

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re	:	Chapter 11
	:	
SANTA FE GOLD CORPORATION, <i>et al.</i>,	:	Case No. 15-11761 (MFW)
	:	
Debtors.¹	:	Joint Administration Requested
	:	
	X	

**DEBTORS' MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO
OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THE
USE OF CASH COLLATERAL, (III) GRANTING LIENS, INCLUDING PRIMING
LIENS, AND SUPERPRIORITY CLAIMS, (IV) GRANTING ADEQUATE
PROTECTION, (V) SCHEDULING A FINAL HEARING, AND
(VI) GRANTING RELATED RELIEF**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby move (the “Motion”) for entry of an interim order (the “Interim Order”) and a final order (the “Final Order”): (i) authorizing the Debtors to enter into senior secured priming and superpriority post-petition financing (the “DIP Facility”) with Waterton Global Value, L.P., by its investment manager, Altitude Management Limited, as lender under the DIP Credit Agreement (in such capacity, the “DIP Lender”); (ii) authorizing the Debtors to use “cash collateral,” (the “Cash Collateral”) as such term is defined in section 363 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); (iii) granting liens, including priming liens, and superpriority administrative claims pursuant to section 364 of the Bankruptcy Code; (iv) granting adequate protection to Waterton Global Value, L.P., in its capacity as provider of the Senior Pre-Petition Indebtedness (the “Senior Pre-Petition Lender”)

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Santa Fe Gold Corporation (4315); Azco Mica, Inc. (8577); The Lordsburg Mining Company (4474); and Santa Fe Gold (Barbados) Corporation (N/A). The Debtors’ mailing address is 1219 Banner Mine Road, Lordsburg, New Mexico 88045.

and Sandstorm Gold (Barbados) Ltd., in its capacity as provider of the Second Lien Pre-Petition Indebtedness (“Sandstorm Barbados” or the “Second Lien Pre-Petition Lender”); (v) scheduling a final hearing with respect to the relief requested herein pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (vi) granting related relief. In support of the Motion, the Debtors rely upon the *Declaration of Jakes Jordaan in Support of Chapter 11 Petitions and First Day Relief* (the “First Day Declaration”) filed contemporaneously herewith and incorporated herein by reference, and respectfully state as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Debtors consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363, 364, 507, and 552 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rule 4001-2.

Relief Requested²

3. By this Motion, the Debtors request entry of the Interim Order, substantially in the form attached hereto as **Exhibit I**, and the Final Order (together with the Interim Order, the “DIP Orders”) that, among other things:³

- a. authorizes Santa Fe Gold Corporation (the “Borrower”) to obtain, and each of the other Debtors (collectively, the “Guarantors”, and the Borrower and Guarantors being referred to collectively as the “Obligors”) to unconditionally guaranty, jointly and severally, the Borrower’s obligations in respect of the DIP Facility, which if approved on a final basis would consist of post-petition financing in a total amount of \$1,580,148, plus the Roll Up Loans, provided pursuant to the terms of (x) the Interim Order and, on a final basis, the Final Order, (y) that certain *Debtor-In-Possession Credit Agreement* (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the “DIP Credit Agreement”), a true and correct copy of which is attached to the Interim Order as **Exhibit B**, by and among the Borrower, the Guarantors, and the DIP Lender, and (z) any and all other Credit Documents (as defined in the DIP Credit Agreement, and together with the DIP Credit Agreement, collectively, the “DIP Loan Documents”);
- b. authorizes the use of the proceeds of the DIP Facility to, among other things, make payments, as permitted by the Approved Budget, for operating expenses, general and ordinary purposes of the Debtors, and for other administrative expenses, including budgeted professional fees, all subject to the conditions set forth in the final DIP Loan Documents and in the Interim Order;
- c. approves borrowings between the entry of this Interim Order and the entry of the Final Order (as defined below) in an aggregate principal amount not more than \$361,547 plus the Initial Roll Up Amount (defined below) (the “Interim Amount”), and authorizes the Guarantors to unconditionally guaranty such obligations jointly and severally;
- d. approves the conversion of all outstanding obligations arising under or in connection with the Supplemental Advance, including, without limitation,

² Capitalized terms used, but not yet defined, have the meaning given to them below. Those terms not defined herein have the meaning given to them in the DIP Loan Documents and the DIP Orders, as applicable.

³ The terms of the DIP Facility as described in this Motion are for illustrative purposes only. This Motion is not intended to modify or supersede any of the terms of the DIP Facility or the proposed Interim Order. In the event of any conflict or inconsistency between this Motion and either the DIP Loan Documents or the proposed Interim Order, then the DIP Loan Documents or the Interim Order, as applicable, shall be controlling.

outstanding principal and accrued interest and fees thereon (the “Initial Roll Up Amount”) into Roll Up Loans;

- e. approves the terms of, and authorizes the Debtors to execute and deliver, and perform under, the DIP Loan Documents and authorizes and directs the Debtors to perform such other and further acts as may be required in connection with the DIP Loan Documents and the Interim Order;
- f. grants to the DIP Lender, (x) the DIP Liens on all of the DIP Collateral pursuant to sections 364(c)(1), 364(c)(2), and 364(d)(1) of the Bankruptcy Code, which DIP Liens are senior to and prime all other liens and (y) pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority administrative claims having recourse to all pre-petition and post-petition property of the Debtors’ estates, now owned or hereafter acquired and the proceeds of each of the foregoing, including, upon entry of the Interim Order, any Debtor’s rights under section 549 of the Bankruptcy Code and the proceeds thereof, and upon entry of the Final Order, the proceeds of Avoidance Actions;
- g. authorizes the Debtors to use the Cash Collateral, including Cash Collateral in which the DIP Lender and the Senior Pre-Petition Lender have a lien or other interest, in each case whether existing on the date hereof (the “Petition Date”), arising pursuant to the Interim Order or otherwise;
- h. vacates the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim Order;
- i. grants the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender, as of the Petition Date and in accordance with the relative priorities set forth in the Interim Order, the Adequate Protection Liens and the Adequate Protection Priority Claims;
- j. schedules a final hearing on the DIP Motion (the “Final Hearing”) to be held no later than thirty-five (35) calendar days after the entry of the Interim Order to consider entry of the Final Order that grants all of the relief requested in the DIP Motion on a final basis and which shall be in form and substance (including with respect to any subsequent modifications to the form or substance made in response to objections of other creditors or the Court) acceptable to the DIP Lender;
- k. waives, upon entry of the Final Order, certain rights of the Debtors to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code; and

1. provides for the immediate effectiveness of the Interim Order and waives any applicable stay (including under Bankruptcy Rule 6004) to permit such immediate effectiveness.

Background

I. Introduction and Case Background

4. On the date hereof, the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors are operating their respective businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases and no committees have been appointed or designated.

5. Information regarding the Debtors, their corporate history, and their assets and liabilities are set forth in the First Day Declaration.

II. Pre-Petition Financing

6. Prior to the Petition Date, the Debtors were involved in a number of secured and unsecured financing transactions. These transactions, and the amount currently outstanding in connection therewith, are described below.

Description	Approximate Amount Outstanding as of the Petition Date	Secured/Unsecured
Waterton Senior Secured Gold Stream Credit Agreement	\$12.8 million	Secured, first priority lien on substantially all assets and stock of subsidiaries
Waterton Gold and Silver Supply Agreement	As of the Petition Date, the Debtors are still determining the amount of this obligation.	Secured, first priority lien on substantially all assets and stock of subsidiaries
Sandstorm Gold Supply Agreement	\$6.5 million	Secured, second priority lien on gold production from the Summit-Silver Gold Project
IGS Senior Subordinated Convertible	\$3.9 million	Unsecured

Notes		
Tyhee Bridge Loan Agreement	\$2.4 million	Unsecured
Individual Convertible Unsecured Notes	\$556,300	Unsecured
Canarc Bridge Loan Agreement	\$250,000	Unsecured
Convertible Unsecured Notes	\$225,400	Unsecured

A. Waterton Senior Secured Gold Stream Credit Agreement

7. On December 23, 2011, the Debtors entered into that certain *Senior Secured Gold Stream Credit Agreement* (the “Pre-Petition Credit Agreement”) with the Senior Pre-Petition Lender. The Pre-Petition Credit Agreement provided for \$25.0 million in financing, consisting of two \$10.0 million, non-revolving tranches and a \$5.0 million, revolving working capital facility. On December 23, 2011, the Debtors closed on the first \$10.0 million tranche of the Pre-Petition Credit Agreement. Proceeds from the initial \$10.0 million tranche of the Pre-Petition Credit Agreement were used to retire the Debtors’ \$5.0 million senior secured bridge loan provided by Victory Park Capital Advisors, LLC, in addition to the payment of transaction fees and expenses. The Debtors utilized the remaining net proceeds for operations and working capital for the Summit Silver-Gold Project.⁴ The second \$10 million tranche was never drawn because it was earmarked to fund a strategic acquisition that the Debtors did not consummate.

8. Pursuant to a series of guarantees, security agreements, deeds of trust, a mortgage, and a stock pledge agreement, the obligations under the Pre-Petition Credit Agreement are secured by a first-priority lien on the stock of Santa Fe’s subsidiaries and liens covering substantially all of the Debtors’ assets.

⁴ The Summit Silver-Gold Project consists of (a) a fully-permitted, underground silver-gold mine located in Grant County, New Mexico—near Duncan, Arizona—on the New Mexico-Arizona border (the “Summit Mine”), (b) a floatation ball mill in Hidalgo County, New Mexico near Lordsburg, New Mexico (the “Lordsburg Mill”), and (c) related property consisting of approximately 1,500 acres of wholly-owned patented, leased patented and unpatented mining claims.

9. On October 9, 2012, the Debtors entered into an amendment to the Pre-Petition Credit Agreement, which modified the due dates of certain principal payments. The amendment provided for principal payments of \$1,082,955 in October of 2012; \$500,000 in November of 2012; \$0 in December of 2012; \$0 in January of 2013; and \$3,852,275 in February of 2013. All other principal payments remained unchanged and interest payments continued to be due monthly. The Debtors have not made the required principal or interest payments under the Pre-Petition Credit Agreement since February, 2013, and March, 2015, respectively. Additionally, all amounts owed by the Debtors to the Senior Pre-Petition Lender that were not paid when due bear interest, from the date on which each such amount is due until each such amount is paid in full, payable on demand, at 14% per annum.

10. On June 30, 2013, the Debtors signed a waiver of default letter (the “Waiver Letter”) with the Senior Pre-Petition Lender whereby they agreed to sell, convey, assign, and transfer to the Senior Pre-Petition Lender certain accounts receivable as consideration for a waiver for non-payment under the Pre-Petition Credit Agreement, and also made certain representations, warranties, and covenants regarding such accounts receivable. The accounts receivable transferred to the Senior Pre-Petition Lender were applied as payments towards outstanding interest payables first, with any remaining receivables transferred being treated as payment towards other indebtedness under the Pre-Petition Credit Agreement, including principal. As of December 31, 2013, the valuation of receivables sold to the Senior Pre-Petition Lender under the Waiver Letter was finalized at \$1,018,056.

11. The Pre-Petition Credit Agreement was further amended on August 14, 2015 to, among other things, provide the Debtors with \$200,000 in additional funding.

12. As of the Petition Date, approximately \$12.8 million (including accrued, unpaid, and penalty interest) is outstanding under the Pre-Petition Credit Agreement.

B. Waterton Gold and Silver Supply Agreement

13. Simultaneously with their entry into the Pre-Petition Credit Agreement, certain of the Debtors and the Senior Pre-Petition Lender entered into that certain *Gold and Silver Supply Agreement* (the “Pre-Petition Gold Supply Agreement”) whereby the relevant Debtors would sell refined gold and silver to the Senior Pre-Petition Lender for the life the Summit Mine. The gold subject to the Pre-Petition Gold Supply Agreement includes all gold originating from the Summit Mine that is not subject to the Sandstorm Gold Supply Agreement (defined below). The sales price for refined gold and silver under the Pre-Petition Gold Supply Agreement is based upon a formulation that considers the London Bullion Market Association PM fix settlement price for each respective metal, less a discount of three percent for each metal, and a transaction cost of \$1.75 per ounce for gold and \$0.07 per ounce for silver. The discount on gold and silver is only applicable until the latter of either three years after all outstanding amounts due under the Pre-Petition Credit Agreement have been repaid or the date on which the Company has sold 125,000 gold equivalent ounces under the Pre-Petition Gold Supply Agreement.

14. As of the Petition Date, the Debtors are still in the process of determining their obligations under the Pre-Petition Gold Supply Agreement. In connection with the Pre-Petition Credit Agreement, the Senior Pre-Petition Lender’s claims against the Debtors pursuant to the Pre-Petition Gold Supply Agreement are secured by a first-priority lien on the stock of Santa Fe’s subsidiaries and substantially all of the Debtors’ assets.

C. Sandstorm Gold Supply Agreement

15. On September 9, 2009, the Debtors entered into that certain *Purchase Agreement* (the “Sandstorm Gold Supply Agreement”) with Sandstorm Barbados to deliver to Sandstorm

Barbados a portion of the life-of-mine gold production (excluding all silver production) from the Summit Mine. In connection therewith, Lordsburg Mining, but none of the other Debtors, granted Sandstorm Barbados a charge, as described in the Sandstorm Gold Supply Agreement, over all of the “assets, property and undertaking” in respect of the Summit Mine. On December 23, 2011, Sandstorm Barbados, the Senior Pre-Petition Lender, Lordsburg Mining, and Santa Fe Barbados (the “Sandstorm Agreement Parties”) executed that certain *Intercreditor Agreement* that provides that, among other things, Sandstorm Barbados’ interests shall at all times remain inferior, junior, and subordinate to the Senior Pre-Petition Lender’s liens and interests.

16. Under the Sandstorm Gold Supply Agreement, certain of the Debtors received an upfront deposit of \$4.0 million and would receive future ongoing payments equal to the lesser of \$400 per ounce or the prevailing market price (the “Fixed Price”) for each ounce of gold delivered pursuant to the DIP Credit Agreement for the life of the mine. The Debtors purchase and deliver refined gold in order to satisfy the requirements of the Sandstorm Gold Supply Agreement and receive the Fixed Price per ounce in cash from Sandstorm Barbados. The difference between the prevailing market price and the Fixed Price per ounce for gold delivered is credited against the upfront deposit of \$4.0 million until that obligation is reduced to zero.

17. On March 29, 2011, the Sandstorm Agreement Parties executed an amendment to the Sandstorm Gold Supply Agreement that extended the original completion guarantee date from April of 2011 to June 30, 2012, and put in place a completion guarantee test. In exchange for the amended completion guarantee date, the Debtors agreed to deliver an additional 700 ounces of gold at equivalent sales terms over and above the original agreement. Under the terms of the amendment, the delivery of the additional gold was to be made prior to June 30, 2011.

18. On June 28, 2011, the Sandstorm Agreement Parties executed a second amendment to the Sandstorm Gold Supply Agreement that extended the delivery date for the additional 700 ounces of gold to October 15, 2011. In exchange for the deferred delivery date, the Debtors agreed to pay a per diem of 3 ounces of gold for each day the additional gold under the first amendment remained outstanding past June 30, 2011, which could be no later than October 15, 2011. On August 9, 2011, the Debtors satisfied the requirements of the second amendment by delivering 817 ounces of gold. The net cost of delivering the gold after receiving payment from Sandstorm Barbados of \$400 per ounce delivered was \$1,075,785.

19. On June 30, 2012, the Debtors calculated the completion guarantee payable provided by the first amendment to the Sandstorm Gold Supply Agreement. Based upon the provisions of the Sandstorm Gold Supply Agreement and the related completion guarantee test, incremental financing charges totaling \$504,049 were recognized and accrued at June 30, 2012. These accrued charges, combined with the remaining uncredited liability for the upfront deposit, totaled \$3,359,873 as of March 31, 2015.

20. Under the Sandstorm Gold Supply Agreement, as of March 31, 2015, the Company has a recorded obligation of 3,709 ounces of undelivered gold valued at approximately \$2.9 million, net of the Fixed Price of \$400 per ounce to be received upon delivery.

D. IGS Convertible Secured Notes

21. In October and November 2012, the Debtors received from International Goldfields Limited (“IGS”) advances totaling \$3.9 million (Australian), representing cash proceeds of \$3,985,000 (Australian), in connection with a contemplated business combination with IGS, as discussed below in greater detail. The funds were advanced by way of two convertible secured notes (each a “Convertible Secured Note”). The Convertible Secured Notes bear interest at a rate of 6% per annum and have a three-year term.

22. In June 2013, the Debtors negotiated for an additional capital injection from IGS up to an additional \$2.0 million (Australian). In connection therewith, the Debtors issued a third Convertible Secured Note to IGS. The third Convertible Secured Note bears interest at a rate of 10% per annum, has a maturity date of October 31, 2015, and is secured by the Debtors' contractual rights in certain real property; however, the Debtors' relevant contractual rights expired in November of 2014 and thus the obligations under the third Convertible Secured Note are unsecured. Upon a refinancing of the funding provided under the Pre-Petition Credit Agreement, the third Convertible Secured Note is repayable in cash or stock of Santa Fe, at IGS's election. The Debtors have received advances totaling \$1,250,000 in connection with the third Convertible Secured Note.

23. As of March 31, 2015, the total outstanding principal balance under the three Convertible Secured Notes is \$2,998,710 and accrued interest was \$436,642.

E. Tyhee Bridge Loan Agreement

24. In conjunction with a proposed merger with Tyhee Gold Corp. ("Tyhee"), described below, Tyhee and the Debtors entered into a bridge loan agreement (the "Tyhee Bridge Loan Agreement"), pursuant to which Tyhee was obligated to advance up to \$3.0 million to the Debtors (the "Tyhee Bridge Loan"). However, Tyhee advanced only \$1,745,092 under the Tyhee Bridge Loan. The Tyhee Bridge Loan bears interest at 2% per month on the outstanding principal amount. Tyhee has given purported notice to Santa Fe that the Company is in default under the Tyhee Bridge Loan, and has demanded that Santa Fe repay \$1,745,082 in principal and \$569,986 in accrued interest and merger expenses.

F. Individual Senior Subordinated Convertible Notes

25. On October 30, 2007, the Debtors completed the placement of \$450,000 of 10% senior subordinated convertible notes (the "Individual Senior Notes"). The Individual Senior

Notes were placed with three accredited investors for \$150,000 each and bear interest at 10% per annum. The notes had a term of 60 months, at which time all remaining principal and interest were due.

26. In connection with the Individual Senior Notes issuance, Santa Fe issued 180,000 five-year warrants, reflecting a warrant for each \$2.50 invested in the Individual Senior Notes. Each warrant gave the relevant holder the right to purchase one share of common stock at a price of \$1.25 per share. At the option of the holders of the Individual Senior Notes, the outstanding principal and interest were convertible at any time into shares of the Company's common stock at a conversion price of \$1.25 per share. The Individual Senior Notes were to be automatically converted into common stock if the weighted average closing sales price of the stock exceeded \$2.50 per share for ten consecutive trading days.

27. On October 31, 2012, the Individual Senior Notes became due and payable. On January 15, 2013, the maturity dates for the Individual Senior Notes were extended for a period of two years from the original maturity dates. Additionally, the convertible price of the Individual Senior Notes was reduced to \$0.40 and the automatic conversion price of \$2.50 was reduced to \$0.80. In connection with the extension of the Individual Senior Notes, 562,500 warrants were issued with a strike price of \$0.40 and term of two years from the original maturity dates. On October 23, 2014, 375,000 of these warrants expired and, on November 20, 2014, the remaining 187,500 expired.

28. As of March 31, 2015, the outstanding principal balance on the Individual Senior Notes was \$450,000 and, along with any unamortized discount, is classified as current. Both principal and interest on the Individual Senior Notes are currently due and payable.

G. Canarc Bridge Loan

29. As described in greater detail below, on July 15, 2014, Santa Fe entered into a Share Exchange Agreement (the “Share Exchange Agreement”) with Canarc Resource Corp., a British Columbia, Canada corporation whose common shares are listed on the TSX Exchange under the symbol CCM (“Canarc”). In connection with the Share Exchange Agreement the Debtors and Carnac entered into that certain interim financing facility pursuant to which Canarc advanced the Company \$220,000. The loan bears interest at a rate of 1% a month and was due and payable upon the closing of a gold bond financing by the Debtors or January 15, 2015, if the gold bond financing did not close. As noted below, the financing failed to close and the entire amount of the loan is outstanding and in default.

H. Convertible Unsecured Notes

30. Finally, the Debtors are a party to two agreements under which they have issued convertible unsecured notes. As of the Petition Date, approximately \$225,400 (including accrued and unpaid interest) is outstanding under convertible unsecured notes.

III. Negotiation of the DIP Facility

31. As noted in the First Day Declaration, upon being made aware of the Debtors’ restructuring efforts and the investment banking assistance contemplated by Canaccord Genuity Inc. (“Canaccord”), the Senior Pre-Petition Lender, the Debtors’ most significant, and senior secured, prepetition lender offered to provide the Debtors with financing to support a sale process within the context of a chapter 11 proceeding, and proposed serving as a “stalking horse” bidder for the Debtors’ assets in a sale under section 363 of the Bankruptcy Code. Prior to this point, the Debtors and their advisors had considered potential sources of debtor-in-possession (“DIP”) financing aside from the Senior Pre-Petition Lender, and even inquired as to whether the Senior Pre-Petition Lender would agree to allow a priming DIP loan provided by a third party

lender. the Senior Pre-Petition Lender advised the Debtors that it would not consent to a priming DIP facility. During the Debtors' efforts to identify alternative financing, the Debtors' advisors contacted several potential DIP lenders, including not only those that were familiar with the Debtors' assets and industry, but also certain financial investors with the ability to promptly evaluate potential investment opportunities. Unfortunately, despite these efforts, the Debtors were unable to obtain any alternative proposals for DIP financing.

32. Accordingly, because of the expedited need to commence the Chapter 11 Cases in light of the Debtors' cash position, and the lack of interest from the numerous other financing options that had been consulted, the Debtors concluded that they would be unable to obtain any alternative proposals for DIP financing.

33. The Debtors then engaged in good-faith, arm's length negotiations regarding the DIP Credit Agreement with the Senior Pre-Petition Lender. During this time, the Debtors continued to explore whether additional financing might be available, other than the Senior Pre-Petition Lender, and those efforts were unavailing.

34. During the course of the Debtors' negotiations with the Senior Pre-Petition Lender, the Debtors, among other things, explored the Senior Pre-Petition Lender's willingness to provide financing without the requested fees, milestones and other lender-protections that are included in the DIP Facility. The Debtors' efforts culminated in the proposed DIP Facility, which is described below. After the Debtors' good-faith and arm's length efforts, the Debtors believe that, under the circumstances of these cases and the Debtors' financial condition, the Debtors have obtained terms that are fair and reasonable and are the best available to the Debtors. Equally important, the Debtors believe that the DIP Facility will provide the Debtors with the funds that are immediately needed in order to maintain and preserve the value of the Debtors' assets and also

will provide the Debtors' the necessary liquidity to conduct an open process to sell their assets and obtain maximum value for their stakeholders.

The Proposed DIP Facility

35. The significant terms of the DIP Credit Agreement and the other DIP Loan Documents to be executed in connection therewith and to which the DIP Facility refers are as follows:

OVERVIEW OF THE DIP FACILITY	
Borrower:	Santa Fe Gold Corporation
Guarantors:	Santa Fe Gold (Barbados) Corporation, The Lordsburg Mining Company, Azco Mica Inc.
DIP Lender:	Waterton Global Value, L.P., by its investment manager, Altitude Management Limited
DIP Facility:	Upon the entry of the Final Order, senior secured priming and superpriority post-petition financing in a total amount of \$1,580,148, plus the Roll Up Loans.
Uses of Proceeds/Roll-Up:	<p>The DIP Facility will be used to, among other things, (i) make payments, as permitted by the Approved Budget, for operating expenses, general and ordinary purposes of the Debtors, and for other administrative expenses, including budgeted professional fees, all subject to the conditions set forth in the final DIP Loan Documents and in the Interim Order and (ii) convert the Initial Roll Up Amount into Roll Up Loans. Concurrent with the funding by the DIP Lender of the first draw under the Term Loan, the Initial Roll-Up Amount will be converted into Roll Up Loans. Concurrent with the funding by the DIP Lender of the second draw under the Term Loan, the remaining Pre-Petition Obligations will be converted into Roll Up Loans</p> <p>The initial Approved Budget is attached to the Interim Order as <u>Exhibit A</u>.</p> <p><i>Interim Order Recitals ii & iv and DIP Credit Agreement § 2.3(b) & § 10.1(u)</i></p>
Termination Date:	The date that is the earliest of (i) the Maturity Date; (ii) the acceleration of all or any portion of the Obligations; (iii) thirty-five days after the entry by the Bankruptcy Court of the Interim Order, unless the Final Order shall have been entered and become effective prior thereto; (iv) the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the Lender; (v) the dismissal of any of the Chapter 11 Cases unless otherwise consented to in writing by the Lender; (vi) the effective date of any Debtor's plan of reorganization confirmed in the Chapter 11 Cases; (vii) the closing of a sale of substantially all the assets of the

Debtors, (viii) the filing of a plan of reorganization in the Cases by any party other than the Debtors without the consent of the Lender; (ix) the Debtors seek or propose to sell all or substantially all the assets of the Debtors and such sale does not provide for payment in full of all the Obligations without the consent of the Lender, and (x) the exercise by Sandstorm Barbados of the “Assignment and Purchase Option” (as defined in the Intercreditor Agreement).

Interim Order ¶ 14 and DIP Credit Agreement § 1.1

**Use of Cash Collateral;
Entities with an Interest in
Cash Collateral:**

The Debtors are authorized to use the Cash Collateral—including Cash Collateral in which the DIP Lender, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender have a lien or other interest, in each case whether existing on the Petition Date, arising pursuant to the Interim Order or otherwise—to fund, in each case only to the extent specified in the Approved Budget (subject to the permitted variance), (a) operating expenses and other amounts for general and ordinary course purposes of the Credit Parties, (b) current interest and fees payable pursuant to the Credit Documents, (c) make adequate protection payments required under the Interim Order and the Final Order, and (d) such other administrative payments, including the budgeted professional fees, as may be authorized and approved by the DIP Lender under the Interim Order, the Final Order or any subsequent order of the Bankruptcy Court

Interim Order Recital vii and DIP Credit Agreement § 10.1(u)(i).

Interest Rates/Default Rate: Interest Rate: 12% per annum.

Default Rate: The Interest Rate plus 2%.

DIP Credit Agreement §§ 1.1 & 3.2(c)

Fees:

Structuring Fee. On the date of the First Drawing under the Term Loan, the Borrower shall pay to the Lender a one-time cash structuring fee in the amount of 2% of the Term Loan Commitment.

Termination Fee. On the Termination Date (or if sooner, the date of any prepayment of the Term Loan), the Borrower shall pay to the Lender a termination fee in the amount of 3% of the Term Loan Commitment.

Extension Fee. On any date which is at least 10 days but not more than 30 days prior to the Initial Maturity Date, the Lender and the Borrower may agree in writing to extend the Maturity Date to a date that is six months following the Initial Maturity Date, subject to (i) the written approval of the Lender, which approval shall be in its sole and absolute discretion and (ii) the payment to the Lender of a non-refundable fee in the amount of 2% of the aggregate principal amount of the Loans and Term Loan Commitment being extended (the “Extension Fee”), which fee shall be earned in full upon the granting of any such extension and be payable in full upon the Termination Date, without further application to or order of the Bankruptcy Court.

DIP Credit Agreement § 2.1 & 3.3

Professional Fees and Expenses. The Debtors are obligated to pay the professional fees and expenses of the Senior Pre-Petition Lender and the

DIP Lender.

Interim Order ¶¶ 2(f) and 3(f)

Conditions to Borrowing:

Certain customary conditions precedent to extensions of credit, including, among other things, (a) execution of the DIP Loan Documents; (b) entry of the DIP Orders; (c) payment of certain fees and expenses required by the DIP Loan Documents; (d) receipt by the Lender of a Borrowing Notice; (e) entry by the Court of all “first day orders,” each in a form and substance reasonably satisfactory to the DIP Lender; and (f) no Default shall have occurred or be existing.

DIP Credit Agreement § 8.1(a) and 8.2(a)

DIP Collateral:

As identified in Section 7.1 of the Credit Agreement, each Debtor’s right, title and interest in, to and under all property and assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Credit Party, whether owned or consigned by or to, or leased from or to, such Credit Party, and regardless of where located, but expressly excluding the “Excluded Collateral” as defined in Section 7.1 of the Credit Agreement, and all other “property of the estate” (as defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, in each case wherever located. For the avoidance of doubt, Avoidance Actions are Excluded Collateral but, after entry of the Final Order, the proceeds of Avoidance Actions will not be Excluded Collateral.

Interim Order ¶ 2(h) & DIP Credit Agreement § 7.1

Liens and Priorities of DIP Obligations:

DIP Liens: As security for the DIP Obligations, effective as of the Petition Date, the following security interests and liens, which shall immediately and without any further action by any Person be valid, binding, permanent, perfected, continuing, enforceable, and non-avoidable upon the entry of the Interim Order, are granted by each Debtor to the DIP Lender, on all of its right, title and interest in, to and under the DIP Collateral:

(I) pursuant to section 364(c)(2) of the Bankruptcy Code, a fully perfected, binding, continuing, enforceable, and non-avoidable first priority lien on all unencumbered DIP Collateral, including, subject to the entry of the Final Order, the proceeds of the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state or municipal law (collectively, the “Avoidance Actions”, which for avoidance of doubt, excludes Debtors’ claims and causes of action under section 549 of the Bankruptcy Code or similar state or municipal law and the proceeds of each of the foregoing), whether received by judgment, settlement, or otherwise;

(II) pursuant to section 364(d)(1) of the Bankruptcy Code, a fully perfected, binding, continuing, enforceable and non-avoidable first priority, senior priming lien on all other DIP Collateral (including Cash

Collateral), which DIP Lien (x) shall be senior to the Adequate Protection Liens and (y) shall be senior to and prime any and all valid, perfected, enforceable and non-avoidable pre-petition and post-petition liens, tax liens or other non-consensual liens in existence as of the Petition Date and properly perfected prior to the Petition Date (the liens referenced in clauses (x) and (y), collectively, the “Primed Liens”) and shall be subject only to the Carve-Out.

Interim Order ¶ 2(h) and DIP Credit Agreement § 7.9

Superpriority Administrative Claim Status: In addition to the DIP Liens granted in the DIP Credit Agreement, effective immediately upon entry of the Interim Order, all of the DIP Obligations shall constitute allowed superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the Carve-Out in accordance with the Interim Order, over all administrative expense claims, adequate protection and other diminution claims (including the Adequate Protection Priority Claims (as defined below)), priority claims and other unsecured claims, and all other claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or any other provision of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the “DIP Superpriority Claims”). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof, including, subject to the entry of the Final Order, Avoidance Actions and the proceeds thereof. Other than as expressly provided in the DIP Credit Agreement and/or the Interim Order with respect to the Carve-Out, no costs or expenses of administration, including professional fees allowed and payable under sections 328, 330, or 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claims or the DIP Obligations, or with any other claims of the DIP Lender arising under the DIP Loan Documents and/or the Interim Order.

Interim Order ¶ 2(i)

Carve-Out:

Subject to the terms and conditions contained in the Interim Order, each of the DIP Liens, the DIP Superpriority Claims, the Waterton Pre-Petition Liens, the Sandstorm Pre-Petition Liens, the Adequate Protection Liens, and the Adequate Protection Claims shall be subject to payment of the Carve-Out in accordance with the terms of the Interim Order:

Carve-Out. For purposes of the Interim Order, “Carve-Out” means the

sum of (i) the aggregate amount of any reasonable and unpaid fees, costs and expenses that were accrued or incurred prior to the Carve-Out Date by the professionals retained by the Debtors or any professionals retained by the Committee (collectively, the “Professionals”) to the extent allowed by an order of the Bankruptcy Court and in compliance with the Approved Budget, plus (ii) those reasonable fees, costs and expenses incurred by Professionals after the Carve-Out Date and subsequently allowed by order of the Bankruptcy Court and in compliance with the Approved Budget, plus (iii) the Success Fee of Canaccord Genuity Inc. as set forth (and defined) in its engagement letter arising from of a sale of substantially all the assets of the Debtors to the extent such Success Fee is allowed by the Bankruptcy Court at any time, whether by interim order, procedural order or otherwise, plus (iv) fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930; provided that (x) the amounts described in items (i) and (ii) of this paragraph shall not exceed \$350,000 in the aggregate (the “Carve-Out Cap”) and (y) following the Carve-Out Date any amounts paid to Professionals by any means will reduce the Carve-Out on a dollar-for-dollar basis.

Interim Order ¶ 8 and DIP Credit Agreement § 1.1

**Senior Pre-Petition
Lender’s and Second Lien
Pre-Petition Lender’s
Adequate Protection:**

In consideration for the use of the Waterton Pre-Petition Collateral (including Cash Collateral) and the Sandstorm Pre-Petition Collateral,⁵ and solely to the extent that the Debtors have value in the DIP Collateral, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender shall receive, as applicable, the following adequate protection (collectively referred to as the “Pre-Petition Adequate Protection”):

Senior Adequate Protection Liens. To the extent there is a diminution in value of the Senior Pre-Petition Lender’s interests in the Waterton Pre-Petition Collateral (including Cash Collateral) from and after the Petition Date, whether or not resulting from the use, sale, or lease by the Debtors of the applicable Waterton Pre-Petition Collateral (including Cash Collateral), the granting of the DIP Superpriority Claims, the granting of the DIP Liens, the imposition of the Carve-Out, or the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code (a “Diminution in Waterton Pre-Petition Collateral Value”), the Senior Pre-Petition Lender is granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, replacement security interests in and liens and mortgages upon all of the DIP Collateral, including, subject to the entry

⁵ All obligations of the Debtors to the Second Lien Pre-Petition Lender arising under the Sandstorm Gold Supply Agreement and the other agreements and documents executed or delivered in connection therewith (each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Sandstorm Documents”) are referred to herein as the “Second Lien Pre-Petition Indebtedness.” Pursuant to the Sandstorm Documents, the Second Lien Pre-Petition Lender was granted a charge, as described in the Sandstorm Gold Supply Agreement, over all of the assets, property and undertaking of The Lordsburg Mining Company in respect of the Summit Mine to secure The Lordsburg Mining Company’s guarantee obligations under the Sandstorm Gold Supply Agreement (the “Sandstorm Pre-Petition Collateral” and the liens securing the Sandstorm Pre-Petition Collateral, the “Sandstorm Pre-Petition Liens”).

of the Final Order, the proceeds of Avoidance Actions (such adequate protection replacement Liens, the “Senior Adequate Protection Liens”), which Senior Adequate Protection Liens on such DIP Collateral shall be junior and subordinate only to the DIP Liens and the Waterton Pre-Petition Liens and subject to the Carve-Out.

Second Lien Adequate Protection Liens. To the extent there is a diminution in value of the Second Lien Pre-Petition Lender’s interests in the Sandstorm Pre-Petition Collateral from and after the Petition Date, whether or not resulting from the use, sale, or lease by the Debtors of the applicable Sandstorm Pre-Petition Collateral, the granting of the DIP Superpriority Claims, the granting of the DIP Liens, the subordination of the Sandstorm Pre-Petition Liens thereto, the imposition of the Carve-Out, or the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code (a “Diminution in Sandstorm Pre-Petition Collateral Value”), the Second Lien Pre-Petition Lender is granted, subject to the terms and conditions set forth in the Interim Order, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, replacement security interests in and liens and mortgages upon the portion of the DIP Collateral solely to the extent of and in a manner that is consistent with the nature, type and scope of the Sandstorm Pre-Petition Collateral (such adequate protection replacement Liens, the “Second Lien Adequate Protection Liens” and, together with the Senior Adequate Protection Liens, the “Adequate Protection Liens”), which Second Lien Adequate Protection Liens on such DIP Collateral shall be junior and subordinate to the DIP Liens, the Senior Adequate Protection Liens and the Waterton Pre-Petition Liens, and subject to the Carve-Out.

Senior Adequate Protection Priority Claims. To the extent of Diminution in Waterton Pre-Petition Collateral Value, the Senior Pre-Petition Lender is further granted allowed superpriority administrative claims (such adequate protection superpriority claims, the “Senior Adequate Protection Priority Claims”), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and priority over other unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order to the extent provided in Paragraph 9), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, junior only to the DIP Superpriority Claims and subject to the Carve-Out, and payable from and having recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof (including, subject to entry of the Final Order, all proceeds of Avoidance Actions); provided, however, that the Senior Pre-Petition Lender shall not receive or retain any payments, property, or other amounts in respect of the Senior Adequate Protection Priority Claims unless and until all DIP Obligations have been paid in full. Subject to the relative priorities set forth above, the Senior Adequate Protection Priority Claims against each Debtor shall be allowed and enforceable against each Debtor and its estate on a joint and

several basis.

Second Lien Adequate Protection Priority Claims. To the extent of Diminution in Sandstorm Pre-Petition Collateral Value, the Second Lien Pre-Petition Lender is further granted allowed superpriority administrative claims (such adequate protection superpriority claims, the “Second Lien Adequate Protection Priority Claims” and, together with the Senior Adequate Protection Priority Claims, the “Adequate Protection Priority Claims”), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and priority over other unsecured claims, in each case solely against Debtor The Lordsburg Mining Company or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order to the extent provided in Paragraph 9), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, junior only to the DIP Superpriority Claims and the Senior Adequate Protection Priority Claims and subject to the Carve-Out, and payable from and having recourse to the pre-petition and post-petition property of Debtor The Lordsburg Mining Company and proceeds thereof; provided, however, that the Second Lien Pre-Petition Lender shall not receive or retain any payments, property, or other amounts in respect of the Second Lien Adequate Protection Priority Claims unless and until all DIP Obligations and Senior Adequate Protection Priority Claims have been paid in full. Subject to the relative priorities set forth above, the Second Lien Adequate Protection Priority Claims against Debtor The Lordsburg Mining Company shall be allowed and enforceable only against Debtor The Lordsburg Mining Company.

Priority of Adequate Protection Liens and Adequate Protection Priority Claims. The Adequate Protection Liens and the Adequate Protection Priority Claims (A) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code or, subject to entry of the Final Order, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any liens or claims of any Debtor or any direct or indirect subsidiary thereof against any Debtor or any of such Debtor’s property, and (C) shall be valid, binding, perfected and enforceable against any trustee or any other estate representative elected or appointed in the Chapter 11 Cases or any Successor Cases, and/or upon the dismissal of any of the Cases. The Adequate Protection Liens shall be junior to the DIP Liens and the Senior Pre-Petition Lender’s liens arising under any Senior Pre-Petition Credit Documents, and senior to any other liens, including, without limitation, to any other adequate protection replacement liens. Finally, for the avoidance of doubt the Second Lien Adequate Protection Liens and the Second Lien Adequate Protection Priority Claims may only be asserted against Debtor The Lordsburg Mining Company and shall be junior to the Senior Adequate Protection

Liens and the Senior Adequate Protection Priority Claims.

Interest and Professional Fees. Without limiting any rights of the Senior Pre-Petition Lender under section 506(b) of the Bankruptcy Code, which rights are preserved by the Interim Order, and in consideration, and as a requirement, for obtaining the Senior Pre-Petition Lender's consent to the entry of the Interim Order and the Debtors' consensual use of Cash Collateral as provided in the Interim Order and as addition adequate protection, (i) the Senior Pre-Petition Lender's fees, costs, expenses, and charges (including the reasonable fees, costs, and expenses of counsel and financial advisors for the Senior Pre-Petition Lender) to the extent, and at the times, payable under the Senior Pre-Petition Credit Documents, including any unpaid fees, costs and expenses accrued prior to the Petition Date, and (ii) all of the interest accruing under the Senior Pre-Petition Credit Documents at the default rate(s) set forth therein, in the case of each of sub-clauses (i) and (ii) above, whether or not budgeted in the Approved Budget, and without further notice, motion, or application to, order of, or hearing before, the Court, shall accrue during these Chapter 11 Cases, shall be deemed to be included in the Senior Pre-Petition Indebtedness and, other than the Initial Roll Up Amount, subject to the entry of the Final Order, shall be converted into Roll Up Loans in accordance with the DIP Credit Agreement; provided, however, that any payment, accrual or conversion into Roll UP Loans of post-petition interest or reimbursement of post-petition fees, costs and expenses under the Senior Pre-Petition Credit Documents shall be reapplied to reduce the principal amount of the Senior Pre-Petition Indebtedness to the extent the Court determines in a final, non-appealable order that the Senior Pre-Petition Lender is not entitled to such payment, accrual or reimbursement pursuant to section 506(b) of the Bankruptcy Code.

Right to Seek Additional Adequate Protection. The Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Senior Pre-Petition Lender to seek additional or alternative forms of adequate protection at any time; provided that any such additional or alternative adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Lender granted under the Interim Order and the DIP Loan Documents.

Interim Order ¶ 3

**Financial, Reporting, and
Other Covenants:**

Article 10 of the DIP Credit Agreement contains covenants customary and appropriate for DIP financings of this type and substantially similar to covenants set forth in the Senior Pre-Petition Credit Documents, including, but not limited to, (a) provision of and compliance with the Approved Budget, (b) reporting of financial information, (c) operation and maintenance of properties, (d) limitation on incurrence of indebtedness and disposition of assets, and (e) maintenance of and prohibitions against liens on properties.

DIP Credit Agreement Article 10

Events of Default:

(a) Non-Payment. A Credit Party fails to make payment of any Obligation (whether for principal, interest, costs, fees, expenses or any

other amount due hereunder or under any other Credit Document) when due and payable pursuant to any of the terms of a Credit Document (whether on a payment date, by prepayment, on demand or otherwise);

(b) **Misrepresentation.** Any representation or warranty or certification made or deemed to be made by a Credit Party or any of its respective directors or officers in any Credit Document shall prove to have been incorrect, incomplete or misleading in any respect when made or deemed to be made;

(c) **Breach of Covenants.** A Credit Party fails to perform, observe or comply with:

(i) any of the covenants or any other provision or obligation contained in Section 10.1(n), Section 10.1(u), Section 10.1(v), Section 10.1(w), Section 10.1(x), Section 10.1(y) or Section 10.2 of the DIP Credit Agreement;

(ii) the covenant or any other provision or obligation contained in Section 10.1(cc) of the DIP Credit Agreement, and such failure continues for a period of twenty-five (25) days, provided in such case the Credit Party is proceeding diligently to remedy such failure; or

(iii) any other covenant or any other provision or obligation contained in any Credit Document to which it is a party and such failure is not capable of being remedied or, if capable of being remedied, continues for a period of five (5) Business Days, provided in such case the Credit Party is proceeding diligently to remedy such failure and the Lender is not prejudiced thereby;

(d) **Cross-Default.** A Credit Party (or any Subsidiary of any Credit Party) fails to pay the principal of, premium, if any, interest on, or any other amount relating to, any of its Debt entered into (x) Pre-Petition and which, subject to the entry of the Final Order, is rolled up after the Petition Date or is not subject to the automatic stay provisions of Section 362 of the Bankruptcy Code or (y) Post-Petition, the principal of which Debt exceeds \$100,000 (or the equivalent amount in any other currency) when such amount becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise); or any other event occurs or condition exists if its effect is to accelerate, or permit the acceleration of such Debt; or any such Debt shall be (or may be) declared to be due and payable prior to its stated maturity;

(e) **Material Contracts.** A Credit Party fails to perform or observe any material term, covenant or agreement contained in any Material Contract on its part to be performed or observed (other than as a result of the Cases); or any Material Contract is amended without the prior written consent of the Lender and such amendment could have a Material Adverse Effect; or any Material Contract is terminated or revoked or permitted to lapse (other than in accordance with its terms and not as a result of default); or any party to any Material Contract delivers a notice of termination or revocation in respect of such Material Contract and such Material Contract is subsequently terminated or revoked, in each

case without the written consent of Lender;

(f) **Judgments.** Any judgment or order for the payment of money in excess of \$100,000 (or the equivalent amount in any other currency) is rendered against a Credit Party (or any Subsidiary of any Credit Party);

(g) **Unenforceability of Pre-Petition Documentation.** Except as a result of an Effect of Bankruptcy (including the second conversion of the Roll Up Loan in accordance with the DIP Credit Agreement):

(i) any material provision of any Pre-Petition Credit Document shall cease to be in full force and effect;

(ii) any Pre-Petition Credit Document is revoked or terminated, becomes unlawful or is declared null and void by a Governmental Entity of competent jurisdiction; or

(iii) any Pre-Petition Credit Document becomes unenforceable, is repudiated or the enforceability thereof is contested or disaffirmed by or on behalf of any party thereto other than the Pre-Petition Lender.

(h) **Dissolution.** Any application is made for, or order, judgment or decree is entered against any Credit Party decreeing, the winding-up or dissolution, or any similar process of such Credit Party and, in the case of an application, such application remains undischarged or unstayed for any period or a resolution is passed for the winding-up, dissolution or liquidation of any of the Credit Parties (or any Subsidiary of any Credit Party);

(i) **Security Imperiled.** Any Credit Document is declared by a court or tribunal of competent jurisdiction to be void, invalid, illegal or unenforceable or the validity, legality or enforceability thereof is contested by any Credit Party or any other Person party thereto (other than the Lender), or any Credit Party or any other Person party thereto denies that it has any or further obligations thereunder;

(j) **Agreed Priority of Collateral.** If any one or more of the Credit Documents ceases to be in full force and effect or any DIP Lien is no longer effective to create in favor of the Lender, a legal, valid and perfected Lien in any Collateral with the Agreed Priority;

(k) **Change of Control.** A Change of Control occurs;

(l) **Material Adverse Effect.** Any event, circumstance or condition which could reasonably be expected to have a Material Adverse Effect has occurred;

(m) **Expropriation/Condemnation.** An Expropriation Event shall have occurred;

(n) **Regulatory Action.** Other than an order of the Bankruptcy Court pursuant to the Cases consented to by the Lender in writing, any Governmental Entity shall take or attempt to take any action with respect to a Credit Party, or with respect to any Mining Property or any Collateral subject to the Security Documents, which has, had or could reasonably be expected to have a Material Adverse Effect on a Credit

Party or the ability of the Borrower or any other Credit Party to satisfy its Obligations in a timely manner unless such action is set aside, dismissed or withdrawn within five days of its institution or such action is being contested in good faith, its effect is stayed during such contest, the Credit Parties are allowed to continue the development and operation of each Mining Property during such period, and the same would not be expected to have a Material Adverse Effect;

(o) Project Operations. Without the prior written consent of the Lender, any material Mining Property, or any portion thereof, shall be abandoned or terminated, or exploration not contemplated by the Approved Budget, development or operation of the Projects or any other material Mining Property shall be commenced;

(p) Financial Statements. The audited financial statements of any Credit Party (or any Subsidiary of any Credit Party) are qualified in any respect by such Credit Party's or such Subsidiary's independent auditors, other than as a result of the Cases. For certainty, a qualification from an independent auditor that the Credit Party may not be able to remain a going concern due to a working capital deficit or the existence of the Cases, shall not constitute an Event of Default.

(q) Reorganization Matters. Any of the following occurs in any Chapter 11 Case:

(i) the bringing of a motion or taking of any action by a Debtor: (A) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to the DIP Credit Agreement; (B) to grant any Lien other than Permitted Liens upon or affecting any Collateral; (C) except as provided in the Interim Order, Final Order or Approved Budget, as the case may be, to use cash collateral under Section 363(c) of the Bankruptcy Code without the prior written consent of the Lender;

(ii) the entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not contain a provision for termination of the DIP Facility and repayment in full in cash of all the Obligations on or before the effective date of such plan or plans;

(iii) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Credit Documents or the Interim Order or the Final Order without the written consent of the Lender or the filing by a Debtor of a motion for reconsideration with respect to the Interim Order or the Final Order;

(iv) the Interim Order is not entered on or before the date that is three days after the Petition Date;

(v) the Final Order is not entered on or before the date that is 35 days after the date of entry of the Interim Order;

(vi) the payment of any Pre Petition claim unless

(A) reflected in the Approved Budget or (B) authorized pursuant to an order approved by the Bankruptcy Court and made with the written consent of the Lender, which consent shall not be unreasonably withheld;

(vii) the allowance of any claim or claims under Sections 506(c) or 552(b) of the Bankruptcy Code or otherwise against the Collateral;

(viii) the appointment of an interim or permanent trustee in any Chapter 11 Case or the appointment of a receiver or an examiner in any Chapter 11 Case with expanded powers to operate or manage the financial affairs, the business or reorganization of a Debtor;

(ix) the sale, without the written consent of the Lender, of all or substantially all of a Debtor's assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise that does not provide for payment in full in cash of the Obligations;

(x) the dismissal of any Chapter 11 Case, or the conversion of any Chapter 11 Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or a Debtor shall file a motion or other pleading seeking the dismissal of any Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise;

(xi) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor other than the Lender to proceed against any assets of a Debtor with an aggregate value in excess of \$20,000;

(xii) the entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations;

(xiii) the failure of a Debtor to perform any of its obligations under the Interim Order or the Final Order;

(xiv) the entry of an order in any of the Chapter 11 Cases granting any other super-priority claim or Lien equal or superior to the DIP Lien of the Lender;

(xv) a Debtor engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of the DIP Facility or the Pre-Petition Obligations or the Liens on or security interests in the assets of such Debtor securing the DIP Facility or the Pre-Petition Obligations, including seeking to equitably subordinate or avoid the liens securing the Pre-Petition Obligations provided, however, it shall not constitute an Event of Default if a Debtor responds to diligence or discovery requests from, or provides basic loan information with respect to the Pre-Petition Obligations to, a party in interest or pursuant to an order of the Bankruptcy Court and provides prior written

notice to the Lender of its intention or obligation to do so;

(xvi) a Debtor engages in or supports any investigation or asserts any claim or cause of action (or supports the assertion of the same) against the Lender or the Pre-Petition Lender; provided, however, it shall not constitute an Event of Default if a Debtor responds to diligence or discovery requests from, or provides basic loan information with respect to the Pre-Petition Obligations to a party in interest or pursuant to an order of the Bankruptcy Court and provides prior written notice to the Lender of its intention or obligation to do so;

(xvii) any Person shall seek a Section 506(a) Determination with respect to the Pre-Petition Obligations that is unacceptable to the Pre-Petition Lender;

(xviii) the entry of an order extending any exclusive right that any Debtor may have to propose a plan more than 120 days after the Petition Date, or to solicit votes or to seek confirmation of a plan on a date more than 180 days after the Petition Date, in either case without the written consent of the Lender;

(xix) any Material Contract is rejected in any of the Cases without the prior consent of the Lender;

(xx) the occurrence of the Termination Date; or

(xxi) any Milestone is not achieved within the applicable time frame set forth in the definition of "Milestone", or the entry of an order of the Bankruptcy Court that precludes any such Milestone from being achieved within the applicable time frame.

DIP Credit Agreement § 11.1

Milestones

(a) no later than 30 days following the Petition Date, the Debtors shall have filed with the Bankruptcy Court a motion including procedures for the sale of substantially all the assets of the Debtors, which procedures are reasonably likely to result in the consummation of such sale no later than the Maturity Date and are in form and substance acceptable to Lender;

(b) no later than 30 days following the filing of the motion referred to in the foregoing clause (a), the Bankruptcy Court shall have entered a final order approving bid procedures for the sale of substantially all the assets of the Debtors, which procedures provide that (x) the Lender may credit bid all or any portion of the Obligations in connection with such sale pursuant to Section 363(k) of the Bankruptcy Code and (y) Lender shall have a right to act as a "stalking horse" bidder in such sale, and which procedures are otherwise in form and substance acceptable to Lender; and

(c) no later than 55 days following the entry of the order referred to in the foregoing clause (b), the Bankruptcy Court shall have entered a final order approving the final sale of substantially all the assets of the Debtors and, if the Lender is not the successful bidder in such sale, the sale shall provide for the payment in full in cash of the Obligations;

(d) no later than 21 days following the entry of the order referred to in the foregoing clause (c), the final sale of substantially all the assets of the Debtors shall have closed.

DIP Credit Agreement § 1.1

Automatic Stay and Remedies:

The automatic stay imposed under section 362(a) of the Bankruptcy Code is vacated and/or modified pursuant to the terms of the Interim Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Liens and the DIP Liens and to incur all liabilities and obligations to the DIP Lender, under the DIP Loan Documents, the DIP Facility, and the Interim Order, (ii) authorize the DIP Lender and the Senior Pre-Petition Lender to retain and apply payments made in accordance with the DIP Loan Documents and the Senior Pre-Petition Credit Documents, (iii) to permit each of the DIP Lender and the Senior Pre-Petition Lender to perform any act authorized under the Interim Order and the DIP Loan Documents, and (iv) otherwise to the extent necessary to implement and effectuate the provisions of the Interim Order and the DIP Loan Documents.

Interim Order ¶ 5

(a) If any Event of Default has occurred and is continuing, the Lender shall, notwithstanding the provisions of Section 362 of the Bankruptcy Code (the automatic stay of Section 362 of the Bankruptcy Code shall be deemed modified and vacated to permit the Lender to exercise its remedies under the DIP Credit Agreement and the Credit Documents), without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court: (i) terminate the DIP Facility; (ii) reduce the Term Loan Commitment from time to time; (iii) declare all or any portion of the Obligations due and payable; (iv) increase the rate of interest applicable to the Obligations to the Default Rate; (v) direct any or all of the Credit Parties to sell or otherwise dispose of any or all of the Collateral on terms and conditions acceptable to the Lender pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct any Credit Party to assume and assign any lease or executory contract included in the Collateral to the Lender's designees in accordance with and subject to Section 365 of the Bankruptcy Code); (vi) enter onto the premises of any Credit Party in connection with an orderly liquidation of the Collateral; and (vii) exercise any rights and remedies provided to the Lender the Credit Documents or at law or equity, including all remedies provided under the UCC and pursuant to the Interim Order and the Final Order.

(b) Notwithstanding anything to the contrary contained in the DIP Credit Agreement, the Lender shall not be permitted to exercise any remedy (other than those described in clauses (i), (ii), (iii) and (iv) of Section 11.2(a) of the DIP Credit Agreement) unless the Lender shall have given three Business Days written notice (the "Notice Period") to the Debtors, counsel to the Committee and the Office of the U.S. Trustee during which Notice Period the Debtors and the Committee may seek relief from the Bankruptcy Court to re-impose or continue the automatic

stay with respect to any remedy other than those described in clauses (i), (ii), (iii) and (iv) of Section 11.2(a) of the DIP Credit Agreement; *provided*, that in any hearing after the giving of the aforementioned notice, the only issue that may be raised by the Debtors and the Committee being whether, in fact, an Event of Default has occurred and is continuing.

DIP Credit Agreement § 7.2

Indemnification:

The DIP Credit Agreement provides for the Debtors to indemnify and hold harmless each Indemnified Person for the liabilities more fully set forth in section 12.5 of the DIP Credit Agreement.

DIP Credit Agreement § 12.5

Debtors' Stipulations and Challenge Period:

Paragraph D of the Interim Order contains acknowledgements and stipulations by the Debtors regarding the extent, validity, enforceability and other matters related to the Senior Pre-Petition Indebtedness.

These acknowledgements and stipulations are subject to a Challenge by certain parties in interest, subject to paragraph 15 of the Interim DIP Order, which, among other things, establishes the Challenge Deadline of (x) with respect to a Creditors' Committee, sixty (60) calendar days from the formation of a Creditors' Committee, and (y) with respect to other parties in interest with requisite standing other than the Debtors or a Creditors' Committee, seventy five (75) calendar days following the date of entry of the Interim Order.

Interim Order ¶¶ D & 7

Release:

Subject only to Paragraph 7 of the Interim Order, entry of the Interim Order shall effectuate the following release: The Credit Parties acknowledge, effective upon entry of the Interim Order and subject to the terms thereof, that the Credit Parties have no defense, counterclaim, offset, recoupment, cross complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Credit Parties' liability to repay Lender as provided in the DIP Credit Agreement or any other Credit Document or to seek affirmative relief or damages of any kind or nature from Lender. Subject to the Orders, the Credit Parties, each in their own right on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, and any Affiliates and any Person acting for and on behalf of, or claiming through them, fully, finally and forever release and discharge Lender, its Affiliates, and their respective past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them of and from any and all past and present actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental,

consequential and punitive damages, including, without limitation, those payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to the DIP Credit Agreement, any other Credit Document, the Interim Order, the Final Order or the transactions contemplated by the DIP Loan Documents, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing. Notwithstanding anything in Section 7.13 of the DIP Credit Agreement to the contrary, nothing in the DIP Credit Agreement shall be deemed to be a release of the Lender from its obligations under the DIP Credit Agreement or any other Credit Document, and nothing in the DIP Credit Agreement shall be deemed to limit or modify any rights granted to third parties under the Orders.

Interim Order ¶¶ 6 and DIP Credit Agreement § 7.13

**Section 506(c) and 552(b)
Waivers; Marshalling:**

Subject to the entry of the Final Order, (i) no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Waterton Pre-Petition Collateral or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the DIP Lender or the Senior Pre-Petition Lender, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender or the Senior Pre-Petition Lender; and (ii) in no event shall the DIP Lender or the Senior Pre-Petition Lender be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Waterton Pre-Petition Collateral, as applicable.

Interim Order ¶ 9

**Lien on Avoidance Action
Proceeds:**

The DIP Liens shall extend to the proceeds of Avoidance Actions immediately upon entry of the Final Order. Subject to entry of the Final Order, the Adequate Protection Liens shall extend to proceeds of Avoidance Actions. No liens are proposed to be granted on the Avoidance Actions themselves.

Interim Order ¶ 2(h), 3(a) and (b)

Local Rule 4001-2 Disclosures

36. The Debtors believe that the following financing terms are required to be identified pursuant to Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2 and, as

discussed herein, are necessary and justified in the context of, and the circumstances relating to, the Chapter 11 Cases.

- a. Stipulations to Validity, Perfection, and Amount of Pre-Petition Liens; Waiver of Pre-Petition Claims. Local Rule 4001-2(a)(i)(B) requires the disclosure of provisions or findings of fact that bind the estate with respect to validity, amount, or perfection of liens or a waiver of claims, without first giving certain parties in interest an opportunity to conduct an investigation. Although the DIP Loan Documents include certain stipulations by the Debtors related to the validity, amount, and perfection of the Pre-Petition Obligations, the Interim Order provides for the earlier to occur of (a) the date that is seventy-five (75) days after entry of the Interim Order, and (b) the date that is sixty (60) days after the appointment of the official committee, if any, as the challenge period for such stipulations. *See* Interim Order ¶¶ D & 7
- b. Waiver of Section 506(c) Surcharge. Local Rule 4001-2(a)(i)(C) requires disclosure of provisions that seek to waive, without notice, whatever rights the estate may have under section 506(c) of the Bankruptcy Code. The DIP Loan Documents provide for a waiver of rights under section 506(c) upon entry of the Final Order. *See* Interim Order ¶ 9.
- c. Liens on Avoidance Actions. Local Rule 4001-2(a)(i)(D) requires disclosure of provisions that immediately grant the prepetition secured creditor liens on avoidance actions. Pursuant to the DIP Loan Documents, the DIP Lender is granted liens, subject to the entry of the Final Order, on the proceeds of claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state or municipal law and the proceeds of each of the foregoing (which for avoidance of doubt, excludes Debtors' claims and causes of action under section 549 of the Bankruptcy Code or similar state or municipal law and the proceeds of each of the foregoing), whether received by judgment, settlement, or otherwise upon the entry of the Interim Order. *See* Interim Order ¶ 2(h)(I).
- d. Roll-Up of First Lien Obligations. Local Rule 4001-2(a)(i)(E) requires disclosure of provisions that use post-petition loans to repay prepetition debt. The DIP Loan Documents provide for the "roll-up" of the outstanding obligations arising under or in connection with the Supplemental Advance, including, without limitation, outstanding principal and accrued interest and fees, immediately upon entry of the Interim Order. Upon the funding of the second draw under the DIP Facility following entry of the Final Order, the remaining Senior Pre-Petition Indebtedness shall be converted into the Roll-Up Loan. In each instance, the amounts rolled up shall be subject to the Challenge Period

established under Paragraph 7 of the Interim Order. *See* Interim Order ¶ 2(c); DIP Credit Agreement § 2.3(b).

- e. Treatment of Professionals. Local Rule 4001-2(a)(i)(F) requires disclosure of provisions that provide disparate treatment to professionals retained by the creditors' committee from professionals retained by the Debtors. The Carve-Out being provided for in the Interim Order is applicable to both the Debtors' and the official unsecured creditors' committee's professionals, if any. *See* Interim Order ¶ 8(a). Accordingly, all professionals retained by these estates will be treated equally, subject to the Approved Budget. *Id.*
- f. Priming Liens. Local Rule 4001-2(a)(i)(G) requires disclosure of provisions that prime any secured liens without the consent of the lienholder. The DIP Lien shall be senior to and prime any and all valid, perfected, enforceable and non-avoidable pre-petition and post-petition liens, tax liens or other non-consensual liens in existence as of the Petition Date and properly perfected prior to the Petition Date including, for the avoidance of doubt, those of the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender. *See* Interim Order ¶ 2(h)(II). The Senior Pre-Petition Lender has consented to the DIP Lien priming its existing lien. Even if the Second Lien Pre-Petition Lender has not expressly consented to the priming of its existing lien as of the entry of the Interim Order, the Sandstorm Pre-Petition Liens are adequately protected pursuant to the terms of the Interim Order. *See* Interim Order ¶ H.
- g. Equities of the Case. Local Rule 4001-2(a)(1)(H) requires disclosure of provisions that seek to affect the Court's power to consider the equities of the case under Section 552(b)(1) of the Bankruptcy Code. Upon entry of the Final Order, in light of the subordination of its liens and claims to the DIP Liens, and the imposition of the Carve-Out, the Senior Pre-Petition Lender is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the "equities of the case" exception shall not apply. *See* Interim Order ¶ I.

37. The provisions of the DIP Loan Documents as to which disclosure was required pursuant to Local Rule 4001-2 are all justified under the circumstances of the Chapter 11 Cases because (i) the Debtors' access to sufficient working capital and liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to a successful sale and/or to otherwise preserve the value of the Debtors' estates and (ii) the Debtors will suffer immediate and irreparable harm if financing is not obtained and permission to use Cash Collateral is not

granted immediately, in each case in accordance with the terms of the Interim Order and the DIP Loan Documents, as well as for all of the other reasons discussed below.

Basis for Relief Requested

38. As set forth above and in the First Day Declaration, the Debtors believe that the DIP Facility is the best financing available to the Debtors under the circumstances and will enable the Debtors, among other things, to continue to meet all obligations as they become due, to make payroll, to satisfy other working capital and operational needs, to complete an orderly marketing and sale process and to otherwise preserve the value of the Debtors' estates. The Debtors' access to sufficient working capital and liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to a successful sale and/or to otherwise preserve the value of the Debtors' estates. If immediate financing is not obtained and permission to use Cash Collateral is not granted, in each case in accordance with the terms of the Interim Order and the DIP Loan Documents, the Debtors and their estates will incur immediate and irreparable harm.

39. For the reasons stated herein, the Debtors submit that they have satisfied the requirements to access post-petition financing on a superpriority, secured basis pursuant to section 364 of the Bankruptcy Code. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business, and (c) obtaining credit with specialized priority or with security. If a debtor-in-possession cannot obtain sufficient post-petition credit on an unsecured basis, section 364(c) of the Bankruptcy Code permits a bankruptcy court to authorize a debtor to obtain credit or incur debt, repayment of which is (x) entitled to super-priority, administrative-expense status or (y) is secured by a senior lien on unencumbered property or a junior lien on encumbered property, or both. Furthermore, section 364(d) of the Bankruptcy Code permits a

bankruptcy court to authorize a debtor to obtain post-petition credit secured by a senior or equal lien on encumbered property (*i.e.*, a priming lien) when a debtor is unable to obtain credit elsewhere and the interests of existing lienholders are adequately protected.⁶

40. As further discussed herein, the DIP Facility is secured by substantially all of the assets of the Debtors' estates through super-priority claims, security interests, and secured liens pursuant to section 364. The circumstances of the Chapter 11 Cases necessitate post-petition financing under section 364(c) and (d) of the Bankruptcy Code, and the DIP Facility reflects the sound exercise of the Debtors' business judgment.

I. The Debtors Should Be Authorized to Obtain Post-Petition Financing Under Section 364(c) of the Bankruptcy Code.

41. Section 364(c) of the Bankruptcy Code provides that if a debtor is unable to obtain unsecured credit allowable as an administrative expense, the court may authorize the debtor to obtain credit or incur debt (a) on a super-priority administrative basis, (b) secured by a lien on the debtor's unencumbered assets, or (c) secured by a junior lien on the debtor's already encumbered assets.⁷ Section 364(c) financing is appropriate when the debtor in possession is unable to obtain unsecured credit allowable as an ordinary administrative claim.⁸

42. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. The debtor is unable to obtain unsecured credit under section 364(b), *i.e.*, by allowing a lender only an administrative claim;
- b. The credit transaction is necessary to preserve the assets of the estate; and

⁶ 11 U.S.C. §§ 364(c), (d).

⁷ 11 U.S.C. § 364(c).

⁸ See *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37-29 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

- c. The terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.⁹

43. The Debtors propose to obtain the financing set forth in the DIP Credit Agreement by providing, among other things, super-priority claims, security interests, and liens pursuant to sections 364(c)(1)—(3) and section 364(d) of the Bankruptcy Code. For the reasons set forth below, the Debtors submit that entry into the DIP Facility satisfies each of these factors.

A. The Debtors Could Not Obtain Unsecured Financing

44. To show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of sections 364(c) of the Bankruptcy Code.¹⁰ Thus, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.”¹¹ Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.”¹²

45. As set forth above and in the First Day Declaration, the Debtors do not believe that unsecured financing is available given that the entirety of the Debtors’ assets are subject to the Waterton Pre-Petition Liens held by the Senior Pre-Petition Lender and the assets, property and undertaking of the silver gold deposit of The Lordsburg Mining Company in respect of the

⁹ *In re Ames Dep’t Stores*, 115 B.R. at 37-39.

¹⁰ *Bray v. Shenandoah Fed. Sav. And Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986).

¹¹ *Id.*, see also *In re Ames Dep’t Stores*, 115 B.R. at 40 (holding that debtor made a reasonable effort to secure financing where it approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders).

¹² *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff’d sub nom. *Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); see also *In re Snowshoe Co.*, 789 F.2d 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

Summit Mine are subject to the Sandstorm Pre-Petition Liens held by the Second Lien Pre-Petition Lender. The amount of this secured debt exceeds the implied value of the Debtors' assets and, therefore, there is likely no value to secure junior financing and the Senior Pre-Petition Lender made clear to the Debtors that it would not consent to being primed by a third party. The economic conclusion that junior financing is not likely to be obtained is supported by the result of the Debtors' unsuccessful efforts to obtain alternative DIP financing and the multiple failed efforts to enter into various strategic transactions in the run-up to these cases that would provide the Debtors with much-needed liquidity. Given these factors, obtaining the financing needed by the Debtors as unsecured debt or debt that would be secured by liens junior to the existing Waterton Pre-Petition Liens and Sandstorm Pre-Petition Liens is simply not a viable option.

46. Accordingly, the Debtors have satisfied the requirement of sections 364(c) of the Bankruptcy Code that alternative credit on more favorable terms was unavailable to the Debtors.

B. Entry Into the DIP Facility Is Necessary to Preserve Assets of the Estates and Is In the Best Interests of Creditors.

47. A debtor's decision to enter into a post-petition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard.¹³ Courts grant a debtor considerable deference in acting in accordance with its sound business judgment.¹⁴ Further, to determine whether the business judgment standard is met, a court is "required to examine

¹³ See *In re Barbara K. Enters., Inc.*, 2008 WL 2439649 at *14 (Bankr. S.D.N.Y. Mar. 5, 2009) (explaining that courts defer to a debtor's business judgment); *Ames Dep't Stores*, 115 B.R. at 38 (noting that financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment).

¹⁴ See, e.g., *Barbara K. Enters.*, 2008 WL 2439649 at *14 (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to any party in interest.").

whether a reasonable business person would make a similar decision under similar circumstances.”¹⁵

48. The Debtors’ decision to enter into the proposed DIP Credit Agreement is an exercise of their sound judgment that warrants approval by the Court. The Debtors’ management, Board of Directors, and professionals have reviewed their restructuring alternatives in detail. These Chapter 11 Cases follow several unsuccessful attempts to consummate strategic transactions over the past several years and, more recently, the Debtors have explored alternative sources of capital and financing, including alternative forms of DIP financing. The Debtors’ management took the steps they deemed necessary and exercised their best business judgment in negotiating the DIP Facility. The Debtors management and the Board of Directors ultimately concluded that the DIP Facility will provide immediate access to capital to pay their limited ongoing operating expenses while pursuing a sale of substantially all of the Debtors’ assets, all on more favorable terms than any other reasonably available alternative.

49. Without post-petition financing, the Debtors would be unable to expeditiously pursue a sale process, while satisfying their limited operating expenses, including post-petition wages and salaries, taxes, and facility maintenance costs. At this time, the DIP Facility is the Debtors’ best and only means of obtaining the liquidity necessary to effectuate a sale and, thereby, maximize the value of the Debtors’ assets. Therefore, by obtaining post-petition financing, the Debtors will be in a position to preserve the value of their assets for the benefit of all creditors.

¹⁵ *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at *272 (Bankr. D. Del. Aug. 15, 2007) (quoting *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006).

C. The Terms of the DIP Facility Are Fair and Reasonable Under the Circumstances.

50. In determining whether the terms of post-petition financing are fair and reasonable, courts consider the relative circumstances of both the debtor and the potential lender.¹⁶ Judged from that perspective, the terms of the DIP Facility are fair and reasonable.

51. The DIP Facility provides the Debtors the liquidity they need to maintain their assets during the Chapter 11 Cases and allow the Debtors to pursue and effectuate a sale of the Debtors' assets. The proceeds of the DIP Facility are sized to support the Debtors through the anticipated pendency of these Chapter 11 Cases and to preserve and promote the health and viability of the Debtors' assets, but nothing more. Moreover, the financial terms and covenants of the DIP Facility are standard and reasonable for financing of this kind.

52. Based on the Debtors' negotiations regarding the DIP Facility, the terms of the DIP Loan Documents constitute, on the whole, the most favorable terms the Debtors could achieve upon which the DIP Lender will extend the necessary post-petition financing. Although the Debtors explored whether the DIP Lender would provide the DIP Facility without certain provisions, in the course of negotiations, the DIP Lender indicated it would not be willing to provide the DIP Facility without such terms. In particular, the DIP Lender would not provide financing without the provisions requiring: (i) the achievement of certain sale milestones, including the filing of a sale motion shortly after the Petition Date, (ii) the roll-up of the Senior Pre-Petition Indebtedness, (iii) securing the DIP Facility with priming liens, and (iv) the various fees provided for under the DIP Facility. These are key components of consideration for the DIP Lender without which it has indicated it is unwilling to provide the DIP Facility.

¹⁶ *In re Farmland*, 294 B.R. at 886-89; see also *Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co., Inc.)*, 65 B.R. 358, 364-65 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard" bargains to acquire funds for its reorganization).

53. Furthermore, although the Debtors explored alternative financing arrangements, including whether they could arrange financing provided by other potential DIP lenders, any such arrangement likely would have led to a lengthy and almost certain value-destroying priming fight given the Senior Pre-Petition Lender's position in the Debtors' capital structure and unwillingness to consent to being primed by a third party. Accordingly, the Debtors, in consultation with their advisors—recognizing the absence of favorable competing proposals and the benefits to be provided under the DIP Facility—determined in their sound business judgment that the terms of the DIP Credit Agreement were superior to any other set of terms reasonably available to the Debtors at this time. Therefore, the DIP Facility provides the Debtors with the best, most feasible, and value-maximizing financing option available at this time.

54. Moreover, the Debtors have concluded that the economic terms of the DIP Facility are fair and reasonable and are consistent with what can be expected in a debtor-in-possession financing facility. In that regard, the various fees and charges associated with obtaining the DIP Facility are within the range of reasonableness. Courts recognize that lender fees often are the only way to obtain financing, and routinely approve them. After thorough analysis by the Debtors and their advisors, they have concluded that the terms of the DIP Facility are reasonable and appropriate under the circumstances. The non-economic terms of the DIP Facility, including the Milestones, are also within the range of what can be expected for a debtor-in-possession financing facility, particularly considering the nature of the Debtors' assets and the immediate need to rehabilitate the Debtors' assets and business to stem further and precipitous declines in value.

55. Likewise, the DIP Facility does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for

which professionals may be paid in the Chapter 11 Cases. Instead, the DIP Facility subjects the security interests and administrative expense claims granted to the DIP Lender to the Carve-Out for certain administrative and professional fees. Carve-out expenses for professional fees have been found to be reasonable and necessary to ensure that statutory creditors' committees and debtors' estates are adequately assisted by counsel and other professionals.¹⁷

56. For these reasons, in the Debtors' prudent business judgment, the terms of the DIP Facility are fair and reasonable in the circumstances of the Chapter 11 Cases and the Debtors could not obtain post-petition financing from any other lending source.

D. The Roll-Up Is Warranted

57. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose.¹⁸ The business judgment rule shields a debtor's management from judicial second-guessing.¹⁹

58. The DIP Lender has made clear to the Debtors that the roll-up is part of the overall package presented by the DIP Facility. The DIP Facility, on the whole, is fair and reasonable under the circumstances, and more importantly, is the only option available to the Debtors that provides them essential liquidity, without which the Debtors' assets would be

¹⁷ See *In re Ames*, 115 B.R. at 38.

¹⁸ See *In re Abbotts Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) should be approved if the debtor can demonstrate a sound business justification for the proposed transaction).

¹⁹ *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

immediately and irreparably harmed. On these facts, the Debtors' business judgment in agreeing to the roll-up is well supported.

II. The Priming Liens Should be Approved Under Section 364(d)

59. If a debtor is unable to obtain credit under the provisions of section 364(c) alone, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly referred to as a "priming lien."²⁰ Section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of post-petition debt secured by senior or "priming" liens, provides that the court may, after notice and a hearing, authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- a. The trustee is unable to obtain credit otherwise; and
- b. There is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.²¹

60. To justify a priming lien, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) and (d) of the Bankruptcy Code.²² The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis.²³ "Its application is left to the vagaries of each case . . . but its focus is protection of the secured creditor from diminution in the value of its

²⁰ 11 U.S.C. § 364(d).

²¹ *Id.*

²² *See In re Snowshoe Co.*, 789 F.2d at 1088; *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992).

²³ *See In re Mosello*, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996).

collateral during the reorganization process.”²⁴ However, consent by a secured creditor to priming obviates the need to show adequate protection.²⁵

61. As demonstrated above, the Debtors believe that the DIP Facility is the only likely source of post-petition financing. In accordance with section 364(d)(1)(B) of the Bankruptcy Code, and consistent with the purposes underlying the provision of adequate protection, the proposed Interim Order provides the Senior Pre-Petition Lender and Second Lien Pre-Petition Lender with adequate protection as described above. In addition, the Senior Pre-Petition Lender has affirmatively consented to the priming of its loans; which otherwise obviates the need to show adequate protection.²⁶ If the Second Lien Pre-Petition Lender does not expressly consent to the entry of the Interim Order, the Sandstorm Pre-Petition Liens and security interests of the Second Lien Pre-Petition Lender will be adequately protected pursuant to the terms of the Interim Order. Thus, the Senior Pre-Petition Lender has consented to the priming of its liens provided that the relief requested herein is granted and, even if the Second Lien Pre-Petition Lender does not consent to the priming of its liens, it will be adequately protected as set forth in paragraph 3 of the Interim Order.

III. Use of Cash Collateral

62. Section 363 of the Bankruptcy Code governs the Debtors’ use of property of the estates. Section 363(c)(1) of the Bankruptcy Code provides that:

If the business of the debtor is authorized to be operated under Section . . . 1108 . . . of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the

²⁴ *Id.* (quoting *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)).

²⁵ *See Anchor Savs. Bank FSB v.*, 99 B.R. at 122 (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”).

²⁶ *Id.*

estate in the ordinary course of business without notice or a hearing.²⁷

63. Section 363(c)(2) of the Bankruptcy Code, however, provides an exception with respect to “cash collateral” to the general grant of authority to use property of the estate in the ordinary course set forth in section 363 of the Bankruptcy Code. Specifically, a trustee or debtor-in-possession may not use, sell, or lease “cash collateral” under subsection (c)(1) unless:

- a. Each entity that has an interest in such collateral consents; or
- b. The court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.²⁸

64. The Debtors need the proposed DIP Facility and the use of Cash Collateral in order to pursue a strategic sale of their Assets and to fund their ordinary course of business operations and administration in the interim. As the DIP Facility is contingent upon the Debtors obtaining approval to use Cash Collateral, it is imperative that the Debtors obtain authority to use Cash Collateral subject to the terms of this Motion. Accordingly, to obtain the financing under the DIP Facility and to avoid immediate and irreparable harm to the Debtors’ business operations and their estates, the Debtors have an immediate need for authority to use Cash Collateral.

65. The Debtors submit that, under the circumstances here, their request to use Cash Collateral should be approved. The Senior Pre-Petition Lender and the DIP Lender affirmatively consent, and the Second Lien Pre-Petition Lender is adequately protected, as described above, with respect to the use of Cash Collateral provided that the relief requested herein is granted. Absent such authority, the Debtors would not have access to any additional liquidity, which would imperil their ability to pursue a sale of their assets. Any delay in pursuing a sale poses grave risk to the Debtors, and their ability to implement the strategy that will yield highest

²⁷ 11 U.S.C. § 363(c)(1).

²⁸ 11 U.S.C. § 363(c)(2).

recovery for their estates and their creditors. Accordingly, the proposed adequate protection is fair, reasonable, and sufficient to justify the requirements of sections 363(c)(2) and (3) of the Bankruptcy Code.

IV. Interim Approval Should Be Granted

66. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the borrowers' estates.

67. The Debtors request that the Court hold and conduct an interim hearing immediately to consider entry of the proposed Interim Order authorizing the Debtors from and after the entry of the Interim Order until the Final Hearing to borrow under the DIP Facility as provided therein. This relief will enable the Debtors to operate their businesses in a manner that will permit them to preserve and maximize value and therefore avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

Final Hearing & Notice

68. The Debtors further respectfully request that the Court schedule the Final Hearing and authorize it to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, by first-class mail upon: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to Waterton Global Value, L.P., in its capacity as the Senior Pre-Petition Lender; (iii) counsel to Sandstorm Barbados, in its capacity as the Second Lien Pre-Petition Lender; (iv) counsel to Waterton Global Value, L.P., in its capacity as the DIP Lender; (v) those parties listed on the list of creditors holding the twenty (20) largest unsecured claims

against the Debtors (on a consolidated basis), as identified in their chapter 11 petitions; and (vi) all known holders of liens upon the Debtors' assets. The Debtors request that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001 and Local Rule 2002-1.

Conclusion

WHEREFORE, the Debtors respectfully request that the Court enter (i) the Interim Order granting the relief requested herein, (ii) schedule a Final Hearing, (iii) enter the Final Order following a Final Hearing, and (iv) grant such other relief as is just and proper.

Dated: August 26, 2015
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Kenneth J. Enos

Robert S. Brady (No. 2847)
Edmon L. Morton (No. 3856)
Kenneth J. Enos (No. 4544)
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Facsimile: (302) 571-1253

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT I

Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SANTA FE GOLD CORPORATION, et al.,¹

Debtors.

Chapter 11

Case No. 15-11761 (MFW)

Joint Administration Requested

Ref. Docket No. ____

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION
FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL,
(III) GRANTING LIENS, INCLUDING PRIMING LIENS, AND SUPERPRIORITY
CLAIMS, (IV) GRANTING ADEQUATE PROTECTION, (V) SCHEDULING A FINAL
HEARING, AND (VI) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “DIP Motion”), dated August 26, 2015 (the “Petition Date”), of the debtors and debtors in possession (collectively, the “Debtors”), in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), seeking entry of an interim order (this “Interim Order”) pursuant to sections 105, 361, 362, 363, 364, 506, 507, and 552 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), that, among other things:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Santa Fe Gold Corporation (4315); Azco Mica, Inc. (8577); The Lordsburg Mining Company (4474); and Santa Fe Gold (Barbados) Corporation (N/A). The Debtors’ mailing address is 1219 Banner Mine Road, Lordsburg, New Mexico 88045.

- i. authorizes Santa Fe Gold Corporation (the “Borrower”) to obtain, and each of the other Debtors (collectively, the “Guarantors”, and the Borrower and Guarantors being referred to herein collectively as the “Obligors”) to unconditionally guaranty, jointly and severally, the Borrower’s obligations in respect of, senior secured priming and superpriority post-petition financing, which if approved on a final basis would consist of post-petition financing in a total amount of [\$1,580,148], plus the Roll UP Loans (the “DIP Facility”), provided pursuant to the terms of (x) this Interim Order and, on a final basis, the Final Order, (y) that certain Debtor-In-Possession Credit Agreement, dated as of August __, 2015 (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the “DIP Credit Agreement”), a true and correct copy of which is attached hereto as Exhibit B,² by and among the Borrower, the Guarantors and Waterton Global Value, L.P., by its investment manager, Altitude Management Limited, as lender under the DIP Credit Agreement (in such capacity, the “DIP Lender”), and (z) any and all other Credit Documents (as defined in the DIP Credit Agreement, and together with the DIP Credit Agreement, collectively, the “DIP Loan Documents”);
- ii. authorizes the use of the proceeds of the DIP Facility to, among other things, make payments, as permitted by the Approved Budget, for operating expenses, general and ordinary purposes of the Debtors, and for other administrative expenses, including budgeted professional fees, all subject to the conditions set forth in the final DIP Loan Documents and in this Interim Order;
- iii. approves borrowings between the entry of this Interim Order and the entry of the Final Order (as defined below) in an aggregate principal amount not more than [\$361,547], plus the Initial Roll Up (the “Interim Amount”), and authorizes the Guarantors to unconditionally guaranty such obligations jointly and severally;
- iv. approves the conversion of all outstanding obligations arising under or in connection with the Supplemental Advance, including, without limitation, outstanding principal and accrued interest and fees thereon (the “Initial Roll Up Amount”) into Roll Up Loans;
- v. approves the terms of, and authorizes the Debtors to execute and deliver, and perform under, the DIP Loan Documents and authorizes and directs the Debtors to perform such other and further acts as may be required in connection with the DIP Loan Documents and this Interim Order;

² Unless otherwise specified in this Interim Order, all capitalized terms used but not defined herein shall have the meanings given to such terms in the DIP Credit Agreement.

- vi. grants to the DIP Lender, (x) the DIP Liens (as defined below) on all of the DIP Collateral (as defined below) pursuant to sections 364(c)(1), 364(c)(2) and 364(d)(1) of the Bankruptcy Code, which DIP Liens are senior to and prime all other liens and (y) pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority administrative claims having recourse to all pre-petition and post-petition property of the Debtors' estates, now owned or hereafter acquired and the proceeds of each of the foregoing, including,³ upon entry of this Interim Order, any Debtor's rights under section 549 of the Bankruptcy Code and the proceeds thereof, and upon entry of the Final Order, the proceeds of Avoidance Actions (as defined below);
- vii. authorizes the Debtors to use "cash collateral," as such term is defined in section 363 of the Bankruptcy Code (the "Cash Collateral"), including Cash Collateral in which the DIP Lender and the Senior Pre-Petition Lender (as defined below) have a lien or other interest, in each case whether existing on the Petition Date, arising pursuant to this Interim Order or otherwise;
- viii. vacates the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order;
- ix. grants the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender (as defined below), as of the Petition Date and in accordance with the relative priorities set forth herein, the Adequate Protection Liens and the Adequate Protection Priority Claims (each as defined below);
- x. schedules a final hearing on the DIP Motion (the "Final Hearing") to be held no later than thirty-five (35) calendar days after the entry of this Interim Order to consider entry of a final order that grants all of the relief requested in the DIP Motion on a final basis and which final order shall be in form and substance (including with respect to any subsequent modifications to the form or substance made in response to objections of other creditors or this Court) acceptable to the DIP Lender (the "Final Order");
- xi. waives, upon entry of the Final Order, certain rights of the Debtors to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code; and
- xii. provides for the immediate effectiveness of this Interim Order and waives any applicable stay (including under Bankruptcy Rule 6004) to permit such immediate effectiveness.

³ As used herein, the words "including" or "include" and variations thereof shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation."

Having considered the DIP Motion, the DIP Credit Agreement, the other DIP Loan Documents, the *Declaration of Jakes Jordaan in Support of Chapter 11 Petitions and First Day Relief* (the “First Day Declaration”), and the evidence submitted or proffered at the hearing on this Interim Order (the “Interim Hearing”); and in accordance with Bankruptcy Rules 2002, 4001(b), 4001(c), and 4001(d), 6004(c) and 9014 and all applicable Local Rules, due and sufficient notice of the DIP Motion and the Interim Hearing having been provided pursuant to Bankruptcy Rule 4001(b)(1)(C); the Interim Hearing having been held and concluded on August __, 2015; this Court having considered all the pleadings, motions and other papers filed in connection therewith; this Court having overruled all unresolved objections to the interim relief requested in the Motion; this Court having considered the record made by the Debtors at the Interim Hearing; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is essential for the continued operation of the Debtors’ business and the preservation of the value of the Debtors’ assets; and it appearing that the Debtors’ entry into the DIP Credit Agreement and the other DIP Loan Documents is a sound and prudent exercise of the Debtors’ business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THIS COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁴

A. **Petition Date.** On the Petition Date, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy

⁴ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate, pursuant to Bankruptcy Rule 7052.

Court for the District of Delaware (this “Court”). The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors (to the extent such committee is appointed, the “Committee”), trustee, or examiner has been appointed in these Chapter 11 Cases.

B. **Jurisdiction and Venue.** This Court has core jurisdiction over these Chapter 11 Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. Venue for the Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and other predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 506, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and the Local Rules.

C. **Notice.** The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties in interest, including: (i) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), (ii) those entities or individuals included on the Debtors’ List of Creditors Holding Twenty Largest Unsecured Claims on a Consolidated Basis, (iii) counsel to the Senior Pre-Petition Lender, (iv) counsel to the Second Lien Pre-Petition Lender, (v) counsel to the DIP Lender, and (vi) all other known lienholders. Under the circumstances, such notice of the DIP Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rules 4001(b), (c) and (d), and the Local Rules, and

no other notice need be provided for entry of this Interim Order.

D. Debtors' Stipulations Regarding the Senior Pre-Petition Indebtedness.

Subject only to the rights of parties in interest that are specifically set forth in Paragraph 7 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (collectively, the "Debtors' Stipulations") as follows:

- (i) Senior Pre-Petition Indebtedness. As of the Petition Date, each of the Debtors were truly and justly indebted to the Senior Pre-Petition Lender (I) in the aggregate principal amount of \$7,955,685, *plus* accrued and unpaid interest and any additional fees, costs and expenses pursuant to the Pre-Petition Credit Agreement, and collectively with any other agreements and documents executed or delivered in connection therewith, including the "Credit Documents" as defined in the Pre-Petition Credit Agreement (each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Pre-Petition Credit Agreement Documents"), and (II) in the aggregate principal amount of \$5,629,563 pursuant to the Pre-Petition Gold Supply Agreement, and collectively with any other agreements and documents executed or delivered in connection therewith (each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Pre-Petition Gold Supply Agreement Documents" and, collectively with the Pre-Petition Credit Agreement Documents, the "Senior Pre-Petition Credit Documents"),⁵ in each case without defense, counterclaim, reduction or offset of any kind.
- (ii) The first priority liens and security interests granted to the Senior Pre-Petition Lender in all of the Debtors' assets (the "Waterton Pre-Petition Collateral" and the liens securing the Waterton Pre-Petition Collateral, the "Waterton Pre-Petition Liens") (a) are legal, valid, binding, enforceable, and perfected liens, (b) were granted to, or for the benefit of, the Senior Pre-Petition Lender for fair consideration and reasonably equivalent value, and (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.
- (iii) The obligations under the Senior Pre-Petition Indebtedness constitute legal, valid, and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the Senior Pre-Petition Credit Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (x) no setoffs, recoupments, offsets, defenses, or counterclaims to any of the Pre-Petition Indebtedness exist, (y) no portion

⁵ All obligations of the Debtors arising under the Senior Pre-Petition Credit Documents are referred to herein as the "Senior Pre-Petition Indebtedness." Waterton Global Value, L.P., in its capacity as provider of the Senior Pre-Petition Indebtedness is referred to herein as the "Senior Pre-Petition Lender."

of the Senior Pre-Petition Indebtedness or any payments made to the Senior Pre-Petition Lender are subject to avoidance, disallowance, disgorgement, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (z) each of the guarantees provided in the Senior Pre-Petition Credit Documents shall continue in full force and effect to unconditionally guaranty the Senior Pre-Petition Indebtedness notwithstanding any use of Cash Collateral permitted hereunder or any financing and financial accommodations extended by the DIP Lender to the Debtors pursuant to the terms of this Interim Order or the DIP Loan Documents.

- (iv) Subordination of Sandstorm Pre-Petition Liens to Waterton Pre-Petition Liens. The Sandstorm Pre-Petition Liens (defined below) are inferior, junior and subordinate to the Waterton Pre-Petition Liens pursuant to the Intercreditor Agreement.

E. Cash Collateral. All of the Debtors’ cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Senior Pre-Petition Lender.

F. **Findings Regarding the DIP Facility.**

(i) Need for Post-petition Financing. The Debtors have an immediate need to obtain the DIP Facility and use Cash Collateral to, among other things, permit the orderly continuation of their businesses, to make payroll, to satisfy other working capital and operational needs, to complete the Debtors’ marketing and sale process and to otherwise preserve the value of the Debtors’ estates. The Debtors’ access to sufficient working capital and liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to a successful sale and/or to otherwise preserve the value of the Debtors’ estates. If immediate financing is not obtained and permission to use Cash Collateral is not granted, in each case in accordance with the terms of this Interim Order and the DIP Loan Documents, the Debtors and their estates will incur immediate and irreparable harm.

- (ii) No Credit Available on More Favorable Terms. The Debtors have

been and continue to be unable to obtain financing on more favorable terms from sources other than the DIP Lender under the DIP Loan Documents and this Interim Order. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or secured credit allowable only under sections 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code. The Debtors are unable to obtain secured credit under section 364(d)(1) of the Bankruptcy Code without (a) granting to the DIP Lender the rights, remedies, privileges, benefits, and protections provided herein and in the DIP Loan Documents, including the DIP Liens and the DIP Superpriority Claims (as defined below), (b) allowing the DIP Lender to provide the loans and other financial accommodations under the DIP Facility (including the conversion of the Initial Roll Up Amount into Roll Up Loans) on the terms set forth herein and in the DIP Loan Documents, and (c) granting to the Senior Pre-Petition Lender the rights, remedies, privileges, benefits, and protections provided herein and in the DIP Loan Documents, including the Senior Adequate Protection Liens and the Senior Adequate Protection Priority Claims (all of the foregoing described in clauses (a), (b), and (c) above, collectively, the “DIP Protections”).

G. **Interim Financing.** During the Interim Period (as defined below), the DIP Lender and the Senior Pre-Petition Lender are willing to provide financing to the Debtors and/or consent to the use of Cash Collateral by the Debtors, subject to (i) the entry of this Interim Order, and (ii) the terms and conditions of the DIP Loan Documents; provided, however, that the consent of the Senior Pre-Petition Lender is limited to the present DIP Facility and shall not be applicable to any other debtor in possession loan facility even if such debtor in possession loan facility contains economic terms which are substantially similar to the economic terms of the DIP Facility.

H. **Adequate Protection.** The Senior Pre-Petition Lender has agreed to permit the Debtors' use of the Waterton Pre-Petition Collateral, including the Cash Collateral, during the Interim Period, subject to the terms and conditions set forth herein. In addition, the DIP Facility contemplated hereby provides for a priming of the Waterton Pre-Petition Liens and Sandstorm Pre-Petition Liens (defined below) pursuant to section 364(d) of the Bankruptcy Code. The Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender (defined below) are entitled to the adequate protection as set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the DIP Motion and on the record presented to this Court at the Interim Hearing, the terms of the proposed adequate protection arrangements, use of the Cash Collateral, and the DIP Facility contemplated hereby are fair and reasonable, consistent with the Bankruptcy Code, including section 506(b) thereof, reflect the Debtors' prudent exercise of business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and are reasonable to protect the interests of the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender. If the Second Lien Pre-Petition Lender has not expressly consented to the entry of this Interim Order, the Sandstorm Pre-Petition Liens and security interests of the Second Lien Pre-Petition Lender are adequately protected pursuant to the terms of this Interim Order.

I. **Section 552.** In light of the subordination of its liens and claims to the DIP Liens, and the imposition of the Carve-Out, the Senior Pre-Petition Lender is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the "equities of the case" exception shall not apply.

J. **Initial Approved Budget.** Attached hereto as Exhibit A is an initial Approved Budget (the "Initial Approved Budget"). The Initial Approved Budget conforms to

the form attached to the DIP Credit Agreement as Exhibit D. The Initial Approved Budget is an integral part of this Interim Order and has been relied upon by the DIP Lender and the Senior Pre-Petition Lender in consenting to this Interim Order, to provide the DIP Facility and to permit the use of the Cash Collateral.

K. Business Judgment and Good Faith Pursuant to Section 364(e).

(i) The terms and conditions of the DIP Facility (including the conversion of the Initial Roll Up Amount into Roll Up Loans) as set forth in the DIP Loan Documents and this Interim Order, and the fees, expenses and other charges paid and to be paid thereunder or in connection therewith, are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

(ii) The DIP Facility was negotiated in good faith and at arms' length among the Debtors, the DIP Lender and the Senior Pre-Petition Lender.

(iii) Use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lender and the Senior Pre-Petition Lender are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code. The DIP Liens, DIP Superpriority Claims and other DIP Protections shall be entitled to the full protection of section 364(e) of the Bankruptcy Code.

L. Relief Essential; Best Interest. For the reasons stated above, the Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtors' estates, their businesses and properties and their ability to successfully sell their assets or otherwise preserve the value of their estates will be immediately and irreparably

harm. The Court concludes that immediate entry of this Interim Order is therefore in the best interests of the Debtors' estates and creditors and will allow for the continued operation of the Debtors' existing businesses and enhance the Debtors' prospects for successful reorganization.

NOW, THEREFORE, based on the DIP Motion and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the Senior Pre-Petition Lender and the DIP Lender to the form and entry of this Interim Order, and good and sufficient cause appearing therefor:

IT IS ORDERED that:

1. **Motion Granted.** The DIP Motion is hereby granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Any objections to the DIP Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled. This Interim Order shall become effective immediately upon its entry.

2. **DIP Loan Documents and DIP Protections.**

(a) **Approval of DIP Loan Documents.** The Debtors are expressly and immediately authorized to establish the DIP Facility, to execute, deliver, and perform under the DIP Loan Documents and this Interim Order, to incur the DIP Obligations⁶ (including to immediately convert the Initial Roll Up Amount into Roll Up Loans and to draw the Interim Amount), in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents, and to execute, deliver, and perform under all other instruments, certificates, agreements, and documents that may be required or necessary for the performance by the applicable Debtors

⁶ For purposes of this Interim Order, the term "**DIP Obligations**" shall mean all amounts and other obligations and liabilities owing by the respective Debtors under the DIP Credit Agreement, the other DIP Loan Documents (including, without limitation, all "Obligations" as defined in the DIP Credit Agreement, and all Roll Up Loans) and to the DIP Lender or the Senior Pre-Petition Lender under this Interim Order.

under the DIP Loan Documents and the creation and perfection of the DIP Liens described in, and provided for by, this Interim Order and the DIP Loan Documents. The Debtors are hereby authorized to do and perform all acts and pay the principal, interest, fees, expenses, and other amounts described in the DIP Loan Documents as such become due pursuant to the DIP Loan Documents and this Interim Order, including, without limitation, all professional fees, the Fees under the DIP Credit Agreement, the Extension Fee, the Structuring Fee, the Termination Fee, and disbursements arising under the DIP Loan Documents and this Interim Order, which amounts shall not be subject to further approval of this Court and shall be non-refundable and not subject to challenge in any respect. Upon their execution and delivery, the DIP Loan Documents shall represent the legal, valid and binding obligations of the applicable Debtors enforceable against such Debtors in accordance with their terms. No obligation, payment, transfer or grant of security under the DIP Loan Documents or this Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. Each officer of a Debtor acting singly is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive evidence of such officer's respective authority to act in the name of and on behalf of the Debtors.

(b) Authorization to Incur DIP Obligations and Use Cash Collateral. To enable the Debtors to continue to operate their business and preserve and maximize the value of their estates, during the period from the entry of this Interim Order through and including the earliest to occur of (i) the entry of the Final Order, or (ii) a Termination Event (as defined below), in each case unless extended by written agreement of the DIP Lender and the Senior Pre-Petition Lender (the period from the entry of this Interim Order through and including such earliest date,

the “Interim Period”), the Borrower is hereby authorized (x) to use Cash Collateral and (y) to borrow under the DIP Facility; provided that (i) during the Interim Period, the aggregate outstanding amount for all such borrowings shall not exceed the Interim Amount; and (ii) any proposed use of the proceeds of DIP Loans or use of Cash Collateral shall be consistent with the terms and conditions of this Interim Order and the DIP Loan Documents, including the Approved Budget. All DIP Obligations shall be unconditionally guaranteed, on a joint and several basis, by the Guarantors, as further provided in the DIP Loan Documents.

(c) Roll Up Loans. The Initial Roll Up Amount shall immediately, automatically, and, subject to paragraph 7 of this Interim Order, irrevocably be deemed to have been converted into Roll Up Loans and shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Interim Order and the DIP Loan Documents.

(d) Perfection in Cash. Subject to the Carve-Out and other provisions of this Interim Order, all financial institutions in which the Debtors’ deposit accounts are located are authorized and directed to comply with any request of the DIP Lender to turn over to the DIP Lender all funds therein without offset or deduction of any kind, and the Debtors are authorized and directed to enter into such blocked account agreements with cash dominion with the DIP Lender and such financial institutions as the DIP Lender may require. Alternatively, the DIP Lender shall be entitled to enjoy the benefit of all control agreements to which the Senior Pre-Petition Lender is a party without the need to enter into new blocked account agreements.

(e) Approved Budget; Cash Flow Reporting. The Borrower shall timely furnish the DIP Lender with each Weekly Actuals Report, Updated Budget, Approved Budget Variance Report and each other calculation and report as required by, and in accordance with, Section 10.1(b) of the DIP Credit Agreement.

(f) Interest, Fees, Costs and Expenses. The DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this Interim Order and the DIP Loan Documents, in each case without further notice, motion, or application to, order of, or hearing before, this Court. The Debtors shall pay on demand all fees, costs, indemnities, expenses (including reasonable out-of-pocket legal and other professional fees and expenses of the DIP Lender) and other charges payable under the terms of the DIP Loan Documents. All such fees, costs, indemnities, expenses and disbursements, whether incurred, paid or required to be paid pre-petition or post-petition and whether or not budgeted in the Approved Budget, are hereby affirmed, ratified, authorized and payable (and any funds held by the DIP Lender and/or its professionals as of the Petition Date for payment of such fees, costs, indemnities, expenses and disbursements may be applied for payment) as contemplated in this Interim Order and the DIP Loan Documents, and shall be non-refundable and not subject to challenge in any respect. All such unpaid fees, costs, expenses, indemnities and disbursements that are payable under the terms of the DIP Loan Documents shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order.

(g) Use of DIP Facility and Proceeds of DIP Collateral. The Debtors shall only incur DIP Obligations and expend Cash Collateral and other DIP Collateral proceeds solely in accordance with this Interim Order and the DIP Loan Documents, and for the specific purposes, and at the specific time periods, set forth in the Approved Budget, subject to variances permitted in the DIP Credit Agreement (and in the case of the costs and expenses of the DIP Lender, in accordance with the DIP Loan Documents and this Interim Order without being limited by the Approved Budget). Without limiting the foregoing, the Debtors shall not be

permitted to make any payments (from the DIP Collateral, the Loan or otherwise) on account of any pre-petition debt or obligation prior to the effective date of a confirmed chapter 11 plan or plans with respect to any of the Debtors, except (a) with respect to the Senior Pre-Petition Indebtedness as set forth in this Interim Order and a Final Order; (b) as provided in the “first day orders” (as such term is used in the DIP Credit Agreement) and as expressly agreed to by the DIP Lender; or (c) as expressly provided in other motions, orders, and requests for relief, each in form and substance acceptable to the DIP Lender prior to such motion, order, or request for such relief being filed.

(h) DIP Liens. As security for the DIP Obligations, effective as of the Petition Date, the following security interests and liens, which shall immediately and without any further action by any Person be valid, binding, permanent, perfected, continuing, enforceable, and non-avoidable upon the entry of this Interim Order, are hereby granted by each Debtor to the DIP Lender (all such security interests and liens granted to the DIP Lender pursuant to this Interim Order and the DIP Loan Documents, the “DIP Liens”), on all of its right, title and interest in, to and under all property and assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Debtor, whether owned or consigned by or to, or leased from or to, such Debtor, and regardless of where located, including, without limitation, all Collateral (as defined in Section 7.1 of the DIP Credit Agreement), all other “property of the estate” (as defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, in each case wherever located (all of the foregoing collateral collectively referred to as the “DIP Collateral”):

(I) pursuant to section 364(c)(2) of the Bankruptcy Code, a fully perfected, binding, continuing, enforceable, and non-avoidable first priority lien on all unencumbered DIP Collateral, including, subject to the entry of the Final Order, the proceeds of the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state or municipal law (collectively, the "Avoidance Actions", which for avoidance of doubt, excludes Debtors' claims and causes of action under section 549 of the Bankruptcy Code or similar state or municipal law and the proceeds of each of the foregoing), whether received by judgment, settlement, or otherwise;

(II) pursuant to section 364(d)(1) of the Bankruptcy Code, a fully perfected, binding, continuing, enforceable and non-avoidable first priority, senior priming lien on all other DIP Collateral (including Cash Collateral), which DIP Lien (x) shall be senior to the Adequate Protection Liens and (y) shall be senior to and prime any and all valid, perfected, enforceable and non-avoidable pre-petition and post-petition liens, tax liens or other non-consensual liens in existence as of the Petition Date and properly perfected prior to the Petition Date (the liens referenced in clauses (x) and (y), collectively, the "Primed Liens") and shall be subject only to the Carve-Out.

(i) Superpriority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Interim Order, all of the DIP Obligations shall constitute allowed superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the Carve-Out in accordance with this Interim Order, over all administrative expense claims, adequate protection and other diminution claims (including the Adequate Protection Priority Claims (as defined below)), priority claims and other unsecured claims, and all other claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or any other provision of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the

“DIP Superpriority Claims”). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof, including, subject to the entry of the Final Order, Avoidance Actions and the proceeds thereof. Other than as expressly provided in the DIP Credit Agreement and/or this Interim Order with respect to the Carve-Out, no costs or expenses of administration, including professional fees allowed and payable under sections 328, 330, or 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claims or the DIP Obligations, or with any other claims of the DIP Lender arising under the DIP Loan Documents and/or this Interim Order.

(j) Priority of DIP Liens and DIP Superpriority Claims. The DIP Liens and the DIP Superpriority Claims: (A) shall not be subject to sections 506, 510, 549, 550, or 551 of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any liens or claims of any Debtor or any direct or indirect subsidiary thereof against any Debtor or any of such Debtor’s property, and (C) shall be valid and enforceable against any trustee or any other estate representative elected or appointed in the Chapter 11 Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (each, a “Successor Case”), and/or upon the dismissal of any of the Chapter 11 Cases.

3. **Adequate Protection for the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender.** In consideration for the use of the Waterton Pre-Petition Collateral (including Cash Collateral) and the Sandstorm Pre-Petition Collateral,⁷ and solely to the extent that the Debtors have value in the DIP Collateral, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender shall receive, as applicable, the following adequate protection (collectively referred to as the “Pre-Petition Adequate Protection”):

(a) **Senior Adequate Protection Liens.** To the extent there is a diminution in value of the Senior Pre-Petition Lender’s interests in the Waterton Pre-Petition Collateral (including Cash Collateral) from and after the Petition Date, whether or not resulting from the use, sale, or lease by the Debtors of the applicable Waterton Pre-Petition Collateral (including Cash Collateral), the granting of the DIP Superpriority Claims, the granting of the DIP Liens, the imposition of the Carve-Out, or the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code (a “Diminution in Waterton Pre-Petition Collateral Value”), the Senior Pre-Petition Lender is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, replacement security interests in and liens and mortgages upon all of the DIP Collateral, including, subject to the entry of the Final Order, the proceeds of Avoidance Actions (such adequate protection replacement Liens, the “Senior Adequate Protection Liens”), which Senior Adequate Protection Liens on such DIP Collateral

⁷ All obligations of the Debtors to the Second Lien Pre-Petition Lender (defined below) arising under the Sandstorm Gold Supply Agreement and the other agreements and documents executed or delivered in connection therewith (each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Sandstorm Documents”) are referred to herein as the “Second Lien Pre-Petition Indebtedness.” Sandstorm Gold (Barbados) Ltd. (“Sandstorm Barbados”), in its capacity as provider of the Second Lien Pre-Petition Indebtedness is referred to herein as the “Second Lien Pre-Petition Lender.” Pursuant to the Sandstorm Documents, the Second Lien Pre-Petition Lender was granted a charge, as described in the Sandstorm Gold Supply Agreement, over all of the assets, property and undertaking of The Lordsburg Mining Company in respect of the Summit Mine (as defined in the First Day Declaration) to secure The Lordsburg Mining Company’s guarantee obligations under the Sandstorm Gold Supply Agreement (the “Sandstorm Pre-Petition Collateral” and the liens securing the Sandstorm Pre-Petition Collateral, the “Sandstorm Pre-Petition Liens”).

shall be junior and subordinate only to the DIP Liens and the Waterton Pre-Petition Liens and subject to the Carve-Out.

(b) Second Lien Adequate Protection Liens. To the extent there is a diminution in value of the Second Lien Pre-Petition Lender's interests in the Sandstorm Pre-Petition Collateral from and after the Petition Date, whether or not resulting from the use, sale, or lease by the Debtors of the applicable Sandstorm Pre-Petition Collateral, the granting of the DIP Superpriority Claims, the granting of the DIP Liens, the subordination of the Sandstorm Pre-Petition Liens thereto, the imposition of the Carve-Out, or the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code (a "Diminution in Sandstorm Pre-Petition Collateral Value"), the Second Lien Pre-Petition Lender is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, replacement security interests in and liens and mortgages upon the portion of the DIP Collateral solely to the extent of and in a manner that is consistent with the nature, type and scope of the Sandstorm Pre-Petition Collateral (such adequate protection replacement Liens, the "Second Lien Adequate Protection Liens" and, together with the Senior Adequate Protection Liens, the "Adequate Protection Liens"), which Second Lien Adequate Protection Liens on such DIP Collateral shall be junior and subordinate to the DIP Liens, the Senior Adequate Protection Liens and the Waterton Pre-Petition Liens, and subject to the Carve-Out.

(c) Senior Adequate Protection Priority Claims. To the extent of Diminution in Waterton Pre-Petition Collateral Value, the Senior Pre-Petition Lender is hereby further granted allowed superpriority administrative claims (such adequate protection superpriority claims, the "Senior Adequate Protection Priority Claims"), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and priority over other unsecured

claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order to the extent provided in Paragraph 9), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, junior only to the DIP Superpriority Claims and subject to the Carve-Out, and payable from and having recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof (including, subject to entry of the Final Order, all proceeds of Avoidance Actions); provided, however, that the Senior Pre-Petition Lender shall not receive or retain any payments, property, or other amounts in respect of the Senior Adequate Protection Priority Claims unless and until all DIP Obligations have been paid in full. Subject to the relative priorities set forth above, the Senior Adequate Protection Priority Claims against each Debtor shall be allowed and enforceable against each Debtor and its estate on a joint and several basis.

(d) Second Lien Adequate Protection Priority Claims. To the extent of Diminution in Sandstorm Pre-Petition Collateral Value, the Second Lien Pre-Petition Lender is hereby further granted allowed superpriority administrative claims (such adequate protection superpriority claims, the “Second Lien Adequate Protection Priority Claims” and, together with the Senior Adequate Protection Priority Claims, the “Adequate Protection Priority Claims”), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and priority over other unsecured claims, in each case solely against Debtor The Lordsburg Mining Company or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order to the extent

provided in Paragraph 9), 507(a), 507(b), 546(c), 546(d), 726 , 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, junior only to the DIP Superpriority Claims and the Senior Adequate Protection Priority Claims and subject to the Carve-Out, and payable from and having recourse to the pre-petition and post-petition property of Debtor The Lordsburg Mining Company and proceeds thereof; provided, however, that the Second Lien Pre-Petition Lender shall not receive or retain any payments, property, or other amounts in respect of the Second Lien Adequate Protection Priority Claims unless and until all DIP Obligations and Senior Adequate Protection Priority Claims have been paid in full. Subject to the relative priorities set forth above, the Second Lien Adequate Protection Priority Claims against Debtor The Lordsburg Mining Company shall be allowed and enforceable only against Debtor The Lordsburg Mining Company.

(e) Priority of Adequate Protection Liens and Adequate Protection Priority Claims.

The Adequate Protection Liens and the Adequate Protection Priority Claims (A) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code or, subject to entry of the Final Order, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any liens or claims of any Debtor or any direct or indirect subsidiary thereof against any Debtor or any of such Debtor’s property, and (C) shall be valid, binding, perfected and enforceable against any trustee or any other estate representative elected or appointed in the Chapter 11 Cases or any Successor Cases, and/or upon the dismissal of any of the Cases. The Adequate Protection Liens shall be junior to the DIP Liens and the Senior Pre-Petition Lender’s liens arising under any Senior Pre-Petition Credit Documents, and senior to

any other liens, including, without limitation, to any other adequate protection replacement liens. Finally, for the avoidance of doubt the Second Lien Adequate Protection Liens and the Second Lien Adequate Protection Priority Claims may only be asserted against Debtor The Lordsburg Mining Company and shall be junior to the Senior Adequate Protection Liens and the Senior Adequate Protection Priority Claims.

(f) Interest and Professional Fees. Without limiting any rights of the Senior Pre-Petition Lender under section 506(b) of the Bankruptcy Code, which rights are hereby preserved, and in consideration, and as a requirement, for obtaining the Senior Pre-Petition Lender's consent to the entry of this Interim Order and the Debtors' consensual use of Cash Collateral as provided herein and as addition adequate protection, (i) the Senior Pre-Petition Lender's fees, costs, expenses, and charges (including the reasonable fees, costs, and expenses of counsel and financial advisors for the Senior Pre-Petition Lender) to the extent, and at the times, payable under the Senior Pre-Petition Credit Documents, including any unpaid fees, costs and expenses accrued prior to the Petition Date, and (ii) all of the interest accruing under the Senior Pre-Petition Credit Documents at the default rate(s) set forth therein, in the case of each of sub-clauses (i) and (ii) above, whether or not budgeted in the Approved Budget, and without further notice, motion, or application to, order of, or hearing before, this Court, shall accrue during these Chapter 11 Cases, shall be deemed to be included in the Senior Pre-Petition Indebtedness and, other than the Initial Roll Up Amount, subject to the entry of the Final Order, shall be converted into Roll Up Loans in accordance with the DIP Credit Agreement; provided, however, that any payment, accrual or conversion into Roll UP Loans of post-petition interest or reimbursement of post-petition fees, costs and expenses under the Senior Pre-Petition Credit Documents shall be reapplied to reduce the principal amount of the Senior Pre-Petition Indebtedness to the extent this

Court determines in a final, non-appealable order that the Senior Pre-Petition Lender is not entitled to such payment, accrual or reimbursement pursuant to section 506(b) of the Bankruptcy Code.

(g) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Senior Pre-Petition Lender to seek additional or alternative forms of adequate protection at any time; provided that any such additional or alternative adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Lender granted under this Interim Order and the DIP Loan Documents.

4. **Automatic Post-Petition Lien Perfection.** This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection, and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document that may otherwise be required under the law of any jurisdiction, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable law) such liens, or to entitle the DIP Lender, the Senior Pre-Petition Lender or the Second Lien Pre-Petition Lender to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender may, in its sole discretion, enter into and file, as applicable, financing statements, mortgages, security agreements, notices of Liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been entered into, filed or recorded as of the Petition Date. The applicable Debtors shall execute and deliver

to the DIP Lender all such financing statements, mortgages, notices, and other documents as such parties may reasonably request to evidence and confirm the contemplated validity, perfection and priority of the DIP Liens and the Adequate Protection Liens, as applicable, granted pursuant hereto. Without limiting the foregoing, the DIP Lender may, in its discretion, file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized and hereby is directed to file or record such copy of this Interim Order.

5. **Automatic Stay.** The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and/or modified pursuant to the terms of this Interim Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Liens and the DIP Liens and to incur all liabilities and obligations to the DIP Lender, under the DIP Loan Documents, the DIP Facility, and this Interim Order, (ii) authorize the DIP Lender and the Senior Pre-Petition Lender to retain and apply payments made in accordance with the DIP Loan Documents and the Senior Pre-Petition Credit Documents, (iii) to permit each of the DIP Lender and the Senior Pre-Petition Lender to perform any act authorized under this Interim Order and the DIP Loan Documents, and (iv) otherwise to the extent necessary to implement and effectuate the provisions of this Interim Order and the DIP Loan Documents.

6. **Release of Claims.** Subject only to the rights of parties in interest that are specifically set forth in Paragraph 7 below, the releases provided in Section 7.13 of the DIP Credit Agreement are expressly incorporated herein by reference and are effective as of the date of entry of this Interim Order.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.** The Debtors' Stipulations shall be binding upon the Debtors and their estates in all circumstances upon entry of this Interim Order. Nothing in this Interim Order or the DIP Loan Documents shall prejudice whatever rights any official committee(s) or any other party in interest (other than the Debtors) may have (a) to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection or priority of the mortgages, security interests and liens of the Senior Pre-Petition Lender in and to the Waterton Pre-Petition Collateral, or (ii) the validity, allowability, priority, status or amount of the Senior Pre-Petition Indebtedness, or (b) to bring suit against the Senior Pre-Petition Lender in connection with or related to the Senior Pre-Petition Indebtedness, or the actions or inactions of the Senior Pre-Petition Lender arising out of or related to the Senior Pre-Petition Indebtedness, or otherwise; provided, however, that, unless any official committee(s) or any other party in interest obtains the requisite standing to commence, and commences, a contested matter or adversary proceeding raising such objection or challenge, including without limitation any claim against the Senior Pre-Petition Lender in the nature of a setoff, counterclaim or defense to the Senior Pre-Petition Indebtedness (including but not limited to, those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against the Senior Pre-Petition Lender), by the later of (a) with respect to any Committee, sixty (60) calendar days following the appointment of any Committee, or (b) if no Committee is appointed, with respect to other parties in interest with requisite standing other than the Debtors or any Committee, seventy-five (75) calendar days following entry of the Interim Order (collectively, (a) and (b) shall be referred to as the "Challenge Period," and the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection or challenge is raised during

the Challenge Period, shall be referred to as the “Challenge Period Termination Date”),⁸ upon the Challenge Period Termination Date, any and all such challenges and objections by any party (including, without limitation, any official creditors’ committee(s), any chapter 11 or chapter 7 trustee appointed herein or in any Successor Case, and any other party in interest) shall be deemed to be forever waived and barred, and all of the obligations under the Senior Pre-Petition Credit Documents shall be allowed secured claims within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Chapter 11 Cases and the Debtors’ Stipulations shall be binding on all creditors, interest holders and parties in interest. To the extent any such objection or complaint is filed, the findings herein shall nonetheless remain binding and preclusive on the Committee, any other official committee and on any other person or entity, except to the extent that such assertions were expressly challenged in such objection or complaint.

8. **Carve-Out.** Subject to the terms and conditions contained in this paragraph, each of the DIP Liens, the DIP Superpriority Claims, the Waterton Pre-Petition Liens, the Sandstorm Pre-Petition Liens, the Adequate Protection Liens, and the Adequate Protection Claims shall be subject to payment of the Carve-Out in accordance with the terms of this Interim Order:

(a) **Carve-Out.** For purposes of this Interim Order, “Carve-Out” means the sum of (i) the aggregate amount of any reasonable and unpaid fees, costs and expenses that were accrued or incurred prior to the Carve-Out Date by the professionals retained by the Debtors or any professionals retained by the Committee (collectively, the “Professionals”) to the extent allowed by an order of the Bankruptcy Court and in compliance with the Approved Budget, plus (ii) those reasonable fees, costs and expenses incurred by Professionals after the Carve-Out Date

⁸ If a chapter 7 trustee or a chapter 11 trustee is appointed or elected during the Challenge Period, then the Challenge Period Termination Date with respect to such trustee only shall be the later of (i) the last day of the Challenge Period and (ii) the date that is twenty (20) days after the date on which such trustee is appointed or elected.

and subsequently allowed by order of the Bankruptcy Court and in compliance with the Approved Budget, plus (iii) the Success Fee of Canaccord Genuity Inc. as set forth (and defined) in its engagement letter arising from of a sale of substantially all the assets of the Debtors to the extent such Success Fee is allowed by the Bankruptcy Court at any time, whether by interim order, procedural order or otherwise, plus (iv) fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930; provided that (x) the amounts described in items (i) and (ii) of this paragraph shall not exceed \$350,000 in the aggregate (the “Carve-Out Cap”) and (y) following the Carve-Out Date any amounts paid to Professionals by any means will reduce the Carve-Out on a dollar-for-dollar basis.

(b) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. None of the DIP Lender or the Senior Pre-Petition Lender shall be responsible for the direct payment or reimbursement of any fees, costs, expenses or disbursements of any of the Professionals. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Professionals, any other official or unofficial committee in these Chapter 11 Cases or any Successor Cases or shall affect the right of the DIP Lender or the Senior Pre-Petition Lender to object to the allowance and payment of such fees.

(c) Payment of Allowed Professional Fees and Expenses Prior to a Termination Event. Prior to the occurrence of a Termination Event (defined below), the Debtors shall be permitted to pay allowed fees and expenses of the Professionals, or the members of the Committee (only to the extent such fees and expenses were incurred in accordance with the Approved Budget), subject to this Interim Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any interim compensation procedures order entered by this Court.

9. **Waiver of 506(c) Claims/Marshalling.** Subject to the entry of the Final Order:

(i) no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Waterton Pre-Petition Collateral or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the DIP Lender or the Senior Pre-Petition Lender, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender or the Senior Pre-Petition Lender; and (ii) in no event shall the DIP Lender or the Senior Pre-Petition Lender be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Waterton Pre-Petition Collateral, as applicable.

10. **After-Acquired Property.** Except as otherwise expressly provided in this Interim Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtors on or after the Petition Date is not, and shall not be, subject to any lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes proceeds of property of the Debtors that is subject to a valid, enforceable, perfected, and unavoidable lien as of the Petition Date (or a valid, enforceable and unavoidable lien that is perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code) that is not subject to subordination or avoidance under the Bankruptcy Code or other provisions or principles of applicable law.

11. **Protection of DIP Lender’s and the Senior Pre-Petition Lender’s Rights.**

Unless the DIP Lender and the Senior Pre-Petition Lender shall have provided their prior written

consent, or all DIP Obligations and obligations under the Senior Pre-Petition Credit Documents have been paid in full, there shall not be entered in any of these Chapter 11 Cases or any Successor Cases any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral, the Waterton Pre-Petition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Waterton Pre-Petition Liens, the Senior Adequate Protection Liens, the Senior Adequate Protection Priority Claims and/or the other DIP Protections; (ii) the use of Cash Collateral for any purpose other than to pay in full the DIP Obligations and the obligations under the Senior Pre-Petition Credit Documents, or as otherwise permitted in the DIP Loan Documents and this Interim Order, or (iii) any modification of either of the DIP Lender's or the Senior Pre-Petition Lender's rights under this Interim Order, the DIP Loan Documents or the Senior Pre-Petition Credit Documents.

12. **Cash Collection and Borrower Account.** From and after the date of the entry of this Interim Order, the proceeds of the DIP Facility, and all collections and proceeds of any DIP Collateral, Waterton Pre-Petition Collateral, Sandstorm Pre-Petition Collateral or services provided by any Debtor and all Cash Collateral that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in (i) the Borrower Account or (ii) in (a) deposit accounts that are Controlled Accounts, (b) deposit accounts or lockbox accounts that are swept on a daily basis into a Controlled Account or (c) deposit accounts subject to a control agreement with the Senior Pre-Petition Lender, each in accordance with the DIP Credit Agreement. No funds shall be

disbursed from the Borrower Account or any such other account other than in accordance with the DIP Credit Agreement and the Approved Budget. Upon an Event of Default, no amounts (other than the Carve-Out) shall be disbursed from the Borrower Account or such other accounts. All amounts in the Borrower Account and such other accounts shall remain as collateral for the DIP Facility, and shall not be subject to any liens, including in connection with any Adequate Protection Liens, but shall be subject to the Carve-Out. Upon the direction of the DIP Lender, at any time after the occurrence of a Termination Event and subject to the provisions of Paragraph 8, all proceeds in the Borrower Account or such other accounts shall be remitted to the DIP Lender for application to the DIP Obligations until payment in full, and then to the Senior Pre-Petition Lender for application to the Senior Pre-Petition Indebtedness until payment in full, and then to the Second Lien Pre-Petition Lender for application to the Second Lien Pre-Petition Indebtedness, and the DIP Lender, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender shall be entitled to take all action that is necessary or appropriate to effectuate the foregoing. Unless otherwise agreed to in writing by the DIP Lender, the Debtors shall maintain no accounts except those identified in the *Order (I) Authorizing the Debtors to (A) Continue their Existing Cash Management System and (B) Maintain Existing Bank Accounts and Check Stock, (II) Granting an Extension of Time to Comply with Section 345(b) of the Bankruptcy Code, and (III) Authorizing the Debtors to Continue Intercompany Transactions and Granting Administrative Expense Status to Intercompany Claims* (the “Cash Management Order”). The Debtors and the financial institutions where the bank accounts authorized in the Cash Management Order are maintained are authorized and directed to remit funds in such accounts upon receipt of any direction to that effect from the DIP Lender or, following payment

in full of the DIP Obligations, the Senior Pre-Petition Lender or, following payment in full of the DIP Obligations and the Senior Pre-Petition Indebtedness, the Second Lien Pre-Petition Lender.

13. **Disposition of DIP Collateral; Credit Bid.**

(a) Unless the DIP Obligations and the obligations under the Senior Pre-Petition Indebtedness are paid in full upon the closing of a sale or other disposition of the DIP Collateral or the Waterton Pre-Petition Collateral, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral or any portion of the Waterton Pre-Petition Collateral (or enter into any binding agreement to do so) without the prior written consent of the DIP Lender and the Senior Pre-Petition Lender (and no such consent shall be implied from any other action, inaction, or acquiescence by either of the DIP Lender or the Senior Pre-Petition Lender, or any order of this Court), except as permitted in the DIP Loan Documents and/or the Senior Pre-Petition Credit Documents, as applicable, and this Interim Order. Except to the extent otherwise expressly provided in the DIP Loan Documents, all proceeds from the sale, transfer, lease, encumbrance or other disposition of any DIP Collateral shall be remitted to the DIP Lender for application to repayment of the DIP Obligations, and then for application to repayment of any remaining Senior Pre-Petition Indebtedness, in each case, in accordance with the terms of this Interim Order, the DIP Loan Documents and/ or the Senior Pre-Petition Credit Documents, as the case may be.

(b) The DIP Lender (or one or more of its designees, affiliates or assignees) shall have the unqualified right to credit bid up to the full amount of any DIP Obligations in any sale of the DIP Collateral (or any DIP Collateral subject to any Adequate Protection Liens) under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) any plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) section 725 of the Bankruptcy

Code. The Debtors, on behalf of themselves and their estates, stipulate and agree that any sale of all or part of the DIP Collateral (or any DIP Collateral subject to any Adequate Protection Liens) that does not include an unqualified right to credit bid up to the full amount of the DIP Obligations would mean that the DIP Lender will not receive the indubitable equivalent of its claims and interests.

(c) The Senior Pre-Petition Lender (or one or more of its designees, affiliates or assignees) shall have the unqualified right to credit bid up to the full amount of any remaining obligations under the Senior Pre-Petition Indebtedness in any sale of the Waterton Pre-Petition Collateral (or any DIP Collateral subject to any Senior Adequate Protection Liens) under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) any plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) section 725 of the Bankruptcy Code. The Debtors, on behalf of themselves and their estates, stipulate and agree that any sale of all or part of the Waterton Pre-Petition Collateral (or any DIP Collateral subject to any Senior Adequate Protection Liens) that does not include an unqualified right to credit bid up to the full amount of any remaining obligations under the Senior Pre-Petition Indebtedness would mean that the Senior Pre-Petition Lender will not receive the indubitable equivalent of its claims and interests.

14. **Termination; Rights and Remedies Upon Termination Event.**

(a) The DIP Facility shall terminate the earliest of (i) the Maturity Date; (ii) the acceleration of all or any portion of the Obligations; (iii) thirty-five days after the entry by the Bankruptcy Court of this Interim Order, unless the Final Order shall have been entered and become effective prior thereto; (iv) the conversion of any of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the DIP

Lender; (v) the dismissal of any of these Chapter 11 Cases unless otherwise consented to in writing by the DIP Lender; (vi) the effective date of any Debtor's plan of reorganization confirmed in these Chapter 11 Cases; (vii) the closing of a sale of substantially all the assets of the Debtors, (viii) the filing of a plan of reorganization in these Chapter 11 Cases by any party other than the Debtors without the consent of the DIP Lender; (ix) the Debtors seek or propose to sell all or substantially all the assets of the Debtors and such sale does not provide for payment in full of all the DIP Obligations without the consent of the DIP Lender, and (x) the exercise by Sandstorm Barbados of the "Assignment and Purchase Option" (as defined in the Intercreditor Agreement) (such of termination, the "Termination Date"). Furthermore, the occurrence of an "Event of Default" under the DIP Credit Agreement (one event of which is the occurrence of the Termination Date), as set forth therein, or any other material breach, default or other violation by any of the Debtors of the terms and provisions of this Interim Order shall constitute a termination event under this Interim Order and the DIP Loan Documents (each, a "Termination Event") unless waived in writing by the DIP Lender. Upon the occurrence of a Termination Event, but subject to Article 11 of the DIP Credit Agreement, any automatic stay otherwise applicable to the DIP Lender is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the DIP Lender to exercise any and all rights and remedies available to it under the DIP Credit Agreement and applicable law.

(b) Upon the effectiveness of any relief from the automatic stay with respect to the DIP Facility pursuant to Paragraph 14(a) hereof, and on not less than three (3) business days' prior written notice to counsel for the Debtors, the U.S. Trustee, and the Committee, the Senior Pre-Petition Lender shall have relief from the automatic stay to the same extent as the DIP Lender, and without further notice, hearing, motion, order or other action of any kind, to

foreclose on, or otherwise enforce and realize on its Waterton Pre-Petition Liens and the Senior Adequate Protection Liens or otherwise exercise remedies against the DIP Collateral or Waterton Pre-Petition Collateral permitted by this Interim Order, the Senior Pre-Petition Credit Documents and/or applicable non-bankruptcy law; provided, however, that any such foreclosure, enforcement or exercise of remedies by the Senior Pre-Petition Lender shall not interfere with or otherwise be inconsistent with any foreclosure or other enforcement by the DIP Lender of any DIP Liens or other DIP Protections or any other exercise of remedies by the DIP Lender.

(c) Subject to the provisions of Paragraph 7 hereof, all proceeds realized in connection with the exercise of the rights and remedies of the DIP Lender or the Senior Pre-Petition Lender shall be turned over first to the DIP Lender for application to the DIP Obligations under, and in accordance with the provisions of, the DIP Loan Documents and this Interim Order until payment in full of all of the DIP Obligations and then to the Senior Pre-Petition Lender for application to the obligations under the Senior Pre-Petition Credit Documents.

15. **Restriction on Use of Proceeds.** Notwithstanding anything herein to the contrary, no loans and/or proceeds from the DIP Facility, DIP Collateral, Cash Collateral (including any retainer held by any professionals for the below-referenced parties), Waterton Pre-Petition Collateral, Sandstorm Pre-Petition Collateral or any portion of the Carve-Out may be used by (a) any Debtor, Committee or trustee or other estate representative appointed in these Chapter 11 Cases or any Successor Cases, or any other person, party, or entity (including any of the Professionals or the members of the Committee) to investigate or prosecute any challenge (including any litigation or other action) in connection with the value of the Waterton Pre-Petition Collateral, the Sandstorm Pre-Petition Collateral or the DIP Collateral (or to pay any

professional fees and disbursements incurred in connection therewith) at any time; or (b) any Debtor, any Committee, or any trustee or other estate representative appointed in these Chapter 11 Cases or any Successor Cases, or any other person, party, or entity (including any of the Professionals or the members of the Committee) to (or to pay any professional fees and disbursements incurred in connection therewith): (i) request authorization to obtain post-petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code, or otherwise, other than from the DIP Lender, or to seek any modification to this Interim Order not approved by the DIP Lender and, to the extent such modification would affect the rights of the Senior Pre-Petition Lender or the Second Lien Pre-Petition Lender; (ii) investigate (except as set forth below), assert, join, commence, support, or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the interests of, in any capacity, any or all of the DIP Lender, the Senior Pre-Petition Lender, the Second Lien Pre-Petition Lender, their respective affiliates, assigns or successors and the respective officers, directors, employees, agents, attorneys, representatives and other advisors of the foregoing, with respect to any transaction, occurrence, omission, action, or other matter (including formal or informal discovery proceedings in anticipation thereof), including (A) any challenges raised during the Challenge Period and any Avoidance Actions or other actions arising under chapter 5 of the Bankruptcy Code; (B) any action with respect to the validity, enforceability, priority, and extent of the DIP Obligations, the obligations under the Senior Pre-Petition Credit Documents and/or the obligations under the Sandstorm Documents, or the validity, extent, and priority of the DIP Liens, the Waterton Pre-Petition Liens, the Sandstorm Pre-Petition Liens, or the Adequate Protection Liens; (C) any action seeking to invalidate, set

aside, avoid, or subordinate, in whole or in part, the DIP Liens, the other DIP Protections, the Waterton Pre-Petition Liens, the Sandstorm Pre-Petition Liens, the Adequate Protection Liens, or the other Pre-Petition Adequate Protection; (D) any action seeking, or having the effect of, preventing, hindering, or otherwise delaying any or all of the DIP Lender's, the Senior Pre-Petition Lender's or the Second Lien Pre-Petition Lender's assertion, enforcement, or realization on the Cash Collateral, the DIP Collateral, the Waterton Pre-Petition Collateral or the Sandstorm Pre-Petition Collateral in accordance with the DIP Loan Documents, the Senior Pre-Petition Credit Documents or the Sandstorm Documents, as applicable, or this Interim Order; and/or (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections, and benefits granted to any or all of the DIP Lender, the Senior Pre-Petition Lender or the Second Lien Pre-Petition Lender hereunder or under the DIP Loan Documents, the Senior Pre-Petition Credit Documents or the Sandstorm Documents, as applicable, or any payments made thereunder or in respect thereof; provided, however, up to \$10,000 in the aggregate of the Carve-Out, any DIP Collateral, any Waterton Pre-Petition Collateral, any Sandstorm Pre-Petition Collateral, any Cash Collateral and proceeds of the DIP Facility may be used by the Committee (to the extent such Committee is appointed) to investigate (but not to prosecute) the claims and/or liens of the Senior Pre-Petition Lender or the Second Lien Pre-Petition Lender under the Senior Pre-Petition Credit Documents or the Sandstorm Documents (but not the claims and/or Liens of the DIP Lender) so long as such investigation occurs within the Challenge Period; (iii) pay any fees or similar amounts to any person (other than the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender) who has proposed or may propose to purchase interests in any of the Debtors without the prior written consent of the DIP Lender, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender; or (iv) use or seek to use Cash Collateral or sell or

otherwise dispose of DIP Collateral, Waterton Pre-Petition Collateral or Sandstorm Pre-Petition Collateral, unless otherwise permitted hereby, without the prior written consent of the DIP Lender, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender.

16. **Proofs of Claim.** Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of these Chapter 11 Cases or Successor Cases to the contrary, the DIP Lender, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender will not be required (but are authorized) to file proofs of claim in any of the Cases or Successor Cases for any claim allowed herein.

17. **Preservation of Rights Granted Under the Interim Order.**

(a) **No Non-Consensual Modification or Extension of Interim Order.** The Debtors irrevocably waive any right to seek any amendment, modification, or extension of this Interim Order (including through any chapter 11 plan of reorganization) without the prior written consent of the DIP Lender, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lender. In the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, such modification, amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances, payments, or use of cash authorized or made hereby or pursuant to the DIP Loan Documents, or lien, claim, priority or other DIP Protections authorized or created hereby or pursuant to the DIP Loan Documents. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed by a subsequent order of this Court or any other court, the DIP Lender, the Senior Pre-Petition Lender

and the Second Lien Pre-Petition Lender shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code, and notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral or any DIP Obligations or any DIP Protections (including the Pre-Petition Adequate Protection) incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Lender of the effective date of such reversal, modification, vacatur, or stay shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the original provisions of this Interim Order (and shall maintain their respective priorities as provided by this Interim Order), and the DIP Lender, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender shall be entitled to all of the DIP Protections (including the Pre-Petition Adequate Protection) and all other rights, remedies, Liens, priorities, privileges, protections, and benefits granted pursuant to section 364(e) of the Bankruptcy Code, this Interim Order, or the DIP Loan Documents.

(b) Survival of Interim Order. The provisions of this Interim Order and the DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the DIP Protections (including the Pre-Petition Adequate Protection), and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Lender, the Senior Pre-Petition Lender or the Second Lien Pre-Petition Lender, respectively, shall survive, and shall not be modified, impaired, or discharged by, the entry of any order confirming any plan of reorganization in any Chapter 11 Case or Successor Case, converting any Chapter 11 Case to a case under chapter 7, dismissing any of the Chapter 11 Cases, withdrawing of the reference of any of the Chapter 11 Cases or any Successor Cases or providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases or any Successor Case in this Court, or terminating the joint administration of these Chapter 11 Cases or any Successor Case or by any

other act or omission. The terms and provisions of this Interim Order, including all of the DIP Protections (including the Pre-Petition Adequate Protection) and all other rights, remedies, Liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Lender, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender, respectively, shall continue in full force and effect and be binding on all parties in interest notwithstanding the entry of any such order, and such DIP Protections (including the Pre-Petition Adequate Protection), and such other rights, remedies, Liens priorities, privileges, protections and benefits, shall continue in full force and effect in these Chapter 11 Cases and in any Successor Cases and after dismissal of any thereof, and shall maintain their respective priorities as provided by this Interim Order. The DIP Obligations shall not be discharged by the entry of an order confirming any chapter 11 plan of reorganization, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

18. **Insurance Policies.** Upon entry of this Interim Order, the DIP Lender and the Senior Pre-Petition Lender shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral, and the Debtors shall take such actions as are reasonably requested by the DIP Lender or the Senior Pre-Petition Lender from time to time to evidence or effectuate the foregoing.

19. **Other Rights and Obligations.**

(a) **Expenses.** As provided in the DIP Loan Documents (and without limiting the Debtors' respective obligations thereunder), the applicable Debtors will pay all reasonable expenses incurred by the DIP Lender (including the reasonable fees and disbursements of the DIP Lender's professionals, including professionals engaged by counsel to the DIP Lender) in

connection with the preparation, execution, delivery, and administration of the DIP Loan Documents, this Interim Order, the Final Order, and any other agreements, instruments, pleadings, or other documents prepared or reviewed in connection with any of the foregoing, whether or not any or all of the transactions contemplated hereby or by the DIP Loan Documents are consummated.

(b) Binding Effect. The provisions of this Interim Order, including all findings herein, and the DIP Loan Documents shall be binding upon all parties in interest in these Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 Case or Successor Case, including the DIP Lender, the Senior Pre-Petition Lender, the Second Lien Pre-Petition Lender, any Committee, and the Debtors and their respective estates, successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors); provided, however, that the DIP Lender, the Senior Pre-Petition Lender and the Second Lien Pre-Petition Lender shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtors in any Chapter 11 Case or Successor Case.

(c) No Waiver. The failure of the DIP Lender or the Senior Pre-Petition Lender to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Senior Pre-Petition Credit Documents, the DIP Loan Documents or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Except as prohibited by this Interim Order, the entry of this Interim

Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, any right or ability of the DIP Lender and the Senior Pre-Petition Lender under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of these Chapter 11 Cases or any Successor Cases to cases under chapter 7, dismissal of these Chapter 11 Cases or any Successor Cases, or the appointment of a trustee or examiner in these Chapter 11 Cases or any Successor Cases, or to oppose the use of Cash Collateral in any Successor Case, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any chapter 11 plan or plans with respect to any of the Debtors or seek early termination of the Debtors' exclusive rights to propose a plan under the Bankruptcy Code, or (iii) except as expressly provided herein, exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Lender or the Senior Pre-Petition Lender.

(d) No Third Party Rights. Except as explicitly provided for herein or in any DIP Loan Document, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary.

(e) Amendments. The Debtors and the DIP Lender are authorized and empowered, without further notice and hearing or approval of this Court, to make any non-material modifications to the DIP Loan Documents, in accordance with Section 12.1 of the DIP Credit Agreement.

(f) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and of this Interim Order, the provisions of this Interim Order shall govern and control.

(g) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully

enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(h) Reservation of Rights. Nothing in this Interim Order shall be deemed to constitute the consent of the DIP Lender or the Senior Pre-Petition Lender, and each of the foregoing expressly reserve the right to object, to entry of any order of the Bankruptcy Court that provides for the sale or other disposition of all or substantially all of the assets of the Debtors (or any other sale or other disposition of assets of any of the Debtors outside the ordinary course of business) to any party unless, in connection and concurrently with any such event, the proceeds of such sale are or will be sufficient to pay in full the DIP Obligations, the Senior Pre-Petition Indebtedness and the Senior Adequate Protection Priority Claims and all of the foregoing are paid in full on the closing date of such sale.

(i) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in, interpreting this Interim Order.

20. Final Hearing

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for _____, 2015, at _____ (ET) at the United States Bankruptcy Court for the District of Delaware. The proposed Final Order shall be substantially the same as the Interim Order except that (i) those provisions in the Interim Order that are subject to the entry of the Final Order shall be included in the Final Order without such qualification, and (ii) where appropriate, references to this Interim Order shall be changed to

references to the Final Order. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

(b) Final Hearing Notice. On or before _____, 2015, the Debtors shall serve, by United States mail, first-class postage prepaid (such service constituting adequate notice of the Final Hearing), (i) notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice") and (ii) a copy of this Interim Order on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court **by no later than _____, 2015 at 4:00 p.m. (ET)**, which objections shall be served so that the same are **actually received on or before such date** by: the Debtors, counsel to the DIP Lender, counsel to the Senior Pre-Petition Lender and the U.S. Trustee.

21. **Retention of Jurisdiction**. This Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: _____, 2015
Wilmington, Delaware

Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT A

Initial Approved Budget

Santa Fe Gold Corporation
The Lordsburg Mining Company
Projected 13- Week Cash Flow Budget

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13
Mill & Mine: Sustaining/Maintenance													
BLM Filing Fees (JC Claims)	\$ 37,130												
BLM Fees (Hidalgo County Claims)	47,895												
BLM (Grant County Claims)	12,710												
BLM (Maricopa & Yavapai Claims)	11,780												
Henry Clay Lease		12,000											
Water Right @ Summit			15,000										
State Permit Modification -- Lordsburg		12,000											
Insurance Mill & Equipment	20,000												
Security Summit Mine	1,600		1,600		1,600		1,600		1,600		1,600		1,600
Storage (MICA Equipment & Records	1,665			1,665				1,665				1,665	
Tailings dam maintenance -- Lordsburg	2,500			\$ 500.0				\$ 500.0		\$ 500.0	1,665	\$ 500.0	
Total Mill & Mine: Sustaining/Maintenance	\$ 135,280	24,000.0	16,600.0	2,165.0	1,600.0	-	1,600.0	2,165.0	1,600.0	500.0	3,265.0	2,165.0	1,600.0
G&A													
Data Room	\$ 450			\$ 450				\$ 450	\$ 450				\$ 450
Lordsburg:Utilities & Communications	2,200			2,200									
Santa Fe: Communication & Office	1,800												
Independent Director Fees (Hofer)	3,000			3,000				3,000				3,000	
Payroll	19,208		19,208		19,208		19,208		19,208		19,208		19,208
Health Insurance	2,300			2,300				2,300				2,300	
Other	5,000			5,000				5,000				5,000	
Total G&A	\$ 33,958	\$ -	\$ 19,208	\$ 12,950	\$ 19,208	\$ -	\$ 19,208	\$ 10,750	\$ 19,658	\$ -	\$ 19,208	\$ 10,300	\$ 19,658
Bankruptcy & Restructuring Costs:													
DIP Loan Commitment Fee													
US Trustee Fees								5,000.0				10,000.0	
Creditors Committee Professionals				75,000.0				50,000.0				25,000.0	
Investment Banking Fees	\$ 50,000			\$ 50,000				\$ 50,000			\$ 50,000	\$ 400,000	
YCST Legal Fees				125,000				100,000				75,000	
Pre-petition wage obligations	62,500												
Claims Agent	10,000			20,000				10,000				20,000	
Travel & Administrative	5,000												
Public Disclosures & Other	5,000			2,500		2,500		5,000				5,000	
Total bankruptcy & Restructuring	\$ 132,500	\$ -	\$ -	\$ 272,500	\$ -	\$ 2,500	\$ -	\$ 220,000	\$ -	\$ -	\$ -	\$ 185,000	\$ 400,000
Weekly Total	\$ 301,738	\$ 24,000	\$ 35,808	\$ 287,615	\$ 20,808	\$ 2,500	\$ 20,808	\$ 232,915	\$ 21,258	\$ 500	\$ 22,473	\$ 197,465	\$ 421,258
Cumulative Cash Flow	\$ 301,738	\$ 325,738	\$ 361,547	\$ 649,162	\$ 669,970	\$ 672,470	\$ 693,278	\$ 926,193	\$ 947,452	\$ 947,952	\$ 970,425	\$ 1,167,890	\$ 1,589,148

EXHIBIT B

DIP Credit Agreement

SANTA FE GOLD CORPORATION

as Borrower

**THE GUARANTORS
FROM TIME TO TIME PARTY HERETO**

as Guarantors

and

**WATERTON GLOBAL VALUE, L.P., BY ITS INVESTMENT MANAGER, ALTITUDE
MANAGEMENT LIMITED**

as Lender

DEBTOR-IN-POSSESSION CREDIT AGREEMENT¹

August [__], 2015

¹ This DIP Credit Agreement is a draft agreement. Completion and funding under this Agreement are subject to receipt by Lender of satisfactory schedules, perfection certificates, closing documents and materials that are responsive to certain questions in respect of the representations.

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Exhibits

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Schedules

Schedule 9.1(i)	Material Contracts
Schedule 9.1(j)	Real Property
Schedule 9.1(l)	Leases
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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This **DEBTOR-IN-POSSESSION CREDIT AGREEMENT** is dated August [___], 2015 (the “**Effective Date**”) and entered into by and among Santa Fe Gold Corporation a corporation incorporated pursuant to the laws of the State of Delaware and a debtor-in-possession under Chapter 11 of the Bankruptcy Code (as defined below) as the borrower (the “**Borrower**”), Santa Fe Gold (Barbados) Corporation, a corporation incorporated pursuant to the laws of Barbados and a debtor-in-possession under Chapter 11 of the Bankruptcy Code (“**Santa Fe**”), the Lordsburg Mining Company, a corporation incorporated pursuant to the laws of the State of New Mexico and a debtor-in-possession under Chapter 11 of the Bankruptcy Code (“**Lordsburg**”), Azco Mica Inc., a corporation incorporated pursuant to the laws of the State of Delaware and a debtor-in-possession under Chapter 11 of the Bankruptcy Code (“**Azco**” and together with Santa Fe, Lordsburg, and each other Person who accedes to this Agreement by becoming a “Guarantor” hereunder in accordance with Section 10.1(v), the “**Guarantors**”) and Waterton Global Value, L.P., a limited partnership formed pursuant to the laws of the British Virgin Islands, by its Investment Manager, Altitude Management Limited, as Lender (together with its permitted successors and assigns in such capacity, the “**Lender**”).

RECITALS

WHEREAS, on August 26, 2015 (the “**Petition Date**”), the Borrower, Santa Fe, Lordsburg and Azco (each, a “**Debtor**” and collectively, the “**Debtors**”) commenced Chapter 11 Case Nos. [___] through [___] (each a “**Chapter 11 Case**” or a “**Case**” and collectively, the “**Chapter 11 Cases**” or the “**Cases**”) by filing voluntary petitions for reorganization under the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, the Pre-Petition Lender (as defined below) provided financing to Santa Fe pursuant to the Senior Secured Gold Stream Credit Agreement, dated as of December 23, 2011, among Santa Fe, Azco, the Borrower, Lordsburg, and the Pre-Petition Lender (as amended, modified or supplemented through the Petition Date, the “**Pre-Petition Credit Agreement**”);

WHEREAS, prior to the Petition Date, Waterton Global Value, L.P., as buyer (in such capacity, the “**Pre-Petition Buyer**”) and each of Lordsburg, the Borrower and Santa Fe, as sellers entered into the Gold and Silver Supply Agreement dated as of December 23, 2011 (as amended, supplemented or otherwise modified through the date hereof, the “**Pre-Petition Gold Supply Agreement**”);

WHEREAS, the Borrower has requested that the Lender provide a senior secured, superpriority credit facility to the Borrower (the “**Facility**”) to fund the working capital requirements of the Borrower and for other purposes permitted under this Agreement during the pendency of the Chapter 11 Cases;

WHEREAS, the Lender is willing to make certain Post-Petition (as defined below) loans to the Borrower in a principal amount of up to [_____] upon the terms and conditions set forth herein;

WHEREAS, each Debtor other than the Borrower has agreed to guarantee all the Obligations (as defined below) and each Debtor has agreed to secure the Obligations by granting to the Lender a security interest in and Lien upon substantially all its existing and after-acquired personal and real property; and

WHEREAS, each Debtor acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrower as provided in this Agreement;

NOW THEREFORE THIS DEBTOR-IN-POSSESSION CREDIT AGREEMENT WITNESSES that for good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, each of the parties agrees as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

“Account Debtor” means an “account debtor” (as defined in the UCC), and also means and includes Persons obligated to pay negotiable instruments and other Receivables.

“Act” has the meaning set forth in Section 12.20.

“Affairs” means the business, affairs, operations, undertaking, property, assets, liabilities, condition (financial or otherwise), prospects, performance and results of operations of a specified Person.

“Affiliate” means (x) 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 and (y) in the case of the initial Lender, Waterton Precious Metals Fund II Cayman, LP.

“Agreed Priority” means, the Liens made in favor of the Lender with the priorities set forth in Section 7.9, subject only to Permitted Liens.

“Agreement” means this Debtor-in-Possession Credit Agreement and all schedules and instruments in amendment or confirmation of it; and the expressions **“Article”**, **“Section”**, **“Subsection”** and **“paragraph”** followed by a number or letter mean and refer to the specified Article, Section, Subsection or paragraph of this Agreement.

“Applicable Law” means any international treaty, any domestic or foreign constitution or any supranational, national, regional, federal, provincial, territorial, state, municipal, tribal or local statute, law, ordinance, code, rule, regulation, order (including any consent decree or administrative order), applicable to, or any directive, guideline, policy or Authorization of any Governmental Entity having jurisdiction with respect to any specified Person, property, transaction or event or any of such Person’s Affairs, and any order, judgment, award or decree of any Governmental Entity, or arbitrator in any proceeding or action to which the Person in question is a party or by which such Person or any of its Affairs is bound. For purposes of Section 5.2, the term “Applicable Law” includes FATCA.

“Approved Budget” has the meaning assigned to such term in Section 8.2(a)(i)(O).

“Approved Budget Variance Report” has the meaning assigned to such term in Section 10.1(b)(iii).

“Assigned Insurance Policies” has the meaning assigned to such term in Section 7.1(w).

“Authorization” means any authorization, approval, consent, certificate, exemption, license, permit, franchise, certification, registration or no-action letter from any Governmental Entity having jurisdiction with respect to any specified Person, property, transaction or event, or any of such Person’s Affairs or from any Person in connection with any easements or contractual rights.

“Azco” has the meaning assigned to such term in the Preamble.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy” or any successor statute, and all rules promulgated thereunder.

“Bankruptcy Court” has the meaning set forth in the Recitals.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and local rules of the Bankruptcy Court, each as amended, and applicable to the Cases.

“Black Canyon Project” means the project described as “Black Canyon Mica” in the Borrower 10-K.

“Borrower” has the meaning set forth in the Preamble.

“Borrower 10-K” means the Borrower’s annual report for the Financial Year ended June 30, 2014 on form 10-K filed with the Securities and Exchange Commission on October 22, 2014.

“Borrower 10-Q” means the Borrower’s quarterly report for the Financial Quarter ended December 31, 2014 on form 10-Q filed with the Securities and Exchange Commission on February 24, 2015.

“Borrower Account” means a bank account in the name of the Borrower with the following wire transfer instructions:

ABA Number: 121 000 248

Bank Name: Wells Fargo Bank, N.A.

Bank Address: Main Office, 420 Montgomery Street, San Francisco, CA 94104

Beneficiary Account Number (BNF): 250 418 6756

Swift Code: WFBIUS6S

“Borrowing Notice” means a written request by the Borrower for a drawing under the Term Loan pursuant to Section 2.4 substantially in the form of Exhibit A hereto.

“Buildings and Fixtures” means all plant, buildings, structures, erections, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) situated on any of the Subject Properties.

“Business” means the business of the Credit Parties as conducted as at the date hereof.

“Business Day” means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Canada, Albuquerque, New Mexico or New York, New York.

“Capital Lease” means, with respect to a Person, a lease or other arrangement in respect of real or personal property that is required to be classified and accounted for as a capital lease or debt obligation on a balance sheet of the Person in accordance with GAAP.

“Capital Lease Obligation” means, with respect to a Person, the obligation of the Person to pay rent or other amounts under a Capital Lease and for the purposes of this definition, the amount of such obligation at any date shall be the capitalized amount of such obligation at such date as determined in accordance with GAAP.

“Capitalized Interest” has the meaning assigned to such term in Section 3.2(a).

“Carve-Out” means the sum of (i) the aggregate amount of any reasonable and unpaid fees, costs and expenses that were accrued or incurred prior to the Carve-Out Date by the professionals retained by the Debtors or any professionals retained by the Committee (collectively, the **“Professionals”**) to the extent allowed by an order of the Bankruptcy Court and in compliance with the Approved Budget, plus (ii) those reasonable fees, costs and expenses incurred by Professionals after the Carve-Out Date and subsequently allowed by order of the Bankruptcy Court and in compliance with the Approved Budget, plus (iii) the Success Fee of Canaccord Genuity Inc. as set forth (and defined) in its engagement letter arising from of a sale of substantially all the assets of the Debtors to the extent such Success Fee is allowed by the Bankruptcy Court at any time, whether by interim order, procedural order or otherwise, plus (iv) fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee

pursuant to 28 U.S.C. § 1930; provided that (x) the amounts described in items (i) and (ii) of this definition shall not exceed \$350,000 in the aggregate and (y) following the Carve-Out Date any amounts paid to Professionals by any means will reduce the Carve-Out on a dollar-for-dollar basis.

“Carve-Out Date” means the earlier of (i) the date on which any Event of Default occurs and (ii) the Maturity Date.

“Carve-Out Reserve” means an amount equal to up to \$[330,000] which may be designated by the Lender to the Borrower in writing at any time on or prior to the second drawing under the Term Loan.

“Case” has the meaning set forth in the Recitals.

“Change of Control” means the occurrence of any of the following events:

- (a) any person or group of persons (within the meaning of the Securities Exchange Act of 1934) (i) “acting in concert” (as interpreted in accordance with applicable securities legislation or regulation) shall have acquired legal or beneficial ownership of, or the power to exercise control or direction over, any Voting Shares of the Borrower (or securities convertible into such Voting Shares), that together with such person’s existing securities would constitute Voting Shares of the Borrower representing more than 30% of the total voting power attached to all Voting Shares of the Borrower then outstanding or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the board of directors of the Borrower;
- (b) any person or group of persons other than the Borrower shall have acquired legal or beneficial ownership of, any shares of any Credit Party;
- (c) there is consummated any amalgamation, consolidation, statutory arrangement, merger or similar transaction of the Borrower (1) in which the Borrower is not the continuing or surviving corporation or (2) pursuant to which any Voting Shares of the Borrower would be reclassified, changed or converted into or exchanged for cash, securities or other property, other than (in each case) an amalgamation, consolidation, statutory arrangement, merger or similar transaction of the Borrower in which the holders of the Voting Shares of the Borrower representing more than 80% of the total voting power attached to all such Voting Shares immediately prior to the amalgamation, consolidation, statutory arrangement, merger or similar transaction have, directly or indirectly, more than 80% of the Voting Shares of the continuing or surviving corporation immediately after such transaction; or
- (d) the Borrower or any Guarantor shall cease to directly own and control the Equity Interests that any of them has pledged to the Lender pursuant to a Security Document (in fact or by title).

“Chapter 11 Case” has the meaning set forth in the Recitals.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” has the meaning set forth in Section 7.1.

“Committee” means any statutory committee appointed in the Chapter 11 Cases.

“Compliance Certificate” means a certificate of the Borrower substantially in (i) the form of Exhibit B, signed on its behalf by an officer acceptable to the Lender or (ii) such other form as the Lender may determine.

“Constating Documents” means (i) with respect to a corporation, its certificate of incorporation, articles of incorporation, amalgamation or continuance or other similar documents and its by-laws, and (ii) with respect to any other Person that is not a natural person, the organization and governance documents of such Person in each case as amended and supplemented from time to time.

“Consultant” has the meaning set forth in Section 12.19.

“Contaminant” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or combination of any of them that could reasonably be likely to (i) injure or damage property or plant or animal life, (ii) harm or cause a nuisance to any Person, (iii) adversely affect the health of any individual, (iv) impair the safety, of any individual, (v) render any property or plant or animal life unfit for use by humans, (vi) cause loss of enjoyment of normal use of property, or (vii) interfere with the normal course of business, and includes any “Contaminant” within the meaning assigned to such term (or any similar term) in any Environmental Law applicable to the Mining Properties or any of the Credit Parties.

“Contingent Liability” means, with respect to a Person, any agreement, undertaking or arrangement by which the Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) the obligation, debt or other liability of any other Person or guarantees the payment of dividends or other distributions upon the shares of any Person. The amount of any contingent liability will, subject to any limitation contained therein, be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the obligation, debt or other liability to which the contingent liability is related.

“Contract” means any contract (written or oral), agreement, undertaking, indenture, mortgage, certificate, document and any other writing (whether formal agreement, letter or otherwise) under which any obligation, duty, covenant, agreement, affirmation, undertaking or liability is evidenced, assumed or undertaken, or any right or Lien (or right or interest therein) is granted, authenticated, notarized, authorized or perfected, and any notice, registration, recordation or filing associated with or required by any of the foregoing.

“Contractual Obligation” means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” of any Person means:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of such Person; or
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of such Person; or
 - (iii) give directions with respect to the operating and financial policies of such Person with which the directors or other equivalent officers of such Person are obliged to comply; and/or
- (b) the holding beneficially of more than 50% of the issued share capital of such Person.

“Control Agreement” means a control agreement, in form and substance satisfactory to the Lender, executed and delivered by a Credit Party or one of its Subsidiaries, the Lender, and the applicable Securities Intermediary or bank.

“Controlled Account” means a bank account that is subject to a Control Agreement.

“Copyrights” means original works of authorship in any medium of expression, whether or not published, and all rights, title and interests arising under any Applicable Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordings thereof and all applications in connection therewith, including copyrights for computer programs, and all issuances, extensions and renewals of such registrations and applications and all tangible and intangible property embodying the foregoing.

“Credit Documents” means this Agreement, the Perfection Certificates, the Security Agreements, and each other Contract executed by the Borrower or other Credit Party in connection with this Agreement and each other Contract executed by the Borrower or other Credit Party after the date hereof in accordance with the terms hereof and designated as a Credit Document by the Lender, or any of the foregoing Contracts, whether or not specifically identified in this clause, as any of the foregoing may be amended, modified, supplemented, extended or restated from time to time in accordance with their respective terms.

“Credit Parties” means, collectively, the Borrower and each Guarantor, and **“Credit Party”** means any of them, together with their permitted successors and assigns.

“Credit Party Control Agreement” means the account control agreement relating to each of the Credit Party Accounts.²

“Credit Party Accounts” means, collectively, the Credit Parties’ bank accounts listed in Schedule 10.1(r) and each a **“Credit Party Account”**.

“Debt” of any Person means:

- (a) all obligations of the Person for borrowed money, including debentures, notes or similar instruments and other financial instruments and obligations with respect to bankers’ acceptances and contingent reimbursement obligations relating to letters of credit;
- (b) all Financial Instrument Obligations of the Person;
- (c) all Capital Lease Obligations and Purchase Money Debt of the Person;
- (d) all obligations to pay the deferred and unpaid purchase price of property or services, which purchase price is due and payable more than 90 days after the date of placing such property or service or taking delivery at the completion of such services;
- (e) all indebtedness of any Person secured by a Lien on any assets of such Person;
- (f) all obligations to repurchase, redeem or repay any shares of such Person; and
- (g) all Contingent Liabilities of the Person with respect to obligations of another Person if such obligations are of the type referred to in paragraphs (a) to (f).

“Debtors” has the meaning set forth in the Recitals.

“Default” means an Event of Default or any event which, with the giving of notice or passage of time, or the making of any determination or any combination of the foregoing, would constitute an Event of Default.

“Default Rate” has the meaning set forth in Section 3.2(c).

“DIP Administrative Claim” means an allowed superpriority administrative expense claim under Section 364(c)(1) of the Bankruptcy Code, having priority over all administrative expense claims, adequate protection and other diminution claims, priority claims and unsecured claims, including administrative expenses and other claims of the kind specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, 1114 or any other provisions of the Bankruptcy Code.

“DIP Facility” means the credit facility provided to the Debtors pursuant to the Credit Documents.

² Confirm whether there are any existing control agreements.

“DIP Liens” has the meaning set forth in Section 7.9.

“Direct Agreement” means a direct agreement entered into by a Credit Party, the counterparty to a Material Contract and the Lender in respect of the assignment of the rights of the Credit Party and the exercise of step-in rights by the Lender under such Material Contract, in form and substance satisfactory to the Lender.

“Disbursement” has the meaning set forth in Section 2.5(b).

“Disbursement Notice” has the meaning set forth in Section 2.5(b).

“Disposal” means a sale, lease, release, abandonment, license, exchange, transfer, loan, grant, option or other disposal by a Person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions) and **“Dispose”** and **“Disposition”** shall have a corresponding meaning.

“Disposal Proceeds” means the consideration receivable by a Credit Party for any Disposal made by such Credit Party, net of any costs actually paid in connection with the Disposal, including brokerage and transaction fees and applicable taxes.

“Distribution” has the meaning specified in Section 10.2(g).

“Dollars” and **“\$”** means lawful money of the United States.

“Effect of Bankruptcy” means, with respect to any contractual obligation, contract, lease or agreement to which a Debtor is a party, any default or other legal consequences arising on account of the commencement or the filing of the Chapter 11 Cases, as applicable (including the implementation of any stay), or the rejection of any such contractual obligation, contract or agreement with the approval of the Bankruptcy Court if required under Applicable Law.

“Effective Date” has the meaning specified in the Preamble.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

“Environmental Claims” means, all liabilities, (including costs of remedial actions, reclamation, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and cost of legal fees) that may be imposed on, incurred by, or asserted against a Credit Party as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law, any Release or threatened Release of Hazardous Materials, or in connection with any environmental, health or safety condition arising prior to or after the date hereof.

“Environmental Indemnified Liabilities” shall have the meaning ascribed thereto in Section 12.5(b).

“Environmental Laws” means any Applicable Law relating to pollution or protection of the environment, ecology or public health or safety or environmental, health or safety issues on or pertaining to the Mining Properties, including, Applicable Laws relating to emissions, discharges, Releases or threatened Releases of Hazardous Materials into the Environment, the exposure of any Person to Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 of the United States (CERCLA), as amended by the Superfund Amendments and Reauthorization Act and as further amended from time to time, and any successor statute and including all regulations promulgated thereunder and any state or local counterpart.

“Equity Interests” means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the *Employee Retirement Income Security Act of 1974*, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA shall be construed to also refer to any successor sections.

“Event of Default” has the meaning specified in Section 11.1.

“Excluded Property” has the meaning assigned to such term in Section 7.1.

“Excluded Shares” means any voting stock in excess of 65% of the outstanding voting stock of any Foreign Subsidiary. For the purposes of this definition, “voting stock” means, with respect to any issuer, the issued and outstanding shares of each class of shares of such issuer entitled to vote (within the meaning of Treasury Regulations § 1.956-2(c)(2)).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to the Lender or required to be withheld or deducted from a payment to the Lender: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of the Lender being organized under the laws of, or having an office located in the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Other Connection Taxes; (b) Taxes attributable to the Lender’s failure to comply with Section 5.2(e); and (c) any U.S. federal withholding Taxes imposed under FATCA.

“Expropriation Event” means the appropriation, confiscation, expropriation, cancellation, seizure or nationalization (by Applicable Law, intervention, court order, condemnation, exercise of eminent domain or other action or form of taking) of ownership or control of a Credit Party or any of its Subsidiaries or of a Mining Property, or any substantial portion thereof, or any substantial portion of the rights related thereto, or any substantial portion of the economic value thereof, or which prevents or materially interferes with the ability of a Person to own or operate the property subject to such action, including by the imposition of any Tax, fee, charge or royalty.

“Extension Fee” has the meaning specified in Section 3.3.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), payments in connection with any Expropriation Event, indemnity payments and any purchase price adjustments, net of any costs actually paid in connection with the receipt, including brokerage and transaction fees and applicable taxes.

“Facility” shall have the meaning given thereto in the Recitals.

“FATCA” means Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b) of the Code and any applicable intergovernmental agreement with respect thereto and applicable official implementing guidance thereunder.

“Final Order” means the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be substantially in the form of the Interim Order or otherwise satisfactory in form and substance to the Lender, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal has been stayed, dismissed or denied unless the Lender waives such requirement, together with all extensions, modifications and amendments thereto, each in form and substance satisfactory to the Lender. The Final Order (a) shall authorize and approve the transactions contemplated by the Credit Documents, (b) shall find that the Lender is extending credit to the Borrower in good faith within the meaning of Bankruptcy Code section 364(e) and (c) shall set forth provisions (i) approving in all respects the Credit Documents, and authorizing and directing the Debtors to execute and become bound by the Credit Documents; (ii) modifying the automatic stay to the extent necessary to permit or effectuate the terms of the Final Order and the Credit Documents, including to permit the creation and perfection of the Lender’s Liens on the Collateral; (iii) providing for the automatic relief of such stay to permit the enforcement of the Lender’s remedies under the DIP Facility, subject to the right of the Debtors and/or the Committee to seek to re-impose or continue the automatic stay; and (iv) providing that the Debtors acknowledge (x) the validity and enforceability of the Pre-Petition Obligations, without defense, offset or counterclaim of any kind, (y) the validity, perfection and priority of the Liens securing the Pre-Petition Obligations, and that the Debtors waive any right to challenge or contest such claims and liens and (z) that the Debtors have no valid claims or causes of action, whether based in contract, tort or otherwise

against (A) the Pre-Petition Lender with respect to the Pre-Petition Credit Agreement or the related documents or transactions or (B) the Pre-Petition Buyer with respect to the Pre-Petition Gold Supply Agreement or the related documents or transactions.

“Financial Advisor” means Canaccord Genuity Inc. or a replacement appointed by the Lender.

“Financial Assistance” has the meaning specified in Section 10.2(h).

“Financial Instrument Obligations” means, with respect to any Person, obligations arising under:

- (a) any interest rate swap agreement, forward rate agreement, floor, cap or collar agreement, future or option, insurance or other similar agreement or arrangement, or any combination thereof, entered into or guaranteed by the Person where the subject matter thereof is interest rates or the price, value or amount payable thereunder is dependent or based upon interest rates or fluctuations in interest rates in effect from time to time (but excluding non-speculative conventional floating rate indebtedness);
- (b) any currency swap agreement, cross currency agreement, forward agreement, floor, cap or collar agreement, future or option, insurance or other similar agreement or arrangement, or any combination thereof, entered into or guaranteed by the Person where the subject matter thereof is currency exchange rates or the price, value or amount payable thereunder is dependent or based upon currency exchange rates or fluctuations in currency exchange rates in effect from time to time; or
- (c) any agreement for the making or taking of any commodity, swap agreement, floor, cap or collar agreement or commodity future or option or other similar agreement or arrangement, or any combination thereof, entered into or guaranteed by the Person where the subject matter thereof is any commodity or the price, value or amount payable thereunder is dependent or based upon the price or fluctuations in the price of any commodity; or any other similar transaction, including any option to enter into any of the foregoing, or any combination of the foregoing, in each case to the extent of the net amount due or accruing due by the Person under the obligations determined by marking the obligations to market in accordance with their terms.

“Financial Quarter” means a period of three consecutive months in each Financial Year ending on March 31, June 30, September 30 and December 31, as the case may be, of such year.

“Financial Year” means, in relation to the Borrower, its financial year commencing on July 1 of each calendar year and ending on June 30 of the following year.

“First Liens” has the meaning set forth in Section 7.9(b).

“Foreign Lender” means the Lender or any successor or assignee that is organized under the laws of a jurisdiction other than the United States, each State thereof and the District of Columbia.

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia (including, for the avoidance of doubt, any Subsidiary organized under the laws of Puerto Rico or any other territory).

“GAAP” means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), including the FASB Accounting Standards Codification™, which are applicable to the circumstances as of the date of determination.

“Governmental Entity” means (i) any multinational, national, federal, provincial, state, territorial, municipal, local, tribal, native or other government, governmental or public department, central bank, court, commission, board, bureau, agency, instrumentality or regulatory authority, domestic or foreign, (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, judicial, expropriation or taxing authority under or for the account of any of the above.

“Guaranteed Obligations” has the meaning assigned to such term in Section 6.1.

“Guarantees” means the guarantee of the Obligations by the Guarantors, pursuant to Article VI of this Agreement.

“Guarantor” has the meaning set forth in the Preamble.

“Hazardous Material” means any substance or mixture of substances, or any pollutant or Contaminant, toxic or dangerous substance or waste or hazardous material, that is regulated, defined, designated or listed in, or otherwise classified pursuant to, or which give rise to liability under, any Environmental Law, including petroleum and all derivatives or synthetic substitutes thereof, asbestos or asbestos-containing materials, polychlorinated biphenyls, radioactive materials or any other substances regulated under Environmental Laws by reason of deleterious properties such as ignitability, corrosiveness, reactivity, carcinogenicity, toxicity or dangerousness.

“Hedging Agreement” means (i) any currency exchange or interest rate swap agreement, currency exchange or interest rate cap agreement or currency exchange or interest rate collar agreements between any Credit Party and any other Person and (ii) all net forward sale, put/call options, spot deferred sale or other similar arrangement or agreement relating to the sale or purchase of any commodity.

“Indemnified Person” has the meaning specified in Section 12.5(a).

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

“Initial Maturity Date” means [____], 2016.³

“Intellectual Property” means on a worldwide basis all (i) Patents; (ii) Trademarks; (iii) Internet Domain Names; (iv) Copyrights; (v) Trade Secrets, confidential information, formulas, designs, know-how and other proprietary information, research and development, inventions, methods, processes, compositions, whether or not patentable; (vi) Software; and (vii) all other intellectual property and all common law and other rights in and to the foregoing owned by or licensed to any Credit Party and used in or necessary to the operation of its business.

“Intercreditor Agreement” means the Intercreditor Agreement dated for reference December 23, 2011 among Sandstorm, Lender, Lordsburg and Santa Fe.

“Interest Payment Amount” means, in relation to any Interest Payment Date, the aggregate of interest due and payable on the outstanding amount of the Loans with respect to the period ending on such Interest Payment Date at a rate of interest per annum equal to the Interest Rate.

“Interest Payment Date” means each of the following (i) each Monthly Payment Date, (ii) the Maturity Date, and (iii) any date on which the Borrower makes a voluntary or mandatory prepayment of a Loan.

“Interest Rate” means, 12% per annum.

“Interim Order” means the order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing, substantially in the form attached hereto as Exhibit C or such other form satisfactory to the Lender and together with all extensions, modifications, and amendments thereto that are each satisfactory to the Lender. The Interim Order (a) shall authorize and approve the transactions contemplated by the Credit Documents, (b) shall find that the Lender is extending credit to the Borrower in good faith within the meaning of Bankruptcy Code section 364(e) and (c) shall set forth provisions (i) approving in all respects the Credit Documents, and authorizing and directing the Debtors to execute and become bound by the Credit Documents; (ii) modifying the automatic stay to the extent necessary to permit or effectuate the terms of the Interim Order and the Credit Documents, including to permit the creation and perfection of the Lender’s Liens on the Collateral; (iii) providing for the automatic relief of such stay to permit the enforcement of the Lender’s remedies under the DIP Facility, subject to the right of the Debtors and/or the Committee to seek to re-impose or continue the automatic stay; and (iv) providing that the Debtors acknowledge (x) the validity and enforceability of the Pre-Petition Obligations, without defense, offset or counterclaim of any kind, (y) the validity, perfection and priority of the Liens securing the Pre-Petition Obligations, and that the Debtors waive any right to challenge or contest such claims and liens and (y) that the

³ 6 months after the Effective Date.

Debtors have no valid claims or causes of action, whether based in contract, tort or otherwise against (A) the Pre-Petition Lender with respect to the Pre-Petition Credit Agreement or the related documents or transactions or (B) the Pre-Petition Buyer with respect to the Pre-Petition Gold Supply Agreement or the related documents or transactions.

“Internet Domain Name” means all right, title and interest arising under any Applicable Law in or relating to internet domain names, whether or not trademarks, registered in any generic top level domain by any authorized private registrar or Governmental Entity.

“IRS” means the United States Internal Revenue Service.

“Land” has the meaning assigned to such term in the definition of “Real Estate”.

“Leased Properties” means, collectively, the real properties forming the subject matter of the Leases.

“Leases” means the leases, subleases, rights to occupy and licenses of real property or Buildings and Fixtures, to which any Credit Party is a party (i) at the date of this Agreement, as listed and described in Schedule 9.1(l), or (ii) after the date of this Agreement.

“Lender” has the meaning set forth in the Preamble.

“Licenses” mean all Contractual Obligations, whether written or oral, granting any right, title and interest in or relating to any Intellectual Property, including any agreement now or hereinafter in existence granting any Credit Party any right, whether exclusive or non-exclusive, with respect to any Person’s Intellectual Property, now or hereafter in existence, whether or not registerable, or pursuant to which any Credit Party has granted to any other Person, any right, whether exclusive or non-exclusive, with respect to any Intellectual Property now or hereafter in existence, whether or not registerable.

“Lien” means any mortgage, deed of trust, lien, pledge, charge, security interest, hypothecation, indenture, preferential right, assignment, option, claim, royalty, production payment, burden on production or other lien, encumbrance or collateral security Instrument in, on or to, or any right or interest, or the title of any vendor, lessor, lender or other secured party to, or interest or title of any Person under any conditional sale or other title retention agreement or capital lease with respect to, any property or asset owned or held by such Person, any mortgage, deed of trust, pledge, charge, security agreement, hypothecation, indenture, assignment or similar instrument, or the filing of a financing statement or other similar Instrument, which names such Person as debtor, or any security agreement or other similar instrument authorizing any other party as the secured party thereunder to file any financing statement or other similar instrument or any other arrangement, encumbrance or condition that in substance secures payment or performance of an obligation.

“Loan” means the Term Loan and/or the Roll Up Loan, as the context requires.

“Lordsburg” has the meaning assigned to such term in the Preamble.

“Mandatory Prepayment Amount” has the meaning specified in Section 4.1(a).

“Material Adverse Effect” means, when used with reference to any event or circumstance, any event or circumstance which has, had, or could reasonably be expected to have, a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which cumulatively could result in a material adverse effect) on (i) any of the Mining Properties, (ii) the business, operations, results of operations, assets, performance, liabilities or the condition (financial or otherwise) of any Credit Party, (iii) any of the rights or remedies of the Lender or (iv) the ability of any Credit Party to perform its obligations under any of the Credit Documents, *provided, however* that clause (ii) shall not be a Material Adverse Effect with respect to any Debtor if such event or circumstance is an Effect of Bankruptcy.

“Material Contracts” means, collectively, the agreements set out in Schedule 9.1(i)⁴ and any other agreement to which any Credit Party is a party and which is deemed material by the Lender to the Business or the operation of the Mining Properties.

“Maturity Date” means the Initial Maturity Date; *provided* that if such date is extended in accordance with Section 3.3, the “Maturity Date” shall thereafter be deemed to be such extended date.

“Milestones” means each of the following Milestones and each individually, a **“Milestone”**:

- (a) no later than 30 days following the Petition Date, the Debtors shall have filed with the Bankruptcy Court a motion including procedures for the sale of substantially all the assets of the Debtors, which procedures are reasonably likely to result in the consummation of such sale no later than the Maturity Date and are in form and substance acceptable to Lender;
- (b) no later than 30 days following the filing of the motion referred to in the foregoing clause (a), the Bankruptcy Court shall have entered a final order approving bid procedures for the sale of substantially all the assets of the Debtors, which procedures provide that (x) the Lender may credit bid all or any portion of the Obligations in connection with such sale pursuant to Section 363(k) of the Bankruptcy Code and (y) Lender shall have a right to act as a “stalking horse” bidder in such sale, and which procedures are otherwise in form and substance acceptable to Lender;
- (c) no later than 55 days following the entry of the order referred to in the foregoing clause (b), the Bankruptcy Court shall have entered a final order approving the final sale of substantially all the assets of the Debtors and, if the Lender is not the successful bidder in such sale, the sale shall provide for the payment in full in cash of the Obligations;
- (d) no later than 21 days following the entry of the order referred to in the foregoing clause (c), the final sale of substantially all the assets of the Debtors shall have closed;

⁴ To include Pre-Petition Gold Supply Agreement.

(g) [OTHERS TO COME]

“Mill” means that certain structure or building for the crushing, grinding, treatment, processing and concentration of ores, minerals and other materials prior to its shipment to a smelter or refinery, commonly known as a mill, or ball mill which is located on the Summit Gold Project, together with all related and associated fixtures, improvements and equipment, and all additions, repairs, renovations, upgrades, constructions, replacements, and new facilities, in whole or in part, whether now or hereafter existing.

“Mining Properties” and each individually, a **“Mining Property”**, includes each of the Projects and all surface, subsurface and mineral rights, and all surface, subsurface and mineral leases, concessions, licenses, claims, rights, titles or interests owned, leased, held or controlled by a Credit Party, and all related, associated or appurtenant rights, in each case howsoever characterized or designated, that are owned, leased, held, or controlled, directly or indirectly, by a Credit Party, with such rights, titles and interests described in Schedule 9.1(jj).

“Mogollon Project” means the project described as the “Mogollon Project” in the Borrower 10-K.

“Monthly Payment Date” the last Business Day of each calendar month for the period commencing on the Effective Date and ending on the Maturity Date.

“New Azco Deed of Trust” means the Deed Of Trust, Security Agreement, Assignment of Production, Rents and Leasehold Interests, Fixture Filing, and Financing Statement from Azco Mica, Inc., as Trustor to First American Title Insurance Company, as Trustee and Lender, as Beneficiary, dated as of [____], 2015.

“New Borrower Deed of Trust” means the Deed of Trust, Security Agreement, Assignment of Production, Rents and Leasehold Interests, Fixture Filing, and Financing Statement from the Borrower, as Trustor to First American Title Insurance Company, as Trustee and Lender, as Beneficiary, dated as of [____], 2015.

“New Lordsburg Mortgage” means the Mortgage, Security Agreement, Assignment of Production, Rents and Leasehold Interests and Financing Statement from Lordsburg, as Grantor to Lender, dated as of [____], 2015.

“New Mortgages” means the New Azco Deed of Trust, the New Lordsburg Mortgage and the New Borrower Deed of Trust.

“Obligations” means all duties, covenants, agreements, liabilities, indebtedness and obligations of each of the Credit Parties with respect to the repayment, payment or performance of all indebtedness, liabilities and obligations (monetary or otherwise) of each of the Credit Parties, including the Term Loan and the Roll Up Loan, whenever arising, whether primary, secondary, direct, contingent, fixed or otherwise and whether joint, several, or joint and several, established by or arising under or in connection with this Agreement and each other Credit Document, including, in each case, the payment of principal, interest, fees, expenses, reimbursements and indemnification obligations.

“Orders” means, collectively, the Final Order and the Interim Order.

“Original Currency” has the meaning specified in Section 12.10(a).

“Ortiz Lease” has the meaning set forth in the Pre-Petition Credit Agreement.

“Ortiz Property” has the meaning set forth in the Pre-Petition Credit Agreement.

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

“Other Currency” has the meaning specified in Section 12.10(a).

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

“Owned Properties” means, collectively, (i) the Mining Properties, and (ii) after the date of this Agreement, the additional lands and premises which are owned by any of the Credit Parties.

“Participant Register” has the meaning specified in Section 12.8(f).

“Patents” means all patents and applications for patents, including all plant and utility patents, utility models, industrial design applications and registered industrial designs, and all divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of the foregoing, unpatented inventions (whether or not patentable) and all rights, title and interests arising under any Applicable Law in or relating to the foregoing.

“Pension Plan” means any plan or arrangement, whether funded or unfunded, registered or not registered, that provides defined benefit pensions or term-certain annuities in respect of any employees, former employees or retirees of any Credit Party.

“Perfection Certificate” means, in respect of each Credit Party, a certificate of a senior officer of such Credit Party, addressed to the Lender, in form and substance reasonably satisfactory to the Lender and pursuant to which certain factual matters relating to such Credit Party and the Collateral of such Credit Party are certified true and correct, together with all schedules and exhibits attached thereto or referred to therein, as the same may be updated from time to time pursuant to Section 10.1(a)(vii).

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

- (a) the Obligations;
- (b) Debt of the Credit Parties in the principal amount outstanding as of the Petition Date arising under Capital Leases and Purchase Money Debt;
- (c) Debt in respect of bonds, letters of credit or bank guarantees in favor of a public utility or any other Governmental Entity when required by such utility or other Governmental Entity in connection with the operations of any Credit Party (including for the reclamation or remediation of mining properties), all in the ordinary course of business;
- (d) Debt owing by any Credit Party to another Credit Party;
- (e) any guarantee by any Credit Party of any Debt permitted under paragraphs (b), (c), (d), or (f); and
- (f) Sandstorm Debt outstanding on the Petition Date.

“Permitted Existing Liens” means Liens in existence on the Petition Date, solely to the extent that such Liens have been incurred and are valid, perfected, enforceable and non-avoidable as of the Petition Date, other than the Pre-Petition Liens.

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

- (a) Permitted Existing Liens;
- (b) Liens for taxes, assessments or governmental charges or levies not at the time due or delinquent or the validity or amount of which are being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with GAAP so long as forfeiture of any part of such property or assets will not result from the failure to pay such taxes, assessments or governmental charges or levies during the period of such contest;
- (c) 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 Credit Party, 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;

- (d) Liens resulting from the deposit of cash or Cash Equivalents to secure workers' compensation, surety or appeal bonds, costs of litigation when required by law and public and statutory obligations;
- (e) Liens (including Liens resulting from the deposit of cash or Cash Equivalents) given to a public utility or any other Governmental Entity when required by such utility or other Governmental Entity in connection with the operations of any Credit Party, all in the ordinary course of business and in accordance with the Approved Budget;
- (f) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the United States of America or any other Governmental Entity, and, in respect of unpatented mining claims, the permanent title of the United States;
- (g) 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;
- (h) the Security;
- (i) Liens securing Debt incurred and outstanding pursuant to paragraph (b) of the definition of "Permitted Debt"; *provided, however*, that any such Lien shall attach only to the asset in respect of which such Debt is incurred and any proceeds thereof;
- (j) Pre-Petition Lender Replacement Liens; and
- (k) Liens or claims incidental to construction and mechanics', warehouseman's, carriers' and other similar liens securing obligations pursuant to contracts existing as of the Petition Date.

"Person" means a natural person, partnership, limited liability company, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

"Petition Date" has the meaning set forth in the Recitals.

"Plan" means at a particular time, any employee benefit plan that is covered by ERISA and in respect of which a Credit Party is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Planet Project" means the project described as the "Planet Micaceous Iron Oxide (MIO) Project" in the Borrower 10-K.

"Pledge Amendment" has the meaning set forth in Section 7.4(a)(iv).

“Post-Petition” means the time period beginning immediately upon the filing of the Chapter 11 Cases.

“Prepayment Notice” has the meaning specified in Section 4.3(a).

“Pre-Petition” means the time period ending immediately prior to the filing of the Chapter 11 Cases.

“Pre-Petition Buyer” has the meaning set forth in the Recitals.

“Pre-Petition Collateral” has the meaning assigned to the term “Collateral” in the Pre-Petition Credit Agreement.

“Pre-Petition Credit Agreement” has the meaning set forth in the Recitals.

“Pre-Petition Credit Documents” has the meaning assigned to the term “Credit Documents” in the Pre-Petition Credit Agreement.

“Pre-Petition Gold Sale Obligations” means an amount equal to [\$5,629,563] as of the Petition Date (plus interest from and after the Petition Date at the applicable rate provided in accordance with Section 11.11 of the Pre-Petition Credit Agreement), such amount being the liquidated amount to discharge all duties, covenants, agreements, liabilities, indebtedness and obligations of each of the Credit Parties to the Pre-Petition Buyer with respect to the repayment, payment or performance of all indebtedness, liabilities and obligations (monetary or otherwise) of each of the Credit Parties whenever arising, whether primary, secondary, direct, contingent, fixed or otherwise and whether joint, several, or joint and several, established by or arising under or in connection with the Pre-Petition Gold Supply Agreement.

“Pre-Petition Gold Supply Agreement” has the meaning set forth in the Recitals.

“Pre-Petition Liens” means Liens securing the Pre-Petition Obligations.

“Pre-Petition Obligations” means the all (x) “Obligations” under and as defined in the Pre-Petition Credit Agreement, including, interest from and after the Petition Date at the applicable rate provided in accordance with Section 11.11 of the Pre-Petition Credit Agreement and all fees and expenses payable to the Pre-Petition Lender pursuant to the Pre-Petition Credit Agreement and (y) Pre-Petition Gold Sale Obligations.

“Pre-Petition Lender” has the meaning assigned to the term “Lender” in the Pre-Petition Credit Agreement.

“Pre-Petition Lender Replacement Liens” has the meaning ascribed thereto in the Interim Order or the Final Order, as applicable.

“Priming Liens” has the meaning set forth in Section 7.9(b).

“Projects” means, collectively, the Summit Gold Project, the Summit Copper Project, the Black Canyon Project and the Planet Project and each individually, a **“Project”**.

“Project Permits” has the meaning set forth in Section 9.1(kk).

“Prudent Mining Industry Practices” means those practices, standards, methods, techniques and specifications, as they may evolve, change and modify from time to time that (a) are commonly used and generally accepted in the mining industry as good, safe and prudent operational, administrative environmental and engineering practices in connection with the design, construction, operation, maintenance, repair or use of mining projects, mining facilities, mining infrastructure, mining equipment or other components of a mining operation, (b) conform in all material respects to Applicable Laws, (c) conform in all material respects to operational and maintenance guidelines and requirements suggested by applicable manufacturers, suppliers and insurance providers (taking into account the size, age, service and type of asset), and (d) are commercially reasonable based on the nature of the Mining Properties.

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

“Real Estate” means all (i) Leases, (ii) with respect to any Credit Party, all of those plots, pieces or parcels of land now owned, leased or hereafter acquired or leased by such Credit Party (the **“Land”**), together with the right, title and interest of such Credit Party, if any, in and to the streets, the land lying in the bed of any streets, roads or avenues, opened or proposed, in front of, the air space and development rights pertaining to the Land and the right to use such air space and development rights, all rights of way, privileges, liberties, tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, all fixtures, all easements now or hereafter benefiting the Land and all royalties and rights appertaining to the use and enjoyment of the Land, including all alley, vault, drainage, mineral, water, oil and gas rights, patented mining claims, unpatented mining claims (lode and placer), unpatented millsites, tunnel sites and rights, royalties and other real property interests, all gold, silver and other ores, minerals, metals, mineral elements and compounds, dore, concentrate, veins, lodes and mineral deposits that are on, in, under, extending from or into, produced or to be produced from, stored, stacked, handled, processed, refined, beneficiated, transported or marketed on or from all or any part of the Land, together with all of the buildings and other improvements now or hereafter erected on the Land, and any fixtures appurtenant thereto and (iii) any Mining Property or the Mill.

“Receivables” means all Accounts, all Payment Intangibles, all Instruments, all Chattel Paper, all Electronic Chattel Paper (as each such term is defined in Section 1.9), and all obligations supporting or otherwise relating to any of the foregoing.

“Register” has the meaning set forth in Section 12.8(e).

“Related Party” means in respect of any Credit Party (a) a Person which alone or in combination with others holds a sufficient number of securities or an Equity Interest or has contractual rights sufficient to affect materially the Control of such Credit Party, (b) a Person who beneficially owns, directly or indirectly, voting securities of such Credit Party or who exercises Control or direction over voting securities of such Credit Party or a combination of both carrying more than 10% of the voting rights attached to all voting securities of such Credit

Party for the time being outstanding, (c) a director or senior officer of a Credit Party or a Person who is a Related Party by virtue of clauses (a) or (b) of this definition of any Credit Party, or (d) an Affiliate of any of the foregoing.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, leeching or migration of any element or compound in or into the Environment (including the abandonment or disposal of any barrels, tanks, containers or receptacles containing any Hazardous Material), or in, into or out of any vessel or facility, including the movement of any Hazardous Material through the air, soil, subsoil, surface, water, groundwater, rock formation or otherwise.

“Released Parties” has the meaning assigned to such term in Section 7.13.

“Relevant Jurisdiction” means, from time to time, any jurisdiction in which a Credit Party has property or assets, or in which it carries on business and, for the purposes of this Agreement, includes each of the jurisdictions in which the Projects are located.

“Roll Up Loan” has the meaning given to such term in Section 2.3(b)(i).

“Sandstorm” means Sandstorm Gold (Barbados) Ltd.

“Sandstorm Debt” means all Debt due and owing to Sandstorm or its Affiliates pursuant to Sandstorm Gold Supply Agreement.

“Sandstorm Gold Supply Agreement” means the gold supply agreement among, *inter alia*, Santa Fe and Sandstorm, dated September 11, 2009 as amended on March 29, 2011 and June 28, 2011, as at the date hereof.

“Santa Fe” has the meaning set forth in the Preamble.

“Secured Party Expenses” means the amounts payable pursuant to Section 12.5(a).

“Security” means, at any time, the DIP Liens.

“Security Agreements” means the New Mortgages, the Credit Party Control Agreements, the Control Agreements and any security agreement or other Contract by which the Lender obtains a Lien in or on any property or assets of a Credit Party to secure the Obligations, together with all amendments, modifications, supplements, extensions and restatements thereof in accordance with its terms.

“Security Documents” means each of the Security Agreements and any other Contract evidencing, granting, perfecting or effecting the security granted to the Lender by any Credit Party, as security for the payment and performance of the Obligations, in each case, with all modifications, supplements, amendments, extensions or restatements thereto or thereof in accordance with their respective terms, all schedules and exhibits attached thereto and all financing statements, filings and other Contract required to be filed or recorded or notices required to be given in order to authenticate and perfect the Liens created by the foregoing.

“Section 506(a) Determination” means a determination under Section 506(a) of the Bankruptcy Code.

“Software” means all “software” (as defined in the UCC), and also means and includes all software programs, whether now or hereafter owned, licensed or leased by a Credit Party, designed for use on computer hardware, including, without limitation, all operating system software, utilities and application programs in whatever form and whether or not embedded in goods, all software code (in any form, including source code, object code and executable code) in magnetic tape, disk or hard copy format or any other listings whatsoever, all firmware associated with any of the foregoing, all documentation, flowcharts, logic diagrams, manuals, specifications, training materials, charts and pseudo codes associated with any of the foregoing, subroutines, techniques, and user interfaces, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing and all options, warranties, services contracts, program services, test rights, maintenance rights, support rights, renewal rights and indemnifications relating to any of the foregoing.

“Structuring Fee” has the meaning set forth in Section 2.1(a).

“Subject Properties” means, collectively, the Mining Properties and all other Owned Properties and Leased Properties, and each individually a **“Subject Property”**.

“Subsidiaries” means the subsidiaries of a Credit Party.

“subsidiary” means with respect to any Person (the **“parent”**) at any date, (i) any corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all equity interests entitled to vote in the election of the board of directors thereof are, as of such date, held by the parent and/or one or more subsidiaries of the parent, (ii) any partnership, (x) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (y) the only general partners of which are the parent and/or one or more subsidiaries of the parent and (iii) any other Person that is otherwise Controlled by the parent and/or one or more subsidiaries of the parent.

“Summit Copper Project” means Lordsburg’s deep porphyry copper exploration project and effort to restart a high grade underground copper mine in the northern portion of the area known as the Lordsburg mining district, located along the middle of the Santa Rita lineament that extends from Copper Flats, through Santa Rita and Chico Tyrone and into Mexico to Bisbee Cananea, as more particularly described in the Borrower 10-Q.

“Summit Gold Project” means the Summit silver and gold mine, located near Duncan, Arizona on the New Mexico-Arizona border and the Lordsburg ball mill, flotation system and tailings dam located in the Lordsburg mining district near Lordsburg, New Mexico, as more particularly described in the Borrower 10-K.

“Supplemental Advance” has the meaning given to such term in the Prepetition Credit Agreement.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholdings), assessments, fees or other charges imposed by any Governmental Entity, including any interest, additions to tax, penalties or similar liabilities applicable thereto.

“Term Loan Commitment” means the commitment of the Lender to make the Term Loan under this Agreement in an aggregate amount not to exceed \$[_____].

“Termination Date” means the earliest of (i) the Maturity Date; (ii) the acceleration of all or any portion of the Obligations; (iii) thirty-five days after the entry by the Bankruptcy Court of the Interim Order, unless the Final Order shall have been entered and become effective prior thereto; (iv) the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the Lender; (v) the dismissal of any of the Chapter 11 Cases unless otherwise consented to in writing by the Lender; (vi) the effective date of any Debtor’s plan of reorganization confirmed in the Chapter 11 Cases; (vii) the closing of a sale of substantially all the assets of the Debtors, (viii) the filing of a plan of reorganization in the Cases by any party other than the Debtors without the consent of the Lender; (ix) the Debtors seek or propose to sell all or substantially all the assets of the Debtors and such sale does not provide for payment in full of all the [Obligations] without the consent of the Lender, and (x) the exercise by Sandstorm of the “Assignment and Purchase Option” (as defined in the Intercreditor Agreement).

“Termination Fee” has the meaning set forth in Section 2.1(b).

“Trademarks” means all rights, title and interests arising under any Applicable Law in or relating to trademarks, trade names, trade dress, corporate names, company names, business names, brand names, fictitious business names, trade styles, service marks, logos, designs, slogans, emblems, collection marks, certification marks (and all translations, adaptations, derivations and combinations of the foregoing) and other source or business identifiers and, in each case, all registrations and recordations thereof and all applications in connection therewith which have heretofore been or may hereafter be issued thereon throughout the world including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications, and all goodwill symbolized by and associated with the foregoing.

“Trade Secrets” means all right, title and interest arising under any Applicable Law in or relating to trade secrets.

“Type” means the Term Loan or the Roll Up Loan, the two types of Loan made available under this Agreement.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; *provided, further* that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or nonperfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code

as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or nonperfection or availability of such remedy, as the case may be.

“Updated Budget” has the meaning set forth in Section 10.1(b)(ii).

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in paragraph (e)(ii)(C) of Section 5.2.

“Variance Covenant Testing Period” the meaning assigned to such term in Section 10.1(b)(iii).

“Variance Testing Disbursements” means, with respect to any Variance Covenant Testing Period, the aggregate cash disbursements of the Credit Parties during such period (other than (i) disbursements on account of professional fees and expenses, (ii) disbursements made with the consent of the Lender pursuant to orders of the Bankruptcy Court [and (iii) any disbursement not contemplated by the Approved Budget required pursuant to applicable law in an amount not to exceed \$[___]].]

“Variance Testing Revenue” means, with respect to any Variance Covenant Testing Period, an amount equal to the aggregate cash receipts of the Credit Parties during such period (excluding proceeds of Loans).

“Voting Shares” means shares of capital stock of any class of any corporation carrying voting rights under all circumstances, *provided* that, for the purposes of such definition, shares which only carry the right to vote conditionally on the happening of any event shall not be considered Voting Shares, whether or not such event shall have occurred, nor shall any shares be deemed to cease to be Voting Shares solely by reason of a right to vote accruing to shares of another class or classes by reason of the happening of such event.

“Waste” means ashes, garbage and refuse and includes domestic waste, industrial waste, municipal refuse or such other wastes as are designated as such under any Environmental Law.

“Weekly Actuals Report” has the meaning set forth in Section 10.1(b)(i).

Section 1.2 Other Usages.

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

Section 1.3 Gender and Number.

Any reference in the Credit Documents to gender includes all genders and words importing the singular number only include the plural and vice versa.

Section 1.4 Headings, etc.

The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect the interpretation of this Agreement.

Section 1.5 Currency.

All references in the Credit Documents to dollars, unless otherwise specifically indicated, are expressed in United States currency.

Section 1.6 Meaning of certain terms.

Any reference in this Agreement to:

(a) a Default being **“continuing”** means that such Default has not been waived or remedied and an Event of Default being **“continuing”** means that such Event of Default has not been waived;

(b) unless otherwise indicated, a **“Credit Document”** or any other agreement or instrument is a reference to that Credit Document or other agreement or instrument as amended, modified, novated, supplemented, extended or restated;

(c) **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(d) **“knowledge”** of any Person shall be deemed to mean such knowledge after due and diligent inquiry; and

(e) **“repay”** (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “prepay” (as, as the case may be, the corresponding derivative form thereof).

Section 1.7 Certain Phrases, etc.

In any Credit Document (i) (x) the words “including” and “includes” mean “including (or includes) without limitation”, and does not create or denote a limitation, (y) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, and (z) the word “asset” includes present and future properties, revenues and rights of every description, and (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.

Section 1.8 Accounting Terms.

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP.

Section 1.9 UCC Terms.

Unless otherwise defined herein or the context otherwise requires, the following terms have the respective meanings provided in the UCC: (i) Accounts; (ii) As-Extracted Collateral; (iii) Certificated Security; (iv) Chattel Paper; (v) Commercial Tort Claims; (vi) Commodity Account; (vii) Commodity Contract; (viii) Documents; (ix) Deposit Accounts; (x) Electronic Chattel Paper; (xi) Entitlement Holder; (xii) Entitlement Order; (xiii) Equipment; (xiv) Financial Assets; (xv) General Intangible; (xvi) Goods; (xvii) Instruments; (xviii) Inventory; (xix) Investment Property; (xx) Payment Intangibles; (xxi) Proceeds; (xxii) Securities Account; (xxiii) Securities Intermediary; (xxiv) Security Certificate; (xxv) Security Entitlements; (xxvi) Uncertificated Security; (xxvii) Fixtures; (xxiii) Letter-of-Credit Rights; (xxix) Supporting Obligations and (xxx) Accessions.

Section 1.10 Incorporation of Schedules.

The schedules and exhibits attached to this Agreement shall, for all purposes of this Agreement, form an integral part of it.

Section 1.11 Conflict.

The provisions of this Agreement prevail in the event of any conflict or inconsistency between its provisions and the provisions of any of the other Credit Documents.

Section 1.12 Certificates.

Whenever the delivery of a certificate is a condition precedent to the taking of any action by the Lender or the occurrence of any event hereunder, the truth and accuracy of the facts and the diligent and good faith determination of the opinions stated in such certificate shall in each case be conditions precedent to have such action taken, and any certificate executed by any Credit Party shall be deemed to represent and warrant that the facts stated in such certificate are true and accurate in all respects.

ARTICLE 2 FACILITY

Section 2.1 Fees.

(a) On the date of the first drawing under the Term Loan, the Borrower shall pay to the Lender a one-time cash structuring fee in the amount of \$_____ ⁵ (the “**Structuring Fee**”).

⁵ Insert amount equal to 2% of the Term Loan Commitment.

(b) On the Termination Date (or if sooner, the date of any prepayment of the Term Loan), the Borrower shall pay to the Lender a termination fee in the amount of \$_____ ⁶ (the “**Termination Fee**”).

(c) All fees shall be paid on the dates due, in immediately available funds. Each of the Structuring Fee and the Termination Fee are deemed earned as of the Effective Date and once paid, none of the fees shall be refundable under any circumstances.

Section 2.2 The DIP Facility.

Subject to the terms and conditions hereof, the DIP Facility shall be made available by the Lender to the Borrower by way of the Term Loan and the Roll Up Loan.

Section 2.3 Loans.

(a) **Term Loan.** On the terms and subject to the conditions contained in this Agreement, the Lender agrees to make a term loan (the “**Term Loan**”) in Dollars to the Borrower from time to time from and after the Effective Date in an aggregate principal amount not to exceed the Term Loan Commitment. The Term Loan shall be drawn in two installments, consisting of (x) a first installment in an aggregate principal amount of not less than [____] and not more than [____], to be drawn on a date no later than 20 days after entry of the Interim Order by the Bankruptcy Court and (y) a second installment in an aggregate principal amount not to exceed the excess of the Term Loan Commitment over the sum of (i) the initial principal amount of the first draw under the Term Loan and (ii) the Carve-Out Reserve, to be funded on a date on or after the date of entry of the Final Order by the Bankruptcy Court but no later than the date that is 10 days thereafter. Amounts of the Term Loan repaid or prepaid may not be reborrowed.

(b) Roll Up Loan.

(i) On the terms and subject to the conditions contained in this Agreement, the Lender agrees to make a roll up loan (the “**Roll Up Loan**”) in Dollars to the Borrower from time to time from and after the Effective Date. Concurrent with (x) the funding by the Lender of the first draw under the Term Loan, all Pre-Petition Obligations outstanding as of the date of the first draw under the Term Loan, to the extent pertaining to or arising from the Supplemental Advance, will be converted on a dollar-for-dollar basis into an initial principal amount of the Roll Up Loan and (y) the funding by the Lender of the second draw under the Term Loan, an amount equal to the excess of (A) the Pre-Petition Obligations outstanding as of the second drawing under the Term Loan over (B) the initial principal amount of the Roll Up Loan converted in accordance with the foregoing clause (x), will be converted into an additional principal amount of the Roll Up Loan. The repayment of all or part of a Term Loan will not reduce the amount of the outstanding Roll Up Loan.

(ii) Upon each conversion of Pre-Petition Obligations into the Roll Up Loan as provided in the foregoing clauses (i)(x) and (y), the Pre-Petition Obligations so

⁶ Insert amount equal to 3% of the Term Loan Commitment.

converted shall be deemed satisfied and of no further force and effect, and Lender shall have no further rights with respect to the repayment thereof.

(iii) The Roll Up Loan shall have the benefit of Section 364(e) of the Bankruptcy Code.

(iv) Amounts of the Roll Up Loan paid or prepaid may not be reborrowed.

Section 2.4 Borrowing Procedure.

The Borrower shall request a draw under the Term Loan by delivering to Lender a written Borrowing Notice signed by the Borrower, which shall be delivered to the Lender no later than 2 Business Days (or such shorter period as may be agreed to by Lender) prior to the date of the requested draw under the Term Loan. Each Borrowing Notice shall be irrevocable and shall specify (i) that a draw under the Term Loan is requested by the Borrower, (ii) the date of the requested draw (which shall be a Business Day not earlier than 2 Business Days after delivery, or such earlier date as may be agreed by Lender), (iii) the aggregate principal amount of such draw to be borrowed and (iv) such other information and certifications as set forth in the form of Borrowing Notice and as the Lender shall otherwise have reasonably requested. No draw under the Term Loan shall be made if a Default has occurred and is continuing or could result from such draw (unless the Lender has waived the relevant Default for the purpose of making such draw). Each conversion of the Roll Up Loan shall be deemed to have been made concurrently with the drawing of the related Term Loan.

Section 2.5 Use of Proceeds; Borrower Account.

(a) Proceeds of each draw under the Term Loan shall be deposited by way of wire transfer or other electronic funds transfer of the applicable funds into the Borrower Account. No such proceeds shall be disbursed from the Borrower Account other than in accordance with this Section 2.5.

(b) Subject to Sections 2.3 and 2.5(c), the Borrower may effect a disbursement of funds on deposit in the Borrower Account from time to time (each, a “**Disbursement**”), by delivering to Lender a written notice (each, a “**Disbursement Notice**”) signed by the Borrower, which shall be delivered to the Lender no later than 2 Business Days (or such shorter period as may be agreed to by Lender) prior to the date of the requested Disbursement. Each Disbursement Notice shall be irrevocable and shall set forth (i) that a Disbursement is requested by the Borrower, (ii) the date of the requested Disbursement (which shall be a Business Day not earlier than 2 Business Days after delivery, or such earlier date as may be agreed by Lender), (iii) the aggregate principal amount of such Disbursement and (iv) a certification by the Borrower that (A) as of the date of the Disbursement Notice and the date of the Disbursement (before and after giving effect thereto) no Default or Event of Default shall have occurred and be continuing, and (B) the proceeds of the Disbursement are necessary to pay amounts due and owing by the Credit Parties within 5 Business Days of such Disbursement and identifying the intended recipient of each payment, all of which amounts are payable in accordance with the Approved Budget (subject to permitted variance).

(c) There shall be no more than one Disbursement in any calendar week.

(d) Subject to Section 2.5(c) and the receipt by the Lender of a duly completed Disbursement Notice, the Borrower shall fund each Disbursement from the Borrower Account by way of wire transfer or other electronic funds transfer of the applicable funds to the intended recipients specified in the relevant Disbursement Notice, no later than 12:00 p.m. (New York time) on the proposed date of the Disbursement.

Section 2.6 Lender's Loan Records.

The Lender shall maintain accounts and records evidencing all Loans and all payments received hereunder, which accounts and records shall constitute, in the absence of manifest error, *prima facie* evidence thereof.

Section 2.7 Termination or Reduction of Commitments.

Any unused Term Loan Commitment shall be terminated upon the earliest of (x) the second draw under the Term Loan, (y) upon the occurrence of an Event of Default if and to the extent required pursuant to Section 11.2 in accordance with the terms thereof and (z) upon the occurrence of the Termination Date.

ARTICLE 3 PROCEDURE AND PAYMENTS

Section 3.1 Repayment of Loans.

The Borrower shall pay in full to Lender all the outstanding Obligations on the Maturity Date.

Section 3.2 Interest.

(a) The Interest Payment Amount on each Loan shall accrue from the date of the drawing thereof (or in the case of the Roll Up Loan, the date of the conversion thereof) and shall be payable in arrears on each Interest Payment Date; *provided*, that on each Monthly Payment Date (but not, for the avoidance of doubt, on any other Interest Payment Date), the Interest Payment Amount on the Loans of each Type (w) shall not be paid in cash and shall instead automatically be deemed added to the outstanding principal amount of Loans of the same Type as the Loan on which such Interest Payment Amount has accrued as of such Interest Payment Date, (x) shall be referred to in the aggregate as “**Capitalized Interest**”, (y) shall be treated as an additional principal amount of the Loan of such Type due under, and evidenced by, this Agreement and (z) shall bear interest, from such Interest Payment Date until paid in full, at the rate per annum otherwise applicable to the Loan of such Type.

(b) Interest (other than Capitalized Interest) accrued on the Loans or other monetary Obligations after the date such amount is due and payable (whether on the Termination Date, any Interest Payment Date, upon acceleration or otherwise) shall be payable upon demand.

(c) Upon the occurrence and during the continuance of any Event of Default, the Borrower shall pay interest (after as well as before judgment) on the Loans and the other Obligations, from the date on which such amount is due until such amount is paid in full, payable

on demand, at a rate per annum equal at all times to the Interest Rate plus 2% (the “**Default Rate**”).

(d) Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided*, that any Loan that is repaid on the same day on which it is made shall bear interest for one (1) day.

(e) Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 3.3 Maturity Date Extension.

On any date which is at least 10 days but not more than 30 days prior to the Initial Maturity Date, the Lender and the Borrower may agree in writing to extend the Maturity Date to a date that is six months following the Initial Maturity Date, subject to (i) the written approval of the Lender, which approval shall be in its sole and absolute discretion and (ii) the payment to the Lender of a non-refundable fee in the amount of 2% of the aggregate principal amount of the Loans and Term Loan Commitment being extended (the “**Extension Fee**”), which fee shall be earned in full upon the granting of any such extension and be payable in full upon the Termination Date, without further application to or order of the Bankruptcy Court.

ARTICLE 4 PREPAYMENTS

Section 4.1 Mandatory Prepayments.

(a) The Borrower shall prepay the Loans, together with accrued and unpaid Interest Payment Amounts thereon, with the following amounts (each, a “**Mandatory Prepayment Amount**”) and at the following times:

- (i) the amount of all Disposal Proceeds, simultaneously upon receipt; and
- (ii) the amount of all Extraordinary Receipts received by or on behalf of any Credit Party, simultaneously upon receipt.

Section 4.2 Change of Control.

If a Change of Control occurs, the Lender, in its sole discretion, by written notice to the Borrower, may require the Borrower to repay the Loan in full, together with any accrued and unpaid interest and all other fees, charges and costs and other amounts payable hereunder. Immediately upon a Change of Control, the Term Loan Commitment shall automatically be reduced to zero.

Section 4.3 Voluntary Prepayment of the Loan.

(a) The Borrower may prepay the Loan (in whole but not in part) at any time on five (5) Business Days prior written notice to the Lender (each, a “**Prepayment Notice**”).

(b) The Borrower shall make such prepayment in cash no later than five (5) Business Days following delivery of the Prepayment Notice, together with all other Obligations then outstanding.

(c) The Prepayment Notice shall be irrevocable and shall state that the prepayment contemplated therein is for the full amount outstanding hereunder.

Section 4.4 Application of Prepayments.

(a) All amounts pre-paid to Lender by any Credit Party pursuant to this Article 4 on any date shall be applied first, to the payment of all costs, fees, expenses and indemnities then due and payable to the Lender, including, to the extent applicable, the Termination Fee and the Extension Fee and including all fees and expenses of attorneys and Consultants reimbursable hereunder; second, to the payment of all accrued and unpaid interest then due and payable on the Loans (other than any Capitalized Interest); third, to the payment of principal of the Term Loan (including all Capitalized Interest thereon); and fourth, to the payment of principal of the Roll Up Loan (including all Capitalized Interest thereon).

ARTICLE 5 PAYMENTS UNDER THIS AGREEMENT

Section 5.1 Payments.

(a) The Borrower shall make any payment required to be made by it to the Lender under this Agreement without set-off, deduction, withholding, counterclaim or cross-claim, in Dollars by wire transfer to Lender in immediately available funds, in each case by not later than 12:00 p.m. (New York time) on the date the payment is due, to an account designated by the Lender.

(b) Unless otherwise expressly provided in this Agreement, the Lender shall make the Term Loan and other payments to the Borrower under this Agreement by crediting the Borrower Account with the amount of the payment not later than 12:00 p.m. (New York time) on the date the payment is to be made.

(c) Whenever any payment or delivery to be made hereunder shall be stated to be due on a day that is not a Business Day, the payment shall be made on the next succeeding Business Day.

(d) All computations of interest and fees shall be made by the Lender on the basis of a year of 365 days taking into account the actual number of days (including the first day and the last day) occurring in the period for which the fees are payable.

Section 5.2 Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Credit Party hereunder or under any other Credit Document shall be made free and clear of and without reduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an

applicable Credit Party) requires the deduction or withholding of any Tax from any such payment by a Credit Party, then the applicable Credit Party shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Entity in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Credit Parties.** Without limiting the provisions of subsection (a) above, the applicable Credit Party shall timely pay any Other Taxes to the relevant Governmental Entity in accordance with Applicable Law or at the option of the Lender timely reimburse it for the payment of any Other Taxes.

(c) **Indemnification by the Credit Parties.** The Credit Parties shall indemnify the Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Entity. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(d) **Evidence of Payments.** Upon request of the Lender, as soon as practicable after any payment of any Taxes by any Credit Party to an Governmental Entity, such Credit Party shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Entity evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(e) **Status of Lender.**

(i) If the Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments hereunder or under any other Credit Document, the Lender shall deliver to the Borrower, at the time or times reasonably requested by the Borrower, such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if requested by the Borrower, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not the Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (ii) – (iv) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject the Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of the Lender.

(ii) Without limiting the generality of the foregoing, or any successor or assignee of the Lender that is a U.S. Person shall deliver to the Borrower on or prior to the date on which such successor or assignee becomes a party under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed originals of IRS Form W-9 certifying that successor or assignee is exempt from U.S. federal backup withholding tax. Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a party under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(A) duly completed and executed originals of IRS Form W-8BEN (or applicable successor form, including W-8BENE) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(B) duly completed and executed originals of IRS Form W- 8ECI,

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code (“**U.S. Tax Compliance Certificate**”) and (y) duly completed and executed originals of Internal Revenue Service Form W-8BEN (or applicable successor form, including W-8BENE),

(D) to the extent a Foreign Lender is not the beneficial owner, duly completed and executed originals of IRS Form W-8IMY, accompanied by any applicable “withholding statement” required by Applicable Law to be associated with the IRS Form W-8IMY, and IRS Form W-8ECI, IRS Form W-8BEN (or applicable successor form, including W-8BEN-E), the certifications described in clause (ii)(C) above, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide the certifications described in clause (ii)(C) on behalf of each such direct and indirect partner, or

(E) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower to determine the withholding or deduction required to be made.

(f) **Treatment of Certain Refunds.** If the Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Entity with respect to such refund), *provided* that the Borrower, upon the request of the Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Entity) to the Lender in the event the Lender is required to repay such refund to such Governmental Entity. Notwithstanding anything to the contrary in this paragraph (f), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (f) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) The Credit Parties' obligations under this Section 5.2 shall survive without limitation the termination of the Credit Facility and this Agreement and all other Credit Documents and the permanent repayment of the outstanding credit and all other amounts payable hereunder.

ARTICLE 6

Guarantee

Section 6.1 Guarantee.

To induce the Lender to make the Loans, each Guarantor hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment and performance when due, whether at stated maturity or earlier, by reason of acceleration, mandatory prepayment or otherwise in accordance with any Credit Document, of all the Obligations of the Borrower whether existing on the Effective Date or thereafter incurred or created (the "**Guaranteed Obligations**"). This Guarantee by each Guarantor hereunder constitutes a guarantee of payment and not of collection. This Guarantee is a continuing guarantee of payment and shall apply to all Guaranteed Obligations.

Section 6.2 Contribution.

To the extent that any Guarantor shall be required hereunder to pay any portion of any Guaranteed Obligation exceeding the greater of (a) the amount of the economic benefit actually received by such Guarantor from the Loans and other Obligations and (b) the amount such Guarantor would otherwise have paid if such Guarantor had paid the aggregate amount of the Guaranteed Obligations (excluding the amount thereof repaid by the Borrower) in the same proportion as such Guarantor's net worth on the date enforcement is sought hereunder bears to

the aggregate net worth of all the Guarantors on such date, then such Guarantor shall be reimbursed by such other Guarantors for the amount of such excess, pro rata, based on the respective net worth of such other Guarantors on such date.

Section 6.3 Authorization; Other Agreements.

Subject to the Interim Order or the Final Order, as applicable, the Lender is hereby authorized, without notice to or demand upon any Guarantor and without discharging or otherwise affecting the obligations of any Guarantor hereunder and without incurring any liability hereunder, from time to time, to do each of the following:

(a) (i) modify, amend, supplement or otherwise change, (ii) accelerate or otherwise change the time of payment or (iii) waive or otherwise consent to noncompliance with, any Guaranteed Obligation or any Credit Document;

(b) apply to the Guaranteed Obligations any sums by whomever paid or however realized to any Guaranteed Obligation in such order as provided in the Credit Documents;

(c) refund at any time any payment received by the Lender in respect of any Guaranteed Obligation;

(d) (i) Dispose of, exchange, enforce, waive, substitute, liquidate, terminate, release, abandon, fail to perfect, subordinate, accept, substitute, surrender, exchange, affect, impair or otherwise alter or release any Collateral for any Guaranteed Obligation or any other guarantee therefor in any manner, (ii) receive, take and hold additional Collateral to secure any Guaranteed Obligation, (iii) add, release or substitute any one or more other Guarantors, makers or endorser of any Guaranteed Obligation or any part thereof and (iv) otherwise deal in any manner with the Borrower and any other Guarantor, maker or endorser of any Guaranteed Obligation or any part thereof; and

(e) settle, release, compromise, collect or otherwise liquidate the Guaranteed Obligations.

Section 6.4 Guarantee Absolute and Unconditional.

Each Guarantor hereby waives and agrees not to assert any defense, whether arising in connection with or in respect of any of the following or otherwise, and hereby agrees that its obligations under this Guarantee are irrevocable, absolute and unconditional and shall not be discharged as a result of or otherwise affected by any of the following (which may not be pleaded and evidence of which may not be introduced in any proceeding with respect to this Guarantee, in each case except as otherwise agreed in writing by the Lender):

(a) the invalidity or unenforceability of any obligation of the Borrower or any other Guarantor under any Credit Document or any other agreement or instrument relating thereto (including any amendment, consent or waiver thereto), or any security for, or other guarantee of, any Guaranteed Obligation or any part thereof, or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations or any part thereof;

(b) the absence of (i) any attempt to collect any Guaranteed Obligation or any part thereof from the Borrower or any Guarantor or other action to enforce the same or (ii) any action to enforce any Credit Document or any Lien thereunder;

(c) the failure by any Person to take any steps to perfect and maintain any Lien on, or to preserve any rights with respect to, any Collateral;

(d) any workout, insolvency, bankruptcy proceeding, reorganization, arrangement, liquidation or dissolution by or against the Borrower, any Guarantor or any of the Borrower's other Subsidiaries (including, without limitation, the Chapter 11 Cases) or any procedure, agreement, order, stipulation, election, action or omission thereunder, including any discharge or disallowance of, or bar or stay against collecting, any Guaranteed Obligation (or any interest thereon) in or as a result of any such proceeding;

(e) any foreclosure, whether or not through judicial sale, and any other Disposition of any Collateral or any election following the occurrence of an Event of Default by the Lender to proceed separately against any Collateral in accordance with the Lender's rights under any Applicable Law; or

(f) any other defense, setoff, counterclaim or any other circumstance that might otherwise constitute a legal or equitable discharge of the Borrower, any other Guarantor or any of the Borrower's other Subsidiaries, in each case other than the payment in full of the Guaranteed Obligations.

Section 6.5 Waivers.

Each Guarantor hereby unconditionally and irrevocably waives and agrees not to assert any claim, defense, setoff or counterclaim based on diligence, promptness, presentment, requirements for any demand or notice hereunder including any of the following: (a) any demand for payment or performance and protest and notice of protest, (b) any notice of acceptance, (c) any presentment, demand, protest or further notice or other requirements of any kind with respect to any Guaranteed Obligation (including any accrued but unpaid interest thereon) becoming immediately due and payable and (d) any other notice in respect of any Guaranteed Obligation or any part thereof, and any defense arising by reason of any disability or other defense of the Borrower or any Guarantor. Each Guarantor further unconditionally and irrevocably agrees not to (x) enforce or otherwise exercise any right of subrogation or any right of reimbursement or contribution or similar right against the Borrower or any other Guarantor by reason of any Credit Document or any payment made thereunder until all Obligations are satisfied or (y) assert any claim, defense, setoff or counterclaim it may have against any other Credit Party or set off any of its obligations to such other Credit Party against obligations of such Credit Party to such Guarantor. In addition, any Debt of the Borrower or any other Credit Party now or hereafter held by any Guarantor is hereby subordinated in right of payment to the prior payment-in-full of the Obligations. No obligation of any Guarantor hereunder shall be discharged other than by complete performance.

Section 6.6 Reliance.

Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower, each other Guarantor and any other guarantor, maker or endorser of any Guaranteed Obligation or any part thereof, and of all other circumstances bearing upon the risk of nonpayment of any Guaranteed Obligation or any part thereof that diligent inquiry would reveal, and each Guarantor hereby agrees that Lender shall not have any duty to advise any Guarantor of information known to it regarding such condition or any such circumstances. In the event the Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to any Guarantor, the Lender shall be under no obligation to (a) undertake any investigation not a part of its regular business routine, (b) disclose any information that such the Lender, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (c) make any future disclosures of such information or any other information to any Guarantor.

ARTICLE 7 SECURITY INTERESTS

Section 7.1 Security Interest.

To induce the Lender to enter into this Agreement and the other Credit Documents and to secure the due and punctual payment of all Obligations, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing or due or to become due, in accordance with the terms thereof and to secure the performance of all of its Obligations and the Obligations of all other Credit Parties hereunder and under the other Credit Documents, each Credit Party hereby grants to the Lender a security interest in, and each Credit Party hereby pledges and collaterally assigns to the Lender, a Lien upon and a continuing first-priority Lien security interest (subject only to (i) the Carve-Out, (ii) Pre-Petition Liens and (iii) Permitted Existing Liens but in any event as provided in Section 7.9) in accordance with sections 364(c)(2) and (3) of the Bankruptcy Code, in all of its right, title and interest in, to and under all property and assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Credit Party, whether owned or consigned by or to, or leased from or to, such Credit Party, and regardless of where located (all of which being hereinafter collectively referred to as the “**Collateral**”), including all:

- (a) Pre-Petition Collateral;
- (b) Receivables;
- (c) Chattel Paper;
- (d) Commercial Tort Claims;
- (e) Deposit Accounts;
- (f) Documents;
- (g) Equipment;

- (h) Fixtures;
- (i) General Intangibles (including Payment Intangibles);
- (j) Goods;
- (k) Instruments;
- (l) Intellectual Property;
- (m) Inventory;
- (n) Investment Property;
- (o) Letter-of-Credit Rights;
- (p) Real Estate;
- (q) Software;
- (r) Supporting Obligations;
- (s) money, policies and certificates of insurance, deposits, cash or other property;
- (t) books, records and information relating to any of the foregoing and/or to the operation of any Credit Party's business, and all rights of access to such books, records, and information, and all property in which such books records and information are stored, recorded and maintained;
- (u) without duplication, each Project and all patented and unpatented mining claims, licenses and permits required for the extraction of minerals or metals from any Project;
- (v) insurance proceeds, refunds and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds and premium rebates arise out of any of the foregoing ((i) through (u)) and otherwise;
- (w) any and all of such Credit Party's interest under all policies of insurance relating to any of the Collateral or any part of the Real Estate (the "**Assigned Insurance Policies**"), including, without limitation, (A) all rights of such Credit Party to receive monies due and to become due under or pursuant to the Assigned Insurance Policies, including, without limitation, all insurance proceeds paid or payable upon the occurrence of any loss, destruction damage, condemnation or other taking of the applicable Collateral, (B) all claims of such Credit Party for damages arising out of or for breach of or default under the Assigned Insurance Policies and (C) all other rights, remedies, benefits and privileges of such Credit Party under the Assigned Insurance Policies, including, without limitation, all rights to terminate, amend, supplement, modify or waive performance under the Assigned Insurance Policies and to compel performance and otherwise to exercise all rights and remedies thereunder;

(x) liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((a) through (w)), including the right of stoppage in transit; and

(y) any of the foregoing whether now owned or now due, or in which any Credit Party has an interest, or hereafter acquired, arising, or to become due, or in which any Credit Party obtains an interest, and all products, Proceeds, substitutions, and Accessions of or to any of the foregoing;

provided, however, that the Collateral shall not include the following property (collectively, the “**Excluded Property**”): (i) any (a) permit, lease, license, contract, instrument or other agreement held by a Credit Party that prohibits or requires the consent of any Person as a condition to the creation by such Credit Party of a security interest or Lien thereon or that would be breached or give the other party the right to terminate it as a result thereof, or any permit, lease, license contract or other agreement held by a Credit Party to the extent that any law applicable thereto prohibits the creation of a security interest or Lien thereon or that would be breached or give the other party the right to terminate it as a result thereof, but only, in each case to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC (including Sections 9-406(a), 9-407(a), 9-408(a) and 9-409 of the UCC) or any other law, and (b) Equipment owned by a Credit Party that is subject to a purchase money Lien or a capital lease which is permitted under this Agreement if the contract or other agreement in which such Lien is granted (or in the documentation providing for such capital lease) prohibits or requires the consent of any Person as a condition to the creation of any other Lien on such equipment or that would be breached or give the other party the right to terminate if as a result thereof; (ii) any Excluded Shares; (iii) any intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law, *provided* that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral; and (iv) any avoidance actions under Chapter 5 of the Bankruptcy Code; *provided, however*, (A) “Excluded Property” shall not include any Proceeds, substitutions or replacements of Excluded Property (unless such Proceeds, substitutions or replacements would constitute replacements of Excluded Property); (B) if and when any property shall cease to be Excluded Property, such property shall be deemed at all times from and after the date hereof to constitute Collateral and (C) from and after the entry by the Bankruptcy Court of the Final Order, Collateral shall include all proceeds of avoidance actions under Chapter 5 of the Bankruptcy Code and any property received thereby whether by judgment, settlement or otherwise.

Section 7.2 Perfection of Security Interests.

(a) Each Credit Party hereby irrevocably authorizes the Lender and its Affiliates, counsel and other representatives, at any time and from time to time, to file in the name of such Credit Party or otherwise and without separate authorization or authentication of such Credit Party appearing thereon, such UCC financing statements or continuation statements as the Lender may reasonably deem necessary or reasonably appropriate to further perfect or maintain the perfection of the Lien of the Lender under this Agreement, and such financing statements and amendments may describe the Collateral covered thereby as “all of the debtor's personal property

and assets” or words to similar effect, whether now owned or hereafter acquired, notwithstanding that such description may be broader in scope than the Collateral described in this Agreement. Each Credit Party hereby also authorizes the Lender and its Affiliates, counsel and other representatives, at any time and from time to time, to execute and file any and all agreements, instruments, documents and papers as the Lender may reasonably request to evidence the Lien of the Lender in any Intellectual Property and the goodwill or accounts and general intangibles of such Credit Party relating thereto or represented thereby. Such Credit Party agrees that, except to the extent that any filing office requires otherwise, a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. The Credit Parties shall pay the costs of, or incidental to, any recording or filing of any financing or continuation statements or other assignment documents concerning the Collateral.

(b) The DIP Liens are granted as security only and shall not subject the Lender to, or in any way alter or modify, any obligation or liability of any Credit Party with respect to or arising out of the Collateral.

(c) Each Credit Party will promptly deliver or cause to be delivered each Instrument and each Certificated Security to the Lender, accompanied by duly executed stock powers or other instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Lender and all promissory notes shall be endorsed by the applicable Credit Party or accompanied by a duly executed instrument of transfer or assignment in blank

(d) Notwithstanding subsections (a), (b) and (c) of this Section 7.2, or any failure on the part of any Credit Party or the Lender to take any of the actions set forth in such subsections, the Liens and security interests granted herein shall be deemed valid, enforceable and perfected by entry of the Interim Order and the Final Order, as applicable. No financing statement, notice of lien, mortgage, deed of trust or similar instrument in any jurisdiction or filing office need be filed or any other action taken in order to validate and perfect the Liens and security interests granted by or pursuant to this Agreement, the Interim Order or the Final Order.

Section 7.3 Lender’s Rights; Limitations on Lender’s Obligations.

(a) Subject to each Debtor’s rights and duties under the Bankruptcy Code (including section 365 of the Bankruptcy Code), it is expressly agreed by each Debtor that, anything herein or in any other Credit Document to the contrary notwithstanding, each Debtor shall remain liable under each of its respective Contractual Obligations incurred after the Petition Date or assumed with the consent of the Lender and Bankruptcy Court approval to observe and perform all the conditions and obligations to be observed and performed by it thereunder. The Lender shall have no obligation or liability under any Contractual Obligation by reason of or arising out of this Agreement or any other Credit Document or the granting herein of a Lien thereon or the receipt by the Lender of any payment relating to any Contractual Obligation pursuant hereto. The Lender shall not be required or obligated in any manner to perform or fulfill any of the obligations of any Credit Party under or pursuant to any Contractual Obligation, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contractual Obligation, or to present or file any claims, or to take any action to collect or enforce any performance or the

payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) Subject to the Interim Order or the Final Order, as applicable, at any time after an Event of Default has occurred and is continuing, after giving notice to the relevant Credit Party of its intent to do so, the Lender may notify each of such Credit Party's Account Debtors and all other Persons obligated on any of the Collateral that the Lender has a security interest therein, and that payments shall be made directly to the Lender (by instructing that such payments be remitted by direct wire transfer to the Lender or to a post office box which shall be in the name and under the control of the Lender). Once any such notice has been given to any Account Debtor or other Person obligated on the Collateral, none of the Credit Parties shall give any contrary instructions to such Account Debtor or other Person without the Lender's prior written consent.

(c) Subject to the Interim Order or the Final Order, as applicable, at any time after an Event of Default has occurred and is continuing, the Lender may in the Lender's own name, in the name of a nominee of the Lender or in the name of any Credit Party communicate with (and such Credit Party hereby authorizes the Lender to so notify) each Account Debtor to verify with such Persons, to the Lender's reasonable satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, Chattel Paper and/or payment intangibles, and that such Collateral has been assigned to the Lender, and that any payments due or to become due in respect of such Collateral are to be made directly to the Lender or any other designee on its behalf.

(d) It is understood and agreed that the security interests in cash and Investment Property created hereunder shall not prevent the Debtors from using such assets in the ordinary course of their respective businesses, subject to the provisions of the Interim Order, the Final Order (as applicable), the Approved Budget and the Credit Documents.

Section 7.4 Covenants with Respect to Collateral.

Without limiting any Credit Party's covenants and agreements contained in this Agreement and the other Credit Documents, each Credit Party covenants and agrees with the Lender that from and after the date of this Agreement and until the Termination Date:

(a) Further Assurances; Pledge of Instruments; Chattel Paper.

(i) At any time and from time to time, upon the reasonable written request of the Lender and at the sole expense of such Credit Party, such Credit Party shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions (including the filing and recording of financing statements and other documents) as the Lender may reasonably deem necessary to obtain the full benefits of this Agreement and of the rights and powers herein granted with respect to the Collateral, including (A) using its commercially reasonable efforts to enforce the security interests granted hereunder; and (B) filing any financing or continuation statements under the UCC in effect in any jurisdiction with respect to the Liens granted hereunder or under any other Credit Document.

(ii) (A) Without the prior written consent of the Lender, such Credit Party will not (x) sell, assign, transfer or pledge the pledged Collateral (except pursuant to a transaction permitted by this Agreement) or (y) otherwise encumber any of its rights in or to the Collateral (except for Permitted Liens), or any unpaid dividends, interest or other distributions or payments with respect to the pledged Collateral or grant a Lien in the pledged Collateral, unless otherwise expressly permitted by this Agreement; (B) upon the written request of the Lender, each Credit Party will, at its expense, promptly execute and deliver all such further instruments and take all such further actions as the Lender from time to time may reasonably request in order to ensure to the Lender the security interests to the pledged Collateral granted hereby are perfected to the extent not expressly prohibited under the Interim Order or the Final Order, as applicable; and (C) subject to the Interim Order or the Final Order, as applicable, in the case of each Credit Party which is an issuer of Equity Interests pledged hereunder, such Credit Party agrees that after an Event of Default it will comply with instructions of the Lender with respect to the Equity Interests of such issuer without further consent by the applicable Credit Party, *provided* that the Lender shall not issue any such instructions unless an Event of Default has occurred and is continuing.

(iii) Unless such Collateral either (x) has been delivered to, and is held by, the Pre-Petition Lender pursuant to the Pre-Petition Credit Agreement or (y) has been delivered to the Lender subject to the Interim Order or the Final Order, as applicable, such Credit Party will promptly deliver or cause to be delivered to the Lender all Collateral consisting of the following negotiable Documents, Certificated Securities, Chattel Paper and Instruments (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank) promptly (and in any event within ten (10) Business Days) after such Credit Party receives the same: (A) any negotiable Document or Instrument having a value in excess of \$25,000, (B) any Certificated Securities (other than certificated pledged Equity Interests of Subsidiaries of such Credit Party delivered to the Lender pursuant to Section 7.2(c)) or (C) any Chattel Paper (other than Chattel Paper (I) the value of which, in the aggregate for all such Chattel Paper, does not exceed \$250,000 or (II) which evidences leases of Inventory for a period of time that is less than one month), and such Credit Party will provide prompt written notice of receipt thereof to the Lender.

(iv) Unless delivered to, and held by, the Pre-Petition Lender pursuant to the Pre-Petition Credit Agreement, each Credit Party will, upon obtaining ownership of any additional Equity Interests or promissory notes or Instruments or any Equity Interests or promissory notes or Instruments required to be pledged to the Lender pursuant to clause (ii) above, which Equity Interests, notes or Instruments are not listed in the Perfection Certificate on the date hereof, promptly deliver to the Lender a pledge amendment in form and substance reasonably satisfactory to the Lender (a **“Pledge Amendment”**) in respect of any such additional Equity Interests, promissory notes or Instruments. Each Credit Party hereby authorizes the Lender to attach each Pledge Amendment to this Agreement and agrees that all Equity Interests, promissory amounts or instruments listed on any Pledge Amendment delivered to the Lender shall for all purposes hereunder be considered Collateral.

(v) Such Credit Party shall obtain authenticated Control Agreements from (x) each Securities Intermediary issuing or holding any financial assets to or for such Credit Party and (y) each commodities intermediary holding commodities for such Credit Party; and such Credit Party shall within twenty (20) Business Days after acquiring any uncertificated securities that are not credited to a Securities Account obtain from each issuer of such uncertificated securities an acknowledgment of the pledge of such uncertificated securities to the Lender granting “control” (within the meaning of Section 8-106 of the UCC) over such uncertificated securities to the Lender and in a form that is reasonably satisfactory to the Lender.

(vi) At any time (x) upon the Lender’s reasonable written request or (y) if an Event of Default has occurred and is continuing, unless the Lender has otherwise consented in writing (which consent may be revoked) or control has been granted to the Pre-Petition Lender, such Credit Party shall take all steps necessary to grant the Lender control of all Electronic Chattel Paper in accordance with the UCC and all “transferable records” as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

(vii) Such Credit Party shall promptly, and in any event within twenty (20) Business Days after the same is acquired by it, notify the Lender of Commercial Tort Claims in excess of \$25,000, individually or in the aggregate, acquired by it.

(b) **[Reserved].**

(c) **Notices.** Such Credit Party will advise the Lender promptly, in reasonable detail, of any Lien (other than Permitted Liens) on or claim made or asserted against a material portion of the Collateral of which it has knowledge, which could reasonably be expected to have a Material Adverse Effect on the Collateral or the ability of the Lender to exercise any of its remedies hereunder.

(d) **Organizational/Collateral Location Changes; No Reincorporation.** Except as otherwise contemplated by this Agreement or a plan of reorganization of the Debtors approved by the Lender in accordance with section 1126 of the Bankruptcy Code, such Credit Party will give the Lender at least thirty (30) calendar days prior written notice of any change to the information set forth in the Perfection Certificate to the extent needed to make the Perfection Certificate up to date and accurate. Such Credit Party shall not affect any such change unless it has taken all steps necessary or reasonably required by the Lender to maintain continued perfection of the Lender’s security interest in the Collateral with the same priority as prior to such change. Without limiting the prohibitions on mergers involving any Credit Party as contained in this Agreement, none of the Credit Parties shall reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof without the prior written consent of the Lender.

(e) **Maintenance of Security Interest.** Such Credit Party shall promptly notify the Lender in writing of its acquisition of any interest hereafter in property that is of a type where a security interest or Lien must be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation. Such Credit Party shall maintain the security interest

created by this Agreement as a perfected security interest having at least the priority described in this Agreement and shall support the Lender in the defense of such security interest and such priority against the claims and demands of all Persons.

(f) **Use of Collateral.** Such Credit Party will do nothing to impair the rights of the Lender in any of the Collateral. Such Credit Party will not use or permit any Collateral to be used unlawfully or in violation of any provision of applicable law, or any insurance policy covering any of the Collateral. Without limiting the foregoing, such Credit Party will not permit the production of Inventory in violation of any provision of the Fair Labor Standards Act and such Credit Party will not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor thereof or allow any credit or discount thereon (other than credits and discounts in the ordinary course of business).

Section 7.5 Bank Accounts; Collection of Accounts and Payments.

Each Credit Party, and any of its Affiliates, employees, agents and other Persons acting for or in concert with any Credit Party shall, acting as trustee for the Lender, receive, as the sole and exclusive property of the Lender, any moneys, checks, notes, drafts or other payments relating to and/or constituting proceeds of Accounts or other Collateral which come into the possession or under the control of such Credit Party or any Affiliates, employees, agent, or other Persons acting for or in concert with any Credit Party, and immediately upon receipt thereof, such Credit Party or such Persons shall deposit the same or cause the same to be deposited in kind, in (i) deposit accounts that are Controlled Accounts, (ii) deposit accounts or lockbox accounts that are swept on a daily basis into a Controlled Account or (iii) deposit accounts subject to a control agreement with the Pre-Petition Lender.

Section 7.6 Grant of License to Use Property; Intellectual Property.

Subject to the Interim Order and Final Order, as applicable,

(a) for the purpose of enabling the Lender to exercise rights and remedies hereunder (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, lease, license, assign, give an option or options to purchase or otherwise dispose of Collateral) at such time as the Lender shall be lawfully entitled to exercise such rights and remedies and upon the occurrence and during the continuance of an Event of Default (subject to the Interim Order or the Final Order, as applicable), each Credit Party hereby grants to the Lender, subject to the provisions of any applicable License, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Credit Party) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by such Credit Party, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof and an irrevocable license (exercisable without payment of rent or other compensation to such Credit Party) to use and occupy all real estate owned or leased by such Credit Party.

(b) after the occurrence of an Event of Default and in connection with exercising its rights under Section 7.6(a), the Lender, subject to the Interim Order or the Final Order, as applicable, may:

(i) subject to the express terms of any valid and enforceable restriction in favor of a Person who is not a Credit Party that prohibits, or requires any consent or establishes any other conditions for, an assignment thereof, license, or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any Intellectual Property throughout the world for such term or terms, on such conditions and in such manner as the Lender shall in its sole discretion determine;

(ii) without assuming any obligations or liability thereunder, at any time and from time to time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of any Credit Party in, to and under any License and take or refrain from taking any action under any provision thereof, and each Credit Party hereby releases the Lender from, and agrees to hold the Lender free and harmless from and against any claims arising out of, any lawful action so taken or omitted to be taken with respect thereto;

(iii) request that each Credit Party use its commercially reasonable efforts to obtain all requisite consents or approvals by the licensor or sublicensor of each License to effect the assignment of all of such Credit Party's right, title and interest thereunder to the Lender or its designee and will execute and deliver to the Lender a power of attorney, in form and substance reasonably satisfactory to the Lender, for the implementation of any lease, assignment, License, sublicense, grant of option, sale or other disposition of Intellectual Property; and

(iv) direct any Credit Party to refrain, in which event such Credit Party shall refrain, from using or practicing any Intellectual Property in any manner whatsoever, directly or indirectly, and shall, if requested by the Lender, change such Credit Party's name to eliminate therefrom any use of any Trademark and will execute such other and further documents as the Lender may request to further confirm this change and transfer ownership of the Intellectual Property and registrations and any pending applications therefor to the Lender.

(c) in the event of any disposition following the occurrence and during the continuance of any Event of Default, each Credit Party shall use commercially reasonable efforts to supply at the Lender's sole expense its know-how and expertise relating to the manufacture and sale of the products or services bearing Trademarks or the products, services or works made or rendered in connection with or under Intellectual Property, and its customer lists and other records relating to such Intellectual Property and to the distribution of said products, services or works, to the Lender.

Section 7.7 Limitation on Lender's Duty in Respect of Collateral.

The Lender's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it

in the same manner as the Lender deals with similar property for its own account. The Lender shall use reasonable care with respect to the Collateral in its possession or under its control. The Lender shall have no other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Lender, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property. The Lender shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other agent or bailee selected by the Lender in good faith. The powers conferred on the Lender hereunder are solely to protect the Lender's interest in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to any Credit Party for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

Section 7.8 Authorized Terminations.

(a) Upon any sale or other transfer by any Credit Party (other than any sale or transfer to another Credit Party) of any Collateral that is permitted under this Agreement or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral, the security interest in such Collateral shall be automatically released and such Collateral shall be sold free and clear of the Lien and security interests created hereby.

(b) Following the Termination Date or the release pursuant to clause (a) above, the Lender shall promptly, at the expense of the relevant Credit Party, execute and deliver to such Credit Party all documents that such Credit Party shall reasonably request to evidence such termination or release, including authorization to file termination statements and releases in accordance with Section 9-513(c) of the UCC. Any execution and delivery of documents pursuant to this Section 7.8 shall be without recourse to or warranty by the Lender.

Section 7.9 Super-Priority Nature of Obligations.

(a) All Obligations shall constitute administrative expenses of the Debtors in the Chapter 11 Cases, with administrative priority and senior secured status under Sections 364(c) and 364(d) of the Bankruptcy Code. Subject to the Carve Out, such administrative claim shall have priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, and shall at all times be senior to the rights of the Debtors, the estates of the Debtors, and any successor trustee or estate representative in the Chapter 11 Cases or any subsequent proceeding or case under the Bankruptcy Code.

(b) All Obligations shall at all times, subject to the Carve-Out, (i) subject to Section 364(d)(1) of the Bankruptcy Code, be secured by fully perfected first priority, valid, binding, enforceable, non-avoidable and automatically perfected priming security interest in and Liens upon (the "**Priming Liens**") the Pre-Petition Collateral and (ii) pursuant to

Section 364(c)(2) of the Bankruptcy Code, be secured by fully perfected first priority, valid, binding, enforceable, non-avoidable and automatically perfected security interest in and liens upon the Collateral (other than Collateral referenced in clause (i)) whether created, existing or acquired prior or subsequent to the commencement of the Cases (the “**First Liens**” and, together with the Priming Liens, the “**DIP Liens**”). The DIP Liens, and the priorities accorded to the Obligations, shall have the priority and senior secured status afforded by Sections 364(c) and 364(d)(1) of the Bankruptcy Code, all as more fully set forth in the Interim Order and Final Order.

(c) The DIP Liens under Sections 364(c)(2),(c)(3) and (d) of the Bankruptcy Code, and the administrative claims under Section 364(c)(1) of the Bankruptcy Code, in each case afforded the Obligations, shall also have priority over any claims arising under Section 506(c) of the Bankruptcy Code subject and subordinate only to the Carve Out.

Section 7.10 Payment of Obligations.

On the Termination Date, the Lender shall be entitled to immediate payment of all outstanding Obligations without further application to or order of the Bankruptcy Court.

Section 7.11 Liens.

(a) The Credit Parties covenant and agree that the DIP Facility and all Obligations will at all times be secured by the DIP Liens as set forth in the Interim Order and the Final Order, as applicable.

(b) The DIP Liens on Collateral of the Credit Parties will not be subject to challenge and will attach and become valid and perfected upon entry of the Interim Order without any requirement of any further action by the Lender. Other than the DIP Liens, the Collateral will be free and clear of all Liens, claims and encumbrances other than Permitted Liens.

(c) The Liens, lien priority, administrative priorities and other rights and remedies granted to the Lender pursuant to this Agreement, the Interim Order and/or the Final Order (specifically, including, but not limited to, the existence, perfection and priority of the Liens provided herein and therein and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by any Credit Party (pursuant to section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever.

Section 7.12 No Discharge; Survival of Claims.

The Credit Parties agree that (i) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization in any Chapter 11 Case (and the Debtors, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waive any such discharge) and (ii) the super-priority administrative claim granted pursuant to the Interim Order and Final Order and described in Section 7.9 and the Liens granted to the Lender pursuant to the Interim Order and Final Order and described in Section 7.9 shall not be affected in any manner by the entry of an order confirming a plan of reorganization in any Chapter 11 Case.

Section 7.13 Release.

The Credit Parties hereby acknowledge, effective upon entry of the Interim Order and subject to the terms thereof, that the Credit Parties have no defense, counterclaim, offset, recoupment, cross complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Credit Parties' liability to repay Lender as provided in this Agreement or any other Credit Document or to seek affirmative relief or damages of any kind or nature from Lender. Subject to the Orders, the Credit Parties, each in their own right on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, and any Affiliates and any Person acting for and on behalf of, or claiming through them, hereby fully, finally and forever release and discharge Lender, its Affiliates, and their respective past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them (collectively, the "**Released Parties**") of and from any and all past and present actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages, including, without limitation, those payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, any other Credit Document, the Interim Order, the Final Order or the transactions contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing. Notwithstanding anything in this Section 7.13 to the contrary, nothing herein shall be deemed to be a release of the Lender from its obligations under this Agreement or any other Credit Document, and nothing in this Agreement shall be deemed to limit or modify any rights granted to third parties under the Orders.

Section 7.14 Waiver of Priming Rights.

Upon the Effective Date, and on behalf of themselves and their estates, and for so long as any Obligations shall be outstanding, the Credit Parties hereby irrevocably waive any right, pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations, other than with respect to adequate protection Liens approved by order of the Bankruptcy Court in the Interim Order or the Final Order.

Section 7.15 Priority of Claim.

The Credit Parties covenant and agree that the Obligations at all times will constitute DIP Administrative Claims, subject only to the Carve Out.

ARTICLE 8 CONDITIONS OF LENDING

Section 8.1 Conditions Precedent to each Draw under the Term Loan.

(a) The obligation of the Lender to fund each drawing under the Term Loan hereunder is subject to the following conditions precedent being satisfied, fulfilled, waived or otherwise met to the satisfaction of the Lender at the time such draw under the Term Loan is requested and funded (the making of such drawing by the Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent to such drawing [but not satisfaction of the conditions to a Disbursement from the Borrower Account]):

(i) the representations and warranties made by the Credit Parties in the Credit Documents or which are contained in any certificate furnished at any time under or in connection herewith, or therewith, shall be true and correct on and as of the date such draw is made as if made on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date;

(ii) no Default or Event of Default shall have occurred and be continuing on such date or after giving effect to such draw and the Lender has received a certificate of a senior financial officer of the Borrower so certifying to the Lender;

(iii) immediately after giving effect to the making of any such draw (and the application of the proceeds thereof), the aggregate sum of all drawings under the Term Loan (excluding for such purposes any Capitalized Interest) shall not exceed the Term Loan Commitment;

(iv) other than the Cases, there shall not exist any litigation, investigation, bankruptcy or insolvency, injunction, order or claim affecting or relating to any Credit Party or any of its Subsidiaries, or any Mining Property, which has had, or could reasonably be expected to have, a Material Adverse Effect, or which could reasonably be expected to affect the legality, validity or enforceability of this Agreement or any other Credit Document, in each case that has not been settled, dismissed, vacated, discharged or terminated;

(v) no Material Adverse Effect shall have occurred and the Lender has not become aware of any facts which, in the Lender's opinion, could reasonably be expected to have a Material Adverse Effect;

(vi) each of the Security Documents has been duly executed and delivered by each party thereto and is in full force and effect enforceable against the Credit Parties, as applicable, in accordance with its respective terms;

(vii) execution and delivery by the Borrower of a duly completed Borrowing Notice with respect to such drawing, including all information reasonably requested from the Credit Parties;

(viii) the Borrower shall have paid all fees, costs and expenses then payable, including the Structuring Fee (which fees, costs and expenses including the Structuring Fee may, for the avoidance of doubt, be paid via withholding from the proceeds of the first drawing under the Term Loan);

(ix) [RESERVED];

(x) other than in the case of the first drawing under the Term Loan, delivery of evidence that (i) the Lender is first loss payee and additional insured under the insurance policies of each of the Credit Parties in respect of the Projects and (ii) such insurance policies are in compliance with Section 10.1(n);

(xi) delivery of a certificate of an officer of the Borrower certifying that all necessary Authorizations relating to the development and operation of the Mining Properties, have been obtained and none have been rescinded, cancelled or otherwise terminated in any respect;

(xii) evidence satisfactory to the Lender confirming the validity of the Security Documents and their application to the Loans and the Obligations as well as the validity and perfection of the DIP Liens granted by such Security Documents and the Orders with the Agreed Priority;

(xiii) all conditions set forth in Section 2.4, Section 2.5 and this Section 8.1 shall have been, and shall remain, satisfied to the satisfaction of the Lender in its sole discretion and the Borrower's delivery of a Borrowing Notice shall constitute the Borrower's representation and warranty that all such conditions precedent have been, and remain, satisfied; and

(xiv) other than in the case of the first drawing under the Term Loan, the Final Order shall be entered and in full force and effect and shall not have been appealed, stayed, reversed, vacated or otherwise modified without the consent of the Lender.

Section 8.2 Conditions Precedent to First Draw under the Term Loan.

(a) In addition to the satisfaction of the conditions set out in Section 8.1, the obligation of the Lender to fund the first draw under the Term Loan is subject to and conditional upon the following conditions precedent being satisfied, fulfilled or otherwise met to the satisfaction of the Lender at the time such draw is requested and funded:

(i) receipt by the Lender of the following documents, each in full force and effect, and in form and substance satisfactory to the Lender:

(A) all data, reports, maps, surveys, financial statements, any Contract and any other information requested by the Lender for its due diligence, including searches of all Lien filings, registrations and records deemed necessary by the Lender, and copies of any documents, filings and Instruments on file in such jurisdictions, shall have been provided, and the Lender shall have completed its technical, legal, financial, permitting, environmental, reclamation financial

assurance and other due diligence investigation of the Credit Parties and the Mining Properties in scope, and with results, satisfactory to the Lender;

(B) executed copies of the Credit Documents, including this Agreement and the Security Documents, together with any filings or other instruments for filing or registration or notarization thereof, notices with respect thereto or other instruments determined by the Lender to be necessary or desirable to establish and perfect the DIP Liens established pursuant to the Security Documents and the Interim Order;

(C) certificates of status or other similar type of evidence for the Credit Parties from all Relevant Jurisdictions;

(D) certified copies of the Constatting Documents of each Credit Party;

(E) officer certified copies of all Material Contracts;

(F) a certified copy of the directors' resolutions of each Credit Party with respect to the authorization, execution and delivery of the Credit Documents, to which each are a party, being delivered in connection herewith;

(G) a certificate of an officer of each Credit Party certifying the names and the true signatures of the officers authorized to sign the Credit Documents;

(H) satisfactory searches of all mineral rights and other interests of each Credit Party in respect of the Mining Properties;

(I) a Perfection Certificate for each Credit Party signed by a senior officer of each such Credit Party;

(J) accurate and complete copies of the most recent [consolidated] financial statements of the Credit Parties;

(K) all regulatory approvals for the transactions contemplated by each of the Credit Documents;

(L) such other documents, certificates, opinions and agreements which the Lender may reasonably request;

(M) the Interim Order shall be entered and in full force and effect and shall not have been appealed, stayed, reversed, vacated or otherwise modified without the consent of the Lender;

(N) a document setting forth a cash management system for the Credit Parties consistent with the existing cash management system of the Credit Parties [and subject to the Credit Party Control Agreements]; and

(O) the Lender shall have received a cash forecast for the period from the Petition Date through the Maturity Date setting forth projected cash flows and disbursements, to be in form, scope and substance acceptable to the Lender and in the form attached hereto as Exhibit D (the “**Approved Budget**”);

(ii) evidence that all DIP Liens created pursuant to the Security Documents or the Interim Order have been duly perfected and registered in all Relevant Jurisdictions and any other relevant jurisdiction as required by the Lender; and

(iii) evidence of the entry by the Bankruptcy Court of all “first day orders” entered at or about the time of the commencements of the Chapter 11 Cases each in form and substance reasonably satisfactory to the Lender.

Section 8.3 Waiver.

The conditions in Section 8.1 and Section 8.2 are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part, with or without conditions, as the Lender may determine in its sole discretion.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

Section 9.1 Representations and Warranties.

Each of the Credit Parties, for itself and on behalf of each of its Subsidiaries, hereby represents and warrants to the Lender, acknowledging and confirming that the Lender is relying on such representations and warranties without independent inquiry in entering into this Agreement and making each Loan that:

(a) **Incorporation and Qualification.** The Borrower is a corporation duly incorporated, organized and validly existing under the laws of Delaware. Each other Credit Party is a corporation duly incorporated, organized and validly existing under the laws of its jurisdiction of incorporation as set forth in as set forth in its Perfection Certificate. Except as set forth in Schedule 9.1(a), each of the Credit Parties is qualified, licensed or registered to carry on business under the Applicable Laws in all jurisdictions in which such qualification, licensing or registration is necessary.

(b) **Corporate Power.** Each of the Credit Parties has, subject to the entry of the Orders, all requisite corporate power and authority to (i) own, lease and operate its properties and assets (including the Mining Properties) and to carry on its business as now being conducted by it and (ii) enter into and perform its obligations under the Credit Documents to which it is a party.

(c) **Conflict with Other Instrument.** The execution and delivery by the Credit Parties and the performance of its obligations under, and compliance with the terms, conditions and provisions of, the Credit Documents to which they are a party, will not (i) conflict with or result in a breach of any of the terms or conditions of (w) its Constating Documents, (x) any Applicable Law, (y) any Contract or contractual restriction binding on or affecting it or its

properties, or (z) any judgment, injunction, determination or award which is binding on it, or (ii) result in, require or permit (x) the imposition of any Lien in, on or with respect to any of its assets or properties (except in favor of the Lender), (y) the acceleration or the maturity of any Debt binding on or affecting any Credit Party, or (z) any third party to terminate or acquire material rights under any Material Contract.

(d) **Corporate Action, Governmental Approvals, etc.** Subject to the entry of the Orders, the execution and delivery of each of the Credit Documents by each Credit Party and the performance by each Credit Party of its obligations under the Credit Documents, have been duly authorized by all necessary corporate action including, without limitation, the obtaining of all necessary shareholder consents. Subject to the entry of the Orders, no authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Entity or other Person is or was necessary in connection with the execution, delivery and performance of the obligations under the Credit Documents except as are in full force and effect, unamended, at the date of this Agreement.

(e) **Execution and Binding Obligation.** This Agreement and the other Credit Documents have been duly executed and delivered by each of the Credit Parties which is a party thereto and, subject to the entry of the Orders, constitute legal, valid and binding obligations of such Credit Party enforceable against it in accordance with their respective terms, subject only to any limitation under Applicable Laws relating to (i) bankruptcy, insolvency, arrangement or creditors' rights generally and (ii) the discretion that a court may exercise in the granting of equitable remedies.

(f) **No Default or Event of Default.** No Default or Event of Default has occurred that is continuing.

(g) **All Authorizations Obtained and Registrations Made.** The Security Documents and the Orders are effective to create in favor of the Lender, legal, valid and perfected Liens in the Agreed Priority in the Collateral and the proceeds thereof enforceable against third parties and any trustee in bankruptcy and/or any other similar official. Subject to the entry of the Orders, all Authorizations and registrations necessary or of advantage to permit each Credit Party to (i) execute, deliver and perform each Credit Document to which it is a party, (ii) create senior super-priority perfected Liens (enforceable against third parties and any trustee in bankruptcy and/or any other similar official) in the Collateral and the proceeds thereof, (iii) consummate the transactions contemplated by the Credit Documents, (iv) own its property and assets and (v) carry on its business (including Authorizations and registrations necessary or of advantage to permit the Credit Parties to carry on the Business), have been obtained or effected and are in full force and effect. Each Credit Party is in compliance with the requirements of all such Authorizations and registrations and there are no investigations or proceedings existing, pending or, to the knowledge of any of the Credit Parties, threatened which could result in the revocation, cancellation, suspension or any adverse modification of any of such Authorizations or registrations. The Security Documents and the Orders constitute a fully perfected security interest or fixed charge on all right, title and interest of each Credit Party in the assets and/or property described therein as security for the obligations specified therein in each case prior and superior in right to any other Person, with the Agreed Priority, other than Permitted Liens. The Collateral includes all Equity Interests owned by and all of the tangible

and intangible assets of each of the Credit Parties (except as otherwise provided in this Agreement). The security interest granted to the Lender pursuant hereto will be perfected upon entry of the Interim Order without any requirement of any further action by the Lender.

(h) **Compliance with Contracts.** The Credit Parties are in compliance with, and have at all times complied with, each of the contractual obligations (including those under each Material Contract) owing by each of them to its customers, suppliers and other Persons. No Contract to which a Credit Party is a party is in default (other than a default resulting from the Cases with respect to which enforcement of remedies is not stayed by means of the Cases) nor has any counterparty thereto claimed or asserted a default or breach thereof. To the knowledge of the Credit Parties, each Contract to which a Credit Party is party is in full force and effect and no material default on the part of any party thereto has occurred thereunder.

(i) **Material Contracts.** Each Material Contract has been duly executed and delivered by each Credit Party and each other Person party thereto and constitutes a legal, valid and binding obligation of such Credit Party and the counterparty thereto enforceable against it in accordance with its respective terms, subject only to any limitation under Applicable Law relating to (i) bankruptcy, insolvency, arrangement or creditors' rights generally and (ii) the discretion that a court may exercise in the granting of equitable remedies. Each Material Contract is in full force and effect and no material default on the part of any party thereto has occurred thereunder. All Authorizations necessary to permit each party to perform its obligations under each Material Contract and consummate the transactions contemplated thereby are and will continue to be in full force and effect and there are no investigations or proceedings existing, pending or threatened which could result in the revocation, cancellation, suspension or adverse modification of any such Authorization.

(j) **Ownership and Use of Property.**

(i) Schedule 9.1(j) accurately and completely sets forth and describes all real property owned, held or controlled by the Credit Parties, including all fee interests, patented mining claims, unpatented mining claims, unpatented millsite claims, leases and other real property interests.

(ii) Except as set forth in Schedule 9.1(j), each of the Credit Parties has good and marketable title to an undivided one hundred percent (100%) of the beneficial and legal interest to all fee lands, patented mining claims, and unpatented mining claims and millsite claims set forth on Schedule 9.1(j), in each case, which title is free and clear of all Liens, subject to Permitted Liens, and is superior and paramount to any adverse claim or right of title which may be asserted.

(iii) Except as set forth in Schedule 9.1(j), with respect to the unpatented mining claims listed on the attached Schedule 9.1(j): (A) the Credit Parties are in exclusive possession thereof, free and clear of all Liens other than Permitted Liens; (B) all such claims were located, staked, filed and recorded on available public domain land in compliance with all Applicable Laws; (C) assessment work, intended in good faith to satisfy the requirements of Applicable Laws and generally regarded in the mining industry as sufficient, for all assessment years was timely and properly performed on or

for the benefit of the claims, and affidavits evidencing such work were timely recorded; (D) claim rental and maintenance fees required to be paid under Applicable Law in lieu of the performance of assessment work, in order to maintain the claims have been timely and properly paid, and affidavits or other notices evidencing such payments and required under Applicable Laws have been timely and properly filed and recorded; and (E) there are no actions or administrative or other proceedings pending or, to the best of the knowledge of the Credit Parties, threatened against or affecting any of the claims.

(iv) Except as set forth in Schedule 9.1(j), as to the patented mining claims listed on Schedule 9.1(j): (A) the Credit Parties own an undivided one hundred percent (100%) of the beneficial and legal interest in those claims in each case, free and clear of all Liens except for Permitted Liens; (B) the Credit Parties are in exclusive possession of those claims; and (C) there are no actions or administrative or other proceedings pending or, to the knowledge of any Credit Party, threatened against those claims.

(v) No Credit Party has any right, title or interest in, or conducts any exploration, operations or other business with respect to, (x) the Ortiz Property or the Ortiz Lease or the Mogollon Project or (y) any mine or project other than the Projects.

(vi) Mineria Sandia S.A. de C.V. does not have any assets or property of any value and is not carrying on business of any kind.

(vii) Each Credit Party and each Subsidiary thereof, has good and marketable title to its owned real property and has valid and effective rights to its leased property, free and clear of all Liens, except for Permitted Liens and except as set forth in Schedule 9.1(j).

(viii) Except as set forth in Schedule 9.1(j), all Taxes, charges, rates, levies and assessments that, if unpaid, would create a Lien or charge on any Mining Property or any portion thereof, have been paid in full and will be paid in full.

(ix) Except as set forth in Schedule 9.1(j), all contractors, subcontractors, agents and other Persons providing services, materials or labor on or for the benefit of any Mining Property have been paid in a timely manner for all work performed or services, goods or labor provided on or with respect thereto, except where such payments are subject to a bona fide dispute, which is being diligently pursued by a Credit Party pursuant to appropriate procedures.

(x) The Security Documents create, or upon their execution and delivery will create, valid and effective Liens in and on the Collateral purported to be covered thereby, which Liens are currently perfected Liens with the Agreed Priority.

(xi) The security interest granted to the Lender pursuant hereto will be perfected upon entry of the Interim Order without any requirement of any further action by the Lender.

(k) **Ownership of Subject Properties.** None of the Borrower or any of the other Credit Parties (i) owns any real property other than the Owned Properties, (ii) is bound by any

agreement to own or lease any real property other than the Leases or (iii) has leased any of its Owned Properties.

(l) **Leased Properties.** Other than as set forth in Schedule 9.1(l), each Lease is in good standing and all amounts owing under each Lease have been paid by each Credit Party, as applicable.

(m) **Work Orders.** Except as set forth in Schedule 9.1(m), there are no outstanding work orders, enforcement orders, compliance orders or other similar notices or requirements by or from a Governmental Entity relating to any of the Subject Properties, nor does any of the Credit Parties have notice of any possible impending or future work order, enforcement order, compliance order or other similar notice or requirement.

(n) **Expropriation.** No part of any of the Subject Properties or the Buildings and Fixtures located on the Subject Properties has been subject to an Expropriation Event, no written notice or proceeding in respect of an Expropriation Event has been given or commenced, nor is any Credit Party aware of any intent or proposal to give any such notice or commence any proceedings.

(o) **Encroachments.** The Buildings and Fixtures located at each of the Subject Properties are located entirely within such Subject Property and are in conformity with all Applicable Laws, including zoning, building, and set-back codes and coverage requirements. There are no encroachments upon any of the Subject Properties.

(p) **Compliance with Laws.** Each Credit Party is in material compliance in all respects with all Applicable Laws. Each of the Subject Properties has been used, explored and operated by the Credit Parties in compliance in all respects with all Applicable Laws.

(q) **No Default.** None of the Credit Parties is in violation of any of its Constatting Documents or any shareholders', partnership, joint venture or similar agreement applicable to it.

(r) **No Material Adverse Agreements.** None of the Credit Parties is a party to any agreement or instrument or subject to any restriction (including any restriction set forth in its Constatting Documents or any shareholders', partnership, joint venture or similar agreement applicable to it) which has, had or to the best of its knowledge in the future may have, a Material Adverse Effect.

(s) **Environmental Compliance.**

(i) The Subject Properties, including the Mining Properties and all equipment and facilities thereon are and have been owned, developed, operated, leased, reclaimed and utilized in compliance in all material respects with applicable Environmental Laws, and each Credit Party holds, and is in material compliance with all Authorizations required by Environmental Laws for the ownership and/or operation of the Subject Properties, and each Credit Party is in compliance with all financial assurance requirements applicable to the Mining Properties under applicable Environmental Laws.

(ii) There are no pending Environmental Claims, or pending consent decrees, clean-up orders, mitigation orders, compliance orders, remediation orders or other orders, decrees, judgments or other administrative or judicial requirements outstanding relating to any Credit Party's compliance with any Environmental Law or to a Release or threatened Release of Hazardous Materials with respect to any Subject Property.

(iii) No Credit Party or any Subsidiary thereof has received any written or actual notice of any threatened Environmental Claim relating to any Subject Property, nor does any Credit Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(iv) There have been no Releases of any Hazardous Materials, at, on, under or from any Subject Property, or any property previously owned, operated, used or leased by any Credit Party or at any third party property to which any Credit Party has sent or arranged for the sending of Hazardous Materials for disposal or treatment that has resulted, or could reasonably be expected to result in a material liability under Environmental Laws.

(v) No conditions exist at, on or under any property now or previously owned, operated, used or leased by any Company 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.

(t) **Pension Plans.** None of the Credit Parties maintain any Pension Plan or has any liability or threatened liability under or pursuant to a Pension Plan.

(u) **Labor Matters.** There are no existing or threatened strikes, lock-outs or other disputes relating to any collective bargaining agreement to which any Credit Party is a party. No Credit Party is subject to, or party to, a collective bargaining agreement with respect to any employees.

(v) **Books and Records.** All books and records of the Credit Parties have been fully, properly and accurately kept and completed and there are no inaccuracies or discrepancies of any kind contained or reflected therein. Each of the Credit Parties' books and records and other data and information are available to it in the ordinary course of its business.

(w) **Tax Liability.** Except as set forth in Schedule 9.1(w): Each of the Credit Parties has filed all tax and information returns which are required to be filed. Each of the Credit Parties has paid all Taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it other than those in respect of which liability based on such returns is being contested in good faith and by appropriate proceedings where adequate reserves, satisfactory to the Lender, have been established in accordance with GAAP. Adequate provision for payment has been made for Taxes not yet due. There are no tax disputes existing or pending involving any of the Credit Parties or the Business. Santa Fe has not filed any tax return in the United States, paid any Tax to any U.S. federal, state or local tax authority nor has Santa Fe been assessed for any Taxes by any U.S. federal, state or local tax authority.

(x) **Corporate Structure.** At the date of this Agreement:

(i) Its Perfection Certificate sets forth, for each Credit Party, its name, its type of organization, its organizational identification number, if any, its authorized and issued Equity Interests, and the holders of its Equity Interests, and all agreements binding on such holders with respect to their Equity Interests. The Perfection Certificate contains a diagram of the organizational structure of the Credit Parties and their Subsidiaries.

(ii) Except as set forth in its Perfection Certificate, none of the Credit Parties owns any Equity Interests.

(iii) Except as set forth in its Perfection Certificate, in the five years preceding the Effective Date, none of the Credit Parties has acquired any substantial assets from any other Person or been party to any merger, amalgamation, reorganization, combination or similar transaction.

(iv) Each Credit Party has good title to all Equity Interests in each Subsidiary of such Credit Party, and all such Equity Interests are duly issued, fully paid and non-assessable.

(v) There are no outstanding warrants, options or other agreements which require or may require the issuance of any Equity Interests of any of the Credit Parties or the issuance of any Debt or securities convertible into Equity Interests of any of the Credit Parties and there are no outstanding debt or securities convertible into Equity Interests of any of the Credit Parties.

(vi) None of the Credit Parties are, directly or indirectly, a member of, or a partner or participant in, any partnership, joint venture or syndicate, which, individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect.

(y) **Subsidiaries, etc.** Each of the Credit Parties is a corporation. Except as disclosed on Schedule 9.1(y), none of the shareholders of the Credit Parties are party to any shareholders', voting or other agreement relating to shares of any of the Credit Parties owned by such shareholder.

(z) **Financial Statements.** The quarterly consolidated financial statements of the Borrower for the period ending on March 31, 2015 and filed with the Securities and Exchange Commission (including the related notes and schedules thereto) fairly present the consolidated financial position of the Credit Parties at such date and the consolidated results of the operations and changes in financial position of the Credit Parties for such period, all in accordance with GAAP.

(aa) **Debt.** No Credit Party has any Debt except Permitted Debt. There exists no default (howsoever described) under the provisions of any Contract evidencing such Debt or of any agreement relating thereto (other than a default resulting from the Cases with respect to which enforcement of remedies is stayed by means of the Cases).

(bb) **Insurance.** Until _____, 2015, the Credit Parties maintained insurance policies with financially sound and reputable insurers of types and in amounts which are customarily maintained by other companies applying Prudent Mining Industry Practices, and the Credit Parties otherwise maintained insurance for each of its respective businesses and the Mining Properties in compliance with Section 10.1(n). There has been no default or failure by the party or parties that were insured under the provisions of such policies of insurance maintained which would prevent the recovery by the relevant Credit Party that was insured thereunder of the full amount of any material insured loss. Set forth on Schedule 9.1(bb) is a list of each claim made under such insurance policies which was unresolved as of _____ 2015.

(cc) **No Litigation.** Other than as set out in Schedule 9.1(cc),⁷ there are no actions, suits or proceedings pending, taken and not stayed pursuant to the Bankruptcy Code or, to the knowledge of any of the Credit Parties, threatened before or by any Governmental Entity or by or against any elected or appointed public official or Person in any jurisdiction which (i) challenges, or threatens, the validity or propriety of the transactions contemplated under the Credit Documents or the documents, instruments and agreements executed or delivered in connection therewith or related thereto, (ii) alleges the violation of any Applicable Law, (iii) involves any Material Contract, (iv) challenges or threatens the validity of all or any portion of any of the Subject Properties or any Credit Party's legal interest or claim thereto, or (v) could reasonably be expected to result, either in any case or in the aggregate, in a Material Adverse Effect.

(dd) **Perfection Certificates.** The Perfection Certificate for each Credit Party sets forth:

(i) a list of all jurisdictions (or registration districts within such jurisdictions) in which such Credit Party (i) has its chief executive office, head office, registered office and chief place of business, (ii) carries on business, (iii) has any account debtors, or (iv) stores any tangible personal property (except for goods in transit in the ordinary course of business);

(ii) a list of all Authorizations which are material or necessary to such Credit Party, the Business or the ownership, management and operation of any of the Mining Properties;

(iii) a list of all Intellectual Property (and the registration particulars thereof) which are material or necessary to such Credit Party or the Business;

(iv) a list of all agreements, contracts and each similar Contracts to which such Credit Party is a party or to which any of its properties or assets could be subject, for which breach, non-performance, cancellation or failure to renew could have a Material Adverse Effect;

(v) a list of all labor agreements to which such Credit Party is a party; and

⁷ Status of existing litigation re Summit property to be confirmed.

(vi) the complete bank account details for each bank account maintained by such Credit Party.

(ee) **No Liabilities.** Except as reflected or reserved against the quarterly consolidated financial statements of the Borrower for the period ending on March 31, 2015 and filed with the Securities and Exchange Commission (including the related notes and schedules thereto) or, if applicable, the most recent financial statements delivered pursuant to Section 10.1(a)(i), none of the Credit Parties has liabilities or obligations of any nature (whether absolute, accrued, contingent or otherwise) except for current liabilities incurred in the ordinary course and reflected in the Approved Budget.⁸

(ff) **Broker's Fees.** Other than as set out under Schedule 9.1(ff), no broker's or finder's fee or commissions will be payable by reason of any action of any of the Credit Parties with respect to any of the transactions contemplated by the Credit Documents.

(gg) **Foreign Assets Control Regulations.** Neither the execution and delivery of this Agreement nor the Borrower's use of the proceeds of the Loans 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 Credit Party 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 Credit Party and its Subsidiaries are in compliance, in all material respects, with the Act. No part of the proceeds from the Loans 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.

(hh) **No Cease Trade Orders.** Other than as set out in Schedule 9.1(hh), no order or ruling suspending the sale or ceasing the trading in any securities of any of the Credit Parties has been issued by any securities regulatory authority or, the best knowledge of the Credit Parties, is pending, contemplated or threatened by any securities regulatory authority.⁹

(ii) **Affiliate Transactions.** The Credit Parties are not conducting, permitting or suffering to be conducted, any transaction with any Affiliate, except as set forth in Schedule 9.1(ii).

(jj) **Operation of Mining Properties.** The Credit Parties have heretofore made available to the Lender all feasibility studies and geological, reserve, resource, metallurgical, engineering and financial data and evaluations of each Mining Property prepared by, or for the

⁸ Discuss proposed Schedule.

⁹ Status re Canadian securities exchanges to be confirmed.

benefit of, any Credit Party or otherwise in the possession of any Credit Party. [The Credit Parties are not aware of any inaccuracy or omission in such information which has not been disclosed to the Lender in writing.]¹⁰ Each mine on the Mining Properties is not operational and is, and has at all time since its last date of operation, been maintained in “care and maintenance” status in accordance with Prudent Mining Industry Practices. No Credit Party is engaged in commercial exploration or development of any mine or project.

(kk) **Project Permits.** Except as set forth in Schedule 9.1(kk) and except for Authorizations which are to be obtained by a Credit Party from time to time in the ordinary course of business and the absence or delay of which will not interfere with or delay development and operation of the Mill or a Mining Property, and subject to the entry of the Orders, the Credit Parties possess all Authorizations of Governmental Entities which are necessary to develop and operate the Mill and the Mining Properties and to undertake and conduct the business of the Credit Parties or any Subsidiary thereof as it is currently being conducted. Each Authorization held by any of the Credit Parties as at the date hereof is identified in Schedule 9.1(kk) hereto (collectively, the “**Project Permits**”). The Project Permits are in full force and effect in accordance with their terms, free of default, all appeal periods with respect to the granting thereof have lapsed and no written notice alleging a breach or default under any Project Permit or challenging or questioning the validity of any Project Permit has been delivered, except to the extent disclosed to the Lender in Schedule 9.1(kk). The Credit Parties have sufficient, legally-enforceable rights of access, entry and egress to and from the Mining Properties, including rights sufficient to develop and operate the Mining Properties. Except as described in Schedule 9.1(kk), all Mining Properties are serviced with utilities, including water, gas and electricity as may be required to develop and operate the Mining Properties in accordance with Prudent Mining Industry Practices.

(ll) **Disclosure.** All forecasts, projections and other information supplied to the Lender were prepared in good faith and adequately disclose all relevant assumptions, are true and accurate in all respects, and were based on fair assumptions. There is no fact known to any Credit Party which could have a Material Adverse Effect and which has not been fully disclosed to the Lender. None of the representations or warranties made by the Credit Parties in the Credit Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any written exhibit, report, statement or certificate furnished by or on behalf of the Credit Parties in connection with the Credit Documents, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

(mm) **Santa Fe Barbados.** Santa Fe is an International Business Company [, in good standing,] pursuant to the *International Business Companies Act* (Barbados).

(nn) **Investment Company Act.** No Credit Party is, and after giving effect to the Loans and the application of the proceeds of the Loans as described herein no Credit Party will be, an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

¹⁰ To be discussed.

(oo) **Regulation T, U or X.** The Credit Parties are not 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 T, U or X.

Terms for which meanings are provided in F.R.S. Board Regulation T, U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

(pp) **Reorganization Matters.**

(i) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice was given for (i) the motion seeking approval of the Credit Documents and the Interim Order and Final Order, (ii) the hearing for the approval of the Interim Order, and (iii) the hearing for the approval of the Final Order.

(ii) After the entry of the Interim Order, and pursuant to and solely to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject, as to priority only, to the Carve Out.

(iii) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected Lien having the priority described in the Orders.

(iv) The Interim Order (with respect to the period prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect and has not been modified or amended without the consent of the Lender, or reversed or stayed.

(v) The Approved Budget has been prepared in good faith by the Borrower, based on assumptions believed by the Borrower to be reasonable at the time such forecasts were prepared.

(qq) **Certain Intellectual Property.** No Credit Party owns or licenses any Copyrights, Patents or Trademarks.

(rr) **Certain Debt.** No Credit Party has any Debt under any Hedging Agreement outstanding as of the Petition Date, including any close-out amounts thereunder.

Section 9.2 Survival of Representations and Warranties.

The representations and warranties in this Agreement and in any certificates or documents delivered to the Lender in connection therewith shall not merge in or be prejudiced by, and shall survive, the making of each Loan and shall continue in full force and effect so long as any amount is owing by the Borrower to the Lender under this Agreement.

ARTICLE 10 COVENANTS OF THE BORROWER

Section 10.1 Affirmative Covenants.

Until the full and final payment and performance of the Obligations and the termination of this Agreement, the Borrower shall, and (as the case may be) each of the other Credit Parties shall, perform all covenants in this Section 10.1:

(a) **Financial Statements, Reports and Other Information.** Deliver, or arrange for the delivery, to the Lender:

(i) as soon as practicable and in any event within forty-five (45) days after the end of each Financial Quarter of each Financial Year, (A) the unaudited quarterly [consolidated and consolidating] financial statements of the Credit Parties for the Financial Year to such Financial Quarter, prepared in accordance with GAAP and (B) together with each such delivery of financial statements pursuant to this paragraph, a duly completed and executed Compliance Certificate relating thereto;

(ii) as soon as practicable and in any event within ninety (90) days after the end of each Financial Year, (A) the annual unaudited [consolidated and consolidating] financial statements of the Credit Parties prepared in accordance with GAAP for such Financial Year and (B) together with each such delivery of financial statements pursuant to this paragraph, a duly completed and executed Compliance Certificate relating thereto;

(iii) as soon as available and in any event within thirty (30) days after the end of each calendar month, a report setting forth, in each case in a form and in sufficient detail satisfactory to Lender, (x) balance sheets of each Credit Party as of the end of such month, (y) statements of income and cash flows of each Credit Party for such month, and for the period commencing at the end of the previous Financial Year and ending with the end of such month and (z) profit and loss statements of each Credit Party for such month and for the period commencing at the end of the previous Financial Year and ending with the end of such month, in each case, prepared in accordance with GAAP (subject to the absence of footnote disclosures and to normal year-end adjustments). Such report shall be accompanied by a certification of an officer of the Borrower, on behalf of the Borrower and the other Credit Parties, that the Credit Parties are in full compliance with each financial covenant set forth in Section 10.2(u) or, if any of such certification cannot be given, stating in reasonable detail the necessary qualifications to such certification;

(iv) as soon as practicable but no later than thirty (30) days after the end of each calendar month, the Credit Parties shall submit to the Lender a written report

concerning its business and activities, each of the Projects and the other Mining Properties and all activities and occurrences with respect thereto during the preceding calendar month and shall include a summary description of actions taken with respect to each of the Projects, and the other Mining Properties, a description of actual expenditures (as compared to the budgeted expenditures), together with an operating statement in form and substance acceptable to Lender and containing (i) line items corresponding to the Approved Budget showing in reasonable detail all actual expenses related to the operation and maintenance of each Project compared to the budgeted expenses for such period, (ii) to the extent available, information showing the amount of gold and silver produced by each Project during such period and (iii) to the extent available, information showing (A) the amount, if any, of other sales of gold and silver sold by the Credit Parties from each Project, together with an explanation of any such sale and identification of the purchaser, and (B) the amount, if any, of other products sold by the Credit Parties from the Projects, together with an explanation of any such sale and identification of the purchaser;

(v) as soon as practicable, such other information in the possession of any Credit Party with respect to its financial condition, business and/or operations including copies of all financial statements, proxy statements, material reports and other material disclosure information which any Credit Party shall send or make available to any of its shareholders or which it is required or elects to file with any Governmental Entity;

(vi) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to any Credit Party (or the audit or finance committee of any Credit Party) by the Auditors in connection with the accounts or books of any Credit Party, or any audit of any Credit Party;

(vii) promptly upon any change that would affect the accuracy of the information with respect to any Credit Party set forth in any Perfection Certificate, an update of such Perfection Certificate signed by a senior officer of such Credit Party; and

(viii) promptly after receiving a request from the Lender, such other certificates, reports, status updates, data and information respecting the condition or operations, financial or otherwise, of any Credit Party and any of the Projects as the Lender may from time to time request, with the same to be delivered in form and substance reasonably acceptable to the Lender.

All reports, descriptions, data and other information provided by the Credit Parties pursuant to Section 10.1(a) or (b) (i) shall be true, complete and accurate in all respects and (ii) shall not contain any material misstatement of fact or omit to state a material fact, and all projections contained in any such reports, certificates, status updates and otherwise shall be based on information which, when delivered, was true, correct and complete in all material respects and shall fairly present such Credit Party's then current estimate of its future business, operations and affairs. An officer of the Borrower, on behalf of the Credit Parties, shall provide the foregoing certification in writing upon delivery of any report, certificate, status update or other information furnished pursuant to Section 10.1(a) or (b) and shall be deemed to have done so to the extent that any Credit Party fails to provide written certification thereof.

(b) **Approved Budget; Cash Flow Reporting.**

(i) Commencing with the first Tuesday after the Petition Date, the Borrower will furnish to the Lender on each Tuesday (or, if such day is not a Business Day, the next succeeding Business Day) of each week, a report (the “**Weekly Actuals Report**”), in form and detail acceptable to the Lender, setting forth (x) actual cash receipts and disbursements for the one week period ended on the previous Saturday and (y) a calculation of each of Variance Testing Revenue and Variance Testing Disbursements for the period from the Sunday prior to the Petition Date through the previous Saturday.

(ii) Within two Business Days of delivery of (x) the Weekly Actuals Report for the calendar week ended [____], 2015 and (y) each fourth Weekly Actuals Report thereafter, the Borrower will furnish to the Lender an updated cash forecast (each, an “**Updated Budget**”) for the period from the previous Sunday through the end of the term of the Approved Budget, setting forth projected cash receipts and disbursements, in form and scope similar to the Approved Budget;

(iii) Together with (x) the Weekly Actuals Report for the calendar week ended [____], 2015 and (y) each fourth Weekly Actuals Report thereafter, the Borrower will furnish to the Lender (A) a variance report (each, an “**Approved Budget Variance Report**”) showing the difference between actual cash receipts and disbursements for the period from [____], 2015 through the previous Saturday (each such period, a “**Variance Covenant Testing Period**”) and projected cash receipts and disbursements for such period set forth in the Approved Budget and (B) a variance report showing the difference between actual cash receipts and disbursements for the period from [____], 2015 through the previous Saturday and projected cash receipts and disbursements for such period set forth in the Updated Budget.

(c) **Notice of Litigation.** Give notice to the Lender as soon as it becomes aware of the commencement of any action, litigation, proceeding, arbitration, investigation, grievance or dispute affecting any Credit Party, any Mining Property, any Material Contract or any Affairs of a Credit Party, together with copies of the court filings or other documents associated therewith.

(d) **Notice of Default.** Give notice to the Lender as soon as it becomes aware of any Default or Event of Default or any event or circumstance which could have a Material Adverse Effect, together with, in the case of a Default or Event of Default, a statement of an officer of the Borrower setting forth details of such Default or Event of Default and the action that the Borrower has taken and propose to take with respect thereto.

(e) **Notice of Environmental Matters.** Promptly after the filing or receipt thereof, copies of (i) all new Project Permits, together with a description thereof; (ii) any revised reclamation estimates or material changes to reclamation-related financial assurance and (iii) all notices with or from any Governmental Entity or any other Person alleging noncompliance with

or violation of any Environmental Law or Project Permit and any correspondence in response thereto.

(f) **Corporate Existence.** Preserve and maintain its corporate existence.

(g) **Compliance with Laws, etc.** Comply, and shall cause each of their Subsidiaries, agents and third party contractors to comply with, all Applicable Laws except when any non-compliance would not have a Material Adverse Effect.

(h) **Comply with Environmental Laws.** Own, operate and manage its business and the Mining Properties in compliance with all Applicable Laws, including Environmental Laws, and each Credit Party shall, and shall cause its agents and third party contractors to, (i) manage and operate the Mining Properties and the Business in compliance with all Environmental Laws, (ii) maintain all Authorizations and make all registrations required under all Environmental Laws in relation to the Mining Properties and the Business and remain in compliance therewith, (iii) store, treat, transport, generate, otherwise handle and dispose of all Hazardous Materials and Waste owned, managed or controlled by any of the Credit Parties in compliance with all Environmental Laws and (iv) comply with all recommendations contained in any environmental impact assessment relating to any Mining Property.

(i) **Conduct of Operations and Maintenance of Properties.** Engage solely in the business of developing the Mining Properties, and in activities incidental thereto, including care and maintenance of each mine on the Mining Properties in accordance with Prudent Mining Industry Practices. The Credit Parties shall develop each Mining Property in accordance with Prudent Mining Industry Practices. The Credit Parties shall maintain ownership of 100% of each Project and all mining claims as are necessary or advisable to be able to operate each Project substantially in accordance with Prudent Mining Industry Practices. The Credit Parties shall, from time to time, make and cause to be made all repairs, renewals, replacements, additions and improvements to the Mining Properties and their properties and assets required to maintain each mine on the Mining Properties in care and maintenance status in accordance with Prudent Mining Industry Practices. No Credit Party shall acquire or lease any real property interests, or terminate or release any right, title or interest it may have to any mining claims, without the prior written consent of the Lender.

(j) **Payment of Taxes and Claims.** Pay, or cause to be paid when due, (i) all Taxes, assessments and governmental charges or levies imposed upon it or upon its income, sales, capital or profit or any other property belonging to any of the Credit Parties, and (ii) all claims which, if unpaid, might by Applicable Law become a Lien upon any of the Credit Parties' property or assets (A) except any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings and in respect of which the Borrower or any of the Credit Parties have established adequate reserves, satisfactory to the Lender, in accordance with GAAP or (B) which are Permitted Liens and which could not, individually or collectively, in the Lender's opinion, have a Material Adverse Effect.¹¹

¹¹ Tax status of Credit Parties to be confirmed.

(k) **Keeping of Books.** Keep proper books of record and account, in which full and correct entries shall be made in respect of its business and shall promptly notify Lender of any change in accounting practices or procedures implemented by a Credit Party relative to such practice and procedures as of the execution of this Agreement.

(l) **Updated Banking Information.** Promptly notify the Lender of any change in bank location or accounts, and shall at all times ensure that each of its respective bank accounts remain subject to a Credit Party Control Agreement.

(m) **Rights of Inspection.** At any time and from time to time, permit any employee, officer, agent or other representative of the Lender, at the expense of the Borrower, to examine the Mining Properties and make copies of any abstracts from the records and books of account of any Credit Party and to discuss any of its Affairs with any of its directors, officers, employees, agents, representatives or auditors. At any time and from time to time, upon request of the Lender, each Credit Party shall permit any Consultant and any officer, agent or other representative of the Lender, at the expense of the Borrower, to inspect the Mining Properties and the Business and discuss any of the Affairs of any Credit Party with any of its personnel and third party contractors. The Borrower shall pay or reimburse the Lender for all costs and expenses of the Lender in connection with each site visit by the Lender or any of its employees, officers, agents, engineers or other representatives. Upon the request of the Lender at reasonable intervals, each Credit Party shall make available its officers to answer questions concerning such Credit Party's business and affairs.

(n) **Maintenance of Insurance.** Maintain from and after 5 Business Days following the first drawing of the Term Loan with financially sound and reputable insurance companies (i) insurance on all its property and assets insuring against at least such risks as are usually insured against in the same or a similar business and as required by Applicable Laws and (ii) liability insurance covering at least such risks as are usually insured against in the same or a similar business and as required by Applicable Laws; and furnish to the Lender, upon request, full information as to the insurance carried. The insurance coverage to be maintained is outlined as to carrier, expiration date, type and amount on Schedule 10.1(n). Upon the request of the Lender from time to time, each Credit Party shall deliver to the Lender evidence of the insurance then in effect, including a detailed list of such insurance containing the information set forth on Schedule 10.1(n). The insurance policies with respect to the Mining Properties shall name the Lender as first loss payee and/or additional insured, as appropriate, and shall contain an endorsement providing that such insurance cannot be terminated or amended without at least thirty days' prior notice to the Lender.

(o) **Authorizations.** Obtain and maintain in full force all Authorizations necessary to keep the Mining Properties in "care-and-maintenance" status and necessary for the performance of the Credit Parties' obligations and to perform and observe all covenants, conditions and restrictions contained in, or imposed on it by, any Material Contract that is necessary to maintain "care-and-maintenance" status of the Mining Properties and any Authorization.

(p) **Deliver Additional Material Contracts and Direct Agreements.** Notify the Lender within five (5) Business Days upon the entering into of any new Material Contract and if requested by the Lender deliver (i) a certified copy of each such Material Contract to the Lender

within five (5) Business Days of such request, (ii) a Direct Agreement executed by each of the parties to such Material Contract within ten (10) days of such request and (iii) promptly take all actions reasonably requested by the Lender to cause each Material Contract entered into after the date hereof to become subject to the DIP Liens.

(q) **Perfection and Protection of Security.** Perform, execute and deliver all acts, agreements and other documents as may be requested by the Lender at any time to register, file, signify, publish, perfect, maintain, protect, and enforce the Security or grant a security interest thereon including, (i) executing, recording and filing of the Security Documents and financing, change or continuation statements in connection therewith, in form and substance satisfactory to the Lender, (ii) delivering to the Lender the originals of all instruments, documents and chattel paper and all other Collateral of which the Lender determines it should have physical possession in order to perfect and protect the Security, duly endorsed or assigned to the Lender, (iii) delivering to the Lender warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are listed, (iv) placing notations on its books of account to disclose the Security, (v) delivering to the Lender all letters of credit on which the Credit Party is named beneficiary and (vi) taking such other steps as are deemed necessary by the Lender to maintain the Security.

(r) **Credit Party Accounts.** Maintain the Credit Party's Accounts as their primary operating accounts, in the location and with the bank or financial institution described on Schedule 10.1(r) and shall not change such accounts without the Lender's prior written consent. No Credit Party may open a new bank account or any other account at a financial institution without the prior written consent of the Lender, which approval may be withheld in its sole discretion.

(s) **Credit Party Control Agreements.** Each Credit Party Account shall at all times be (i) held as Collateral to secure the repayment and/or performance of the Obligations, (ii) held at the financial institution at which such Credit Party Control Account was maintained on the Petition Date under the terms of the Pre-Petition Credit Documents, and subject to the Credit Party Control Agreement, or otherwise at a financial institution otherwise approved by the Lender and (iii) subject to a perfected Priming Lien in favor of the Lender, with all rights and remedies in respect thereto as set forth in the Orders and the other Credit Documents.

(t) **Additional Security.** Promptly upon the request of the Lender, at the cost and expense of the Borrower, the Borrower shall, and shall ensure that each other Credit Party shall, execute, deliver, create and perfect any and all Security which the Lender may require in relation to any assets of any Credit Party, as the Lender may designate, together with all related documents, instruments, registrations and other evidence the Lender may require to ensure that such Security creates a legal, valid and first priority perfected security interest in relation to such assets, enforceable against third parties and any trustee in bankruptcy.

(u) **Use of Proceeds.**

(i) All proceeds of the Loans shall be used solely to fund, in each case only to the extent specified in the Approved Budget (subject to the permitted variance), (a) operating expenses and other amounts for general and ordinary course purposes of the

Credit Parties, (b) current interest and fees payable pursuant to the Credit Documents, (c) make adequate protection payments required under the Interim Order and the Final Order and (d) such other administrative payments, including the budgeted professional fees, as may be authorized and approved by the Lender under the Interim Order, the Final Order or any subsequent order of the Bankruptcy Court.

(ii) No portion of the proceeds of the Loans, the Collateral or the Carve-Out shall be used to (a) challenge the validity, perfection, priority, extent or enforceability of the DIP Facility, the Pre-Petition Obligations, or the Liens on the assets of the Debtors securing the DIP Facility or the Pre-Petition Obligations or (b) assert any claim against the Lender or the Pre-Petition Lender; *provided, however*, that (x) the proceeds of the Loans may be used to seek a Section 506(a) Determination and (y) up to \$10,000 of the proceeds of the Loans may be used by the Committee to investigate potential claims arising out of, or in connection with, the Pre-Petition Credit Agreement or the security interests and liens securing the Pre-Petition Obligations. The Carve-Out shall be reduced by an amount equal to all proceeds of the Loans used pursuant to the foregoing proviso.]

(iii) Prior to the Carve-Out Date, subject to entry of an appropriate order of the Bankruptcy Court (in form and substance acceptable to the Lender), proceeds of the Loans may be used to pay professional fees and expenses of the Debtors [and of the Committee] allowed and payable under sections 330 and 331 of the Bankruptcy Code in accordance with the Approved Budget.

(iv) On and after the Carve-Out Date, any amounts paid to professionals of the Debtors and of the Committee by any means will reduce the Carve-Out on a dollar-for-dollar basis and the Carve-Out will be limited to the maximum amount of \$[_____]; *provided*, that nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement, or compensation sought by the professionals retained by the Debtors or any statutory committee in the Chapter 11 Cases.

(v) **Additional Guarantors.** The Borrower and each other Credit Party shall ensure that on or prior to any Person becoming a Subsidiary of any Credit Party:

(i) such Person shall execute and deliver in favor of the Lender a joinder to this Agreement, pursuant to which such Person becomes a Guarantor hereunder;

(ii) such Person shall grant any and all Security as the Lender may require;

(iii) all shares in the capital of such Person are pledged to the Lender (and all original share certificates are delivered to the Lender, duly endorsed in blank or accompanied by a duly executed stock power transfer form) and all directors of such Person have delivered to the Lender resignations duly executed but undated;

(iv) the Lender shall receive evidence of registration or other perfection of such Security and/or pledge in such jurisdictions as the Lender may require to ensure that such Security and/or pledge creates legal, valid, binding, enforceable and first-priority security interests in the assets or shares to which such Security or pledge relates, enforceable against third parties, trustees in bankruptcy and similar officials;

(v) the Lender shall receive opinions of the counsel to such Person relating to, among other things, its subsistence, the due authorization, execution, delivery and enforceability of the Credit Documents to which such Person is a party and the creation and perfection of the Liens against such Person under the Security Documents;

(vi) the Lender shall receive all discharges, subordination agreements, waivers and confirmations as the Lender may require to ensure that all obligations under the Credit Documents are secured by first priority Liens on the property and assets of such Person; and

(vii) the Lender shall receive a Perfection Certificate signed by a senior officer of such Person, together with such other evidence, certificates and documentation as the Lender may request;

in each case, in form and substance satisfactory to the Lender.

(w) **Defense of Title and Rights.** Each Credit Party shall preserve and defend its ownership of and all right, title and interest in its assets, properties and rights, including each Mining Property, as such title is represented and warranted in Section 9.1(j). Each Credit Party shall defend the Liens in favor of the Lender, and the Credit Parties shall maintain and preserve such Liens as perfected Liens with their Agreed Priority. Each Credit Party shall ensure that the Security Documents shall at all times cover and extend to all assets, properties, rights and interests of each Credit Party.

(x) **Santa Fe Barbados.** [Santa Fe shall, from and after the first to occur of (i) 5 Business Days following the Petition Date and (ii) the second Disbursement from the Borrower Account, remain an International Business Company in good standing, pursuant to the *International Business Companies Act* (Barbados).]

(y) **Leases.** Each Credit Party shall provide the Lender with immediate written notice of any material default under any Lease and shall provide the Lender with the right to cure such default.

(z) **Reorganization Matters.** The Debtors shall give, on a timely basis as specified in the Interim Order or the Final Order all notices required to be given to all parties specified in the Interim Order or Final Order. The Debtors shall provide to the Lender copies of all pleadings, motions, applications and other documents or information (i) filed by or on behalf of any Debtor with the Bankruptcy Court or (ii) provided to any Committee appointed in the Chapter 11 Cases. The Debtors shall provide the Lender with drafts of all pleadings, motions and applications to be filed by or on behalf of any Debtor at least two (2) Business Days in advance of such filing; provided that if such advance delivery is not practicable under the circumstances, the applicable Debtor or Debtors shall immediately advise the Lender of the substance of any relief that will be sought and shall, in any event, provide copies of such material prior to filing with the Bankruptcy Court.

(aa) **Professional Fees.** Promptly following receipt thereof, the Debtors shall deliver to the Lender all monthly fee statements detailing the fees of all its professionals (including

counsel and financial advisors) for such month delivered in accordance with the interim compensation procedures approved by the Bankruptcy Court.

(bb) **Monthly Meetings.** At least once per calendar month, upon request of the Lender, at mutually acceptable times (and with telephonic conferences being acceptable), the Debtors shall, and shall procure that representatives of the Debtors' professionals (including counsel and financial advisors) as may be requested by the Lender, meet together with the Lender to update the Lender on the status of the Cases and to discuss any other issues in connection therewith as may be requested by the Lender.

(cc) **Pre-Petition Gold Supply Agreement.** Within ten (10) days after the Petition Date, the Credit Parties shall file such pleading or pleadings with the Bankruptcy Court as the Lender and the Credit Parties agree are necessary or advisable to terminate and liquidate the amounts due and owing to the Pre-Petition Buyer under the Pre-Petition Gold Supply Agreement, which amounts shall be no less than the Pre-Petition Gold Sale Obligations and which pleading or pleadings shall provide for a hearing with respect to the subject matter thereof to occur no later than the hearing with respect to the Final Order.

(dd) **Secured Party Expenses.** The Borrower shall pay all Secured Party Expenses promptly (and in any event within five Business Days of demand).

Section 10.2 Negative Covenants.

Except with the prior written consent of the Lender (acting in its sole discretion), until the irrevocable, full and final payment and performance of the Obligations and the termination of this Agreement, none of the Borrower or any of the other Credit Parties shall:

(a) **Debt.** Create, incur, assume or suffer to exist any Debt, other than Permitted Debt.

(b) **Liens.** Create, incur, assume or suffer to exist, any Lien on any of their respective properties or assets, now owned or hereafter acquired, or assign or otherwise convey any right to receive the production, proceeds or income therefrom, other than Permitted Liens.

(c) **Mergers, Etc.** Enter into any reorganization, consolidation, amalgamation, arrangement, winding-up, merger or other similar transaction or convey, lease or Dispose of all or substantially all of its assets or convey, lease or Dispose of all or any part of any Mining Property, in each case other than the Cases or pursuant to an order of the Bankruptcy Court.

(d) **Disposal of Assets Generally.** Dispose of any property or asset (including, without limitation, any securities other than a disposal resulting from securities being issued directly from such Credit Party's treasury) other than (i) bona fide sales of inventory, in the ordinary course of business for the purpose of carrying on the Business and at fair market value, and (ii) the sale of any asset (other than securities) which has no material economic value in the Business and is obsolete provided the fair market value of such asset does not exceed, when aggregated with the fair market value of all other assets sold in reliance on this Section 10.2(d), \$[200,000].

(e) **Transactions with Related Parties.** Directly or indirectly enter into any agreement with, make any financial accommodation for, or otherwise enter into any transaction with, a Related Party.

(f) **Change in Business.** Make any change in the nature of the Business or commence the operation of the mine on the Mining Property constituting the Summit Gold Project.

(g) **Distributions.** Other than to the Borrower, declare, make or pay any Distribution. For purposes of this Section 10.2(g), “**Distribution**” includes with respect to any Person (i) any dividend or other distribution on issued shares or any other Equity Interest of the Person or any of its Subsidiaries, (ii) any purchase, redemption or retirement of any issued share, warrant or other Equity Interest or any other option or right to acquire any share or other Equity Interest of the Person or any of its Subsidiaries or (iii) any payment whether as consulting fees, management fees or otherwise to any Related Party of the Person or any of its Subsidiaries.

(h) **Financial Assistance.** Provide any Financial Assistance to any Person. For the purposes of this Section 10.2(h), “**Financial Assistance**” includes any advances, loans or other extensions of credit, guarantees, indemnities, financial accommodations or other contingent liabilities in the nature of a guarantee or indemnity or capital contributions.

(i) **Acquisitions.** Purchase any shares, stocks, bonds, notes, debentures, securities or other Equity Interests of any Person other than such Equity Interests which such Credit Party owns as of the date hereof and disclosed in the Perfection Certificate, or acquire the undertaking of, or all or substantially all the assets of, any other Person.

(j) **Capital Expenditures.** [Except as set forth in the Approved Budget,]¹² no Credit Party shall make or commit to make, or suffer or permit the making of, expenditures that would, in accordance with GAAP, be considered capital expenditures.

(k) **Hedging.** Enter into any Hedging Agreement.

(l) **Business.** Carry on the Business otherwise than through the Borrower or any Credit Party.

(m) **Charter Documents.** Amend or modify its Constatting Documents (or equivalent charter documents).

(n) **Change to Material Contracts.** Terminate, waive or make any amendment to, or assign any interest, in any Material Contract, except with the prior written consent of the Lender.

(o) **Burdens on Production.** Grant, sell, transfer, assign or convey, directly or indirectly, to any Person any royalty (of any kind or nature whatsoever, howsoever designated), production payment or other interest in any Mining Property, other than to the Lender.

¹² To confirm whether any capex permitted.

(p) **Limitation on the Issuance of Shares.** Sell, transfer or issue, and the Credit Parties shall cause each Subsidiary to not sell, transfer or issue, any Equity Interest.

(q) **Prepayment of Debt.** Directly or indirectly, voluntarily or involuntarily, purchase, redeem, defease or repay or prepay any principal, interest or any other amount in relation to any Debt, except with the prior written consent of the Lender or pursuant to an order of the Bankruptcy Court.

(r) **Mineria Sandia S.A. de C.V.** Permit Mineria Sandia S.A. de C.V. to carry on any business or obtain any assets or property of any value without first becoming a Guarantor and complying with the requirements set out in Section 10.1(v).

(s) **Chapter 11 Claims.** Except for the Carve-Out, no Debtor shall incur, create, assume, suffer to exist or permit any super-priority administrative claim against such Debtor which is *pari passu* with or senior to the claims of the Lender against the Debtors, except as set forth in Section 7.9.

(t) **Approved Budgets.** The Borrower shall not make any change in the Approved Budget without the prior written consent of the Lender.

(u) **Financial Covenants.**

(i) The Credit Parties shall not permit professional fees (other than the fees and expenses of the advisors and consultants working on behalf of the Lender) in any period of time measured from the Petition Date to exceed the amounts set forth in the line item entitled “[Total Professional Fees & Administrative Expenses]” (excluding “[Legal Advisors – DIP Lender]” and “[Financial Advisors – DIP Lender]”) for such period of time in the Approved Budget by more than [_____] (\$[_____]).

(ii) The Credit Parties will not permit Variance Testing Revenue for any Variance Covenant Testing Period to be lower than 90% of the projected Variance Testing Revenue for such period set forth in Exhibit E.

(iii) The Credit Parties will not permit Variance Testing Disbursements for any Variance Covenant Testing Period to exceed 110% of the projected Variance Testing Disbursements for such period set forth in Exhibit F.

(v) **Accounting Changes.** No Credit Party shall make any change in (i) its accounting policies or reporting practices, except as required by GAAP and as notified to the Lender (*provided* that the Credit Parties shall provide a historical reconciliation for the prior audited period addressing any such change in accounting practices), or (ii) its Financial Year without the prior written consent of the Lender.

(w) **Certain Intellectual Property.** No Credit Party shall own or license any Copyrights, Patents or Trademarks.

(x) **Certain Activities.** No Credit Party shall acquire any right, title or interest in, or conduct any exploration, operations or other business with respect to, any of the Ortiz Property or the Ortiz Lease or the Mogollon Project.

ARTICLE 11 EVENTS OF DEFAULT

Section 11.1 Events of Default.

Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion to, hearing before, or order of the Bankruptcy Court or any notice to any Credit Party, the occurrence of any of the following events shall constitute an “**Event of Default**” under this Agreement:

(a) **Non-Payment.** A Credit Party fails to make payment of any Obligation (whether for principal, interest, costs, fees, expenses or any other amount due hereunder or under any other Credit Document) when due and payable pursuant to any of the terms of a Credit Document (whether on a payment date, by prepayment, on demand or otherwise);

(b) **Misrepresentation.** Any representation or warranty or certification made or deemed to be made by a Credit Party or any of its respective directors or officers in any Credit Document shall prove to have been incorrect, incomplete or misleading in any respect when made or deemed to be made;

(c) **Breach of Covenants.** A Credit Party fails to perform, observe or comply with:

(i) any of the covenants or any other provision or obligation contained in Section 10.1(n), Section 10.1(u), Section 10.1(v), Section 10.1(w), Section 10.1(x), Section 10.1(y) or Section 10.2;

(ii) the covenant or any other provision or obligation contained in Section 10.1(cc), and such failure continues for a period of twenty-five (25) days, provided in such case the Credit Party is proceeding diligently to remedy such failure; or

(iii) any other covenant or any other provision or obligation contained in any Credit Document to which it is a party and such failure is not capable of being remedied or, if capable of being remedied, continues for a period of five (5) Business Days, provided in such case the Credit Party is proceeding diligently to remedy such failure and the Lender is not prejudiced thereby;

(d) **Cross-Default.** A Credit Party (or any Subsidiary of any Credit Party) fails to pay the principal of, premium, if any, interest on, or any other amount relating to, any of its Debt entered into (x) Pre-Petition and which, subject to the entry of the Final Order, is rolled up after the Petition Date or is not subject to the automatic stay provisions of Section 362 of the Bankruptcy Code or (y) Post-Petition, the principal of which Debt exceeds \$100,000 (or the equivalent amount in any other currency) when such amount becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise); or any other event occurs or condition exists if its effect is to accelerate, or permit the acceleration of such

Debt; or any such Debt shall be (or may be) declared to be due and payable prior to its stated maturity;

(e) **Material Contracts.** A Credit Party fails to perform or observe any material term, covenant or agreement contained in any Material Contract on its part to be performed or observed (other than as a result of the Cases); or any Material Contract is amended without the prior written consent of the Lender and such amendment could have a Material Adverse Effect; or any Material Contract is terminated or revoked or permitted to lapse (other than in accordance with its terms and not as a result of default); or any party to any Material Contract delivers a notice of termination or revocation in respect of such Material Contract and such Material Contract is subsequently terminated or revoked, in each case without the written consent of Lender;

(f) **Judgments.** Any judgment or order for the payment of money in excess of \$100,000 (or the equivalent amount in any other currency) is rendered against a Credit Party (or any Subsidiary of any Credit Party);

(g) **Unenforceability of Pre-Petition Documentation.** Except as a result of an Effect of Bankruptcy (including the second conversion of the Roll Up Loan in accordance with this Agreement):

(i) any material provision of any Pre-Petition Credit Document shall cease to be in full force and effect;

(ii) any Pre-Petition Credit Document is revoked or terminated, becomes unlawful or is declared null and void by a Governmental Entity of competent jurisdiction; or

(iii) any Pre-Petition Credit Document becomes unenforceable, is repudiated or the enforceability thereof is contested or disaffirmed by or on behalf of any party thereto other than the Pre-Petition Lender.

(h) **Dissolution.** Any application is made for, or order, judgment or decree is entered against any Credit Party decreeing, the winding-up or dissolution, or any similar process of such Credit Party and, in the case of an application, such application remains undischarged or unstayed for any period or a resolution is passed for the winding-up, dissolution or liquidation of any of the Credit Parties (or any Subsidiary of any Credit Party);

(i) **Security Imperiled.** Any Credit Document is declared by a court or tribunal of competent jurisdiction to be void, invalid, illegal or unenforceable or the validity, legality or enforceability thereof is contested by any Credit Party or any other Person party thereto (other than the Lender), or any Credit Party or any other Person party thereto denies that it has any or further obligations thereunder;

(j) **Agreed Priority of Collateral.** If any one or more of the Credit Documents ceases to be in full force and effect or any DIP Lien is no longer effective to create in favor of the Lender, a legal, valid and perfected Lien in any Collateral with the Agreed Priority;

(k) **Change of Control.** A Change of Control occurs;

(l) **Material Adverse Effect.** Any event, circumstance or condition which could reasonably be expected to have a Material Adverse Effect has occurred;

(m) **Expropriation/Condemnation.** An Expropriation Event shall have occurred;

(n) **Regulatory Action.** Other than an order of the Bankruptcy Court pursuant to the Cases consented to by the Lender in writing, any Governmental Entity shall take or attempt to take any action with respect to a Credit Party, or with respect to any Mining Property or any Collateral subject to the Security Documents, which has, had or could reasonably be expected to have a Material Adverse Effect on a Credit Party or the ability of the Borrower or any other Credit Party to satisfy its Obligations in a timely manner unless such action is set aside, dismissed or withdrawn within five days of its institution or such action is being contested in good faith, its effect is stayed during such contest, the Credit Parties are allowed to continue the development and operation of each Mining Property during such period, and the same would not be expected to have a Material Adverse Effect;

(o) **Project Operations.** Without the prior written consent of the Lender, any material Mining Property, or any portion thereof, shall be abandoned or terminated, or exploration not contemplated by the Approved Budget, development or operation of the Projects or any other material Mining Property shall be commenced;

(p) **Financial Statements.** The audited financial statements of any Credit Party (or any Subsidiary of any Credit Party) are qualified in any respect by such Credit Party's or such Subsidiary's independent auditors, other than as a result of the Cases. For certainty, a qualification from an independent auditor that the Credit Party may not be able to remain a going concern due to a working capital deficit or the existence of the Cases, shall not constitute an Event of Default.

(q) **Reorganization Matters.** Any of the following occurs in any Chapter 11 Case:

(i) the bringing of a motion or taking of any action by a Debtor: (A) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Liens upon or affecting any Collateral; (C) except as provided in the Interim Order, Final Order or Approved Budget, as the case may be, to use cash collateral under Section 363(c) of the Bankruptcy Code without the prior written consent of the Lender;

(ii) the entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not contain a provision for termination of the DIP Facility and repayment in full in cash of all the Obligations on or before the effective date of such plan or plans;

(iii) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Credit Documents or the Interim Order or the Final Order without the written consent of the Lender or the filing by a Debtor of a motion for reconsideration with respect to the Interim Order or the Final Order;

(iv) the Interim Order is not entered on or before the date that is three days after the Petition Date;

(v) the Final Order is not entered on or before the date that is 35 days after the date of entry of the Interim Order;

(vi) the payment of any Pre Petition claim unless (A) reflected in the Approved Budget or (B) authorized pursuant to an order approved by the Bankruptcy Court and made with the written consent of the Lender which consent will not be unreasonably withheld;

(vii) the allowance of any claim or claims under Sections 506(c) or 552(b) of the Bankruptcy Code or otherwise against the Collateral;

(viii) the appointment of an interim or permanent trustee in any Chapter 11 Case or the appointment of a receiver or an examiner in any Chapter 11 Case with expanded powers to operate or manage the financial affairs, the business or reorganization of a Debtor;

(ix) the sale, without the written consent of the Lender, of all or substantially all of a Debtor's assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise that does not provide for payment in full in cash of the Obligations;

(x) the dismissal of any Chapter 11 Case, or the conversion of any Chapter 11 Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or a Debtor shall file a motion or other pleading seeking the dismissal of any Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise;

(xi) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor other than the Lender to proceed against any assets of a Debtor with an aggregate value in excess of \$20,000;

(xii) the entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations;

(xiii) the failure of a Debtor to perform any of its obligations under the Interim Order or the Final Order;

(xiv) the entry of an order in any of the Chapter 11 Cases granting any other super-priority claim or Lien equal or superior to the DIP Lien of the Lender;

(xv) a Debtor engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of the DIP Facility or the Pre-Petition Obligations or the Liens on or security interests in the assets of such Debtor securing the DIP Facility or the Pre-Petition Obligations, including seeking to equitably subordinate or avoid the liens securing the Pre-Petition Obligations *provided, however*, it shall not constitute an Event

of Default if a Debtor responds to diligence or discovery requests from, or provides basic loan information with respect to the Pre-Petition Obligations to, a party in interest or pursuant to an order of the Bankruptcy Court and provides prior written notice to the Lender of its intention or obligation to do so;

(xvi) a Debtor engages in or supports any investigation or asserts any claim or cause of action (or supports the assertion of the same) against the Lender or the Pre-Petition Lender; *provided, however*, it shall not constitute an Event of Default if a Debtor responds to diligence or discovery requests from, or provides basic loan information with respect to the Pre-Petition Obligations to a party in interest or pursuant to an order of the Bankruptcy Court and provides prior written notice to the Lender of its intention or obligation to do so;

(xvii) any Person shall seek a Section 506(a) Determination with respect to the Pre-Petition Obligations that is unacceptable to the Pre-Petition Lender;

(xviii) the entry of an order extending any exclusive right that any Debtor may have to propose a plan more than 120 days after the Petition Date, or to solicit votes or to seek confirmation of a plan on a date more than 180 days after the Petition Date, in either case without the written consent of the Lender;

(xix) any Material Contract is rejected in any of the Cases without the prior consent of the Lender;

(xx) the occurrence of the Termination Date; or

(xxi) any Milestone is not achieved within the applicable time frame set forth in the definition of "Milestone", or the entry of an order of the Bankruptcy Court that precludes any such Milestone from being achieved within the applicable time frame.

Section 11.2 Action Upon Event of Default.

(a) If any Event of Default has occurred and is continuing, the Lender shall, notwithstanding the provisions of Section 362 of the Bankruptcy Code (the automatic stay of Section 362 of the Bankruptcy Code shall be deemed modified and vacated to permit the Lender to exercise its remedies under this Agreement and the Credit Documents), without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court: (i) terminate the DIP Facility; (ii) reduce the Term Loan Commitment from time to time; (iii) declare all or any portion of the Obligations due and payable; (iv) increase the rate of interest applicable to the Obligations to the Default Rate; (v) direct any or all of the Credit Parties to sell or otherwise dispose of any or all of the Collateral on terms and conditions acceptable to the Lender pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct any Credit Party to assume and assign any lease or executory contract included in the Collateral to the Lender's designees in accordance with and subject to Section 365 of the Bankruptcy Code); (vi) enter onto the premises of any Credit Party in connection with an orderly liquidation of the Collateral; and (vii) exercise any rights and remedies provided to the Lender the Credit Documents or at law or

equity, including all remedies provided under the UCC and pursuant to the Interim Order and the Final Order.

(b) Notwithstanding anything to the contrary contained herein, the Lender shall not be permitted to exercise any remedy (other than those described in clauses (i), (ii), (iii) and (iv) of Section 11.2(a)) unless the Lender shall have given three Business Days written notice (the “**Notice Period**”) to the Debtors, counsel to the Committee and the Office of the U.S. Trustee during which Notice Period the Debtors and the Committee may seek relief from the Bankruptcy Court to re-impose or continue the automatic stay with respect to any remedy other than those described in clauses (i), (ii), (iii) and (iv) of Section 11.2(a); *provided*, that in any hearing after the giving of the aforementioned notice, the only issue that may be raised by the Debtors and the Committee being whether, in fact, an Event of Default has occurred and is continuing.

Section 11.3 Remedies.

Upon the occurrence and during the continuation of an Event of Default, the Lender shall have the right, but not the obligation, subject to the Orders, to do any of the following, and all disbursements and expenses made by the Lender in connection therewith shall be added to and be made a part of the Obligations and, whether or not said sum, including such disbursements and expenses, exceeds the indebtedness originally intended to be secured hereby, the entire amount of said sum, including such disbursements and expenses, shall be secured by the DIP Liens and shall be due and payable upon demand therefor and thereafter shall bear interest at the Default Rate or the maximum rate permitted by Applicable Law, whichever is less:

(a) vote or exercise any and all of any Credit Party's rights or powers incident to its ownership of Equity Interests in any other Credit Party, including any rights or powers to manage or control such Credit Party;

(b) demand, sue for, collect or receive any money or property at any time payable to or receivable by any Credit Party on account of or in exchange for all or part of the Equity Interests pledged by it pursuant to the Orders;

(c) amend, terminate, supplement or modify all or any of the Constatting Documents of any Credit Party;

(d) proceed to protect and enforce the rights vested in it hereunder and under the UCC;

(e) cause all revenues and all other moneys and other property forming part of the Collateral to be paid and/or delivered directly to it, and demand, sue for, collect and receive any such moneys and property;

(f) cause any action at law or in equity or other proceeding to be instituted and prosecuted to collect or enforce any of the Obligations, or rights hereunder or included in the Collateral, or for specific enforcement of any covenant or agreement contained herein or in any Material Contract or other agreements forming part of the Collateral, or in aid of the exercise of any power herein or therein granted, or for any foreclosure hereunder and sale under a judgment

or decree in any judicial proceeding, or to enforce any other legal or equitable right vested in it by this Agreement or by Applicable Law;

(g) foreclose or enforce any other agreement or other instrument by or under or pursuant to which the Obligations are issued or secured;

(h) incur expenses, including attorneys' fees, consultants' fees, and other costs in connection with the exercise of any right or power under this Agreement or any other Credit Document;

(i) perform any obligation of any Credit Party hereunder or under any other Credit Document or any Material Contract or other agreement forming part of the Collateral, submit renewal notices or exercise any purchase options under leases, and make payments, purchase, contest or compromise any encumbrance, charge or lien, and pay taxes and expenses and insure, process and preserve the Collateral without, however, any obligation to do so;

(j) take possession of the Collateral and of any and all books of account and records of the Debtors relating to any of the Collateral and render it usable and repair and renovate the same without, however, any obligation to do so, and enter upon, or authorize its designated agent to enter upon, any location where the same may be located for that purpose (including the right of the Lender to exclude the Debtors and all Persons claiming access through any of the Debtors from any access to the Collateral or to any part thereof) and the Lender and its representatives are hereby granted an irrevocable license to enter upon such premises for such purpose, control, manage, operate, rent and lease the Collateral, collect all rents and income from the Collateral and apply the same to reimburse the Lender for any reasonable cost or expenses incurred hereunder or under any of the Credit Documents and to the payment or performance of any of the Obligations, and apply the balance to the Obligations as provided herein and any remaining excess balance to whomsoever is legally entitled thereto;

(k) make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and extend the time of payment, arrange for payment installments or otherwise modify the terms of, any Collateral;

(l) secure the appointment of a receiver of the Collateral or any part thereof, whether incidental to a proposed sale of the Collateral or otherwise, and all disbursements made by such receiver and the expenses of such receivership shall be added to and be made a part of the Obligations and, whether or not said principal sum, including such disbursements and expenses, exceeds the indebtedness originally intended to be secured hereby, the entire amount of said sum, including such disbursements and expenses, shall be secured by the DIP Liens and shall be due and payable upon demand therefor and thereafter shall bear interest at the Default Rate or the maximum rate permitted by Applicable Law, whichever is less;

(m) enter into any extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for, the Collateral or any part thereof;

(n) transfer the Collateral or any part thereof to the name of the Lender or to the name of Lender's nominee;

(o) take possession of and endorse in the name of any Credit Party or in the name of the Lender, for the account of any Credit Party, any bills of exchange, checks, drafts, money orders, notes or any other chattel paper, documents or instruments constituting all or any part of the Collateral or received as interest, rent or other payment on or on account of the Collateral or any part thereof or on account of its sale or lease;

(p) appoint another Person (who may be an employee, officer or other representative of the Lender) to do any of the foregoing, or take any other action permitted hereunder, on behalf of the Lender;

(q) execute (in the name, place and stead of any Credit Party) endorsements, assignments and other instruments of conveyance or transfer with respect to all or any of the Collateral;

(r) take any other action which the Lender deems necessary or desirable to protect or realize upon its security interest in the Collateral or any part thereof;

(s) require each Credit Party to assemble the Collateral or any part thereof and to make the same (to the extent the same is reasonably moveable) available to the Lender at a place to be designated by the Lender which is reasonably convenient to the Credit Parties and the Lender;

(t) make formal application for the transfer of all or any Governmental Approvals of any Credit Party to the Lender or to any assignee of the Lender or to any purchaser of any of the Collateral to the extent the same are assignable in accordance with their terms and Applicable Laws;

(u) bring an action or proceeding to foreclose or proceed to sell any real property pursuant to a power of sale; and/or

(v) exercise any other or additional rights or remedies granted to the Lender under any other provision of this Agreement or any other Credit Document, or exercisable by a secured party under the UCC or under any other Applicable Law and without limiting the generality of the foregoing and without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange or broker's board or elsewhere, at such price or prices and on such other terms as the Lender may deem commercially reasonable in accordance with the UCC.

Section 11.4 Minimum Notice Period.

If, pursuant to Applicable Laws, prior notice of any action described in Section 11.3 is required to be given to any Credit Party, each Credit Party hereby acknowledges that the minimum time required by such Applicable Laws, or (if no minimum time is specified) 10 days, shall be deemed a reasonable notice period.

Section 11.5 Sale of Collateral.

In addition to exercising the foregoing rights, the Lender may, to the extent permitted by Applicable Laws and subject to the Orders, arrange for and conduct the sale of the Collateral at a public or private sale (as the Lender may elect) which sale may be conducted by an employee or representative of the Lender, and any such sale shall be conducted in a commercially reasonable manner. The Lender may release, temporarily or otherwise, to the applicable Credit Party any item of Collateral of which the Lender has taken possession pursuant to any right granted to the Lender by this Agreement without waiving any rights granted to the Lender under this Agreement, the other Credit Documents or any other agreement related hereto or thereto. Each Credit Party, in dealing with or disposing of the Collateral or any part thereof, hereby waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to require, upon foreclosure, sales of assets in a particular order. Each successor of any Credit Party under the Credit Documents agrees that it shall be bound by the above waiver, to the same extent as if such successor gave the waiver itself. Each Credit Party also hereby waives, to the full extent it may lawfully do so, the benefit of all laws providing for rights of appraisal, valuation, stay, extension or redemption after foreclosure now or hereafter in force. If the Lender sells any of the Collateral upon credit, the Credit Party in respect of such Collateral will be credited only with payments actually made by the purchaser and received by the Lender. In the event the purchaser fails to pay for the Collateral, the Lender may resell the Collateral and the relevant Credit Party shall be credited with the proceeds of the sale in excess of the amounts required to pay the Obligations in full. In the event the Lender bids at any foreclosure or trustee's sale or at any private sale permitted by Applicable Law and this Agreement or any other Credit Document, the Lender may bid all or less than the amount of the Obligations. The Lender shall not be obligated to make any sale of Collateral regardless of whether or not notice of sale has been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Credit Party further acknowledges and agrees that any offer to sell any part of the Collateral that has been (i) publicly advertised on a bona fide basis in a newspaper or other publication of general circulation or (ii) made privately in the manner described herein to not less than 15 bona fide offerees shall be deemed to involve a "public disposition" for the purposes of Section 9-610(c) of the UCC.

Section 11.6 Actions Taken by Lender.

Any action or proceeding to enforce this Agreement or other agreement forming part of the Collateral may be taken by the Lender either in the name of the applicable Credit Party or in the Lender's name, as the Lender may deem necessary.

Section 11.7 Private Sales.

The Lender shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale made in good faith by Lender pursuant to Section 11.3 or Section 11.5 conducted in a commercially reasonable manner and in accordance with the requirements of Applicable Laws. Each Credit Party hereby waives any claims against the Lender and arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price that might have been obtained at a public sale or was less than the

aggregate amount of the Obligations, even if the Lender accepts the first offer received and does not offer the Collateral to more than one offeree, *provided* that such private sale is conducted in a commercially reasonable manner and in accordance with applicable Laws.

Section 11.8 Access to Land.

In exercising its right to take possession of the Collateral upon the occurrence and during the continuation of an Event of Default hereunder, the Lender, personally or by its Consultants, agents or attorneys, and subject to the rights of any tenant under any lease or sublease of the Collateral and subject to the Orders, to the fullest extent permitted by Applicable Law, may enter upon any land owned or leased by any Credit Party without being guilty of trespass or any wrongdoing, and without liability to such Credit Party for damages thereby occasioned.

Section 11.9 Compliance With Limitations and Restrictions.

Each Credit Party hereby agrees that in respect of any sale of any of the Collateral pursuant to the terms hereof, the Lender is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of Applicable Laws, or in order to obtain any required approval of the sale or of the purchaser by any Governmental Entity or official, and each Credit Party further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Lender be liable or accountable to such Credit Party for any discount allowed by reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

Section 11.10 No Impairment of Remedies.

If, in the exercise of any of its rights and remedies hereunder, the Lender forfeits any of its rights or remedies, including any right to enter a deficiency judgment against any Credit Party or any other Person, whether because of any applicable Law pertaining to "election of remedies" or otherwise, each Credit Party hereby consents to such action by the Lender and, to the extent permitted by Applicable Law, waives any claim based upon such action, even if such action by the Lender would result in a full or partial loss of any rights of subrogation, indemnification or reimbursement which such Credit Party might otherwise have had but for such action by the Lender or the terms herein. Any election of remedies which results in the denial or impairment of the right of the Lender to seek a deficiency judgment against any of the parties to any of the Credit Documents shall not, to the extent permitted by applicable Laws, impair any Credit Party's obligations hereunder.

Section 11.11 Attorney-In-Fact.

(a) Each Credit Party hereby constitutes and appoints the Lender and each successor or permitted assign of the Lender, the true and lawful attorney-in-fact of such Credit Party, with full power and authority in the place and stead of such Credit Party and in the name of such Credit Party, Lender or otherwise to enforce all rights, interests and remedies of such Credit Party with respect to the Collateral or enforce all rights, interests and remedies of the Lender under this Agreement (including the rights set forth in this Article XI). This power of attorney is a power coupled with an interest and shall be irrevocable; *provided*, that nothing in this

Agreement shall prevent any Credit Party from, prior to the exercise by Lender of any of the aforementioned rights, undertaking such Credit Party's operations in the ordinary course of business in accordance with the Collateral and the Credit Documents.

(b) If any Credit Party fails to perform any agreement or obligation contained herein, and such failure continues for 10 days following delivery of written notice by the Lender to such Credit Party, and subject to the Orders, the Lender itself may perform, or cause performance of, such agreement or obligation, and the reasonable expenses of the Lender incurred in connection therewith shall be payable by such Credit Party and shall be secured by the Collateral.

Section 11.12 Application of Proceeds.

Any moneys received by the Lender after the occurrence and during the continuance of an Event of Default may be held by the Lender on account of the Obligations without prejudice to any claim by the Lender for any deficiency after such moneys are received by the Lender, and each Credit Party shall remain liable for any such deficiency. All such moneys may be applied to such part of the Obligations as the Lender may direct. The Lender may at any time change any such appropriation of any such moneys received by it and may reapply the same to any other part of the Obligations it may from time to time see fit, notwithstanding any previous application.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Amendments, etc.

No amendment or waiver of any provision of any of the Credit Documents, nor consent to any departure by any Credit Party or any other Person from such provisions, is effective unless in writing and approved by the Lender. Any amendment, waiver or consent is effective only in the specific instance and for the specific purpose for which it was given.

Section 12.2 Waiver.

(a) No failure on the part of the Lender to exercise, and no delay in exercising, any right under any of the Credit Documents shall operate as a waiver of such right; nor shall any single or partial exercise of any right under any of the Credit Documents preclude any other or further exercise of such right or the exercise of any other right.

(b) Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties shall not merge on and shall survive each Loan and, notwithstanding any such Loan or any investigation made by or on behalf of any party, shall continue in full force and effect.

Section 12.3 Evidence of Debt and Borrowing Notices.

The indebtedness of the Borrower resulting from the Loans shall be evidenced by the records of the Lender, which shall constitute *prima facie* evidence of such indebtedness.

Section 12.4 Notices, etc.

Any notice, direction or other communication to be given under this Agreement shall, except as otherwise permitted, be in writing and given by delivering it or sending it by facsimile or other similar form of recorded communication addressed:

- (a) to any Credit Party at:

Santa Fe Gold Corporation
Attention: Jakes Jordaan
1219 Banner Mine Road, Lordsburg, NM 88045
Telephone: (505) 255-4852
Facsimile: (505) 255-4851
Email: jjordaan@santafegoldcorp.com

- (b) to the Lender at:

Waterton Global Value, L.P.
Nemours Chambers
4th Floor, Road Town
Tortola, VG1110
British Virgin Islands

Attention: Peter Poole
Facsimile: (284) 494-8356/7422

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

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603

Attention: Jessica Boelter
Facsimile: (312) 853 7036
Email: jboelter@sidley.com

Any such communication shall be deemed to have been validly and effectively given if (i) personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (New York time), otherwise on the next Business Day or (ii) transmitted by facsimile, electronic mail or similar means of recorded communication on the Business Day following the date of transmission. Any party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the party at its changed address.

Section 12.5 Costs, Expenses General Indemnity and Environmental Indemnity.

(a) Each Credit Party shall, whether or not the transactions contemplated in this Agreement are completed, indemnify and defend and hold the Lender, the Lender's Affiliates, Consultants and their respective directors, partners, managers, members, owners, principals, shareholders, officers, employees, agents, consultants and representatives (each an "**Indemnified Person**") harmless from, and shall pay to such Indemnified Person promptly (and in any event within five Business Days of demand) all amounts required to compensate the Indemnified Person for, any cost, expense, liability, obligation, loss, damage, penalty, action, judgment, fine, suit, charge, claim, taxes, payments or disbursements of any kind or nature whatsoever, including the fees and expenses of the Financial Advisor and attorneys fees and expenses imposed on, incurred by, suffered by or asserted against, the Indemnified Person as a result of, connected with or arising out of (i) the preparation, execution and delivery of, preservation of rights under, enforcement of, or refinancing, renegotiation or restructuring of, any present or future Credit Document, the Interim Order and the Final Order and any related amendment, waiver or consent, as well as the consummation of the transactions contemplated hereby and thereby; (ii) any advice of counsel as to the rights and duties of the Lender with respect to the administration of the Credit Documents, the Interim Order and the Final Order or any transaction contemplated under the Credit Documents, the Interim Order and the Final Order; (iii) any default (whether or not constituting a Default or an Event of Default) by a Credit Party; (iv) any proceedings brought by or against the Indemnified Person, or in which the Indemnified Person otherwise participates, due to its entering into or being a party to any of the Credit Documents, or by reason of its exercising or performing, or causing the exercise or performance of, any right, power or obligation under any of the Credit Documents or otherwise in connection with its interest in any Security, whether or not such proceedings are directly related to the enforcement of any Credit Document; (v) the ownership, management, administration or operation of any Mining Property, except in each case to the extent directly caused by the gross negligence or willful misconduct of the Indemnified Person; (vi) obtaining the approval of the Credit Documents by the Bankruptcy Court; (vii) the preparation and review of pleadings, documents and reports related to any Chapter 11 Case or any subsequent case under Chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to any Chapter 11 Case or any subsequent case under Chapter 7 of the Bankruptcy Code; and (viii) general monitoring of any Chapter 11 Case or any subsequent case under Chapter 7 of the Bankruptcy Code.

(b) Each Credit Party shall, whether or not the transactions contemplated in this Agreement are completed, indemnify and hold harmless and agrees to defend the Indemnified Persons against any cost, expense, liability, obligation, loss, damage, penalty, action, judgment, fine, suit, charge, claim, taxes, payments or disbursements of any kind or nature whatsoever (including strict liability and including costs and expenses of investigation, abatement and remediation and monitoring of spills or Releases or threatened Releases of Hazardous Materials or other Contaminants, and including liabilities of the Indemnified Persons to third parties (including Governmental Entities) in respect of bodily injuries, property damage, damage to or impairment of the environment or any other injury or damage and including liabilities of the Indemnified Persons to third parties for the third parties' foreseeable and unforeseeable consequential damages) (collectively, "**Environmental Indemnified Liabilities**") incurred as a result of or in connection with the entering into, the administration of or enforcement of this

Agreement or any other Credit Document, including the exercise by the Lender of any rights hereunder or under any of the other Credit Documents, which result from or relate, directly or indirectly, to:

(i) the presence, Release or threatened Release of any Hazardous Material or other Contaminants, by any means or for any reason, whether or not such presence, Release or threatened Release of Hazardous Materials or other Contaminants was under the control, care or management of a Credit Party or of a previous owner, operator, tenant or other Person;

(ii) any Release, presence, use, creation, transportation, storage or disposal of any Hazardous Material or Contaminant on or with respect to the Subject Property or the business, operations or activities of any Credit Party;

(iii) any claim or order for any clean-up, restoration, detoxification, reclamation, repair or other securing or remedial action which relates to any Subject Property or the business, operations or activities of any Credit Party;

(iv) any Environmental Claim with respect to any Subject Property or any Credit Party; or

(v) the breach or violation or alleged breach or violation of any Environmental Laws by a Credit Party.

For purposes of this Section, “**liability**” shall include (A) liability of an Indemnified Person for costs and expenses of abatement and remediation of spills and releases of Hazardous Materials where such abatement and remediation is prudent for the continued operation of the Business or required by Environmental Laws and to the extent required to maintain the value and use of the Collateral, (B) liability of an Indemnified Person to a third party to reimburse the third party for bodily injuries, property damages and other injuries or damages which the third party suffers, including (to the extent, if any, that the Indemnified Person is liable therefor) foreseeable and unforeseeable consequential damages suffered by the third party, (C) liability of the Indemnified Person for damage suffered by the third party, (D) liability of an Indemnified Person for damage to or impairment of the environment and (E) liability of an Indemnified Person for court costs, expenses of alternative dispute resolution proceedings, and fees and disbursements of expert consultants and legal counsel on a solicitor and own client basis.

(c) If, with respect to the Lender, (i) any change in any law, rule, regulation, judgment or order or any change in the interpretation, application or administration of such law, rule, regulation, judgment or order, occurring or becoming effective after this date, or (ii) compliance by the Lender with any direction, request or requirement (whether or not having the force of law) of any Governmental Entity made or becoming effective after the date hereof, has the effect of causing any loss to the Lender or reducing the Lender’s rate of return by (A) increasing the cost to the Lender of performing its obligations under any of the Credit

Documents (including the costs of maintaining any capital, reserve or special deposit requirements), (B) requiring the Lender to maintain or allocate any capital or additional capital or affecting its allocation of capital in respect of its obligations under any of the Credit Documents, (C) reducing any amount payable to the Lender under any of the Credit Documents or (D) causing the Lender to make any payment or to forego any return on, or calculated by reference to, any amount received or receivable by the Lender under the Credit Documents, then the Lender may give notice to the Borrower specifying the nature of the event giving rise to the loss and the Borrower shall, on demand, pay such amounts as the Lender specifies are necessary to compensate it for any such loss. A certificate as to the amount of any such loss submitted in good faith by the Lender to the Borrower shall be conclusive and binding for all purposes, absent manifest error.

(d) Each Credit Party shall pay to the Lender on demand any amounts required to compensate the Lender for any loss suffered or incurred by it as a result of (i) any payment being made in respect of a Loan, (ii) the failure of the Borrower to give any notice in the manner and at the times required by this Agreement, (iii) the failure of the Borrower to borrow a Loan in the manner and at the time specified in any Borrowing Notice or (iv) the failure of the Borrower to make a payment or a mandatory repayment in the manner and at the time specified in this Agreement. A certificate as to the amount of any loss submitted in good faith by the Lender to the Borrower shall be conclusive and binding for all purposes, absent manifest error.

(e) The provisions of this Section 12.5 shall survive the termination of this Agreement and the repayment of all Obligations. Each Credit Party acknowledges that neither its obligation to indemnify nor any actual indemnification by it of the Lender or any other Indemnified Person in respect of such Person's losses for the legal fees and expenses shall in any way affect the confidentiality or privilege relating to any information communicated by such Person to its counsel.

Section 12.6 Release.

Upon irrevocable and indefeasible repayment and performance in full of the Obligations, including all indebtedness, obligations and liabilities (direct or indirect, absolute or contingent, matured or not, solely or jointly) of each of the Credit Parties incurred under or in connection with this Agreement and/or any other Credit Documents and the irrevocable payment to the Lender of all reasonable costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Lender in connection with the Security, each of the Credit Parties shall be entitled to a release and discharge of the Security constituted by the Security Documents, other than obligations and/or liabilities that have accrued prior to the date of such release or any other obligation which is expressly stated to survive the termination of the Security Documents, *provided* that the Lender no longer has any obligations (contingent or otherwise) under or in connection with this Agreement or any other Credit Document.

Section 12.7 Taxes and Other Taxes.

(a) Lender is free to arrange its tax affairs in whatever manner it deems fit (in its sole discretion including, funding any Loan through a special purpose vehicle) and in particular, the Lender shall not be under any obligation to claim relief from its corporate profits or similar tax

liability in respect of any deduction or withholding in priority to any other relief, claims, credits or deductions available to it and the Lender shall not be obligated to disclose to the Borrower any information regarding its tax affairs, tax computations or otherwise.

(b) The Lender, at its discretion, shall be entitled to allocate any amounts and costs which it receives hereunder to principal, interest, fees, charges and other similar payments.

(c) The provisions of this Section 12.7 shall survive the termination of the Agreement and the repayment of all Obligations.

Section 12.8 Successors and Assigns.

(a) None of the Credit Parties shall have the right to assign or transfer any of its rights or obligations under this Agreement or any interest in this Agreement without the prior written consent of the Lender, which consent may be unreasonably withheld.

(b) The Lender may assign or transfer any of its rights, interests or obligations (in whole or in part) under this Agreement and any other Credit Document (i) to any Affiliate of the Lender without the consent of any Credit Party or (ii) to any other Person with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed). If any consent is requested and no response is received by the Lender within five days of such request, the Borrower shall be deemed to have given its consent. In the case of any such assignment or transfer authorized under this Section 12.8, the assignee or transferee (as the case may be) shall have, to the extent of such assignment or transfer, the same rights, benefits and obligations as it would if it were the Lender hereunder and the Lender shall be relieved of its obligations hereunder with respect to the commitments assigned or transferred; *provided* that an assignee or transferee (as the case may be) shall not be entitled to receive any greater payment under any provision of any Credit Document than the Lender would have been entitled to receive. Each of the Credit Parties hereby acknowledges and agrees that any assignment or transfer will give rise to a direct obligation of the Credit Parties to such assignee or transferee (as the case may be) and that such assignee or transferee (as the case may be) shall be considered to be the “**Lender**” hereunder. The Lender may furnish any information concerning the Credit Parties in its possession from time to time to assignees and transferees *provided* that any such assignee or transferee agrees to maintain the confidentiality of such information.

(c) The Credit Parties shall provide such certificates, acknowledgments and further assurances in respect of this Agreement and the Credit Documents as the Lender may reasonably require in connection with any assignment pursuant to this Section 12.8.

(d) Any assignment pursuant to this Section 12.8 will not constitute a repayment by the Borrower to the Lender of any Loan or a new Loan to the Borrower by the Lender or by the assignee, as the case may be, and the parties acknowledge that each Credit Party’s obligations with respect to any such Loans will continue and will not constitute new obligations.

(e) The Lender shall maintain at its offices a register for the recordation of the names and addresses of the Lender and each successor and assignee, and the principal amounts (and stated interest) of each Loan owing to, the Lender and or such successor or assignee pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be

conclusive absent manifest error, and the Borrower, the Lender and each successor and assignee shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the holder of each Loan specified therein as held by the Lender or such successor or assignee for all purposes of this Agreement.

(f) If the Lender or any successor or assignee sells a participation interest in a Loan, such Lender or successor or assignee shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Credit Documents (the "**Participant Register**"); *provided* that neither the Lender nor any successor nor any assignee shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the Lender or the applicable successor or assignee shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

Section 12.9 Right of Set-off.

Upon the occurrence and during the continuance of any Event of Default, the Lender is authorized at any time and from time to time, to the fullest extent permitted by law (including general principles of common-law), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by it to or for the credit or the account of any Credit Party against any and all of the obligations of any Credit Party under any of the Credit Documents, irrespective of whether or not the Lender has made demand under any of the Credit Documents and although such obligations may be unmatured or contingent. If an obligation is unascertained, the Lender may, in good faith, estimate the obligation and exercise its right of set-off in respect of the estimate, subject to providing the applicable Credit Party with an accounting when the obligation is finally determined. The Lender shall promptly notify the applicable Credit Party after any set off and application is made by it, *provided* that the failure to give notice shall not affect the validity of the set off and application. The rights of the Lender under this Section 12.9 are in addition to any other rights and remedies (including all other rights of set-off) which the Lender may have.

Section 12.10 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due to the Lender in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Lender could purchase the Original Currency with the Other Currency on the Business Day preceding the day on which final judgment is given or, if permitted by Applicable Law, on the day on which the judgment is paid or satisfied.

(b) The obligations of the Credit Parties in respect of any sum due in the Original Currency from it to the Lender under any of the Credit Documents shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in the Other Currency, the Lender may, in accordance with normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Lender in the Original Currency, the Credit Parties agree, as a separate obligation and notwithstanding the judgment, to indemnify the Lender, against any loss, and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Lender in the Original Currency, the Lender shall remit such excess to the applicable Credit Parties.

Section 12.11 Applicable Law; Jurisdiction; Etc.

(a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) All judicial proceedings brought against any Credit Party arising out of or relating to this Agreement or any other Credit Document, or any Obligations hereunder or thereunder, must be brought in the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, such proceeding may be brought in the courts of the State of New York, the courts of the United States of America for the Southern District of New York and appellate court of any thereof.

(c) **SUBMISSION TO JURISDICTION.** EACH CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN EACH CREDIT PARTY, ON THE ONE HAND, AND THE LENDER, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS; *PROVIDED*, THAT EACH CREDIT PARTY ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY AN APPELEATE COURT OTHER THAN THE BANKRUPTCY COURT; *PROVIDED, FURTHER*, THAT, SUBJECT TO RECEIVING PRIOR APPROVAL FROM THE BANKRUPTCY COURT AUTHORIZING SUCH ACTION, NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE LENDER BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER.

(d) **WAIVER OF VENUE.** EACH CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR

RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN ANY COURT REFERRED TO IN SECTION 12.11(b). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(e) **Immunity.** To the extent that any Credit Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, each Credit Party hereby irrevocably and unconditionally waives such immunity in respect of its obligations under the Credit Documents and, without limiting the generality of the foregoing, agrees that the waivers set forth in this Section 12.11(e) shall have the fullest scope permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of the Foreign Sovereign Immunities Act of 1976.

(f) **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.11.

Section 12.12 Counterparts.

This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties. This Agreement may be validly executed and delivered by facsimile, portable document format (.pdf) or other electronic transmission, and delivery of an executed counterpart of a signature page to this Agreement, any amendment, waiver, consent or supplement, or to any other Credit Document, by facsimile, portable document format (.pdf) or other electronic delivery (including e-mail) shall be as effective and binding as delivery of a manually executed counterpart thereof.

Section 12.13 Severability.

If any provision hereof is determined to be ineffective, invalid, illegal or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect, binding on and enforceable against the parties.

Section 12.14 Entire Agreement; Schedules and Exhibits.

The Schedules to this Agreement and the Exhibits to this Agreement form an integral part of this Agreement and are incorporated herein by reference and expressly made a part hereof. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof, superseding all prior statements, representations, discussions, agreements and understandings, oral or written, relating to such subject matter.

Section 12.15 Credit Party Joint and Several Liability.

Each of the Credit Parties shall be jointly and severally liable for all the Obligations. The Borrower and the other Credit Parties are engaged in related businesses and are integrated to such an extent that the financial strength and flexibility of each Credit Party has a direct, tangible and immediate impact on the success of the other Credit Parties. Each Guarantor will derive substantial direct and indirect benefit from the extensions of the Loans to the Borrower hereunder.

Section 12.16 Further Assurances.

Each Credit Party shall execute, acknowledge and deliver to the Lender such other and further documents and Contracts and do or cause to be done such other acts as the Lender reasonably determines to be necessary or desirable to effect the intent of the parties to this Agreement or otherwise to protect and preserve the interests of the Lender hereunder, promptly upon request of the Lender, including the execution and delivery of any and all documents and Contracts which are necessary or advisable to create, protect or maintain in favor of the Lender, Liens (with the Agreed Priority) on all Collateral of the Credit Parties as may be required by this Agreement or any Security Documents that are duly perfected in accordance with all Applicable Laws.

Section 12.17 Acknowledgements.

Each of the parties hereto hereby acknowledges that:

(a) it has been advised by its own legal counsel in the negotiation, preparation, execution and delivery of this Agreement and each other Credit Document;

(b) this Agreement and the other Credit Documents shall not be construed against any party or more favorably in favor of any party based upon which party drafted the same, it being agreed and acknowledged that all parties contributed substantially to the negotiation and preparation of this Agreement and the other Credit Documents;

(c) the Lender has no fiduciary relationship with or duty to the Borrower or any other Credit Party arising out of or in connection with this Agreement, or any other agreement,

arrangement or Contract, and the relationship between the Lender, on one hand, and the Borrower and the other Credit Parties, on the other hand, in connection herewith is solely that of creditor and debtor; and

(d) neither this Agreement nor any other Credit Document or other Contract between any Credit Party and the Lender creates a joint venture or partnership among the parties hereto, and no joint venture or partnership exists, or shall be deemed to exist, among the Lender and the Borrower or among the Lender and the other Credit Parties.

Section 12.18 Section 552(b).

The Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Lender with respect to proceeds, products, offspring or profits of any of the Collateral.

Section 12.19 Consultant.

The Credit Parties hereby acknowledge and agree that the Lender shall have the unfettered right to appoint an engineer, technical consultant, auditor, agent and/or advisor retained by the Lender from time to time (each a “**Consultant**”) (at usual and customary hourly rates) to analyze the operational status of any Project and the other operations of the Credit Parties. The Credit Parties shall be responsible for all reasonable and documented costs and expenses of any Consultant.

Section 12.20 USA Patriot Act.

Lender hereby notifies the Borrower 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 Credit Parties which information includes the name and address of each Credit Party and other information that will allow the Lender to identify such Credit Party in accordance with the Act.

[Signatures on following page.]

IN WITNESS WHEREOF the parties have executed this Debtor-in-Possession Credit Agreement.

Lender:

**WATERTON GLOBAL VALUE, L.P.,
by its Investment Manager, Altitude
Management Limited**

Borrower:

SANTA FE GOLD CORPORATION

By: _____
Authorized Signing Officer

By: _____
Authorized Signing Officer

Guarantors:

AZCO MICA, INC.

By: _____
Authorized Signing Officer

THE LORDSBURG MINING COMPANY

By: _____
Authorized Signing Officer

**SANTA FE GOLD (BARBADOS)
CORPORATION**

By: _____
Authorized Signing Officer