Lien securing such Indebtedness, if any, is, prior to the issuance thereof, fully subordinated to the Lien securing the Secured Obligations pursuant to

an intercreditor agreement on terms and conditions satisfactory to the Majority Lenders and the Administrative Agent, acting reasonably;

- (d) contemporaneously with the incurrence of such Indebtedness, a Borrower has provided to the Administrative Agent a copy of the indenture or other agreement certified by an officer of that Borrower under which such High Yield Indebtedness has been issued and any guarantees therefor.

“Holding Company Subsidiary” means, in respect of each Subsidiary which is a Non-Guarantor Subsidiary, the direct or indirect wholly-owned Subsidiary of Capstone Copper which (i) wholly-owns directly or indirectly, such Subsidiary, and (ii) which itself is not a Non-Guarantor Subsidiary.

“Indebtedness” of any Person means, without duplication, (i) indebtedness of such Person for borrowed money or for the deferred purchase price of property and services, other than trade payables incurred in the ordinary course of business and payable in accordance with customary practices, (ii) other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (iii) obligations of such Person under any Capital Lease (iv) subject to the following sentence, reimbursement obligations of such Person under bankers’ acceptances and contingent obligations of such Person in respect of any letter of credit, bank guarantee or surety bond in each instance (except to the extent fully defeased by cash collateral), (v) to the extent accelerated, the Out-of-the-Money Derivative Exposure and (vi) the contingent obligations of such Person under any guarantee or other agreement assuring payment of any obligations of any Person of the type described in the foregoing clauses (i) to (v). The determination of Indebtedness for all purposes hereunder shall: (i) exclude any and all obligations outstanding under Restricted Forward Sale Transactions and Prepaid Hedging Contracts and (ii) include on an incremental basis, to the extent not cash-collateralized, reimbursement obligations for Reclamation Obligations only to the extent the aggregate of such obligations exceed the greater of (a) \$200,000,000, and (b) 10% of Total Assets. For certainty, subparagraph (ii) of the preceding sentence shall be calculated exclusive of any Letters issued in support of Reclamation Obligations.

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

“Indemnified Taxes” means Taxes other than Excluded Taxes and Other Taxes.

“Individual Commitment” means, with respect to a particular Lender, the amount set forth in Schedule A attached hereto, as reduced or amended from time to time pursuant to Sections 2.4, 8.3, 9.3 and 16.5 as the individual commitment of such Lender provided that, upon the termination of the Credit Facility pursuant to Section 2.5, the Individual Commitment of each Lender with respect to the Credit Facility shall thereafter be equal to the Individual Commitment of such Lender under the Credit Facility immediately prior to the termination thereof.

“Insolvency Event” shall occur with respect to any Person, if such Person (i) shall admit in writing its inability to pay its debts generally, (ii) shall make an assignment for the benefit of its creditors or file a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation to some or all of its creditors, (iii) shall petition or apply to any Court for the appointment of a receiver, receiver manager, administrator, inspector, liquidator, agent, trustee or other similar official (each, a **“Receiver”**) for it or for all or substantially all of its property, (iv) is adjudged or declared bankrupt or insolvent and such judgment or declaration is not dismissed, rescinded, withdrawn or stayed within 30 days (provided that upon any such stay ceasing to be in full force and effect, an Insolvency Event shall thereupon be deemed to occur unless the related judgment or declaration has theretofore been dismissed, rescinded or withdrawn), (v) is dissolved, liquidated or wound up, or an effective resolution is passed authorizing the dissolution, liquidation or winding up of such Person, (vi) commences or files notice of any proceedings relating to it or all or substantially all of its property under any law, whether now or hereafter in effect, of any jurisdiction relating to dissolution, liquidation, winding up, bankruptcy, insolvency, reorganization of insolvent debtors, arrangement or readjustment or moratorium of debts, (vii) consents to any such proceeding for it or for all or substantially all of its property commenced by any other Person or if there is no such consent, any such proceeding commenced by any other Person is not dismissed within 30 days, (viii) commences any case, proceeding or other action under the *Business Corporations Act* (Ontario) or any similar corporate law statute of any jurisdiction relating to reorganization (other than a Permitted Reorganization) or relief of debtors or (ix) shall suffer the private appointment of any Receiver, and any such appointment is not set aside or stayed within 30 days after the date that such appointment was suffered, provided that such 30 day period shall only apply if such appointment was not applied for or consented to by the relevant Person and is being actively and diligently contested in good faith by appropriate proceedings.

“Insurance Prepayment Trigger Event” means the receipt by any Subject Entity (other than any Restricted Subject Entity) of any insurance proceeds in excess of \$5,000,000 or the Canadian Dollar Equivalent thereof, where such proceeds or any portion thereof have not been used or committed by such Subject Entity to repair or replace the subject assets within one year of such Subject Entity’s receipt thereof.

“Intellectual Property” shall mean all issued patents and patent applications, industrial design registrations, trade-marks, registrations and applications therefor, trade-names and styles, logos, copyright registrations and applications therefor, all of the foregoing owned by or licensed to any Subject Entity and used in or necessary to the operation of its business.

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

“Interest Expenses” means, for any particular period, the amount which would, in accordance with generally accepted accounting principles, be classified on the consolidated income statement of Capstone Copper for such period as gross interest expenses (including, for greater certainty, stamping fees with respect to bankers’ acceptances, fees related to surety bonds and standby fees). The determination of Interest Expenses for all purposes hereunder shall be determined excluding (i) all interest expenses of the Excluded Entities and consolidated Interest Expenses of Capstone Copper under the Non-Recourse Indebtedness and (ii) all amounts received under any interest rate swap transaction.

“Interest Payment Date” means, in the case of interest on Term Benchmark Loans, the last day of each Interest Period applicable to such Loan; provided that, in the case of Interest Periods of a duration longer than three months, accrued interest shall be paid no less frequently than every three months from the first day of such Interest Period during the term of such Interest Period, and the Maturity Date.

“Interest Period” means, with respect to any Term Benchmark Loan, the period commencing on the date of such Term Benchmark Loan and ending on the numerically corresponding day in the calendar month that is one (1), three (3) or six (6) months thereafter (in each case, subject to the availability thereof), as the Borrowers may elect; provided, that (i) if any Interest Period would end on a day other than a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day unless such next succeeding Banking Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Banking Day, (ii) any Interest Period that commences on the last Banking 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 Banking Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to clause (e) of Section 3.13 shall be available for specification in any request for a Term Benchmark Loan or continuation of, or conversion into, a Term Benchmark Loan. For purposes hereof, the date of a Term Benchmark Loan initially shall be the date on which such Term Benchmark Loan is made and thereafter shall be the effective date of the most recent conversion or continuation of such Term Benchmark Loan.

“Interim Period” means period the period of time between the Execution Date and the Effective Date.

“Investment” shall mean any advance, loan, extension of credit or capital contribution to, purchase of Shares, bonds, notes, debentures or other securities of, or any other investment made in, any Person but shall exclude any Acquisition, any acquisition of tangible personal property and any capital or exploration expenditures. The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity, or distributions or dividends paid, thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital

amount equal to the fair value of such property at the time of such Investment, as determined in good faith by the Borrowers.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“**Issuing Lender**” means The Bank of Nova Scotia, Canadian Imperial Bank of Commerce or any other applicable Lender selected by the Administrative Agent and acceptable to the Borrowers who assumes in writing the obligation of issuing Letters under the Credit Facility on behalf of the applicable Lenders.

“**Joint Venture Interests**” means any contractual rights of a Borrower in any option agreement, earn-in agreement, joint venture agreement, shareholders agreement or similar contract which establishes rights and obligations of an Excluded Entity in or to any joint venture.

“**Lenders**” means the financial institutions set forth in Schedule A hereto with an Individual Commitment under the Credit Facility and “**Lender**” means any of the Lenders.

“**Letters**” means Financial Letters or Non-Financial Letters issued by the Issuing Lender at the request, and on the credit, of the Borrowers, each being denominated in Canadian dollars or United States dollars, having a term of not more than one year, being renewable in the sole discretion of the Issuing Lender, being issued to a named beneficiary acceptable to the Issuing Lender and being otherwise in a form satisfactory to the Issuing Lender.

“**Level**” means a level set out in the first column of the table contained in Schedule K corresponding to the range within which the Total Leverage Ratio as of any Fiscal Quarter end falls.

“**Lien**” means any deed of trust, mortgage, charge, hypothec, assignment, pledge, lien, vendor’s privilege, vendor’s right of reclamation, royalty or other security interest or encumbrance of whatever kind or nature, regardless of form and whether consensual or arising by law (statutory or otherwise), that secures the payment of any indebtedness or liability or the observance or performance of any obligation.

“**Life of Mine**” means, for any particular Project, the period during which all reserves at such Project as reported in Capstone Copper’s most recent Reserve Statement in respect of such Project is projected to be extracted through planned mining activities at or in connection with such Project.

“**Loans**” means Base Rate Canada Loans, Term Benchmark Loans, Prime Rate Loans and BA Rate Loans.

“Majority Lenders” means:

- (a) at any particular time up to the Facility Termination Date pursuant to Section 2.5, such group of Lenders (and, if there is more than one Lender, at least two Lenders) whose Individual Commitments with respect to the Credit Facility aggregate at least two thirds of the Total Commitment Amount at such time; and
- (b) at any particular time after the Facilities Termination Date pursuant to Section 2.5, such group of Finance Parties which have aggregate Exposure in an amount at least two thirds of the aggregate Exposure of all of the Finance Parties at such time.

“Mantos Blancos Mine” means Mantos Copper S.A.’s open pit copper mine and installations for processing oxide and sulphide ore located 30 miles from East Antofagasta, Chile.

“Mantos Blancos Security” means (a) the sulphide concentrate plant related to the Mantos Blancos Mine and (b) (i) the extracted silver and silver in process from the Mantos Blancos Mine and (ii) the exploitation mining concessions listed or otherwise referred to in Schedule B to the Mantos Stream Agreement, excluding physical materials or assets accessory to the mining concessions pursuant to Article 3 of the current Chilean Mining Code.

“Mantos Intercreditor Agreement” means the intercreditor agreement dated as of the date hereof between, *inter alia*, the Administrative Agent, as first lien creditor, Osisko, as second lien creditor in connection with the Mantos Stream Agreement, Southern Cross, as third lien creditor in connection with the Mantos Royalty Agreement and Mantos Copper S.A., as debtor.

“Mantos Royalty Agreement” means the royalty agreement dated August 31, 2019 entered into between Mantos Copper S.A., as payor and Southern Cross, as payee pursuant to which Mantos Copper S.A. has agreed to pay a royalty to Southern Cross based on copper production and sales from the Mantos Blancos Mine.

“Mantos Stream Agreement” means the third amended and restated deed of silver purchase dated August 31, 2019 entered into between Mantos Copper S.A., as seller and Osisko, as purchaser pursuant to which Mantos Copper S.A. has agreed to sell silver produced from the Mantos Blancos Mine to Osisko.

“Mantoverde PF” means the \$906,600,000 financing package granted in favour of Mantoverde S.A. for the purposes of financing the development of Mantoverde Project which financing package includes (i) a \$520,000,000 senior secured amortising project debt facility by Export Finance Australia, BNP Paribas, MUFG Bank, ING Capital, Natixis, Banco de Crédito e Inversiones and Societe Generale; (ii) a \$51,600,000 senior secured mine closure bonding facility by Banco de Crédito e Inversiones; (iii) \$275,000,000 in equity proceeds from Mitsubishi Materials

Corporation in exchange for a 30% equity interests in Mantoverde S.A. (Chile) which owns the Mantoverde Project; and (iv) a \$60,000,000 cost overrun facility by Mitsubishi Materials Corporation in exchange for additional offtake of copper concentrate, pursuant to certain financing documents and equity subscription documents dated on or about February 12, 2021.

“Mantoverde Project” means the Mantoverde Sulphide Development Project which is the brownfield copper project in the Atacama region of Chile that involves the building of a copper concentrator and associated facilities to process ore from the sulphide deposit at Mantoverde.

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

“Material Adverse Effect” means the effect of any event or circumstance which, in the reasonable opinion of the Majority Lenders, would or could reasonably be expected to have a material adverse effect on (i) the ability of any Obligor to perform its obligations under any Credit Document or on the ability of any Finance Party to enforce any of such obligations or (ii) the business, operations, performance, properties or condition (financial or otherwise) of the Subject Entities, taken as a whole. Notwithstanding the foregoing, a change in commodity market prices shall not be deemed to have a Material Adverse Effect.

“Material Agreements” means those contracts set forth in Section 7 of the Perfection Certificate and any contract to which any Subject Entity is a party and which the Administrative Agent, on the instructions of the Majority Lenders, acting reasonably and in consultation with the Borrowers, has designated in writing to the Borrowers as a Material Agreement and **“Material Agreement”** means any of the Material Agreements.

“Maturity Date” means May 12, 2026, as such day may be extended by extensions of one year with the written agreement of the Borrowers, each Lender and the Administrative Agent.

“Mine Plan” means the consolidated budget of Capstone Copper which shall include without duplication (i) the individual mine plans for each Project over its relevant Life of Mine and (ii) all other exploration and corporate expenses (including, without limitation, sales, general and administrative expenses), delivered by or on behalf of Capstone Copper to the Lenders. The Mine Plan shall be determined without reference to any Excluded Entity.

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

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 3(37) of ERISA, any “multiemployer plan” as defined in Section 4001(a)(3) of ERISA, or any “multiple employer plan” within the meaning of Section 210 of ERISA or

Code Section 413(c), or any “multiple employer welfare arrangement,” as defined in ERISA Section 3(40) to which any ERISA Company is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“**Net Cash Proceeds**” means, with respect to an Insurance Prepayment Trigger Event, the gross cash proceeds (including payments from time to time in respect of instalment obligations, if any) received by or on behalf of a Subject Entity (other than a Restricted Subject Entity) in respect of such Insurance Prepayment Trigger Event less the sum of:

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

“**Net Income**” means, for any particular period, the amount that would, in accordance with generally accepted accounting principles, be classified on the consolidated income statement Capstone Copper for such period as the net income of Capstone Copper excluding any extraordinary items (and for certainty, shall exclude any unrealized gains or losses attributable to any Hedging Agreement). The determination of Net Income for all purposes hereunder shall be determined exclusive of any Net Income of the Excluded Entities.

“**New Accounts**” means any bank account maintained with any of the Borrowers, Capstone Mexico, Capstone US, Pinto Valley or Capstone Luxembourg with Citibank, N.A., Citibank International PLC or any of their respective Affiliates in the United States of America, United Kingdom or the Grand-Duchy of Luxembourg.

“**New Security Documents**” means:

- (a) the general security and pledge agreement governed by British Columbia law made as of the date hereof by Capstone Copper in favour of the Administrative Agent evidencing a first ranking registered and perfected security over the Secured Assets of Capstone Copper, including its shares in Capstone Mining;
- (b) the share charge governed by the laws of England made as of the date hereof by Capstone Copper in favour of the Administrative Agent pursuant to which Capstone Copper charges, *inter alia*, all present and future Shares of Mantos Copper (UK) No. 1 Limited;
- (c) the debenture governed by English law made as of the date hereof by Mantos Copper (UK) No. 1 Limited in favour of the Administrative Agent

- evidencing a first ranking security over the Secured Assets of Mantos Copper (UK) No. 1 Limited;
- (d) the share charge governed by the laws of England made as of the date hereof by Mantos Copper (UK) No. 1 Limited in favour of the Administrative Agent pursuant to which Mantos Copper (UK) No. 1 Limited charges, *inter alia*, all present and future Shares of Mantos Copper (UK) No. 2 Limited;
 - (e) the debenture governed by English law made as of the date hereof by Mantos Copper (UK) No. 2 Limited in favour of the Administrative Agent evidencing a first ranking security over the Secured Assets of Mantos Copper (UK) No. 2 Limited;
 - (f) the pledge without conveyance over shares agreement (*prenda sin desplazamiento sobre acciones*) governed by the laws of the Republic of Chile made as of the date hereof by Mantos Copper (UK) No. 2 Limited in favour of the Administrative Agent, for the benefit of the Finance Parties, pursuant to which Mantos Copper (UK) No. 2 Limited pledges and constitutes prohibitions to lien and dispose of all present and future Shares issued by Mantos Copper Holding SpA;
 - (g) the pledge without conveyance over shares agreement (*prenda sin desplazamiento sobre acciones*) governed by the laws of the Republic of Chile made as of the date hereof by Mantos Copper Holding SpA in favour of the Administrative Agent, for the benefit of the Finance Parties, pursuant to which Mantos Copper Holding SpA pledges and constitutes prohibitions to lien and dispose the present and future Shares issued by Mantos Copper S.A. of its property;
 - (h) the pledge without conveyance over assets (*prenda sin desplazamiento sobre activos*) governed by the laws of the Republic of Chile made as of the date hereof by Mantos Copper Holding SpA in favour of the Administrative Agent, for the benefit of the Finance Parties, evidencing a first ranking registered and perfected security over the Secured Assets of Mantos Copper Holding SpA;
 - (i) the pledge without conveyance over assets (*prenda sin desplazamiento sobre activos*) governed by the laws of the Republic of Chile made as of the date hereof by Mantos Copper S.A. in favour of the Administrative Agent, for the benefit of the Finance Parties, evidencing a first ranking registered and perfected security over the group of assets (*universalidad de hecho*) comprising the Mantos Blancos Mine;
 - (j) the insurance designation as loss payee or additional insured and mandates (*designación como beneficiario o asegurado adicional de pólizas de seguro y mandatos*), governed by the laws of the Republic of

Chile made as of the date hereof by Mantos Copper Holding SpA and Mantos Copper S.A. in favour of the Administrative Agent, for the benefit of the Finance Parties, designating the Administrative Agent, for the benefit of the Finance Parties, as loss payee (except with regard to third-party liability insurance) and additional insured under each of the insurance policies governed by Chilean law with regard to their property described in Section 13. Schedule 2 of the Perfection Certificate;

- (k) the pledge without conveyance over money (*prenda sin desplazamiento sobre dinero*), governed by the laws of the Republic of Chile made as of the date hereof by Mantos Copper Holding SpA and Mantos Copper S.A. in favour of the Administrative Agent, for the benefit of the Finance Parties to pledge and constitutes prohibitions to lien and dispose of any monies deposited at any time in the bank accounts established in the name of Mantos Copper Holding SpA and Mantos Copper S.A. and described in Section 10. of the Perfection Certificate, and over any related Permitted Investments credited thereto from time to time;
- (l) the subordinated debt pledge agreement (*prenda sin desplazamiento de créditos subordinados*) governed by the laws of the Republic of Chile made as of the date hereof by the Borrower in favour of the Administrative Agent, for the benefit of the Finance Parties to pledge and constitutes prohibitions to lien and dispose of the intercompany loan between the Borrower and Mantos Copper Holding SpA described in Section 5. of the Perfection Certificate and any future intercompany loan between the Borrower and Mantos Copper Holding SpA entered into in the future;
- (m) the subordination agreement (*convenio de subordinación*) governed by the laws of the Republic of Chile made as of the date hereof by the Borrower in favour of the Administrative Agent, for the benefit of the Finance Parties to subordinate the intercompany loan between the Borrower and Mantos Copper Holding SpA described in Section 5. of the Perfection Certificate;
- (n) the mortgages over real property (*hipotecas sobre bienes raíces*) governed by the laws of the Republic of Chile made as of the date hereof by Mantos Copper Holding SpA and Mantos Copper S.A. in favour of the Administrative Agent, for the benefit of the Finance Parties to mortgage and constitutes prohibitions to lien and dispose of any real property described in Section 3. (i) and Schedule 3 of the Perfection Certificate of their property, and over any real property they may acquire at any time following this date;
- (o) the mortgages over real property (*hipotecas sobre bienes raíces*) governed by the laws of the Republic of Chile by Mantos Copper S.A. in favour of the Administrative Agent, for the benefit of the Finance Parties to mortgage and constitutes prohibitions to lien and dispose of any real

property described in Section 3. (i) and Schedule 3 of the Perfection Certificate of their property, and over any real property they may acquire at any time following this date;

- (p) the mortgage over mining concessions agreement (*hipoteca sobre concesiones mineras*) governed by laws of the Republic of Chile made as of the date hereof by Mantos Copper S.A. in favour of the Administrative Agent, for the benefit of the Finance Parties, evidencing a first ranking registered and perfected security over the existing and future constituted mining concessions owned by Mantos Copper S.A. and related to the Mantos Blancos Mine; and
- (q) all such confirmations of security and guarantees dated as of the Effective Date, entered into by each Obligor party thereto in favour of the Administrative Agent and each other Finance Party, or such other confirmations or undertakings as the Administrative Agent may reasonably require.

“Non-FATCA Compliant Lender” means any Lender hereunder who is in breach of its obligations under FATCA.

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

“Non-Guarantor Subsidiary” means a Subsidiary (other than an Excluded Entity) that:

- (a) is prohibited by law or Prohibited By Contract from becoming a Full Security Guarantor;
- (b) if it executed and delivered a Guarantee or a Security Document, or performed its obligations thereunder, stamp taxes or other charges and expenses (including, but not limited to, legal fees) in aggregate in excess of US\$250,000 (or such lesser amount as the Majority Lenders may otherwise agree) would be, or would become, due and payable upon the execution or enforcement thereof;
- (c) is not a wholly-owned Subsidiary;
- (d) does not hold any equity interests in a Full Security Guarantor and does not have assets or liabilities in excess of \$10,000,000; or
- (e) the Borrowers and the Lenders hereafter agree to designate such Subsidiary as a Non-Guarantor Subsidiary.

In the event that, subsequent to the execution and delivery of a Guarantee or a Security Document a Full Security Guarantor becomes, or is determined to have been, a Non-Guarantor Subsidiary as set out in clause (b) above, the aforesaid Guarantee and Security Document will be released if the relevant Holding Company Subsidiary is or becomes a Partial Security Guarantor in accordance with Section 11.1(u).

“**Non-Recourse Indebtedness**” has the meaning specified in the definition of Excluded Entity Support.

“**Non-Withheld Part XIII Taxes**” has the meaning given to such term in Section 8.6(b) of this agreement.

“**NumCo**” means a corporation to be incorporated, the entirety of whose Shares shall be held by Capstone Mining and whose only asset shall be the Shares of 0908113.

“**Obligors**” means, collectively, the Borrowers and the Guarantors and “**Obligor**” means any one of the Obligors.

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

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

“**Osisko**” means Osisko Bermuda Limited.

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

“**Out-of-the-Money Derivative Exposure**” has the meaning given to it in the definition of “Derivative Exposure”.

“**Partial Security Guarantors**” means the Additional Partial Security Guarantors and “**Partial Security Guarantor**” means any of the Partial Security Guarantors.

“**PBGC**” means Pension Benefit Guaranty Corporation or any governmental body succeeding to its functions.

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

“Perfection Certificate” means the consolidated certificate of a senior officer of a Borrower, addressed to the Administrative Agent, in form and substance satisfactory to the Administrative Agent and pursuant to which certain factual matters relating to such Obligor and the Secured Assets of such Obligors are certified true and correct, together with all schedules and exhibits attached thereto or referred to therein, as the same may be updated pursuant to Section 11.1(a) or 11.1(i).

“Permitted Acquisition” means an Acquisition with respect to which:

- (a) the assets acquired are in the mining industry and are subject to a Lien in favour of the Administrative Agent pursuant to the Security Documents (unless the entity acquired constitutes a Non-Guarantor Subsidiary or an Excluded Entity);
- (b) no Default or Event of Default exists at the time of such Acquisition and no Default or Event of Default would exist immediately after the implementation of any such Acquisition;
- (c) the covenants in Sections 11.1(o)-(q) are in compliance on a pro forma basis after completion of such Acquisition and the applicable Borrower has delivered to the Administrative Agent a certificate, in form and substance satisfactory to the Administrative Agent, evidencing same;; and
- (d) the assets acquired are situate in or the entity acquired is incorporated in, a Permitted Jurisdiction.

“Permitted Acquisition Hedging Agreements” means any Hedging Agreement which existed prior to, and was not entered into in contemplation of, a Permitted Acquisition and all transactions entered into prior to the date of such Permitted Acquisition with respect to such Hedging Agreement.

“Permitted Acquisition Indebtedness” means any Indebtedness resulting from a Permitted Acquisition which existed prior to, and not in contemplation of, the Permitted Acquisition and any Indebtedness incurred upon and following the Permitted Acquisition pursuant to any commitment which existed prior to, and not in contemplation of, the Permitted Acquisition, provided (i) no Default exists at the time of the incurrence of such Indebtedness, (ii) no Default would exist immediately thereafter and (iii) the financial covenants set out in Sections 11.1(o)-(q) would be met, on a pro forma basis, immediately after the incurrence of such

Indebtedness. Any refinancing of any Permitted Acquisition Indebtedness by a non-wholly owned Non-Guarantor Subsidiary that is a party to a joint venture agreement (A) with (I) multilateral, development, export or agency financial institutions, (II) substantially the same set of creditors and in the same form of the Permitted Acquisition Indebtedness being refinanced, or (III) a combination of the Persons described in clauses (A)(I) and (A)(II) hereof, or (B) constituting working capital or credit support lines of credit, solely to the extent required pursuant to the terms of agreements, contracts, instruments or other documents to which such non-wholly owned Non-Guarantor Subsidiary is a party at the time of such Permitted Acquisition shall, in each case, be deemed to constitute “Permitted Acquisition Indebtedness” provided (i) there is no increase in the amount of such Permitted Acquisition Indebtedness at the time of such refinancing, (ii) no Default exists at the time of such refinancing, (iii) no Default would exist immediately thereafter and (iv) the financial covenants set out in Sections 11.1(o)-(q) would be met, on a pro forma basis, immediately after such refinancing. For certainty, any refinancing of any Permitted Acquisition Indebtedness shall not constitute Permitted Acquisition Indebtedness other than as provided for in the preceding sentence. For the purposes of this definition, “**joint venture agreement**” means an agreement entered into with respect to, inter alia, the development, construction and operation of a mining project.

“**Permitted Acquisition Metal Stream Contracts**” means Permitted Acquisition Pre-Existing Metal Stream Contracts and Permitted Acquisition Prospective Metal Stream Contracts.

“**Permitted Acquisition Pre-Existing Metal Stream Contracts**” means any secured or unsecured metal streaming contract which existed prior to, and not in contemplation of, a Permitted Acquisition and transactions entered into prior to the date of such Permitted Acquisition with respect to such metal stream contract.

“**Permitted Acquisition Prospective Metal Stream Contracts**” means any unsecured metal streaming contract entered into by any Subject Entity pursuant to which such Subject Entity agrees to sell a certain percentage of its metal by-product from a particular mine that is to be acquired pursuant to a Permitted Acquisition, which unsecured metal streaming contract shall be entered into prior to the date of such Permitted Acquisition and not in contemplation of such Permitted Acquisition.

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

- (a) the Secured Obligations;
- (b) (i) Indebtedness of the Subject Entities (other than Mantos Copper S.A.) under Capital Leases and Purchase Money Indebtedness in an aggregate amount not to exceed at any particular time \$25,000,000, and (ii) Indebtedness of Mantos Copper S.A. under Capital Leases and Purchase Money Indebtedness in an aggregate amount not to exceed at any particular time \$30,000,000;

- (c) Hedging Agreements incurred in accordance with Section 11.2(h);
- (d) trade payables and other accrued liabilities incurred in the ordinary course of business and payable in accordance with customary practices;
- (e) Indebtedness under the Capstone Silver and Gold Contract, the Mantos Stream Agreement and the Mantos Royalty Agreement;
- (f) High Yield Indebtedness
- (g) Indebtedness among the Subject Entities;
- (h) [Intentionally deleted];
- (i) Indebtedness of the Capstone Mining owing to 0908113 by way of unsecured intercompany notes in the maximum aggregate principal amount of \$ \$44,224,648.28 which was entered into for the purpose of financing the development of the Santo Domingo Project;
- (j) any Indebtedness of the Subject Entities under Excluded Entity Support;
- (k) Indebtedness constituting Permitted Investments;
- (l) Indebtedness in respect of bonds, standby letters of credit or letters of guarantee securing Reclamation Obligations, provided that the last two sentences of the definition of Indebtedness shall not apply for purposes of this subparagraph (l);
- (m) Permitted Unsecured or Sub-Debt;
- (n) unsecured Indebtedness of the Subject Entities but not otherwise permitted under paragraphs (a) to (l);
- (o) Indebtedness in respect of Permitted Acquisition Indebtedness;
- (p) Permitted Acquisition Hedging Agreements;
- (q) Permitted Acquisition Metal Stream Contracts;
- (r) the Capstone MSD Guarantee; and
- (s) Non-Recourse Indebtedness of Mantos Copper Holdings SpA in connection with the Mantoverde PF.

“Permitted Investments” means an Investment with respect to which:

- (a) such Investment is a Secured Asset;
- (b) Investments in Cash;

- (c) extensions of trade credit and asset purchases in the ordinary course of business;
- (d) Investments made by any Subject Entity in another Subject Entity;
- (e) Investments (other than those Investments contemplated in subparagraph (g) below) made by a Subject Entity in an Excluded Entity provided that the financial covenants set out in Sections 11.1(o)-(q), inclusive, are satisfied, on a *pro forma* basis, prior to and immediately and after making any such Investment in an Excluded Entity;
- (f) Investments by the Subject Entities not otherwise referenced in this definition in the maximum consolidated and aggregated amount of \$50,000,000 in any Fiscal Year; and
- (g) Investments by any Subject Entity in an Excluded Entity funded solely by the proceeds of an equity issuance by Capstone Copper completed after the date hereof.

“Permitted Jurisdictions” means those countries listed in Schedule N, provided that if any such country becomes subject to any Sanctions, such country shall be deemed not to constitute a Permitted Jurisdiction.

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

- (a) Liens for taxes, assessments or governmental charges or levies not at the time due or delinquent or the validity of which are being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles;
- (b) the Lien of any judgment rendered or the Lien of any claim filed which is being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles;
- (c) Liens and charges incidental to construction or current operations which have not at such time been filed pursuant to law or which relate to obligations not due or delinquent or the validity of which are being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles;
- (d) restrictions, easements, rights-of-way, servitudes or other similar rights in land granted to or reserved by other Persons which in the aggregate do not materially impair the usefulness, in the operation of the business of any Subject Entity, of the property subject to such restrictions, easements,

rights-of-way, servitudes or other similar rights in land granted to or reserved by other persons;

- (e) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by any Subject Entity or by any statutory provision, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (f) the Lien resulting from the deposit of cash or securities (i) in connection with contracts, tenders or expropriation proceedings, or (ii) to secure workers' compensation, surety or appeal bonds, costs of litigation when required by law and public and statutory obligations, or (iii) in connection with the discharge of Liens or claims incidental to construction and mechanics', warehouseman's, carriers' and other similar liens;
- (g) security given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the operations of any Subject Entity, all in the ordinary course of business;
- (h) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the Crown or in comparable grants, if any, in jurisdictions other than Canada;
- (i) title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use of the property for the purpose for which it is held;
- (j) applicable municipal and other governmental restrictions affecting the use of land or the nature of any structures which may be erected thereon, provided such restrictions have been complied with and will not materially impair the use of the property for the purpose for which it is held;
- (k) Liens on minerals or the proceeds of sale of such minerals arising or granted pursuant to a processing or refining arrangement entered into in the ordinary course and upon usual market terms, securing the payment of any Subject Entity's portion of the fees, costs and expenses attributable to the processing or refining of such minerals under any such processing arrangement, but only insofar as such Liens relate to obligations which are at such time not past due;
- (l) Liens granted pursuant to the Security Documents;
- (m) Liens to secure Permitted Indebtedness referred to in paragraphs (b), (f), (g), (j) (pursuant to an Excluded Entity Indebtedness Pledge Agreement only) and (m) thereof;

- (n) [Intentionally deleted];
- (o) the extension, renewal or refinancing of any Permitted Lien, provided that the amount so secured does not exceed the original amount secured immediately prior to such extension, renewal or refinancing and the Lien is not extended to any additional property;
- (p) royalties on the production or profits from mining provided such royalties are in existence, or contemplated by an agreement that is in existence, as at the date of execution and delivery of this agreement as well as the Endeavour Royalty;
- (q) a Lien on concession number 235,574 at the Cozamin Project registered by and in favour of Unificación Carlos;
- (r) Liens on any assets (including any after-acquired assets relating to the business acquired) or Shares acquired pursuant to (and not created in anticipation of) a Permitted Acquisition to the extent that they secure payment or performance of any Permitted Acquisition Indebtedness;
- (s) Liens securing any Permitted Acquisition Hedging Agreement provided such Liens were in existence at the time of (and not created in anticipation of) the relevant Permitted Acquisition;
- (t) Liens securing Permitted Acquisition Pre-Existing Metal Stream Contracts, so long as the security is limited to the applicable project and all assets related thereto, including the product produced by the applicable project and such Liens were in existence at the time of (and not created in anticipation of) the relevant Permitted Acquisition;
- (u) Liens granted pursuant to the WPM Security provided such Liens, and the related guarantees, are at all times subject to the Cozamin Intercreditor Agreement; and
- (v) Liens granted pursuant to the Mantos Blancos Security provided such Liens, and the related guarantees, are at all times subject to the Mantos Intercreditor Agreement.

“Permitted Reorganization” means:

- (a) any amalgamation solely between Obligors;
- (b) any winding-up (including any voluntary dissolution) of any Obligor into another Obligor; and
- (c) any capital reorganization of any Obligor;

provided (i) in the case of any amalgamation, the amalgamated corporation delivers to the Administrative Agent a certificate pursuant to which it confirms it is bound by the terms of the Credit Documents to which either amalgamating corporation is a party, (ii) in each case, no Default or Event of Default has occurred and is outstanding at the time of such amalgamation, winding-up or capital reorganization or would arise immediately thereafter, (iii) in each case, the Borrowers provide notice to the Administrative Agent of the amalgamation, winding-up or capital reorganization and (iv) in the case of a capital reorganization of an Obligor (other than Capstone Copper), such Obligor will, after the completion thereof, continue to be a wholly owned, direct or indirect, Subsidiary of the Borrowers. Notwithstanding any of the foregoing, in no circumstances shall a “Division” (as defined in Section 18-217 of the *Delaware Limited Liability Company Act*) constitute a Permitted Reorganization.

“**Permitted Unsecured or Sub-Debt**” means Indebtedness of the Subject Entities provided (i) any such Indebtedness has a term of at least one year after the Maturity Date at the time incurred; (ii) such Indebtedness is either unsecured or establishes a second ranking priority security in the Secured Assets in favour of a second lien creditor; (iii) if such Indebtedness is intended to establish second ranking priority security in the Secured Assets in favour of such second lien creditor, an intercreditor agreement is entered into among the aforementioned second lien creditor, the Borrowers and the Administrative Agent prior to the incurrence of such Indebtedness which intercreditor agreement shall provide for, *inter alia*, customary subordinations and postponements, standstill periods and enforcement rights, all on terms and conditions satisfactory to the Lenders; (iv) no Default would exist prior to incurrence of such Indebtedness, or immediately thereafter, and (v) the financial covenants set out in Sections 11.1(o)-(q) would be met, on a *pro forma* basis, prior to and immediately after the incurrence of such Indebtedness.

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

“**Pinto Valley**” means Pinto Valley Mining Corp., a company incorporated under the laws of Delaware.

“**Plan**” means each U.S. “employee pension benefit plan,” as defined in Section 3(2) of ERISA (including any Multiemployer Plan) that is a defined benefit plan (as defined in Section 3(35) of ERISA) subject to Title IV of ERISA, (i) that is currently, or has been at any time in the six prior calendar years, maintained, administered, contributed to or required to be contributed to by a Borrower, or (ii) to which a Borrower is a party or has any liability, or (iii) that covers any current or former employee of a Borrower or any ERISA Affiliate.

“**Pledged Subsidiaries**” means those Subsidiaries of a Borrower the Shares of which are pledged to the Administrative Agent pursuant to a Security Document.

“**Pollutant**” means any waste, as defined by EMA.

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

“**Prepaid Hedging Contract**” means a Hedging Agreement that is a forward commodity contract whereby a Borrower commits to deliver a notional or actual quantity of a commodity on a future date or dates and the counterparty pays to such Borrower all or a portion of the purchase price prior to such delivery date (including for the avoidance of doubt, a Variable Price Prepaid Hedging Contract).

“**Prepayment Notice**” shall have the meaning ascribed thereto in Section 9.4.

“**Prime Rate**” means the greater of (a) the variable rate of interest per annum equal to the rate of interest determined by the Administrative Agent from time to time as its prime rate for Canadian dollar loans made by the Administrative Agent in Canada from time to time, being a variable per annum reference rate of interest adjusted automatically upon change by the Administrative Agent calculated on the basis of a year of 365 or 366 days, as applicable and (b) the sum of (A) the BA Rate for a Schedule I Lender for a 30 day term on the date of determination and (B) 5/8 of 1% per annum. In no circumstances shall the Prime Rate be less than zero.

“**Prime Rate Loans**” means monies lent by the Lenders to the Borrowers hereunder in Canadian dollars and upon which interest accrues at a rate referable to the Prime Rate.

“**Pro Rata Share**” means (i) at any particular time with respect to a particular Lender, the ratio of the Individual Commitment of such Lender at such time to the aggregate of the Individual Commitments of all of the Lenders at such time or (ii) at any particular time with respect to a particular Lender, the ratio of the aggregate of the Individual Commitments of such Lender at such time to the aggregate of the Individual Commitments of all of the Lenders at such time.

“**Proceeds of Realization**” means all cash and non-cash proceeds derived from any sale, disposition or other realization of the Secured Assets (i) after any notice by the Administrative Agent to the Borrowers pursuant to Section 13.1 declaring all indebtedness of the Borrowers hereunder to be immediately due and payable, (ii) upon any dissolution, liquidation, winding-up, reorganization, bankruptcy, insolvency or receivership of any of the Obligors (or any other arrangement or marshalling of the Secured Assets that is similar thereto) or (iii) upon the enforcement of, or any action taken with respect to, any of the Security Documents or Guarantees. For greater certainty, prior to the Security becoming enforceable (x) insurance proceeds derived as a result of the loss or destruction of any of the Secured Assets or (y) cash or non-cash proceeds derived from any expropriation or other condemnation of any of the Secured Assets shall not constitute Proceeds of Realization.

“**Prohibited By Contract**” means, as concerns any Subsidiary, provisions in:

- (a) any agreement to which such Subsidiary is a party evidencing any Permitted Acquisition Indebtedness;
- (b) any partnership, joint venture or shareholders agreement or other agreement relating to the ownership of Shares with respect to such Subsidiary; or
- (c) any agreement to which such Subsidiary is a party relating to any operating mine;

in each case, (I) that existed (x) prior to the date hereof or (y) prior to the direct or indirect formation by the Borrowers of such Subsidiary or prior to such Subsidiary becoming a Subsidiary and (II) that prohibit such Subsidiary from becoming a Guarantor.

“Prohibited Transaction” means a transaction that is prohibited under Section 4975 of the Code or Section 406 of ERISA and is not eligible for an exemption under the Code or ERISA or regulations or guidance promulgated thereunder.

“Projects” means the Cozamin mine project, the Pinto Valley mine project, the Mantos Blancos Mine and each other mine project now or hereafter developed by any Subject Entity other than the Mantoverde Project, the Santo Domingo Project, the Chilean Exploration Projects and **“Project”** means any one of the Projects.

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

“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” has the meaning ascribed thereto in Section 16.16.

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

“Qualified Secured Hedge Lender” means (x) any Person that enters into a Secured Hedging Agreement at a time when such Person is a Lender or (y) any Qualified Affiliate that enters into a Secured Hedging Agreement at a time when the Person with which such Qualified Affiliate is affiliated is a Lender provided that any such Person shall cease to be a Qualified Secured Hedge Lender if and when such Person (or its Qualified Affiliate) sells all of its rights and obligations under the Credit Documents prior to the date on which all Secured Obligations owing by the Obligors to the Finance Parties or any of them, or remaining unpaid

to the Finance Parties or any of them, under the Credit Agreement have been satisfied in full and the Credit Facility has terminated pursuant to Section 2.5.

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

“**Reclamation Obligations**” means, with respect to any Person, all mine maintenance and closure, asset retirement and environmental reclamation obligations of such Person, whether matured, real or contingent, on a consolidated basis at such time (except to the extent fully defeased by cash collateral).

“**Release**” means any release, spill, leak, emission, discharge, leach, dumping, migration, pumping, pouring, emitting, emptying, injecting, spraying, burying, abandoning, incinerating, seeping, escape, disposal or similar or analogous act.

“**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 Federal Reserve Bank of New York, or any successor thereto.

“**Replacement Lender**” means a proposed new Lender that has agreed to accept an Individual Commitment with respect to the Credit Facility and is so designated in a Replacement Lender Notice delivered to the Administrative Agent pursuant to and in accordance with Section 8.3(b).

“**Replacement Lender Agreement**” means an agreement in the form of Schedule M (or in such other form to substantially similar effect as the Administrative Agent may accept) duly completed, executed and delivered by the Borrowers, a Replacement Lender and the Administrative Agent pursuant to Section 8.3(b).

“**Replacement Lender Notice**” shall have the meaning ascribed thereto in Section 8.3(b).

“**Reserve Statement**” means the mineral reserve and resource statement in respect of a Project, to be prepared by or on behalf of a Borrower, prepared in compliance with National Instrument 43-101 of the Canadian Securities Administrators.

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Restricted Forward Sale Transaction**” means any agreement other than the Capstone Silver and Gold Contract, by a Person to sell forward a quantity of metal or other commodity at a discount to current market rates where payment of proceeds is made to such Person, in whole or in part, prior to the date on which such metal or commodity was mined or extracted by such Person.

“Restricted Subject Entity” means, at any particular time, any Subsidiary (other than an Excluded Entity) that is, at such time, a Non-Guarantor Subsidiary because it is Prohibited by Contract from becoming a Full Security Guarantor and it is otherwise subject to a pre-existing prepayment trigger event comparable to the Insurance Prepayment Trigger Event.

“Rolling EBITDA” means for each Fiscal Quarter, the aggregate of (without duplication):

- (a) the sum of EBITDA (exclusive of any portion thereof attributable to any Rolling Permitted Acquisition EBITDA) for such Fiscal Quarter and of the three immediately preceding Fiscal Quarters; and
- (b) any Rolling Permitted Acquisition EBITDA for such Fiscal Quarter.

“Rolling Interest Expenses” means, for any particular Fiscal Quarter, Interest Expenses for such Fiscal Quarter and each of the three immediately preceding Fiscal Quarters.

“Rolling Permitted Acquisition EBITDA” means, for any Fiscal Quarter as concerns any Permitted Acquisition with respect to which less than four Fiscal Quarter ends have occurred since the date of the completion of such Permitted Acquisition,

- (a) for the first full Fiscal Quarter following the Permitted Acquisition, the aggregate of EBITDA attributable to such Permitted Acquisition during such Fiscal Quarter to such Permitted Acquisition multiplied by four;
- (b) for the second Fiscal Quarter following the Permitted Acquisition, the aggregate of EBITDA attributable to such Permitted Acquisition during such Fiscal Quarter and the immediately preceding Fiscal Quarter attributable to such Permitted Acquisition multiplied by two;
- (c) for the third Fiscal Quarter following the Permitted Acquisition, the aggregate of EBITDA attributable to such Permitted Acquisition during such Fiscal Quarter and the two immediately preceding Fiscal Quarters attributable to such Permitted Acquisition multiplied by 4/3.

“Rollover Notice” shall have the meaning ascribed thereto in Section 5.3.

“S&P” means Standard & Poor’s Ratings Service or any successor by merger or consolidation to its business.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by:

- (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of Treasury or the U.S. Department of State; or
- (b) the United Nations Security Council, the European Union, Her Majesty's Treasury of the United Kingdom or the Canadian government.

“Santo Domingo Project” means copper-iron-gold development project located in Santo Domingo, Chile.

“Santo Domingo Stream Agreement” means the precious metals purchase agreement dated as of March 24, 2021 between WPM, Capstone Mining and Capstone MSD.

“Schedule I Lenders” means the Lenders that are listed in Schedule I to the *Bank Act* (Canada).

“Schedule I Reference Lenders” means Canadian Imperial Bank of Commerce and such other Schedule I Lenders as may be agreed upon by the Borrowers and the Administrative Agent from time to time.

“Schedule II and III Lenders” means Lenders that are not Schedule I Lenders that are otherwise residents of Canada for purpose of the *Income Tax Act* (Canada).

“Schedule II and III Reference Lenders” means such group of Schedule II and III Lenders as may be agreed upon by the Borrowers and the Administrative Agent from time to time.

“Secured Assets” means all of the present and future assets, property and undertaking of each Obligor (other than the Excluded Assets) and any and all proceeds of any of the foregoing. For certainty, the Secured Assets shall cease to be Secured Assets to the extent such assets are sold or otherwise disposed of in a manner which is permitted by this agreement or any other Financing Document.

“Secured Hedging Agreements” means any Hedging Agreement entered into from time to time by any Obligor with any Qualified Secured Hedge Lender other than a Hedging Agreement constituting a Restricted Forward Sale Transaction.

“Secured Obligations” shall mean all indebtedness, obligations and liabilities (other than Excluded Swap Obligations), present or future, absolute or contingent, matured or not, at any time owing by any of the Obligors to any of the Finance Parties, or remaining unpaid to any of the Finance Parties, under or in connection with any of the Finance Documents and Secured Obligations of a particular Obligor shall mean all indebtedness, obligations and liabilities (other than Excluded Swap Obligations), present or future, absolute or contingent, matured or not, at any time owing by such Obligor to any of the Finance Parties, or remaining unpaid to any of the Finance Parties, under or in connection with any of the Finance Documents to which such Obligor is a party. For certainty, **“Secured Obligations”** shall include

interest accruing subsequent to the filing of, or which would have accrued but for the filing of, a petition for bankruptcy, in accordance with and at the rate (including any rate applicable upon any Default or Event of Default to the extent lawful) specified herein, whether or not such interest is an allowable claim in such bankruptcy proceeding.

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

“Security” means the collateral security constituted by the Security Documents.

“Security Documents” shall mean the security documents which, in the reasonable opinion of the Administrative Agent, are required to be entered into from time to time by the Obligors in favour of the Administrative Agent for the benefit of the Finance Parties in order to grant directly or indirectly to the Administrative Agent a Lien on the present and future real and personal property, assets and undertakings of the Obligors (other than Excluded Assets) and to otherwise comply with Sections 11.1(t) and (u) as continuing collateral security for the payment and performance of the Secured Obligations, such security documents to be in form and substance satisfactory to the Administrative Agent acting reasonably and to include, without limitation, (i) the security documents described in Schedule J, and (ii) the New Security Documents.

“Senior Secured Indebtedness” means, at any particular time and without duplication, an amount equal to all actual and contingent Indebtedness of the Borrowers under the Finance Documents at such time, plus all other actual and contingent consolidated secured Indebtedness of the Borrowers which ranks in right of repayment in insolvency equal to or greater thereto at such time. The determination of Senior Secured Indebtedness for all purposes hereunder shall exclude all Non-Recourse Indebtedness of the Borrowers on a consolidated basis.

“Senior Secured Indebtedness Pledged Cash” means all Cash which is subject to a Lien in favor of the holders of Senior Secured Indebtedness regardless of whether the owner of the Cash is the Borrowers or not.

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

“Shares”, as applied to the shares of any corporation or other entity, means the shares or other ownership interests of every class whether now or hereafter authorized, regardless of whether such shares or other ownership interests shall be limited to a fixed sum or percentage with respect to the rights of the holders thereof

to participate in dividends and in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding-up of such corporation or other entity.

“**SMARRCO**” means San Manuel Arizona Railroad Company, a company incorporated under the laws of Arizona.

“**SOFR**” means a rate per annum equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**Southern Cross**” means Southern Cross Royalties Limited.

“**Stream Agreement**” means any purchase and sale agreement entered into by any Subject Entity as seller with any streaming counterparty.

“**Subject Entities**” means the Obligors and the Non-Guarantor Subsidiaries.

“**Subsidiary**” means, with respect to any Person, any corporation, company or other similar business entity (including, for greater certainty, a Canadian chartered bank) of which more than fifty per cent (50%) of the outstanding Shares or other equity interests (in the case of Persons other than corporations) having ordinary voting power to elect a majority of the board of directors or the equivalent thereof of such corporation, company or similar business entity (irrespective of whether at the time Shares of any other class or classes of the Shares of such corporation, company or similar business entity shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

“**Supported QFC**” has the meaning ascribed thereto in Section 16.16.

“**Swap Obligation**” means, with respect to any Guarantor, any obligation (each, a “**Swap 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*.

“**Target**” has the meaning ascribed thereto in Section 3.3(b).

“**Tax Act**” means the *Income Tax Act* (Canada), as amended from time to time, and regulations promulgated thereunder.

“**Taxes**” means all taxes, charges, fees, levies, imposts, rates, dues and assessments, including all income, sales, use, goods and services, 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, unemployment

insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed, levied, collected, withheld or assessed by any Official Body (including federal, state, provincial, municipal and foreign Official Bodies), and whether disputed or not.

“Term Benchmark Loan” means monies lent by the Lenders to the Borrowers hereunder and upon which interest accrues at a rate referable to the Adjusted Term SOFR Rate.

“Term SOFR Adjustment” means, for any calculation with respect to a Term Benchmark Loan, a percentage per annum as set forth below for the applicable Interest Period therefor:

| <u>Interest Period</u> | <u>Percentage</u> |
|------------------------|-------------------|
| One (1) month | 0.10% |
| Three (3) months | 0.15% |
| Six (6) months | 0.25% |

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

“Term SOFR Determination Day” has the meaning assigned to it under the definition of Term SOFR Rate.

“Term SOFR Rate” means, with respect to any Term Benchmark Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the **“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 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 Rate 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 Term SOFR Determination Day.

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

“Termination Event” means (i) any of the events set forth in Section 4043(b) of ERISA or the regulations thereunder; (ii) a Borrower's, or any ERISA Affiliate's, withdrawal from a Multiemployer Plan during a year in which it was a “substantial

employer,” as this term is defined in Section 4001(a)(2) of ERISA, (iii) the incurring of liability by a Borrower or any ERISA Affiliate under Section 4064 of ERISA upon the termination of a Plan; (iv) providing notice of intent to terminate a Plan under Section 4041(a)(2) of ERISA; (v) the PBGC instituting proceeding to terminate a Plan under Section 4041 of ERISA; (vi) any other event or condition that might constitute grounds under Section 4042 of ERISA to terminate or appoint a trustee to administer a Plan; (vii) the occurrence of an event described in Section 302(c), 4069, 4070, or 4212(c) of ERISA; (viii) any complete or partial withdrawal from a Multiemployer Plan, any termination of a Multiemployer Plan, or any Multiemployer Plan being insolvent or in reorganization status; or (ix) any occurrence similar to any of those referenced in clauses (i) – (viii) above under the applicable law of a foreign country.

“**Total Assets**” means the total assets of the Borrowers and the other Subject Entities determined in accordance with generally accepted accounting principles, as shown on the most recent consolidated balance sheet of Capstone Copper; provided that, for purposes of calculating “**Total Assets**” for purposes of testing the covenants under this agreement in connection with any transaction, the total assets of the Borrowers and the other Subject Entities shall be adjusted to reflect any acquisitions and dispositions of assets that have occurred during the period from the date of the applicable balance sheet through the applicable date of determination and for greater certainty shall exclude the assets of the Excluded Entities.

“**Total Commitment Amount**” means, with respect to the Credit Facility at any particular time, the aggregate of the Individual Commitments with respect thereto of all of the Lenders at such time.

“**Total Indebtedness**” means, at any particular time and without duplication, an amount equal to all actual and contingent consolidated Indebtedness of a Borrower at such time. The determination of Total Indebtedness for all purposes hereunder shall exclude all Non-Recourse Indebtedness and all obligations guaranteed under the Capstone MSD Guarantee except in connection with any demand made under the Capstone MSD Guarantee.

“**Total Leverage Ratio**” means, for any Fiscal Quarter, the ratio of (i) Total Indebtedness as at the last day of such Fiscal Quarter less (A) any Cash which is subject to a Lien for the benefit of the holders of such Total Indebtedness and (B) any Cash pledged as collateral security to secure Excluded Entity Support (other than Non-Recourse Indebtedness) to (ii) Rolling EBITDA for such Fiscal Quarter.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit

institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

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

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

“U.S. Dollar Equivalent” means the Exchange Equivalent in United States dollars of any amount of Canadian Dollars.

“U.S. Flood Insurance Laws” means, collectively, (a) the *National Flood Insurance Act of 1968*, (b) the *Flood Disaster Protection Act of 1973*, (c) the *National Flood Insurance Reform Act of 1994*, (d) the *Flood Insurance Reform Act of 2004*; (e) the *Biggert-Waters Flood Insurance Reform Act of 2012*; and (f) any other law, regulation or requirement of similar scope and intent to (a) to (e) inclusive imposed by a United States regulator, agency or body of competent jurisdiction, as each of the foregoing is now or hereafter in effect and any successor statute, regulation or requirement to any of the foregoing.

“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.

“U.S. Special Resolution Regimes” has the meaning ascribed thereto in Section 16.16.

“Variable Price Prepaid Hedging Contract” means a Prepaid Hedging Contract where the price a counterparty pays to a Borrower for the commodity is equal to the current market price of the commodity at the time of delivery.

“Waste” means any waste, as defined by EMA.

“Withdrawal Liability” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“WPM” means Wheaton Precious Metals International Ltd., a company existing under the laws of the Cayman Islands.

“**WPM Security**” means the Mexican Security Documents (as defined in the Cozamin Intercreditor Agreement) to the extent securing the PMPA Obligations (as defined in the Cozamin Stream Agreement).

“**Write-down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Other Usages

References to “this agreement”, “the agreement”, “hereof”, “herein”, “hereto” and like references refer to this Credit Agreement and not to any particular Article, Section or other subdivision of this agreement. Any references herein to any agreements or documents shall mean such agreements or documents as amended, modified, supplemented or restated from time to time in accordance with the terms hereof and thereof.

1.3 Plural and Singular

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

1.4 Headings

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

1.5 Currency

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

1.6 Applicable Law

This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein. Any legal action or proceeding with respect to this agreement may be brought in the courts of the Province of British Columbia and, by execution and delivery of this agreement, the parties hereby accept

for themselves and in respect of their property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts. Each party irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party to the address prescribed by Section 16.1, such service to become effective five Banking Days after such mailing. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

1.7 Time of the Essence

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

1.8 Non-Banking Days

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

1.9 Consents and Approvals

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

1.10 Amount of Credit

Any reference herein to the amount of credit outstanding shall mean, at any particular time:

- (a) in the case of a Prime Rate Loan or a BA Rate Loan, the U.S. Dollar Equivalent of principal amount thereof at such time;
- (b) in the case of a Term Benchmark Loan or Base Rate Canada Loan, the principal amount of such Loan at such time;
- (c) in the case of a Bankers' Acceptance, the U.S. Dollar Equivalent of the face amount thereof at such time; or
- (d) in the case of a Letter denominated in U.S. dollars, the contingent liability of the Issuing Lender thereunder (or, if the Letter is denominated in Canadian dollars, the U.S. Dollar Equivalent of the contingent liability of the Issuing Lender thereunder).

1.11 Schedules

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

1.12 Extension of Credit

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

1.13 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any other Finance Document, the provisions of this agreement shall prevail and be paramount.

1.14 Accounting Principles

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with generally accepted accounting principles, as in effect from time to time. 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 generally accepted accounting principles in existence as at the date of this agreement and used in the preparation of the consolidated financial statements of the Borrowers referred to in Section 11.1(a).

1.15 Rule of Construction

The Finance 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 Finance Documents. Notwithstanding anything herein or in generally accepted accounting principles to the contrary, for the purposes of this agreement and the other Credit Documents, including the calculation of any financial ratios (or components thereof), the term “consolidated” (i) shall refer to the consolidation of Capstone Copper and the other Subject Entities only; (ii) shall take into account the assets, liabilities, income and expenses of any non-wholly owned Subsidiary subject to consolidation in proportion to the equity ownership of Capstone Copper or such other Subject Entity in such non-wholly owned Subsidiary; and (iii) to the extent that a Borrower or another Subject Entity has guaranteed the Indebtedness of any non-wholly owned Subsidiary subject to consolidation, shall take into account without duplication only that portion of the Indebtedness subject to such guarantee in the calculation of any financial ratios (or components thereof), to the extent applicable.

1.16 Project Financing

For the purpose of this agreement, a Subsidiary is a borrower with respect to any project financing if:

- (a) such Subsidiary is obligated as a borrower (or is otherwise intended to be the ultimate borrower) pursuant to, or in connection with, an engagement letter, a commitment letter or a credit agreement (or other document having similar effect) with respect to financing of a mine project which financing provides for the construction and development of such mine project; or

- (b) such Subsidiary is a newly formed Subsidiary, such Subsidiary is expected to become, no later than three months after the formation thereof, obligated as a borrower (or is otherwise intended to be the ultimate borrower) pursuant to, or in connection with, an engagement letter, a commitment letter or a credit agreement (or other document having similar effect) with respect to financing of a mine project which financing provides for the construction and development of such mine project and such Subsidiary becomes so obligated within such three month period.

1.17 Joint and Several Obligations

All Secured Obligations hereunder which are stated to be obligations of the Borrowers or any one of them to a Finance Party shall be joint and several obligations of the Borrowers. The obligation of any Borrower (hereinafter, individually in this sentence, the “**first mentioned Borrower**”) with respect to its joint and several liability for the credit extended to any other Borrower shall not be wholly or partially satisfied by such first mentioned Borrower repaying the credit extended to such first mentioned Borrower hereunder. With respect to the joint and several obligations of the Borrowers, no Finance Party shall be bound to exhaust their recourse against any Borrower or others or any security or guarantees it may at any time hold before being entitled to payment from any other Borrower and each Borrower renounces all benefits of discussion and division.

1.18 Divisions of Limited Liability Companies

If, in connection with any division or plan of division of any Subsidiary of a Borrower which is a limited liability company under Delaware law (or any comparable event under a different jurisdiction’s law) any new person comes into existence, such new person shall be deemed to have been organized on the first date of its existence by the holders of its Shares at such time, and a Borrower or any Subsidiary of a Borrower shall be deemed to have made an Investment in the amount of the fair market value of the assets transferred by such Borrower or any such Subsidiary to such resulting person (less the cash consideration received) in each case on the date of such person’s formation.

ARTICLE 2 CREDIT FACILITIES

2.1 Establishment of Credit Facility

Subject to the terms and conditions hereof, the applicable Lenders hereby establish in favour of the Borrowers a senior secured revolving term credit facility (the “**Credit Facility**”) in the amount of the Credit Limit.

2.2 [Intentionally Deleted]

2.3 Lenders’ Commitments

Subject to the terms and conditions hereof and in reliance upon the agreements of the Lenders set forth herein, the Lenders severally agree to extend credit to the Borrowers under the Credit Facility from time to time provided that the aggregate amount of credit extended by

each Lender under the Credit Facility shall not at any time exceed the Individual Commitment of such Lender under the Credit Facility and further provided that the aggregate amount of credit outstanding under the Credit Facility shall not at any time exceed the Credit Limit. All credit requested under the Credit Facility shall be made available to the Borrowers contemporaneously by all of the Lenders. Each Lender shall provide to the Borrowers its Pro Rata Share of each credit, whether such credit is extended by way of drawdown, rollover or conversion. No Lender shall be responsible for any default by any other Lender in its obligation to provide its Pro Rata Share of any credit under the Credit Facility nor shall the Individual Commitment of any Lender be increased as a result of any such default of another Lender in extending credit under the Credit Facility. The failure of any Lender to make available to the Borrowers its Pro Rata Share of any credit under the Credit Facility shall not relieve any other Lender of its obligation hereunder to make available to the Borrowers its Pro Rata Share of such credit under the Credit Facility.

2.4 Reduction of Credit Facility

The Borrowers may, from time to time and at any time, by notice in writing to the Administrative Agent, permanently reduce the Credit Facility in whole or in part to the extent it is not being utilized at the time such notice is given, provided that such reduction shall not become effective until five Banking Days after such notice has been given. The amount of the Credit Facility will be permanently reduced with respect to each repayment or prepayment in accordance with Section 9.1 or 9.3. With respect to an Insurance Prepayment Trigger Event with respect to which, the amount of the Net Cash Proceeds with respect thereto exceeds the amount of credit outstanding under the Credit Facility at such time, the Credit Limit shall be permanently reduced by the amount of such excess at the time of the related mandatory prepayment pursuant to Section 9.3. Any other repayment or prepayment of outstanding credit under the Credit Facility shall not cause a reduction in the amount of the Credit Facility. Any reduction of the Credit Limit pursuant to Section 9.3 shall be in addition to any of the scheduled reductions of the Credit Limit set forth in the definition thereof.

Any repayment of outstanding credit which forms part of any conversion from one type of credit to another type of credit under Article 3 or Article 6 or of any rollover under Article 5 shall not cause any reduction in the amount of the Credit Facility. Upon any reduction of the Credit Facility, the applicable Individual Commitment of each Lender with respect thereto shall thereupon be reduced by an amount equal to such Lender's Pro Rata Share of the amount of such reduction of the Credit Facility.

The Individual Commitment of each Lender shall be reduced by an amount equal to such Lender's Pro Rata Share of the amount of such reduction at the time of such reduction.

2.5 Termination of the Credit Facility

- (a) The Credit Facility shall terminate upon the earliest to occur of:
 - (i) the termination of the Credit Facility in accordance with Section 13.1;
 - (ii) the date on which the Credit Facility has been permanently reduced to zero pursuant to Section 2.4; and

- (iii) the Maturity Date.
- (b) Upon the termination of the Credit Facility, the right of the Borrowers to obtain any credit thereunder and all of the obligations of the Lenders to extend credit thereunder shall automatically terminate.

2.6 Credit Restrictions

Subject to the terms and conditions hereof, the aggregate amount of credit outstanding under the Credit Facility shall not at any time exceed the Credit Limit at such time. No Borrower shall drawdown credit under the Credit Facility solely for the purpose of accumulating cash in deposit or investment accounts outside the ordinary course of business.

2.7 Accordion Feature

- (a) Any Borrower may, by prior notice to the Administrative Agent (an “**Accordion Notice**”), from time to time starting November 8, 2022, request that the amount of the Credit Facility be increased by an amount of up to \$100,000,000 (ie: to a maximum Credit Limit of \$600,000,000). The Accordion Notice shall specify (i) the aggregate amount of the proposed increase in respect of the Credit Facility (which shall be in compliance with the first sentence of this Section 2.7(a)); (ii) the Lenders and/or, subject to Section 2.7(b), proposed new Lenders that are being requested by the Borrower to increase its Individual Commitments with respect to the Credit Facility in the aggregate amount of such requested increase; and (iii) any fees offered to the Accordion Lenders, which fees may be variable based upon the amount by which any such Accordion Lender is willing to increase the principal amount of its commitment.
- (b) The Administrative Agent shall promptly send a copy of the Accordion Notice to each Lender. Each of the existing Lenders shall be given the opportunity to increase their respective Individual Commitments pursuant to an Accordion Notice prior to any solicitation by the Borrowers for an initial Individual Commitment from a Person that is not an existing Lender. If all Lenders agree to participate in the increase in the Credit Facility, the Individual Commitment of each Lender shall be increased in accordance with their Pro Rata Share. For certainty, a new Lender may only be proposed by the Borrower to participate in a proposed increase to the Credit Facility if the full amount of the proposed increase pursuant to the subject Accordion Notice is not completely acquired by Accordion Lenders that are already Lenders.
- (c) Upon receipt of an Accordion Notice pursuant to Section 2.7(b), each Accordion Lender that is an existing Lender shall send a confirming letter to the Administrative Agent advising whether or not it has agreed to increase its Individual Commitment with respect to the Credit Facility and setting out the amounts of that increase. The increase in that Accordion Lender's Individual Commitment with respect to the Credit Facility shall, subject to Sections 2.7(b) and (f), take place with effect from the Accordion Effective Date. Upon the Accordion

Effective Date any such increase of that Accordion Lender's Individual Commitment with respect to the Credit Facility, Schedule A hereto shall be deemed to be amended to increase the Individual Commitment of that Accordion Lender with respect to the Credit Facility by the amount of such increase. For certainty, Lenders may decline, in their sole discretion, to increase their Individual Commitments in connection with an Accordion Notice and increases of the Individual Commitments of the existing Lenders with respect to the Credit Facility pursuant to this Section 2.7 need not be effected on a pro rata basis.

- (d) Any Accordion Lender with respect to the Credit Facility that is not an existing Lender must be acceptable to the Administrative Agent and the Issuing Lenders acting in their discretion exercised reasonably. Upon delivery to the Administrative Agent of an Accordion Agreement executed by the Borrowers and an Accordion Lender that is so acceptable to the Administrative Agent, the Administrative Agent shall promptly execute and deliver such Accordion Agreement whereupon this agreement and each other Credit Document shall, subject to Section 2.7(f) and on and from such date as the parties thereto may agree, be read and construed as if such Accordion Lender were party to this agreement as a Lender having all of the rights and obligations of a Lender expressed herein with respect to the Individual Commitment with respect to the Credit Facility that the Accordion Lender has agreed to accept and all references to any Lender in any Credit Document shall (to the extent the context so admits) be construed accordingly. Consequent thereto, Schedule A hereto shall be deemed to be amended to add the Individual Commitment of such Accordion Lender with respect to the Credit Facility. Each Lender irrevocably appoints, authorizes and directs the Administrative Agent, as its attorney and agent, with full power of substitution and delegation, to complete and execute on its behalf an Accordion Agreement with each Accordion Lender. Each Lender agrees that it will be bound by the terms of each such Accordion Agreement so completed and executed by the Administrative Agent.
- (e) The Administrative Agent shall promptly notify the Borrowers and the Lenders of the increased Individual Commitments with respect to the Credit Facility arising pursuant to Section 2.7(c) and/or 2.7(d). Notwithstanding any other provision hereof with respect to the funding of Loans in accordance with each relevant Lender's Pro Rata Share, the Administrative Agent shall be entitled to reallocate the funding obligations among the relevant Lenders or the outstanding credit under the Credit Facility in order to ensure, to the greatest extent practicable, that after such increase the aggregate amount of credit extended hereunder by each Lender coincides with such Lender's Pro Rata Share of the aggregate amount of credit extended under the Credit Facility by all of the Lenders, provided that no such allocation shall result in the aggregate amount of credit extended hereunder by any Lender exceeding such Lender's Individual Commitment with respect to the Credit Facility. The Administrative Agent may exercise the timing of its discretion to reallocate as aforesaid so as to minimize or eliminate the requirement to break a Term SOFR Rate contract or incur breakage fees in respect of any outstanding Term Benchmark Loan.

- (f) No increase in the amount of the Credit Facility pursuant to an Accordion Notice:
- (i) shall be permitted at any time that a Default or Event of Default has occurred and is continuing or if any Default or Event of Default would arise as a result of an increase to the Credit Limit as a result of the exercise of any such Accordion Notice; and
 - (ii) shall be effective until (i) the Borrowers have brought down the representations and warranties set forth in Section 10.1 hereof pursuant to an officer certificate addressed to the Administrative Agent duly executed by senior officers of the Borrowers and (ii) if required by the Administrative Agent, acting reasonably, each Obligor shall have executed and delivered to the Administrative Agent a confirmation of its Secured Obligations, in form and substance acceptable to the Lenders, acting reasonably, under each Credit Document to which it is a party and acknowledging and confirming that the relevant Accordion Lender benefits from such Credit Documents.

ARTICLE 3 GENERAL PROVISIONS RELATING TO CREDITS

3.1 Types of Credit Availments

Subject to the terms and conditions hereof, the Borrowers may obtain credit from the Lenders under the Credit Facility through the Branch of Account by way of one or more Bankers' Acceptances, Letters and Loans. Any extension of credit hereunder (i) by way of Term Benchmark Loans shall be in a minimum amount of \$1,000,000, (ii) by way of Base Rate Canada Loans shall be in a minimum amount of \$1,000,000 and (iii) by way of Prime Rate Loans or BA Rate Loans shall be in a minimum amount of Cdn\$1,000,000.

3.2 Funding of Loans

Each Lender shall make available to the Administrative Agent its Pro Rata Share of the principal amount of each Loan under the Credit Facility prior to 11:00 a.m. (Vancouver time) on the date of the extension of credit. The Administrative Agent shall, upon fulfilment by the Borrowers of the terms and conditions set forth in Article 12 and unless otherwise irrevocably authorized and directed in the Drawdown Notice, make such funds available to the Borrowers on the date of the extension of credit by crediting the Borrower Account (or causing such account to be credited). Unless the Administrative Agent has been notified by a Lender at least one Banking Day prior to the date of the extension of credit that such Lender will not make available to the Administrative Agent its Pro Rata Share of such Loan, the Administrative Agent may assume that such Lender has made such portion of the Loan available to the Administrative Agent on the date of the extension of credit in accordance with the provisions hereof and the Administrative Agent may, in reliance upon such assumption, make available to the Borrowers on such date a corresponding amount. If the Administrative Agent has made such assumption, to the extent such Lender shall not have so made its Pro Rata Share of the Loan available to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand, such Lender's Pro Rata Share of the Loan and all reasonable costs and expenses incurred by the Administrative

Agent in connection therewith together with interest thereon at the then prevailing interbank rate for each day from the date such amount is made available to the Borrowers until the date such amount is paid or repaid to the Administrative Agent; provided, however, that notwithstanding such obligation, if such Lender fails so to pay, the Borrowers shall, without prejudice to any rights that the Borrowers might have against such Lender, repay such amount to the Administrative Agent forthwith after demand therefor by the Administrative Agent. The amount payable by each Lender to the Administrative Agent pursuant hereto shall be set forth in a certificate delivered by the Administrative Agent to such Lender and the Borrowers (which certificate shall contain reasonable details of how the amount payable is calculated) and shall constitute *prima facie* evidence of such amount payable. If such Lender makes the payment to the Administrative Agent required herein, the amount so paid shall constitute such Lender's Pro Rata Share of the Loan for purposes of this agreement and shall entitle the Lender to all rights and remedies against the Borrowers in respect of such Loan.

3.3 Failure or Refusal of Lender to Fund Loan

- (a) If any Lender fails to make available to the Administrative Agent its Pro Rata Share of any Loan under the Credit Facility as required (such Lender being herein called the “**Defaulting Lender**”) and the Administrative Agent has not funded pursuant to Section 3.2, the Administrative Agent shall forthwith give notice of such failure by the Defaulting Lender to the Borrowers and the other Lenders and such notice shall state that any Lender may make available to the Administrative Agent all or any portion of the Defaulting Lender's Pro Rata Share of such Loan (but in no way shall any other Lender or the Administrative Agent be obliged to do so) in the place and stead of the Defaulting Lender. If more than one Lender gives notice that it is prepared to make funds available in the place and stead of a Defaulting Lender in such circumstances and the aggregate of the funds which such Lenders (herein collectively called the “**Contributing Lenders**” and individually called the “**Contributing Lender**”) are prepared to make available exceeds the amount of the advance which the Defaulting Lender failed to make, then each Contributing Lender shall be deemed to have given notice that it is prepared to make available its *pro rata* share of such advance based on the Contributing Lenders' relative commitments to advance in such circumstances. If any Contributing Lender makes funds available in the place and stead of a Defaulting Lender in such circumstances, then the Defaulting Lender shall pay to any Contributing Lender making the funds available in its place and stead, forthwith on demand, any amount advanced on its behalf together with interest thereon at the then prevailing interbank rate for each day from the date of advance to the date of payment, against payment by the Contributing Lender making the funds available of all interest received in respect of the Loan from the Borrowers. The Borrowers shall pay all amounts owing by it to the Defaulting Lender hereunder (with respect to the amounts advanced by the Contributing Lenders on behalf of the Defaulting Lender) to the Contributing Lenders until such time as the Defaulting Lender pays to the Administrative Agent for the Contributing Lenders all amounts advanced by the Contributing Lenders on behalf of the Defaulting Lender. Other than a vote on matters contemplated by each of Section 14.14(b)(i) and/or (ii), as applicable, any such Defaulting Lender shall not be permitted to vote on any matters requiring consent pursuant to Section 14.14

and any Majority Lender vote shall, in such circumstance, disregard such Defaulting Lender's Individual Commitment when calculating the Total Commitment Amount.

- (b) In the event that the Borrowers wish to utilize proceeds of one or more Accommodations under the Credit Facility to, or to provide proceeds of one or more Accommodations to any of its Subsidiaries, its Affiliates or other person to, finance an offer to acquire (which shall include an offer to purchase securities, solicitation of an offer to purchase or sell securities, an acceptance of an offer to sell securities, whether or not the offer was solicited or unsolicited, or any combination of the foregoing) outstanding securities of any person (the "**Target**") which constitutes a "takeover bid" pursuant to applicable Canadian corporate or securities legislation or a "tender offer" pursuant to applicable U.S. federal securities laws (in either and any case, a "**Takeover Bid**"), and if the Takeover Bid is, under Applicable Law, such as to require the board of directors of the Target to prepare a directors' circular or like document that includes either a recommendation to accept or reject the Takeover Bid or a statement that they are unable to make or are not making a recommendation, then either:
- (i) prior to or concurrently with delivery to the Administrative Agent of any Drawdown Notice, the proceeds of which are to be utilized as aforesaid, each Borrower shall provide to the Administrative Agent evidence satisfactory to the Administrative Agent (acting reasonably, and for this purpose any public disclosure document prepared and filed by the Target shall be deemed to be satisfactory) that (x) the board of directors or like body of the Target has or will have approved the Takeover Bid or recommended to the applicable security holders acceptance of the Takeover Bid, or (y) there has or will have been deposited pursuant to the Takeover Bid and not withdrawn at the relevant time that number of applicable securities which, together with such securities already owned, directly or indirectly, by the Borrowers, would ensure the successful completion of the Takeover Bid in accordance with its terms (provided that such securities, in the aggregate, represent not less than 66 2/3% of the outstanding securities of the Target on a fully diluted basis) and upon providing the corresponding Drawdown Notice, the Lenders shall fund pursuant to such Drawdown Notice in accordance with Section 3.2; or
- (ii) the following steps shall be followed:
- A. at least 5 Banking Days prior to the delivery to the Administrative Agent of such Drawdown Notice, each Borrower shall advise the Administrative Agent (who shall promptly advise each Lender) of the particulars of such Takeover Bid;
- B. within 3 Banking Days of being so advised, each Lender shall notify the Administrative Agent of such Lender's determination as to whether it is willing to fund under such Drawdown Notice; provided

that, in the event such Lender does not so notify the Administrative Agent within such 3 Banking Day period, such Lender shall be deemed to have notified the Administrative Agent that it is not so willing to fund; and

- C. the Administrative Agent shall promptly notify the Borrowers of each Lender's determination;

and in the event that any Lender (each, a "**Declining Lender**") has notified or is deemed to have notified the Administrative Agent that it is not willing to fund under such Drawdown Notice, then such Declining Lender shall have no obligation to fund under such Drawdown Notice, notwithstanding any other provision of the Credit Agreement to the contrary; provided, however, that each other Lender (each, a "**Financing Lender**") which has advised the Administrative Agent it is willing to fund under such Drawdown Notice shall have an obligation, up to the amount of its unused Individual Commitment under the Credit Facility, to fund under such Drawdown Notice, and such funding shall be provided by each Financing Lender in accordance with the ratio, determined prior to the provision of such funding, that the Individual Commitment of such Financing Lender bears to the aggregate Individual Commitments of all the Financing Lenders, under the Credit Facility.

- (c) If Accommodations are provided in the manner contemplated by this Section and there are Declining Lenders, subsequent Accommodations shall be funded firstly by Declining Lenders having unused Individual Commitments under the Credit Facility, and subsequent repayments under the Credit Facility shall be applied firstly to the Financing Lenders, in each case until such time as the proportion of each Lender's aggregate outstanding Accommodations bears to the aggregate amount of Accommodations among all Lenders outstanding is equal to such proportion which would have been in effect but for the application of this section.

3.4 Timing of Credit Availments

No Term Benchmark Loan, BA Rate Loan or Bankers' Acceptance under the Credit Facility may have a maturity date later than the Maturity Date.

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

If a Lender determines in good faith, which determination shall be final, conclusive and binding on the Borrowers, and the Administrative Agent notifies the Borrowers that (i) by reason of circumstances affecting financial markets inside or outside Canada, deposits of United States dollars are unavailable to such Lender in Canada, (ii) adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided in the definition of Adjusted Term SOFR Rate or Alternate Base Rate Canada, as the case may be, (iii) the making or continuation of United States dollar advances in Canada has been made impracticable by the occurrence of a contingency (other than a mere increase in rates payable by such Lender to fund the advance)

which materially and adversely affects the funding of the advances at any interest rate computed on the basis of the Adjusted Term SOFR Rate or the Alternate Base Rate Canada, as the case may be, or by reason of a change in any Applicable Law or government regulation, guideline or order (whether or not having the force of law but, if not having the force of law, one with which a responsible Canadian chartered bank would comply) or in the interpretation thereof by any Official Body affecting such Lender or any relevant financial market, which results in Adjusted Term SOFR Rate or the Alternative Base Rate Canada, as the case may be, no longer representing the effective cost to such Lender of deposits in such market for a relevant Interest Period, or (iv) any change to present law or any future law, regulation, order, treaty or official directive (whether or not having the force of law but, if not having the force of law, one with which a responsible Canadian chartered bank would comply) or any change therein or any interpretation or application thereof by any Official Body has made it unlawful for such Lender to make or maintain or give effect to its obligations in respect of United States dollar advances in Canada as contemplated herein, then:

- (a) the right of the Borrowers to obtain any affected Base Rate Canada Loan or Term Benchmark Loan from such Lender shall be suspended until such Lender determines that the circumstances causing such suspension no longer exist and such Lender so notifies the Borrowers;
- (b) if any affected Base Rate Canada Loan or Term Benchmark Loan is not yet outstanding, any applicable Drawdown Notice shall be cancelled and the advance requested therein shall not be made;
- (c) if any Term Benchmark Loan is already outstanding under the Credit Facility at any time when the right of the Borrowers to obtain credit by way of a Term Benchmark Loan is suspended, it shall, subject to the Borrowers having the right to obtain credit by way of a Base Rate Canada Loan at such time under the Credit Facility, be converted on the last day of the Interest Period applicable thereto (or on such earlier date as may be required to comply with any Applicable Law) to a Base Rate Canada Loan in the principal amount equal to the principal amount of the Term Benchmark Loan or, if the Borrowers do not have the right to obtain credit by way of a Base Rate Canada Loan at such time under the Credit Facility, such Term Benchmark Loan shall be converted on the last day of the Interest Period applicable thereto (or on such earlier date as may be required to comply with any Applicable Law) to a loan in such other currency as may be mutually agreed upon by the Lenders and the Borrowers in the principal amount equal to the Exchange Equivalent of such Term Benchmark Loan; and
- (d) if any Base Rate Canada Loan is already outstanding under the Credit Facility at any time when the right of the Borrowers to obtain credit by way of a Base Rate Canada Loan is suspended, it shall, subject to the Borrowers having the right to obtain credit by way of a Term Benchmark Loan at such time under the Credit Facility, be immediately converted to a Term Benchmark Loan in the principal amount equal to the principal amount of the Base Rate Canada Loan and having an Interest Period of one month or, if the Borrowers do not have the right to obtain credit by way of a Term Benchmark Loan at such time, it shall be immediately

converted to a loan in such other currency as may be mutually agreed upon by the Lenders and the Borrowers in the principal amount equal to the Exchange Equivalent of the principal amount of the Base Rate Canada Loan.

3.6 Time and Place of Payments

Unless otherwise expressly provided herein, each Borrower shall make all payments pursuant to this agreement or pursuant to any document, instrument or agreement delivered pursuant hereto by deposit to the relevant Agent Account before 10:00 a.m. (Vancouver time) on the day specified for payment and the Administrative Agent shall be entitled to withdraw the amount of any payment due to the Administrative Agent or the Lenders hereunder from such accounts on the day specified for payment.

3.7 Remittance of Payments

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

3.8 Evidence of Indebtedness

The Administrative Agent shall maintain accounts wherein the Administrative Agent shall record the amount of credit outstanding, each payment of principal and interest on account of each Loan, each Letter issued and drawn upon and all other amounts becoming due to and being paid to the Lenders or the Administrative Agent hereunder, including, Letter fees and standby fees. The Administrative Agent's accounts constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrowers pursuant to this agreement.

3.9 Notice Periods

Each Drawdown Notice, Rollover Notice, Conversion Notice and Prepayment Notice shall be given to the Administrative Agent:

- (a) prior to 10:00 a.m. (Vancouver time) on the third Banking Day prior to the date of drawdown of, rollover of or conversion into a Term Benchmark Loan or the issuance of a Letter or any voluntary prepayment pursuant to Section 9.2;
- (b) prior to 10:00 a.m. (Vancouver time) on the second Banking Day prior to the date of a drawdown of, rollover of or conversion into a Bankers' Acceptance or any Loan other than a Term Benchmark Loan; and
- (c) prior to 10:00 a.m. (Vancouver time) on the first Banking Day prior to the date of any other drawdown, rollover or conversion.

3.10 Funding of Bankers' Acceptances

- (a) If the Administrative Agent receives from the Borrowers a Drawdown Notice, Rollover Notice or Conversion Notice requesting a drawdown of, a rollover of or a conversion into Bankers' Acceptances, the Administrative Agent shall notify each Lender, prior to 10:00 a.m. (Vancouver time) on the prior Banking Day prior to the date of such extension of credit of such request and of each Lender's Pro Rata Share of such extension of credit. The Administrative Agent shall also at such time notify the Borrowers of each Lender's Pro Rata Share of such extension of credit. Each Lender shall, not later than 10:00 a.m. (Vancouver time) on the date of each extension of credit by way of Bankers' Acceptance, accept drafts of the Borrowers which are presented to it for acceptance and which have an aggregate face amount equal to such Lender's Pro Rata Share of the total extension of credit being made available by way of Bankers' Acceptances on such date, as advised by the Administrative Agent. Each Lender shall purchase the Bankers' Acceptances which it has accepted for a purchase price equal to the BA Discounted Proceeds therefor. Each Lender may at any time and from time to time hold, sell, rediscount or otherwise dispose of any and all Bankers' Acceptances accepted and purchased by it.
- (b) The Borrowers shall provide for payment to the accepting Lenders of the face amount of each Bankers' Acceptance at its maturity, either by payment of such amount or through an extension of credit hereunder or through a combination of both. The Borrowers hereby waive presentment for payment of Bankers' Acceptances by the Lenders and any defence to payment of amounts due to a Lender in respect of a Bankers' Acceptance which might exist by reason of such Bankers' Acceptance being held at maturity by such Lender which accepted it and agrees not to claim from such Lender any days of grace for the payment at maturity of Bankers' Acceptances.
- (c) In the case of a drawdown by way of Bankers' Acceptance, each Lender shall, forthwith after the acceptance of drafts of a Borrower as aforesaid, make available

to the Administrative Agent the BA Proceeds with respect to the Bankers' Acceptances accepted by it. The Administrative Agent shall, upon fulfillment by the Borrowers of the terms and conditions set forth in Article 12, make such BA Proceeds available to the Borrowers on the date of such extension of credit by crediting the applicable Designated Account. In the case of a rollover of or conversion into Bankers' Acceptances, each Lender shall retain the Bankers' Acceptance accepted by it and shall not be required to make any funds available to the Administrative Agent for deposit to the applicable Designated Account; however, forthwith after the acceptance of drafts of the Borrowers as aforesaid, each Borrower shall pay to the Administrative Agent on behalf of the Lenders an amount equal to the aggregate amount of the acceptance fees in respect of such Bankers' Acceptances calculated in accordance with Section 7.6 plus the amount by which the aggregate face amount of such Bankers' Acceptances exceeds the aggregate BA Discounted Proceeds with respect thereto.

- (d) Any Bankers' Acceptance may, at the option of the Borrowers, be executed in advance by or on behalf of the Borrowers, by mechanically reproduced or facsimile signatures of any two officers of a Borrower who are properly so designated and authorized by such Borrower from time to time. Any Bankers' Acceptance so executed and delivered by the Borrowers to the Lenders shall be valid and shall bind the Borrowers and may be dealt with by the Lenders to all intents and purposes as if the Bankers' Acceptance had been signed in the executing officers' own handwriting.
- (e) The Borrowers shall notify the Lenders as to those officers whose signatures may be reproduced and used to execute Bankers' Acceptances in the manner provided in Section 3.10(d). Bankers' Acceptances with the mechanically reproduced or facsimile signatures of designated officers may be used by the Lenders and shall continue to be valid, notwithstanding the death, termination of employment or termination of authorization of either or both of such officers or any other circumstance.
- (f) Each Borrower hereby indemnifies and agrees to hold harmless the Lenders against and from all losses, damages, expenses and other liabilities caused by or attributable to the use of the mechanically reproduced or facsimile signature instead of the original signature of an authorized officer of a Borrower on a Banker's Acceptance prepared, executed, issued and accepted pursuant to this agreement, except to the extent determined by a court of competent jurisdiction to be due to the gross negligence or wilful misconduct of the Lenders.
- (g) Each Lender agrees that, in respect of the safekeeping of executed drafts of the Borrowers which are delivered to it for acceptance hereunder, it shall exercise the same degree of care which it gives to its own property, provided that it shall not be deemed to be an insurer thereof.
- (h) All Bankers' Acceptances to be accepted by a particular Lender shall, at the option of such Lender, be issued in the form of depository bills made payable originally to

and deposited with The Canadian Depository for Securities Limited pursuant to the *Depository Bills and Notes Act* (Canada).

- (i) In order to facilitate the issuance of Bankers' Acceptances pursuant to this agreement, each Borrower hereby authorizes each Lender, and appoints each Lender as the Borrowers' attorney, to complete, sign and endorse drafts or depository bills (each such executed draft or bill being herein referred to as a "**BA Draft**") on its behalf in handwritten form or by facsimile or mechanical signature or otherwise in accordance with the applicable Drawdown Notice, Rollover Notice or Conversion Notice and, once so completed, signed and endorsed to accept them as Bankers' Acceptances under this agreement and then if applicable, purchase, discount or negotiate such Bankers' Acceptances in accordance with the provisions of this agreement. BA Drafts so completed, signed, endorsed and negotiated on behalf of the Borrowers by such Lender shall bind the Borrowers as fully and effectively as if so performed by an authorized officer of the Borrowers. Each draft of a Bankers' Acceptance completed, signed or endorsed by a Lender shall mature on the last day of the term thereof.

3.11 BA Rate Loans

If in the sole judgement of a Lender, such Lender is unable to extend credit by way of Bankers' Acceptances in accordance with this agreement, such Lender shall give an irrevocable notice to such effect to the Administrative Agent and the Borrowers prior to 10:00 a.m. (Vancouver time) on the date of the requested credit extension and shall make available to the Borrowers prior to 11:00 a.m. (Vancouver time) on the date of such requested credit extension a Canadian dollar loan (a "**BA Rate Loan**") in the principal amount equal to such Lender's Pro Rata Share of the total credit to be extended by way of Bankers' Acceptances, such BA Rate Loan to be funded in the same manner as a Loan is funded pursuant to Sections 3.2 and 3.3. If the Borrowers requests an extension of credit by way of Prime Rate Loan, each Lender shall make available to the Borrowers prior to 11:00 a.m. (Vancouver Time) on the date of such requested credit extension a BA Rate Loan in the principal amount equal to such Lender's Pro Rate Share of the total credit to be extended by way of Prime Rate Loans, such BA Rate Loan to be funded in the same manner as a Loan is funded pursuant to Sections 3.2 and 3.3. If such BA Rate Loan is a substitute for Bankers' Acceptances, such BA Rate Loan shall have the same term as such Bankers' Acceptances. If such BA Rate Loan is a substitute for Prime Rate Loans, such BA Rate Loan shall have a term equal to the shortest Interest Period displayed on the Refinitiv Canadian Dollar Offered Rate (CDOR) Page for Canadian chartered banks listed in Schedule I to the *Bank Act* (Canada) for Cdn.\$1,000,000. A BA Rate Loan shall bear such rate of interest per annum throughout the term thereof as shall permit such Lender to obtain the same effective rate as if such Lender had accepted and purchased a Bankers' Acceptance at the same acceptance fee and pricing at which a Schedule II or III Lender would have accepted and purchased such Bankers' Acceptance at approximately 11:00 a.m. (Vancouver time) on the date such BA Rate Loan is made, on the basis that, and each Borrower hereby agrees that, for such a BA Rate Loan, interest shall be payable in advance on the date of the extension of credit by the Lender deducting the interest payable in respect thereof from the principal amount of such BA Rate Loan. All BA Rate Loans to be made by a particular Lender shall, at the option of such Lender, be evidenced by a promissory note in the form of a depository

note made payable originally to and deposited with The Canadian Depository for Securities Limited pursuant to the *Depository Bills and Notes Act* (Canada).

3.12 General Provisions Relating to All Letters

- (a) Each request by each Borrower for the issuance or amendment of a Letter shall be deemed to be a representation by each Borrower that the extension of credit so requested complies with the conditions set forth in Section 12.1. Each Borrower hereby acknowledges and confirms to the relevant Issuing Lender that such Issuing Lender shall not be obliged to make any inquiry or investigation as to the right of any beneficiary to make any claim or Draft under a Letter and payment by such Issuing Lender pursuant to a Letter shall not be withheld by such Issuing Lender by reason of any matters in dispute between the beneficiary thereof and such Borrower. The sole obligation of the relevant Issuing Lender with respect to Letters issued by it is to cause to be paid a Draft drawn or purporting to be drawn in accordance with the terms of the applicable Letter and for such purpose such Issuing Lender is only obliged to determine that the Draft purports to comply with the terms and conditions of the relevant Letter.
- (b) No Issuing Lender shall have any responsibility or liability for or any duty to inquire into the form, sufficiency (other than to the extent provided in the preceding paragraph), authorization, execution, signature, endorsement, correctness (other than to the extent provided in the preceding paragraph), genuineness or legal effect of any Draft, certificate or other document presented to it pursuant to a Letter issued by the relevant Issuing Lender and each Borrower unconditionally assumes all risks with respect to the same. Each Borrower agrees that it assumes all risks of the acts or omissions of the beneficiary of any Letter with respect to the use by such beneficiary of the relevant Letter. Each Borrower shall promptly examine a copy of each Letter and each amendment thereto that is delivered to it and, in the event of any claim of non-compliance with a Borrower's instructions or other irregularity, such Borrower will immediately notify the relevant Issuing Lender. Each Borrower shall be conclusively deemed to have waived any such claim against the relevant Issuing Lender and its correspondents unless such notice is given as aforesaid.
- (c) The obligations of each Borrower hereunder with respect to Letters shall be absolute, unconditional and irrevocable and shall not be reduced by any event or occurrence including, without limitation:
 - (i) any lack of validity or enforceability of this agreement or any such Letter;
 - (ii) any amendment or waiver of or any consent to departure from this agreement;
 - (iii) the existence of any claim, set-off, defense or other rights which each Borrower may have at any time against any beneficiary or any transferee of any such Letter (or any person or entities for whom any such beneficiary or

any such transferee may be acting), any Lender, any Issuing Lender or any other person or entity;

- (iv) any Draft, statement or other document presented under any such Letter proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;
- (v) any non-application or misapplication by the beneficiary of such Letter of the proceeds of any drawing under such Letter;
- (vi) the surrender or impairment of any Security;
- (vii) any reduction or withdrawal of the Issuing Lender's credit rating by any rating agency; or
- (viii) any other circumstance or happening whatsoever, similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, either Borrower.

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

- (d) Any action, inaction or omission taken or suffered by an Issuing Lender or any of its correspondents under or in connection with a Letter or any Draft made thereunder, if in good faith and in conformity with foreign or domestic laws, regulations or customs applicable thereto, shall be binding upon each Borrower and shall not place the relevant Issuing Lender or any of its correspondents under any resulting liability to such Borrower. Without limiting the generality of the foregoing, each Issuing Lender and its correspondents may receive, accept or pay as complying with the terms of a Letter, any Draft thereunder, otherwise in order which may be signed by, or issued to, the administrator or any executor of, or the trustee in bankruptcy of, or the receiver for any property of, or other person or entity acting as the representative or in the place of, such beneficiary or its successors and assigns. Each Borrower covenants that it will not take any steps, issue any instructions to any Issuing Lender or any of its correspondents or institute any proceedings intended to derogate from the right or ability of such Issuing Lender or its correspondents to honour and pay any Draft or Drafts.
- (e) Each Borrower agrees that the Lenders, the relevant Issuing Lender and the Administrative Agent shall have no liability to it for any reason in respect of or in connection with any Letter, the issuance thereof, any payment thereunder, or any other action taken by the Lenders, the relevant Issuing Lender or the Administrative

Agent or any other Person in connection therewith, other than on account of the relevant Issuing Lender's gross negligence or wilful misconduct.

- (f) Notwithstanding anything to the contrary in Sections 3.12(a) – (e) hereof, no Borrower shall be obliged to compensate an Issuing Lender for any loss, cost or expense incurred by it to the extent such loss, cost or expense are determined by a final judgment to have directly resulted from the wilful misconduct or gross negligence of such Issuing Lender. Notwithstanding the preceding sentence, each Borrower shall remain liable to reimburse and indemnify the relevant Issuing Lender from any payment such Issuing Lender may make under any Letter if and to the extent such Borrower would be unjustly enriched by reason of the fact that such payment discharges a payment obligation otherwise owing by any Borrower and such Borrower does not have an obligation to make a corresponding payment of a like amount to such Issuing Lender.
- (g) Notwithstanding any other provision of this agreement to the contrary, any payment made by an Issuing Lender in good faith in response to any demand for payment under any Letter shall be deemed to have been properly made, shall be binding upon the parties hereto and shall, subject to Section 8.4(d), oblige each Borrower to reimburse and indemnify such Issuing Lender for such payment under Section 8.4(d).
- (h) Save to the extent expressly provided otherwise in this Section 3.12, the rights and obligations between an Issuing Lender and each Borrower with respect to each relevant Letter shall be determined in accordance with the applicable provisions of the (i) Uniform Customs and Practice for Documentary Credits, ICC Publications 600 or (ii) the International Standby Practices - ISP98, ICC Publication No. 590, as applicable.
- (i) Each Issuing Lender shall act on behalf of the Lenders with respect to any Letters issued by it and the documents associated therewith, and such Issuing Lender shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article 14 with respect to any acts taken or omissions suffered by such Issuing Lender in connection with Letters issued by it or proposed to be issued by it and any documentation pertaining to such Letters as fully as if the term “**Administrative Agent**” as used in Article 14 included such Issuing Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to such Issuing Lender.
- (j) Immediately upon the issuance of each Letter under the Credit Facility, each Lender under the Credit Facility shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant Issuing Lender a risk participation in such Letter in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter.
- (k) None of the Issuing Lenders, the Administrative Agent nor any correspondent, participant or assignee of any Issuing Lender shall be liable to any Lender for

(i) any action of any of the relevant Issuing Lender, the Administrative Agent or any correspondent, participant or assignee of such Issuing Lender taken or omitted in connection herewith at the request or with the approval of the applicable Lenders or the Majority Lenders, as applicable, (ii) any action of any of such Issuing Lender, the Administrative Agent or any correspondent, participant or assignee of such Issuing Lender taken or omitted in the absence of such party's gross negligence or wilful misconduct; or (iii) any deficiency in the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter.

- (l) The maximum aggregate face amount of Letters which an Issuing Lender shall be required to issue shall not exceed US\$300,000,000 (or the Canadian Dollar Equivalent thereof) at any one time.

3.13 Alternate Rate of Interest.

- (a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 3.13, if:
- (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) prior to the commencement of any Interest Period for a Term Benchmark Loan, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period; or
 - (ii) the Administrative Agent is advised by the Majority Lenders in respect of the relevant Credit Facility prior to the commencement of any Interest Period for a Term Benchmark Loan that the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining such Term Benchmark Loan for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrowers and the Lenders by telephone or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark (1) any request pursuant to a Drawdown Notice, Rollover Notice, or Conversion Notice, as applicable, that requests a Loan of a Term Benchmark Loan shall instead be deemed to be a request for Loan of, or a conversion or rollover of to, a Base Rate Canada Loan; provided that if the circumstances giving rise to such notice (x) affect only one type of Loan, then all other types of Loans shall be permitted and (y) do not affect all Lenders, then requests by the Borrowers for Term Benchmark Loans may be made to the Lenders that are not affected thereby. Furthermore, if any Term Benchmark Loan is outstanding on the date of the Borrowers' receipt of the notice from the Administrative Agent referred to in this Section 3.13(a) with respect to an Adjusted Term SOFR Rate applicable to such Term Benchmark Loan, then until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist

with respect to the relevant Benchmark, any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Term Benchmark Loan (or the next succeeding Banking Day if such day is not a Banking Day), be converted by the Administrative Agent to, and shall constitute a Base Rate Canada Loan.

- (b) Notwithstanding anything to the contrary herein or in any other Credit Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred in respect of any setting of the then-current Benchmark, then (x) 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 Credit 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 Credit Document and (y) 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 such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Banking 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 Credit Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Majority Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.
- (c) In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit 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 Credit Document.
- (d) The Administrative Agent will promptly notify the Borrowers and the Lenders of (i) the implementation of any Benchmark Replacement, and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrowers of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (e) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.13, 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 Credit Document, except, in each case, as expressly required pursuant to this Section 3.13.

- (e) Notwithstanding anything to the contrary herein or in any other Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) 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 Administrative Agent in its reasonable discretion or (B) 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 Administrative 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 and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) 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 Administrative 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.
- (f) Upon the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any pending request for a Term Benchmark Loan of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for a Loan of or conversion to a Base Rate Canada Loan.

3.14 Illegality

If after the date hereof, the adoption of any Applicable Law, or any change in any Applicable Law (whether adopted before or after the date hereof), or any change in interpretation or administration thereof by any Official Body, or compliance by any Lender with any such Applicable Law, shall make it unlawful for any Lender to make, maintain or fund its portion of Term Benchmark Loans, such Lender shall so notify the Administrative Agent, and the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrowers. Before giving any notice to the Administrative Agent pursuant to this Section 3.14, such Lender shall designate a different lending office if such designation will avoid the need for giving such notice and will not, in the good faith reasonable judgment of such Lender, be otherwise materially disadvantageous to such Lender. Upon receipt of such notice, notwithstanding anything contained in this agreement, each Borrower shall repay in full the then outstanding principal amount of such Lender's portion of each affected Term Benchmark Loan, together with accrued interest thereon, on either (a) the Interest Payment Date applicable to such affected Term Benchmark Loans if such Lender may lawfully continue to maintain and fund its portion of such Term Benchmark Loan to such day or (b) within 10 Banking Days of demand from such Lender if such Lender may not

lawfully continue to fund and maintain its portion of such affected Term Benchmark Loans to such day. Concurrently with repaying such portion of each affected Term Benchmark Loan, each Borrower may borrow a Base Rate Canada Loan from such Lender, whether or not it would have been entitled to effect such borrowing and such Lender shall make such Loan of a Base Rate Canada Loan, if so requested, in an amount such that the outstanding principal amount of the affected Loan made by such Lender shall equal the outstanding principal amount of such Loan immediately prior to such repayment. The obligation of such Lender to make Term Benchmark Loans is suspended only until such time as it is once more possible and legal for such Lender to fund and maintain Term Benchmark Loans.

3.15 CDOR Discontinuance

- (a) If the Administrative Agent determines (which determination shall be conclusive absent manifest error), or a Borrower or the Majority Lenders notifies the Administrative Agent that such Borrower or the Majority Lenders (as applicable) has determined that:
- (i) adequate and reasonable means do not exist for ascertaining CDOR, including because the CDOR Page of Refinitiv Benchmark Services (UK) Limited (or any of its successors or Affiliates) is not available or published on a current basis for the applicable interest period and such circumstances are unlikely to be temporary;
 - (ii) the administrator of the CDOR or a governmental authority having jurisdiction has made a public statement identifying a specific date after which CDOR will permanently or indefinitely cease to be made available or permitted to be used for determining the interest rate of loans;
 - (iii) a governmental authority having jurisdiction over a Lender has made a public statement identifying a specific date after which CDOR shall no longer be permitted to be used for determining the interest rate of loans (each such specific date in clause (b) above and in this clause (c) a “**CDOR Scheduled Unavailability Date**”); or
 - (iv) bi-lateral or syndicated loans currently being executed, or that include language similar to that contained in this Section 3.15, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace CDOR,

then reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent, acting on the instructions of the Majority Lenders, and the Borrowers may mutually agree upon a successor rate to CDOR, and the Administrative Agent, acting on the instructions of the Majority Lenders, and the Borrowers may amend this agreement to replace CDOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then

existing convention for similar Canadian dollars denominated bi-lateral or syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “**CDOR Successor Rate**”), together with any proposed CDOR Successor Rate conforming changes.

- (b) If no CDOR Successor Rate has been determined and the circumstances under subsection (a) above exist or a CDOR Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrowers and the Lenders. Thereafter, the obligation of the Lenders to make or maintain Accommodations in Canadian dollars shall be suspended. Upon receipt of such notice, the Borrowers may revoke any pending request for an Accommodation or rollover of an Accommodation denominated in Canadian dollars.

Notwithstanding anything else herein, any definition of the CDOR Successor Rate (exclusive of any margin) shall provide that in no event shall such CDOR Successor Rate be less than zero for the purposes of this agreement.

ARTICLE 4 DRAWDOWNS

4.1 Drawdown Notice

Subject to the provisions hereof and provided that all of the applicable conditions precedent set forth in Article 12 have been fulfilled by the Borrowers or waived by the Lenders as provided in Section 14.14, a Borrower may, from time to time, obtain credit hereunder by giving to the Administrative Agent an irrevocable notice in substantially the form of Schedule D hereto (“**Drawdown Notice**”) in accordance with Section 3.9 and specifying:

- (a) the Borrower Account to which the credit is to be deposited;
- (b) the date the credit is to be obtained;
- (c) whether the credit is to be obtained by way of Loan or Bankers’ Acceptance or Letter;
- (d) if the credit is to be extended by way of a Loan, the principal amount and type of the Loan;
- (e) if the credit is to be obtained by way of Term Benchmark Loan, the applicable Interest Period;
- (f) if the credit is to be extended by way of Bankers’ Acceptance, the number of Bankers’ Acceptances to be issued, the aggregate amount of the Bankers’ Acceptances to be issued and the term(s) of the Bankers’ Acceptances to be issued;
- (g) if the credit is to be obtained by way of Letter,

- (i) the named beneficiary of the Letter and address of such beneficiary, the documents to be presented by such beneficiary in case of any drawing thereunder, the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder, the purpose and nature of the requested Letter, the maturity date and amount of the Letter, the currency in which the Letter is to be denominated and all other terms of the Letter (including, without limitation, such other matters as the Issuing Lender may require); and
 - (ii) if the Letter is to be issued for and on behalf of a Subsidiary of a Borrower, such Borrower shall cause to be delivered to the Administrative Agent a reimbursement instrument in the form of Schedule I hereto executed by the relevant Subsidiary; and
- (h) the details of any irrevocable authorization and direction pursuant to Section 3.2.

ARTICLE 5 ROLLOVERS

5.1 Bankers' Acceptances

Provided that the relevant Borrower has, by giving notice to the Administrative Agent in accordance with Section 5.3, requested the Lenders to accept its drafts to replace all or a portion of outstanding Bankers' Acceptances as they mature, each such Lender shall, on the maturity of such Bankers' Acceptances and concurrent with the payment by a Borrower to such Lender of the face amount of such Bankers' Acceptances or the portion thereof to be replaced, accept the Borrower's draft or drafts having an aggregate face amount equal to its Pro Rata Share of the aggregate face amount of the matured Bankers' Acceptances or the portion thereof to be replaced in accordance with Section 3.4.

5.2 Term Benchmark Loans

Subject to Section 3.5 and provided that the relevant Borrower has, by giving notice to the Administrative Agent in accordance with Section 5.3, requested the Lenders to continue to extend credit by way of a Term Benchmark Loan to replace all or a portion of an outstanding Term Benchmark Loan as it matures, each such Lender shall, on the maturity of such Term Benchmark Loan, continue to extend credit to the relevant Borrower by way of a Term Benchmark Loan (without a further advance of funds to the relevant Borrower) in the principal amount equal to such Lender's Pro Rata Share of the principal amount of the matured Term Benchmark Loan or the portion thereof to be replaced.

5.3 Rollover Notice

The notice to be given to the Administrative Agent pursuant to Section 5.1 or 5.2 ("**Rollover Notice**") shall be irrevocable, shall be given in accordance with Section 3.5, shall be in substantially the form of Schedule E hereto and shall specify:

- (a) the maturity date of the maturing Bankers' Acceptances, BA Rate Loan or Term Benchmark Loan, as the case may be;
- (b) the face amount of the maturing Bankers' Acceptances or the principal amount of the maturing BA Rate Loan or Term Benchmark Loan, as the case may be, and the portion thereof to be replaced;
- (c) in the case of a maturing Term Benchmark Loan, the maturity date of the maturing Term Benchmark Loan, the principal amount of the maturing Term Benchmark Loan and the portion thereof to be replaced and the Interest Period or Interest Periods of the replacement Term Benchmark Loans;
- (d) in the case of maturing Bankers' Acceptances, the aggregate face amount of the new Bankers' Acceptances to be issued and the term of the new Bankers' Acceptances; and
- (e) in the case of maturing BA Rate Loans, the aggregate principal amount of the new BA Rate Loans and the term or terms thereof.

5.4 Absence of Notice

Subject to the terms and conditions hereof, in the absence of a Rollover Notice or Conversion Notice within the appropriate time periods referred to herein, a maturing Term Benchmark Loan shall be automatically continued as a Term Benchmark Loan having an Interest Period of one month in the principal amount of the maturing Term Benchmark Loan and a maturing Bankers' Acceptance or BA Rate Loan shall be automatically continued as a Bankers' Acceptance having a term of 30 days and an aggregate face amount equal to the maturing Bankers' Acceptance or a comparable BA Rate Loan as though a notice to such effect had been given in accordance with Section 5.3.

ARTICLE 6 CONVERSIONS

6.1 Converting Loan to Other Type of Loan

Subject to the provisions hereof and provided that a Borrower has, by giving notice to the Administrative Agent in accordance with Section 6.4, requested the Lenders to convert all or a portion of an outstanding Loan (other than a BA Rate Loan) into another type of Loan (other than a BA Rate Loan), each such Lender shall, on the date of conversion (which, in the case of the conversion of all or a portion of an outstanding Term Benchmark Loan, shall be the date on which such Loan matures), continue to extend credit to the relevant Borrower by way of the type of Loan into which the outstanding Loan or a portion thereof is converted (with a repayment and a subsequent advance of funds to the relevant Borrower) in the aggregate principal amount equal to such Lender's Pro Rata Share of the principal amount of the outstanding Loan or the portion thereof which is being converted.

6.2 Converting Loan to Bankers' Acceptances

Provided that the relevant Borrower has, by giving notice to the Administrative Agent in accordance with Section 6.4, requested the Lenders to accept its drafts to replace all or a portion of an outstanding Loan and, if a Term Benchmark Loan or a BA Rate Loan is to be replaced the date of conversion is the date on which such Loan matures, each such Lender shall, on the date of conversion and concurrent with the payment by a Borrower to each such Lender of the principal amount of such outstanding Loan or the portion thereof which is being converted, accept the relevant Borrower's draft or drafts having an aggregate face amount equal to its Pro Rata Share of the aggregate principal amount of such Loan or the portion thereof which is being converted or the Canadian Dollar Equivalent thereof, as the case may be, such acceptance to be in accordance with Section 3.10.

6.3 Converting Bankers' Acceptances to Loan

Each Lender shall, on the maturity date of a Bankers' Acceptance which such Lender has accepted, pay to the holder thereof the face amount of such Bankers' Acceptance. Subject to Sections 3.1 and 3.5 and provided that the relevant Borrower has, by giving notice to the Administrative Agent in accordance with Section 6.4, requested such Lenders to convert all or a portion of outstanding maturing Bankers' Acceptances into a Loan, each such Lender shall, upon the maturity date of such Bankers' Acceptances and the payment by such Lender to the holders of such Bankers' Acceptances of the aggregate face amount thereof and concurrent with the payment by a Borrower to such Lender of the aggregate face amount of such Bankers' Acceptances, extend credit to the relevant Borrower by way of the Loan into which the matured Bankers' Acceptances or a portion thereof are converted in the aggregate principal amount equal to its Pro Rata Share of the aggregate face amount or the U.S. Dollar Equivalent of the aggregate face amount, as the case may be, of the matured Bankers' Acceptances or the portion thereof which are being converted. Where a particular Lender has funded the relevant Borrower by way of a BA Rate Loan rather than by way of Bankers' Acceptances, the provisions of this Section 6.3 as they relate to Bankers' Acceptances shall apply *mutatis mutandis* to such BA Rate Loan.

6.4 Conversion Notice

The notice to be given to the Administrative Agent pursuant to Section 6.1, 6.2 or 6.3 ("**Conversion Notice**") shall be irrevocable, shall be given in accordance with Section 3.9, shall be in substantially the form of Schedule F hereto and shall specify:

- (a) whether an outstanding Loan or Bankers' Acceptances are to be converted and, if an outstanding Loan is to be converted, the type of Loan to be converted;
- (b) the date on which the conversion is to take place;
- (c) the face amount of the Bankers' Acceptances or the portion thereof which is to be converted or the principal amount of the Loan or the portion thereof which is to be converted;
- (d) the type and amount of the Loan or Bankers' Acceptances into which the outstanding Loan or Bankers' Acceptances are to be converted;

- (e) if an outstanding Loan or Bankers' Acceptances are to be converted into a Term Benchmark Loan, the applicable Interest Period; and
- (f) if an outstanding Loan is to be converted into Bankers' Acceptances, the aggregate face amount of the new Bankers' Acceptances to be issued and the term of the new Bankers' Acceptances.

6.5 Conversion by Lenders

Upon written notice to such effect to the Borrowers at such times as a Default has occurred and is continuing, the Administrative Agent may, as applicable, on the maturity date of a Bankers' Acceptance, BA Rate Loan or a Term Benchmark Loan, convert such Bankers' Acceptance, BA Rate Loan or Term Benchmark Loan into Prime Rate Loan or Base Rate Canada Loan, as applicable, as though a notice to such effect had been given in accordance with Section 6.4.

ARTICLE 7 INTEREST AND FEES

7.1 Interest Rates

The Borrowers shall pay to the Lenders, in accordance with Section 3.6, interest on the outstanding principal amount from time to time of each Loan (other than a BA Rate Loan) at the rate per annum equal to:

- (a) in the case of each Prime Rate Loan, the Prime Rate plus the Applicable Rate;
- (b) in the case of each Base Rate Canada Loan, the Alternate Base Rate Canada plus the Applicable Rate; and
- (c) in the case of each Term Benchmark Loan, the applicable Adjusted Term SOFR Rate plus the Applicable Rate.

7.2 Calculation and Payment of Interest

- (a) Interest on the outstanding principal amount from time to time of each Prime Rate Loan and Base Rate Canada Loan shall accrue from day to day from and including the date on which credit is obtained by way of such Loan to but excluding the date on which such Loan is repaid in full (both before and after maturity and as well after as before judgment) and shall be calculated on the basis of the actual number of days elapsed divided by 365 (or, in the case of a leap year, 366).
- (b) Interest on the outstanding principal amount from time to time of each Term Benchmark Loan shall accrue from day to day from and including the date on which credit is obtained by way of such Loan to but excluding the date on which such Loan is repaid in full (both before and after maturity and as well after as before judgment) and shall be calculated on the basis of the actual number of days elapsed divided by 360.

- (c) Accrued interest shall be paid,
 - (i) in the case of interest on Prime Rate Loans and Base Rate Canada Loans, monthly in arrears on the 22nd day of each calendar month; and
 - (ii) in the case of interest on Term Benchmark Loans, on the last day of the applicable Interest Period; provided that, in the case of Interest Periods of a duration longer than three months, accrued interest shall be paid no less frequently than every three months from the first day of such Interest Period during the term of such Interest Period and on the date on which such Term Benchmark Loans are otherwise required to be repaid.

7.3 General Interest Rules

- (a) For the purposes hereof, whenever interest is calculated on the basis of a year of 360, 365 or 366 days, each rate of interest determined pursuant to such calculation expressed as an annual rate for the purposes of the *Interest Act* (Canada) is equivalent to such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360, 365 or 366 days, respectively.
- (b) Interest on each Loan and on overdue interest thereon shall be payable in the currency in which such Loan is denominated during the relevant period.
- (c) If the Borrowers fail to pay any fee or other amount of any nature payable by it to any Finance Party hereunder or under any document, instrument or agreement delivered pursuant hereto on the due date therefor, the Borrowers shall pay to such Finance Party, interest on such overdue amount in the same currency as such overdue amount is payable from and including such due date to but excluding the date of actual payment (as well after as before judgment) at the rate per annum, calculated and compounded monthly, which is equal to (x) the Prime Rate in the case of overdue amounts denominated in Canadian dollars or the Alternate Base Rate Canada in the case of overdue amounts denominated in U.S. dollars, plus (y) the Applicable Rate, plus (z) 2%. Such interest on overdue amounts shall become due and be paid on demand made by the Administrative Agent.

7.4 Selection of Interest Periods

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

- (a) Interest Periods shall have a duration from one, two, three or six months (subject to availability and to the aggregate number of Interest Periods with different dates outstanding being less than ten (10));
- (b) the first Interest Period for a Term Benchmark Loan shall commence on and include the day on which credit is obtained by way of such Loan and each subsequent

Interest Period applicable thereto shall commence on and include the date of the expiry of the immediately preceding Interest Period applicable thereto; and

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

7.5 Standby Fee

Upon the first Banking Day of each Fiscal Quarter and upon the termination of the Credit Facility, the Borrowers shall pay in accordance with Section 3.6, to the Lenders, in arrears, a standby fee on the Credit Facility, calculated at the rate per annum, on the basis of a year of 365 days (or, in the case of a leap year, 366 days), equal to the Applicable Rate on the daily Available Credit during the most recently completed Fiscal Quarter, such fee to accrue daily from the date of the execution and delivery of this agreement (and, for the avoidance of doubt, regardless of whether the Effective Date has occurred) to and including the termination of the Credit Facility. The standby fees paid by Capstone Mining during the Interim Period pursuant to the Existing Credit Agreement shall, as concerns any Lenders which are a party to the Existing Credit Agreement and this agreement, be creditable against standby fees paid by the Borrowers pursuant to this Section 7.5 during such Interim Period.

7.6 Acceptance Fees

- (a) Upon the acceptance of any draft of a Borrower under the Credit Facility pursuant hereto, the Borrowers shall pay to the Lenders, in the manner provided herein, in advance, an acceptance fee calculated at the rate per annum, on the basis of a year of 365 days, equal to the Applicable Rate on the face amount of such Bankers' Acceptance for its term, being the actual number of days in the period commencing on the date of acceptance of the relevant Borrower's draft and ending on but excluding the maturity date of the Bankers' Acceptance; provided, however, that such fee shall not be less than **[Redacted – Commercially sensitive information]** with respect to any single transaction involving the issuance of one or more Bankers' Acceptances.
- (b) With respect to each drawdown by way of Bankers' Acceptances, such acceptance fees shall be paid by the Lenders deducting the amount thereof from the BA Discounted Proceeds before advancing the BA Proceeds to the Administrative Agent as provided in Section 3.10(c). With respect to each rollover or conversion into Bankers' Acceptances, such acceptance fees shall be paid by the Borrowers to the Administrative Agent as provided in Section 3.10(c). Each such payment is non-refundable and fully earned when due.

7.7 Applicable Rate Adjustment

On the second Banking Day following each date a Borrower delivers a compliance certificate to the Administrative Agent pursuant to Section 11.1(a)(iii) which discloses a Total

Leverage Ratio at a Level which differs from the Level then in effect, the Applicable Rate applicable to (i) all Accommodations outstanding on the date any such change takes effect and (ii) the standby fee referenced in Section 7.5 will in each case be adjusted immediately, but without retroactive effect. Notwithstanding the foregoing if the Borrowers fails to deliver a compliance certificate to the Administrative Agent by the date required to do so under Section 11.1(a)(iii), the Total Leverage Ratio shall be deemed as from such date to be at Level IV until such failure is cured, at which time the Applicable Rate shall be determined in accordance with the table set forth in the definition of Applicable Rate, but without any adjustments having retroactive effect.

7.8 Letter Fees

The Borrowers shall pay to the Administrative Agent, for the benefit of the Lenders under the Credit Facility, in accordance with Section 3.6, an issuance fee quarterly in arrears on the first Banking Day of each Fiscal Quarter, calculated at a rate per annum equal to the Applicable Rate on the basis of a year of 365 or 366 days and on the amount of each such Letter for a period of time equal to the number of days in the preceding Fiscal Quarter on which such Letter was outstanding. In addition, with respect to all Letters, the Borrowers shall from time to time pay to the relevant Issuing Lender, for its own account, its usual and customary fees (at the then prevailing rates) for the amendment, delivery and administration of letters of credit such as the Letters. Each such payment is non-refundable and fully earned when due.

7.9 Fronting Fees

With respect to each Letter issued hereunder, the Borrowers shall pay to the relevant Issuing Lender, in accordance with Section 3.6, a fronting fee quarterly in arrears on the first Banking Day of each Fiscal Quarter, calculated at a rate of **[Redacted – Commercially sensitive information]** per annum on that portion of the amount of each such Letter for which Lenders other than the relevant Issuing Lender have agreed to reimburse such Issuing Lender for any amounts drawn hereunder and for a period of time equal to the number of days in the preceding Fiscal Quarter on which such Letter was outstanding. Each such payment is non-refundable and fully earned when due.

ARTICLE 8 RESERVE, CAPITAL, INDEMNITY AND TAX PROVISIONS

8.1 Conditions of Credit

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

8.2 Increased Costs

- (a) Increased Costs Generally. If from time to time any Change in Law shall:
 - (i) 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 Finance Party;

- (ii) subject any Finance Party to any Tax of any kind whatsoever with respect to this agreement, any Accommodation made by it, or change the basis of taxation of payments to such Finance Party in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 8.6 and the imposition, or any change in the rate, of any Excluded Tax payable by such Finance Party; or
- (iii) impose on any Finance Party or any applicable interbank market any other condition, cost or expense affecting this agreement or Accommodations made by such Finance Party or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Finance Party of making or maintaining any Accommodation (or of maintaining its obligation to make any such Accommodation) or to reduce the amount of any sum received or receivable by such Finance Party hereunder (whether of principal, interest or any other amount), then upon request of such Finance Party from time to time the Borrowers shall pay to such Finance Party such additional amount or amounts as will compensate such Finance Party for such additional costs incurred or reduction suffered, such amount or amounts to be determined in the sole and absolute discretion of such Finance Party. For certainty, any payments made pursuant to Section 8.2(a) and/or 8.2(c) shall be made without duplication.

- (b) **Capital and Liquidity Requirements.** If any Finance Party determines in its sole and absolute discretion that any Change in Law affecting such Finance Party or any lending office of such Finance Party or such Finance Party's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Finance Party's capital or on the capital of such Finance Party's holding company, if any, as a consequence of this agreement, the Individual Commitment of such Finance Party or the Accommodations made by it, to a level below that which such Finance Party or its holding company could have achieved but for such Change in Law (taking into consideration such Finance Party's policies and the policies of its holding company with respect to, as applicable, capital adequacy or liquidity requirements), then from time to time the Borrowers shall pay to such Finance Party such additional amount or amounts as will compensate such Finance Party or its holding company for any such reduction suffered, such amount or amounts to be determined in the sole and absolute discretion of the Finance Party. For certainty, any payments made pursuant to Section 8.2(a) and/or 8.2(c) shall be made without duplication.
- (c) **Certificates for Reimbursement.** A certificate of a Finance Party setting forth the amount or amounts necessary to compensate such Finance Party or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrowers from time to time shall be conclusive absent manifest error. The Borrowers shall pay such Finance Party the amount shown as due on any such certificate within 10 days after receipt thereof.

- (d) **Delay in Requests.** Failure or delay on the part of any Finance Party to demand compensation pursuant to this Section shall not constitute a waiver of such Finance Party's right to demand such compensation, except that no Borrower shall be required to compensate a Finance Party pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Finance Party notifies the relevant Borrower of the Change in Law giving rise to such increased costs or reductions and of such Finance Party's intention to claim compensation therefor, unless the Change in Law giving rise to such 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 thereof.

8.3 Replacement of Lenders

- (a) If any Lender but not all of the Lenders who have Individual Commitments seeks additional compensation pursuant to Section 8.2(a) or (c), if any Lender becomes either a Defaulting Lender or a Non-FATCA Compliant Lender or a Lender in respect of which any amounts are paid or become payable by the Borrowers pursuant to Section 8.6 (each such Lender, an "**Affected Lender**"), then a Borrower may indicate to the Administrative Agent in writing that it desires to replace the Affected Lender with one or more of the other Lenders, and the Administrative Agent shall then forthwith give notice to the other Lenders that any such Lender or Lenders may, in the aggregate, advance all (but not part) of the Affected Lender's Pro Rata Share of the affected credit and, in the aggregate, assume all (but not part) of the Affected Lender's Individual Commitment and obligations under the Credit Facility and acquire all (but not part) of the rights of the Affected Lender and assume all (but not part) of the obligations of the Affected Lender under each of the other Credit Documents to the extent they relate to the Credit Facility (but in no event shall any other Lender or the Administrative Agent be obliged to do so). If one or more Lenders shall so agree in writing (herein collectively called the "**Assenting Lenders**" and individually called an "**Assenting Lender**") with respect to such advance, acquisition and assumption, the Pro Rata Share of such credit of each Assenting Lender and the Individual Commitment and the obligations of such Assenting Lender under the Credit Facility and the rights and obligations of such Assenting Lender under each of the other Credit Documents to the extent they relate to the Credit Facility shall be increased by its respective pro rata share (based on the relative Individual Commitments of the Assenting Lenders) of the Affected Lender's Pro Rata Share of such credit and Individual Commitments and obligations under the Credit Facility and rights and obligations under each of the other Credit Documents to the extent they relate to the Credit Facility on a date mutually acceptable to the Assenting Lenders and the Borrowers. On such date, the Assenting Lenders shall extend to the Borrowers the Affected Lender's Pro Rata Share of such credit and shall prepay to the Affected Lender the advances of the Affected Lender then outstanding, together with all interest accrued thereon and all other amounts owing to the Affected Lender hereunder, and, upon such advance and prepayment by the Assenting Lenders, the Affected Lender shall cease to be a "Lender" for purposes of this agreement and the other Credit Documents and shall no longer have any rights or obligations hereunder or thereunder. Upon the

assumption of the Affected Lender's Individual Commitment as aforesaid by an Assenting Lender, Schedule A hereto shall be deemed to be amended to increase the Individual Commitment of such Assenting Lender by the amount of such assumption. For certainty, no Borrower shall be required to pay an Affected Lender that is a Defaulting Lender in respect of breakage costs or other amounts required to be paid as a result of prepayment to such Lender. In the event that an Affected Lender is not replaced pursuant to the foregoing provisions and provided (x) no Default or Event of Default has occurred and is continuing at the time of any such prepayment and cancellation or would arise immediately thereafter and (y) such prepayment and cancellation is not prohibited by applicable law, a Borrower may, upon five Banking Days' notice to the Affected Lender and the Administrative Agent, cancel the Individual Commitment of such Affected Lender and prepay advances of such Affected Lender then outstanding, together with all interest accrued thereon and all other amounts owing to such Affected Lender hereunder (such payments shall be made to the Administrative Agent), and, upon such notice and prepayment by the relevant Borrower, such Affected Lender shall cease to be a "Lender" for all purposes of this agreement and the other Credit Documents and shall no longer have any rights or obligations hereunder.

- (b) The Borrowers may, by notice to the Administrative Agent (a "**Replacement Lender Notice**"), from time to time prior to the Maturity Date, propose new Lenders that have agreed to accept Individual Commitments with respect to the Credit Facility in the aggregate amount of commitments that were cancelled pursuant to Section 8.3(a). For certainty, the aggregate Individual Commitments under the Credit Facility shall not in either case exceed at any particular time (i) \$500,000,000 minus (ii) the aggregate of any permanent reductions to the Credit Facility made by the Borrowers pursuant to Section 2.4 plus (iii) the aggregate of any increases to the Credit Facility made by the Borrowers pursuant to Section 2.7.
- (c) Any Replacement Lender that is not an existing Lender must be acceptable to the Administrative Agent acting in its sole discretion exercised reasonably. Upon delivery to the Administrative Agent of a Replacement Lender Agreement executed by the Borrowers and a Replacement Lender that is so acceptable to the Administrative Agent, the Administrative Agent shall promptly execute and deliver such Replacement Lender Agreement whereupon this agreement and each other Credit Document shall, subject to Section 8.3(e) and (f), henceforth be read and construed as if such Replacement Lender were party to this agreement and each other Credit Document as a Lender having all of the rights and obligations of a Lender expressed herein and therein with respect to the Individual Commitment with respect to the Credit Facility that the Replacement Lender has agreed to accept and all references to any Lenders in any Credit Document shall (to the extent the context so admits) be construed accordingly. Consequent thereto, Schedule A hereto shall be deemed to be amended to add the Individual Commitment of such Replacement Lender. Each Lender irrevocably appoints, authorizes and directs the Administrative Agent, as its attorney and agent, with full power of substitution and delegation, to complete and execute on its behalf each Replacement Lender Agreement relating to each Replacement Lender. Each Lender agrees that it will be

bound by the terms of each such Replacement Lender Agreement so completed and executed by the Administrative Agent.

- (d) The Administrative Agent shall promptly notify the Borrowers and the Lenders of the amended or increased Individual Commitments with respect to the Credit Facility arising pursuant to Section 8.3(a) and (c).
- (e) No increase in or establishment of, any Individual Commitment with respect to the Credit Facility pursuant to this Section 8.3 shall be permitted at any time that a Default or Event of Default has occurred and is outstanding.
- (f) On the first Banking Day following any deemed amendment to Schedule A pursuant to Section 8.3(a) and (c), the Administrative Agent shall advise the Replacement Lender in writing of (i) the aggregate outstanding credit under the Credit Facility already advanced by the Lenders to the Borrowers (the “**Existing Facility Indebtedness**”) and (ii) its Pro Rata Share of the Existing Facility Indebtedness. Within one Banking Day of receipt of such notice from the Administrative Agent, the Replacement Lender shall pay to the Administrative Agent, for the pro rata benefit of each Lender, its Pro Rata Share of the Existing Facility Indebtedness whereupon the Administrative Agent shall disburse such proceeds to the Lenders in accordance with Section 3.6.

8.4 Indemnity Relating to Credits

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

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

- (b) in converting one currency into another currency as a result of the failure of the Borrowers to make repayments of outstanding credit hereunder in the currency in which such outstanding credit was denominated;
- (c) with respect to any Bankers' Acceptance, arising from claims or legal proceedings, and including reasonable legal fees and disbursements, respecting the obtaining of credit by the Borrowers by way of such Bankers' Acceptance, the collection of amounts owed by the Borrowers hereunder in respect of such Bankers' Acceptance or the enforcement of the Administrative Agent or the Lenders' rights hereunder in respect of such Bankers' Acceptance including, without limitation, legal proceedings attempting to restrain the Administrative Agent or the Lenders from paying any amount under such Bankers' Acceptance; or
- (d) with respect to any Letter, arising from claims or legal proceedings, and including reasonable and documented legal fees and disbursements, respecting the collection of amounts owed by the Borrowers hereunder in respect of such Letter or the enforcement of the Administrative Agent or the Lenders' rights hereunder in respect of such Letter including, without limitation, legal proceedings attempting to restrain the Administrative Agent or the Lenders from paying any amount under such Letter, save that no Borrower shall in no event be liable to reimburse the relevant Issuing Lender for, or indemnify and save the relevant Issuing Lender harmless from and against, any payments, claims or losses and expenses to the extent they have been determined by a final judgment to have directly resulted from the wilful misconduct or gross negligence of such Issuing Lender. Notwithstanding the preceding sentence, each Borrower shall remain liable to reimburse and indemnify the relevant Issuing Lender from any payment such Issuing Lender may make under any Letter if and to the extent the relevant Borrower would be unjustly enriched by reason of the fact that such payment discharges a payment obligation otherwise owing by the Borrowers and the Borrowers do not have an obligation to make a corresponding payment of a like amount to such Issuing Lender.

8.5 Indemnity for Transactional and Environmental Liability

- (a) Each Borrower hereby agrees to indemnify and hold each Finance Party and each of their respective shareholders, Affiliates, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which indemnification hereunder is sought), and including, without limitation, reasonable legal fees and out of pocket disbursements and amounts paid in settlement which are approved by the Borrowers (collectively in this Section 8.5(a), the "**Indemnified Liabilities**"), incurred or suffered by, or asserted against, the Indemnified Parties or any of them as a result of, or arising out of, or relating to (i) the extension of credit contemplated herein, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any credit extended hereunder, (iii) any actual or threatened investigation, litigation or other proceeding relating to any credit

extended or proposed to be extended as contemplated herein or (iv) the execution, delivery, performance or enforcement of the Finance Documents and any instrument, document or agreement executed pursuant hereto or thereto, except for any such Indemnified Liabilities that a court of competent jurisdiction determines arose on account of an Indemnified Party's gross negligence or willful misconduct.

- (b) Without limiting the generality of the indemnity set out in the preceding clause (a), each Borrower hereby further agrees to indemnify and hold the Indemnified Parties free and harmless from and against any and all claims, demand, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith, including, without limitation, reasonable legal fees and out of pocket disbursements and amounts paid in settlement which are approved by the Borrowers, of any and every kind whatsoever paid (collectively in this Section 8.5(b), the "**Indemnified Liabilities**"), incurred or suffered by, or asserted against, the Indemnified Parties or any of them for, with respect to, or as a direct or indirect result of, (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, any real property legally or beneficially owned (or any estate or interest which is owned), leased, used or operated by any Subject Entity of any Hazardous Material, Contaminant, Pollutant or Waste, and (ii) any other violation of an Environmental Law by any Subject Entity, and regardless of whether caused by, or within the control of, such Subject Entity, except for any such Indemnified Liabilities that a court of competent jurisdiction determines arose on account of an Indemnified Party's gross negligence or willful misconduct.
- (c) All obligations provided for in this Section 8.5 shall survive indefinitely the permanent repayment of the outstanding credit hereunder and the termination of the Credit Agreement. The obligations provided for in this Section 8.5 shall not be reduced or impaired by any investigation made by or on behalf of the Administrative Agent or any of the Lenders.
- (d) The Borrowers hereby agrees that, for the purposes of effectively allocating the risk of loss placed on the Borrowers by this Section 8.5, each Finance Party shall be deemed to be acting as the agent or trustee on behalf of and for the benefit of their respective shareholders, officers, directors, employees and agents.
- (e) If, for any reason, the obligations of the Borrowers pursuant to this Section 8.5 shall be unenforceable, the Borrowers agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under Applicable Law.
- (f) The indemnity under this Section 8.5 shall not apply to any matters specifically dealt with in Sections 8.2, 8.4, 8.6 or 11.1(f).

8.6 Gross-Up for Taxes

- (a) Any and all payments made by or on behalf of the Borrowers under this agreement or under any other Finance Document (any such payment being hereinafter referred to as a “**Payment**”) to or for the benefit of a Finance Party shall be made without set-off or counterclaim, and free and clear of, and without deduction or withholding for, or on account of, any and all present or future Taxes except to the extent that such deduction or withholding is required by law or the administrative practice of any Official Body. If any such Taxes are so required to be deducted or withheld from or in respect of any Payment made to or for the benefit of a Finance Party, the Borrowers shall:
- (i) promptly notify the Administrative Agent of such requirement;
 - (ii) if such Taxes are Indemnified Taxes, pay to such Finance Party in addition to the Payment to which such Finance Party is otherwise entitled, such additional amount as is necessary to ensure that the net amount actually received by such Finance Party (free and clear of, and net of, any such Indemnified Taxes, including the full amount of any Taxes required to be deducted or withheld from any additional amount paid by the Borrowers under this Section 8.6(a), whether assessable against the Borrowers or such Finance Party) equals the full amount the Finance Party, would have received had no such deduction or withholding been required;
 - (iii) make such deduction or withholding;
 - (iv) pay to the relevant Official Body in accordance with Applicable Law the full amount of Taxes required to be deducted or withheld (including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrowers, to the Finance Party under this Section 8.6(a)), within the time period required by Applicable Law; and
 - (v) as promptly as possible thereafter, forward to such Finance Party an original official receipt (or a certified copy), or other documentation reasonably acceptable to the Administrative Agent and such Finance Party, evidencing such payment to such Official Body.
- (b) If any Finance Party is subject to Indemnified Taxes under Part XIII of the *Tax Act* (or any successor part) in respect of any Payment made by the Borrowers but such Indemnified Taxes are not levied by way of deduction or withholding (all such Indemnified Taxes being “**Non-Withheld Part XIII Taxes**”), the Borrowers shall pay such Finance Party, as the case may be, at the time the Borrowers make such Payment and in addition to such Payment, such additional amount as is necessary to ensure that the total amount received by such Finance Party, as the case may be, is equal to the Payment plus the amount of Non-Withheld Part XIII Taxes exigible in respect of the aggregate of the Payment and the additional amount payable under this Section 8.6(b).

- (c) In addition, the Borrowers agree to pay any and all present or future Other Taxes.
- (d) The Borrowers hereby indemnify and hold harmless each Finance Party, on an after-Taxes basis, for the full amount of Indemnified Taxes and Other Taxes, including Non-Withheld Part XIII Taxes, interest, penalties and other liabilities, levied, imposed or assessed against (and whether or not paid directly by) such Finance Party, as applicable, and for all expenses, resulting from or relating to the Borrowers' failure to:
 - (i) remit to the Administrative Agent or such Finance Party the documentation referred to in Section 8.6(a)(v);
 - (ii) pay any Indemnified Taxes or Other Taxes when due to the relevant Official Body (including, without limitation, any Taxes imposed by any Official Body on amounts payable under this Section 8.6); or
 - (iii) pay to the applicable Finance Party any Non-Withheld Part XIII Taxes in accordance with Section 8.6(b),

whether or not such Indemnified Taxes were correctly or legally assessed. Any Finance Party who pays any Indemnified Taxes or Other Taxes (other than Non-Withheld Part XIII Taxes), and any Finance Party who pays any Non-Withheld Part XIII Taxes in excess of the amount (if any) paid by the Borrowers on account thereof under Section 8.6(b), shall promptly notify the Borrowers of such payment, provided, however, that failure to provide such notice shall not detract from, or compromise, the obligations of the Borrowers under this Section 8.6. Payment pursuant to this indemnification shall be made within 30 days from the date the relevant Finance Party, as the case may be, makes written demand therefor accompanied by a certificate as to the amount of such Taxes or Other Taxes and the calculation thereof, which calculation shall be *prima facie* evidence of such amount.

- (e) If the Borrowers determines in good faith that a reasonable basis exists for contesting any Indemnified Taxes for which a payment has been made under this Section 8.6, the relevant Finance Party shall, if so requested by the Borrowers, cooperate with the Borrowers in challenging such Indemnified Taxes at the Borrower's expense.
- (f) If any Finance Party receives a refund of, or credit for, Indemnified Taxes or Other Taxes for which a payment has been made by the Borrowers under this Section 8.6, which refund or credit in the good faith judgment of such Finance Party is attributable to the Taxes giving rise to such payment made by the Borrowers, then such Finance Party shall reimburse the Borrowers for such amount (if any, but not exceeding the amount of any payment made under this Section 8.6 that gives rise to such refund or credit), net of out-of-pocket expenses of such Finance Party which the Finance Party determines in its absolute discretion will leave it, after such reimbursement, in no better or worse position than it would have been in if such

Taxes had not been exigible. The Borrowers, upon the request of a Finance Party, agrees to repay such Finance Party any portion of any such refund or credit paid over to the Borrowers that a Finance Party is required to pay to the relevant Official Body and agrees to pay any interest, penalties or other charges paid by such Finance Party as a result of or related to such payment to such Official Body. No Finance Party shall be under any obligation to arrange its tax affairs in any particular manner so as to claim any refund or credit. No Finance Party shall be obliged to disclose any information regarding its tax affairs or computations to the Borrowers or any other Person in connection with this Section 8.6 (or any other provision of this Section 8.6).

- (g) The Borrowers also hereby indemnify and hold harmless each Finance Party, on an after-Taxes basis, for any additional taxes on net income that the Finance Party may be obliged to pay as a result of the receipt of amounts under this Section 8.6.
- (h) Any Finance Party that is entitled to an exemption from or reduction of withholding Taxes, Non-Withheld Part XIII Taxes or Other Taxes (collectively, “**Relevant Taxes**”) under the law of the jurisdiction in which the Borrowers are resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to Payments shall deliver to the Borrowers (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law and reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law (if any) as will permit such payments to be made without withholding or at a reduced rate of withholding or a reduced rate of Relevant Taxes. In addition, (i) any Finance Party, if requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law (if any) or reasonably requested by the Borrowers or the Administrative Agent as will enable such Borrower or the Administrative Agent to determine whether or not such Finance Party is subject to withholding or information reporting requirements, and (ii) any Finance Party that ceases to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the *Tax Act* or any successor provision thereto in respect of Payments shall within five Business Days thereof notify the Borrowers and the Administrative Agent in writing. Notwithstanding the foregoing, no Finance Party shall be required to deliver any documentation pursuant to this Section 8.6(h) that such Finance Party is not legally able to deliver.
- (i) Additional amounts payable under Section 8.6(a) and Non-Withheld Part XIII Taxes payable under Section 8.6(b) have the same character as the Payments to which they relate. For greater certainty, for example, additional amounts payable under Section 8.6(a) or Non-Withheld Part XIII Taxes payable under Section 8.6(b), in respect of interest payable under a Finance Document, shall be payments of interest under such Finance Document. All payments made under this Section 8.6 shall be subject to the provisions of this Section 8.6.
- (j) If a payment made to a Finance Party under any Finance Document would be subject to U.S. federal withholding tax imposed by FATCA if such Finance Party

were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Finance Party shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Finance Party has complied with such Finance Party's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (j), "FATCA" shall include any amendments made to FATCA after the date of this agreement.

- (k) The Borrowers' obligations under this Section 8.6 shall survive without limitation the termination of the Credit Facility and this agreement and all other Finance Documents and the permanent repayment of the outstanding credit and all other amounts payable hereunder or thereunder.

ARTICLE 9 REPAYMENTS AND PREPAYMENTS

9.1 Repayments under Credit Facility

On the Maturity Date, the Borrowers shall repay to the Lenders the full amount of the credit outstanding under the Credit Facility, together with all accrued and unpaid interest thereon and all accrued and unpaid fees with respect thereto. As concerns any Letter issued under the Credit Facility which, on the Maturity Date, has an expiry date later than the Maturity Date, the Borrowers shall pay to the relevant Issuing Lender, on the Maturity Date, the then contingent liability of such Issuing Lender thereunder (to be held solely for the purpose of satisfying any draw under such Letter and to be held subject to Section 13.4). Following such payment by the Borrowers to the relevant Issuing Lender, the Borrowers shall have no further liability to the Lenders with respect to any such Letter.

9.2 Voluntary Prepayments under Credit Facility

Subject to Section 9.4, the Borrowers shall be entitled to prepay all or any portion of the outstanding Loans under the Credit Facility at any time, without penalty, provided that Section 8.4 shall be complied with in connection with any such prepayment. Prepayments under the Credit Facility pursuant to this Section 9.2 may be reborrowed.

9.3 Mandatory Prepayments

The Borrowers shall, within five Banking Days of the occurrence of a Insurance Prepayment Trigger Event, prepay outstanding credit under the Credit Facility in an amount equal to, subject to the following sentence, 100% of the Net Cash Proceeds with respect to such Insurance Prepayment Trigger Event. Amounts which are prepaid as aforesaid under the Credit Facility may

not be reborrowed. Section 8.4 shall be complied with in connection with any prepayment pursuant to Section 9.3.

9.4 Prepayment Notice

The Borrowers shall give written notice to the Administrative Agent of each voluntary prepayment pursuant to Section 9.2. Such notice (a “**Prepayment Notice**”) shall be irrevocable, shall be given in accordance with Section 3.9 and shall specify:

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

9.5 Currency of Repayment

All payments and repayments of outstanding credit hereunder shall be made in the currency of such outstanding credit.

9.6 Reimbursement or Conversion on Presentation of Letters

- (a) On presentation of a Letter and payment thereunder by the relevant Issuing Lender, the Borrowers shall forthwith pay and in any event no later than 11:00 a.m. (Vancouver time) on the date of any payment by such Issuing Lender under a Letter to the Administrative Agent for the account of such Issuing Lender, and thereby reimburse such Issuing Lender for, all amounts paid by such Issuing Lender pursuant to such Letter. Failing such payment, the Borrowers shall be deemed to have effected under the Credit Facility under which such Letter was issued, notwithstanding any other provision hereof, a conversion of such Letter into a Base Rate Canada Loan, in the case of a Letter denominated in U.S. dollars, or a Prime Rate Loan, in the case of a Letter denominated in Canadian dollars, to the extent of the payment of the relevant Issuing Lender thereunder.
- (b) If the relevant Issuing Lender makes payment under any Letter and the Borrowers do not fully reimburse such Issuing Lender on or before the date of payment, then Section 9.6(a) shall apply to deem a Loan to be outstanding to the Borrowers under the Credit Facility in the manner therein set out regardless of whether the conditions set forth in Section 12.1 are satisfied. Each Lender under the Credit Facility shall, on request by the relevant Issuing Lender, immediately pay to such Issuing Lender an amount equal to such Lender’s Pro Rata Share of the amount paid by such Issuing Lender such that each Lender under the Credit Facility is participating in the deemed Loan in accordance with its Pro Rata Share. The obligation of each Lender under the Credit Facility to pay the relevant Issuing Lender its Pro Rata Share of each such deemed Loan shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defence or other right which such Lender may have against such Issuing Lender, the Borrowers or any other Person for any reason whatsoever;

(B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing.

- (c) Each Lender shall immediately on demand indemnify the relevant Issuing Lender to the extent of such Lender's Pro Rata Share of any amount paid or liability incurred by the relevant Issuing Lender under each Letter issued by it to the extent that the Borrowers do not fully reimburse such Issuing Lender therefor.
- (d) Until each Lender funds its Loan pursuant to this Section 9.6 to reimburse the relevant Issuing Lender for any amount drawn under any Letter, interest in respect of such Lender's Pro Rate Share of such amount shall be solely for the account of the relevant Issuing Lender.
- (e) If any Lender fails to immediately make available to the Administrative Agent for the account of the relevant Issuing Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 9.6, such Issuing Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Lender at a rate per annum equal to Alternative Base Rate Canada plus the Applicable Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by such Issuing Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Pro Rate Share of the relevant Loan. A certificate of the relevant Issuing Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this Section 9.6(e) shall be conclusive absent manifest error.

9.7 Letters Subject to an Order

- (a) Subject to Section 13.4, the Borrowers shall pay to the relevant Issuing Lender an amount equal to the maximum amount available to be drawn under any unexpired Letter which becomes the subject of any Order. Payment in respect of each such Letter shall be due forthwith upon demand.
- (b) Notwithstanding anything in this agreement to the contrary, no Issuing Lender shall be under any obligation to issue any Letter if:
 - (i) the issuance of such Letter would violate one or more policies of the Issuing Lender applicable to Letters generally;
 - (ii) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter is to be denominated in a currency other than Canadian or U.S. dollars;
 - (iii) any order, judgment or decree of any Official Body or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing such Letter, or any law applicable to the Issuing Lender or any request or

directive (whether or not having the force of law) from any Official Body with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter in particular or shall impose upon the Issuing Lender with respect to such Letter any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated hereunder) not in effect on the date hereof, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the date hereof and which the Issuing Lender in good faith deems material to it; or

- (iv) such Letter contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

9.8 Repayment of Credit Excess

- (a) In the event that there is a Credit Excess under the Credit Facility at any time being equal to 105% of the Credit Limit which has arisen solely on account of a currency conversion or an exchange rate fluctuation, the Borrowers shall repay on demand to the Administrative Agent, for and on behalf of the Lenders, the amount of such Credit Excess.
- (b) In the event that there is a Credit Excess under the Credit Facility (other than a Credit Excess referenced in Section 9.8(a)), the Borrowers shall repay on demand to the Administrative Agent, for and on behalf of the Lenders, the amount of such Credit Excess.
- (c) For the purpose of this Section 9.8, the Administrative Agent, on behalf of the Lenders or any Lender, on behalf of all Lenders, shall be entitled to make demand for any of the foregoing repayments. Each of the foregoing repayments shall first be applied to repay outstanding Prime Rate Loans and Base Rate Canada Loans outstanding under the Credit Facility under which the Credit Excess arose and, to the extent that the amount of such repayment exceeds the aggregate amount of credit outstanding by way of such Loans which have been repaid, shall then be deposited by the Administrative Agent in a segregated account and held in trust for the Lenders to be applied to repay outstanding BA Rate Loans or Term Benchmark Loans under the Credit Facility or to satisfy reimbursement obligations with respect to outstanding Bankers' Acceptances or Letters under the Credit Facility under which the Credit Excess arose as such Loans or Bankers' Acceptances mature or as such Letters are drawn upon, as the case may be.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties

To induce the Lenders and the Administrative Agent to enter into this agreement and to induce the Lenders to extend credit hereunder, the Borrowers hereby represent and warrant to the Lenders and the Administrative Agent, as of the date of this agreement, as of the date of

each extension of credit hereunder and as of the last day of each Fiscal Quarter, as follows and acknowledge and confirm that the Lenders and the Administrative Agent are relying upon such representations and warranties in entering into this agreement and in extending credit hereunder:

- (a) **Status and Power of Subject Entities.** Each Subject Entity is a corporation duly incorporated and organized and validly subsisting in good standing under the laws of its jurisdiction of incorporation. Each Subject Entity is duly qualified, registered or licensed in all jurisdictions where the failure to do so would reasonably be expected to have a Material Adverse Effect. Each Subject Entity has all requisite corporate capacity, power and authority to own, hold under licence or lease its properties, to carry on its business as now conducted. Each Obligor has all requisite corporate capacity to enter into, and carry out the transactions contemplated by, the Finance Documents to which it is a party.
- (b) **Authorization and Enforcement.** All necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance by each Obligor of the Credit Documents to which it is a party. Each Obligor has duly executed and delivered the Credit Documents to which it is a party. The Credit Documents to which each Obligor is a party are legal, valid and binding obligations of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent that the enforceability thereof may be limited by (i) applicable bankruptcy, insolvency, moratorium, reorganization and other laws of general application limiting the enforcement of creditors' rights generally, and (ii) the fact that the courts may deny the granting or enforcement of equitable remedies.
- (c) **Compliance with Other Instruments.** The execution, delivery and performance by each Obligor of the Finance Documents to which it is a party, and the consummation of the transactions contemplated herein and therein, do not and will not conflict with, result in any material breach or violation of, or constitute a material default under, the terms, conditions or provisions of the charter or constating documents or by-laws of, or any shareholder agreement or declaration relating to, such Obligor or of any law, regulation, judgment, decree or order binding on or applicable to such Obligor or to which its property is subject or of any material agreement, lease, licence, permit or other instrument to which such Obligor is a party or is otherwise bound or by which such Obligor benefits or to which its property is subject and do not require the consent or approval of any Official Body or any other party, other than such consents as have been obtained and are in effect.
- (d) **Financial Statements.** The consolidated financial statements of Capstone Copper for the most recently completed Fiscal Quarter or Fiscal Year, as the case may be, were prepared in accordance with generally accepted accounting principles and no Material Adverse Change has occurred in the condition, financial or otherwise, of Capstone Copper since the date of such financial statements. The consolidated balance sheet of the aforesaid financial statement presents a fair statement of the financial condition and assets and liability of Capstone Copper as at the date thereof and the consolidated statements of operations, retained earnings and cashflows

contained in the aforesaid consolidated financial statements fairly presents the results of the operations of Capstone Copper throughout the period covered thereby. Except to the extent reflected or reserved against in the aforesaid balance sheet (including the notes thereto) and except as incurred in the ordinary and usual course of the business of Capstone Copper, Capstone Copper does not have any outstanding Indebtedness or any liability or obligations (whether accrued, absolute, contingent or otherwise) of a material nature customarily reflected or reserved against in a balance sheet (including the notes thereto) prepared in accordance with generally accepted accounting principles.

- (e) **Litigation.** There are no actions, suits, inquiries, claims or proceedings (whether or not purportedly on behalf of any Subject Entity) pending or threatened in writing against or affecting any Subject Entity before any Official Body which in any case or in the aggregate could reasonably be expected to have a Material Adverse Effect.
- (f) **Title to Assets.** Each Subject Entity has good title to all of its property, assets and undertaking, free from any Lien other than the Permitted Liens.
- (g) **Conduct of Business.** No Subject Entity is in violation of any agreement, mortgage, franchise, licence, judgment, decree, order, statute, statutory trust, rule or regulation relating in any way to itself or to the operation of its business or to its property or assets (including, without limitation, Environmental Laws) which could reasonably be expected to have a Material Adverse Effect. Each Subject Entity holds all licenses, certificates of approval, approvals, registrations, permits and consents which are required to operate its businesses where they are currently being operated except where the failure to have such licenses, certificates of approval, approvals, registrations, permits and consents could not reasonably be expected to have a Material Adverse Effect.
- (h) **Outstanding Defaults.** No event has occurred which constitutes or which, with the giving of notice, lapse of time or both, would constitute a default under or in respect of any Material Agreement, undertaking or instrument to which any Subject Entity is a party or to which its property or assets may be subject, and which could reasonably be expected to have a Material Adverse Effect.
- (i) **Solvency Proceedings.** No Subject Entity has:
 - (i) admitted its inability to pay its debts generally as they become due or failed to pay its debts generally as they become due;
 - (ii) in respect of itself, filed an assignment or petition in bankruptcy, *concurso mercantil* or a petition to take advantage of any insolvency statute;
 - (iii) made an assignment for the benefit of its creditors;
 - (iv) consented to the appointment of a receiver of the whole or any substantial part of its assets;

- (v) filed a petition or answer seeking a reorganization, arrangement, adjustment or composition in respect of itself under applicable bankruptcy laws or any other Applicable Law or statute of Canada, the United States, the United Mexican States or other applicable jurisdiction or any subdivision thereof; or
 - (vi) been adjudged by a court having jurisdiction a bankrupt *concurso* or insolvent, nor has a decree or order of a court having jurisdiction been entered for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy of any Subject Entity with such decree or order having remained in force and undischarged or unstayed for a period of 30 days.
- (j) **Tax Returns and Taxes.** Each Subject Entity has filed all material Tax returns and Tax reports required by law to have been filed by it and has paid all Taxes thereby shown to be owing, except any such Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with generally accepted accounting principles shall have been set aside on its books.
- (k) **Expropriation.** To the best of the Obligors' knowledge, there is no present or threatened (in writing) expropriation of the property or assets of any Subject Entity, which expropriation could reasonably be expected to have a Material Adverse Effect.
- (l) **Environmental Compliance.**
- (i) All facilities and property (including underlying groundwater) owned, leased, used or operated by any Subject Entity have been, and continue to be, owned or leased in compliance with all Environmental Laws where any such non-compliance could reasonably be expected to have a Material Adverse Effect;
 - (ii) There are no pending or threatened (in writing)
 - A. claims, complaints, notices or requests for information received by any Subject Entity with respect to any alleged violation of any Environmental Law which, if proved, could reasonably be expected to have a Material Adverse Effect;
 - B. complaints, notices or inquiries to any Subject Entity regarding potential liability under any Environmental Law which liability could reasonably be expected to have a Material Adverse Effect;
 - (iii) There have been no Releases of any Hazardous Materials or any escape, seepage, leakage, spillage, discharge, emission or release of any Contaminants, Pollutants or Waste at, on, under or from any property now or previously owned, operated, used or leased by any Subject Entity that,

singly or in the aggregate, have, or could reasonably be expected to have, a Material Adverse Effect;

- (iv) Each Subject Entity has been issued and is in compliance with all permits, certificates, approvals, licenses and other authorizations under any Environmental Laws to carry on its business except where any such non-issuance or non-compliance could not reasonably be expected to have a Material Adverse Effect; and
 - (v) No conditions exist at, on or under any property now or previously owned, operated, used or leased by any Subject Entity which, with the passage of time, or the giving of notice or both, would give rise to liability under any Environmental Law which liability could reasonably be expected to have a Material Adverse Effect.
- (m) **Subsidiaries and Partnerships.** Other than as set forth in Schedule G hereto, there are no Subsidiaries of each Borrower and those Subsidiaries which are or will hereafter be identified in compliance certificates delivered to the Administrative Agent pursuant to Section 11.1(a)(iii). No Subject Entity is, directly or indirectly, a member of, or a partner or participant in, any partnership, joint venture or syndicate where the liability of the relevant Subject Entity arising from such partnership, joint venture or syndicate could reasonably be expected to have a Material Adverse Effect.
- (n) **Corporate Structure.** Except as the information in Schedule G may change as a result of a transaction permitted hereby and reported to the Administrative Agent in accordance with Section 11.1(a)(vi), the chart attached hereto as Schedule G accurately sets out the corporate structure of each Borrower and all of its Subsidiaries and evidences intercorporate share ownership and ownership of mines.
- (o) **Assets Insured.** The property and assets of each Subject Entity are insured with insurers, in amounts, for risks and otherwise which are reasonable in relation to such property and assets (subject to the amount of such deductibles as are reasonable and normal in the circumstances) against loss or damage, and there has been no default or failure by the party or parties insured under the provisions of such policies of insurance maintained which would prevent the recovery by such Subject Entity insured thereunder of the full amount of any material insured loss.
- (p) **Perfection Certificates.** All information in each Perfection Certificate is true and correct.
- (q) **Consents, Approvals, etc.** Other than as expressly stated in each Security Document, no consents, approvals, acknowledgements, undertakings, non-disturbance agreements, directions or other documents or instruments are required to be entered into by any Person, (i) to make effective the Security created or intended to be created by the Obligors in favour of the Administrative Agent pursuant to the Security Documents, (ii) to ensure the perfection and the intended

priority of such Security or (iii) to implement the transactions contemplated by the Finance Documents.

- (r) **Capital of Pledged Subsidiaries.** Except as such information may change as a result of a transaction permitted hereby and reported to the Administrative Agent in accordance with Section 11.1(a) or 11.1(i), the Perfection Certificates set out (A) the authorized and issued capital of each Pledged Subsidiary, and (B) the owner of record of all such issued shares. There are no outstanding warrants, options or other agreements which require or may require the issuance of any shares of any Pledged Subsidiary or the issuance of any debt or securities convertible into shares of any Pledged Subsidiary, there are no outstanding debt or securities convertible into shares of any Pledged Subsidiary and there are no shares of any Pledged Subsidiary allotted for such issued shares.
- (s) ***Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).*** Capstone Copper's most recent audited balance sheet states that Capstone Copper has net assets of at least Cdn.\$75,000,000. Capstone Copper's Shares are traded on a Canadian stock exchange or a stock exchange designated under subsection 262(1) of the *Tax Act*. Each Borrower operates in a country that is a member of the Financial Action Task Force.
- (t) **Intellectual Property.** Each Subject Entity owns or is licensed or otherwise has the right to use all Intellectual Property that is used in the operation of its businesses without conflict with the rights of any other Person (other than any Intellectual Property the absence of which or any such conflict with respect to which would not have a Material Adverse Effect). No Subject Entity has received any notice of any claim of infringement or similar claim or proceeding relating to any of the Intellectual Property which if determined against such Subject Entity could reasonably be expected to have a Material Adverse Effect. No present or former employee of any Subject Entity and no other Person owns or claims to own or has or claims to have any interest, direct or indirect, in whole or in part, in any of the Intellectual Property of such Subject Entity that could reasonably be expected to have a Material Adverse Effect.
- (u) **Employment and Labour Agreements.** Each Subject Entity is in compliance with the terms and conditions of all collective bargaining agreements and other labour agreements except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.
- (v) **Employee Benefit Plans and Pension Plans.** Each Employee Benefit Plan and Pension Plan is in compliance in all material respects with all Applicable Laws and the respective requirements of the governing documents for such plan. No Subject Entity contributes to any Pension Plan or Plan with a defined benefit element. With respect to any Employee Benefit Plan maintained or contributed to by any Subject Entity, reasonable reserves have been established in accordance with prudent business practice or where required by best accounting practices in the jurisdiction in which such plan is maintained having regard to tax legislation. The aggregate

unfunded liabilities, after giving effect to any reserves for such liabilities, with respect to all Employee Benefit Plans and Pension Plans could not be reasonably expected to result in a Material Adverse Effect. There is no proceeding or claim (other than routine claims for benefits) pending or threatened in writing against any Subject Entity with respect to any Employee Benefit Plan.

- (w) **Employee Benefit Plans.** Each of the ERISA Companies is in compliance with the Code and ERISA with respect to its Employee Benefit Plans, except where such non-compliance is not reasonably expected to have a Material Adverse Effect. There have been no Prohibited Transactions or breaches of fiduciary duty with respect to any Employee Benefit Plan that could be reasonably expected to have a Material Adverse Effect. No Termination Event has occurred or is expected to occur with respect to any Plan or Multiemployer Plan that could be reasonably expected to have a Material Adverse Effect.
- (x) **Regulation U or X.** No Borrower is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any credit obtained hereunder shall be used for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or X. Terms for which meanings are provided in F.R.S. Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.
- (y) **Investment Company.** No Subject Entity is subject to regulation under the *Investment Company Act* of 1940 or under any other applicable federal or state statute or regulation which may limit its ability to enter into any Finance Document to which it is a party or otherwise render any such Finance Document unenforceable except to the extent that the enforceability thereof may be limited by (i) applicable bankruptcy, insolvency, moratorium, reorganization and other laws of general application limiting the enforcement of creditors' rights generally, and (ii) the fact that the courts may deny the granting or enforcement of equitable remedies..
- (z) **Foreign Assets Control Regulations.** Neither the execution and delivery of this agreement nor the Borrowers' use of the proceeds of the Credit Facility will violate the *Trading with the Enemy Act*, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any other enabling legislation or executive order relating thereto. Without limiting the foregoing, no Subject Entity nor any of its Subsidiaries (a) is or will become a Person whose property or interests in property are blocked pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001) or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such Person. Each Subject Entity and its Subsidiaries are in compliance, in all material respects, with the Title III of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (*USA Patriot Act* of 2001). No part of the proceeds from the Credit Facility will be used, directly or indirectly, for any payment to any governmental official or employee, political

party, official of a political party, candidate for political office or anyone else acting in an official party capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the *United States Foreign Corrupt Practices Act* of 1977, as amended.

- (aa) **Liens.** The Liens granted to the Administrative Agent pursuant to the Security Documents are fully perfected first priority Liens in and to the Secured Assets, subject only to Permitted Liens and will, upon the acquisition of additional Secured Assets by each Obligor, constitute first charges or security interests upon all such Secured Assets of such Obligor free and clear of all Liens except for Permitted Liens.
- (bb) **Eligible Contract Participants.** Each Borrower legally owns total assets exceeding \$10,000,000.
- (cc) **Anti-Corruption Laws and Sanctions.** Capstone Copper has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrowers, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrowers, its Subsidiaries and their respective officers and employees and, to the knowledge of the Borrowers, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions. None of (a) the Borrowers, any Subsidiary or, to the knowledge of the Borrowers or such Subsidiary, any of their respective directors, officers or employees, or (b) to the knowledge of the Borrowers, any agent of the Borrowers or any Subsidiary that will act in any capacity in connection with or benefit from the Credit Facility, is a Sanctioned Person.
- (dd) **[Intentionally deleted].**
- (ee) **No Omissions.** None of the representations and statements of fact set forth in this Section 10.1 omits to state any material fact necessary to make any such representation or statement of fact not misleading in any material respect.

10.2 Survival of Representations and Warranties

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

ARTICLE 11 COVENANTS

11.1 Affirmative Covenants

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

- (a) **Financial Reporting.** The Borrowers shall furnish the Administrative Agent with the following statements and reports (with sufficient copies for all of the Lenders) (the filing of any of the following documents on SEDAR shall satisfy the delivery obligation in relation to such documents so filed when Capstone Copper has provided written notice of such filing to the Administrative Agent):
- (i) within 120 days after the end of each Fiscal Year, copies of the audited consolidated financial statements of Capstone Copper together with the consolidating working papers that support said consolidated audited financial statements for such Fiscal Year and the auditors' report thereon in form and substance satisfactory to the Administrative Agent;
 - (ii) within 60 days after the end of each Fiscal Quarter, copies of the unaudited consolidated financial statements of Capstone Copper together with the consolidating working papers that support said consolidated unaudited financial statements in form and substance satisfactory to the Administrative Agent;
 - (iii) concurrent with the deliveries of financial statements pursuant to any of clauses (i) and (ii) above, a duly executed and completed compliance certificate, in the form attached as Schedule B hereto and signed by a senior financial officer of Capstone Copper together with written notification of any change in the information certified in any Perfection Certificates;
 - (iv) within 120 days after the end of each Fiscal Year, a Mine Plan provided, however, Capstone Copper shall only be compelled to deliver an updated Mine Plan where such Mine Plan would report a 10% negative variance from the most recently delivered Mine Plan as such variance relates solely to (i) the production figures and the aggregate costs and capital expenditure line items for the Mine Plan and (ii) line items for exploration and corporate expenses (including, without limitation, sales, general and administrative expenses);
 - (v) within 60 days after the relevant the end of each Fiscal Year, a consolidated annual operating budget of Capstone Copper; and
 - (vi) such other statements, reports and information as the Administrative Agent on the instructions of the Majority Lenders may reasonably request from time to time, including, any information that may be reasonably requested in respect of any Permitted Acquisition.
- (b) **Copies of Public Filings.** Capstone Copper shall, upon request, furnish the Administrative Agent with copies of all documents which are filed by any Subject Entity with the British Columbia Securities Commission or with any similar Official Body in any other jurisdiction in compliance with applicable securities legislation which are not available on SEDAR.

- (c) **Use of Proceeds.** The Borrowers shall apply the proceeds of the Credit Facility solely for their general corporate purposes including, for certainty, for any Permitted Acquisition; provided that the proceeds of the Credit Facility shall not be used to make any payment under the Capstone MSD Guarantee other than a payment with respect to a Non-Default PMPA Payment (as defined in the Santo Domingo Stream Agreement) with proceeds of the Credit Facility not exceeding \$30,000,000 in the aggregate so long as the Non-Default PMPA Payment Restrictions (as defined in the Santo Domingo Stream Agreement) are satisfied as of the date of the relevant extension of credit hereunder and Section 12.1 is otherwise satisfied in connection therewith.
- (d) **Insurance.** Each Borrower shall, and shall cause each other Subject Entity to, (x) insure and keep insured, with insurers, for risks, in amounts in a manner consistent with standard industry practice, all of the Subject Entities' assets, property and undertakings and (y) with respect to the Obligors name the Administrative Agent as loss payee and additional insured in any insurance binders, certificates of insurance and statements of coverage where the aggregate value of the assets insured exceeds \$5,000,000.
- (e) **Access to Senior Financial Officers.** Upon the request of the Administrative Agent at reasonable intervals, each Borrower shall, and shall cause each other Subject Entity to, make available during reasonable business hours its senior financial officers to answer questions concerning such Subject Entity's business and affairs.
- (f) **Reimbursement of Expenses.** Each Borrower shall, or shall cause the Obligors to, (i) reimburse the Administrative Agent, on demand, for all reasonable and documented out-of-pocket costs, charges expenses, legal fees, consulting fees, due diligence fees and documentation fees incurred by or on behalf of the Administrative Agent and/or the Lenders (including, without limitation, the reasonable fees, disbursements and other charges of an independent or in-house engineer and one primary counsel and any local counsel to the Administrative Agent in connection with the negotiation, preparation, execution, delivery, syndication, administration and interpretation of the Finance Documents and the closing documentation ancillary to the completion of the transactions contemplated hereby and thereby and any amendments and waivers hereto (whether or not consummated or entered into), the charges of Intralinks and any lien search fees and (ii) reimburse the Administrative Agent and the Lenders, on demand, for all, but not limited to, reasonable out-of-pocket costs, charges expense, legal fees, consulting fees, due diligence fees and documentation fees incurred by or on behalf of any of them (including the fees, disbursements and other charges of counsel) in connection with the enforcement of the Finance Documents.
- (g) **Notice re: Expropriation or Condemnation or Title Issues.** Each Borrower shall promptly notify the Administrative Agent of the commencement or the written threat of any expropriation or condemnation of any of the assets, property and

undertaking of the Subject Entities or of the institution of any proceedings related thereto.

- (h) **Inspection of Assets and Operations.** Upon reasonable written notice from the Administrative Agent to the Borrowers, or either of them, each Borrower shall, and shall cause each other Subject Entity to, permit representatives of the Administrative Agent and of the Lenders from time to time (but, so long as no Default has occurred and is continuing, no more than once in any particular Fiscal Year) to inspect the assets, property and undertaking of the Subject Entities and for that purpose to enter on any property which is owned and controlled by any Subject Entities and where any of the assets, property and undertaking of the Subject Entities may be situated during reasonable business hours and, unless a Default has occurred and is continuing, upon reasonable notice.
- (i) **Change Perfection Certificate Information.** Each Borrower shall notify the Administrative Agent in writing promptly of any material change in the information set forth in any Perfection Certificate. For the purpose of this Section 11.1(i), a change shall be deemed to be “material” if the non-notification of same to the Administrative Agent would result in any of the present and future property, assets and undertaking of any Obligor not being subject to a Lien in favour of the Administrative Agent pursuant to one or more Security Documents.
- (j) **Corporate Existence.** Except as permitted by way of any Permitted Reorganization, each Borrower shall, and shall cause each other Subject Entity to, maintain its corporate existence in good standing. Each Borrower shall, and shall cause each other Subject Entity to, qualify and remain duly qualified to carry on business and own property in each jurisdiction where the failure to do so could reasonably be expected to result in a Material Adverse Effect.
- (k) **Conduct of Business.** Each Borrower shall, and shall cause each other Subject Entity to, conduct its business in such a manner so as to comply with all laws and regulations (including, without limitation, Environmental Laws), so as to observe and perform all its obligations under leases, licences and agreements necessary for the proper conduct of its business and so as to preserve and protect its property and assets and the earnings, income and profits therefrom, in each case, where such non-compliance, non-observance or non-performance, in each case, could reasonably be expected to have a Material Adverse Effect. Each Borrower shall, and shall cause each other Subject Entity to, perform all obligations incidental to any trust imposed upon it by statute and shall ensure that any breaches of the said obligations and the consequences of any such breach shall be promptly remedied. Each Borrower shall, and shall cause each other Subject Entity to, obtain and maintain all licenses, permits, government approvals, franchises, authorizations and other rights necessary for the operation of its business where failure to do so could reasonably be expected to have a Material Adverse Effect.
- (l) **Taxes.** The Borrowers shall pay, and shall cause each other Subject Entity to pay, all material Taxes levied, assessed or imposed upon it and upon its property or

assets or any part thereof, as and when the same become due and payable, save and except when and so long as the validity of any such Tax is being contested in good faith by appropriate proceedings and reserves are being maintained in accordance with generally accepted accounting principles while forfeiture of any part of its property or assets may result from the failure to so pay during the period of any such contest.

- (m) **Notice of Litigation.** Each Borrower shall promptly notify the Administrative Agent of any actions, suits, inquiries, claims or proceedings (whether or not purportedly on behalf of any Subject Entity) commenced or threatened in writing against or affecting any Subject Entity before any Official Body which in any case or in the aggregate could reasonably be expected to have a Material Adverse Effect.
- (n) **Environmental Matters.** Each Borrower shall, and shall cause each other Subject Entity to, as soon as practicable and in any event within 30 days, notify the Administrative Agent and provide copies upon receipt of all written claims, complaints, notices or inquiries relating to the condition of its facilities and properties or compliance with Environmental Laws, which claims, complaints, notices or inquiries relate to matters which could reasonably be expected to have a Material Adverse Effect, and shall proceed diligently to resolve any such claims, complaints, notices or inquiries relating to compliance with Environmental Laws and provide such information and certifications which the Administrative Agent may reasonably request from time to time to evidence compliance with this Section 11.1(n).
- (o) **Interest Coverage Ratio.** Capstone Copper shall, at all times from and including the Effective Date, cause the Interest Coverage Ratio (which shall be measured at the last day of each Fiscal Quarter) to be greater than or equal to 2.50:1.00.
- (p) **Senior Secured Leverage Ratio.** At all times from and including the date which is the later of (i) the Effective Date and (ii) the date on which the Subject Entities' incur Permitted Unsecured or Sub-Debt in excess of a consolidated aggregate amount of \$300,000,000, Capstone Copper shall cause the Senior Secured Leverage Ratio to be less than or equal to 3.00:1.00 and shall calculate such ratio as at the last day of each Fiscal Quarter.
- (q) **Total Leverage Ratio.** Capstone Copper shall, at all times from and including the Effective Date, cause the Total Leverage Ratio to be less than or equal to 3.50:1.00 at all times and shall calculate such ratio as at the last day of each Fiscal Quarter, provided, however, that Capstone Copper shall be permitted to cause the Total Leverage Ratio to be less than or equal to 4.00:1.00 at all times from and including the date which is the later of (i) the Effective Date and (ii) the date on which the Subject Entities' incur Permitted Unsecured or Sub-Debt in excess of a consolidated aggregate amount of \$300,000,000.
- (r) **Books and Records.** Each Borrower shall, and shall cause each other Subject Entity to, keep proper books of account and records covering all its business and

affairs on a current basis, make full, true and correct entries of its transactions in such books, set aside on its books from their earnings all such proper reserves as required by generally accepted accounting principles and permit representatives of the Administrative Agent to inspect such books of account, records and documents and to make copies therefrom during reasonable business hours provided that a Borrower may exclude or redact, as such Borrower may reasonably determine, confidential information or privileged information filed with a securities regulators from such books of account, records and documents made available to such representatives of the Administrative Agent to the extent disclosure thereof would prejudice the protections or rights afforded by applicable law, rules, regulations or orders.

- (s) **Notice of Default or Event of Default.** Upon the occurrence of either a Default or an Event of Default of which a Borrower is aware, each Borrower shall promptly deliver to the Administrative Agent a notice specifying the nature and date of occurrence of such Default or Event of Default, such Subject Entity's assessment of the duration and effect thereof and the action which the relevant Subject Entity proposes to take with respect thereto.
- (t) **Additional Guarantors.** Upon the direct or indirect formation or acquisition by a Borrower of a wholly-owned Subsidiary (other than an Excluded Entity or a Non-Guarantor Subsidiary):
 - (i) such Borrower shall forthwith cause such Subsidiary to duly execute and deliver to the Administrative Agent a Guarantee;
 - (ii) such Borrower shall forthwith cause such Subsidiary to duly execute and deliver to the Administrative Agent a Security Document as security for its Secured Obligations under the Guarantee referenced in paragraph (i) above;
 - (iii) such Borrower shall forthwith deliver, or cause to be delivered to, the Administrative Agent, in form and substance satisfactory to the Administrative Agent:
 - A. a duly certified copy of the articles of incorporation or similar documents and by-laws of such Subsidiary;
 - B. a certificate of status or good standing for such Subsidiary issued by the appropriate governmental body or agency of the jurisdiction in which such Subsidiary is incorporated, if applicable;
 - C. a duly certified copy of the resolution of the board of directors or shareholders of such Subsidiary authorizing it to execute, deliver and perform its obligations under each Credit Document to which such Subsidiary is a signatory and a duly certified copy of the resolution of the board of directors or shareholders (if required under the constating documents or by-laws of such Subsidiary) of such Subsidiary authorizing the pledge of all of its issued and outstanding

- shares to the Administrative Agent and any subsequent disposition thereof by the Administrative Agent in realizing on the security therein constituted by the relevant Security Documents;
- D. a certificate of an officer of such Subsidiary, in such capacity, setting forth specimen signatures of the individuals authorized to sign each Credit Document to which such Subsidiary is a signatory;
 - E. share certificates representing all of the issued and outstanding shares in such Subsidiary, in each case duly endorsed in blank for transfer or attached to duly executed stock transfers and powers of attorney or as otherwise required under Applicable Law;
 - F. a Perfection Certificate signed by an officer of such Subsidiary;
 - G. requisite information to identify such Subsidiary under applicable “know your client” legislation;
 - H. an opinion of such Subsidiary’s counsel addressed to the Lenders, the Administrative Agent and its counsel, relating to the status and capacity of such Subsidiary, the due authorization, execution and delivery and the validity and enforceability of the applicable Credit Documents in the jurisdiction of incorporation of such Subsidiary and in the Province of British Columbia, as applicable and such other matters as the Administrative Agent may reasonably request; and
 - I. an opinion of the Administrative Agent’s counsel with respect to such matters as may be reasonably required by the Administrative Agent in connection with such Subsidiary (including, without limitation, the legality, validity and binding nature of the obligations of such Subsidiary under, and the enforceability against such Subsidiary of, the Credit Documents which are governed by the laws of the Province of British Columbia); or
- (iv) such Borrower shall forthwith cause such additional Security Documents or amendments to existing Security Documents to be executed and delivered to permit the pledge of the shares of such Subsidiary;
 - (v) the Administrative Agent and its counsel shall be satisfied, acting reasonably, that all necessary approvals, acknowledgements, directions and consents have been given and that all relevant laws have been complied with in respect of all agreements and transactions referred to herein; and
 - (vi) except as otherwise agreed by the Administrative Agent in the corresponding Security Documents, all documents and instruments shall have been properly registered, recorded and filed in all places which, searches shall have been conducted in all jurisdictions which, and deliveries

of all consents, approvals, acknowledgements, undertakings, directions, negotiable documents of title and other documents and instruments to the Administrative Agent shall have been made which, in the opinion of the Administrative Agent's counsel, acting reasonably, are desirable or required to make effective the Security created or intended to be created pursuant to, and to the extent contemplated by, Section 11.1(t)(iv) and to ensure the perfection and the intended first-ranking priority of such Security;

whereupon such Subsidiary shall become a Full Security Guarantor for all purposes of this agreement.

- (u) **Non-Guarantor Subsidiaries.** Upon the direct or indirect formation or acquisition by a Borrower of a Non-Guarantor Subsidiary:
- (i) such Borrower shall forthwith cause such Non-Guarantor Subsidiary's Holding Company Subsidiary to duly execute and deliver to the Administrative Agent a Guarantee;
 - (ii) such Borrower shall forthwith cause such Non-Guarantor Subsidiary's Holding Company Subsidiary to duly execute and deliver to the Administrative Agent a pledge agreement whereby it pledges all of the issued and outstanding shares in such Non-Guarantor Subsidiary;
 - (iii) such Borrower shall forthwith deliver, or cause to be delivered to, the Administrative Agent, in form and substance satisfactory to the Administrative Agent:
 - A. a duly certified copy of the articles of incorporation or similar documents and by-laws of such Holding Company Subsidiary and such Non-Guarantor Subsidiary;
 - B. a certificate of status or good standing for such Holding Company Subsidiary and such Non-Guarantor Subsidiary issued by the appropriate governmental body or agency of the jurisdictions in which such Holding Company Subsidiary and such Non-Guarantor Subsidiary are incorporated, if applicable;
 - C. a duly certified copy of the resolution of the board of directors or shareholders of such Holding Company Subsidiary authorizing the Guarantee and Security Documents to which it is a party;
 - D. a duly certified copy of the resolution of the board of directors or shareholders (if required under the constating documents or by-laws of such Non-Guarantor Subsidiary) of such Non-Guarantor Subsidiary authorizing the pledge of all of its issued and outstanding shares to the Administrative Agent and any subsequent disposition thereof by the Administrative Agent;

- E. share certificates representing all of the issued and outstanding shares in such Non-Guarantor Subsidiary, in each case duly endorsed in blank for transfer or attached to duly executed stock transfers and powers of attorney or as otherwise required under Applicable Law; and
 - F. requisite information to identify such Holding Company Subsidiary under applicable "know your client" legislation; and
- (iv) such Borrower shall forthwith cause amendments to existing Security Documents to be executed and delivered to permit the pledge of the shares of such Non-Guarantor Subsidiary,

whereupon such Holding Company Subsidiary shall become a Partial Security Guarantor for all purposes of this agreement.

- (v) **Maintenance of Assets.** Each Borrower shall, and shall cause each other Subject Entity to, maintain, preserve, protect and keep:
 - (i) all of its ownership, lease, use, licence and other interests in all of the assets, property and undertaking of the Subject Entities in accordance with sound mining and business practice, as applicable; and
 - (ii) all of the assets, property and undertaking of the Subject Entities owned by it in good repair, working order, and condition, and make necessary and proper repairs, renewals, and replacements so that the business carried on in connection therewith may be properly conducted at all times, unless the continued maintenance of any of such assets, property and undertaking of the Subject Entities is no longer necessary or economically desirable for the operation of a Project, such operation to be substantially in accordance with sound mining and business practice, as applicable.
- (w) **Punctual Payment.** The Borrowers will, and shall cause each other Obligor to, duly and punctually pay all amounts due under this agreement and the other Finance Documents at the dates and places, in the currencies and in the manner provided in this agreement and any other Finance Documents.
- (x) **Insolvency Event of Excluded Entity.** Forthwith upon the occurrence of an Insolvency Event of an Excluded Entity, each Borrower shall give notice thereof to the Administrative Agent in writing.
- (y) **ERISA.** Each Borrower shall, and shall cause each ERISA Affiliate to, furnish to the Administrative Agent:
 - (i) promptly after receipt thereof (but in no event later than 30 days after such receipt), a copy of any notice any ERISA Company receives after the date of this agreement from the PBGC relating to the intention of the PBGC to terminate any Plan or Plans or to appoint a trustee to administer any Plan or

Plans, if such termination or appointment would result in a Material Adverse Effect;

- (ii) within 10 days after the due date for filing with the PBGC pursuant to Section 303(k) of ERISA of a notice of failure to make a required installment or other payment with respect to a Plan, a statement of a financial officer setting forth details as to such failure and the action proposed to be taken with respect thereto, together with a copy of such notice given to the PBGC, but only if such failure to make a required installment would result in a Material Adverse Effect; and
- (iii) promptly and in any event within 30 days after receipt thereof by any ERISA Company from the sponsor of a Multiemployer Plan, a copy of each notice received by any ERISA Company concerning (A) the imposition of any Withdrawal Liability or (B) a determination that a Multiemployer Plan is, or is expected to be, terminated or in reorganization, in each case within the meaning of Title IV of ERISA, but only if the imposition of such Withdrawal Liability, in the case of clause (A), or such termination or reorganization, in the case of clause (B), would result in a Material Adverse Effect.
- (z) **Anti-Corruption and Sanctions Policies.** Each Borrower shall maintain in effect and enforce policies and procedures designed to ensure compliance in all material respects by the Borrowers, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.
- (aa) **NumCo.** Capstone Mining shall provide notice to the Administrative Agent of the incorporation of NumCo. Capstone Mining shall cause NumCo at all times to be a direct wholly-owned Subsidiary of Capstone Mining whose only assets will be all of the Shares of its direct wholly-owned Subsidiary 0908113 and to have no liabilities, other than trade payables for service providers in the ordinary course. Upon such notice and, provided there is compliance with the preceding sentence, NumCo shall constitute an Excluded Entity and Schedule G shall be deemed to be amended to reflect NumCo as a Subsidiary of Capstone Mining.

11.2 Restrictive Covenants

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

- (a) **Liens.** No Borrower shall, and shall not permit or suffer any other Subject Entity to, enter into or grant, create, assume or suffer to exist any Lien affecting any of their respective properties, assets or undertaking, whether now owned or hereafter acquired, save and except only for the Permitted Liens.
- (b) **Corporate Existence.** Other than in connection with any Permitted Reorganization and as set out in (i) and (ii) below, no Borrower shall, and shall not permit or suffer

any other Subject Entity to, take part in any amalgamation, merger, dissolution, winding-up, corporate reorganization, capital reorganization or similar proceeding or arrangement other than:

- (i) the merger of any Obligor with and into a Borrower so long as a Borrower is the surviving entity; and
- (ii) the merger of any Guarantor with and into any other Guarantor,

so long as the amalgamated Person shall have delivered to the Administrative Agent such acknowledgements and confirmations and taken such other actions as are reasonably requested by the Administrative Agent to ensure that the amalgamated Person has granted to the Administrative Agent a first priority (subject only to Permitted Liens) security interest in its assets and interests in assets.

- (c) **Disposition of Assets.** No Borrower shall, and shall not suffer or permit any other Subject Entity to, sell or otherwise dispose of (including, for certainty, by way of any sale and leaseback transaction) any of the assets, property and undertaking of the Subject Entities, or grant to any Person the right to acquire any of the assets, property and undertaking of the Subject Entities other than:

- (i) the Subject Entities may make sales of inventory and of output from any mining project owned by such Subject Entity in the ordinary course of business;
- (ii) the Subject Entities may, in the ordinary course of business, sell equipment which is uneconomic or obsolete to the business;
- (iii) the Obligors may sell or dispose of any Floating Charge Collateral, free and clear of the Security, at any time that no Default or Event of Default has occurred and is outstanding or would occur and be outstanding immediately thereafter;
- (iv) sales or dispositions between Subject Entities;
- (v) dispositions under the Capstone Silver and Gold Contract, the Cozamin Stream Agreement, the Mantos Stream Agreement and Permitted Acquisition Metal Stream Contracts; and
- (vi) sales or other dispositions (for certainty, exclusive of the dispositions referenced in paragraphs (i) to (iv) inclusive hereof) in any Fiscal Year that do not exceed \$50,000,000 in the aggregate for all such sales or dispositions by any of the Subject Entities;

provided in each of the foregoing the proceeds therefrom are subject to a Lien in favour of the Administrative Agent pursuant to the Security Documents.

- (d) **Distributions.** Capstone Copper shall not make any Distributions unless (i) no Default or Event of Default has occurred and is continuing at the time of making such Distribution nor would any Default or Event of Default would arise upon making any such Distribution and (ii) immediately after making any Distribution, and the financial covenants set out in Sections 11.1(o)-(q), inclusive, would be satisfied on a *pro forma* basis.
- (e) **Indebtedness.** No Borrower shall, and shall not suffer or permit any other Subject Entity to, create, incur, assume or suffer to exist any Indebtedness other than Permitted Indebtedness.
- (f) **Acquisitions.** No Borrower shall, and shall not suffer or permit any other Subject Entity to, make any Acquisitions other than Permitted Acquisitions.
- (g) **Investments.** No Borrower shall, and shall not permit any other Subject Entity to, make any Investments, except for Permitted Investments provided that no Event of Default has occurred and is continuing at the time of the making of the commitment to undertake such Investment. For certainty, other than as set out in the definition of Permitted Investments and this Section 11.2(g), no Subject Entity shall make any Investment in, or provide any financial assistance to, any Excluded Entity.
- (h) **Risk Management.** No Borrower shall, and shall not suffer or permit any other Subject Entity to, enter into any Hedging Agreement for speculative purposes or on a cash margined basis or secured basis (other than the Secured Hedging Agreements) or which would cause an amount in excess of 75% of the Borrower's consolidated annual metal deliveries (planned or actual) are hedged.
- (i) **Change in Business.** No Borrower shall, and shall not suffer or permit any other Subject Entity to, discontinue its business or any material part thereof or carry on any business other than the acquisition, development, ownership and operation of base and precious metal mines, together with, in each case, other matters reasonably ancillary thereto.
- (j) **Amendments.** No Borrower shall, and shall not suffer or permit any other Subject Entity to, amend its articles of incorporation (other than in connection with a Permitted Reorganization) other than any such amendment that could not reasonably be expected to have a Material Adverse Effect. No Borrower shall, and shall not suffer or permit any other Obligor to, renew or extend the Capstone Silver and Gold Contract without the prior written consent of the Majority Lenders. No Borrower shall, and shall not suffer or permit any other Obligor, to, amend the Cozamin Stream Agreement to increase the delivery or payment obligations of Capstone Mining or Capstone Barbados or allow for the exercise by WPM of its right of first refusal thereunder. No Borrower shall, and shall not suffer or permit any other Obligor, to, (i) amend the Capstone MSD Guarantee or (ii) any of the definitions of "Credit Agreement", "Credit Agreement Event of Default", "Credit Agreement Total Leverage Ratio", "Enforcement Action", "Non-Default PMPA Payment", "Non-Default PMPA Payment Restrictions" and "Unrestricted

Enforcement Action” and Section 8.1(d) of the Santo Domingo Stream Agreement or otherwise to increase the delivery or payment obligations of Capstone Mining or Capstone MSD or allow for the exercise by WPM of its right of first refusal thereunder. No Borrower shall, and shall not suffer or permit any other Obligor, to, amend (i) the Mantos Stream Agreement to increase the delivery obligations of Mantos Copper S.A., to reduce the price per ounce payable by Osisko or allow for the exercise by Osisko of its right of first refusal under Article 13 thereunder or (ii) the Mantos Royalty Agreement to increase the Royalty (as defined therein) .

- (k) **Transactions with Affiliates.** No Borrower shall, and shall not permit any Subject Entity to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates other than in the ordinary course of business at prices and on terms and conditions not less favourable to such Subject Entity than could be obtained on an arm’s length basis from unrelated third parties. No Borrower shall, and shall not suffer or permit any Subject Entity to, enter into any transaction or series of transactions with non-Subject Entity Affiliates of any of the Subject Entities, which involve an outflow of money or other property from such Subject Entity to any such Affiliate, including payment of management fees, affiliation fees, administration fees, compensation, salaries, asset purchase payments or any other type of fees or payments similar in nature, other than on terms and conditions substantially as favourable to such Subject Entity as would be obtainable by such Subject Entity in a reasonably comparable arm’s length transaction with a Person other than an Affiliate of such Subject Entity. Nothing provided in this clause (k) shall prohibit or restrict in any way, the Borrowers or any other Subject Entity from entering into any Excluded Entity Support.
- (l) **Off-Take Agreements.** No Borrower shall, nor shall it suffer or permit any Subject Entity to, enter into any off-take or similar agreement for the sale of minerals from the Projects unless the counterparty thereto (if an Obligor is a party to such off-take or similar agreement) irrevocably acknowledges and agrees in writing to the relevant Obligor’s assignment of the rights therein to the Administrative Agent.
- (m) **Excluded Entity Indebtedness.** No Borrower shall, nor shall it suffer or permit any Subject Entity to, grant any security or guarantees to the Excluded Entity Indebtedness Creditors other than Excluded Entity Support, the security granted pursuant to Excluded Entity Indebtedness Pledge Agreements and the Capstone MSD Guarantee.
- (n) **[Intentionally deleted].**
- (o) **New Accounts.** No Borrower shall suffer or permit there to be any monies on deposit in any of the New Accounts until such time as Security Documents have been entered into, and the requisite registrations made with respect thereto, in each case to the satisfaction of the Administrative Agent, to ensure the New Accounts are subject to the Security.

- (p) **Prepays.** The Borrowers shall not, and shall not permit or suffer any other Subject Entity to, enter into any Prepaid Hedging Contract unless (i) entered into with a Qualified Secured Hedge Lender, (ii) the security therefor, if any, is limited to the Security and (iii) the aggregate value of all Prepaid Hedging Contracts entered into by the Subject Entities does not exceed, at any particular time, \$50,000,000 in the aggregate.
- (q) **Streams.** No Borrower shall, and shall not suffer or permit any other Subject Entity to, enter any Stream Agreement other than the Capstone Silver and Gold Contract, the Cozamin Stream Agreement, the Santo Domingo Stream Agreement, the Mantos Stream Agreement and Permitted Acquisition Metal Stream Contracts.
- (r) **United States Flood Laws.** At any time on or after the Effective Date, no Borrower shall suffer or permit any Obligor to enter into any document in respect of any real property in the United States on which improvements are located (and which are subject to U.S. Flood Insurance Laws), or which is acquired by the relevant Obligor after the date of this agreement, until the Administrative Agent shall have received written confirmation from each Lender that adequate flood insurance due diligence and flood insurance compliance have been completed by such Lender; provided, however, that if any Lender has not responded to a request for written confirmation from the relevant Borrower or Administrative Agent within 45 days then such Lender shall be deemed to have provided its written confirmation hereunder.

11.3 Performance of Covenants by Administrative Agent

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

11.4 Release of Security

If an entity in which an Obligor has a minority interest (the Shares of which entity being, therefore, subject to the Security) becomes an obligor with respect to any project financing, the Lenders confirm that the Security shall be released over such Shares and the Administrative Agent shall be authorized to deliver such releases and consents as necessary to give effect to such release.

ARTICLE 12
CONDITIONS PRECEDENT TO OBTAINING CREDIT

12.1 Conditions Precedent to All Credit

The obligation of the Lenders to extend credit hereunder (including, without limitation, the obligation of the Issuing Lender to issue a Letter) is subject to fulfilment of the following conditions precedent on the date such credit is extended:

- (a) the Effective Date has occurred;
- (b) each Borrower shall have complied with the requirements of Article 4, 5 or 6, as the case may be, in respect of the relevant credit;
- (c) no Default has occurred and is continuing or would arise immediately after giving effect to or as a result of such extension of credit;
- (d) the representations and warranties of the Subject Entities contained in Section 10.1 shall be true and correct in all respects on the date such credit is extended as if such representations and warranties were made on such date; and
- (e) the Credit Facility has not been terminated pursuant to Section 2.5.

12.2 Conditions Precedent to Effectiveness of Agreement

The Existing Credit Agreement shall be amended and restated by this agreement, and this agreement shall become effective upon, the fulfilment of the following conditions precedent:

- (a) the Obligors have duly executed and delivered to the Administrative Agent this Agreement, the Guarantees and the Security Documents (or, in the case of Guarantees and Security Documents delivered pursuant to the Existing Credit Agreement confirmations thereof or amendments thereto, including amendments that are reasonably required in order to ensure that the Secured Obligations of Capstone Copper are appropriately guaranteed and secured) which in the opinion of counsel to the Administrative Agent are necessary or desirable, each in form and substance satisfactory to the Administrative Agent;
- (b) the Administrative Agent, Osisko, Southern Cross and Mantos Copper S.A. shall each have executed and delivered the Mantos Intercreditor Agreement;
- (c) the Administrative Agent has received satisfactory evidence that all indebtedness, obligations and liabilities owed to Glencore Chile SPA by Mantos Copper S.A. has been repaid in full and cancelled and any related security or guarantees granted in connection with such indebtedness has been released and discharged;
- (d) the Administrative Agent has received, in form and substance satisfactory to the Administrative Agent (or in the case of subsection (d)(vii), each Lender):

- (i) a duly certified copy of the articles of incorporation, articles of amalgamation or similar documents and by-laws of each Obligor or a certificate of an officer of an Obligor certifying that there have been no changes to such documents since the equivalent was certified and delivered to the Administrative Agent in connection with the Existing Credit Agreement;
 - (ii) a certificate of status or good standing for each Obligor (if available under Applicable Law) issued by the appropriate governmental body or agency of the jurisdiction in which such Obligor is incorporated;
 - (iii) a duly certified copy of the resolution of the board of directors or shareholders of each Obligor authorizing it to execute, deliver and perform its obligations under each Credit Document to which such Obligor is a signatory and, in the case of each Obligor other than Capstone Copper, authorizing the pledge of all of its issued and outstanding shares to the Administrative Agent and any subsequent disposition thereof by the Administrative Agent in realizing on the Security therein constituted by the relevant Security Documents;
 - (iv) a certificate of an officer of each Obligor, in such capacity, setting forth specimen signatures of the individuals authorized to sign the Credit Documents to which such Obligor is a signatory;
 - (v) except as delivered under the Existing Credit Agreement, share certificates representing all of the issued and outstanding shares of each Obligor other than Capstone Copper duly endorsed in blank for transfer or attached to duly executed stock transfers and powers of attorney or as otherwise required under Applicable Law;
 - (vi) a consolidated Perfection Certificate signed by an officer of Capstone Copper in respect of each Obligor;
 - (vii) requisite information to permit each Lender to identify the Obligors under its respective “know your client” legislation, delivered sufficiently in advance for each Lender to complete such identification; and
 - (viii) insurance binders signed by the issuers of the insurance policies maintained by the Subject Entities and acknowledging the interests of the Finance Parties in such policies with the Obligors as loss payee and additional insured with respect to such insurance policies (where the aggregate value of the assets insured exceeds \$5,000,000) as referred to in Section 11.1(d).
- (e) the Administrative Agent has received, in form and substance satisfactory to the Administrative Agent and the Lenders:
- (i) an opinion of counsel to each Obligor, addressed to the Finance Parties and their counsel, relating to the status and capacity of such Obligor, the due

authorization, execution and delivery and the validity and enforceability of the Credit Documents to which such Obligor is a party in the jurisdiction of incorporation of such Obligor and in the jurisdiction governing the relevant Credit Document, perfection of security (or in the case of security under the Existing Credit Agreement, to the extent possible from local counsel, continuing perfection), choice of law and reciprocal enforcement and such other matters as the Lenders may reasonably request;

- (ii) if required by the Administrative Agent, acting reasonably, reliance letters from counsel to each Obligor, addressed to each Finance Party, pursuant to which each such Finance Party may rely on each legal opinion which opined on each Guarantee and each Security Document (other than such Credit Documents which have been released or terminated as of the date hereof) dated prior to the date of this agreement; and
 - (iii) an opinion of the Finance Parties' counsel with respect to such matters as may be reasonably required by the Finance Parties in connection with the transactions hereunder (including, without limitation, the legality, validity and binding nature obligations of each Obligor under, and the enforceability against such Obligor of, the Credit Documents which are governed by the laws of the Province of British Columbia);
- (f) there has not occurred a Material Adverse Change since December 31, 2021;
 - (g) the Administrative Agent and its counsel shall be satisfied, acting reasonably, that all necessary approvals, acknowledgements, directions and consents have been given and that all relevant laws have been complied with in respect of all agreements and transactions referred to herein;
 - (h) all documents and instruments shall have been properly filed for registration and recording in all places which, searches shall have been conducted in all jurisdictions which, and deliveries of all consents (including such material third party consent and acknowledgment agreements from counter-parties to the agreements referenced in Section 11.2(1) which the Administrative Agent may reasonably require) and other material approvals with respect to the Credit Facility and the Security and evidence that all such consents, acknowledgements and approvals remain in full force and effect, approvals, acknowledgements, undertakings (including all subordination and postponement undertakings), directions, negotiable documents of title, ownership certificates and other documents and instruments to the Administrative Agent shall have been made which, in the opinion of the Administrative Agent's counsel, acting reasonably, are desirable or required to make effective the Security created or intended to be created by the Obligors in favour of the Administrative Agent pursuant to the Security Documents and to ensure the perfection and the intended first-ranking priority of such security;
 - (i) each Borrower shall have paid to the Administrative Agent and the Lenders all fees and expenses (including legal fees of counsel to the Administrative Agent) required

to be paid pursuant to the Credit Documents, with any subsequent legal fees of counsel to the Administrative Agent to be paid by the Borrowers in the ordinary course pursuant to Section 11.1(f); and

- (j) there shall exist no pending or threatened litigation in writing, proceedings or investigations which could reasonably be expected to have a Material Adverse Effect.

12.3 Waiver

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

12.4 Execution Date Fees

The Borrowers hereby acknowledge and agree that the fees set forth in Section 7.5 hereof (Standby Fee) and in the Fee Letter shall be payable by the Borrower to the Lenders solely on the condition that the Execution Date has occurred and that, for the purpose of payment obligations in respect of such fees, it is irrelevant whether the Effective Date hereunder in fact occurs.

12.5 Existing Credit Agreement and Interim Period

The parties hereto acknowledge and agree that during the Interim Period, the Existing Credit Agreement shall remain in full force and effect in accordance with its terms and that Capstone Mining, as borrower thereunder, may make drawdowns, prepayments and repayments in accordance with the express provisions thereof.

12.6 Effectiveness of this Amendment and Restatement

As of the Effective Date, this agreement shall amend and restate the Existing Credit Agreement in its entirety and the Existing Credit Agreement as so amended and restated is hereby ratified and confirmed by the parties hereto. This agreement is not intended by the parties to, and shall not constitute, a payment, discharge, satisfaction or novation of the whole or any item or part of the Secured Obligations (as such term is defined in the Existing Credit Agreement) remaining outstanding and owing to the Finance Parties until paid in full in accordance with the provisions of this agreement. The parties hereto agree that, at the Effective Date, the Loans and Letters (each as defined in the Existing Credit Agreement), including, for certainty, the Existing Letters outstanding under the Existing Credit Agreement shall become outstanding hereunder as advances of the same type. The Borrowers hereby confirm to and agree with the Finance Parties that the Secured Obligations (as defined in the Existing Credit Agreement) shall continue in full force and effect in accordance with the respective terms (as amended and restated, as applicable, by this agreement). With respect to the outstanding Loans as of the Effective Date, the Lenders shall make such payments among themselves (as calculated by the Administrative Agent) so as to ensure that the aggregate amount of credit outstanding under all Loans, together with all accrued and unpaid

interest and fees with respect thereto, shall be owing to the Lenders in accordance with their respective Pro Rata Shares. The Borrowers hereby further confirm their obligations and the validity and effectiveness of the Liens created under the Security (as defined in the Existing Credit Agreement) and agree that such Security continues in full force and effect in accordance with its terms, and that such Security shall constitute part of the Security (as defined herein) and secure the Secured Obligations pursuant to the Security Documents.

ARTICLE 13 DEFAULT AND REMEDIES

13.1 Events of Default

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

- (a) the breach by a Borrower of the provisions of Section 9.1 or 9.8;
- (b) the failure of any Obligor to pay any amount due under the Credit Documents (other than amounts due pursuant to any of Sections 9.1 or 9.8) within five Banking Days after the payment is due;
- (c) the breach or failure of due observance or performance by a Borrower of Sections 11.1(o), (p) or (q) or Section 11.2;
- (d) other than in connection with a Permitted Reorganization, the commencement by any Subject Entity or by any other Person of proceedings for the dissolution, liquidation or winding-up of such Subject Entity or for the suspension of operations of such Subject Entity (other than such proceedings commenced by another Person which are diligently defended and are discharged, vacated or stayed within thirty days after commencement);
- (e) other than in connection with a Permitted Reorganization, if any Obligor ceases or threatens to cease to carry on its business;
- (f) if any Subject Entity is adjudged or declared bankrupt or insolvent or admits its inability to pay its debts generally as they become due or fails to pay its debts generally as they become due or makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of a receiver or trustee for it or for any part of its property (or such a receiver or trustee is appointed for it or any part of its property), or commences (or any other Person commences) any proceedings relating to it under any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect (other than such proceedings commenced by another Person which are diligently defended and are discharged, vacated or stayed within thirty days after commencement), or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for it or for any

part of its property, or suffers the appointment of any receiver or trustee, sequestrator or other custodian;

- (g) if any representation or warranty made by any Obligor in this agreement or in any other document, agreement or instrument delivered pursuant hereto or referred to herein or any material information furnished in writing to the Administrative Agent by any Obligor proves to have been incorrect when made or furnished and continues to be incorrect for thirty days after the Administrative Agent has given the Borrowers notice thereof;
- (h) if a writ, execution, attachment or similar process is issued or levied against all or any portion of the property of any Subject Entity (other than with respect to collateral described in the definition of “**Excluded Entity Indebtedness Pledge Agreement**”) in connection with any judgment against it in an amount of at least \$50,000,000 and such writ, execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within thirty days after its entry, commencement or levy;
- (i) the breach or failure of due observance or performance by any Obligor of any covenant or provision of any Credit Document (other than those previously referred to in this Section 13.1) or of any other document, agreement or instrument delivered pursuant hereto or thereto or referred to herein or therein to which the Administrative Agent or any of the Lenders is a party and such breach or failure continues for 30 Banking Days after the Administrative Agent has given the Borrowers notice of such breach or failure;
- (j) if one or more encumbrancers, lien holder or landlords take possession of any part of the property of any Subject Entity (other than with respect to collateral described in the definition of “**Excluded Entity Indebtedness Pledge Agreement**”) or attempt to enforce their security or other remedies against such property (other than at the expiry of the relevant lease) and their claims remain unsatisfied for such period as would permit such property to be sold thereunder and such property which has been repossessed or is capable of being sold has an aggregate fair market value of at least \$50,000,000;
- (k) if an event of default under any one or more agreements, indentures or instruments, under which any Subject Entity has outstanding Indebtedness in an amount of at least \$50,000,000 or under which another Person has outstanding Indebtedness in an amount of at least \$50,000,000 which is guaranteed by any Subject Entity, shall happen (with all applicable grace and forbearance periods having expired) and be continuing, or if any Indebtedness of or guaranteed by any Subject Entity in an amount of at least \$50,000,000 which is payable on demand is not paid on demand, excluding in all cases any such event or nonpayment or demand in respect of Excluded Entity Support, or any Indebtedness as to which Excluded Entity Support relates, so long as the relevant Subject Entity does not fail to make payment on demand under any Excluded Entity Support (taking into account all applicable grace and forbearance periods); provided that if as a result of a breach by a Subject

Entity of any covenant in any Excluded Entity Support in an amount of at least \$50,000,000, the beneficiaries of such support call an event of default based on such covenant default in respect of the Indebtedness to which such support relates and accelerate the obligation to repay such Indebtedness such that it is immediately repayable (with all applicable grace and forbearance periods having expired), then such demand for payment shall be included in this clause (k);

- (k1) if an event of default under the Cozamin Stream Agreement shall occur (with all applicable grace and forbearance periods having expired) and be continuing;
- (k2) if an event of default under the Santo Domingo Stream Agreement shall occur and be continuing (other than any event of default that arises solely as a result of any Non-Default PMPA Payment not being made when otherwise due and payable);
- (l) any Person or group of Persons acting jointly and in concert acquires Control of any Subject Entity;
- (m) any one or more of the Credit Documents is determined by a court of competent jurisdiction not to be a legal, valid and binding obligation of any Obligor which is a party thereto, enforceable by the Administrative Agent, the Lenders or any of them against such Obligor and such Credit Document has not been replaced by a legal, valid, binding and enforceable document which is equivalent in effect to such Credit Document, assuming such Credit Document had originally been legal, valid, binding and enforceable, in form and substance acceptable to the Administrative Agent, within 60 days of such determination, provided, however, that such grace period shall only be provided if such Obligor actively co-operates with the Administrative Agent to so replace such Credit Document;
- (n) a Material Adverse Change occurs;
- (o) the expropriation, condemnation or abandonment of any Project or any material part thereof other than any such expropriation or condemnation the proceeds from which do not exceed \$50,000,000;
- (p) any Security Document does not constitute first ranking priority security in the Secured Assets (subject to Permitted Liens), and such breach or failure continues for five Banking Days after the Administrative Agent gives the Borrowers notice of such breach or failure; or
- (q) (i) any Termination Event occurs (not otherwise described in this Section 13.1(q)) that, when taken together with all other Termination Events that have occurred after the date of this agreement, could be expected to result in a direct or indirect liability of the Borrowers, when added to any liability of any other ERISA Company, in excess of \$50,000,000; (ii) failure to make full payment (including all required installments) when due of all amounts that, under the provisions of any Employee Benefit Plan or the Code or ERISA as they relate to any Employee Benefit Plan, the Borrowers or any ERISA Affiliate is required to pay as contributions thereto, which, together with all such other failures, would result in a liability to the

Borrowers, when added to any liability of another Subject Entity, in excess of \$50,000,000; (iii) failure of the Borrowers or any ERISA Company to timely pay an amount or amounts aggregating in excess of \$50,000,000 for which it is liable under Section 4062, 4063 or 4064 of ERISA and for which the Borrowers or any ERISA Company does not reasonably dispute the amount or validity thereof; (iv) notice of intent to terminate a Plan shall be filed under Title IV of ERISA by any ERISA Company, any plan administrator, or both if such termination would be reasonably expected to result in a Material Adverse Effect; (v) the PBGC institutes proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Plan, if such action by the PBGC would result in a Material Adverse Effect; or (vi) there shall occur a complete or partial withdrawal from, or a default, within the meaning of Section 4219(c)(5) of ERISA, with respect to, one or more Multiemployer Plans which could cause one or more ERISA Companies to incur a current annual payment obligation in excess of \$50,000,000; or

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

13.2 Remedies Cumulative

The Borrowers expressly agree that the rights and remedies of the Administrative Agent and the Lenders under this agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by the Administrative Agent or any Lender of any right or remedy for a default or breach of any term, covenant or condition in this agreement does not waive, alter, affect or prejudice any other right or remedy to which the Administrative Agent or such Lender may be lawfully entitled for the same default or breach. Any waiver by the Administrative Agent with the approval of the Majority Lenders or all of the Lenders in accordance with Section 14.14 of the strict observance, performance or compliance with any term, covenant or condition of this agreement is not a waiver of any subsequent default and any indulgence by the Lenders with respect to any failure to strictly observe, perform or comply with any term, covenant or condition of this agreement is not a waiver of the entire term, covenant or condition or any subsequent default. No failure or delay by the Administrative Agent or any Lender in exercising any right shall operate as a waiver of such right

nor shall any single or partial exercise of any power or right preclude its further exercise or the exercise of any other power or right.

13.3 Set-Off

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

13.4 Refund of Overpayments

With respect to each Letter for which the Issuing Lender has been paid all of its contingent liability pursuant to Section 9.1, 9.6 or 13.1 and provided that all amounts due by the Borrowers to the Issuing Lender under Sections 9.1, 9.6 or 13.1 have been paid, the Issuing Lender agrees to pay to the Borrowers, upon the later of:

- (a) if the Letter is subject to an Order, the date on which any final and non-appealable order, judgment or other determination has been rendered or issued either permanently enjoining the Issuing Lender from paying under such Letter or terminating any outstanding Order; and
- (b) the earlier of:
 - (i) the date on which either the original counterpart of such Letter is returned to the Issuing Lender for cancellation or the Issuing Lender is released by the beneficiary thereof from any further obligations in respect of such Letter;
 - (ii) the expiry of such Letter; and
 - (iii) (where the contingent liability under such Letter is less than the face amount thereof), all amounts possibly payable under such Letter have been paid;
 - (iv) an amount equal to any excess of the amount received by the Issuing Lender hereunder in respect of its contingent liability under such Letter over the total of amounts applied to reimburse the Issuing Lender for amounts paid by it under or in connection with such Letter (the Issuing Lender having the right to so appropriate such funds).

ARTICLE 14 THE ADMINISTRATIVE AGENT

14.1 Appointment and Authorization of Administrative Agent

Each Finance Party hereby appoints and authorizes, and hereby agrees that it will require any assignee of any of its interests in the Credit Documents (other than the holder of a participation in its interests herein or therein) to appoint and authorize the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under the Credit Documents as are delegated to the Administrative Agent by such Lender by the terms hereof, together with such powers as are reasonably incidental thereto (including its appointment as an agent (*Comisionista*) under the terms of Articles 273 and 274 of the Mexican Commerce Code (*Código de Comercio*)). Neither the Administrative Agent nor any of its directors, officers, employees or agents shall be liable to any of the Lenders for any action taken or omitted to be taken by it or them thereunder or in connection therewith, except for its own gross negligence or wilful misconduct and each Lender hereby acknowledges that the Administrative Agent is entering into the provisions of this Section 14.1 on its own behalf and as agent and trustee for its directors, officers, employees and agents.

14.2 Interest Holders

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

14.3 Consultation with Counsel

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

14.4 Documents

The Administrative Agent shall not be under any duty to the Lenders to examine, enquire into or pass upon the validity, effectiveness or genuineness of the Credit Documents or any instrument, document or communication furnished pursuant to or in connection with the Credit Documents and the Administrative Agent shall, as regards the Lenders, be entitled to assume that the same are valid, effective and genuine, have been signed or sent by the proper parties and are what they purport to be.

14.5 Administrative Agent as Finance Party

With respect to the portion of the Credit Facility made available by it, the Administrative Agent shall have the same rights and powers under the Finance Documents as any other Finance Party and may exercise the same as though it were not the Administrative Agent. The Administrative Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrowers and its Affiliates and Persons doing business

with the Borrowers and/or any of its Affiliates as if it were not the Administrative Agent and without any obligation to account to the Lenders therefor.

14.6 Responsibility of Administrative Agent

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

14.7 Action by Administrative Agent

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

14.8 Notice of Events of Default

In the event that the Administrative Agent shall acquire actual knowledge or shall have been notified of any Default or Event of Default, the Administrative Agent shall promptly notify the Lenders and shall take such action and assert such rights under Section 13.1 of this agreement and under the other Credit Documents as the Majority Lenders shall request in writing and the Administrative Agent shall not be subject to any liability by reason of its acting pursuant to any such request. If the Majority Lenders shall fail for five Banking Days after receipt of the notice of any Default or Event of Default to request the Administrative Agent to take such action or to assert such rights under any of the Credit Documents in respect of such Default or Event of Default, the Administrative Agent may, but shall not be required to, and subject to subsequent specific instructions from the Majority Lenders, take such action or assert such rights (other than rights under Section 13.1 of this agreement or under the other Credit Documents and other than

giving an express waiver of any Default or any Event of Default) as it deems in its discretion to be advisable for the protection of the Lenders except that, if the Majority Lenders have instructed the Administrative Agent not to take such action or assert such rights, in no event shall the Administrative Agent act contrary to such instructions unless required by law to do so.

14.9 Responsibility Disclaimed

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

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

14.10 Indemnification

The Finance Parties agree to indemnify the Administrative Agent (to the extent not reimbursed by the Borrowers) in their respective Pro Rata Shares from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of any of the Credit Documents or any other document contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under any of the Credit Documents or any document contemplated hereby or thereby, except that no Lender shall be liable to the Administrative Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or wilful misconduct of the Administrative Agent.

14.11 Credit Decision

Each Lender represents and warrants to the Administrative Agent that:

- (a) in making its decision to enter into this agreement and to make its Pro Rata Share of the Credit Facility available to the Borrowers, it is independently taking whatever steps it considers necessary to evaluate the financial condition and affairs of the Borrowers and that it has made an independent credit judgment without reliance upon any information furnished by the Administrative Agent; and

- (b) so long as any portion of the Credit Facility is being utilized by the Borrowers, it will continue to make its own independent evaluation of the financial condition and affairs of the Borrowers.

14.12 Successor Administrative Agent

Subject to the appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may, with the prior written consent of the Borrowers (which consent shall not be required for so long as an Event of Default has occurred and is continuing), resign at any time by giving 30 days written notice thereof to the Borrowers and the Lenders. Upon any such resignation, the Majority Lenders, with the prior written consent of the Borrowers (which consent shall not be required (x) if the successor Administrative Agent is an Affiliate or Subsidiary of the Administrative Agent on the date hereof or (y) for so long as an Event of Default has occurred and is continuing), shall have the right to appoint a successor Administrative Agent who shall be one of the Lenders unless none of the Lenders wishes to accept such appointment. If no successor Administrative Agent shall have been so appointed and shall have accepted such appointment by the time of such resignation, then the retiring Administrative Agent may, on behalf of the Lenders and with the prior written consent of the Borrowers (which consent shall not be required for so long as an Event of Default has occurred and is continuing), appoint a successor Administrative Agent which shall be a bank organized under the laws of Canada which has combined capital and reserves in excess of Cdn.\$250,000,000 and has an office in Toronto. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, duties and obligations of the retiring Administrative Agent (in its capacity as Administrative Agent but not in its capacity as a Lender) and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder (in its capacity as Administrative Agent but not in its capacity as a Lender). After any retiring Administrative Agent's resignation hereunder as the Administrative Agent, provisions of this Article 14 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent.

14.13 Delegation by Administrative Agent

The Administrative Agent shall have the right to delegate any of its duties or obligations hereunder as Administrative Agent to any Affiliate of the Administrative Agent so long as the Administrative Agent shall not thereby be relieved of such duties or obligations.

14.14 Waivers and Amendments

- (a) Subject to Sections 14.14(b) to (g), inclusive, any term, covenant or condition of any of the Credit Documents may only be amended with the prior consent of the Borrowers and the Majority Lenders or compliance therewith may be waived (either generally or in a particular instance and either retroactively or prospectively) by the Majority Lenders and in any such event the failure to observe, perform or discharge any such covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or

after such failure), shall not be construed as a breach of such covenant, condition or obligation or as a Default or Event of Default.

- (b) Notwithstanding Section 14.14(a) but subject to Section 14.14(i), without the prior written consent of each Lender, no such amendment or waiver shall directly:
 - (i) increase the amount of the Credit Facility or the amount of the Individual Commitment of any Lender with respect thereto;
 - (ii) amend the requirement of *pro rata* application of all amounts received by the Administrative Agent in respect of the Credit Facility;
 - (iii) change the percentage of the Lenders' requirement to constitute the Majority Lenders or otherwise amend the definition of Majority Lenders;
 - (iv) reduce the stated amount or postpone the date for payment of any fees or other amount to be paid pursuant to Article 7 or Article 8 of this agreement;
 - (v) permit any subordination of any of the Secured Obligations;
 - (vi) release or discharge any of the Security Documents or the Security or any of the Guarantees, in whole or in part, or release any of the Secured Assets from the Security, in whole or in part except as permitted by Section 11.2(c) and Section 14.25;
 - (vi1) alter the terms or waive any provision of Sections 12.1 or 12.2;
 - (vii) alter the terms of this Section 14.14; or
 - (viii) amend the definitions of “**Effective Date**”, “**Enforcement Date**”, “**Exposure**”, “**Finance Party**”, “**Secured Obligations**”, “**Secured Obligations Termination Date**” or “**Permitted Unsecured or Sub-Debt**” or any definition forming part thereof.
- (c) Notwithstanding Section 14.14(a), without the prior written consent of each Lender, no amendment or waiver shall extend the Maturity Date or the time for the payment of interest on Loans made under the Credit Facility or fees to be paid under the Credit Facility, forgive any portion of principal thereof or reduce the stated rate of interest or fees payable thereon.
- (d) Notwithstanding Section 14.14(a), but subject to Section 14.14(e), without the prior written consent of each Qualified Secured Hedge Lender, no amendment or waiver shall directly:
 - (i) permit any subordination of any of the Secured Obligations;
 - (ii) release or discharge any of the Security Documents or the Security or any of the Guarantees, in whole or in part, or release any of the Secured Assets

from the Security, in whole or in part except as permitted by Section 11.2(c) and Section 14.25;

- (iii) alter the terms of Section 14.14, 14.16, 14.19 or 14.22; or
 - (iv) amend the definitions of “**Enforcement Date**”, “**Exposure**”, “**Finance Party**”, “**Secured Obligations**” or “**Secured Obligations Termination Date**” or any definition forming part thereof.
- (e) A Qualified Secured Hedge Lender that is no longer a Lender or an Affiliate of a Lender shall not be entitled to vote on, consent to, waive or veto any of the matters set forth in Section 14.14(d) unless specifically set forth in this Section 14.14(e) or unless such Qualified Secured Hedge Provider ceased to be a Lender or an Affiliate of a Lender on account of a request of the Borrowers pursuant to Section 8.3. Notwithstanding any other provisions of this agreement, the Secured Obligations of each Qualified Secured Hedge Lender (including, for certainty, each Qualified Secured Hedge Lender that is no longer a Lender or an Affiliate of a Lender) shall at all times rank *pari passu* with the Secured Obligations of each other Finance Party and the Secured Obligations of the Finance Parties (including, for certainty, any Qualified Secured Hedge Lender that is no longer a Lender or an Affiliate of a Lender) shall be paid pro rata in accordance with their relative Exposures that are then due and payable, in each case regardless of any amendments made to this agreement after the date hereof. Notwithstanding any other provisions of this agreement, no amendment shall be made to this Section 14.14(e) without the written consent of each Qualified Secured Hedge Lender that is no longer a Lender or an Affiliate of a Lender and each other Finance Party.
- (f) No amendment to or waiver of any provision hereof to the extent it affects the rights or obligations of the Administrative Agent shall be effective without the prior written consent of the Administrative Agent.
- (g) Without the prior written consent of an Issuing Lender, no amendment to or waiver of Article 14 or any other provision hereof to the extent it affects the rights or obligations of such Issuing Lender shall be effective.
- (h) The Borrowers may at any time, by written request to the Administrative Agent (each, a “**Unanimous Lender Request**”), request an amendment or waiver that requires the prior written consent of each applicable Lender pursuant to Section 14.14(b), or 14.14(c), as applicable. A copy of the Unanimous Lender Request shall be provided by the Administrative Agent to each of the Lenders in accordance with Section 14.18. Each Lender may in its sole discretion, by written notice to the Administrative Agent (the “**Unanimous Lender Response Notice**”), within 10 Banking Days of the Administrative Agent’s receipt of the Unanimous Lender Request (the “**Unanimous Lender Response Period**”), approve or decline the Unanimous Lender Request. If any Lender does not provide a Unanimous Lender Response Notice within the Unanimous Lender Response Period, such Lender shall be deemed to have declined the Unanimous Lender Request. If

Lenders with Individual Commitments that in the aggregate are greater than 30% of the aggregate Individual Commitments of all Lenders do not approve the Unanimous Lender Request, the Administrative Agent shall notify the Borrowers and the Lenders that the Unanimous Lender Request has been declined.

- (i) If applicable Lenders with Individual Commitments that in the aggregate are equal to or greater than 70% but less than 100% of the aggregate applicable Individual Commitments of all applicable Lenders approve the Unanimous Lender Request within the Unanimous Lender Response Period (the “**Approving Lenders**”), the following shall apply:
 - (i) On or before the second Banking Day after the Unanimous Lender Response Period, the Administrative Agent shall give written notice (the “**Acquisition Request Notice**”) to the Borrowers and each Lender identifying the Approving Lenders and Lender or Lenders that have declined or are deemed to have declined the Unanimous Lender Request (the “**Declining Lenders**”) and their respective Individual Commitments;
 - (ii) Any Approving Lender may, at its option, acquire all or any portion of the rights and obligations of the Declining Lenders under the Credit Documents (all of such rights and obligations being herein called the “**Available Amount**”) by giving written notice to the Administrative Agent (an “**Acquisition Notice**”) of the portion of the Available Amount which it is prepared to acquire (the “**Desired Acquisition Amount**”). Such Acquisition Notice shall be given within 10 days following the giving of the Acquisition Request Notice (such deadline being herein called the “**Acquisition Deadline**”). If only one Approving Lender gives an Acquisition Notice to the Administrative Agent or if more than one Approving Lender gives an Acquisition Notice to the Administrative Agent but the aggregate of their Desired Acquisition Amounts is less than or equal to the Available Amount, then each such Approving Lender shall be entitled to acquire its Desired Acquisition Amount of the rights and obligations of the Declining Lenders under the Credit Documents. If more than one Approving Lender gives an Acquisition Notice to the Administrative Agent and the aggregate of the Desired Acquisition Amounts is greater than the Available Amount, then each such Approving Lender shall be entitled to acquire a pro rata share of the rights and obligations of the Declining Lenders under the Credit Documents, such pro rata share being determined based on the relative Desired Acquisition Amount of each such Approving Lender. On or before the second Banking Day following the Acquisition Deadline, the Administrative Agent shall give to the Borrowers and each Lender a written notice identifying the Available Amount of each Declining Lender and the portion thereof to be acquired by each Approving Lender. Each of such acquisitions shall be completed on the date which is fifteen days following the Acquisition Deadline in accordance with the procedures set out in Section 16.5(c). If the Available Amount is not completely acquired by the Approving Lenders, the Borrowers may locate other

Persons (“**Substitute Lenders**”) who qualify as Lenders, are satisfactory to the Administrative Agent, acting reasonably, and who acquire all or a portion of the balance of the rights and obligations of the Declining Lenders under the Credit Documents on the date which is fifteen days following the Acquisition Deadline in accordance with the procedures set out in Section 16.5(c). Any outstanding credit extended by the Declining Lenders to the Borrowers under the Credit Facility which is not so acquired by Approving Lenders or Substitute Lenders shall be repaid and the Individual Commitments of the Declining Lenders not so acquired shall be cancelled on the date which is fifteen days following the Acquisition Deadline and the amount of the Credit Facility shall thereupon be reduced by the aggregate of the Individual Commitments so cancelled. The Borrowers shall comply with Section 8.4 in connection with any such prepayment. As concerns any Letter that otherwise would be subject to prepayment pursuant to this Section 14.14, the Borrowers shall forthwith pay to the Issuing Lender an amount equal to the aggregate contingent liability of the Declining Lenders under such Letter, such amount to be held by the Issuing Lender subject to Section 13.3. For certainty, upon the acquisition of the Available Amount by the Approving Lenders and/or the Substitute Lenders and, if applicable, repayment of outstanding credit extended by the Declining Lenders to the Borrowers under the Credit Facility which is not so acquired, the Unanimous Lender Request shall be deemed to have been consented to by all of the Lenders. Any outstanding credit extended by a Declining Lender to the Borrowers under the Credit Facility shall (unless otherwise agreed to by the applicable Declining Lender) be purchased at par pursuant to this Section 14.14(i).

- (j) Notwithstanding any other provision hereof, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Individual Commitment of such Lender may not be increased or extended nor any forgiveness or reduction of the principal and interest owed to such Defaulting Lender by the Borrowers hereunder be made without the consent of such Defaulting Lender.

14.15 Determination by Administrative Agent Conclusive and Binding

Any determination to be made by the Administrative Agent on behalf of or with the approval of the Lenders or the Majority Lenders under this agreement shall be made by the Administrative Agent in good faith and, if so made, shall be binding on all parties, absent manifest error.

14.16 Adjustments among Lenders after Acceleration

- (a) The Lenders agree that, at any time after all Indebtedness of the Borrowers to the Lenders pursuant hereto has become immediately due and payable pursuant to Section 13.1 or after the cancellation or termination of the Credit Facility, they will at any time or from time to time upon the request of any Lender through the

Administrative Agent purchase portions of the availments made available by the other Lenders which remain outstanding, and make any other adjustments which may be necessary or appropriate, in order that the amounts of the availments made available by the respective Lenders which remain outstanding, as adjusted pursuant to this Section 14.16, will be in the same proportions as their respective Pro Rata Shares thereof with respect to the Credit Facility immediately prior to such acceleration, cancellation or termination.

- (b) The Lenders agree that, at any time after all Indebtedness of the Borrowers to such Lenders pursuant hereto has become immediately due and payable pursuant to Section 13.1 or after the cancellation or termination of the Credit Facility, the amount of any repayment made by the Borrowers under this agreement, and the amount of any proceeds of the exercise of any rights or remedies of the Lenders under the Credit Documents, which are to be applied against amounts owing hereunder as principal, will be so applied in a manner such that to the extent possible, the availments made available by the respective Lenders which remain outstanding, after giving effect to such application, will be in the same proportions as their respective Pro Rata Shares thereof with respect to the Credit Facility immediately prior to such acceleration, cancellation or termination.
- (c) For greater certainty, the Lenders acknowledge and agree that without limiting the generality of the provisions of Section 14.16(a) and (b), such provisions will have application if and whenever any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, compensation, or otherwise) on account of any monies owing or payable by the Borrowers to it under the Credit Documents in excess of its *pro rata* share of payments on account of monies owing by the Borrowers to all the Finance Parties thereunder.
- (d) The Borrowers agrees to be bound by and to do all things necessary or appropriate to give effect to any and all purchases and other adjustments made by and between the Lenders pursuant to this Section 14.16.

14.17 Redistribution of Payment

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

14.18 Distribution of Notices

Except as otherwise expressly provided herein, promptly after receipt by the Administrative Agent of any notice or other document which is delivered to the Administrative Agent hereunder on behalf of the Lenders, the Administrative Agent shall provide a copy of such notice or other document to each of the Lenders.

14.19 Determination of Exposures

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

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

14.20 Decision to Enforce Security

Upon the Security becoming enforceable in accordance with its terms, the Administrative Agent shall promptly so notify each of the Finance Parties. Any Finance Party may thereafter provide the Administrative Agent with a written request to enforce the Security. Forthwith after the receipt of such a request, the Administrative Agent shall seek the instructions of the Majority Lenders as to whether the Security should be enforced and the manner in which the Security should be enforced. In seeking such instructions, the Administrative Agent shall submit a specific proposal to the Finance Parties. The Administrative Agent shall promptly notify the Lenders of all instructions and approvals of the Majority Lenders.

14.21 Enforcement

The Administrative Agent reserves the sole right to enforce, or otherwise deal with, the Security and to deal with the Obligors in connection therewith; provided, however, that the Administrative Agent shall so enforce, or otherwise deal with, the Security as the Majority Lenders shall instruct.

14.22 Application of Cash Proceeds of Realization

- (a) All Proceeds of Realization not in the form of cash shall be forthwith delivered to the Administrative Agent and disposed of, or realized upon, by the Administrative Agent in such manner as the Majority Lenders may approve so as to produce Cash Proceeds of Realization.
- (b) Subject to the claims, if any, of secured creditors of the Obligors whose security ranks in priority to the Security, all Cash Proceeds of Realization shall be applied and distributed, and the claims of the Lenders shall be deemed to have the relative priorities which would result in the Cash Proceeds of Realization being applied and distributed, as follows:
 - (i) firstly, to the payment of all reasonable costs and expenses incurred by or on behalf of the Administrative Agent (including, without limitation, all legal fees and disbursements) in the exercise of all or any of the powers granted to it hereunder or under other Credit Documents and in payment of all of the remuneration of any Receiver and all costs and expenses properly incurred by such Receiver (including, without limitation, all legal fees and disbursements) in the exercise of all or any powers granted to it under the Security Documents;
 - (ii) secondly, in payment of all amounts of money borrowed or advanced by the Administrative Agent or such Receiver pursuant to the Security Documents and any interest thereon;
 - (iii) thirdly, to the payment or prepayment of the Secured Obligations (including holding as cash collateral to be applied against Secured Obligations which have not then matured) to the Finance Parties *pro rata* in accordance with their relative Exposures; and

- (iv) the balance, if any, to the Borrowers or otherwise in accordance with Applicable Law.

14.23 Security Documents

As continuing collateral security for the Secured Obligations, the Borrowers shall, and shall cause the Guarantors to, execute and deliver the Guarantees and the Borrowers shall, and shall cause the Guarantors to, execute and deliver the Security Documents. The Guarantees and the Security Documents shall be entered into in favour of the Administrative Agent for the rateable benefit of the Finance Parties. The Administrative Agent declares that it shall hold the Security, the Secured Assets charged by the Security Documents and the rights granted to it under the Credit Documents for its own benefit and in its capacity as agent for the rateable benefit of each Finance Party.

14.24 Entering into Contracts

Each Lender hereby irrevocably authorizes the Administrative Agent to enter into the Guarantees, the Security Documents and the Mantos Intercreditor Agreement as agent for and on behalf of such Lender and the Borrowers hereby expressly acknowledge the authority of the Administrative Agent to enter into the Guarantees, the Security Documents and the Mantos Intercreditor Agreement.

14.25 Discharge of Security

To the extent a sale or other disposition of the Secured Assets is permitted pursuant to the provisions hereof, the Lenders hereby authorize the Administrative Agent, at the cost and expense of the Borrowers, to execute such discharges and other instruments which are necessary for the purposes of releasing and discharging the security interest of the Lenders and the Administrative Agent therein or for the purposes of recording the provisions or effect thereof in any office where the Security Documents may be registered or recorded or for the purpose of more fully and effectively carrying out the provisions of this Section 14.25.

14.26 Survivorship

The provisions of Articles 8, 10, 11, 13, 14 and 15 and all other provisions of this agreement which are necessary to give effect to each of the provisions of such Articles shall survive the permanent repayment in full of the Credit Facility and the termination of all of the commitments of the Lenders in connection therewith until the Secured Obligations Termination Date.

14.27 Erroneous Payments

- (a) If the Administrative Agent notifies a Lender or Finance Party, or any Person who has received funds on behalf of a Lender or Finance Party (any such Lender, Finance Party or other recipient, a “**Payment Recipient**”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under Section 14.27(b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted

to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Finance Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient on its books and records and held in trust for the benefit of the Administrative Agent, and such Lender or Finance 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 two Banking Days thereafter, return to the Administrative 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 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 Administrative Agent in same day funds at the greater of (x) the Federal Funds Effective Rate (provided, for the purpose of this Section 14.27, if at the relevant time the Federal Funds Effective Rate is less than zero, the Federal Funds Effective Rate at such time shall be deemed to be equal to zero) and (y) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this Section 14.27(a) shall be conclusive, absent manifest error.

- (b) Without limiting Section 14.27(a), each Lender or Finance Party, or any Person who has received funds on behalf of a Lender or Finance Party, 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 Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative 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 Administrative Agent (or any of its Affiliates), or (z) that such Lender or Finance Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:
 - (i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and
 - (ii) such Lender or Finance Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Banking Day of its knowledge of such error) notify the

Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this 14.27(b).

- (c) Each Lender or Finance Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Finance Party under any Credit Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Finance Party from any source, against any amount due to the Administrative Agent under Section 14.27(a) or under the indemnification provisions of this agreement.
- (d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with Section 14.27(a), 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 respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such Lender at any time, (i) such Lender shall be deemed to have assigned its Loans (but not its Individual Commitment) of the relevant type(s) with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Individual Commitment) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrowers) deemed to execute and deliver an instrument substantially in the form of Schedule C (or, to the extent applicable, an agreement incorporating an instrument substantially in the form of Schedule C by reference pursuant to an electronic platform such as SyndTrak or IntraLinks as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative 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 its applicable Individual Commitment which shall survive as to such assigning Lender (iv) the Administrative Agent may reflect in the accounts referenced in Section 3.8 its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. Subject to Section 14.4, the Administrative Agent may, in its discretion, sell any Loans 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 Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and

claims against such Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Individual Commitment of any Lender and such Individual Commitment shall remain available in accordance with the terms of this agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender or Finance Party under the Credit Documents with respect to each Erroneous Payment Return Deficiency (the “**Erroneous Payment Subrogation Rights**”).

- (e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrowers or any other Obligor, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from (i) the Borrowers or any other Obligor or (ii) the proceeds of realization from the enforcement of one or more of the Credit Documents against or in respect of one or more of the Obligors.
- (f) 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 Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.
- (g) Each party’s obligations, agreements and waivers under this Section 14.27 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender the termination of the Individual Commitment and/or the repayment, satisfaction or discharge of all Secured Obligations (or any portion thereof) under any Credit Document.
- (h) Except pursuant to an Erroneous Payment Deficiency Assignment or the exercise of any Erroneous Payment Subrogation Rights (or any equivalent equitable subrogation rights), neither Borrower shall have any liability to the Administrative Agent 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 Credit Document or under any legal principle or theory, whether arising by law or in equity.

ARTICLE 15

Downstream Guarantee

15.1 Guarantee

Each Borrower hereby unconditionally, absolutely and irrevocably guarantees the full and punctual payment to the Administrative Agent, for the benefit of the Finance Parties, as and when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise of all of the Secured Obligations of each other Obligor (the “**Guaranteed Obligations**”) in each case in the same currency as the currency of the applicable Guaranteed Obligations, whether for principal, interest, fees, expenses, indemnities or otherwise. The guarantee by each Borrower (the “**first Borrower**”) hereunder shall not extend to the Secured Obligations of the other Borrower for which the first Borrower is jointly and severally liable pursuant to Section 1.17.

15.2 Nature of Guarantee.

Subject to Section 15.2, the guarantee provided herein shall in all respects be a continuing, absolute, unconditional and irrevocable guarantee of payment when due and not of collection or performance, and shall remain in full force and effect until the Secured Obligations Termination Date. Each Borrower guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Finance Document under which they arise, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Finance Party with respect thereto. A written statement of the Administrative Agent as to the amount remaining unpaid to the Finance Parties at any time by the applicable Obligor under the Finance Documents shall, if agreed to by such Obligor, be conclusive evidence and shall, in any event, be prima facie evidence against the Borrowers as to the amount remaining unpaid to the Finance Parties at such time by such Obligor under the Finance Documents.

15.3 Liability Not Lessened or Limited.

Subject to the provisions hereof, the liability of each Borrower under this Article 15 shall be absolute, unconditional and irrevocable irrespective of, and without being lessened or limited by:

- (a) any lack of validity, legality, effectiveness or enforceability of any Finance Document;
- (b) the failure of any Finance Party:
 - (i) to assert any claim or demand or to enforce any right or remedy against any Obligor or any other Person (including any other guarantor) under the provisions of any Finance Document, or otherwise; or
 - (ii) to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Guaranteed Obligations;

- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other extension, compromise, indulgence or renewal of any Guaranteed Obligations;
- (d) any reduction, limitation, variation, impairment, discontinuance or termination of any Guaranteed Obligations for any reason (other than by reason of any payment which is not required to be rescinded), including any claim of waiver, release, discharge, surrender, alteration or compromise, and shall not be subject to (and each Borrower hereby waives any right to or claim of) any defence or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Guaranteed Obligations or otherwise (other than by reason of any payment which is not required to be rescinded);
- (e) any amendment to, rescission, waiver or other modification of, or any consent to any departure from, any of the terms of any Finance Document or any other guarantees or security;
- (f) any addition, exchange, release, discharge, renewal, realization or non-perfection of any collateral security for any Guaranteed Obligations;
- (g) any amendment to, or waiver or release or addition of, or consent to departure from, any other guarantee held by any Finance Party as security for any of the Guaranteed Obligations;
- (h) the loss of or in respect of or the unenforceability of any other guarantee or other security which any Finance Party may now or hereafter hold in respect of the Guaranteed Obligations, whether occasioned by the fault of any Finance Party or otherwise;
- (i) any change in the name of any Obligor or in the constating documents, capital structure, capacity or constitution of any Obligor, the bankruptcy or insolvency of any Obligor, the sale of any or all of the business or assets of any Obligor being consolidated, merged or amalgamated with any other Person;
- (j) any payment received on account of any Guaranteed Obligations that either Borrower is obliged to repay pursuant to any Applicable Law or for any other reason; or
- (k) any other circumstance (other than final payment in full of all Guaranteed Obligations) which might otherwise constitute a defence available to, or a legal or equitable discharge of, any Obligor, any surety or any other guarantor.

15.4 Finance Parties not Bound to Exhaust Recourse

No Finance Party shall be bound to pursue or exhaust its recourse against any Obligor (other than the Borrowers) or others or any security or other guarantees it may at any time hold before being entitled to payment hereunder from the Borrowers.

15.5 Enforcement

Upon written demand by the Administrative Agent on or after the Enforcement Date, the Borrowers shall forthwith pay to the Administrative Agent in immediately available funds the total amount of all unpaid and overdue Guaranteed Obligations and the Administrative Agent may apply the sum so paid against such Guaranteed Obligations in accordance with the terms of the Credit Agreement.

15.6 Guarantee in Addition to Other Security

This guarantee shall be in addition to and not in substitution for any other guarantee or other security which any Finance Party may now or hereafter hold in respect of the Guaranteed Obligations, and no Finance Party shall be under any obligation to marshal in favour of the Borrowers any other guarantee or other security or any moneys or other assets which such Finance Party may be entitled to receive or may have a claim upon.

15.7 Reinstatement

The guarantee provided herein and all other terms of this agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Guaranteed Obligations is rescinded or must otherwise be returned or restored by any Finance Party by reason of the insolvency, bankruptcy or reorganization of any Obligor or for any other reason not involving the wilful misconduct of a Finance Party, all as though such payment had not been made.

15.8 Waiver of Notice, etc.

Each Borrower hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this agreement.

15.9 Subrogation Rights

Until the Secured Obligations Termination Date, all dividends, compositions, proceeds of security or payments received by the Finance Parties in respect of the Secured Obligations shall be regarded for all purposes as payment in gross. The Borrowers will not exercise any rights which it may acquire by way of subrogation under this agreement, by any payment made hereunder or otherwise, until the Secured Obligations Termination Date. Any amount paid to a Borrower on account of any such subrogation rights prior to the Secured Obligations Termination Date shall be held in trust by the relevant Borrower for the benefit of the Finance Parties and shall immediately be paid to the Administrative Agent and credited and applied against the Guaranteed Obligations, whether matured or unmatured in accordance with the terms of the Credit Agreement provided, however, that if the Secured Obligations Termination Date has occurred, the relevant Borrower shall be subrogated to the rights of the Finance Parties against the applicable Obligor with respect to all Secured Obligations of such Obligor and at the relevant Borrower's request, the Finance Parties shall execute and deliver to the Borrowers appropriate documents (without recourse and without representation or warranty, except that it has not released, assigned or encumbered any subject Secured Obligations) necessary to evidence the transfer by subrogation to the Borrowers of all such Secured Obligations. In furtherance of the foregoing, until the Secured

Obligations Termination Date, each Borrower hereby (i) postpones and subordinates any and all claims it may have against any Obligor to the claims of the Finance Parties against such Obligor at any time that an Event of Default has occurred and is continuing, and (ii) agrees to refrain from taking any action or commencing any proceeding against any Obligor or its successors or assigns, whether in connection with a bankruptcy proceeding or otherwise, to recover any amounts in respect of payments made hereunder to any Finance Party, although each Borrower may take such actions as may be necessary to preserve its claims against such Obligor. In the event any payments are made by any Obligor to either Borrower in contravention of the preceding sentence, the Borrowers shall hold the amount so received in trust for the Finance Parties and shall forthwith pay such amount to the Administrative Agent.

15.10 Advances After Certain Events

All advances, renewals and credits made or granted by the Finance Parties purportedly to or for any Obligor after the bankruptcy or insolvency of such Obligor, but before the Finance Parties have received notice thereof, shall be deemed to form part of the Guaranteed Obligations and all advances, renewals and credits obtained from any Finance Party purportedly by or on behalf of any Obligor shall be deemed to form part of the Guaranteed Obligations, notwithstanding any lack or limitation of power, incapacity or disability of any Obligor or of the directors or agents thereof and notwithstanding that any Obligor may not be a legal entity and notwithstanding any irregularity, defect or informality in the obtaining of such advances, renewals or credits, whether or not any Finance Party has knowledge thereof. Any such advance, renewal or credit which may not be recoverable from the Borrowers as guarantor shall be recoverable from the Borrowers as principal debtor in respect thereof.

15.11 Release of Guarantee.

On the Secured Obligations Termination Date, but subject to Sections 15.8 and 15.11, the Borrowers shall be immediately released from all obligations under this Article 15.

15.12 Keepwell

The Borrowers hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor to honor all of its obligations under Finance Documents to which it is a party in respect of Swap Obligations (provided, however, that the Borrowers shall only be liable under this Section 15.12 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 15.12, or otherwise under this Article 15, voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of the Borrowers under this Section shall remain in full force and effect until the Secured Obligations Termination Date. The Borrowers intends that this Section 15.12 constitute, and this Section 15.12 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the *Commodity Exchange Act*.

ARTICLE 16 MISCELLANEOUS

16.1 Notices

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

16.2 Severability

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

16.3 Counterparts

- (a) This agreement may be executed in counterparts (and by different parties hereto 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 this agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this agreement.
- (b) The words “**execution**”, “**signed**”, “**signature**,” and words of like import in any Credit Document 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 Transactions Act* (British Columbia) 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.

16.4 Successors and Assigns

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

16.5 Assignment

- (a) Neither the Credit Documents nor the benefit thereof may be assigned by the Obligors.
- (b) A Lender may at any time sell to one or more other persons (“**Participants**”) participating interests in any credit outstanding hereunder, any commitment of the Lender hereunder or any other interest of the Lender hereunder. In the event of any such sale by a Lender of a participating interest to a Participant, the Lender’s obligations under the Credit Documents to the Borrowers shall remain unchanged and such Lender shall remain solely entitled to enforce its rights hereunder and thereunder, the Lender shall remain solely responsible for the performance thereof and the Borrowers shall continue to be obligated to the Lender in connection with the Lender’s rights under the Credit Documents, provided that for greater certainty a Participant shall have no enforceable rights against any other party to a Credit Document (other than the relevant Lender) and shall not be entitled to vote, consent or grant any waivers in respect of such Credit Documents nor shall such Participant be entitled, to instruct a Lender how to vote on such matters unless it is a matter contemplated by Sections 14.14(b)(i) and (ii) and/or 14.14(c), as applicable. The Borrowers agree that if amounts outstanding under this agreement, or shall have been declared to be or shall have become due and payable upon the occurrence of an Event of Default, or any Default which might mature into an Event of Default, each Participant shall be deemed to have the right of setoff in respect of its participating interest in amounts owing under this agreement to the same extent as if the amount of its participating interest were owing directly to it as the relevant Lender under this agreement.
- (c) With the prior written consent of (i) the Borrowers (which consent shall not be required (x) if an assignment is to one or more other Lenders or to an Affiliate of any Lender and such assignment would not impose at the time of the assignment on the Borrowers any liability under Section 8.6 or (y) in circumstances where an Event of Default has occurred and is continuing), (ii) the Issuing Lender(s) and (iii) the Administrative Agent, a Lender may at any time assign all or any part of its rights and obligations under the Credit Documents (but not less than \$2,500,000, except with respect to an assignment by a Lender to one of its Affiliates that has been mandated by an Official Body) to one or more Persons (“**Purchasing Lenders**”), provided that such consent is not required in the case of an assignment by a Lender that is listed in Schedule II to the *Bank Act* (Canada) to its Affiliate that is listed in Schedule III to the *Bank Act* (Canada) nor shall any consent be required for any pledge by a Lender to a federal reserve bank or a central bank of such Lender’s interest under this agreement. Upon such assignment, the Lender shall, to the extent of such assignment, be released from its obligations under the

Credit Documents and each of the Purchasing Lenders shall become a party to the Credit Documents to the extent of the interest so assigned. Any such assignment by a Lender shall not be effective unless and until such Lender has paid to the Administrative Agent an assignment fee in the amount of **[Redacted – Commercially sensitive information]** for each Purchasing Lender, unless and until the Purchasing Lender has executed an instrument substantially in the form of Schedule C hereto whereby the Purchasing Lender has agreed to be bound by the terms of the Credit Documents as a Lender and has agreed to specific Individual Commitments and a specific address and telefacsimile number for the purpose of notices as provided in Section 16.1, unless and until the requisite consents to such assignment have been obtained, unless and until a copy of a fully executed copy of such instrument has been delivered to each of the Administrative Agent and the Borrowers. Upon any such assignment becoming effective, Schedule A hereto shall be deemed to be amended to include the Purchasing Lender as a Lender with the specific Individual Commitment, address and telefacsimile number as aforesaid and the Individual Commitment of the Lender making such assignment shall be deemed to be reduced by the amount of the Individual Commitment of the Purchasing Lender with respect to the Credit Facility.

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

16.6 Entire Agreement

This agreement and the agreements referred to herein and delivered pursuant hereto (including, without limitation, the Fee Letter) constitute the entire agreement between the parties hereto and supersede any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

16.7 Further Assurances

Each Borrower shall from time to time and at all times hereafter, upon every reasonable request of the Administrative Agent, make, do, execute, and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be necessary in the opinion of the Administrative Agent for more effectually perfecting the Security and implementing and carrying out the true intent and meaning of the Credit Documents or any agreement delivered pursuant hereto or thereto and such additional Security Documents in connection with the property, assets and undertakings of the Obligors, in form and substance satisfactory to the Administrative Agent, as the Administrative Agent may from time to time

reasonably request, to ensure (i) each Guarantor has executed and delivered a Guarantee and Security Documents, (ii) the present and future property, assets and undertakings of each Obligor are subject to a Lien in favour of the Administrative Agent pursuant to one or more Security Documents and (iii) the intended first ranking priority of such Liens.

16.8 Judgment Currency

- (a) If, for the purpose of obtaining or enforcing judgment against any Obligor in any court in any jurisdiction, it becomes necessary to convert into a particular currency (such currency being hereinafter in this Section 16.8 referred to as the “**Judgment Currency**”) an amount due in another currency (such other currency being hereinafter in this Section 16.8 referred to as the “**Indebtedness Currency**”) under this agreement, the conversion shall be made at the rate of exchange prevailing on the Banking Day immediately preceding:
- (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of British Columbia or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
 - (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 16.8(a)(ii) being hereinafter in this Section 16.8 referred to as the “**Judgment Conversion Date**”).
- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 16.8(a)(ii), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Borrowers shall pay to the appropriate judgment creditor or creditors such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Indebtedness Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.
- (c) Any amount due from the Borrowers under the provisions of Section 16.8(b) shall be due to the appropriate judgment creditor or creditors as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this agreement.
- (d) The term “**rate of exchange**” in this Section 16.8 means the noon spot rate of exchange for Canadian interbank transactions applied in converting the Indebtedness Currency into the Judgment Currency published by the Bank of Canada for the day in question.

16.9 Treatment of Certain Information: Confidentiality

- (a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) 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 such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any Official Body (including any self-regulatory authority), (iii) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (vi) 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 party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrowers and its obligations, this agreement or payments hereunder, (III) any rating agency, or (IV) the CUSIP Service Bureau or any similar organization, (vii) with the consent of the Borrowers, (viii) to the extent such Information (I) becomes publicly available other than as a result of a breach of this Section or (II) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than a Subject Entity or (III) to any credit insurance or reinsurance provider relating to any Subject Entity and its Secured Obligations or to any credit rating agency or (ix) to a federal reserve bank or any central bank in its capacity as a pledgee of a Lender's interest under this agreement.
- (b) For purposes of this Section, "**Information**" means all information received in connection with this agreement from any Subject Entity relating to any Subject Entity or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to 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 such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

- (c) Notwithstanding the terms of any confidentiality agreement executed by a Lender prior to the date hereof concerning the provision of, or participation in, a credit facility for the Borrowers, such confidentiality agreement shall be of no further force and effect and such Lender's confidentiality obligations shall be governed by this Section 16.9.
- (d) In addition, and notwithstanding anything herein to the contrary, the Administrative Agent may provide the information concerning the Borrowers and the Credit Facility to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

16.10 Waivers of Jury Trial

THE BORROWERS, THE LENDERS AND THE ADMINISTRATIVE AGENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT TO WHICH IT IS A PARTY AND FOR ANY COUNTERCLAIM THEREIN.

16.11 USA Patriot Act

Each Lender subject to the Act (as hereinafter defined) hereby notifies the Borrowers that pursuant to the requirements of the *USA Patriot Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), it is required to obtain, verify and record information that identifies the Borrowers and each other Obligor, which information includes the name and address of each Lender and the Administrative Agent and other information that will allow such Lender to identify such Obligor in accordance with the Act.

16.12 No Fiduciary Duty

Each Lender and its Affiliates (collectively, solely for purposes of this Section 16.12, the "**Banks**"), may have economic interests that conflict with those of the Borrowers, its shareholders and/or their Affiliates. The Borrowers acknowledges and agrees that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) (the "**Credit Document Transactions**") are arm's-length commercial transactions between the Lenders, on the one hand, and the Borrowers, on the other, and (ii) in connection with the Credit Document Transactions and with the process leading thereto, (x) no Bank has assumed an advisory or fiduciary responsibility in favor of the Borrowers, its shareholders or its Affiliates with respect to the Credit Document Transactions or the process leading thereto (irrespective of whether any Bank has advised, is currently advising or will advise the Borrowers, its shareholders or its Affiliates on other matters which the Bank has assumed an advisory or fiduciary responsibility in favour of the Borrowers, its shareholders or its Affiliates which advisory or fiduciary responsibility will continue in respect of such unrelated matters) or any other obligation to the Borrowers except the obligations expressly set forth in the Credit Documents and, as applicable, the Commitment Letter and (y) each Bank is acting solely as principal and not as the agent or fiduciary of the Borrowers, its management, shareholders, creditors or any other Person in respect of the Credit Document Transactions except as otherwise

expressly set forth in the Credit Documents. The Borrowers acknowledge and agree that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to the Credit Document Transactions and the process leading thereto. The Borrowers agree that it will not claim that any Bank has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrowers, in connection with the Credit Document Transactions or the process leading thereto except as otherwise expressly set forth in the Credit Documents.

16.13 Illegality

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

16.14 Anti-Money Laundering Laws

- (a) The Borrowers acknowledge that, pursuant to Anti-Money Laundering Laws, the Finance Parties may be required to obtain, verify and record information regarding the Borrowers and their respective Subsidiaries and their directors, authorized signing officers, direct or indirect shareholders or unitholders or other Persons in control of the Borrowers and/or any such Subsidiary, and the transactions contemplated hereby. The Borrowers shall promptly:
 - (i) provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Administrative Agent, or any prospective assignee of a Lender or the Administrative Agent, in order to comply with any applicable Anti-Money Laundering Laws, whether now or hereafter in existence; and
 - (ii) if requested from time to time, notify the recipient of any such information of any changes thereto.
- (b) If, upon the written request of any Finance Party, the Administrative Agent has ascertained the identity of the Borrowers or any of its Subsidiaries or any authorized signatories of the Borrowers or any of its Subsidiaries for the purposes of applicable Anti-Money Laundering Laws on such Finance Party's behalf, then the Administrative Agent:
 - (i) shall be deemed to have done so as an agent for such Finance Party, and this agreement shall constitute a "written agreement" in such regard between such Finance Party and the Administrative Agent within the meaning of applicable Anti-Money Laundering Laws; and

- (ii) shall provide to such Finance Party copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the foregoing, each Finance Party agrees (or as applicable, each Lender who is an Affiliate of the relevant Finance Party) that the Administrative Agent has no obligation to ascertain the identity of the Borrowers or any of its Subsidiaries or any authorized signatories of the Borrowers or any of its Subsidiaries, on behalf of any Finance Party, or to confirm the completeness or accuracy of any information it obtains from the Borrowers or any of its Subsidiaries or any such authorized signatory in doing so.

16.15 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any Lender that is an Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of a Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this agreement or any other Credit Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the Write-down and Conversion Powers of the applicable Resolution Authority.

16.16 Acknowledgement Regarding Any Supported QFCs

To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Hedging Agreements 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 FDIC 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 Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

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 Credit 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 Credit 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.

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

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

Capstone Copper Corp.
510 West Georgia Street
Suite 2100
Vancouver, British Columbia
V6B 0M3

Attention: President and Chief Operating
Officer
[Redacted – Personal
Information]
Telefax: [Redacted – Personal
Information]

CAPSTONE COPPER CORP., as Borrower

By: (signed) – “*signed*”
Name: [Redacted – Personal Information]
Title: Director and CEO

By: (signed) – “*signed*”
Name: [Redacted – Personal Information]
Title: SVP & CFO

Capstone Mining Corp.
510 West Georgia Street
Suite 2100
Vancouver, British Columbia
V6B 0M3

Attention: President and Chief Operating
Officer
[Redacted – Personal
Information]
Telefax: [Redacted – Personal
Information]

CAPSTONE MINING CORP., as Borrower

By: (signed) – “*signed*”
Name: [Redacted – Personal Information]
Title: Director and CEO

By: (signed) – “*signed*”
Name: [Redacted – Personal Information]
Title: SVP & CFO

Canadian Imperial Bank of Commerce
Capital Markets, Wealth Management
Operations
595 Bay Street, CPS-5th Floor
Toronto, Ontario M5G 2C2
Attention: Global Agent Administrative
Services
Telefax: [Redacted – Personal
Information]
Email: [Redacted – Personal
Information]

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Administrative Agent**

By: (signed) – “*signed*”
Name: [Redacted – Personal Information]

Title: Managing Director

By: (signed) – “*signed*”
Name: [Redacted – Personal Information]
Title: Director

Canadian Imperial Bank of Commerce
Capital Markets, Wealth Management
Operations

595 Bay Street, CPS-5th Floor
Toronto, Ontario M5G 2C2

Attention: **[Redacted – Personal
Information]**

Telefax: **[Redacted – Personal
Information]**

Email: **[Redacted – Personal
Information]**

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Lender and Issuing Lender**

By: (signed) – “*signed*”

Name: **[Redacted – Personal Information]**

Title: Managing Director

By: (signed) – “*signed*”

Name: **[Redacted – Personal Information]**

Title: Director

The Bank of Nova Scotia
Global Banking and Markets
40 King Street West, 62nd Floor
Toronto, Ontario M5W 2X6

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

Attention: **[Redacted – Personal
Information]**
Director, Corporate Banking

Email: **[Redacted – Personal
Information]**

By: (signed) – “signed”
Name: **[Redacted – Personal Information]**
Title: Director

By: (signed) – “signed”
Name: **[Redacted – Personal Information]**
Title: Associate Director

ING CAPITAL LLC
1133 Avenue of the Americas
New York, NY 10036

Attention: **[Redacted – Personal Information]**
Telefax: **[Redacted – Personal Information]**

ING CAPITAL LLC, as Lender

By: (signed) – “signed”
Name: **[Redacted – Personal Information]**

Title: Managing Director

By: (signed) – “signed”
Name: **[Redacted – Personal Information]**
Title: Director

**WELLS FARGO BANK, N.A., CANADIAN WELLS FARGO BANK, N.A., CANADIAN
BRANCH**

Suite 330 - 200 Burrard Street
Vancouver, BC V6C 3L6

BRANCH, as Lender

Attention: **[Redacted – Personal
Information]**
Telefax: **[Redacted – Personal
Information]**

By: (signed) – “*signed*”
Name: **[Redacted – Personal Information]**
Title: Director

By: _____
Name:
Title:

CITIBANK, N.A., CANADIAN BRANCH
4000, 525 8th Avenue S.W.
Calgary, Alberta
T2P 1G1

Attention: Vice President
Telefax: **[Redacted – Personal
Information]**

**CITIBANK, N.A., CANADIAN BRANCH, as
Lender**

By: (signed) – “signed”
Name: **[Redacted – Personal Information]**

Title: Authorized Signatory

By: _____
Name:
Title:

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

**NATIONAL BANK OF CANADA, as
Lender**

Attention: **[Redacted – Personal
Information]**
Email: **[Redacted – Personal Information]**

By: (signed) – “signed”
Name: **[Redacted – Personal
Information]**
Title: Vice-President

By: (signed) – “signed”
Name: **[Redacted – Personal
Information]**
Title: Managing Director

Bank of Montreal
Corporate Banking
885 West Georgia St., Suite 1700
Vancouver, BC V6C 3E8

BANK OF MONTREAL, as Lender

Attention: **[Redacted – Personal
Information]**
Director
Telefax: **[Redacted – Personal
Information]**

By: (signed) – “*signed*”

Name: **[Redacted – Personal Information]**
Title: Director

Royal Bank of Canada
Royal Bank Plaza
P.O. Box 50, 200 Bay Street
5th Floor, South Tower
Toronto, Ontario M5J 2W7

ROYAL BANK OF CANADA, as Lender

Attention: **[Redacted – Personal
Information]**
Managing Director, Corporate
Banking

Email: **[Redacted – Personal
Information]**

By: (signed) – “*signed*”

Name: **[Redacted – Personal Information]**

Title: Authorized Signatory

**SCHEDULE A
LENDERS AND INDIVIDUAL COMMITMENTS**

[Redacted – Commercially sensitive information]

**SCHEDULE B
COMPLIANCE CERTIFICATE**

TO: Canadian Imperial Bank of Commerce, as Administrative Agent
Infrastructure/Technology, Infrastructure and Innovation
595 Bay Street, CPS-7th Floor
Toronto, Ontario M5G 2C2

Attention: Global Agent Administration Services
Fax: **[Redacted – Personal Information]**
Email: **[Redacted – Personal Information]**
- and -

Attention: Large Corporate (Canadian) Credit Monitoring
Facsimile: **[Redacted – Personal Information]**
Email: **[Redacted – Personal Information]**

I, _____, the **[senior financial officer]** of Capstone Mining Corp. and Capstone Copper Corp. (the “**Borrowers**”), hereby certify in such capacity and not in my personal capacity that:

- (a) I am the duly appointed **[senior financial officer]** of Capstone Mining Corp. and Capstone Copper Corp., the Borrowers named in the fourth amended and restated credit agreement dated as of May 12, 2022 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, the “**Credit Agreement**”) among the Borrowers, as borrower, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders and as such I am providing this Certificate for and on behalf of the Borrowers pursuant to the Credit Agreement.
- (b) I am familiar with and have examined the provisions of the Credit Agreement including, without limitation, those of Article 10, Article 11 and Article 13 therein.
- (c) To the best of my knowledge, information and belief and after due inquiry, no Default has occurred and is continuing.

As at or for the relevant period ending _____, the amounts and financial ratios as contained in Sections 11.1(o), (p) and (q) of the Credit Agreement are as follows and detailed calculations thereof are attached hereto:

| | Actual Amount | Required Amount |
|-----------------------------------|--------------------------|------------------------|
| (a) Interest Coverage Ratio | _____ | ≤ 2:5 to 1 |
| (b) Senior Secured Leverage Ratio | _____ | (See Section 11.1(p)) |
| (c) Total Leverage Ratio | _____ | (See Section 11.1(q)) |

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

- (d) As at the last day of the Fiscal Quarter ending <@>, <@>, the Subsidiaries (other than the Excluded Entities) of the Borrowers are as follows:

[To be added]

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

DATED this _____ day of _____, 20____.

(Signature)

(Name - please print)

(Title of Senior Financial Officer)

CALCULATION WORKSHEET**Interest Coverage Ratio**

Indebtedness

| <u>Description</u> | <u>Amount</u> |
|--|---------------|
| Rolling EBITDA | \$ _____ (A) |
| Rolling Interest Expenses | \$ _____ (B) |
| Interest Coverage Ratio | |
| Interest Coverage Ratio (Max. Permitted): | 2.50:1 |

Compliance [Yes]/[No]**Senior Secured Leverage Ratio**

Senior Secured Indebtedness: \$ _____ (A)

Rolling EBITDA: \$ _____ (B)

Senior Secured Leverage Ratio (Actual): _____ (A:B)

Senior Secured Leverage Ratio (Max. Permitted): (See Section 11.1(p))

Compliance [Yes]/[No]**Total Leverage Ratio**

Total Indebtedness: \$ _____ (A)

Rolling EBITDA: \$ _____ (B)

Total Leverage Ratio (Actual): _____ (A:B)

Total Leverage Ratio (Max. Permitted): (See Section 11.1(q))

Compliance [Yes]/[No]

SCHEDULE C
FORM OF ASSIGNMENT

Dated _____, 20__

Reference is made to the fourth amended and restated credit agreement dated as of May 12, 2022 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, the “**Credit Agreement**”), among Capstone Mining Corp. and Capstone Copper Corp., as borrowers, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders (in that capacity, the “**Administrative Agent**”). Terms defined in the Credit Agreement are used herein as therein defined.

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

(a) The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, a _____% interest in and to all of the Assignor’s rights and obligations under the Credit Agreement as it relates to the Credit Facility as of the Effective Date (as defined below) (including, without limitation, such percentage interest in the Assignor’s Individual Commitment as in effect on the Effective Date, the credit extended by the Assignor under the Credit Facility and outstanding on the Effective Date and the corresponding rights and obligations of the Assignor under all of the Credit Documents).

(b) The Assignor (i) represents and warrants that as of the date hereof its Individual Commitment with respect to the Credit Facility is \$_____ (without giving effect to assignments thereof which have not yet become effective, including, but not limited to, the assignment contemplated hereby), and the aggregate outstanding amount of credit extended by it under the Credit Facility is \$_____ (without giving effect to assignments thereof which have not yet become effective, including, but not limited to, the assignment contemplated hereby); (ii) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (iii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any other instrument or document furnished pursuant thereto; (iv) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any of the Subject Entities or the performance or observance by the Obligor of any of their obligations under the Credit Documents or any other instrument or document furnished pursuant thereto; and (v) gives notice to the Administrative Agent and the Borrowers of the assignment to the Assignee hereunder.

(c) The effective date of this Assignment (the “**Effective Date**”) shall be the later of _____ and the date on which a copy of a fully executed copy of this Assignment has been delivered to the Borrowers and the Administrative Agent in accordance with Section 16.5(c) of the Credit Agreement.

(d) The Assignee hereby agrees to the specific Individual Commitment of \$_____ with respect to the Credit Facility and to the address and telefacsimile number set out after its name on the signature page hereof for the purpose of notices as provided in Section 16.1 of the Credit Agreement.

(e) As of the Effective Date (i) the Assignee shall, in addition to any rights and obligations under the Credit Documents held by it immediately prior to the Effective Date, have the rights and obligations under the Credit Documents that have been assigned to it pursuant to this Assignment and (ii) the Assignor shall, to the extent provided in this Assignment, relinquish its rights and be released from its obligations under the Credit Documents.

(f) The Assignor and Assignee shall make all appropriate adjustments in payments under the Credit Documents for periods prior to the Effective Date directly between themselves.

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

[ASSIGNOR]

By: _____
Title:

[ASSIGNEE]

By: _____
Title:

Address

Attention: _____
Telefax: _____

Acknowledged and agreed to as of this _____ day of _____, 20_____.

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Administrative Agent and as
Issuing Lender**

By: _____
Name:
Title:

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

By: _____
Name:
Title:

Acknowledged and agreed to as of this _____ day of _____, 20_____.

¹CAPSTONE MINING CORP.

By: _____
Name:
Title:

²CAPSTONE COPPER CORP.

By: _____
Name:
Title:

¹ If required. See Section 15.5(c).

² If required. See Section 15.5(c).

**SCHEDULE D
FORM OF DRAWDOWN NOTICE**

TO: Canadian Imperial Bank of Commerce, as Administrative Agent
Infrastructure/Technology, Infrastructure and Innovation
595 Bay Street, CPS-7th Floor
Toronto, Ontario M5G 2C2

Attention: Global Agent Administration Services
Fax: **[Redacted – Personal Information]**
Email: **[Redacted – Personal Information]**

RE: Fourth Amended and Restated Credit Agreement dated as of May 12, 2022, (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, , the “**Credit Agreement**”) among Capstone Mining Corp. and Capstone Copper Corp., as borrowers, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably notifies you that it wishes to draw down under the Credit Facility on **[date of drawdown]** as follows:

Borrower Account: _____

Availment Option: _____

Currency: _____

Amount: \$ _____

If Term Benchmark Loan, Interest Period: _____

If Bankers’ Acceptances, term: _____

If Letter, (a copy being attached hereto):³

Type of Letter (financial or performance): _____

Date of Issuance: _____

Named Beneficiary: _____

Maturity Date: _____

³ Attach duly executed Reimbursement Agreement if Letter is being issued on behalf of a Subsidiary.

Currency & Amount: _____

Other Terms: _____

[Financial Letter] [Non-Financial Letter]: _____

[You are hereby irrevocably authorized and directed to pay the proceeds of the drawdown to _____ and this shall be your good and sufficient authority for so doing.]

No Default or Event of Default has occurred and is continuing nor will arise as a result of the extension of credit hereby requested and the undersigned hereby confirms the truth and accuracy of the representations and warranties set forth in Article 10 of the Credit Agreement.

All capitalized terms defined in the Credit Agreement and used herein shall have the meanings ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, 20__.

CAPSTONE MINING CORP.

By: _____
Name:
Title:

CAPSTONE COPPER CORP.

By: _____
Name:
Title:

**SCHEDULE E
FORM OF ROLLOVER NOTICE**

TO: Canadian Imperial Bank of Commerce, as Administrative Agent
Infrastructure/Technology, Infrastructure and Innovation
595 Bay Street, CPS-7th Floor
Toronto, Ontario M5G 2C2

Attention: Global Agent Administration Services
Fax: **[Redacted – Personal Information]**
Email: **[Redacted – Personal Information]**

RE: Fourth Amended and Restated Credit Agreement dated as of May 12, 2022 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, , the “**Credit Agreement**”) among Capstone Mining Corp. and Capstone Copper Corp., as borrowers, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably requests a rollover of outstanding credit under the Credit Facility on **[date of rollover]** as follows:

Term Benchmark Loans

| | |
|--|--------------|
| Maturity Date of Maturing Term Benchmark Loan | _____ |
| Principal Amount of Maturing Term Benchmark Loan | \$_____ |
| Portion Thereof to be Replaced | \$_____ |
| Interest Period of New Term Benchmark Loan | _____ months |

Bankers’ Acceptances

| | |
|--|-------------|
| Maturity Date of Maturing Bankers’ Acceptances | _____ |
| Aggregate Face Amount of Maturing Bankers’ Acceptances | Cdn.\$_____ |
| Portion thereof to be Replaced | Cdn.\$_____ |
| Term of New Bankers’ Acceptances | _____ |

No Default or Event of Default has occurred and is continuing nor will arise as a result of the extension of credit hereby requested and the undersigned hereby confirms the truth and accuracy of the representations and warranties set forth in Article 10 of the Credit Agreement.

All capitalized terms defined in the Credit Agreement and used herein shall have the meaning ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, 20_____.

CAPSTONE MINING CORP.

By: _____
Name:
Title:

CAPSTONE COPPER CORP.

By: _____
Name:
Title:

**SCHEDULE F
FORM OF CONVERSION NOTICE**

TO: Canadian Imperial Bank of Commerce, as Administrative Agent
Infrastructure/Technology, Infrastructure and Innovation
595 Bay Street, CPS-7th Floor
Toronto, Ontario M5G 2C2

Attention: Global Agent Administration Services
Fax: **[Redacted – Personal Information]**
Email: **[Redacted – Personal Information]**

RE: Fourth Amended and Restated Credit Agreement dated as of May 12, 2022 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, , the “**Credit Agreement**”) between Capstone Mining Corp. and Capstone Copper Corp., as borrowers, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably requests a conversion of outstanding credit under the Credit Facility on **[date of conversion]** as follows:

Converting From

Bankers’ Acceptances

Maturity Date of
Bankers’ Acceptances to
be converted: _____
Aggregate Face Amount
of said Bankers’
Acceptances
Portion Thereof to be
Converted: Cdn.\$

Prime Rate Loans

Principal Amount of Cdn.\$
Prime Rate Loan to be
converted:
Portion Thereof to be
Converted: Cdn.\$

**Base Rate Canada
Loans**

Converting Into

Bankers’ Acceptance

Aggregate Face Amount of Cdn.\$
New Bankers’
Acceptances
Term of New Bankers’
Acceptance _____ days

Term Benchmark Loans

Principal Amount of New \$
Term Benchmark Loan
Interest Period of New
Term Benchmark Loan months

Prime Rate Loans

Principal Amount of New Cdn.\$
Prime Rate Loan:

Base Rate Canada Loan

| | | | |
|--|-------|---|----|
| Principal Amount of Base Rate Canada Loan to be converted: | \$ | Principal Amount of New Base Rate Canada Loan: | \$ |
| Portion Thereof to be Converted: | \$ | | |
| Term Benchmark Loans | | | |
| Maturity Date of Term Benchmark Loan to be Converted: | _____ | | |
| Principal Amount of said Term Benchmark Loan: | \$ | | |
| Portion Thereof to be Converted: | \$ | | |

No Default or Event of Default has occurred and is continuing nor will arise as a result of the extension of credit hereby requested and the undersigned hereby confirms the truth and accuracy of the representations and warranties set forth in Article 10 of the Credit Agreement.

Reference is made to the powers of attorney of the Borrowers set forth in Section 3.10 of the Credit Agreement.

All capitalized terms defined in the Credit Agreement and used herein shall have the meaning ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, 20____.

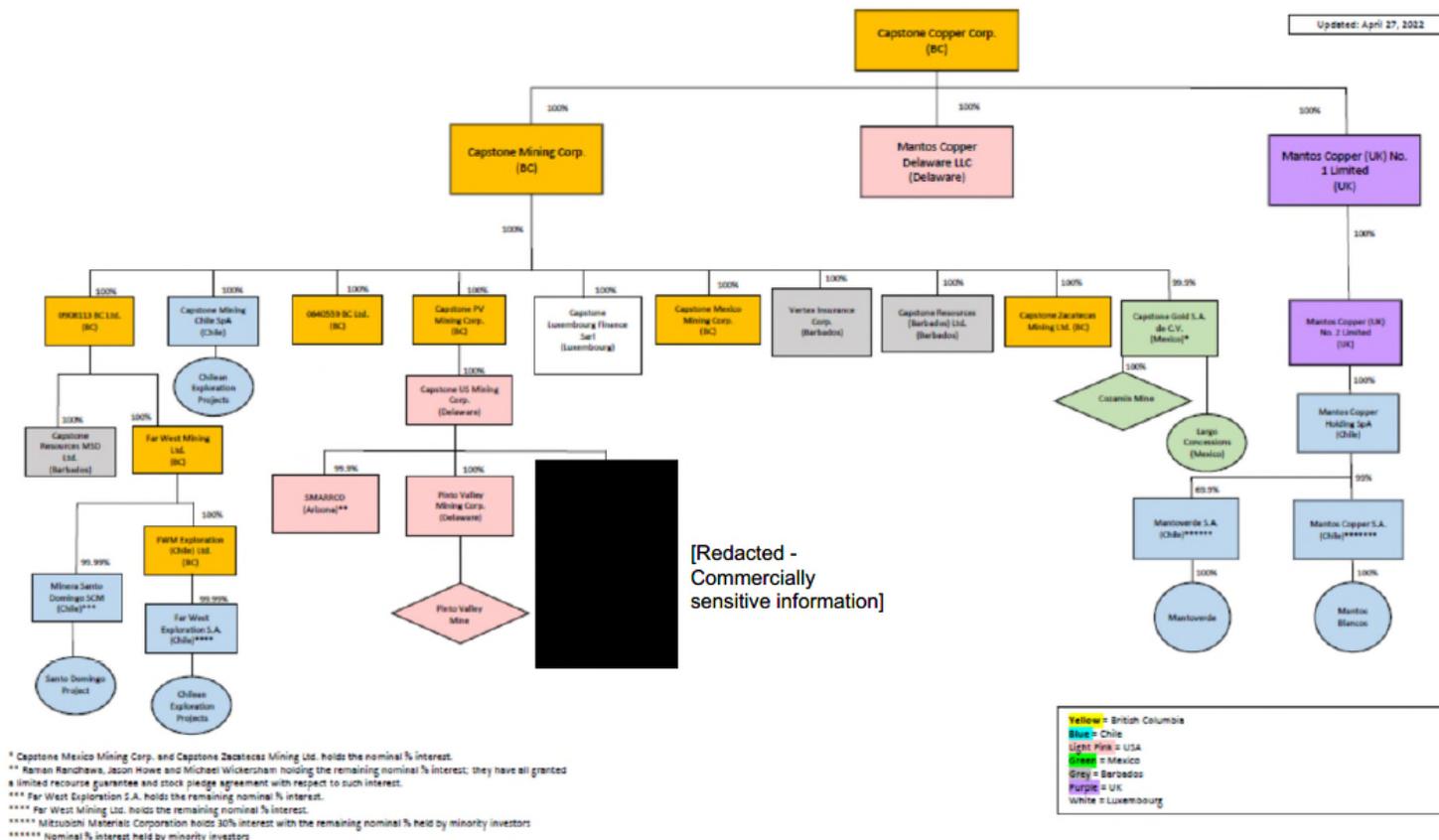
CAPSTONE MINING CORP.

By: _____
Name:
Title:

CAPSTONE COPPER CORP.

By: _____
Name:
Title:

SCHEDULE G CORPORATE STRUCTURE



SCHEDULE H
QUALIFIED AFFILIATE INSTRUMENT OF ADHESION

TO: Canadian Imperial Bank of Commerce, as Administrative Agent
Infrastructure/Technology, Infrastructure and Innovation
595 Bay Street, CPS-7th Floor
Toronto, Ontario M5G 2C2

Attention: Global Agent Administration Services
Fax: [Redacted – Personal Information]
Email: [Redacted – Personal Information]
- and -

Attention: Large Corporate (Canadian) Credit Monitoring
Facsimile: [Redacted – Personal Information]
Email: [Redacted – Personal Information]

AND TO: THE OTHER PARTIES TO THE CREDIT AGREEMENT REFERRED TO BELOW

Reference is made to the fourth amended and restated credit agreement dated as of May 12, 2022 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, , the “**Credit Agreement**”), among Capstone Mining Corp. and Capstone Copper Corp., as borrowers, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders (in that capacity, the “**Administrative Agent**”). Terms defined in the Credit Agreement are used herein as therein defined.

WHEREAS the Credit Agreement provides that an Affiliate of a Lender may become a Qualified Affiliate under the Credit Agreement if it executes this instrument and delivers it to the Administrative Agent;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, the undersigned hereby represents, warrants and covenants as follows:

- (a) By executing this instrument, the undersigned hereby covenants and agrees to be bound by the terms and conditions of the Credit Agreement as a Qualified Affiliate, including all amendments, supplements and additions thereto, deletions therefrom and restatements thereof, solely as relates to the terms and conditions set forth in Article 14 of the Credit Agreement.
- (b) The undersigned hereby acknowledges that it has been provided with a copy of the Credit Agreement.

DATED this _____ day of _____, _____.

**[INSERT NAME OF QUALIFIED
AFFILIATE]**

By: _____
Name:
Title:

**SCHEDULE I
REIMBURSEMENT INSTRUMENT**

TO: Canadian Imperial Bank of Commerce, as Administrative Agent
Infrastructure/Technology, Infrastructure and Innovation
595 Bay Street, CPS-7th Floor
Toronto, Ontario M5G 2C2

Attention: Global Agent Administration Services
Fax: **[Redacted – Personal Information]**
Email: **[Redacted – Personal Information]**

RE: Fourth Amended and Restated Credit Agreement dated as of May 12, 2022 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, the “**Credit Agreement**”) among Capstone Mining Corp. and Capstone Copper Corp., as borrowers, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders

For good and valuable consideration, the undersigned hereby agrees to immediately reimburse each Issuing Lender (as defined in the Credit Agreement) the amount of each and any demand or other request for payment presented to and paid by the relevant Issuing Lender in accordance with each Letter (as defined in the Credit Agreement) issued by such Issuing Lender on behalf of the undersigned (even if, under laws applicable to the rights of the beneficiary of such Letter, a demand or other request for payment is validly presented after expiry of such Letter).

DATED as of the _____ day of _____, _____.

[NAME OF SUBSIDIARY]

By: _____

By: _____

SCHEDULE J
SECURITY DOCUMENTS

1. Amended and restated general security and pledge agreement governed by British Columbia law made as of April 11, 2012 by Capstone Mining in favour of the Administrative Agent.
2. Amended and restated general security and pledge agreement governed by British Columbia law made as of April 11, 2012 by Capstone BC (formerly known as 0807370 B.C. Ltd.) in favour of the Administrative Agent.
3. General security and pledge agreement governed by British Columbia law made as of April 11, 2012 by 0840559 in favour of the Administrative Agent.
4. [Intentionally deleted]
5. [Intentionally deleted]
6. Account control agreement governed by British Columbia law made as of May 9, 2012 by Capstone Mining, Haywood Securities Inc. and the Administrative Agent.
7. [Intentionally deleted]
8. Account control agreement governed by Ontario law made as of April 11, 2012 by Capstone Mining, BMO Nesbitt Burns Inc. and the Administrative Agent.
9. Account control agreement governed by Ontario law made as of April 11, 2012 by Capstone Mining, BMO Nesbitt Burns Inc. and the Administrative Agent.
10. Account control agreement governed by Ontario law made as of April 11, 2012 by Capstone Mining, BMO Nesbitt Burns Inc. and the Administrative Agent.
11. Account control agreement governed by Ontario law made as of April 11, 2012 by Capstone Mexico, BMO Nesbitt Burns Inc. and the Administrative Agent.
12. Account control agreement governed by Ontario law made as of April 11, 2012 by Capstone Mexico, BMO Nesbitt Burns Inc. and the Administrative Agent.
13. Account control agreement governed by Ontario law made as of April 11, 2012 by Capstone Mexico, BMO Nesbitt Burns Inc. and the Administrative Agent.
14. Omnibus confirmation of security made as of October 4, 2013 by each Canadian Obligor in favour of the Administrative Agent.
15. General security and pledge agreement governed by British Columbia law made as of October 4, 2013 by Capstone PV in favour of the Administrative Agent.
16. [Intentionally Deleted].

17. Security agreement governed by Arizona state law made as of October 4, 2013 by Capstone US, Pinto Valley and the Administrative Agent.
18. Stock pledge agreement governed by Arizona state law made as of October 4, 2013 by Capstone US and the Administrative Agent.
19. Deed of Trust, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing governed by Arizona law made as of October 4, 2013 (as amended by an amending agreement dated January 16, 2015) by Pinto Valley for the benefit of the Administrative Agent for and on behalf of the Finance Parties.
20. Blocked account control agreement governed by Ontario law made as of October 4, 2013 by Capstone US, the Administrative Agent and Bank of Montreal.
21. Assigned account agreement governed by Arizona state law made as of October 4, 2013 by Pinto Valley, the Administrative Agent and BMO Harris Bank N.A.
22. Deposit account control agreement governed by Arizona state law dated October 11, 2013 by Pinto Valley, the Administrative Agent and Bank of America, N.A.
23. Pledge without transfer of possession agreement governed by Mexican law dated January 19, 2009, as amended by amending agreements dated October 6, 2011, April 12, 2012, October 4, 2013, January 23, 2015, July 25, 2019, February 19, 2021 and December 22, 2021, entered into between Capstone Mexico and the Administrative Agent.
24. Amended and Restated Stock Pledge Agreement governed by Mexican law originally dated as of February 1, 2012, as amended by amending agreements dated April 12, 2012, October 4, 2013, January 23, 2015, July 25, 2019, February 19, 2021 and December 22, 2021 entered into between Capstone Mining, Capstone BC (formerly known as 0807370 B.C. Ltd.), Capstone Zacatecas Mining Ltd., Capstone Mexico, and the Administrative Agent, as the case may be, relating to all of the capital stock of Capstone Mexico.
25. Mortgage agreement governed by Mexican law dated as of March 12, 2012, as amended by amending agreements dated October 4, 2013 and on or about January 23, 2015, entered into between Capstone Mexico and the Administrative Agent.
26. Guarantee Agreement governed by Ontario law dated as of January 19, 2009, as amended by certain amending agreements governed by Mexican Law dated April 12, 2012, October 4, 2013, January 23, 2015, July 25, 2019 and on or about December 22, 2021, entered into between Capstone Mexico and the Administrative Agent
27. [Intentionally Deleted.]
28. [Intentionally Deleted.]
29. [Intentionally Deleted.]
30. [Intentionally Deleted.]

31. Stock pledge agreement governed by Arizona state law made as of November 1, 2013 by Capstone US and the Administrative Agent.
32. Stock pledge agreements governed by Arizona state law made as of July 25, 2019 by each of Jason Howe, Ramanpreet Randhawa and Michael Wickersham and the Administrative Agent.
33. Security agreement governed by Arizona state law made as of November 1, 2013 by SMARRCO and the Administrative Agent.
34. Leasehold Deed of Trust, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing governed by Arizona law made as of November 1, 2013 by SMARRCO for the benefit of the Administrative Agent for and on behalf of the Finance Parties.
35. Deposit account control agreement governed by Arizona state law made as of November 1, 2013 (as amended by an amending agreement dated June 18, 2014) by Pinto Valley, the Administrative Agent and Bank of America, N.A.
36. Deposit account control agreement governed by Arizona state law made as of November 1, 2013 by SMARRCO, the Administrative Agent and Bank of America, N.A.
37. Share pledge agreement governed by the laws of Luxembourg made as of November 27, 2013 by Capstone Mining, the Administrative Agent and Capstone Luxembourg.
38. Account pledge agreement governed by the laws of Luxembourg made as of November 27, 2013 by Capstone Luxembourg and the Administrative Agent.
39. Account pledge agreement governed by the laws of Luxembourg made as of November 27, 2013 by Capstone Mining and the Administrative Agent.
40. Supplemental deed of charge over bank account governed by the laws of England and Wales made as of November 29, 2013 by Capstone Mining and the Administrative Agent
41. Supplemental deed of charge over bank account governed by the laws of England and Wales made as of November 29, 2013 by Capstone Luxembourg and the Administrative Agent.
42. Account control agreement governed by Ontario law made as of July 31, 2014 by 0840559, BMO Nesbitt Burns Inc. and the Administrative Agent.
43. Charge over Shares governed by Barbados law made on February 19, 2021 by Capstone Mining Corp. over the shares of Capstone Resources (Barbados) Ltd. in favour of the Administrative Agent.
44. Charge over Deposit Accounts governed by Barbados law made on February 19, 2021 by Capstone Resources (Barbados) Ltd. in favour of the Administrative Agent.

45. Debenture/Mortgage governed by Barbados law made on February 19, 2021 by Capstone Resources (Barbados) Ltd. in favour of the Administrative Agent.
46. Deed of Guarantee governed by Barbados law made on February 19, 2021 by Capstone Resources (Barbados) Ltd. in favour of the Administrative Agent.
47. **[Redacted – Commercially sensitive information].**
48. Stock pledge agreement governed by Delaware state law made as of February 19, 2021 by Capstone US and the Administrative Agent.
49. **[Redacted – Commercially sensitive information].**
50. **[Redacted – Commercially sensitive information].**
51. **[Redacted – Commercially sensitive information].**
52. The New Security Documents.

**SCHEDULE K
APPLICABLE RATE**

| | Total Leverage Ratio | Adjusted Term SOFR, BA Stamping Fee or Financial LC Fee margin per annum | Prime Rate Loan or Base Rate Canada Loan interest rate margin per annum | Standby Fee on Available Credit per annum | Non-Financial Letter fee rate per annum |
|-----------|-----------------------------|---|--|--|---|
| Level I | < 1.0x | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] |
| Level II | ≥1.0x to <1.5x | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] |
| Level III | ≥1.5x to <2.0x | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] |
| Level IV | ≥2.0x to <2.5x | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] |
| Level V | ≥2.5x to <3.0x | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] |
| Level VI | ≥3.0x | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] | [Redacted – Commercially sensitive information] |

**SCHEDULE L
AGENT ACCOUNT**

Bank: Canadian Imperial Bank of Commerce, as Administrative Agent
Infrastructure/Technology, Infrastructure and Innovation
595 Bay Street, CPS-7th Floor
Toronto, Ontario M5G 2C2

Attention: Global Agent Administration Services

Fax: **[Redacted – Personal Information]**

Email: **[Redacted – Personal Information]**

Credit to (CAD): **[Redacted – Personal Information]**

Credit to (USD): **[Redacted – Personal Information]**

SCHEDULE M REPLACEMENT LENDER AGREEMENT

Reference is made to the fourth amended and restated credit agreement dated as of May 12, 2022 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, the “**Credit Agreement**”), among Capstone Mining Corp., and Capstone Copper Corp., as borrowers, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders (in that capacity, the “**Administrative Agent**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned in the Credit Agreement.

RECITALS:

Pursuant to Section 8.3(c) of the Credit Agreement, the Borrowers wishes to designate the Replacement Lender defined below as a Lender under the Credit Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Borrowers, the Lenders, the Administrative Agent and <@> (the “**Replacement Lender**”), hereby agree as follows:

- (a) The Credit Agreement shall, henceforth from the date of the execution and delivery of this Replacement Lender Agreement but subject always to Section 8.3(e) and (f) of the Credit Agreement, be read and construed as if the Replacement Lender were party to the Credit Agreement having all the rights and obligations of a Lender under the Credit Agreement having the Individual Commitment set out in paragraph 2 below. Accordingly all references in any Credit Documents to (a) any “Lender” shall be treated as including a reference to the Replacement Lender and (b) the Credit Agreement shall be treated as a reference to the Credit Agreement as supplemented by this Replacement Lender Agreement to the intent that this Replacement Lender Agreement and the Credit Agreement shall be read and construed together as one single agreement.
- (b) The Individual Commitment with respect to the Credit Facility of the Replacement Lender shall be \$<@> and Schedule A of the Credit Agreement shall be deemed to be amended accordingly.
- (c) The Replacement Lender represents and warrants to each of the other parties to the Credit Agreement that it has been provided with a copy of the Credit Agreement.
- (d) The Replacement Lender irrevocably authorizes and directs the Administrative Agent, as its attorney and agent, with full power of substitution and delegation, to complete, execute and deliver on behalf of the Replacement Lender each Credit Document to be executed by it or on its behalf and each agreement, document and instrument to be executed by it or on its behalf pursuant to each Credit Document, and to take such action on its behalf as may be authorized or directed pursuant to any such Credit Document.
- (e) This Replacement Lender Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and

delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Transmission of an executed signature page of this Replacement Lender Agreement by facsimile transmission or by e-mail in pdf format shall be effected as delivery if a manually executed counterpart hereof.

- (f) This Replacement Lender Agreement shall be governed by, and interpreted in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF, the parties hereto have caused this Replacement Lender Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the _____ day of _____, _____.

CAPSTONE MINING CORP., as
Borrower

<@>, as Replacement Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

CAPSTONE COPPER CORP., as
Borrower

By: _____
Name:
Title:

By: _____
Name:
Title:

**CANADIAN IMPERIAL BANK OF
COMMERCE**, as
Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

**SCHEDULE N
PERMITTED JURISDICTIONS**

| | |
|----------------|--------------|
| Australia | Bulgaria |
| Canada | Colombia |
| Denmark | Italy |
| Finland | Lithuania |
| Germany | Panama |
| Hong Kong | South Africa |
| Liechtenstein | Azerbaijan |
| Luxembourg | Iceland |
| Norway | India |
| Sweden | Philippines |
| Switzerland | Spain |
| United Kingdom | Uruguay |
| Austria | Greece |
| Netherlands | Hungary |
| United States | Portugal |
| Abu Dhabi | Turkey |
| Belgium | Romania |
| France | Serbia |
| New Zealand | Barbados |
| Chile | |
| China | |
| Czech Republic | |
| Estonia | |
| Japan | |
| Saudi Arabia | |
| Taiwan | |
| Israel | |
| South Korea | |
| Slovakia | |
| Botswana | |
| Malaysia | |
| Poland | |
| Slovenia | |
| Ireland | |
| Kazakhstan | |
| Latvia | |
| Mexico | |
| Peru | |
| Thailand | |
| Brazil | |

SCHEDULE O
FORM OF ACCORDION AGREEMENT

Reference is made to the fourth amended and restated credit agreement dated as of May 12, 2022 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, the “**Credit Agreement**”) among Capstone Copper Corp. and Capstone Mining Corp. (the “**Borrowers**”), as borrowers, the Lenders named therein and Canadian Imperial Bank of Commerce, as administrative agent of the Lenders (in that capacity, the “**Administrative Agent**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned in the Credit Agreement.

RECITALS:

Pursuant to Section 2.7(d) of the Credit Agreement, the Borrowers wish to designate the Accordion Lender defined below as a Lender under the Credit Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Borrowers, the Lenders, the Administrative Agent and <@> (the “**Accordion Lender**”), hereby agree as follows:

- (i) The Credit Agreement shall, henceforth from the date of the execution and delivery of this Accordion Agreement but subject always to Section 2.7(f) of the Credit Agreement, be read and construed as if the Accordion Lender were party to the Credit Agreement having all the rights and obligations of a Lender under the Credit Agreement having the Individual Commitment with respect to the Credit Facility set out in paragraph (ii) below. Accordingly all references in any Credit Documents to (a) any “Lender” shall be treated as including a reference to the Accordion Lender and (b) the Credit Agreement shall be treated as a reference to the Credit Agreement as supplemented by this Accordion Agreement to the intent that this Accordion Agreement and the Credit Agreement shall be read and construed together as one single agreement.
- (ii) The Individual Commitment of the Accordion Lender with respect to the Credit Facility, and the address and the email address for the purposes of notices as provided in Article 16.1 of the Credit Agreement, are set out in the attached Annex I, and Schedule A of the Credit Agreement shall be deemed to be amended accordingly.
- (iii) The Accordion Lender represents and warrants to each of the other parties to the Credit Agreement that it has been provided with a copy of the Credit Agreement.
- (iv) The Accordion Lender irrevocably authorizes and directs the Administrative Agent, as its attorney and agent, with full power of substitution and delegation, to complete, execute and deliver on behalf of the Accordion Lender each Credit Document to be executed by it or on its behalf and each agreement, document and instrument to be executed by it or on its behalf pursuant to each Credit Document, and to take such action on its behalf as may be authorized or directed pursuant to any such Credit Document.

- (v) This Accordion Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Transmission of an executed signature page of this Accordion Agreement by e-mail in pdf format shall be effected as delivery if a manually executed counterpart hereof.
- (vi) This Accordion Agreement shall be governed by, and interpreted in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF, the parties hereto have caused this Accordion Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the _____ day of _____, _____.

CAPSTONE COPPER CORP.

as Borrower

By: _____

Title: _____

_____ as Accordion Lender

By: _____

Title: _____

CAPSTONE MINING CORP.

as Borrower

By: _____

Title: _____

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Administrative Agent**

By: _____

Title: _____

By: _____

Title: _____

**SCHEDULE P
EXISTING LETTERS**

N/A.