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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **CS MINING, LLC**	Bankruptcy Case No. 16-24818
Debtor.	(Chapter 11)
	Judge William T. Thurman

MOTION FOR FINAL ORDER (I) AUTHORIZING THE DEBTOR TO ENTER INTO ADDITIONAL $2.65 MILLION POSTPETITION FINANCING AGREEMENT WITH VENDOR AND EXISTING DIP LENDER; (II) AUTHORIZING AMENDMENT TO EXISTING DEBTOR-IN-POSSESSION FINANCING FACILITY; (III) APPROVING SULFURIC ACID SUPPLY AGREEMENT; (IV) AUTHORIZING THE USE OF CASH COLLATERAL AND (V) GRANTING ADEQUATE PROTECTION

CS Mining, LLC, as debtor and debtor-in-possession (the "Debtor"), hereby moves (the "Motion") the Court for the entry of an (the "Order") attached hereto as **Exhibit A** (the "Tailings DIP Order"),[1] (a) authorizing the Debtor to enter into an additional $2.65 million postpetition

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Documents (as defined herein) or the DIP Orders, as applicable.

secured financing agreement, $2.0 million of which consists of vendor financing, on a senior secured, priming, superpriority basis (the "Tailings DIP Financing") ; (b) authorizing the Debtor to amend its existing debtor-in-possession credit facility (the "Existing DIP Financing Facility" [Docket No. 352, and Exhibit A thereto] in accordance with the proposed consensual Amendment to Debtor-In-Possession Credit and Security Agreement (the "Amendment to Final DIP Credit Facility") attached hereto as **Exhibit B;** (c) approving the Sulfuric Acid Agreement with proposed Vendor-Lender and attached hereto as **Exhibit C**; (d) granting adequate protection to the holders of the Prepetition Secured Indebtedness (as defined below) for the priming of the Prepetition Liens (as defined below) and the Debtor's use of the Cash Collateral.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, and 364 of title 11 of the United States Code (11 U.S.C. §§ 101 *et. seq.*, the "Bankruptcy Code") and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

SUMMARY OF RELIEF REQUESTED

3. The Debtor seeks authority to enter into the Tailings DIP Financing for a second secured financing credit facility, in the amount of $2.65 million, $2.0 million of which represents vendor financing provided by a member of the Official Committee of Unsecured Creditors (the

"Committee")[2]. The proceeds of the Tailings DIP Financing are to be used to pay postpetition operating and maintenance expenses incurred by the Debtor in accordance with the budget (the "Tailings Budget") attached as **Exhibit D** to this Motion.

4. If approved, the Tailings DIP Financing will:

(a) allow the Debtor to restart its ore processing facilities for the dual purpose of (a) processing the Debtor's existing "tailings inventory"[3] (the "Tailings Processing") through the Debtor's state-of-the-art copper cathode production processing facility to extract and sell copper cathode, and (b) providing additional information related to the operating parameters and cost components of the Debtor's processing facilities which will be beneficial to any prospective bidders interested in participating in the sales process currently planned for the Debtor's operations;

(b) allow the Debtor to provide feedback on key metallurgical assumptions, and generate positive cash flow from the sale of copper cathode[4], with a goal of processing up to approximately 2,200 tons per day of tailings inventory;

(c) allow the Debtor to expand on its Resource Development Plan, including providing greater certainty with respect to estimated amount of the Debtor's mineral asset, the Debtor's reserves and resources;

(d) allow the Debtor to provide for, among other things, the payment of postpetition operating expenses and other working capital requirements of the Debtor in connection with its "Tailings Processing" and ongoing "Resource Development Plan," all as initially recommended by the Debtor's Chief Restructuring Officers ("CROs");

(e) allow the Debtor to continue to pursue all value maximizing opportunities for the Debtor, including extending the existing deadlines (the "Exit Milestones") governing the potential sale of the Debtor's assets as a going concern as well as continued development of potential restructuring alternatives of the Debtor's liabilities;

(f) likely increase, the realizable value of the Debtor's assets, both through proving up the profitable nature of Debtor's state-of-art ore processing facilities,

[2] If the Additional Financing is approved, the vendor, Oxbow Sulphur, Inc., will resign from the Committee.

[3] As used herein, the term "tailings inventory" means ore that has been partially processed and stockpiled. This ore is available for further processing to extract copper, through the Debtor's existing agitated leach and SX/EW facilities.

[4] Since the commencement of this case the spot price of copper has increased from $2.10 per pound on the Petition Date to $2.60 per pound as of 30 November 2016, an increase of approximately 23.8 percent.

but also through the continued development and definition of Debtor's mining rights, mining claims and mineral assets; and

(g) likely create additional market value for the benefit of all of the Debtor's stakeholders.

5. The Tailings DIP Financing and Tailings Budget are consistent with the original business plan proposed by the Debtor's CROs, and with the best interests of Waterloo Street Limited ("Waterloo"), one of the Debtor's alleged pre-petition secured lenders, and DXS Capital (U.S.) Limited ("DXS") and PacNet Capital (U.S.) Limited ("PacNet" and with DXS and Waterloo, the "Lippo Group" or "Lippo"), the two minority equity interests of the Debtor's parent company Skye Mineral Partners, LLC ("SMP")[5]. Prior to the Relief Date (as defined below), all of the members of the Debtor's Board of Managers, as well as the equity holders of the Debtor's parent company, SMP, recognized and acknowledged the importance of two key components to any successful reorganization or sale of the Debtor as a going concern: (i) the need to properly develop and understand the Debtor's existing mineral resources; and (ii) the need for sufficient time to complete such development and analysis. The parties further recognized and acknowledged that any such reorganization or sale process was limited by the availability of funding.[6] The Tailings DIP Financing and Tailings Budget proposed by this Motion resolve that financial limitation, and allow the Debtor the best opportunity to maximize the value of its assets for the benefit of all.

6. The relief requested is fully supported by the Debtor's chief restructuring officers ("CROs"), Messrs. Buenzow, Beckman and Davenport, all of whom are authorized and directed,

[5] Waterloo, DXS and PacNet are affiliates of The Lippo Group and are collectively referred to hereafter as "The Lippo Group" or "Lippo." Each of the individual Lippo entities are represented by the same counsel, Jones Day and Kirton & McConkie.

[6] See, transcript of hearing, Docket No. 210, filed August 26, 2016, at pages 42-47, excerpt attached, as **Exhibit H**.

through their engagement letter approved by the Court, to "identify and consult on key copper mining and processing issues," "advise the Company on operating plan, liquidity management, and restructuring alternatives," "assist with the DIP financing process," "assist the Company with a sale and/or restructuring process," and "assist the Company with the preparation and confirmation of a value optimizing plan of reorganization." The Tailings DIP Financing and Tailing Budget before the Court have been recommended by the CROs in accordance with these court approved responsibilities, and in the interest of maximizing value for the Debtor and its stakeholders.

7. Moreover, the Debtor's management team, and at least two of three of the members of the Debtor's Board of Managers[7], the Committee and the existing debtor-in-possession secured lenders, Wellington and Broadbill (the "Existing DIP Lenders") all believe, in the exercise of their respective duties, that approval of the Tailings DIP Financing, and related Tailings Budget, are not only appropriate but are the product of a valid exercise of the Debtor's business judgment. They further believe that the Tailings DIP Financing and Tailings Budget provide the best opportunity to maximize the value of the Debtor's assets, including potential restructuring opportunities.

8. Lastly, the relief requested is appropriate and permissible under the Bankruptcy Code and will inure to the benefit of all of the Debtor's stakeholders.

[7] Lippo's representative on the Debtor's Board of Managers abstained from voting on the Board resolution approving the Tailings Financing and Tailings Budget on grounds that he had insufficient information to evaluate the proposed financing.

BACKGROUND

9. **The Chapter 11 Case.** On June 2, 2016 (the "Petition Date"), an involuntary petition (the "Involuntary Petition," Docket No. 1) was filed against the Debtor in the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court"), with R.J. Bayer Professional Geologist, LLC; Mineral Advisory Group, LLC; Rollins Construction & Trucking, LLC; Rollins Machine, Inc.; Oxbox Sulphur, Inc. and Brahma Group, Inc. initially or eventually joining in the Involuntary Petition. On August 4, 2016 (the "Relief Date"), after several months of attempting to negotiate an orderly entrance into a voluntary chapter 11 proceeding, including negotiation of debtor-in-possession financing and the Debtor's business plan for the bankruptcy case, the Debtor consented to entry of an order for relief under Chapter 11.

10. As the Court is aware, the Debtor was not able to obtain sufficient financing to fund the original business plan – the "Tailings Business Plan" – recommended by the Debtor's CROs. The Debtor, however, was able to obtain financing to pursue an expedited sale of the Debtor's assets while placing the Debtor's processing facilities in a care and maintenance state (the "C&M Plan").

11. The Debtor continues to implement the C&M Plan and operate its business and manage its property as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. Moreover, the Court has recently approved "Bidding Procedures" [Docket No. 433] governing the potential sale of the Debtor's assets.

12. Despite the progress the Debtor has made to date in its case, the Debtor and its CROs have continued to explore all value maximizing alternatives for the Debtor, including obtaining additional financing to pursue the Tailings Business Plan originally proposed by the

Debtor's CROs. The Debtor has received an offer for such additional financing which has culminated in this Motion, and if approved will necessarily extend out the existing Exit Milestones and Resource Development Milestones previously approved by the Court. The proposed financing will also allow the Debtor to continue its value maximizing strategies for the benefit of all of the Debtor's stakeholders.

13. **Interim Financing Order**. On August 9, 2016, the Bankruptcy Court entered the Interim Financing Order [Docket No. 162] approving interim debtor in possession financing (the "Interim DIP Facility"). The initial DIP Lenders included Waterloo, Wellington, and Broadbill (collectively the "Interim DIP Lenders"). Pursuant to the Interim Financing Order, the Debtor received an initial advance of $2,675,000 of the total authorized secured superpriority debtor in possession financing facility of $7,675,000.

14. **First Extension of Interim Financing**. The Interim DIP Lenders were unable to agree on the form or terms of a final debtor-in-possession credit agreement or financing consistent with the original business plan proposed by the CROs. As a result, by agreement among the Interim DIP Lenders, the Debtor and the Committee, and after hearing before the Bankruptcy Court on September 8, 2016, the Bankruptcy Court entered the First Extension to Interim DIP Financing [Docket No. 253] which extended the Interim DIP Facility through September 23, 2016 and increased the borrowing base to the Debtor under the Interim DIP Facility from $2,675,000 to $3,675,000. Wellington funded an additional $467,637.32 to the Debtor pursuant to the First Extension to Interim DIP Financing, while Broadbill funded an additional $532,362.68 to the Debtor pursuant to the First Extension to Interim DIP Financing.

Waterloo did not fund any additional amounts to the Debtor under the First Extension to Interim DIP Financing .

15. **Second Extension of Interim DIP Financing.** The Interim DIP Lenders remained in a deadlock and were unable to agree on the form or terms of a final debtor-in-possession credit agreement following the First Extension to Interim DIP Financing. Consequently, on September 16, 2016, the Bankruptcy Court, by agreement among the Debtor, the Interim DIP Lenders and the Committee, entered an Order approving the Second Extension to Interim Financing which extended the Interim DIP Facility through September 30, 2016 [Docket No. 282].

16. **Final DIP Financing Facility And Authorization To Use Cash Collateral.** The deadlock and impasse among the Interim DIP Lenders continued after the Second Extension to Interim DIP Financing and the Interim DIP Lenders remained unable to agree on the form or terms of a final debtor-in-possession credit agreement and the terms of such financing. As a result, on or about September 23, 2016, the Debtor received a supplement [Docket No. 294] to its prior financing proposal from Wellington and Broadbill (the "Existing DIP Lenders"), and sought approval of the alternative financing on a final basis pursuant to the supplement.

17. **DIP Facility.** On October 11, 2016, the Court entered its final order authorizing DIP financing and use of Cash Collateral and providing Adequate Protection (the "Final DIP Financing Order") [Docket No. 352] approving the existing DIP financing (the "Existing DIP Credit Facility"). The Existing DIP Credit Facility is a secured superpriority debtor-in-possession financing facility in an amount consistent with the modified business plan adopted by

the Debtor at the beginning of the case. The Existing DIP Credit Facility was funded in full shortly after entry of the Final DIP Financing Order.

18. The Existing DIP Credit Facility provided Debtor the liquidity necessary to maintain its operations in the C&M Plan and to perform certain limited "Resource Development" - *i.e.*, a plan providing for the exploration and estimation of certain of the Debtor's existing mineral assets, proven and probable reserves, and the measured, indicated and inferred resources –while the Debtor sought an expedited sale of its assets as a going-concern. The Existing DIP Credit Facility did not fund the "Tailings Business Plan" originally proposed by the Debtor's CROs, nor did it provide sufficient funds to extend the final closing of a sale beyond March 2016[8].

19. **Continued Efforts to Obtain Additional Financing to Implement Original Tailings Business Plan and Extend the Existing Sale and Resource Development Milestones.** While the Existing DIP Credit Facility has allowed the Debtor to move forward with a limited "Resource Development Plan" and the potential expedited sale of its assets (the "Sale Process"), the existing plan may not necessarily maximize the value of the Debtor's assets for the benefit of the Debtor's stakeholders.

20. Significantly, the Tailings DIP Financing and Tailings Plan, if approved, proposes to extend the existing Exit Milestones out to June 30, 2017, an additional 4 months. The Tailings DIP Financing also proposes to invest a total of $4.0 million of funds into an expanded Resource Development Program, including best efforts by the Debtor to complete all appropriate Resource

[8] The Existing DIP Credit Facility anticipated a sale in January 2017, but it also granted authority to the CROs to extend the sale date by up to 60 days if sufficient funds were available in the budget to maintain operations during the extended period. The CROs subsequently concluded that they could extend the deadlines by an additional 45 days, and have exercised their authority to do so.

Development tasks and reports which may include a N43-101 Report prior to the request for final bids related to any sale of the Debtor's assets.[9]

21. The Debtor believes that the estate will benefit from an expanded Sale Process and expanded Resource Development Plan. For example, the Resource Development Plan is currently limited to a localized portion of the Debtor's mining claims due to the constraints of the Existing DIP Credit Facility. Expanding the Resource Development Plan to other areas of the Debtor's property, including performing a variety of additional geophysical studies of the Debtor's real property and the Debtor's existing mining and mineral rights and claims, further metallurgical and economic mine planning, will provide a better understanding about the true extent of the Debtor's existing mineral assets, the Debtor's proven and probable reserves, as well as the measured, indicated and inferred resources available to the Debtor. *See*, Declarations of David J. Beckman and Randy Davenport, CROs of CS Mining, attached hereto as **Exhibits F and G**.

22. While it is obvious that the Debtor's existing equity holders and secured creditors anticipated the availability of extensive mineral deposits that could be profitably extracted and refined to provide a return on their investment of over $110 million, it is quite another thing for third party bidders and potential purchasers to pay fair market value for the Debtor's assets based on speculation and conjecture, no matter how probable or likely the results may be. Thus, to insure a robust, competitive and successful sale process that maximizes the value of the estate, it is necessary to fully develop both the resource development model as well as prove up the processing capabilities of the Debtor's plant and equipment.

[9] It is highly unlikely that under the Existing DIP Credit Facility and limited timeframe for a sale that such development tasks and reports could be completed before parties were required to submit bids.

23. The Debtor believes that extending the Sale Process out an additional few months, coupled with an expanded Resource Development Plan and performance results from operation of the Debtor's facilities, will also allow the Debtor to attract additional bidders to the Sale Process, as well as potentially provide the Debtor with access to additional capital markets and financing sources. *See,* Declarations of David J. Beckman and Randy Davenport, attached as **Exhibits F and G**.

24. The interests of the Debtor's prepetition secured lenders are more than adequately protected if the Tailings DIP Financing is approved by the Court because, (a) absent this additional information, they are not likely to recover the fair value of their collateral in connection with any subsequent sale, (b) they would have to conduct similar analyses, at their own expense, in order to realize the fair value of their collateral and sell it in a commercially reasonable manner, and (c) the value added to their collateral from obtaining this information is expected to exceed the amount of the additional financing. *See,* Declarations of David J. Beckman and Randy Davenport, attached as **Exhibits F and G**.

25. **The Debtor's Prepetition Secured Loans.** The following, with a full reservation of rights, defenses, causes of action, claims and challenges by or against the Debtor, the Committee or any creditors or parties in interest in this case, including, without limitation, the Final DIP Lenders, sets forth the Debtor's material indebtedness as of the Petition Date:

> (a) **Waterloo Secured Loan**. On August 12, 2014, Noble Americas Corp.("Noble") entered into a loan and security agreement with the Debtor pursuant to which Noble extended a loan with a full facility principal amount of $30 million (the "Waterloo Loan," and together with all other documents evidencing or granting collateral to secure the Waterloo Loan, all of the foregoing, as the same may have been amended, restated, supplemented or otherwise modified to date, collectively, the "Waterloo Loan Documents"). Under the terms of the Waterloo Loan, CS Mining granted Noble a security interest in

certain of its assets. All obligations of the Debtor arising under the Waterloo Loan Documents, including all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including any and all reasonable attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable, reimbursable or otherwise payable under the Waterloo Loan Documents), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtor's obligations under the Waterloo Loan Documents shall hereinafter be referred to collectively as the "Waterloo Loan Obligations." On December 31, 2015, Noble and Waterloo entered into a purchase and sale agreement whereby Noble sold the Waterloo Loan, and assigned all its rights and obligations arising from and under the Waterloo Loan Documents, to Waterloo.

(b) **WUMI Loan**. On August 10, 2012, the Debtor and David J. Richards, LLC d/b/a Western US Mineral Investors LLC ("WUMI") entered into a security and loan agreement under which WUMI made advances over a number of months, eventually advancing $20,500,000 in principal amount to the Debtor (the "WUMI Loan"). Interest accrues under the WUMI Loan equal to the greater of Prime Index Rate plus 9.25% or 12.5%. The WUMI Loan as amended, restated, supplemented or otherwise modified and all other agreements, documents and instruments executed and/or delivered to or in favor of WUMI in connection with the WUMI Loan, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto (all the foregoing, together with the WUMI Loan, as all of the same have been supplemented, modified, extended, renewed, restated and/or replaced to date, are referred to collectively as the "WUMI Loan Documents"). In connection with the WUMI Loan, the Debtor granted WUMI a security interest in all of its assets, with certain exclusions. All obligations arising under the WUMI Loan Documents including, without limitation, all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including any and all reasonable attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable, reimbursable or otherwise payable under the WUMI Loan Documents), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtor's obligations under the WUMI Loan Documents shall hereinafter be referred to collectively as the "WUMI Loan Obligations."

(c) **SMP Loan Facility**. As described in that Joint Modification Agreement between the Debtor and Sky Mineral Partners, LLC ("SMP") dated November 10, 2011 and the First Amendment to Joint Loan Modification Agreement dated

August 12, 2014, as part of a sale of the Debtor's predecessor, SMP assumed the indebtedness owing to the Debtor's predecessor under which the Debtor would effectively be indebted to SMP in the amount of $24,024,356.66 (the "SMP Loan," and all other agreements, documents and instruments executed and/or delivered to or in favor of SMP in connection with the SMP Loan, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto (all the foregoing, together with the SMP Loan, as all of the same have been supplemented, modified, extended, renewed, restated and/or replaced to date, collectively, the "SMP Loan Documents")). The terms included a three percent (3%) interest rate and a maturity date of August 15, 2019. In connection with the SMP Loan, the Debtor granted SMP a security interest in all of its assets. All obligations arising under the SMP Loan Documents including, without limitation, all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including any and all reasonable attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable, reimbursable or otherwise payable under the SMP Loan Documents), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtor's obligations under the SMP Loan Documents shall hereinafter be referred to collectively as the "SMP Loan Obligations"). Together, the respective liens securing Waterloo, WUMI, and SMP Loan Obligations are referred to as the "Prepetition Liens").

(D) **Other Liens**. As of the Petition Date, the Debtor believes that the following additional liens noted immediately below (collectively, the "Other Prepetition Liens") were asserted against one or more of the Debtor's assets:

Creditor Name and Address	**Description of Debtor's Property That is Subject to a Lien**	**Describe the Lien**	**Amount of Claim Do Not Deduct the Value of Collateral**
Agate, Inc. P.O. Box 117 Scotsdale, AZ 85252	Phase II Project Assets	Mechanics Lien	$ 142,386.00
Beaver County Treasurer P.O. Box 432 Beaver, UT 84713	Property Tax	Tax Lien	$ 544,478.07

Brahma Group, Inc. 1132 South 500 West Salt Lake City, UT 84101	Phase II Project Assets	Mechanics Lien	$ 1,369,915.79
Caterpillar Financial Services Corporation 2120 West End Avenue Nashville, TN 37203	Cat 777 Haul Trucks	Purchase Money Security Interests	$ 1,335,477.80
Caterpillar Financial Services Corporation 2120 West End Avenue Nashville, TN 37203	Cat TL 12, Cat 349	Purchase Money Security Interests	$ 308,130.94
Ferguson Enterprises, Inc. 1422 South 4450 West Salt Lake City, UT 84104	Phase II Project Assets	Mechanics Lien	$ 55,905.20
International Lining Technology, Inc. (a Nevada Corp.) 850 Maestro Drive, Suite 101 Reno, NV 89511	Phase II Project Assets	Mechanics Lien	$ 156,969.00
J&M Steel Solutions LLC 894 West State Street Lehi, UT 84157	Phase II Project Assets	Mechanics Lien	$ 20,450.00
Komatusu Financial Lp 1701 West Golf Road Suite1-300 Rolling Meadows, IL 60008	Manitou Forklift, LK8 Forklift, RS519 Telehandler, S185 Skidsteer, Yale Forklift, GS2632 Scissorlift, 600AJ Boomlift	Purchase Money Security Interests	$ 94,714.45
Pipe Valve and Fitting Co. 2505 East 79th Avenue P.O. Box 5806 Denver, CO 80217	Phase II Project Assets	Mechanics Lien	$ 24,470.04
Schmueser & Associates, Inc. 1901 Railroad Avenue Rifle, CO 81650	Phase II Project Assets	Mechanics Lien	$ 310,531.99

SMA Surety, Inc. d/b/a Smith Manus, Lexon Insurance Company 2307 River Road Suite 200 Louisville, KY 40206	Cash Collateral	Surety Bond	$ 4,944,348.00
Thermo electron North America, LLC 770 Northport Parkway Suite 100 West Palm Beach, FL 33407	ARL 4460 Metals Analyzer	Purchase Money Security Interests	$ 77,365.91
Utah Independent Bank 195 North Main Beaver, UT 84713	2006 Ford F150	Equipment Loan	$ 4,144.57
Wells Fargo Equipment Finance 300 Tri-State International Suite 400 Lincolnshire, IL 60069	Cat P5000 forklift	Purchase Money Security Interests	$ 41,111.03

The above Other Prepetition Liens are separate and distinct from the Prepetition Liens asserted by Waterloo, SMP and WUMI. **For the avoidance of doubt, the Liens granted under this Tailings Financing Order shall not prime or be superior to the liens or security interests of the valid, enforceable, perfected, and non-avoidable liens or security interests of the Other Prepetition Liens;**

(E) **Gap Funding**. After the Petition Date, but prior to the Response Date, the Debtor borrowed an aggregate amount of $700,000 from Wellington and Broadbill pursuant to those certain promissory notes (i) $525,000 note from Wellington dated June 24, 2016, as replaced with amended and restated promissory from Wellington in the cumulative amount of $600,000, and subsequently replaced with amended and restated promissory note from Wellington in the cumulative amount of $625,000 on June 24, 2016 and (ii) $75,000 note from Broadbill dated June 24, 2016 (collectively, the "Gap Funding"). On August 10, 2016, $675,000 of the Interim DIP Loan was used to repay the Gap Funding, with postponement of the remaining $25,000 to be paid from sale proceeds.

(F) **Intercreditor Agreement.** On August 12, 2014, the Debtor, WUMI and Noble (prior to Waterloo's purchase of the Waterloo Loan) entered into that certain Intercreditor agreement in connection with the Waterloo Loan (the

"Intercreditor Agreement"). Pursuant to the Intercreditor Agreement, WUMI subordinated certain of its liens, security interests, mortgages and deeds of trust to Noble, while Noble acknowledged that any lien it may have, if any, or that it may acquire in certain other assets would be junior to those of WUMI. Thus, through the Intercreditor Agreement, WUMI and Noble established their relative priority in and to all of the Debtor's assets. Pursuant to the Intercreditor Agreement, the parties agreed that Noble has a first priority security interest in the "Noble Priority Collateral," as set forth and defined in the Intercreditor Agreement, while WUMI has a first priority security interest in the "WUMI Priority Collateral," as set forth in the Intercreditor Agreement. By agreement, dated August 10, 2012, SMP agreed to subordinate its debt and lien rights to the debt of WUMI. On August 12, 2014, the Debtor, SMP and Noble entered into that certain Intercreditor and Subordination Agreement (the "SMP Intercreditor and Subordination Agreement") in connection with the Waterloo Loan. Through the SMP Intercreditor and Subordination Agreement, SMP subordinated all of its claims and liens under the SMP Loan Agreement to those claims and liens held by Noble. The "Prepetition Liens" secure the Waterloo Loan Obligations, the WUMI Loan Obligations and the SMP Loan Obligations, subject in all respects to the challenge rights set forth in in this Financing Order, are collectively referred to as the "Prepetition Liens"). All of the Debtor's assets and property subject to the Prepetition Liens and Other Prepetition shall be referred to as the "Prepetition Collateral." All of the Debtor's assets and property securing the Prepetition Secured Indebtedness shall be referred to as the "Prepetition Collateral."

THE TERMS OF THE PROPOSED ADDITIONAL FINANCING

26. The salient terms of the proposed Additional Financing include:

Borrower:	CS Mining, LLC (the "Debtor")
DIP Lenders:	Wellington Financing Partners, LLC, a Delaware limited liability company ("Wellington"), St. Cloud Capital Partners II, L.P., and Oxbow Carbon LLC (collectively, the "Second DIP Lenders").
DIP Facility:	Term loan facility in the aggregate principal amount of up to $2,650,000 (the "Advance"). Of the total Advance, Oxbow will fund $2,000,000 subject to execution of a sulfuric acid supply agreement attached to the proposed Credit Agreement (**Exhibit E hereto)**, Wellington will fund $300,000, plus up to $250,000 of any request made pursuant to

	Section 7.12(a) of the proposed Credit Agreement; and St. Cloud will fund $100,000 of any request made pursuant to Section 7.12(a) of the proposed Credit Agreement.
Purpose:	Amounts advanced may be used only to pay postpetition operating, resource development, and administrative expenses in accordance with the proposed Tailings Budget attached as Exhibit A to the proposed Credit Agreement.
Tailings Budget:	The Tailings Budget is attached as Exhibit A to the proposed Credit Agreement. The Tailings Budget provides for, among other things, the payment of: (i) postpetition operating expenses and working capital requirements in connection with the Tailings Processing and Resource Development Plan as initially recommended by the CROs; and (ii) budgeted costs and expenses incurred in administering the Bankruptcy Case.
Maturity Date:	The earliest of June 30, 2017, the effective date of a confirmed plan of reorganization, the effective date of the closing of a sale of substantially all of the assets of the Debtor; or the date of acceleration of the DIP Facility following the occurrence and during the continuance of an Event of Default.
Interest:	7.0% per annum, calculated on the basis of the actual number of days elapsed in a year of 360 days. Interest shall accrue and be paid on the Maturity Date.
Default Interest and Fees:	7.8% per annum.
Facility Fee:	0.75% of the funded amount.
Repayment and Prepayments:	Permitted in whole or in part, with prior notice. Each partial prepayment shall be in an amount not less than $25,000.
Prepayment Premium or Penalty:	There shall be no premiums or penalties for any prepayments (whether mandatory or

	optional) of the DIP Facility.
Security:	All obligations of the Debtor under the Tailings DIP Financing shall be secured by perfected, valid, binding, enforceable, non-avoidable, (a) first priority Liens and security interests (held pari passu with the Second DIP Lenders in accordance with Section 364(c)(2) of the Bankruptcy Code; (b) valid, perfected and unavoidable first priority priming Lien (held pari passu with the Second DIP Lenders), over, junior Liens and security interests in accordance with Section 364(c)(3) of the Bankruptcy Code; and (c) a priming first priority Lien (held pari passu with the Second DIP Lenders) in accordance with Section 364(d) of the Bankruptcy Code on property that is subject to valid, perfected and unavoidable Prepetition Liens of Waterloo, WUMI and SMP. The Liens granted to the Tailings DIP Lenders shall be subject to the Carve-Out, the Existing DIP Liens and any ordinary course pre-existing liens, not including the Prepetition Liens. **For the avoidance of doubt, the Liens granted under this Tailings Financing Order shall not prime or be superior to the liens or security interests of the valid, enforceable, perfected, and non-avoidable liens or security interests of the Other Prepetition Liens.**
Superpriority:	All obligations of the Debtor under the Tailings DIP Financing shall constitute allowed superpriority administrative expense claims (the "DIP Superpriority Claim") under section 364(c)(1) of the Bankruptcy Code, subject only to the Carve-Out and Existing DIP Liens. The superpriority and first priority liens granted to the Tailings Lenders do not extend

	to any potential claims or causes of action, or proceeds of any such causes of action the Debtor may assert under chapter 5 of the United States Bankruptcy Code.
Carve-Out:	The "Carve-Out" shall mean (i) allowed, accrued, but unpaid professional fees and expenses of the Debtor and the Committee, provided that such fees and expenses are consistent with the cash payments provided for in the Tailings Budget; (ii) allowed, accrued, but unpaid fees and expenses of any trustee under section 726(b) of the Bankruptcy Code, not to exceed $25,000 in the aggregate; (iii) allowed, accrued, but unpaid professional fees and expenses of the Debtor and any Committee after the delivery of a Carve-Out Notice, not to exceed $100,000 in the aggregate; and (iv) the payment of fees pursuant to 28 U.S.C. § 1930, plus any interest pursuant to 31 U.S.C. § 3717; and amounts associated with a wind down of the Debtor following the consummation of the Sale Process (defined below), not to exceed $50,000 in the aggregate. "Carve-Out Notice" shall mean a written notice delivered by the Tailings DIP Lenders to the Debtor, counsel to the Debtor, counsel to the Committee (if any), and the United States Trustee, which notice may be delivered after the acceleration of the DIP Facility.
Credit Bid:	The Tailings DIP Lenders shall have the right to credit bid up to the full amount of the obligations under the Tailings DIP Financing, the DIP Superpriority Claim, and any unpaid expenses and indemnities in accordance with each Tailings DIP Lender's corresponding percentage of the DIP Facility Commitment, in the sale of any of the Collateral, including, without limitation, (a) pursuant to Bankruptcy Code section 363, (b) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129, or (c) a sale or disposition by a

	chapter 7 trustee for any Debtor under Bankruptcy Code section 725.
Conditions to Borrowings:	Conditions precedent to each borrowing under the Tailings DIP Financing will be those customary for a transaction of this type, including, without limitation: • all documentation (including a loan and security agreement) relating to the Tailings DIP Financing (the "Tailings DIP Documents") shall be complete and in form and substance satisfactory to the Tailings DIP Lenders; • the automatic stay shall have been modified to permit the creation and perfection of the Tailings DIP Lenders' liens and the enforcement of rights and remedies; • the interest of Tailings DIP Lenders in the Collateral shall constitute a superpriority secured first lien, ahead of all other liens on the Collateral, except as noted above; • the entry of a final order by the court authorizing and approving the Sulfuric Acid Supply Agreement between Oxbow and the Debtor; • all representations and warranties in the DIP Documents shall be true and correct in all material respects; • there shall exist no default or Event of Default; • all fees and expenses of the Tailings DIP Lenders (including, without limitation, legal fees and expenses) invoiced on or before the date of such borrowing shall have been paid; • the Tailings Budget shall have been

	approved by the Bankruptcy Court; • to the extent that the Debtor has determined, in consultation with the Tailings DIP Lenders, that any executory contract or unexpired lease of the Debtor is necessary for it to comply with the Tailings Budget, the Court shall have approved any modifications or extensions to the Debtor's material contracts necessary to maintain such contracts and the value thereof; • the Tailings DIP Lenders shall have received from the Debtor a written request to borrow under the Tailings DIP Financing, which shall be executed by the Debtor's Chief Restructuring Officer, and who shall certify that the requested amount is consistent with the Tailings Budget and that the Debtor is in compliance with the Tailings DIP Documents; and, • no material adverse effect shall have occurred.
Representations and Warranties:	Representations and warranties shall be customary and appropriate for a transaction of this type, including, without limitation, with respect to organization and good standing, due authorization and power, capitalization, no conflict, governmental consents, enforceable obligations, liens, litigation, no default, use of proceeds, margin stock, principal office, compliance with laws, subsidiaries, collateral, environmental matters, insurance, taxes, employee matters, labor matters, intellectual property, no material adverse effect, material agreements, and deposit accounts.
Affirmative Covenants:	Affirmative covenants shall be those customary and appropriate for a transaction of this type, including, without limitation, with respect to financial statements, corporate existence, payment of taxes, insurance,

	inspections, compliance with laws, environmental matters, use of proceeds, and information regarding the Case and other matters.
	In addition, the Debtor shall: • provide the Tailings DIP Lenders with reasonable access to the Debtor's properties and personnel (including appropriate management and outside advisors), as well as any requested financial, legal, accounting, tax, or other information regarding the Debtor's business or the Collateral; • keep the Tailings DIP Lenders apprised on at least a weekly basis of all material developments with respect to the business and assets of the Debtor; • concurrently with the Debtor's efforts to continue to execute the Resource Development Plan, the Debtor shall provide the Tailings DIP Lenders an updated Resource Development Plan based on the Tailings Budget; • by March 1, 2017 the Debtor shall recommence a formal sale process by filing an appropriate motion for approval of an asset sale or by filing a plan of reorganization which provides for an asset sale; and, • If the Debtor shall seek to sell its assets as part of a plan of reorganization, or to otherwise seek to restructure its debt obligations through a plan of reorganization, the Bankruptcy Court will approve such plan of reorganization by June 30, 2017.
Negative Covenants:	Negative covenants shall be customary and appropriate for a transaction of this type and others determined by the Tailings DIP Lenders to be appropriate, including, without limitation,

	with respect to indebtedness, liens, fundamental changes, disposition of assets, restricted payments, investments, loans, acquisitions, transactions with affiliates, negative pledges, lines of business, modifications of organizational documents and material agreements, changes in capital structures, superpriority claims, non-ordinary course or prepetition payments, use of proceeds, and accounts.
Events of Default:	Events of default ("Events of Default") will be those customary and appropriate for a transaction of this type, including, without limitation: • failure to make payments of principal, interest, fees, or other amounts when due; • material inaccuracies in representations and warranties; • violations of covenants, including, without limitation, the failure to meet the milestones under the Sale Process; • the entry of an order in the Case granting a superpriority administrative claim equal or superior to interest of Tailings DIP Lenders in the Collateral and the DIP Administrative Claim; • the entry of an order in the Case granting a lien or security interest in the Collateral that is not approved in advance by DIP Lenders; • the entry of an order granting relief from or modifying the automatic stay under section 362 of the Bankruptcy Code to allow any creditor to execute upon or enforce a lien on any Collateral having a value equal to or above $10,000;

	• the filing of any pleading or commencement of any action by the Debtor to obtain additional financing under sections 364(c) or (d) of the Bankruptcy Code (unless such financing is proposed to refinance and pay the obligations in cash in full under the Tailings DIP Financing with the termination of all related lending commitments thereunder); • the filing of any pleading or commencement of any action by the Debtor to prime or challenge the validity, enforceability, perfection, or priority of the Tailings DIP Financing or Tailings DIP Liens; • the filing of any pleading or commencement of any action by the Debtor that is otherwise inconsistent with the terms of the Tailings DIP Financing or the Sale Process; • dismissal or conversion of the Case to chapter 7 of the Bankruptcy Code (except as consented to by the Tailings DIP Lenders); and, • appointment of a chapter 11 trustee, examiner, or similar fiduciary with expanded powers pursuant to section 1104 of the Bankruptcy Code in any Case.
Waivers:	The Final Order shall include customary waivers, including the waiver of the automatic stay in connection with the Tailings DIP Lenders' enforcement of remedies upon an Event of Default, and the waiver of any surcharge of costs or expenses with respect to the Tailings DIP Lenders' interest in the Collateral under section 506(c) of the Bankruptcy Code. In no event shall the Tailings DIP Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

Assignments and Participations:	The Tailings DIP Lenders may (i) assign all or any portion of its loans under the Tailings DIP Financing or (ii) sell participations in all or a portion of its loans and commitments under the Tailings DIP Financing.
Expenses and Indemnification:	The Debtor shall reimburse the Tailings DIP Lenders for all reasonable and documented fees, costs and expenses incurred in connection with the Tailings DIP Financing and Tailings DIP Documents in an amount not to exceed $200,000. The Tailings DIP Lenders fees shall include the fees, costs and expenses incurred in connection with: (a) the negotiation, preparation and filing and/or recordation of the Tailing DIP Documents and related documents, motions and filings; (b) any amendment, modification or waiver of, consent with respect to, or termination of, this Agreement or any other Tailings DIP Document; (c) any litigation, contest, dispute, suit, proceeding or action (whether instituted by Tailings DIP Lender, Borrower or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Tailings DIP Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against Borrower or any other Person that may be obligated to the Tailings DIP Lender by virtue of the Tailings DIP Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Tailings DIP Financing during the pendency of one or more Events of

	Default; (d) advice in connection with the administration of the Tailings DIP Financing made pursuant hereto or its rights hereunder or thereunder; (e) any attempt to enforce any remedies of Tailings DIP Lenders against Borrower or any other Person that may be obligated to Tailings DIP Lenders by virtue of any of the Tailings DIP Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Tailings DIP Financing during the pendency of one or more Events of Default; (provided, however, that these fees and any fees incurred by the Tailings DIP Lenders in connection with a foreclosure on the DIP Collateral are not subject to the $200,000 cap); (f) any workout or restructuring of the Tailings DIP Financing during the pendency of one or more Events of Default; (g) the obtaining of approval of the Tailings DIP Documents by the Bankruptcy Court; (h) the preparation and review of pleadings, documents and reports related to the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code, and general monitoring of the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code; and (i) efforts to (x) monitor the Tailings DIP Financing, Tailings Budget, Borrower operations or any obligations under the Tailings DIP Financing, (y) evaluate, observe or assess Borrower or its affairs, and (z) verify,

	protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral. The Debtor will indemnify the Tailings DIP Lenders and their affiliates, officers, directors, members, employees, accountants, agents, partners, attorneys, advisors, successors in interest, and representatives, and hold them harmless from and against all reasonable costs, fees, expenses (including, without limitation, reasonable legal fees and expenses), and liabilities arising out of or relating to the Tailings DIP Financing and the transactions contemplated thereby and any actual or proposed use of the proceeds of any loans made under the Tailings DIP Financing; provided, that no such person will be indemnified for fees, costs, expenses, or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the gross negligence or willful misconduct of such person.
Taxes and Other Deductions:	All payments are to be free and clear of any present or future taxes, withholdings, or other deductions whatsoever (excluding income taxes imposed by a jurisdiction in which the Tailings DIP Lenders would be deemed to operate or earn income and franchise or capital taxes imposed on it in lieu of net income taxes) (such non-excluded taxes, "Taxes"). If the Debtor is required by law to deduct any Taxes from or in respect of any sum payable under the Tailings DIP Financing, (i) the sum payable shall be increased as necessary so that, after making the required deductions, the Tailings DIP Lenders receive an amount equal to the sum they would have received had no deductions been made, and (ii) the Debtor shall make such deductions, and remit the full amount deducted to the relevant tax authority

	in accordance with applicable law.
Definitive Documents:	The Tailings DIP Financing will be extended pursuant to the Tailings DIP Documents in a form prepared by counsel for the Tailings DIP Lenders and the Company.
Governing Law and Forum:	The laws of the State of Utah. Each party to the Tailings DIP Financing will waive the right to trial by jury and will consent to jurisdiction of the Bankruptcy Court in connection with any dispute arising from or under the Tailings DIP Financing or the Tailings DIP Documents.

27. **No Third Party Rights**. For the avoidance of doubt, the nature, extent, validity, and priority of the Prepetition Liens or Other Prepetition Liens, including any and all rights, defenses, causes of action, claims and challenges with respect to the Prepetition Liens and Other Prepetition Liens, are expressly preserved and not being determined as part of this Motion.

28. **Use of Cash Collateral and Proceeds of the DIP Facility, Collateral and Prepetition Collateral**. All Cash Collateral, all proceeds of the Prepetition Collateral and the Collateral (each defined below), including proceeds realized from a sale or disposition thereof, or from payment thereon, and all proceeds of the Tailings DIP Financing (net of any amounts used to pay fees, costs, and expenses payable under this Tailings Financing Order) shall be used and/or applied in accordance with the terms and conditions of this Order, the Tailings Budget, and the Tailings DIP Documents and for no other purpose.

29. **No Credit Available on More Favorable Terms.** The Debtor has been unable to obtain on more favorable terms and conditions than those provided in this Tailings Financing Order (a) adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense, (b) credit for money borrowed with priority over any or all

administrative expenses of the kind specific in section 503(b) or 507(b) of the Bankruptcy Code, (c) credit for money borrowed secured by a lien on property of the estate that is not otherwise subject to a lien, or (d) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien. The Debtor is unable to obtain credit for borrowed money without granting the Tailings DIP Liens and the DIP Superpriority Claims to the Tailings DIP Lenders.

30. **The Terms of Tailings DIP Facility are Fair and Reasonable.** The Tailings DIP Lenders have indicated a willingness to provide the Tailings DIP Financing in accordance with the Tailings DIP Documents and the other related agreements solely on the terms and conditions set forth in the proposed Tailings Financing Order and the Tailings DIP Documents, including and subject to (i) approval of the Tailings Financing Order and (ii) findings by the Bankruptcy Court that such financing is essential to the Debtor's estate, that the Tailings DIP Lenders are good faith financiers, and that the Tailings DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to and in connection with the Tailings Financing Order and the Tailings DIP Documents (including the DIP Superpriority Claims (as defined below) and the Tailings DIP Liens), will not be affected by any subsequent reversal, modification, vacatur or amendment of, as the case may be. The terms of the Tailings DIP Financing as set forth in the Tailings DIP Documents are fair and reasonable and reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are the best available under the circumstances.

31. **Arm's Length and Good Faith Negotiation.** The Debtor and the Tailings DIP Lenders have negotiated the terms and conditions of the Tailings DIP Financing, the Tailings

DIP Documents and this Tailings Financing Order in good faith and at arm's length, and any credit extended and loans made pursuant to this Tailings Financing Order have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

I. The Tailings DIP Financing is Permissible Under Section 364 of the Bankruptcy Code

32. Bankruptcy Code Section 364(c) provides:

> If the [debtor-in-possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt -
>
> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

33. Bankruptcy Code section 364(d)(1) further provides:

> The court, after notice and a hearing, may 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 [debtor-in-possession] is unable to obtain such 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.
>
> 11 U.S.C. § 364(d).

(a) Entering into the Tailings DIP Documents Is an Exercise of the Debtor's Sound Business Judgment.

34. The Tailings DIP Financing represents a culmination of the Debtor's continued efforts to maximize the value of the Debtor's assets for the benefit of all stakeholders and is as an exercise of the Debtor's' sound business judgment.

35. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its sound business judgment in obtaining such credit. See, e.g., In re CB Holding Corp., 447 B.R. 222, 227 (Bankr. D. Del. 2010) ("[T]he terms of the Post-Petition Financing appear to be fair and reasonable, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration); In re Local Insight Media Holdings, Inc., No. 10-13677, 2010 WL 5272396, at *5 (Bankr. D. Del. Nov. 19, 2010) ("The terms of the DIP Financing and the use of the Prepetition Collateral (including the Cash Collateral) pursuant to this Order are fair and reasonable, reflect the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, are appropriate under the circumstances and constitute reasonably equivalent value and fair consideration."); In re Barbara K Enters., Inc., No 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (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 one party in interest"); Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc.), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business

judgment . . . ."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); see also Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable").

36. To determine whether the business judgment standard is met, a court is "required to examine whether a reasonable business person would make a similar decision under similar circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re L.A. Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("Under the [business judgment] rule, courts will not second-guess a business decision, so long as corporate management exercised a minimum level of care in arriving at the decision. The business judgment rule under Delaware law and the law of numerous other jurisdictions establishes a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company.").

37. The Debtor submits that this Court should approve its entry into the Tailings DIP Financing and execution of the Tailings DIP Documents as an exercise of its sound business judgment. Prior to the Petition Date, the Debtor and its advisors undertook an analysis of the Debtor's projected financing needs during the pendency of the bankruptcy case and determined that the Debtor would require postpetition financing to support its operational and restructuring

activities while pursuing a sale of all or substantially all of the its assets (a "Sale"). Without the financing to be provided by the Tailings DIP Financing, the Debtor would not be able to maximize value at a Sale, to the detriment of the Debtor, its employees, and other stakeholders.

38. Accordingly, the Debtor negotiated the Tailings DIP Financing with the Tailings DIP Lenders in good faith, at arm's-length, and with the assistance of its advisors, to obtain the required postpetition financing on terms favorable to the Debtor. Based on the advice of the Debtor's professionals and the Debtor's own analysis, the Debtor has determined in its sound business judgment that the Tailings DIP Financing provides the necessary liquidity on comparatively more favorable terms than any other reasonably available alternative in order to achieve fair market value for the Debtor's assets at a Sale. Although the Debtor has determined that the Tailings DIP Financing is the only sufficient financing available to them, the Tailings DIP Financing contains terms that are fair and reasonable under the circumstances.

39. Because the Prepetition Lenders have liens on substantially all of the Debtor's assets, there is no possibility of the Debtor being able to secure DIP financing on an unsecured or junior basis. Also, the Debtor does not have sufficient unencumbered assets to serve as collateral for the senior secured Tailings DIP Financing. All potential lenders other than the Prepetition Lenders would certainly have demanded that any DIP financing provided be secured by priming liens, to which the Prepetition Lenders would not consent without the provision of adequate protection with respect to their interests in the Prepetition Liens, as required pursuant to section 364(d) of the Bankruptcy Code.

40. As a result of the foregoing, the Debtor, in the exercise of its sound business judgment, and with the advice of its CROs, has determined that the Tailings DIP Financing

provides the best available financing for the Debtor (indeed, the only available financing) to achieve the highest and best value for creditors and stakeholders. Moreover, the Debtor and its advisors have determined that the financing provided by the Tailings DIP Credit Facility is fair and reasonable under the circumstances and sufficient to permit the Debtor to: expand its existing Sale Process; attract potentially more bidders to any sale; expand its ongoing Resource Development Program; explore all additional restructuring alternatives; and effectuate an orderly exit from bankruptcy. Such financing will also provide a window of opportunity for the Debtor to explore regular capital markets to obtain for more long term financing or structure a plan of reorganization.

41. Bankruptcy Rule 4001(c)(2) provides, in relevant part:

> The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

42. Bankruptcy Rule 4001(d) provides, in relevant part, that (i) a motion for approval to modify or terminate the automatic stay shall be served on any committee appointed pursuant to Bankruptcy Code section 1102, on the creditors included on the list filed under Bankruptcy Rule 1007(d), and on such other entities as the court may direct, and (ii) objections may be filed within 14 days of the mailing of the notice of the motion and the time for filing objections thereto. See Fed. R. Bankr, P. 4001(l) - (2).

43. As set forth above, notwithstanding the efforts of the Debtor's CROs and financial advisors, the Debtor has been unable to obtain postpetition financing on an unsecured

basis and was likewise unable to obtain postpetition financing secured by a junior lien or a lien on unencumbered assets. The Debtor was not able to obtain sufficient financing at the outset of the case to fund the "Tailings Business Plan," as recommended by the Debtor's CROs. Despite the progress the Debtor has made to date in its case, the Debtor and its CROs have continued to explore all value maximizing alternatives for the Debtor, including obtaining additional financing to pursue the tailings development proposal originally recommended by the Debtor's CROs.

44. The Debtor negotiated the Tailings DIP Financing at arm's-length and have determined, in the exercise of its business judgment, with one Board member abstaining from voting, that it is the best proposal to maximize value under all of the existing circumstances of this Bankruptcy Case. Provided that this judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its business judgment.

45. The CROs negotiated the Tailings DIP Financing with the Tailings DIP Lenders in good faith, at arm's-length with the goal of obtaining the financing on terms favorable to the Debtor. More importantly, the Tailings DIP Financing provides additional liquidity to the Debtor sufficient to enable it, inter alia, to: (a) restart its ore processing facilities to exploit its tailings inventory, which are expected to generate positive cash flows, (b) provide feedback on key metallurgical assumptions, generate positive cash flow from the sale of copper cathode, with a general goal of processing up to approximately 2,200 tons per day of tailings; (c) expand the Debtor's Resource Development Plan, including providing greater certainty with respect to estimated amount of the Debtor's mineral asset, the Debtor's measured, indicated and inferred

resources and, if appropriate, the Debtor's proven and probable reserves; (d) provide for, among other things, the payment of postpetition operating expenses and other working capital requirements of the Debtor in connection with its "Tailings Processing" and ongoing "Resource Development Plan," all as initially recommended by the Debtor's CROs; (e) continue to pursue all value maximizing opportunities for the Debtor, *i.e.* a potential restructuring of the Debtor's liabilities and not just a Sale; (f) likely increase, the value of the Debtor's assets as a going-concern, which value will be realized through not only proving up the value of the Debtor's state-of-art ore processing facilities, but also through the continued development and exploration of the Debtor's mining rights, mining claims and mineral assets; and, (g) create value for the benefit of all of the Debtor's stakeholders.

46. The Tailings DIP Financing also will result in expanded Exit Milestones and Resource Development Milestones, thereby providing for a more robust Sale Process.

47. The Debtor submits that this Court should approve its entry into the Tailings DIP Financing and execution of the Tailings DIP Documents as an exercise of its sound business judgment. The Tailings Budget will maximize the value of the Debtor's assets, while also supporting the Debtor's operational and restructuring activities. The Debtor believes that the terms and conditions of the Tailings DIP Financing are fair and reasonable under the circumstances and that the Tailings DIP Financing was negotiated at arm's length and in good faith. Accordingly, the Debtor requests that the Tailings DIP Lenders be afforded the benefits of Bankruptcy Code section 364(e) in respect of the Tailings DIP Financing.

(b) The Debtor Should Be Authorized to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis.

48. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code;
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

49. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *Snowshoe*, 789 F.2d at 1088; *Suntrust Bank v. Den-Mark Construction, Inc. (In re Den-Mark Construction, Inc.)*, 406 B.R. 683, 691 (E.D.N.C. 2009) ("Although a debtor is not required to seek credit from every possible source . . . a debtor must show that it made a 'reasonable effort' to obtain post-petition financing from other potential lenders on less onerous terms and that such financing was unavailable.") (internal citation omitted). "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Snowshoe*, 789 F.2d at 1088; *see also Pearl-Phil GMT (Far E.) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative

expense). When few lenders are likely to be able and willing to 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." *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 Garland Corp.*, 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); *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).

50. The Tailings DIP Lenders are not willing to offer financing on an unsecured or administrative expense basis. For these reasons and those set forth elsewhere in this Motion, the Debtor submits that it has satisfied the standards of section 364(c) with respect to the DIP Credit Facility.

(c) The Debtor Should Be Authorized to Obtain Postpetition Financing Secured by First Priority Priming Liens.

51. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property, without the consent of the existing lienholders, if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1).

52. When determining whether to authorize a debtor to obtain credit secured by a "priming" lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether

the transaction will enhance the value of the debtor's assets. Courts consider a number of factors, including, without limitation, whether:

(a) alternative financing is available on any other basis (i.e., whether any better offers, bids or timely proposals are before the court);

(b) the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtor's business;

(c) the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtor and proposed lender(s); and

(d) the proposed financing agreement was negotiated in good faith and at arm's length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estates and their creditors.

See, e.g., Ames, 115 B.R. at 37-39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *In re Farmland Indus., Inc.*, 294 B.R. 855, 862-79 (Bankr. W.D. Mo. 2003); *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Mar. 5, 2009); *Barbara K Enters.*, 2008 WL 2439649, at *10. The DIP Loan Documents satisfy each of these factors.

53. ***First***, as described above, the Tailings DIP Financing is the best option for maximizing the value of the Debtor's assets, in lieu of the existing Exit Milestones. The CROs conducted arm's-length negotiations with the Tailings DIP Lenders regarding the terms of the Tailings DIP Financing, and the Tailings DIP Documents reflect the most favorable terms on which the Tailings DIP Lenders were willing to offer financing.

54. ***Second***, the Debtor requires the Tailings DIP Financing to not only preserve the value of its estate for the benefit of all creditors and other parties in interest, but also to provide the liquidity to maintain the proposed Tailings Processing.

55. ***Third***, the Tailings DIP Financing will provide the Debtor with access to sufficient postpetition financing to achieve the Tailings Budget, which, in turn, will enable the Debtor to maximize the value of its assets for all stakeholders. The Tailings Financing Order also provides the Debtor with authority to continue using the Cash Collateral, which the Debtor urgently requires to continue its operations, invest in additional Resource Development including a variety of geophysical studies of the Debtor's property and mining rights, pay its restructuring expenses (including professional fees and expenses and other administrative costs), prove up the operating parameters of its processing facilities, and enhance and preserve its going concern value. The Tailings DIP Financing is reasonable and adequate to support the Debtor's operations and restructuring activities through June of 2017, and will provide time for the Debtor to explore other more value accretive opportunities in the interim.

56. ***Fourth***, as described in greater detail above, the Debtor and the Tailings DIP Lenders negotiated the Tailings DIP Documents in good faith and at arm's-length, and the Debtor's entry into the Tailings DIP Documents is an exercise of its sound business judgment and is in the best interests of its estate, creditors, and other parties in interest.

(d) The Interests of the Prepetition Lender Are Adequately Protected.

57. A debtor may obtain postpetition credit "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the debtor, among other things, provides "adequate protection" to those parties whose liens are primed. 11 U.S.C. § 364(d)(1)(B). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. See, e.g., In re Cont'l Airlines,

Inc., 154 B.R. 176, 180-81 (Bankr. D. Del. 1993); In re Columbia Gas Sys., Inc., Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); see also In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("[T]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case . . . ."); In re Realty Sw. Assocs., 140 B.R. 360 (Bankr. S.D.N.Y. 1992); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (internal citation omitted).

58. The Debtor proposes to provide the Prepetition Lenders adequate protection by increasing the value of the collateral during the Tailings Process and through the Resource Development Plan. Even though the Debtor will be using the collateral during the Tailings Process, the Debtor believes that the Tailings Process and Resource Development Plan will increase the value of the collateral over its current value to the Prepetition Lenders in an amount that exceeds any perceived impact the Tailings Process may have on the current value of the collateral being used. Accordingly, under the unique circumstances of this case, the Debtor submits that the proposed adequate protection is appropriate and should be approved.

If approved, the Tailings DIP Financing Order proposes that the holders of the Prepetition Liens shall be entitled to adequate protection of their interests in the Prepetition Collateral (including the Cash Collateral), in an amount equal to the aggregate diminution in value (if any) of the Prepetition Collateral resulting from the sale, lease or use by the Debtor of the Prepetition Collateral (including the Cash Collateral), and/or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code and/or the priming of their interests in the

Prepetition Collateral (such diminution, the "Adequate Protection Obligations"). The proposed Adequate Protection is fair and reasonable, reflects the Debtor's prudent exercise of business judgment and is sufficient to allow the Debtor's use of the Prepetition Collateral (including the Cash Collateral) and to permit the priming of the Prepetition Liens. Moreover, in light of, as applicable, the subordination of the Prepetition Liens the holders of Prepetition Liens will be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply.

II. The Use of Cash Collateral is Permissible under Section 363 of the Bankruptcy Code

59. In connection with the Tailings Financing, the Debtor also requires the use of Cash Collateral.

60. Bankruptcy Code section 363(c)(2) provides that the Debtor may not use, sell, or lease cash collateral unless "(A) each entity that has an interest in such cash 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." 11 U.S.C. § 363(c)(2).

61. Here, the only cash collateral that will be used is the cash generated from the processing of the tailings inventory. This cash, however, would not exist at all unless the tailings were processed in the manner proposed under the Tailings Budget. As such, the cash collateral is actually property acquired by the Debtor after commencement of the case and is not subject to any lien resulting from any security agreement entered into by the Debtor before the commencement of the case. 11 U.S.C § 552. Moreover, even if the Court were to conclude that the cash generated from processing the tailings inventory were proceeds of a prepetition lien, the

Court can "order otherwise" based on the equities of the case. 11 U.S.C. § 552(b)(1). Under the existing circumstances, such an order would be most appropriate.

III. Modification of the Automatic Stay

62. Bankruptcy Code section 362 provides for an automatic stay upon the filing of a bankruptcy petition. The proposed Tailings Financing Order contemplates the modification of the automatic stay (to the extent applicable), to the extent necessary to permit the Debtor and the Tailings DIP Lenders to implement the terms of Order. Stay modification provisions of this type are standard features of postpetition debtor-in-possession financing facilities and, in the Debtor's business judgment, are reasonable under the present circumstances. Accordingly, the Debtor respectfully requests that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Tailings Financing Order and Tailings DIP Credit Agreement.

Request for a Final Hearing

63. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the hearing on the Motion be a final hearing.

Reservation of Rights

64. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtor, a waiver of the Debtor's or any other party's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. If this Court grants the relief sought herein, any payment made pursuant to this Court's order is not intended and should not be construed as an admission

of the validity of any claim or a waiver of the Debtor's or any other party's rights to dispute such claim subsequently.

Notice

65. The Debtor has provided notice of this Motion on the date hereof via facsimile, overnight delivery, and/or hand delivery to: (i) the Office of the United States Trustee for the District of Utah; (ii) the Debtor's largest twenty (20) unsecured creditors as identified in its chapter 11 petition; (iii) the Committee; (iv) the known Prepetition Secured Parties; (v) the DIP Lenders; (iv) the Debtor's cash management banks and (v) all parties requesting notice in this case pursuant to Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is necessary.

No Prior Request

66. Other than the Existing DIP Credit Facility, no prior request for the relief sought in this Motion has been made to this or any other court.

Conclusion

WHEREFORE, the Debtor respectfully request that the Court grant the relief requested herein, enter the Tailings Financing DIP Order, and grant such other further relief as is just and proper.

DATED this 7th day of December, 2016.

SNELL & WILMER L.L.P.

/s/ Jeff Tuttle
David E. Leta
Troy J. Aramburu
Jeffrey D. Tuttle

- and –

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Counsel for CS Mining, LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2016, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the CM/ECF System. I further certify that the parties of record in this case as identified below, are registered CM/ECF users and will be served through the CM/ECF system:

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Epiq: By U.S. mail – Epiq Bankruptcy Solutions, LLC, who was appointed as Claims and Noticing Agent, on September 28, 2016 [Docket No. 331] is preparing and will subsequently file with the court a certificate of service.

/s/ *Wendy H. Kalawaia*

EXHIBIT A

Tailings DIP Order

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Counsel for CS Mining, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: CS MINING, LLC, Debtor.	Case No. 16-24818 Chapter 11 Judge William T. Thurman

FINAL ORDER (I) AUTHORIZING THE DEBTOR TO ENTER INTO ADDITIONAL $2.65 MILLION POSTPETITION FINANCING AGREEMENT WITH VENDOR AND EXISTING DIP LENDER; (II) AUTHORIZING AMENDMENT TO EXISTING DEBTOR-IN-POSSESSION FINANCING FACILITY; (III) APPROVING SULFURIC ACID SUPPLY AGREEMENT; (IV) AUTHORIZING THE USE OF CASH COLLATERAL AND (V) GRANTING ADEQUATE PROTECTION

Upon the motion ("Motion") [Docket No. xxx] filed by CS Mining, LLC, as debtor and debtor in possession (the "Debtor") in the above captioned chapter 11 case (the "Chapter 11 Case") requesting entry of a final order (this "Tailings Financing Order"), pursuant to sections

105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), 365 and 507 of title 11 of the United States Code (11 U.S.C. §§101 *et seq.* as amended, the "Bankruptcy Code"), and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Utah (as amended, the "Local Rules"), *inter alia* (a) authorizing the Debtor to enter into an additional $2,650,000 secured superpriority debtor-in-possession financing facility (the "Tailings DIP Facility") pursuant to and in accordance with the Tailings Secured Superpriority Debtor in Possession Credit and Security Agreement in the form attached hereto as **Exhibit A** (as amended, modified, or supplemented in accordance with its terms and the provisions of this Financing Order, the "Tailings DIP Credit Agreement") between the Debtor, as borrower, and the lenders party thereto (the "Tailings DIP Lenders"),[1] the other Tailings DIP Facility Documents (as defined below), the Tailings Budget (as defined below) and the Financing Order (as defined below), (b) authorizing the Debtor to use Cash Collateral (as defined below) pursuant to and in accordance with the Tailings Budget and the Financing Order, (c) granting the Tailings DIP Lenders a security interest in and liens on the DIP Collateral (as defined below) on a *pari passu* basis with the lenders under the superpriority debtor-in-possession financing facility in the amount of $7,675,000 approved by final Order of the Court entered October 11, 2016 (the "Existing DIP Lenders")[2] and a superpriority administrative expense claim on a *pari passu* basis with the Existing DIP Lenders, to the extent and as provided in this Financing Order and the Tailings DIP Facility Documents, to secure the Tailings DIP

[1] The Tailings DIP Lenders are: Wellington Financing Partners, LLC ("Wellington"); St. Cloud Capital Partners II, L.P. ("St. Cloud") and Oxbow Carbon, LLC (""Oxbow").

[2] The Existing DIP Lenders are Wellington, Broadbill Partners, L.P. ("Broadbill") and St. Cloud.

Obligations (as defined below), (d) granting certain adequate protection to the Prepetition Liens,[3] and (e) granting related relief; and the Bankruptcy Court having found that the relief requested in the Motion is in the best interest of the Debtor, its estate, its creditors and other parties in interest; and the Bankruptcy Court: having reviewed the Motion; having heard the statements in support of the relief requested therein at hearing before the Bankruptcy Court on _____, 2016 (the "Final Hearing"); and having determined that the legal and factual bases set forth in the Motion, and as articulated at the Final Hearing before the Bankruptcy Court adequately establish just cause for the relief granted herein; and upon all of the proceedings and record before the Bankruptcy Court; and after due deliberation and sufficient cause appearing therefore, it is HEREBY FOUND AND CONCLUDED THAT:[4]

A. Commencement of Chapter 11 Case. On June 2, 2016 (the "Petition Date"), an involuntary petition (the "Involuntary Petition," Docket No. 1) was filed against the Debtor in the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court"), with R.J. Bayer Professional Geologist, LLC; Mineral Advisory Group, LLC; Rollins Construction & Trucking, LLC; Rollins Machine, Inc.; Oxbow Sulphur, Inc. and Brahma Group, Inc. initially or eventually joining in the Involuntary Petition (collectively, the "Petitioning Creditors") . On August 4, 2016 (the "Response Date"), the Debtor consented to entry of an order for relief under Chapter 11, with unanimous written consent of the directors and members. The Debtor is

[3] Holders of the Prepetition Liens are Waterloo Street Limited ("Waterloo"), David J. Richards, LLC d/b/a Western US Mineral Investors LLC ("WUMI"), and Sky Mineral Partners, LLC ("SMP").

[4] The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

continuing to operate its business and manage its property as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On August 11, 2016, an official committee of unsecured creditors (the "Committee") was appointed in the Chapter 11 Case.

B. Jurisdiction and Venue. The Bankruptcy Court has jurisdiction over the Chapter 11 Case, the Motion and the parties and property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Bankruptcy Court may enter this Financing Order as a final order. Venue of this Chapter 11 Case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the Motion and granted in this Financing Order are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Local Rule 4001-2.

C. Interim Financing Order. On August 9, 2016, the Bankruptcy Court entered the Interim Financing Order (the "Interim Financing Order") [Docket No. 162], approving an interim debtor in possession financing (the "Interim DIP Facility") proposed by Waterloo, Wellington, and Broadbill (collectively the "Interim DIP Lenders") on an interim basis, as outlined in the term sheet attached as Exhibit A to the Interim Financing Order. Pursuant to the Interim Financing Order, the Debtor was approved to receive an initial advance of $2,675,000 of the total authorized secured superpriority debtor in possession financing facility of $7,675,000. Wellington funded $1,535,274.64, Broadbill funded $139,725.36 and Waterloo funded $1,000,000 to the Debtor pursuant to the Interim Financing Order.

D. First Extension of Interim Financing. The Interim DIP Lenders were unable to agree on the form or terms of a final credit agreement related to the proposed DIP Facility. As a

result, by stipulated agreement among the Interim DIP Lenders, the Debtor and the Committee, and after hearing before the Bankruptcy Court on September 8, 2016, the Bankruptcy Court entered the Order approving the First Extension to Interim DIP Financing (the "First Extension Interim Order") which extended the Interim DIP Facility through September 23, 2016 and increased the borrowing base to the Debtor under the Interim DIP Facility from $2,675,000 to $3,675,000. Wellington funded an additional $467,637.32 to the Debtor pursuant to the First Extension Interim Order, while Broadbill funded an additional $532,362.68 to the Debtor pursuant to the First Extension Interim Order. As a result of the additional funding, Wellington and Broadbill funded a combined total of $2,675,000 (with Wellington funding $2,002,911.96 and Broadbill funding $672,088.04) to the Debtor, while Waterloo has funded $1,000,000.

E. Second Extension of Interim DIP Financing. The Interim DIP Lenders remained unable to agree on the form or terms of a final credit agreement related to the DIP Facility. As a result, on September 16, 2016, the Bankruptcy Court, by stipulated agreement among the Debtor, the Interim DIP Lenders and the Committee, entered the Order approving a Second Extension to Interim Financing (the "Second Extension Interim Order") which extended the Interim DIP Facility through September 30, 2016 on the terms and conditions set forth in the Interim Order and First and Second Extension Interim Orders (together, the "Interim Financing Orders").

F. Existing DIP Credit Facility. The Interim DIP Lenders were not been able to agree on the form or terms of the documents relating to the proposed DIP facility. As a result, the Existing DIP Lenders submitted an alternative secured superpriority debtor-in-possession financing facility in the amount of $7,675,000 (the "Existing DIP Credit Facility").

G. Final DIP Financing Order. On October 11, 2016, the Bankruptcy Court entered a final Order (the "Final DIP Financing Order") [Docket No. 352] approving the Existing DIP Financing Facility. Pursuant to the Final DIP Financing Order, the Debtor was approved to borrow $7,675,000, subject to increase in amount for payment of interest and any other allowed costs related to the Interim Financing Orders. Proceeds of the Existing DIP Credit Facility were used to repay (or with respect to the Existing DIP Lenders, to roll over), obligations under the Interim DIP Facility in full. Wellington funded $4,909,857.83 (either through new moneys or amounts rolled over), Broadbill funded $2,513,629.99 (either through new moneys or amounts rolled over), and St. Cloud funded $500,000.

H. Tailings DIP Financing. The proposed Tailings DIP Lenders submitted an additional DIP financing proposal (the "Tailings DIP Financing") to the Debtor. The Tailings DIP Financing has been reviewed by the Debtors' chief restructuring officers (the "CROs") and the Debtor, who have agreed to submit the Tailings DIP Financing for approval by the Bankruptcy Court. The Tailings DIP Financing is in the amount of up to $2,650,000 and is in addition to the Existing DIP Credit Facility. The Debtor has filed a motion to amend the Existing DIP Credit Facility to permit the Existing DIP Lenders and the Tailings DIP Lenders to share liens in the Debtor's assets *pari passu,* to modify the Maturity Date, Exit Milestones (both as defined in the Existing DIP Credit Facility), and other changes necessitated by the Tailings DIP Financing to ensure the consistency of the Existing DIP Credit Facility and Tailings DIP Financing.

I. Notice. Notice of Final Hearing and the relief requested in the Motion has been provided by the Debtor by facsimile, telecopy, electronic mail, overnight courier and/or hand

delivery to the following parties and/or their respective counsel (collectively the "Notice Parties"): (i) the Interim DIP Lenders; (ii) the Existing DIP Lenders; (ii) the Tailings DIP Lenders; (iv) the Office of the United States Trustee; (v) the Debtor's known prepetition secured lenders; (vi) the Debtor's thirty (30) largest unsecured creditors; (vii) counsel to the Official Committee of Unsecured Creditors; and (viii) all parties who have filed a notice of appearance pursuant to Bankruptcy Rule 2002 in this case. The Motion has attached to it the form of the proposed Tailings DIP Credit Agreement.

J. Tailings DIP Financing. The Tailings DIP Financing is a secured superpriority debtor in possession financing facility in the aggregate principal amount of up to $2,650,000. Subject to approval of the DIP Fees as set forth in Paragraph 4(b) hereof, the Tailings DIP Financing shall be funded upon the entry of the Financing Order, subject to satisfaction of the conditions in the Tailings DIP Financing Documents (as defined below). Of the total amount, Wellington will fund $300,000 plus $250,000 of any additional Advance (as defined in the Tailings DIP Credit Agreement) if made, St. Cloud will fund $100,000 of any additional Advance, and Oxbow will fund $2,000,000 subject to certain conditions as set forth in the Tailings DIP Credit Agreement. The Tailings DIP Financing and the other obligations under the Tailings DIP Financing Documents (as defined below), including, without limitation, principal, interest, expenses, the DIP Fees (as defined below) and the other obligations due from time to time by the Debtor pursuant to the Tailings DIP Financing Documents shall be referred to as the "Tailings DIP Obligations."

K. Use of Cash Collateral and Proceeds of the Tailings DIP Financing, Collateral and Prepetition Collateral. All Cash Collateral, all proceeds of the Prepetition Collateral and the

Collateral (each defined below), including proceeds realized from a sale or disposition thereof, or from payment thereon, and all proceeds of the Tailings DIP Financing (net of any amounts used to pay fees, costs, and expenses payable under the Interim Order or this Financing Order) shall be used and/or applied in accordance with the terms and conditions of this Financing Order, the Tailings Budget, and the other Tailings DIP Financing Documents, for the types of expenditures in the Tailings Budget and for no other purpose.

L. The Tailings DIP Financing will Preserve the Value of the Prepetition Collateral. Absent access to the Tailings DIP Financing and the use of the Cash Collateral[5] in accordance with this Financing Order, the value of the Prepetition Collateral (as defined below) would be severely and irreparably impaired. Accordingly, access to the Tailings DIP Financing and the use of the Cash Collateral will preserve, and ultimately enhance, the value of the Prepetition Collateral.

M. No Credit Available on More Favorable Terms. The Debtor has been unable to obtain on more favorable terms and conditions than those provided in this Financing Order (a) adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense, (b) credit for money borrowed with priority over any or all administrative expenses of the kind specific in section 503(b) or 507(b) of the Bankruptcy Code, (c) credit for money borrowed secured by a lien on property of the estate that is not otherwise subject to a lien, or (d) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien. The Debtor is unable to obtain credit for borrowed money

[5] "Cash Collateral" shall have the meaning assigned to the term "cash collateral" under section 363(a) of the Bankruptcy Code and covers all "cash collateral" that constitutes Prepetition Collateral subject to the Prepetition Liens (as each of these terms are defined below).

without granting the DIP Liens (defined below) and the DIP Superpriority Claims (defined below) to the Tailings DIP Lenders.

N. Terms of Tailings DIP Financing are Fair and Reasonable. The Tailings DIP Lenders have indicated a willingness to provide the Tailings DIP Financing in accordance with the Tailings DIP Credit Agreement and the other Tailings DIP Financing Documents solely on the terms and conditions set forth in this Financing Order and the Tailings DIP Financing Documents, including and subject to (i) approval of this Financing Order and (ii) findings by the Bankruptcy Court that such financing is essential to the Debtor's estate, that the Tailings DIP Lenders are good faith financiers, and that the Tailings DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to and in connection with this Tailings Financing Order and the DIP Liens), will not be affected by any subsequent reversal, modification, vacatur or amendment of, as the case may be, this Financing Order or any other order, as provided in section 364(e) of the Bankruptcy Code. The terms of the Tailings DIP Financing as set forth in the Tailings DIP Credit Agreement are fair and reasonable and reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are the best available under the circumstances.

O. Arm's Length and Good Faith Negotiation. The Debtor and the Tailings DIP Lenders have negotiated the terms and conditions of the Tailings DIP Financing, the Tailings DIP Financing Documents and this Financing Order in good faith and at arm's length, and any credit extended and loans made pursuant to this Financing Order shall be, and hereby are, deemed to have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and the Tailings DIP Lenders shall be entitled

to the full protection of section 364(e) of the Bankruptcy Code in the event that this Financing Order or any provision thereof is vacated, reversed, or modified, whether on appeal or otherwise.

P. The Prepetition Indebtedness. The following, with a full reservation of rights, defenses, causes of action, claims and challenges by or against the Debtor, any Committee appointed in this Chapter 11 Case, the Debtor's creditors or parties in interest in this case, including, without limitation, the Tailings DIP Lenders, as to the nature, extent, validity or priority of same, sets forth the Debtor's material indebtedness as of the Petition Date:

Q. Waterloo Secured Loan. On August 12, 2014, Noble Americas Corp. ("Noble") entered into a loan and security agreement with the Debtor pursuant to which Noble extended a loan with a full facility principal amount of $30 million (the "Waterloo Loan," and together with all other documents evidencing or granting collateral to secure the Waterloo Loan, all of foregoing, as the same may have been amended, restated, supplemented or other otherwise modified to date, collectively, the "Waterloo Loan Documents"). Under the terms of the Waterloo Loan, CS Mining granted Noble a security interest in certain of its assets. All obligations of the Debtor arising under the Waterloo Loan Documents, including all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including any and all reasonable attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable, reimbursable or otherwise payable under the Waterloo Loan Documents), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtor's obligations under the Waterloo Loan Documents shall hereinafter be referred to collectively as the "Waterloo Loan Obligations." On

December 31, 2015, Noble and Waterloo entered into a purchase and sale agreement whereby Noble sold the Waterloo Loan, and assigned all its rights and obligations arising from and under the Waterloo Loan Documents, to Waterloo.

R. WUMI Loan. On August 10, 2012, the Debtor and David J. Richards, LLC d/b/a Western US Mineral Investors LLC ("WUMI") entered into a security and loan agreement under which WUMI made advances over a number of months, eventually advancing $20,500,000 in principal amount to the Debtor (the "WUMI Loan"). Interest accrues under the WUMI Loan equal to the greater of Prime Index Rate plus 9.25% or 12.5%. The WUMI Loan as amended, restated, supplemented or otherwise modified and all other agreements, documents and instruments executed and/or delivered to or in favor of WUMI in connection with the WUMI Loan, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto (all the foregoing, together with the WUMI Loan, as all of the same have been supplemented, modified, extended, renewed, restated and/or replaced to date, are referred to collectively as the "WUMI Loan Documents"). In connection with the WUMI Loan, the Debtor granted WUMI a security interest in all of its assets, with certain exclusions. All obligations arising under the WUMI Loan Documents including, without limitation, all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including any and all reasonable attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable, reimbursable or otherwise payable under the WUMI Loan Documents), of any kind or nature, whether or not evidenced by any note, agreement or other

instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtor's obligations under the WUMI Loan Documents shall hereinafter be referred to collectively as the "WUMI Loan Obligations."

S. SMP Loan Facility. As described in that Joint Modification Agreement between the Debtor and Sky Mineral Partners, LLC ("SMP") dated November 10, 2011 and the First Amendment to Joint Loan Modification Agreement dated August 12, 2014, as part of a sale of the Debtor's predecessor, SMP assumed the indebtedness owing to the Debtor's predecessor under which the Debtor would effectively be indebted to SMP in the amount of $24,024,356.66 (the "SMP Loan," and all other agreements, documents and instruments executed and/or delivered to or in favor of SMP in connection with the SMP Loan, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto (all the foregoing, together with the SMP Loan, as all of the same have been supplemented, modified, extended, renewed, restated and/or replaced to date, collectively, the "SMP Loan Documents")). The terms included a three percent (3%) interest rate and a maturity date of August 15, 2019. In connection with the SMP Loan, the Debtor granted SMP a security interest in all of its assets. All obligations arising under the SMP Loan Documents including, without limitation, all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including any and all reasonable attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable, reimbursable or otherwise payable under the SMP Loan Documents), of any kind or nature, whether or not evidenced by any note, agreement

or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtor's obligations under the SMP Loan Documents shall hereinafter be referred to collectively as the "SMP Loan Obligations"). Together, the Waterloo, WUMI, and SMP Loan Obligations are referred to as the "Prepetition Liens").

T. Other Liens. As of the Petition Date, the Debtor believes that the following additional liens noted immediately below (collectively, the "Other Prepetition Liens") were asserted against one or more of the Debtor's assets:

Creditor Name and Address	Description of Debtor's Property That is Subject to a Lien	Describe the Lien	Amount of Claim Do Not Deduct the Value of Collateral
Agate, Inc. P.O. Box 117 Scotsdale, AZ 85252	Phase II Project Assets	Mechanics Lien	$ 142,386.00
Beaver County Treasurer P.O. Box 432 Beaver, UT 84713	Property Tax	Tax Lien	$ 544,478.07
Brahma Group, Inc. 1132 South 500 West Salt Lake City, UT 84101	Phase II Project Assets	Mechanics Lien	$ 1,369,915.79
Caterpillar Financial Services Corporation 2120 West End Avenue Nashville, TN 37203	Cat 777 Haul Trucks	Purchase Money Security Interests	$ 1,335,477.80
Caterpillar Financial Services Corporation 2120 West End Avenue Nashville, TN 37203	Cat TL 12, Cat 349	Purchase Money Security Interests	$ 308,130.94
Ferguson Enterprises, Inc. 1422 South 4450 West Salt Lake City, UT 84104	Phase II Project Assets	Mechanics Lien	$ 55,905.20

International Lining Technology, Inc. (a Nevada Corp.) 850 Maestro Drive, Suite 101 Reno, NV 89511	Phase II Project Assets	Mechanics Lien	$ 156,969.00
J&M Steel Solutions LLC 894 West State Street Lehi, UT 84157	Phase II Project Assets	Mechanics Lien	$ 20,450.00
Komatusu Financial Lp 1701 West Golf Road Suite1-300 Rolling Meadows, IL 60008	Manitou Forklift, LK8 Forklift, RS519 Telehandler, S185 Skidsteer, Yale Forklift, GS2632 Scissorlift, 600AJ Boomlift	Purchase Money Security Interests	$ 94,714.45
Pipe Valve and Fitting Co. 2505 East 79th Avenue P.O. Box 5806 Denver, CO 80217	Phase II Project Assets	Mechanics Lien	$ 24,470.04
Schmueser & Associates, Inc. 1901 Railroad Avenue Rifle, CO 81650	Phase II Project Assets	Mechanics Lien	$ 310,531.99
SMA Surety, Inc. d/b/a Smith Manus, Lexon Insurance Company 2307 River Road Suite 200 Louisville, KY 40206	Cash Collateral	Surety Bond	$ 4,944,348.00
Thermo electron North America, LLC 770 Northport Parkway Suite 100 West Palm Beach, FL 33407	ARL 4460 Metals Analyzer	Purchase Money Security Interests	$ 77,365.91
Utah Independent Bank 195 North Main Beaver, UT 84713	2006 Ford F150	Equipment Loan	$ 4,144.57

Wells Fargo Equipment Finance 300 Tri-State International Suite 400 Lincolnshire, IL 60069	Cat P5000 forklift	Purchase Money Security Interests	$ 41,111.03

These Other Prepetition Liens are separate and distinct from the Prepetition Liens asserted by Waterloo, SMP and WUMI.

(1) Gap Funding. After the Petition Date, but prior to the Response Date, the Debtor borrowed an aggregate amount of $700,000 from Wellington and Broadbill pursuant to those certain promissory notes (i) $525,000 note from Wellington dated June 24, 2016, as replaced with amended and restated promissory from Wellington in the cumulative amount of $600,000, and subsequently replaced with amended and restated promissory note from Wellington in the cumulative amount of $625,000 on June 24, 2016 and (ii) $75,000 note from Broadbill dated June 24, 2016 (collectively, the "Gap Funding"). On August 10, 2016, $675,000 of the Interim DIP Loan was used to repay the Gap Funding, with postponement of the remaining $25,000 to be paid from sale proceeds at the demand of Waterloo.

(2) Intercreditor Agreement. On August 12, 2014, the Debtor, WUMI and Noble (prior to Waterloo's purchase of the Waterloo Loan) entered into that certain Intercreditor Agreement in connection with the Waterloo Loan (the "Intercreditor Agreement"). Pursuant to the Intercreditor Agreement, WUMI subordinated certain of its liens, security interests, mortgages and deeds of trust to Noble, while Noble acknowledged that any lien it may have, if any, or that it may acquire in certain other assets would be junior to those of WUMI. Thus, through the Intercreditor Agreement, WUMI and Noble established their relative priority in and to all of the Debtor's assets. Pursuant to the Intercreditor Agreement, the parties agreed that

Noble has a first priority security interest in the "Noble Priority Collateral," as set forth and defined in the Intercreditor Agreement, while WUMI has a first priority security interest in the "WUMI Priority Collateral," as set forth in the Intercreditor Agreement. By agreement, dated August 10, 2012, SMP agreed to subordinate its debt and lien rights to the debt of WUMI. On August 12, 2014, the Debtor, SMP and Noble entered into that certain Intercreditor and Subordination Agreement (the "SMP Intercreditor and Subordination Agreement") in connection with the Waterloo Loan. Through the SMP Intercreditor and Subordination Agreement, SMP subordinated all of its claims and liens under the SMP Loan Agreement to those claims and liens held by Noble. The "Prepetition Liens" secure the Waterloo Loan Obligations, the WUMI Loan Obligations and the SMP Loan Obligations, subject in all respects to the challenge rights set forth in in this Financing Order., are collectively referred to as the "Prepetition Liens"). All of the Debtor's assets and property subject to the Prepetition Liens and Other Prepetittion shall be referred to as the "Prepetition Collateral."

(3) No Stipulations Relating to the Prepetition Secured Indebtedness. For the avoidance of doubt, nothing in this Financing Order shall be deemed as a stipulation by the Debtor or any other party as to the nature, extent, validity, or priority of the Prepetition Liens or Other Prepetition Liens, and any and all rights, defenses, causes of action, claims and challenges with respect to the Prepetition Liens and Other Prepetition Liens are hereby preserved to the fullest extent.

U. Adequate Protection.

(1) Holders of the Prepetition Liens shall be entitled to adequate protection of their interests in the Prepetition Collateral (including the Cash Collateral), as set forth in

Paragraph 15 below, in an amount equal to the aggregate diminution in value (if any) of the Prepetition Collateral resulting from the sale, lease or use by the Debtor of the Prepetition Collateral (including the Cash Collateral), and/or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code and/or the priming of their interests in the Prepetition Collateral (such diminution, the "Adequate Protection Obligations").

(2) As outlined in the Interim Financing Order, the terms of the Adequate Protection (as defined below) are fair and reasonable, reflect the Debtor's prudent exercise of business judgment and are sufficient to allow the Debtor's use of the Prepetition Collateral (including the Cash Collateral) and to permit the DIP Liens and the DIP Superpriority Claims granted in favor of the Tailings DIP Lenders to prime the Prepetition Liens to the extent set forth in this Financing Order and the Tailings DIP Financing Documents.

V. Section 552. In light of, as applicable, the subordination of the Prepetition Liens and the Adequate Protection Liens (as defined below) to the DIP Liens and the Carve-Out, and the granting of the DIP Liens on the DIP Collateral and the Prepetition Collateral, the holders of Prepetition Liens (subject to paragraph O) above) are each entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply.

Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before the Bankruptcy Court, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. Motion Granted. The Motion is granted as set forth in this Financing Order. Any objections to the Motion and Supplement that have not previously been resolved or withdrawn

are hereby overruled. This Financing Order shall become effective immediately upon its entry. To the extent that the terms of any of the Tailings DIP Credit Agreement differ from the terms of this Financing Order, this Financing Order shall control.

2. Authority to Enter into Tailings DIP Financing.

(a) The Debtor's entry into the Tailings DIP Financing is hereby approved. The Debtor is also authorized to enter into such additional documents, instruments and agreements delivered or executed from time to time in connection with the Tailings DIP Financing (such agreements, together with the Tailings DIP Credit Agreement and this Financing Order, the "Tailings DIP Financing Documents").

(b) To the extent not specifically provided in this Financing Order, the Debtor is authorized to incur and perform the obligations arising under, and to otherwise comply with, the Tailings DIP Financing Documents and this Financing Order.

(c) Following the execution of such documents (regardless of whether it was actual execution or deemed execution provided under this Financing Order), and effective upon entry of this Financing Order, each of the Tailings DIP Financing Documents shall constitute valid and binding agreements, enforceable against the Debtor, in accordance with the terms of the Tailings DIP Financing Documents.

3. Authority to Borrow, Use Funds and Implement Limited Operations Plan.

(a) The Debtor is hereby authorized to borrow the amounts under the Tailings DIP Financing, pursuant to the terms of this Financing Order and the Tailings DIP Credit Agreement, including without limitation, the Tailings Budget (defined below).

(b) The Debtor is hereby authorized to use the funds under the Tailings DIP Financing and the Cash Collateral pursuant to the Tailings DIP Financing Documents, and in

accordance with the Tailings Budget attached to the Tailings DIP Credit Agreement, including any variances contained in such Tailings Budget that are permitted under the Tailings DIP Credit Agreement (as the same may be amended, supplemented, and/or updated in accordance with the Tailings DIP Documents, the "Tailings Budget"); provided however, in the event that an amount is not utilized it may be carried forward and used in expenses under the Tailings Budget in a subsequent week or period within or outside line items, subject to the Permitted Variance (as defined in the Tailings DIP Credit Agreement), which is fifteen percent (15%) on a cumulative basis under the Tailings DIP Credit Agreement. For the avoidance of doubt, the Tailings Budget is attached hereto as **Exhibit B**.

(c) Any and all amounts advanced under the DIP Superpriority Claim shall be utilized only (i) to pay postpetition operating and working capital requirements of the Debtor in accordance with the Tailings Budget;; and (iv) to pay Tailings Budgeted costs and expenses incurred in administering the Bankruptcy Case, including, without limitation, payment of transaction costs, fees, and expenses incurred in connection with the Tailings DIP Financing Facility and Exit Milestones (as defined below).

4. Limitation on Use of Funds.

(a) No proceeds of the Tailings DIP Financing shall be used by any party or Professional to assert causes of action against any Tailings DIP Lender with respect to such Tailings DIP Lender's rights and remedies hereunder and under the other Tailings DIP Documents. Nothing in this Financing Order shall limit the rights and remedies of the Debtor or the Committee, to the extent it has standing, to challenge the Prepetition Liens and the Other Prepetition Liens.

(b) DIP Fees. The Debtor is hereby authorized and directed to pay all other fees, expenses and other amounts payable under the Tailings DIP Documents, including, without limitation, a facility fee equal to 0.75% of the funded amount of the amount borrowed under the Tailings DIP Financing, all recording fees, fees and expenses of the Tailings DIP Lenders' bankruptcy counsel, and all of the other fees and all out-of-pocket costs and expenses of the Tailings DIP Lenders (all the foregoing, the "Tailings DIP Lenders' Fees"), provided, however, that the Tailings DIP Lenders' Fees shall be subject to a cap of $200,000, not including the Third-Party Advisor's Fees or any fees incurred by the Tailings DIP Lenders in a successful foreclosure, if they are required to foreclose on the DIP Collateral (the "Tailings DIP Lenders' Fee Cap"), and be payable on demand out of the first proceeds on the Maturity Date. With regards to Tailings DIP Lenders' Fees relating to the fees and expenses of counsel to the Tailings DIP Lenders, such counsel shall provide to counsel for the Debtor copies of all fees and expenses of such counsel incurred through the date of the Final Hearing, and thereafter, monthly, with the Debtor to object thereto within fourteen days of such statements. Any objection to the payment of such fees and expenses shall be made only on the basis of "reasonableness," and shall specify in writing the amount of the contested fees and expenses and detailed basis for such objection. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the Debtor and the issuer of the invoice, either party may submit such dispute to the Bankruptcy Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. The Bankruptcy Court shall resolve any dispute as to the reasonableness of any fees and expenses. The fees of the Third-Party Advisor to be retained by the Tailings DIP Lenders are not included as part of the Tailings DIP Lenders' Fee Cap. None of the Tailings DIP Lenders' Fees shall be subject to Bankruptcy Court approval

or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Bankruptcy Court. The Tailings DIP Lenders' Fees plus the Third-Party Advisor's Fees shall constitute Tailings DIP Obligations and the repayment thereof shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the Tailings DIP Obligations under this Financing Order and the Tailings DIP Documents. The Tailings DIP Lenders' Fees shall be payable on the Maturity Date, unless the Tailings DIP Financing is refinanced prior to the Maturity Date with a facility in which Tailings DIP Lenders provide at least 50% of the refinancing facility, in which event the Tailings DIP Lenders' Fees will be paid at the time the Tailings DIP Obligations are due.

(c) Tailings DIP Obligations. The Tailings DIP Obligations are (a) legal, valid, binding and enforceable against the Debtor, each in accordance with its terms, (b) not subject to any recoupment, rejection, avoidance, reductions, recharacterization, setoff, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses or any other claims, causes of action or challenges of any nature under the Bankruptcy Code, any other applicable law or regulation or otherwise, and (c) shall constitute "allowed claims" within the meaning of section 502 of the Bankruptcy Code.

(d) DIP Collateral. As used herein, "DIP Collateral" shall mean, all now owned or hereafter acquired assets and property, whether real or personal, of the Debtor, including, without limitation, all assets and property owned by the Debtor, and all cash, any investment of such cash, inventory, accounts receivable, including any intercompany accounts (and all rights associated therewith), other rights to payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper, goods, investment property, inventory, deposit accounts, and in each case all amounts on deposit therein from time to time, equity

interests, securities accounts, securities entitlements, securities, commercial tort claims, books, records, plants, equipment, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property, fixtures, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery, and equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, and all proceeds, rents, profits, products, and substitutions, if any, of any of the foregoing. For the avoidance of doubt, the DIP Collateral shall not include actions for preferences, fraudulent conveyances, and other avoidance power claims under sections 544, 545, 547, 548, 550 and 533 of the Bankruptcy Code.

(e) DIP Liens. Effective immediately upon the entry of this Financing Order, and subject to the Carve-Out, as set forth more fully in this Financing Order, the Tailings DIP Lenders are hereby granted the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable, and non-avoidable (all liens and security interests granted to the Lenders pursuant to this Financing Order, and the Tailings DIP Documents, the "DIP Liens"), which the Tailings DIP Lenders shall hold *pari passu* with the Existing DIP Lenders;

(f) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected, and non-avoidable first priority liens on and security interests in all DIP Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date;

(g) pursuant to section 364(c)(3) of the Bankruptcy Code, valid, enforceable, perfected, and non-avoidable liens on and security interests in all DIP Collateral, ranked junior in priority to any valid pre-existing lien on the Petition Date, excluding the Prepetition Liens, but

solely to the extent that such liens and security interests of third parties were in each case were valid, enforceable, perfected and non-avoidable as of the Petition Date, and were permitted by the terms of the Waterloo Loan Documents, WUMI Loan Documents or SMP Loan Documents. **For the avoidance of doubt, the DIP Liens granted under this Financing Order shall not prime or be superior to the liens or security interests of the valid, enforceable, perfected, and non-avoidable liens or security interests of the Other Prepetition Liens**;

(h) pursuant to section 364(d) of the Bankruptcy Code, valid, enforceable, perfected, and non-avoidable superpriority liens on and security interests on all property of Borrower that is subject to the valid, perfected and unavoidable Prepetition Liens of Waterloo, WUMI and SMP, in each case whether now owned or hereafter acquired or arising and wherever located, including Borrower's right, title and interest in and to the following, whether now owned or hereafter acquired or arising and wherever located (the "DIP Liens"), which DIP Liens and security interest shall be senior to and prime the Prepetition Liens and the liens of third parties which are *pari passu* with or junior and subject to the Prepetition Liens:

i. all of Borrower's right, title and interest in all owned or leased real properties, including all minerals and other substances of value that may be extracted from such properties (including copper and copper ore) and all copper cathode sheets and other products processed or obtained therefrom;

ii. all of Borrower's accounts;

iii. all of Borrower's books and records (including all of its records indicating, summarizing or evidencing its assets (including the Collateral) or liabilities, all of its records relating to its business operations or financial condition);

iv. all of Borrower's chattel paper and, in any event, including tangible chattel paper and electronic chattel paper;

v. all of Borrower's right, title and interest with respect to any deposit account;

vi. all of Borrower's equipment and fixtures;

vii. all of Borrower's inventory;

viii. all of Borrower's investment property;

ix. all of Borrower's letter of credit rights, instruments, promissory notes, drafts and documents;

x. all of Borrower's general intangibles, including intellectual property;

xi. all of Borrower's right, title and interest in respect of supporting obligations, including letters of credit and guaranties issued in support of accounts, chattel paper, documents, general intangibles, instruments, or investment property;

xii. all of Borrower's money, cash, cash equivalents, securities and other property held directly or indirectly by Tailings DIP Lenders; and

xiii. all of the proceeds, products, accessions or substitutions, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering or relating to any of the foregoing.

For the avoidance of doubt, the DIP Liens shall not prime the valid, perfected and unavoidable Other Prepetition Liens.

(i) upon entry of this Financing Order, whether or not the Tailings DIP Lenders take any action to validate, perfect, or confirm perfection, the DIP Liens shall be deemed valid, perfected, allowed, enforceable, nonavoidable, and not subject to challenge, dispute, avoidance, impairment, or subordination (other than with respect to the Carve-Out or as set forth in this Financing Order), at the time and as of the date of entry of this Financing Order;

(j) the Tailings DIP Lenders are hereby authorized, but not required, to file or record, in any jurisdiction, financing statements, intellectual property filings, mortgages, deeds of trust, notices of lien, or similar instruments, or take any other action in order to validate and perfect the DIP Liens. Upon the request of the Tailings DIP Lenders, the Debtor, without any further consent of any party, are authorized to take, execute and deliver such instruments (in each

case without representation or warranty of any kind except as set forth in the DIP Superpriority Claim Loan Documents) to enable the Tailings DIP Lenders to validate, perfect, preserve, and enforce the DIP Liens consistent with the terms of this Financing Order. A certified copy of this Financing Order may be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, deeds of trust, notices of lien, or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Financing Order for filing and recording;

(k) the Debtor is authorized and directed, as soon as reasonably practicable following entry of this Financing Order, to add the Tailings DIP Lenders as additional insureds and loss payees on each insurance policy maintained by the Debtor which in any way relates to the DIP Collateral and shall, subject to the terms of this Financing Order, distribute any proceeds recovered or received in accordance with the terms of this Financing Order; and

(l) absent the written consent of the Tailings DIP Lenders, and subject to applicable law, the Debtor shall not sell, transfer, or otherwise dispose of any of the Debtor's assets valued in excess of $50,000 (excluding sales of product in the ordinary course);

(m) the Debtor will not, without the Tailings DIP Lenders' consent (in their sole discretion), propose, file, consent to, cooperate with, solicit votes with respect to, acquiesce to, or support any chapter 11 plan or debtor in possession financing unless such plan or financing would, on the date of its effectiveness, indefeasibly pay in full in cash all Tailings DIP Obligations.

(n) the Debtor will not directly or indirectly take any action that is inconsistent with, or that would unreasonably delay or impede approval of, any of the Tailings DIP Documents or the DIP Superpriority Claim, including, without limitation, directly or

indirectly soliciting, encouraging, initiating, joining, and/or supporting any offer or proposal from, entering into any agreement with, and/or engaging in any discussions or negotiations with, any person concerning any actual or proposed transaction involving any or all of (A) another financial and/or corporate restructuring of the Debtor (other than a restructuring that would indefeasibly pay in full in cash all Tailings DIP Obligations), (B) another debtor in possession financing facility (other than a financing that is used at its funding to indefeasibly pay in full in cash all Tailings DIP Obligations), or (C) a merger, consolidation, business combination, liquidation, recapitalization, refinancing, sale of substantially all assets, or similar transaction involving the Debtor.

(o) DIP Superpriority Claims. Subject and subordinate to the Carve-Out, pursuant to sections 364(c)(1), 503 and 507 of the Bankruptcy Code, all of the Tailings DIP Obligations shall constitute allowed superpriority administrative expense claims against the Debtor (the "DIP Superpriority Claims") with priority over any and all administrative expenses of the Debtor (including administrative expenses constituting Adequate Protection), whether heretofore or hereafter incurred.

5. Credit Bid Protection. Subject to the terms and conditions set forth in this Financing Order, each Tailings DIP Lender shall have the right to credit bid up to its pro rata share of the Tailings DIP Obligations in connection with any sale of all or substantially all of the Debtor's assets and property occurring pursuant to section 363 of the Bankruptcy Code or, including, without limitation, any sale occurring as part of any plan of reorganization subject to confirmation under section 1129(b) of the Bankruptcy Code or by a trustee under section 725 of the Bankruptcy Code; provided that sufficient cash funds are provided to the estate in connection

with any credit bid to pay the Carve-Out, all Tailings DIP Lender's Fees and Third-Party Advisor Fees and all outstanding administrative claims and the Completion Fee of the CROs.

6. Monitoring of Collateral. The Tailings DIP Lenders and Waterloo, and their respective consultants and advisors, shall, upon execution of a Non-Disclosure Agreement, be given reasonable access to the Debtor's books, records, assets and properties during normal business hours for purposes of monitoring the Debtor's business and the value of the DIP Collateral, and shall be permitted to conduct, at their discretion and own cost and expense, field audits, collateral examination, and environmental testing in respect of the DIP Collateral, in each case, in accordance with this Financing Order. In addition, the Debtor is authorized to pay up to $10,000 per month from the Tailings Budget for the Lenders' Third-Party Advisor (as defined in the Tailings DIP Credit Agreement) and, in addition for a $100,000 monitoring fee of the Third-Party Advisor payable *pari passu* from the proceeds of a sale of the Debtor's assets, to monitor the Resource Development Plan (as defined in the Tailings DIP Credit Agreement) and evaluate other value-enhancing initiatives.

7. Financial Reporting. The Debtor shall deliver to the Tailings DIP Lenders and Waterloo the following:

(a) the monthly financial reporting given to the U.S. Trustee and all of the financial reporting set forth in the Tailings DIP Credit Agreement;

(b) by no later than Friday of each week (commencing with the first Friday following the Closing Date) with a weekly variance report showing actual receipts and disbursements from operations on a weekly basis and comparing actual results (including estimated accrued but not yet billed fees and expenses for all Professionals) compared to the line

items in the most recently-delivered Tailings Budget for all prior periods in form and substance satisfactory to Lenders;

(c) as soon as practicable, but in any event within one (1) Business Day after the Debtor becomes aware of the existence of any Event of Default, written notice specifying the nature of such Event of Default, including the anticipated effect thereof;

(d) promptly, all pleadings, motions, applications, financial information and other papers and documents filed by the Debtor including the monthly operating reports required by the Bankruptcy Court, which requirement is satisfied through posting of those documents on the website maintained by Epiq Bankruptcy Solutions, LLC ("Epiq") in this case;

(e) promptly, all written reports given by the Debtor to the U.S. Trustee or to the Committee in the Debtor's case; and

(f) such other information with respect to the Debtor's business, operations, financial condition, use of Advances, collection of accounts receivable or otherwise, as may be reasonably requested by the Tailings DIP Lenders.

8. Carve-Out. Subject to the terms and conditions contained in this paragraph, the DIP Liens, the superpriority claims granted to the Tailings DIP Lenders pursuant to this Financing Order, and the Adequate Protection Liens shall be subject to the following: (i) unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (ii) allowed, accrued, but unpaid fees and expenses of any trustee under section 726(b) of the Bankruptcy Code, not to exceed $25,000 in the aggregate; (iii) fees and expenses for any Professional retained pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code by the Debtor or the Committee (the "Professional Fees") incurred at any time on or prior to the calendar day immediately prior to the date of the delivery of a Carve-Out Notice (as defined

herein) to the extent such Professional Fees are consistent with cash payments provided for and specified within the Tailings Budget in effect at the time such fees and expenses are incurred and such fees and expenses are allowed by the Bankruptcy Court; and (iv) allowed, accrued, but unpaid Professional Fees of Borrower and the Committee after the delivery of a Carve-Out Notice, not to exceed $100,000 in the aggregate, to the extent such Professional Fees are consistent with the Tailings Budget and such Professional Fees are allowed and approved by the Bankruptcy Court (the fees and expenses described in subsections (i)-(iv), collectively, the "Carve-Out"). The foregoing shall not affect the right of the Debtor, the Tailings DIP Lenders, the Committee, the U.S. Trustee or other parties in interest to object to the allowance and payment of any amounts covered by the Carve-Out. Payment of any portion of the Carve-Out shall not, and shall not be deemed to, (A) reduce any of the Tailings DIP Obligations or the Prepetition Obligations owed by the Debtor or (B) subordinate, modify, alter or otherwise affect any of the DIP Liens or the Prepetition Liens. The "Carve-Out Notice" shall mean a written notice delivered by the Tailings DIP Lenders to the Debtor, counsel to the Debtor, counsel to the Committee, and the United States Trustee, which notice may be delivered after an Event of Default has occurred and is continuing (and specifying the Event of Default which has occurred), after giving effect to any applicable grace periods.

9. Cash Management. Subject to the Tailings Budget, the Debtor shall maintain a cash management system substantially identical to the cash management system that they maintained immediately prior to the Petition Date, provided, however, the Debtor may open, in addition to a DIP operating account, separate checking accounts for: (i) the payment of any utility deposits that may be established by order of this Bankruptcy Court; and (ii) the payment of all fees and expenses subject to the provisions related to payment of Professional fees.

10. Disposition of Collateral. Absent the written consent of the Tailings DIP Lenders, the Debtor shall not sell, transfer or otherwise dispose of any of the Debtor's assets in excess of $50,000 (excluding sales in the ordinary course) that is not in accordance with the Exit Milestones set forth in the Tailings DIP Credit Agreement.

11. Exit Milestones. In accordance with the terms of the Tailings DIP Credit Agreement, the Debtor is required to comply with the following milestones (the "Exit Milestones") with respect to the sale of all or substantially all of its assets consistent with the following milestones: (a) on or before March 1, 2017, Borrower will recommence a formal sale process by filing an appropriate motion for approval of an asset sale or by filing a plan of reorganization which provides for such an asset sale; (b) f the Debtor seeks to sell its assets outside of a plan of reorganization, then on or before May 31, 2017, the Bankruptcy Court will approve the proposed sale of assets and such sale shall close on or before June 30, 2017; (c) if the Debtor seeks to sell its assets as part of a plan of reorganization, or otherwise seeks to restructure its debt obligations through a plan of reorganization, the Bankruptcy Court will approve such plan of reorganization on or before June 30, 2017. After consultation with the Tailings DIP Lenders, the foregoing Exit Milestones may be extended upon the reasonable request of the Debtor's CROs for up to sixty (60) days if, in their business judgment, such an extension is necessary to maximize the value of the Debtor's assets and/or improve the prospects of the sale process and/or an alternative resolution such as a plan of reorganization, provided the Debtor has sufficient cash to operate during such additional 60-day period.

12. Adequate Protection of Prepetition Secured Parties. As adequate protection, holders of the, valid, enforceable, perfected and non-avoidable liens Prepetition Liens are hereby granted the following (collectively, "Adequate Protection"):

(a) Adequate Protection Liens. To the extent of, and in an aggregate amount equal to, the diminution in value of such interests, from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code, resulting from, among other things, the use, sale or lease by the Debtor of the Prepetition Collateral, the granting of the DIP Liens, the subordination of the Prepetition Liens and the imposition or enforcement of the automatic stay of section 362 of the Bankruptcy Code (collectively, "Diminution in Value"), holders of the Prepetition Liens shall have a valid and perfected replacement security interest and lien upon all of the DIP Collateral (the "Adequate Protection Liens"), subject to the terms of this Financing Order. The Adequate Protection Liens shall in all cases be subject to the Carve-Out, the Completion Fee of the CROs, the Tailings DIP Lenders' Fees and the Third-Party Advisor Fees.

(b) Adequate Protection Superpriority Claim. To the extent of the aggregate Diminution in Value, holders of valid, enforceable, perfected and non-avoidable liens Prepetition Liens shall have, subject to the payment of the Carve-Out, an allowed superpriority administrative claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior and subject to the superpriority administrative claims granted to the Tailings DIP Lenders by this Financing Order; provided, that the holders of the Prepetition Liens shall not receive or retain any payments, property, distribution or other amounts in respect of their superpriority claim unless and until the Tailings DIP Obligations and (without duplication) the superpriority claims of the Tailings DIP Lenders have indefeasibly been paid in full in cash.

13. Automatic Stay. Upon ten (10) business days' written notice to the Debtor, with copies to counsel for the Committee and the United States Trustee and without prejudice to the Debtor's ability to seek relief from this Bankruptcy Court prior to the expiration of the such period, without requiring further order from the Bankruptcy Court, the automatic stay provisions

of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit either the Tailings DIP Lenders to exercise, upon the occurrence and during the continuance of any Event of Default (as defined in the Tailings DIP Credit Agreement), all rights and remedies provided for in the Tailings DIP Documents, pursuant to and subject to the terms and conditions set forth therein and in this Financing Order. Upon receiving a written notice of default, the Debtor, the Committee and the U.S. Trustee shall be entitled to seek an expedited hearing with the Bankruptcy Court.

14. No Waiver. The failure of the Tailings DIP Lenders to seek relief or otherwise exercise their rights and remedies under this Financing Order or the Tailings DIP Documents or otherwise, as applicable, shall not constitute a waiver of any of the Tailings DIP Lenders' rights hereunder, thereunder, or otherwise.

15. Modification of the Tailings DIP Documents. The Tailings DIP Documents may be modified or amended without further order of the Bankruptcy Court so long as such modification or amendment is in writing and signed by each of the Tailings DIP Lenders and the Debtor and complies with, and is effectuated in accordance with, the Tailings DIP Credit Agreement.

16. Modification of Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362 is hereby modified and lifted to the extent necessary to effectuate the terms of this Financing Order and the Tailings DIP Documents.

17. Binding Effect. The provisions of this Financing Order shall be binding upon and inure to the benefit of the Tailings DIP Lenders, holders of Prepetition Liens and Other Prepetition Liens, the Debtor, and each of the foregoing parties' respective successors and assigns, including any trustee hereafter appointed for the estate of the Debtor, whether in this

Bankruptcy Case or in the event of the conversion of the Bankruptcy Case to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Financing Order.

18. Survival. The provisions of this Financing Order and any actions taken pursuant hereto shall survive (x) the entry of any order (a) confirming any plan of reorganization in this Bankruptcy Case (and, to the extent not satisfied in full, in cash, the Tailings DIP Obligations shall not be discharged by the entry of any such order, or pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor having hereby waived such discharge), (b) converting the Chapter 11 Case to a chapter 7 case, or (c) dismissing the Chapter 11 Case and (y) the repayment or refinancing of the Tailings DIP Obligations. Unless otherwise provided in the Tailings DIP Documents, the DIP Liens, the DIP Superpriority Claims granted to Tailings DIP Lenders pursuant to this Financing Order, and the Adequate Protection Liens shall continue in full force and effect notwithstanding the entry of any such order, and such claims and liens shall maintain their priority as provided by this Financing Order, the Tailings DIP Documents to the maximum extent permitted by law until all of the Tailings DIP Obligations and the Prepetition Obligations are indefeasibly paid in full, in cash, and discharged.

19. No Third Party Rights. Except as explicitly provided for herein, this Financing Order does not create any rights for the benefit of any party, creditor, equity holder or other entity other than the Lenders, the holders of Prepetition Liens or Other Prepetition Liens, and the Debtor, and their respective successors and assigns.

20. Subsequent Reversal. If any or all of the provisions of this Financing Order or the Tailings DIP Documents are hereafter modified, vacated, amended, or stayed by subsequent order of the Bankruptcy Court or any other court: (a) such modification, vacatur, amendment, or

stay shall not affect the validity of the Tailings DIP Obligations or the Adequate Protection Obligations or the validity, enforceability, or priority of the DIP Liens, the DIP Superpriority Claims pursuant to this Financing Order, and the Adequate Protection Liens or other protections authorized or created by this Financing Order or the Tailings DIP Documents; and (b) the Tailings DIP Obligations and the Adequate Protection Liens shall continue to be governed in all respects by the original provisions of this Financing Order and the Tailings DIP Documents, and the validity of any obligations, security interests, liens or other protections described in this paragraph shall be protected by section 364(e) of the Bankruptcy Code.

21. Effect of Dismissal of the Bankruptcy Case. If the Chapter 11 Case is dismissed, converted, or substantively consolidated, then neither the entry of this Financing Order nor the dismissal or conversion of the Chapter 11 Case shall affect the rights of the Tailings DIP Lenders and the Prepetition Secured Parties (as to Adequate Protection) under their respective documents or this Financing Order, and all of the respective rights and remedies thereunder of the Tailings DIP Lenders and the holders of the Prepetition Liens (as to Adequate Protection) shall remain in full force and effect as if the Chapter 11 Case had not been dismissed, converted or substantively consolidated. Notwithstanding the entry of an order dismissing the Chapter 11 Case at any time, (a) the DIP Liens and the DIP Superpriority Claims granted to and conferred pursuant to this Financing Order and the Tailings DIP Documents shall continue in full force and effect and shall maintain their priorities as provided in this Financing Order until all Tailings DIP Obligations shall have been paid and satisfied in full, (b) the Adequate Protection granted to and conferred upon the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Financing Order until the Adequate Protection Obligations have been satisfied, and (c) this shall retain jurisdiction, notwithstanding such dismissal, for the

purpose of enforcing the Liens, the superpriority claims, and the Adequate Protection Liens granted in this Financing Order and the Tailings DIP Documents. Any hearing on a motion to dismiss the Chapter 11 Case shall require at least ten (10) days' prior notice to counsel to the Tailings DIP Lenders.

22. Controlling Effect of Financing Order. To the extent any provision of this Financing Order conflicts with any provision of the Motion or any DIP Superpriority Claim Document, the provisions of this Financing Order shall control; to the extent not released in accordance with the terms of the Tailings DIP Credit Agreement.

23. Retention of Jurisdiction. Notwithstanding any provision in the Tailings DIP Documents, this Bankruptcy Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Financing Order, the DIP Superpriority Claim, or the Tailings DIP Documents.

24. Notice of the Financing Order. The Debtor shall promptly mail or fax copies of this Financing Order to the Notice Parties within three (3) business days of the date hereof.

*** * * * END OF ORDER * * * ***

EXHIBIT A

DIP CREDIT FACILITY

SECOND DEBTOR IN POSSESSION CREDIT AND SECURITY AGREEMENT

Dated as of December __, 2016

between

CS MINING, LLC
Debtor and Debtor-in-Possession,

as Borrower

and

WELLINGTON FINANCING PARTNERS, LLC,
ST. CLOUD CAPITAL PARTNERS, II, L.P.
OXBOW CARBON LLC

as DIP Lenders

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EXHIBITS AND SCHEDULES

This SECOND DEBTOR IN POSSESSION CREDIT AND SECURITY AGREEMENT ("Agreement") is entered into as of November ___, 2016, by and between CS MINING, LLC, a Delaware limited liability company, as debtor and debtor in possession ("Borrower" or "Debtor"), and WELLINGTON FINANCING PARTNERS, LLC, a Delaware limited liability company ("Wellington"), ST. CLOUD CAPITAL PARTNERS II. L.P. ("St. Cloud,") and OXBOW CARBON LLC, a Delaware limited liability company ("Oxbow,") and collectively with Wellington, and St. Cloud and each of their successors and assigns, "DIP Lenders"; each of Wellington, St. Cloud and Oxbow, together with its respective successors and assigns, a "DIP Lender"), and is in addition to that Debtor in Possession Credit and Security Agreement dated as of October __, 2016 (the "Replacement Credit Agreement").

RECITALS

A. On June 2, 2016 (the "Petition Date"), Case No. 16-24818 (the "Bankruptcy Case") was commenced against Borrower by the filing of an involuntary petition (the "Involuntary Petition") for relief against Borrower under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court").

B. On August 4, 2016 (the "Relief Date"), Borrower consented to the Involuntary Petition and an order for relief was entered by the Bankruptcy Court in the Bankruptcy Case.

C. Borrower continues to operate its business and manage its property as a debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

D. On August 8, 2016, Debtor filed the Motion for Interim and Final Orders (i) Authorizing the Debtor to Obtain Superpriority Secured Debtor-In-Possession Financing; (ii) Authorizing Debtor to Use Cash Collateral; (iii) Granting Adequate Protection to the Prepetition Secured Parties; (iv) Scheduling a Final Hearing and (v) Granting Related Relief (the "Original DIP Financing Motion") with the Bankruptcy Court pursuant to Bankruptcy Rules 2002, 4001 and 9014.

E. On August 9, 2016 the Bankruptcy Court entered the Interim Order Pursuant to Sections 105, 361, 362, 363, 364, 365 and 507 of the Bankruptcy Code (i) Authorizing Debtor to Obtain Superpriority Secured Debtor-In-Possession Financing, (ii) Authorizing Debtor to Use Cash Collateral, (iii) Granting Adequate Protection to the Prepetition Secured Parties, (iv) Scheduling a Final Hearing, and (v) Granting Related Relief (the "Interim Financing Order") wherein the Bankruptcy Court found, among other things, that the Debtor has an immediate and critical need to obtain up to the amount of the Interim DIP Loan and access to "cash collateral" as that term is used in section 363(a) of the Bankruptcy Code, including all "cash collateral" that constitutes Prepetition Collateral subject to the Prepetition Liens (as each of these terms are defined below) (collectively, the "Cash Collateral"). The Interim Financing Order approved by the Bankruptcy Court on an interim basis, involving approval of $2,675,000 of an approximately $7,675,000 priming, superpriority debtor-in-possession proposed facility to be made by Wellington, Broadbill and Waterloo Street Limited, a British Virgin Islands limited company ("Waterloo").

F. On September 7, 2016, the Bankruptcy Court entered the Order Approving Stipulation by and between Debtor, DIP Lenders and Committee Increasing the Interim DIP Loan and Extending Term of Interim Financing (the "Interim Financing Extension Order"). The Interim Financing Extension Order authorized Wellington and Broadbill to advance $500,000 of additional lending to Borrower under the Interim Financing Order and Wellington, Broadbill, and/or Waterloo to advance an additional $500,000 to Borrower under the Interim Financing Order as needed. On September 12, 2016, Wellington and Broadbill advanced a combined $1,000,000 to the Debtor pursuant to the Interim Financing Extension Order, with Wellington funding $467,637.32 and Broadbill $532,362.68.

G. As set forth more fully in the DIP Financing Motion (as defined below), Debtor requested, and Waterloo, Wellington and Broadbill agreed to advance, subject to mutually-acceptable detailed loan documents, a secured superpriority financing facility in the aggregate principal amount of $7,675,000 comprised of (i) a new money fully committed and funded multi draw term loan (the "Proposed Waterloo DIP Facility") in an aggregate principal amount of $3,675,000 (the "Interim DIP Loan") funded by Waterloo, Wellington and Broadbill on August 10, 2016, of which Waterloo advanced $1,000,000, Wellington advanced $2,002,911.96 and Broadbill advanced $672,088.04 on an interim basis and (ii) up to an additional $4,000,000 (and together with the Interim DIP Loan, the "Proposed Waterloo DIP Loans").

H. Waterloo, Wellington and Broadbill were unable to reach agreement on a final form of the loan documents for the Proposed Waterloo DIP Facility and Proposed Waterloo Loans. Given the Borrower's needs for post-petition financing on terms equal to or better than the terms set forth in the term sheet appended to the Interim Financing Order, the DIP Lenders submitted this Agreement to Borrower, which has been approved by Borrower's CROs.

I. On September 30, 2016, the Bankruptcy Court approved a priming secured superpriority line of credit (the "Replacement DIP Facility"), under which Wellington, Broadbill and St. Cloud are the "Replacement DIP Lenders." The Bankruptcy Court entered a final Order approving the Replacement DIP Facility on October 11, 2016 (the "Replacement DIP Order"). The Replacement DIP Facility provides for a loan not to exceed $7,675,000 (subject to adjustment for payment of interest and fees and expenses under the Interim Financing Order) and for the Debtor and the Replacement DIP Lenders to enter into the Replacement DIP Credit Agreement. On October 11, 2016, the Replacement DIP Facility closed and was funded by the Replacement DIP Lenders. Proceeds of the Replacement DIP Facility were used to repay (or with respect to the Replacement DIP Lenders, to roll over), obligations under the Interim DIP Facility in full. Wellington funded $4,909,857.83 (either through new moneys or amounts rolled over), Broadbill funded $2,513,629.99 (either through new moneys or amounts rolled over), and St. Cloud funded $500,000.

J. DIP Lenders are willing to make available to Borrower a second priming secured superpriority line of credit (the "DIP Facility") pursuant to which this Agreement is entered into. To provide security for the repayment of the DIP Loan made available pursuant hereto and payment of any other DIP Obligations of Borrower under the DIP Facility Documents, Borrower has agreed to provide DIP Lenders with the following:

(1) with respect to the obligations of Borrower hereunder and under the other DIP Facility Documents, and subject to the Carve-Out (as defined below), an allowed administrative expense claim in the Bankruptcy Case pursuant to Section 364(c)(1) of the Bankruptcy Code having priority over all administrative expenses of the kind specified in or arising under any Section of the Bankruptcy Code (including Sections 105, 326, 328, 330, 331, 503(b) 507(a), 507(b), 546(c) or 726 thereof) but *pari passu* with the superpriority claim held by the Replacement DIP Lenders;

(2) a perfected first priority Lien *pari passu* with the Liens held by the Replacement DIP Lenders, pursuant to Section 364(c)(2) of the Bankruptcy Code, on all property of Borrower that was unencumbered by any Lien as of the Petition Date, and the proceeds thereof; and

(3) excluding the prepetition liens of Waterloo, David J. Richards, LLC d/b/a Western US Mineral Investors LLC ("WUMI") and Sky Mineral Partners, LLC ("SMP") (together, the "Prepetition Liens"), which the Borrower intends to provide DIP Lenders with valid, perfected and unavoidable first priority priming Lien (held *pari passu* with the Replacement DIP Lenders) over, a perfected junior Lien, pursuant to Section 364(c)(3) of the Bankruptcy Code, upon all property of Borrower, that was subject to valid, perfected and unavoidable Liens as of the Petition Date and the proceeds thereof (the "Other Prepetition Liens"). (For the avoidance of doubt, Borrower proposes to provide a valid, perfected and unavoidable priming lien in favor of DIP Lenders over the Prepetition Liens of Waterloo, WUMI and SMP, and only a junior valid, perfected and unavoidable Lien under all Other Prepetition Liens). A schedule of Other Prepetition Liens known to Borrower, which may or may be validly existing or properly perfected, is attached hereto as **Schedule 8.3**.

(4) a perfected first priority Lien (held *pari passu* with the Replacement DIP Lenders), pursuant to Section 364(d) of the Bankruptcy Code, upon all property of Borrower and the proceeds thereof, that primes the valid, perfected and unavoidable Prepetition Liens as of the Petition Date of Waterloo, WUMI and SMP. (For the avoidance of doubt, Borrower proposes to provide a valid, perfected and unavoidable priming lien in favor of DIP Lenders over the Prepetition Liens of Waterloo, WUMI and SMP, but does not intend to provide, and is not providing, the DIP Lenders with a valid, perfected and unavoidable priming Lien over Other Prepetition Liens.)

DIP Lenders will also be granted a superpriority administrative claim pursuant to the Financing Order and described in **Section 4.3**.

K. DIP Lenders have agreed to make available to Borrower the secured, priming superpriority line of credit upon the terms and conditions set forth in this Agreement. DIP Lenders agree that they will hold the Liens *pari passu* with the Replacement DIP Lenders and understand that the Replacement Credit Agreement will be amended to permit this *pari passu* holding of the Liens and modifications to the Maturity Date, Budget, Exit Milestones, and any other changes necessitated by this Agreement, and Bankruptcy Court approval will be sought for these amendments.

L. Debtor is filing a Motion for a Final Order (i) Authorizing the Debtor to Obtain an Second Superpriority Secured Debtor-In-Possession Financing and to Utilize the Tailings Inventory to Operate Its Business ; (ii) Authorizing Debtor to Use Cash Collateral; (iii) Granting Adequate Protection to the Prepetition Secured Parties; (iv) Scheduling a Final Hearing and (v) Granting Related Relief (the "Second DIP Financing Motion") with the Bankruptcy Court pursuant to Bankruptcy Rules 2002, 4001 and 9014. Debtor is also filing a Motion to Amend the Replacement DIP Facility to accommodate the *pari passu* treatement of Liens between the DIP Lenders and the Replacement DIP Lenders.The Debtor's utilization of the tailings inventory is defined below as the Tailings Processing.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

I. DEFINITIONS

1.1. Defined Terms. As used in this Agreement, the following terms shall have the respect meanings set forth below:

"Advances" means the advances pursuant to this Agreement.

"Agreement" has the meaning set forth in the introductory paragraph of this Agreement.

"Bankruptcy Case" has the meaning set forth in the recitals of this Agreement.

"Bankruptcy Code" has the meaning set forth in the recitals of this Agreement.

"Bankruptcy Court" has the meaning set forth in the recitals of this Agreement.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure.

"Borrower" has the meaning set forth in the introductory paragraph of this Agreement.

"Borrower's CROs" means Michael Buenzow, David J. Beckman and Randy Davenport of FTI Consulting, Inc.

"Business Day" means any day other than a Saturday, a Sunday, any day which is a legal holiday under the laws of the State of Utah, or any day on which banking institutions located in the State of Utah are required by law or other governmental action to close.

"Carve-Out" means (i) allowed, accrued, but unpaid Professional Fees and expenses of Borrower and the Committee, prior to the delivery by DIP Lenders of a Carve-Out Notice (as defined below), whether allowed prior to or after the delivery of such notice, provided that such fees and expenses are consistent with cash payments provided for in the Tailings Budget in effect at the time such fees and expenses are incurred and such fees and expenses are allowed by the Bankruptcy Court; (ii) allowed, accrued, but unpaid fees and expenses of any trustee under section 726(b) of the Bankruptcy Code, not to exceed $25,000 in the aggregate; (iii) allowed, accrued, but unpaid Professional Fees of Borrower and the Committee after the delivery of a Carve-Out Notice, not to exceed $100,000 in the aggregate; and (iv) the payment of fees pursuant to 28 U.S.C. § 1930, plus any interest pursuant to 31 U.S.C. § 3717; in each case, up to the amounts specified in the Tailings Budget or as otherwise required to be paid pursuant to the Bankruptcy Code. For the avoidance of any doubt, Allowed Professional Fees of up to the amounts specified in the Tailings Budget will be paid in cash from the DIP Loan proceeds, consistent with and on the schedule specified to be paid in cash under the Tailings Budget. As long as no Default or Event of Default shall have occurred and be continuing, the Borrowers shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code up to the amounts specified to be paid in cash under the Tailings Budget, as the same may be due and payable. Any and all amounts of the Carve-Out (subsection (i) through (iv) above) that are not paid in cash from the DIP Loan proceeds shall be payable from the proceeds of any sale of the Borrower's assets or the sale of the Collateral, and such payments shall be made before the satisfaction of the DIP Obligations, the DIP Lenders' claims, the Prepetition Liens, or Other Prepetition Liens.

"Carve-Out Notice" shall mean a written notice delivered by DIP Lenders to Borrower, counsel to Borrower, counsel to the Committee, and the United States Trustee, which notice may be delivered after an Event of Default has occurred and is continuing (and specifying the relevant provisions of Article VIII under which Event of Default occurred).

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"CERCLIS" means the Comprehensive Environmental Response Compensation Liability Information System List.

"Closing Date" means November __, 2016.

"Collateral" has the meaning set forth in **Section 4.1**.

"Committee" means the Official Committee of Unsecured Creditors appointed by the Bankruptcy Court in the Bankruptcy Case.

"Completion Fee" means a completion fee with respect to Borrower's CROs in the event of a successful sale of the Borrower's assets or reorganization of Borrower in the same form as

Borrower's CROs existing completion fee agreement and approved by the Interim Financing Order.

"Contingent Liability" means, relative to any Person, any agreement, undertaking or arrangement by which such 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 Borrower, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection or standard contractual indemnities entered into in the ordinary course of business), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall be deemed to be the outstanding principal amount of the debt obligation or other liability guaranteed thereby.

"Credit Exposure" means, as to any DIP Lender or Replacement DIP Lender at any time, the aggregate principal amount of the loans made under the the DIP Facility and Replacement DIP Facility outstanding at such time.

"Cure Period" means a time period equal to five Business Days following DIP Lenders providing a written notice of an Event of Default to Borrower.

"Default Rate" means a per annum interest rate equal to seven and eight-tenths percent (7.8%).

"DIP Facility" has the meaning set forth in the recitals of this Agreement.

"DIP Facility Documents" means this Agreement, the Note(s) and all other agreements, instruments, documents and certificates identified in the Schedule of Documents executed and delivered to, or in favor of, DIP Lenders and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of Borrower, or any employee of Borrower, and delivered to DIP Lenders in connection with this Agreement or the transactions contemplated hereby, including the Financing Order. Any reference in this Agreement or any other DIP Facility Document to a DIP Facility Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such DIP Facility Document as the same may be in effect at any and all times such reference becomes operative. The term DIP Facility Documents does not include any loans, advances, debts, liabilities and obligations, howsoever arising, owed by Borrower to the DIP Lenders prior to June 2, 2016.

"DIP Lender" or "DIP Lenders" has the meaning set forth in the introductory paragraph of this Agreement.

"DIP Liens" has the meaning set forth in **Section 4.1**.

"DIP Loan" means the loan(s) provided for in this Agreement.

"DIP Obligations" means the DIP Loan, the interest thereon, and all other advances, debts, liabilities, obligations, fees, charges, expenses, covenants and duties owing by Borrower to DIP Lenders arising under this Agreement and the other DIP Facility Documents, including any fees, charges, or expenses incurred by a DIP Lender in connection with the enforcement of any rights or remedies under this Agreement. Any reference in this Agreement or in the other DIP Facility Documents to the DIP Obligations shall include all or any portion thereof and any extensions, modifications, renewals or alterations thereto.

"Environmental Law" means any applicable federal, state, or local statutes, laws, ordinances, codes, rules, regulations, and guidelines (including consent decrees and administrative orders) relating to public health and safety and protection of the environment.

"Event of Default" has the meaning set forth in **Section 10.1**.

"Exit Milestones" has the meaning set forth in **Section 7.10**.

"Financing Order" means the order or orders of the Bankruptcy Court entered in the Bankruptcy Case after a final hearing under Bankruptcy Rule 4001, which order or orders shall be satisfactory in form and substance to DIP Lenders, and shall approve and authorize on a final basis (including the expiration or all appeals and extension periods), the DIP Facility.

"GAP Facility" means a $700,000.00 principal loan extended by certain of DIP Lenders to Borrower to fund amounts due and owing to attorneys, advisors and other parties necessary for the Borrower during the time period after the filing of the Involuntary Petition but prior to the Relief Date of which $675,000 has been repaid pursuant to the Original DIP Facility.

"Hazardous Substances" means:

(a) any "hazardous substance," as defined by CERCLA;

(b) any "hazardous waste," as defined by the Resource Conservation and Recovery Act, as amended; or

(c) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance (including any petroleum product) within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended.

"Indebtedness" of any Person means (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (including reimbursement and all other obligations with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured, (b) all obligations evidenced by notes, debentures, bonds, or similar instruments, (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (d) all indebtedness referred to in clauses (a) through (d)

above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, (e) the DIP Obligations, (f) Contingent Liabilities of such Person in respect of any of the foregoing, and (g) any guaranty of such Person relating to any Indebtedness set forth in clauses (a) through (f) above.

"Indemnified Person" is defined in **Section 11.14**.

"Interest Rate" means a per annum interest rate equal to seven percent (7.0%).

"Involuntary Petition" has the meaning set forth in the recitals of this Agreement.

"Interim Financing Order" has the meaning set forth in the recitals of this Agreement.

"Interim Financing Extension Order" has the meaning set forth in the recitals of this Agreement.

"Interim DIP Loan" has the meaning set forth in the recitals of this Agreement.

"Key Metrics" means cumulative Cash Flows (as defined in the Tailings Budget) from Operations (as defined in the Tailings Budget) pursuant to the Tailings Budget.

"Lender's Environmental Liability" means any and all losses, liabilities, obligations, penalties, claims, litigations, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages),, disbursements, or expenses of any kind or nature whatsoever (including reasonable attorneys' fees at trial and appellate levels and reasonable consultants' and experts' fees, disbursements, and expenses incurred in investigating, defending against or prosecuting any litigation, claim, or proceeding) which may at any time be imposed upon, incurred by, or asserted or awarded against, any DIP Lender:

(a) any Hazardous Substances on, in, under or affecting all or any portion of any property of Borrower, the groundwater thereunder, or any surrounding areas thereof to the extent caused by Releases from Borrower or any of its properties;

(b) any misrepresentation, inaccuracy, or breach of any warranty, contained in **Section 5.12**;

(c) any violation or claim of violation by Borrower of any Environmental Laws; or

(d) the imposition of any Lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Substances by Borrower or in connection with any property owned or formerly owned by Borrower.

"Lien" means any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the

same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the law of any jurisdiction).

"Material Adverse Effect" means a material adverse effect on: (a) the business, assets, operations or financial condition of Borrower; (b) Borrower's ability to pay the DIP Loan or any of the other DIP Obligations in accordance with the terms of this Agreement; (c) the Collateral or DIP Liens on the Collateral or the priority of such Liens; or (d) DIP Lenders' rights and remedies under this Agreement and the other DIP Facility Documents.

"Maturity Date" means earliest to occur of:

(a) June 30, 2017 which date may be extended by sixty (60) days by Borrower without DIP Lender approval if (a) recommended by Borrower's CROs as appropriate to maximize value to all stakeholders and (b) Borrower has sufficient cash to operate during such additional 60-day period;

(b) the effective date of a confirmed plan of reorganization in the Bankruptcy Case;

(c) the effective date of the closing of a sale of all or substantially all of the assets of Debtor; or

(d) the date of acceleration of the DIP Facility following the occurrence and during the continuance of an Event of Default pursuant to **Section 10.1**.

"Maximum Amount" means an aggregate amount equal to $2,650,000.

"NI 43-101 Reports" means the National Instrument 43-101 Standards ("NI 43-101") for Disclosure for Mineral Projects for reporting of resources and reserves as estimated by a Qualified Person.

"Note(s)" has the meaning set forth in **Section 2.2**.

"Original DIP Financing Motion" has the meaning set forth in the recitals of this Agreement.

"Other Prepetition Liens" has the meaning set forth in the recitals of this Agreement.

"Person" means any individual, sole proprietorship, partnership, firm, association, joint venture, trust, limited liability company, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government body (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"Permitted Liens" means any of the following types of Liens:

(a) Liens securing payment of the DIP Obligations and Indebtedness permitted under subsections (ii) and (iv) of **Section 8.4**;

(b) Liens in favor of carriers, warehousemen, mechanics, materialmen and landlords granted in the ordinary course of business for amounts not overdue or being diligently contested in good faith by appropriate proceedings;

(c) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (excluding, however, obligations for the payment of borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(d) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other similar encumbrances not interfering in any material respect with the value or use of the property to which such Lien is attached;

(e) Liens for Taxes not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves shall have been set aside on its books;

(f) customary rights of set-off, revocation, refund or charge back under deposit agreements or under the UCC of banks or other financial institutions; and

(g) Liens permitted under the prepetition loan documents existing as of the Petition Date.

"Permitted Variance" means an amount not to exceed the product of (a) the total budgeted disbursements (without regard to the specific line items therein) following the Effective Date and (b) fifteen percent (15.0%) on a cumulative basis.

"Petition Date" has the meaning set forth in the recitals of this Agreement.

"Prepetition Collateral" means collateral subject to the Prepetition Liens.

"Prepetition Creditors" means lenders, lienholders, liens, creditors and parties who were creditors of Borrower before the Petition Date and their affiliates, officers, directors, members, employees, accountants, agents, partners, attorneys, advisors, successors in interest, and representatives.

"Prepetition Liens" has the meaning set forth in the recitals of this Agreement.

"Professional Fees" means the fees and expenses of Professionals as approved by the Bankruptcy Court.

"Professionals" means, collectively, any and all professional Persons, retained by the Debtor or the Committee.

"Proposed Waterloo DIP Facility" has the meaning set forth in the recitals of this Agreement.

"Proposed Waterloo DIP Documents" has the meaning set forth in the recitals of this Agreement.

"Proposed Waterloo DIP Loan" has the meaning set forth in the recitals of this Agreement.

"Qualified Person" means an independent engineer or geoscientist who meets requirements set forth in current National Instrument 43-101 rules and policies.

"Release" means a "release," as such term is defined in CERCLA.

"Relief Date" has the meaning set forth in the recitals of this Agreement.

"Replacement DIP Facility" has the meaning set forth in the recitals of this Agreement.

"Required DIP Lenders" means at the relevant time, DIP Lenders having with 66% of Credit Exposures.

"Resource Development Milestones" has the meaning set forth in **Section 7.09**.

"Resource Development Plan" means a resource development program with reasonable contingencies and options, including all aspects of data acquisition, sampling and analysis that is intended to achieve a defined outcome with respect to conducting an estimation of certain of Borrower's mineral assets and its measured, indicated and inferred resources and, if appropriate, proven and probable reserves.

"Restricted Payment" means, with respect to any Person, (a) any dividend or other payment or distribution, direct or indirect, on account of any shares of any class of Stock of such Person, now or hereafter outstanding, or to the holders, in their capacity as such, of any shares of any class of Stock of such Person, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Stock of such Person, now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Stock of such Person, now or hereafter outstanding.

"Schedule of Documents" means the schedule of documents, including all appendices, exhibits or schedules thereto, listing certain documents and information to be delivered in connection with this Agreement, the other DIP Facility Documents and the transactions contemplated thereunder, in the form attached hereto as **Exhibit A**.

"Second DIP Financing Motion" has the meaning set forth in the recitals of this Agreement.

"Stock" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership

interests and (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Tailings Budget" means the monthly operating budget of Borrower for the period from the Closing Date through the Maturity Date which budget shall be in the form attached hereto as **Exhibit B** and provide, among other things, for the payment of (i) postpetition operating expenses and other working capital requirements of the Borrower in connection with its Tailings Processing and Resource Development Plan (as defined in Section 1.1) as initially recommended by the Borrower's CROs and subsequently agreed by the Borrower's CROs and Lenders, as the plan and budget that maximizes value for all stakeholders of Debtor, (ii) repayment of Replacement DIP Facility, and (iii) budgeted costs and expenses incurred in administering the Bankruptcy Case, including, without limitation, payment of transaction costs, fees, and expenses in connection with the Loans. Funds to be used under the Tailings Budget come from proceeds of the DIP Loan and proceeds from the sale of copper cathode produced from the Tailings Processing. The Tailings Budget will initially include $4,000,000 to be expended in the Resource Development Plan.

"Tailings Processing" means a restart of copper cathode production from processing of the existing tailings inventory scheduled to commence approximately 30 days after the Financing Order to further optimize the production facilities, provide feedback on key metallurgical assumptions, and generate cash flow from the sale of copper cathode. The Key Metrics are outlined in the Tailings Budget with a general goal of processing up to approximately 2,200 tons per day of tailings.

"Third-Party Advisor" has the meaning set forth in **Section 11.13** of this Agreement.

"UCC" means the Uniform Commercial Code in effect in the State of Utah; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, DIP Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of Utah, the term "UCC" shall mean the Uniform Commercial Code in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

1.2. Rules of Construction. With reference to this Agreement and each other DIP Facility Document, unless otherwise specified herein or in such other DIP Facility Document:

(a) All undefined terms contained in this Agreement or any of the DIP Facility Documents shall, unless the context indicates otherwise, have the meanings provided for by the UCC to the extent the same are used or defined therein; in the event that any term is defined differently in different Articles or Divisions of the Code, the definition contained in Article or Division 9 shall control.

(b) The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including any exhibits attached hereto, as the same may from time to time be amended, modified or supplemented and not to any particular section, subsection or clause contained in this Agreement. Each reference to a Section or Exhibit are to a

section or exhibit of or to this Agreement, unless otherwise specified or the context otherwise requires.

(c) Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

II. AMOUNT AND TERMS OF DIP LOAN

2.1. Advances. Subject to the terms and conditions hereof, including the satisfaction by Borrower or waiver by DIP Lenders of all relevant conditions precedent provided in this Agreement, DIP Lenders agree to make additional Advances to the Borrower up to an aggregate of the Maximum Amount (without taking into account an increase to the Maximum Amount), in addition to amounts advanced to Borrower under the Replacement DIP Facility which shall be funded to Borrower within five (5) business days of entry of the Financing Order.

(a) Wellington agrees to make an additional Advance up to an aggregate principal amount of $300,000 plus $250,000 of any Advance pursuant to Section 7.12(a).

(b) St. Cloud agrees to pay $100,000 of any Advance pursuant to Section 7.12(a).

(c) Oxbow agrees to Advance $2,000,000, subject to the execution of a corresponding sulfuric acid supply agreement between Oxbow Sulphur Inc. ("Oxbow Sulphur") and Borrower on the terms specified in such agreement (the "Sulfuric Acid Agreement"), which is attached hereto as **Exhibit C**. Borrower will earmark $1,680,000 of this Advance to prepay for the purchase of sulfuric acid pursuant to the Sulfuric Acid Agreement.

Each Advance noted in subsections 2.1(a) through (c) shall be made upon irrevocable written notice from one or more of the Debtor's Chief Restructuring Officers, David Beckman, Michael Buenzow or Randy Davenport, to Lender, which notice shall be in writing and must be received by Lenders not later than 12:00 noon (Mountain Time) on the Business Day prior to the requested date of such Advance. Nothing contained in this Agreement shall obligate DIP Lenders to advance funds for any purpose not set forth in the Tailings Budget. DIP Lenders may agree to advance any additional necessary funds and/or to modifications to the Tailings Budget, in each case as provided in this Agreement or as otherwise approved by the Bankruptcy Court.

An additional Advance of up to $350,000 may be requested pursuant to Section 7.12(a) by Borrower (after review and approval by Borrower's CROs).

2.2. Notes. The Advances made by DIP Lenders shall constitute the DIP Loan and shall be evidenced by promissory notes made payable to the applicable DIP Lender(s) and substantially in the form attached hereto as **Exhibit D** (the "Note(s)"). The Notes on an aggregate basis shall be in the original principal amount equal to the sum of the Maximum Amount, with interest thereon as prescribed in **Section 2.5**.

2.3. Repayment and Prepayment.

(a) The entire unpaid principal amount of the DIP Loan, together with all accrued and unpaid interest thereon, and all other Obligations, shall be due and payable to DIP Lenders on the Maturity Date, and

(b) Subject to the Carve-Out, Borrower may prepay the DIP Loan at any time, in whole or in part, for any reason including but not limited to availability of alternative financing or refinancing, without premium or penalty. Each partial prepayment shall be in an amount not less than $25,000, and all prepayment amounts paid to DIP Lenders shall be paid pro rata to each DIP Lender in accordance with the DIP Loan made by such DIP Lender relative to the total amount of DIP Loan made hereunder by all DIP Lenders.

(c) The DIP Loan shall be prepaid in an amount equal to 100% of the net cash proceeds of any sale or other disposition (including as a result of casualty or condemnation and including any purchase price adjustment or earn-out in respect of any acquisition) by Borrower of any asset in excess of $50,000 (and excluding sales of product in the ordinary course), until payment in full of all outstanding DIP Obligations, in each case subject to the Carve-Out.

(d) Any prepayments shall be first applied to any interest, fees, costs and expenses due to DIP Lenders, and thereafter to principal of the DIP Loan.

2.4. Use of Proceeds. The proceeds from the Advances may be used only to pay postpetition operating and care and maintenance expenses of Borrower in accordance with the provisions of the Tailings Budget (subject to the Permitted Variance), including the administrative expenses of the Bankruptcy Case (to the extent approved by the Bankruptcy Court). Nothing contained in this Agreement shall obligate DIP Lenders to advance funds for any purpose whatsoever not set forth in the Tailings Budget, and no proceeds of the DIP Loan shall be used by any party or Professional to assert causes of action against any DIP Lender with respect to DIP Lenders' rights and remedies hereunder and under the other DIP Facility Documents; provided that only up to $200,000 in the aggregate of the proceeds of the DIP Facility may be used by the Borrower or any committee appointed in the Bankruptcy Case to investigate any potential claims or causes of action in connection with the Prepetition Creditors. The foregoing provisions shall not limit or preclude Borrower's right to enforce or assert its rights pursuant to this Agreement. Excluding repayment of the Interim DIP Facility, GAP Facility, and or Replacement DIP Facility, as applicable, no proceeds of the DIP Loan may be used to pay any obligation arising prior to the Petition Date unless such payment is provided for in the Tailings Budget and approved by order of the Bankruptcy Court acceptable to DIP Lenders.

(a) Professional Fees. Allowed Professional Fees of up to the amounts specified to be paid in cash under the Tailings Budget will be paid in cash from the DIP Loan proceeds, consistent with and on the schedule specified in the Tailings Budget. The amount of the Professionals Fees of Pepper Hamilton and Snell & Wilmer identified in the Tailings Budget shall be funded into a separate escrow account on a monthly basis (with 50% on the first of the month and 50% on the 15th of the month) to and for the benefit of the Professionals. All other amounts specified to be paid in cash under the Tailings Budget that are not paid in cash from the DIP Loan proceeds shall be subject to the provisions of the Carve-Out, if applicable. All other Allowed Professional Fees in excess of amounts specified in the Tailings Budget will be paid on a *pari passu* basis with the DIP Loan. as administrative expense claims under Section 507(a)(2) of the Bankruptcy Code in the Bankruptcy Case. All Professional Fees shall be subject to the allowance and approval of the Bankruptcy Court. In the event of a plan of reorganization, the Completion Fee will be paid in cash. The Debtor and DIP Lenders further agree that any order approving the sale of the Debtor's assets shall include the requirement that any acceptable bid must include a cash component adequate to cover all of the Debtor's administrative expenses.

(b) Certain Fees of Borrower's CROs. $150,000 of Borrower's CROs' fees accrued during the gap period will be paid from first proceeds of a sale of Debtor's assets. The Completion Fee of Borrower's CROs (which is also an administrative claim in the Bankruptcy Case) is not included in the allowed professional fees and expenses addressed above and will be paid from the proceeds of a sale of the Borrower's assets following satisfaction of the DIP Obligations but before other secured claims.

(c) Allowed Fees of Petitioning Creditors. Fees and expenses incurred by the petitioning creditors in the Debtor's case that are allowed by the Court will be paid *pari passu* with the DIP Loan provided that such fees and expenses shall not exceed $50,000.

2.5. Interest on DIP Loan.

(a) Subject to the provisions of **Sections 2.5(b)**, the DIP Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date until paid at a rate equal to the Interest Rate.

(b) If any Event of Default occurs, at DIP Lender's option, the DIP Loan shall bear interest on the outstanding principal amount thereof from the date of such Event of Default and for so long as such Event of Default is continuing, at a rate equal to the Default Rate to the fullest extent permitted by applicable laws and shall be due and payable upon demand.

(c) Interest on the DIP Loan shall be due and payable in full in arrears on the Maturity Date.

2.6. Facility Fee. Borrower shall pay DIP Lenders a facility fee equal to 0.75% of the funded amount on or before the Maturity Date.

2.7. Payment of DIP Obligations. Upon the maturity (whether by acceleration or otherwise) of any of the DIP Obligations under this Agreement or any of the other DIP Facility Documents, DIP Lenders shall be entitled to immediate payment of such DIP Obligations without further application to or order of the Bankruptcy Court.

2.8. No Discharge; Survival of Claims. Borrower agrees that (a) the DIP Obligations shall not be discharged by the entry of an order confirming a plan of reorganization in the Bankruptcy Case (and Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and the superpriority administrative claim granted to DIP Lenders pursuant to the Financing Order and described in **Section 4.3**, and the Liens granted to DIP Lenders pursuant to **Section 4.1** and the Financing Order shall not be affected in any manner by the entry of an order confirming a plan of reorganization in the Bankruptcy Case.

2.9. Separate DIP Loans. Each Advance and DIP Loan from a DIP Lender shall be treated as a separate and individual DIP Loan made hereunder by the respective DIP Lender making such Advance and DIP Loan hereunder, pursuant to the terms hereof and this Agreement shall govern the operation of the DIP Loans. Borrower's agreement with each DIP Lender hereunder is and shall be deemed and treated as a separate agreement with each DIP Lender, and each respective DIP Loan hereunder shall be a separate DIP Loan made by the respective DIP Lender that funds such DIP Loan. No DIP Lender shall be liable or responsible for the actions of any other DIP Lender hereunder with respect to its obligations, rights or performance under this Agreement.

2.10. Priority of DIP Obligations. Notwithstanding any other provision in this Agreement to the contrary, the DIP Lenders each acknowledge and agree that the Borrower's obligations under the Replacement DIP Facility (the "Replacement DIP Obligations") rank equally in right of payment with the DIP Obligations. The DIP Lenders further acknowledge and agree that no payment shall be made to the DIP Lenders on the DIP Obligations unless, at the time of such payment, the Borrower also makes a *pro rata* payment to the Replacement DIP Lenders on account of the Replacement DIP Obligations. If any DIP Lender receives a payment on account of the DIP Obligations that is greater than the proportion received by a Replacement DIP Lender on account of the Replacement DIP Obligations, such DIP Lender shall: (a) notify the other DIP Lenders and the Replacement DIP Lenders of the receipt of such payment and (b) return such payment to the Borrower for distribution to the Replacement DIP Lenders in accordance with the terms of this Section 2.10.

III. CONDITIONS PRECEDENT

The obligation of each DIP Lender to make the Advances on the Closing Date and thereafter as specified in **Section 2.1** shall be subject to and conditioned upon the full satisfaction by Borrower or the written waiver by DIP Lenders (at their sole discretion) of each of the following conditions:

3.1. This Agreement shall have been duly executed by, and delivered to, Borrower and DIP Lenders; and DIP Lenders shall have received such other DIP Facility Documents as DIP Lenders shall require in connection with the transactions contemplated by this Agreement, including all those designated as being completed prior to the Closing Date in the Schedule of Documents;

3.2. The automatic stay shall have been modified to permit the creation and perfection of DIP Lenders' Liens and the enforcement of rights and remedies in accordance with **Section 10.2**;

3.3. DIP Lenders shall be satisfied with the corporate structure, material contracts, and governing documents of Borrower, and the tax effects resulting from the commencement of the Bankruptcy Case and the DIP Loan;

3.4. All motions and other documents to be filed with the Bankruptcy Court relating to the DIP Loan shall be complete and in form and substance satisfactory to DIP Lenders;

3.5. The interest of DIP Lenders in the Collateral shall constitute a superpriority secured first lien, ahead of all other liens on the Collateral, as provided in **Section 4** below;

3.6. The Tailings Budget in form and substance satisfactory to DIP Lenders shall have been approved by the Bankruptcy Court;

3.7. With respect to Oxbow, the entry of a final order by the Bankruptcy Court authorizing and approving the sulfuric acid supply agreement between Oxbow Sulphur Inc. and Borrower on the terms specified in such agreement (the "Sulfuric Acid Agreement"), which is attached hereto as **Exhibit D**; and

3.8. (i) The Financing Order shall include a finding that DIP Lenders are entitled to the protections of 11 U.S.C. § 364(e), (ii) the Financing Order shall not have been vacated, reversed, modified or amended without DIP Lenders' consent, (iii) a motion for reconsideration of any such order shall not have been timely filed or (iv) an appeal of any such order shall not have been timely filed and if such order is the subject of a pending appeal in any respect, either the making of any Advance, the granting of superpriority claim status with respect to the DIP Obligations, the granting of the Liens described herein, or the performance by Borrower of any of its obligations under this Agreement or any other DIP Facility Document shall be the subject of a presently effective stay pending appeal; or

3.9. If not provided in the Financing Order, the Bankruptcy Court shall have entered an order that, fees and expenses which are payable from proceeds of sale pursuant to the Replacement Financing Order will be paid from proceeds of sale.

3.10. If Borrower has determined, in consultation with Borrower's CRO's and the DIP Lenders, that it needs to retain certain executory contracts and/or unexpired leases to comply with the Tailings Budget or to preserve the value of Borrower or its assets, the Bankruptcy Court shall have approved an extension of time within which to assume those contracts and leases or the modification of those contracts and leases or the assumption of those contracts and leases.

The request and acceptance by Borrower of the proceeds of any Advance shall be deemed to constitute, as of the date thereof, (i) a representation and warranty by Borrower that the conditions in this **Section 3.2** have been satisfied and (ii) a reaffirmation by Borrower of the granting and continuance of DIP Lenders' Liens on the Collateral.

IV. SECURITY

4.1. DIP Liens. To secure the DIP Obligations and subject to the Carve-Out, Borrower hereby unconditionally grants, assigns, and pledges to DIP Lenders valid, continuing, enforceable and fully perfected: (a) first priority Liens and security interests (held *pari passu*

with the Replacement DIP Lenders) in accordance with Section 364(c)(2) of the Bankruptcy Code on all unencumbered property of Borrower; (b) excluding the Prepetition Liens of Waterloo, WUMI and SMP, which the Borrower intends to provide DIP Lenders with valid, perfected and unavoidable first priority priming Lien (held *pari passu* with the Replacement DIP Lenders) over, junior Liens and security interests in accordance with Section 364(c)(3) of the Bankruptcy Code on all property of Borrower that is subject to valid, perfected and unavoidable Liens in existence at the time of the Petition Date, and (c) a priming first priority Lien ((held *pari passu* with the Replacement DIP Lenders) pursuant to Section 364(d) of the Bankruptcy Code on all property of Borrower that is subject to the valid, perfected and unavoidable Prepetition Liens of Waterloo, WUMI and SMP, in each case whether now owned or hereafter acquired or arising and wherever located, including Borrower's right, title and interest in and to the following , whether now owned or hereafter acquired or arising and wherever located (the Liens granted in favor of DIP Lenders pursuant to this Agreement and the Financing Order will be referred to as the "DIP Liens"):

(a) all of Borrower's right, title and interest in all owned or leased real properties, including all minerals and other substances of value that may be extracted from such properties (including copper and copper ore) and all copper cathode sheets and other products processed or obtained therefrom;

(b) all of Borrower's accounts;

(c) all of Borrower's books and records (including all of its records indicating, summarizing or evidencing its assets (including the Collateral) or liabilities, all of its records relating to its business operations or financial condition);

(d) all of Borrower's chattel paper and, in any event, including tangible chattel paper and electronic chattel paper;

(e) all of Borrower's right, title and interest with respect to any deposit account;

(f) all of Borrower's equipment and fixtures;

(g) all of Borrower's inventory;

(h) all of Borrower's investment property;

(i) all of Borrower's letter of credit rights, instruments, promissory notes, drafts and documents;

(j) all of Borrower's general intangibles, including intellectual property;

(k) all of Borrower's right, title and interest in respect of supporting obligations, including letters of credit and guaranties issued in support of accounts, chattel paper, documents, general intangibles, instruments, or investment property;

(l) all of Borrower's money, cash, cash equivalents, securities and other property held directly or indirectly by DIP Lender; and

(m) all of the proceeds, products, accessions or substitutions, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering or relating to any of the foregoing.

For the avoidance of doubt, the DIP Lenders shall not have any first priority lien, or any superpriority lien or claim, on any potential claims or causes of action, or proceeds of any such causes of action the Debtor may assert under chapter 5 of the United States Bankruptcy Code.

(For the avoidance of doubt, Borrower proposes to provide a valid, perfected and unavoidable priming lien in favor of DIP Lenders over the Prepetition Liens of Waterloo, WUMI and SMP, but does not intend to provide, and is not providing, the DIP Lenders with a valid, perfected and unavoidable priming Lien over any other valid, perfected and unavoidable Other Prepetition Liens.) All of the foregoing, and any other assets or property of Borrower in which DIP Lenders shall be granted a Lien, shall be referred to collectively as the "Collateral."

4.2. Effectiveness of Liens. Notwithstanding anything to the contrary contained herein or elsewhere, DIP Lenders' Liens on the Collateral shall be deemed valid and perfected by entry of the Financing Order, as the case may be. DIP Lenders shall not be required to file, register or publish any financing statements, mortgages, deeds of trust, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or perfect the Liens on Collateral granted by or pursuant to this Agreement, the Financing Order or any other DIP Facility Document. If DIP Lenders shall, in their sole discretion, from time to time elect to file, register or publish any such financing statements, mortgages, deeds of trust, notices of Lien or similar instruments, take possession of any Collateral or take any other action to validate, render enforceable or perfect all or any portion of DIP Lenders' Liens on Collateral, all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date of entry of the Financing Order is entered.

4.3. Superpriority Nature of DIP Obligations and DIP Lenders' Liens. Subject to the Carve-Out, all DIP Obligations shall constitute administrative expenses of Borrower in the Bankruptcy Case, with administrative priority and senior secured status under Sections 364(c)(i) of the Bankruptcy Code. Such administrative claim shall have priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 330, 331, 503(b), 507(a), 507(b), 726 or any other provision of the Bankruptcy Code and shall at all times be senior to the rights of Borrower, Borrower's estate, and any successor trustee or estate representative in the Bankruptcy Case or any subsequent proceeding or case under the Bankruptcy Code. The Liens granted to DIP Lenders on the Collateral shall have the priority and senior secured status afforded by Sections 364(c)(2), (c)(3), and (d) of the Bankruptcy Code (all as more fully set forth in the Financing Order).

4.4. DIP Lenders' Priority. The interests of each DIP Lender in DIP Lenders' Liens granted hereunder as provided in this Section 4 and rights therein shall be pro rata or *pari passu* in accordance with the DIP Loan made by each respective DIP Lender relative to the total

amount of DIP Loan made hereunder, subject in each case to any internal or intercreditor agreements that may be agreed amongst DIP Lenders.

4.5. Credit Bidding. Borrower irrevocably authorizes each DIP Lender to credit bid up to its *pro rata* share of the DIP Obligations in connection with (a) any sale of all or substantially all of Borrower's assets and property pursuant to any sale occurring pursuant to Bankruptcy Code Section 363, or (b) including without limitation, any sale occurring as part of any plan of reorganization subject to confirmation under Bankruptcy Code Section 1129(b), or (c) a sale or disposition by a chapter 7 trustee for any debtor under Bankruptcy Code section 725; provided that sufficient cash funds are provided to the estate in connection with any credit bid to pay the Carve-Out, all outstanding administrative claims and the Completion Fee of the CRO.

V. REPRESENTATIONS AND WARRANTIES

5.1. Borrower's Representations and Warranties. Borrower hereby represents and warrants, as of the Closing Date and as of the date of each Advance, that:

(a) Authorization. Subject to the entry of the Financing Order, the execution, delivery and performance by Borrower of this Agreement has been duly authorized in good faith by all necessary corporate and organizational action, and do not and will not contravene the terms of Borrower's organizational documents; and has been duly authorized and approved by the Debtor's Chief Restructuring Officer and the Bankruptcy Court.

(b) Enforceability. This Agreement and each of the DIP Facility Documents has been duly executed and delivered by Borrower and constitutes a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to the Bankruptcy Code.

(c) Existence, Qualification and Power. Borrower (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) subject to the entry and effectiveness of the Financing Order, as applicable, execute, deliver and perform its obligations under the DIP Facility Documents, and (c) is duly qualified and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in **clause (c)**, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(d) Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any governmental authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Borrower of any DIP Facility Document, except for the approval of the Bankruptcy Court in the Financing Order, and such other consents or approvals that have been obtained and that are still in force and effect.

(e) Compliance with Laws. Borrower is in compliance in all material respects with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or

to its properties, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(f) Tailings Budget. The Tailings Budget is consistent in all material respects with the provisions of the DIP Facility Documents and the Orders and has been prepared in good faith based upon assumptions believed by Borrower to be reasonable as of the date delivered, and to the best knowledge of Borrower, fairly represents Borrower's current expectation as to the matters covered thereby.

(g) Financial Information. The financial statements of Borrower furnished or to be furnished to DIP Lenders pursuant to **Section 6.1** or otherwise have been consistently applied, and present fairly the financial condition of Borrower as at the dates thereof and the results of their operations for the periods then ended. All balance sheets, all statements of operations, equity amounts, cash flow and all other financial information of Borrower furnished or to be furnished pursuant to Section 6.1 or otherwise have been and will for periods following the Closing Date, and do or will present fairly the financial condition of Borrower as at the dates thereof and the results of their operations for the periods then ended. Notwithstanding anything herein to the contrary, it being understood that historical financial statements, balance sheets, all statements of operations, equity amounts, cash flow and all other financial information of Borrower furnished prior to the Petition Date were prepared in accordance with GAAP to the best of Borrower's knowledge and in accordance with past practice.

(h) No Material Adverse Effect. No Material Adverse Effect has occurred since the date of the financial statements of Borrower most recently delivered to DIP Lenders pursuant to **Section 6.1**.

(i) Litigation, Controversies, etc. Except as set forth on **Schedule 5.1(i)**, there is no pending material litigation, action, proceeding, or labor controversy which could reasonably be expected to result in a Material Adverse Effect or which purports to affect the legality, validity or enforceability of this Agreement or any other DIP Facility Document.

(j) Taxes. Other than certain property and sales and use taxes identified on **Schedule 5.1(j),** Borrower has filed, or caused to be filed, all material Tax and informational returns that are required to have been filed by it or them in any jurisdiction and/or has timely sought an extension of such time to file taxes, and have paid all material Taxes shown to be due and payable on such returns and all other Taxes and assessments payable by it or them, to the extent the same have become due and payable (other than those Taxes that it is contesting in good faith and by appropriate proceedings, with adequate, segregated reserves established for such Taxes) and, to the extent such Taxes are not due, has established reserves therefor by allocating amounts that are adequate for the payment thereof.

(k) Ownership of Properties. Except as set forth on **Schedule 5.1(k)**, Borrower owns (i) in the case of owned real property, good and marketable fee title to, and (ii) in the case of owned personal property, good and valid title to, or, in the case of leased real or personal property, valid and enforceable leasehold interests (as the case may be) in, all of its

properties and assets, tangible and intangible, of any nature whatsoever, free and clear in each case of all Liens or claims, except for Permitted Liens. Borrower is not party to any agreement which grants an option to any such Person to purchase or lease any real property or personal property.

(l) Environmental Warranties. To Borrower's actual knowledge, based on reasonable inquiry,

(i) all facilities and property (including underlying groundwater) owned or leased by Borrower has been, and continue to be, owned or leased by such Person in material compliance with all Environmental Laws;

(ii) except as disclosed on **Schedule 5.1(l)(b)**, no conditions exist at, on or under any property owned or leased by Borrower which, with the passage of time, or the giving of notice or both, would give rise to material liability under any Environmental Law.

(m) Intellectual Property. Borrower owns or licenses (as the case may be) or will own or hold licenses for all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights and copyrights as Borrower considers necessary for the conduct of the businesses of Borrower without any infringement upon rights of other Persons and, to the best of Borrower's knowledge, there is no individual patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right or copyright the loss of which could reasonably be expected to result in a Material Adverse Effect.

(n) Accuracy of Information. None of the factual written information, taken as a whole, heretofore or contemporaneously furnished by or on behalf of Borrower to DIP Lenders for the purposes of, or in connection with, the DIP Facility Documents contains any untrue statement of a material fact on the date as if which such information is dated or certified, or omits to state any material fact necessary to make such information, taken as a whole, not misleading on the date as if which such information is dated or certified. No factual written information, taken as a whole, hereafter furnished in connection with any DIP Facility Document by Borrower to DIP Lenders will contain any untrue statement of a material fact on the date as if which such information is dated or certified or will omit to state any material fact necessary to make such information not misleading on the date as if which such information is dated or certified.

(o) Contingent Liabilities. Borrower has not incurred any material Contingent Liabilities in respect of Indebtedness or obligations except those authorized under or contemplated by the DIP Facility Documents and not prohibited by this Agreement.

(p) Prepetition Liens and Security. For the avoidance of doubt, nothing in this Agreement shall be deemed as a stipulation by Borrower or any other party as to the nature, extent, validity or priority of Borrower's prepetition debts or prepetition liens against Borrower's property, and any and all claims, challenges, rights, defenses, and causes of action with respect to such prepetition debts and liens are hereby preserved to the fullest extent.

(q) Bankruptcy Case. The Bankruptcy Case was commenced on the Petition Date and the order for relief was entered on the Relief Date, each in accordance with applicable law, and the proper notice for the hearing for the approval of the Financing Order has been given.

5.2. DIP Lenders' Representations and Warranties. On the Closing Date, each DIP Lender will have sufficient funds to enable such DIP Lender to make the Advance(s) and to consummate the transactions contemplated by this Agreement.

VI. REPORTING REQUIREMENTS

Borrower covenants and agrees that, from and after the Closing Date and until the repayment in full of the DIP Obligations and termination of this Agreement, Borrower shall deliver the following to DIP Lenders:

6.1. by no later than Friday of each week (commencing with the first Wednesday following the Closing Date) with a weekly variance report showing actual receipts and disbursements from operations on a weekly basis and comparing actual results (including at least bi-weekly a general estimate of accrued but not yet billed fees and expenses for all Professionals) compared to the line items in the most recently-delivered Tailings Budget for all prior periods in form and substance satisfactory to DIP Lenders.

6.2. as soon as practicable, but in any event within one (1) Business Day after Borrower becomes aware of the existence of any Event of Default, written notice specifying the nature of such Event of Default, including the anticipated effect thereof;

6.3. promptly, all pleadings, motions, applications, financial information and other papers and documents filed by Borrower in the Bankruptcy Case, including the monthly operating reports required by the Bankruptcy Court;

6.4. promptly, all written reports given by Borrower to the U.S. Trustee or to the Committee in the Bankruptcy Case; and

6.5. such other information with respect to Borrower's business, operations, financial condition, use of Advances, collection of accounts receivable or otherwise, as may be reasonably requested by DIP Lenders.

VII. AFFIRMATIVE COVENANTS

The following covenants shall be binding on Borrower from and after the Closing Date and until the repayment in full of the DIP Obligations and termination of this Agreement:

7.1. Compliance with Laws. Borrower shall comply with all federal, state, local and foreign laws and regulations applicable to it, including:

(a) those relating to ERISA, labor laws, and Environmental Laws, except to the extent that the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(b) the maintenance and preservation of the corporate or other organizational existence of Borrower and its material rights, privileges and postpetition contractual obligations; and

(c) the payment, before the same become delinquent, of all material postpetition obligations, including material taxes, assessments and charges imposed.

7.2. Insurance. Borrower shall, at its sole cost and expense, maintain the policies of insurance as in effect on the Closing Date or otherwise in form and amounts and with insurers reasonably acceptable to DIP Lender. Such policies of insurance (or the loss payable and additional insured endorsements delivered to DIP Lender) shall contain provisions pursuant to which the insurer agrees to provide thirty (30) days' prior written notice to DIP Lenders in the event of any non-renewal, cancellation or amendment of any such insurance policy. If Borrower at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above, or to pay all premiums relating thereto, DIP Lenders may at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto that DIP Lenders deems advisable. DIP Lenders shall have no obligation to obtain insurance for Borrower or pay any premiums therefor. By doing so, DIP Lenders shall not be deemed to have waived any Event of Default arising from Borrower's failure to maintain such insurance or pay any premiums therefor. All sums so disbursed, including reasonable attorneys' fees, court costs and other charges related thereto, shall be payable on demand by Borrower to DIP Lenders and shall be additional DIP Obligations hereunder secured by the Collateral.

7.3. Supplemental Disclosure. From time to time as may be necessary (in the event that such information is not otherwise delivered by Borrower to DIP Lenders pursuant to this Agreement), so long as there are DIP Obligations outstanding, Borrower covenants and agrees to supplement or amend each representation herein with respect to any matter hereafter arising which, if existing or occurring as of the Closing Date, would have been required to be set forth or described in an exception to such representation or which is necessary to correct any information in such representation which has been rendered inaccurate thereby.

7.4. Access. Each DIP Lender and any of its officers, employees or agents shall have the right, during normal business hours (or at such other times as may reasonably be requested by such parties), to inspect Borrower's facilities and to inspect, audit and make extracts from any and all of Borrower's records, files and books of account. Subject to the execution of a Non-Disclosure and Confidentiality Agreement, Borrower shall deliver to each DIP Lender any non-privileged document or instrument as such DIP Lender may reasonably request. Each DIP Lender shall take the steps reasonably necessary to protect the secrecy of and avoid disclosure or use of any information furnished to such DIP Lender pursuant to this **Section 7.4** and to prevent such information from becoming publicly available or entering the possession of persons other than each DIP Lender, its affiliates, directors, officers, employees, consultants, attorneys, advisors, investors and agents. Such measures shall include the same degree of care that utilizes to protect its own confidential information of a similar nature.

7.5. Financing Order and Exit from Bankruptcy or Sale. Borrower shall cause the Financing Order approving the DIP Loan and Agreement and DIP Facility Documents to be

entered by the Bankruptcy Court on or before 11:59 P.M. (ET) on or before November __, 2016. Borrower shall also comply with the Exit Milestones. Nothing in this Agreement, or the Financing Order shall preclude or limit the Debtor from proposing a plan of reorganization acceptable to DIP Lenders prior to the Maturity Date, provided the DIP Obligations are indefeasibly paid in full in cash upon the effective of such plan.

7.6. Asset Dispositions. Absent the written consent of DIP Lenders, Borrower shall not sell, transfer or otherwise dispose of any of Borrower's assets in excess of $50,000 (excluding sales in the ordinary course) that is not in accordance with the Exit Milestones set forth in **Section 7.10** of this Agreement.

7.7. Preserving the DIP Collateral; Further Assurances. Borrower shall undertake all actions and execute all further documents, financing statements, agreements and instruments which are necessary or appropriate in the reasonable judgment of DIP Lenders or as may be required by other applicable law to (x) effectuate the transactions contemplated by the DIP Facility Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the DIP Facility Documents; (y) maintain DIP Lenders' respective security interests under the DIP Facility Documents in the DIP Collateral in full force and effect at all times (including the priority thereof) and (z) preserve and protect the DIP Collateral and protect and enforce such Person's rights and title and the respective rights of each DIP Lender to the DIP Collateral, including the making or delivery of all filings and recordations (including filing UCC and other financing statements and mortgages in form and substance satisfactory to DIP Lenders), the delivery to DIP Lenders of all such instruments and documents (including title insurance policies and lien searches) as DIP Lenders shall reasonably request to evidence compliance with this Section, the payments of fees and other charges, the issuance of supplemental documentation, the discharge of all claims or other Liens (other than the Permitted Liens) adversely affecting the rights of DIP Lenders to and under the DIP Collateral (except to the extent same is being contested in good faith by appropriate governmental proceedings promptly instituted and diligently contested, so long as (1) such reserve or other appropriate provision, if any, shall have been made therefor and (2) in case of any charge or claim which has or may become a Lien against any of the DIP Collateral, such Lien shall be subject and subordinate in all respects to the Liens held by DIP Lenders (unless bonded) and such contested proceedings conclusively operate to stay the sale of any portion of the DIP Collateral to satisfy such charge or claim which has or may become a Lien against any of the DIP Collateral) and the publication or other delivery of notice to third parties. Borrower agree to provide such evidence as DIP Lenders shall reasonably request as to the perfection and priority status of each such security interest and Lien.

7.8. Cash Management. Subject to the Tailings Budget, Borrower shall maintain a cash management system substantially identical to the cash management system that they maintained immediately prior to the Petition Date, provided, however, Borrower may open, in addition to a DIP operating account, a separate checking account for the payment of any utility deposits that may be established by order of this Court (the "Utility Deposit Account") and an escrow account for the payment of fees scheduled to be paid in cash in the Tailings Budget subject to the provisions related to payment of Professional Fees. In connection with the foregoing, Borrower shall seek the entry of an order of the Bankruptcy Court, satisfactory to the DIP Lenders in its discretion, providing for the continuation of the cash management system.

7.9. Resource Development. Borrower will continue to execute the Resource Development Plan and will regularly consult with the Qualified Person, Borrower's CROs, the Third-Party Advisor, DIP Lenders and the Committee to monitor the Resource Development Plan. Subject to a review of the Key Metrics and the approval of the DIP Lenders, which approval will not be unreasonably withheld, Borrower's CRO's may adjust the amount budgeted to maximize Resource Development by increasing that amount by up to $1,000,000 (provided the Key Metrics support such increase and Borrower has sufficient funds, time, and appropriate targets (as recommended by the Qualified Person) to expend that amount and Debtor, DIP Lenders and Committee recommend this adjustment) or by decreasing that amount up to $704,000. Borrower will provide to DIP Lenders a bi-monthly analysis of the activities undertaken in the Resource Development Plan.

7.10. Resource Development Milestones. Borrower will comply with the resource development milestones set forth below (collectively, the "Resource Development Milestones"):

(a) within fifteen (15) days of the execution of this Agreement, Borrower will provide DIP Lenders with an updated Resource Development Plan based on the Tailings Budget after consultation between the Qualified Person, Borrower's CRO's, Third-Party Advisor and the DIP Lenders; and

(b) Borrower agrees to utilize its best efforts to complete appropriate resource development tasks and reports which may include a N43-101 Report prior to the request for final bids for related to the Section 363 asset sale process.

7.11. Sale Process and Plan of Reorganization. Borrower will comply with the following schedule and milestones (the "Exit Milestones"):

(a) on or before March 1, 2017, Borrower will recommence a formal sale process by filing an appropriate motion for approval of an asset sale or by filing a plan of reorganization which provides for such an asset sale;

(b) if the Debtor seeks to sell its assets outside of a plan of reorganization, then on or before May 31, 2017, the Bankruptcy Court will approve the proposed sale of assets and such sale shall close on or before June 30, 2017; and

(c) if the Debtor seeks to sell its assets as part of a plan of reorganization, or otherwise seeks to restructure its debt obligations through a plan of reorganization, the Bankruptcy Court will approve such plan of reorganization on or before June 30, 2017.

After consultation with DIP Lenders, the foregoing Exit Milestones may be extended upon the reasonable request of Borrower's CROs for up to sixty (60) days if, in their business judgment, such an extension is necessary to maximize the value of Borrower's assets and/or improve the prospects of the sale process and/or an alternative resolution such as a plan of reorganization, provided Borrower has sufficient cash to operate during such additional 60-day period.

7.12. Additional Advances and Adjustments if Tailings Processing Does Not Reach Cash Flow Benchmark. If, by March 1, 2017, cash flow contributions from the Tailings Processing do not meet at least 80% of the projected Cash Flow from Operations, projected by

the Tailings Budget, Borrower's CROs may take the following actions (and DIP Lenders are obligated to make Advances as set forth below):

(a) Borrower's CROs may request that Wellington and St. Cloud make an additional Advance of $350,000 to Borrower and Wellington and St. Cloud shall make such Advance, prorated among them, within 10 days of receipt of such request for an additional Advance;

(b) Borrower's CROs may determine, in consultation with Borrower, DIP Lenders and the Committee to reallocate the entire remaining amounts for expenditures for the Resource Development Plan under the Tailings Budget for April, May and June 2017 of $849,000 to other expenses as determined by Borrower's CROs.

(c) In addition, if cash flow contributions from the Tailings Processing are between 80% and 100% of Cash Flow from Operations projected by the Tailings Budget and, if Borrower's CROs believe that there is not sufficient cash available to support the Tailings Budget, Borrower's CROs, in their discretion, may reallocate expenditures in April, May and June 2017 for the Resource Development Plan to other expenses up to a maximum of $450,000 in Cash Flows from Operations. However, before reallocating the expenses, Borrower's CROs will first provide written notice to DIP Lenders and give DIP Lenders the option to contribute the additional advance of up to $350,000. DIP Lenders shall have three (3) business days' notice to decide whether or not to contribute the additional advance of $350,000, or allow the Borrower's CROs to reallocate the resource development expenditures.

VIII. NEGATIVE COVENANTS

The following covenants shall be binding on Borrower from and after the Closing Date and until the repayment in full of the DIP Obligations and termination of this Agreement:

8.1. Mergers, and Other Material Transactions. Borrower shall not directly or indirectly, by operation of law or otherwise, merge with, consolidate with, acquire all or substantially all of the assets or capital stock of, or otherwise combine with, any Person.

8.2. Sales of Assets. Borrower shall not sell, lease, transfer, convey, abandon or otherwise dispose of any of Borrower's assets or properties or attempt or contract to do so, except as provided in Section 7.7 or for the sale of inventory in the ordinary course of business.

8.3. Liens. Borrower shall not create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens in favor of DIP Lenders arising pursuant to the DIP Facility Documents or the Financing Order;

(b) Liens securing the Prepetition Creditors and other liens existing on the Petition Date and listed in **Schedule 8.3**;

(c) Liens for taxes, assessments or governmental charges, levies or other similar amounts (i) that are not yet due, (ii) that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, or (iii) with respect to which Borrower has made adequate payment with respect to the underlying obligation to release such Lien and is awaiting release of such Lien;

(d) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of Borrower;

(e) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions; and

(f) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business;

8.4. Indebtedness.

(a) Borrower shall not create, incur, assume or suffer to exist any Indebtedness, except:

(i) Indebtedness under the DIP Facility Documents;

(ii) Indebtedness of Borrower outstanding on the Petition Date and listed in **Schedule 8.4**;

(iii) Indebtedness incurred as set forth in the Tailings Budget.

(iv) Indebtedness owed to depositary banks or any of their banking affiliates in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with automated clearing house transfers of funds; or

(v) Indebtedness in the ordinary course of the Borrower's operations.

(b) Except pursuant to a confirmed plan of reorganization and except as specifically permitted hereunder, Borrower shall not, without the express prior written consent of DIP Lenders or pursuant to an order of the Bankruptcy Court entered after notice and a hearing, make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the filing of the Bankruptcy Case that is subject to the automatic stay provisions of the Bankruptcy Code, whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

8.5. Restricted Payments. Borrower shall not declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so.

8.6. Advances Not to Exceed Maximum Amount. Without the written approval of the DIP Lenders, the funding of a requested Advance shall not cause the aggregate outstanding amount of the Loan to exceed either (i) the Maximum Amount or (ii) any of the limitations set forth in the Tailings Budget (subject to the Permitted Variance);

8.7. Revision of Orders; Applications to Bankruptcy Court. Borrower shall not:

(a) seek, consent to or suffer to exist any modification, stay, vacation or amendment of the Financing Order except for any modifications and amendments agreed to in writing by DIP Lender; or

(b) apply to the Bankruptcy Court for authority to take any action prohibited by **Section 8** (except to the extent such application and the taking of such action is conditioned upon the receiving the written consent of DIP Lender, or unless such action proposes to pay the DIP Lenders in full).

8.8. Claims in the Bankruptcy Case. Borrower shall not incur, create, assume, suffer to exist or permit any administrative expense, unsecured claim, superpriority claim or other claim or Lien which is *pari passu* with or senior to the claims or Liens, as the case may be, of DIP Lenders against Borrower hereunder, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out.

IX. TERM

9.1. Termination. Subject to the provisions of **Section 10**, the DIP Loan shall be in effect from the Closing Date until the Maturity Date.

9.2. Survival of DIP Obligations upon Termination of this Agreement. No termination or cancellation of any financing arrangement under this Agreement (regardless of the cause or procedure) shall in any way affect or impair the duties and obligations of Borrower or the rights and powers of DIP Lenders relating to any transaction or event occurring prior to such termination and all claims granted to DIP Lenders hereunder shall continue in full force and effect until all DIP Obligations are fully and finally paid in full. All undertakings, agreements, covenants, warranties, and representations of Borrower contained in the DIP Facility Documents shall survive such termination or cancellation and shall continue in full force and effect until all of the DIP Obligations have been fully and finally paid in full in accordance with the terms of the agreements creating such DIP Obligations.

X. EVENTS OF DEFAULT; RIGHTS AND REMEDIES

10.1. Events of Default. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to the Bankruptcy Court or any notice to Borrower, and subject to **Section 10.2(b)**, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

(a) Borrower (i) fails to make any payment of principal of, or interest on, the DIP Loan or any of the other DIP Obligations when due and payable, or (ii) fails to pay or

reimburse DIP Lenders for any expense reimbursable hereunder or under any other DIP Facility Document.

(b) Borrower fails or neglects to perform, keep or observe any provision of this Agreement, the Note, or any other DIP Facility Document, in any material respect;

(c) any representation or warranty made by Borrower herein or in any of the DIP Facility Documents, any financial statement, or any statement or representation made in any other certificate, report or opinion delivered in connection herewith or therewith proves to have been incorrect or misleading in any material respect when made;

(d) Borrower's failure to pay any principal or interest due in respect of the Replacement DIP Facility when due and such failure continues after the applicable grace period, if any, specified therein;

(e) there occurs any uninsured damage to or loss, theft or destruction of any portion of the Collateral that could reasonably be expected to have a Material Adverse Effect;

(f) Borrower breaches or violates any material term of the Financing Order;

(g) Borrower uses the proceeds of the DIP Facility for purposes not authorized under the Tailings Budget (subject to the Permitted Variance);

(h) the funding of the requested Advance would cause the aggregate outstanding amount of the DIP Loan to exceed the amount then authorized by the Financing Order, as the case may be, or any order modifying or vacating the Final Financing Order shall have been entered, or any appeal of the Financing Order shall have been timely filed;

(i) the funding of a requested Advance would cause the aggregate outstanding amount of the DIP Loan to exceed either (i) the Maximum Amount, subject to any adjustments in this Agreement, or (ii) any of the limitations set forth in the Tailings Budget (subject to the Permitted Variance);

(j) the creation, existence or allowance of any Indebtedness, whether recourse or nonrecourse, and whether superior or junior, resulting from borrowings, DIP Loan, advances, or the granting of credit, whether secured or unsecured, except (i) Indebtedness to DIP Lenders arising under or as a consequence of this Agreement or the other DIP Facility Documents and (ii) Indebtedness existing on the Petition Date or otherwise expressly permitted under this Agreement, the Financing Order or the other DIP Facility Documents;

(k) other than potential Liens arising from any unpaid Taxes, the creation, existence or allowance of any Liens on any of Borrower's properties or assets except the Liens existing as of the Petition Date and the Liens created or permitted under this Agreement, the Financing Order or the other DIP Facility Documents;

(l) except as occasioned by the commencement of the Bankruptcy Case and the actions, proceedings, and investigations related thereto, any event or circumstance having a Material Adverse Effect shall have occurred since the Closing Date;

(m) any material representation or warranty by Borrower contained herein or in any other DIP Facility Document is untrue or incorrect as of such date as determined by DIP Lender, except to the extent that such representation or warranty expressly relates to an earlier date and except for changes therein expressly permitted or expressly contemplated by this Agreement; and

(n) The occurrence of any of the following in the Bankruptcy Case:

(i) the bringing of a motion or the filing of any plan of reorganization or disclosure statement attendant thereto by Borrower: (w) to sell assets of Borrower (other than as provided in Section 7.7; (x) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (y) to grant any Lien upon or affecting any Collateral; or (z) or any other action or actions adverse to DIP Lenders or its rights and remedies hereunder or its interest in the Collateral, unless the DIP Obligations are indefeasibly paid pursuant to such motion, plan of reorganization.

(ii) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the DIP Facility Documents or the Financing Order in any material manner without the written consent of DIP Lender, or the filing of a motion for reconsideration with respect to the Financing Order;

(iii) the payment of, or application for authority to pay, any prepetition claim without DIP Lenders' prior written consent or pursuant to an order of the Bankruptcy Court after notice and hearing unless otherwise permitted under this Agreement;

(iv) the appointment of an interim or permanent trustee in the Bankruptcy Case or the appointment of a receiver or an examiner in the Bankruptcy Case with expanded powers to operate or manage the financial affairs, the business, or reorganization of Borrower without DIP Lenders' consent; or the sale without DIP Lenders' consent, of all of Borrower's assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Bankruptcy Case, or otherwise that does not provide for payment in full of the DIP Obligations and termination of DIP Lenders' commitment to make the Advances;

(v) the dismissal of the Bankruptcy Case, or the conversion of the Bankruptcy Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or the filing of a motion or other pleading by Borrower seeking the dismissal of the Bankruptcy Case under Section 1112 of the Bankruptcy Code or otherwise;

(vi) 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 to execute upon or enforce a Lien on any Collateral;

(vii) the commencement of a suit or action against DIP Lenders and, as to any suit or action brought by any Person other than Borrower or a subsidiary, officer or employee of Borrower, the continuation thereof without dismissal for thirty (30) days

after service thereof on DIP Lender, that asserts by or on behalf of Borrower, the Environmental Protection Agency, any state environmental protection or health and safety agency, or the Committee in the Bankruptcy Case, any claim or legal or equitable remedy which seeks subordination of the claim or Lien of DIP Lender;

(viii) the failure to file a plan of reorganization or motion for asset sale pursuant to Section 363 of the Bankruptcy Code on or before the Maturity Date;

(ix) the entry of an order in the Bankruptcy Case granting any other superpriority administrative claim or Lien equal or superior to the claims and Liens granted to DIP Lender.

10.2. Remedies.

(a) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, if any Event of Default occurs and is continuing, DIP Lenders holding Credit Exposures representing more than 50% of the aggregate amount of Credit Exposures at that time may take any or all of the following actions without further order of or application to the Bankruptcy Court, following the Cure Period:

(i) declare its commitment to make Advances to be terminated, whereupon such commitments shall be terminated;

(ii) declare the unpaid principal amount of the DIP Loan, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other DIP Facility Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower;

(iii) increase the rate of interest from the Interest Rate to the Default Rate; or

(iv) take any other action or exercise any other right and remedy available to it under the DIP Facility Documents or otherwise available at law or in equity;

provided, that with respect to **Section 10.2(a)(iv)**, such DIP Lender shall provide Borrower (with copies to counsel for the Committee, the United States Trustee for the District of Utah, and all holders of Prepetition Liens with ten (10) days' prior written notice (in any hearing after giving effect to such notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing, provided, however, that notwithstanding any Cure Period, if action is required to be taken by DIP Lenders to preserve the value of their security Collateral pursuant to this Agreement, DIP Lenders may take such action prior to expiration of the Cure Period.

(b) Solely with respect to an Event of Default that occurs and is continuing under **Section 10.1(a)** of this Agreement, acting on its own or for the benefit of all DIP Lenders, may take the remedial actions set forth in **Section 10.2(a)** of this Agreement or the Replacement

DIP Agreement, as applicable, following the expiration of the Cure Period unless the Required DIP Lenders have agreed to extend the Cure Period by up to thirty (30) days. The Required DIP Lenders shall not agree to such an extension unless it is in the best interest of the DIP Lenders and/or necessary to maximize the value of the Borrower's assets. DIP Lenders acknowledge and agree that the Cure Period may not be extended beyond a single thirty (30) day period without the unanimous consent of the DIP Lenders.

(c) Upon the occurrence and during the continuance of an Event of Default, the automatic stay arising pursuant to Bankruptcy Code Section 362 shall be vacated and terminated in accordance with the Financing Order so as to permit DIP Lenders' full exercise of all of its rights and remedies based on the occurrence of an Event of Default, including all of its rights and remedies with respect to the Collateral. With respect to DIP Lenders' exercise of its rights and remedies, Borrower agrees and warrants as follows:

(i) Borrower waives and releases and shall be enjoined from attempting to contest, delay, or otherwise dispute the exercise by each DIP Lender of its rights and remedies before the Bankruptcy Court or otherwise; except only as expressly stated in **Section 10.2(b)(ii)**; and

(ii) when a DIP Lender seeks to enforce its rights and remedies based on an Event of Default, and if Borrower disputes that an Event of Default has occurred, Borrower will be entitled to file an emergency motion with the Bankruptcy Court disputing whether an Event of Default has occurred. Unless otherwise agreed in writing by DIP Lender, any such motion shall be heard within ten (10) days after it is filed, subject to the availability of the Bankruptcy Court. At the hearing on the emergency motion, the only issue that will be heard by the Bankruptcy Court will be whether an Event of Default has occurred and has not been cured, and, if an Event of Default has occurred and has not been cured, each DIP Lender will be entitled to continue to exercise all of their rights and remedies without the necessity of any further notice or order. Furthermore, nothing herein shall be construed to impose or reimpose any stay or injunction of any kind against DIP Lender.

(d) If an Event of Default has occurred and is continuing: (i) each DIP Lender shall have, in addition to all of its other rights, the rights and remedies of a secured party under the UCC; (ii) DIP Lenders may, at any time, take possession of the Collateral and keep it on Borrower's premises, at no cost to DIP Lender, or remove any part of it to such other place or places as DIP Lenders may desire, or Borrower shall, upon DIP Lenders' demand, at Borrower's cost, assemble the Collateral and make it available to DIP Lenders at a place or places reasonably convenient to DIP Lenders; and (iii) DIP Lenders may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as DIP Lenders deem advisable, in its reasonable discretion, and may, if DIP Lenders deem it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, Borrower agrees that any notice by DIP Lenders of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to Borrower if such notice is mailed by registered or certified mail, return receipt

requested, postage prepaid, or is delivered personally against receipt to Borrower, at least ten (10) days prior to such action to Borrower's address specified herein. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the DIP Obligations until DIP Lenders receives payment, and if the buyer defaults in payment, DIP Lender may resell the Collateral without further notice to Borrower. In the event DIP Lender seeks to take possession of all or any portion of the Collateral by judicial process, Borrower irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that DIP Lenders retain possession and not dispose of any Collateral until after trial or final judgment. Borrower agrees that DIP Lenders have no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. DIP Lenders are hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property, in completing production of, advertising or selling any Collateral, and Borrower's rights under all licenses and all franchise agreements shall inure to DIP Lenders' benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including reasonable attorneys' fees, and then to the DIP Obligations. After the DIP Obligations have been fully and finally satisfied in full in cash, DIP Lenders will return any excess proceeds of the Collateral Borrower or as otherwise directed by the Bankruptcy Court. Borrower shall remain liable for any deficiency.

XI. COOPERATION AMONG THE DIP LENDERS

11.1. With respect to all decisions to be made or actions to be taken by the DIP Lenders with respect to or in connection with this Agreement or any of the DIP Facility Documents other than with respect to remedies under section 10.2(a) and (b), the DIP Lenders shall act by unanimous agreement.

11.2. Without limiting the scope of section 11.1 above, no DIP Lender may modify, extend or waive any terms of its Note, without the affirmative consent of all DIP Lenders.

11.3. No DIP Lender is authorized or empowered to act for or bind another DIP Lender because of this Agreement alone. Any such authority or power shall be the subject of a subsequent agreement between the granting DIP Lender and the grantee DIP Lender with advance notice to all DIP Lenders.

11.4. Any recovery by a DIP Lender of an amount in excess of its proportionate share of the DIP Obligation recovered by all DIP Lenders shall be held in trust for the other DIP Lenders and shall be re-distributed as necessary to achieve a proportionate recovery for all DIP Lenders.

11.5. Each DIP Lender shall be entitled to retain counsel and other professionals as of its choice, and to recover from the Borrower any expenses associated therewith as part of that DIP Lender's share of the DIP Obligations.

11.6. No DIP Lender may sell, assign or transfer all or any part of its interest in the DIP Loan or this Agreement to a proposed non-DIP Lender purchaser without prior notice to and the

consent of the other DIP Lenders, which consent shall not be unreasonably withheld. Any proposed assignee of all or any part of such interest will have to assume expressly all of assignor's obligations under this Agreement.

11.7. Each DIP lender grants to each other DIP Lender the right to purchase the former's Note and interest in each of the DIP Facility Documents in return for payment of the selling DIP Lender's share of the DIP Obligations. In the event that more than one DIP Lender offers to purchase the selling DIP Lender's Note and interest in each of the DIP Facility Documents, the selling DIP Lender, in its sole and absolute discretion, may choose the purchaser.

11.8. The DIP Lenders each shall be responsible for keeping themselves informed of (a) the financial condition of the Borrower and (b) all other circumstances bearing upon the risk of nonpayment of the DIP Obligations, and have made and shall continue to make, independently and without reliance upon each other, their own credit analysis and decision in entering into the DIP Facility Documents to which they are parties and taking or not taking any action thereunder. No DIP Lender shall have a duty to advise any other DIP Lender of information known to it regarding such condition or any such other circumstances, and no disclosure of any such information shall create any obligation to provide any further information or be deemed to constitute or require any representation or warranty from the disclosing DIP Lender regarding that or any other information.

XII. MISCELLANEOUS

12.1. Complete Agreement. This Agreement, the Financing Order and the other DIP Facility Documents constitute the complete agreement between the parties with respect to the subject matter hereof.

12.2. Sale of Interests. Borrower may not sell, assign or transfer this Agreement or any of the other DIP Facility Documents or any portion thereof, including Borrower's duties and obligations thereunder. Borrower hereby consents to each DIP Lender's sale of participation, assignment, transfer or other dispositions, at any time or times, of any of the DIP Facility Documents or of any portion thereof or interest therein, including such DIP Lender's rights, title, interest, remedies, powers, or duties thereunder, whether evidenced by a writing or not. No rights are intended to be created hereunder for the benefit of any third party or creditor or any direct or indirect incidental beneficiary, except as specifically provided herein.

12.3. Modification of Agreement. No amendment, modification or alteration to this Agreement, the Note or any other DIP Facility Document shall be effective unless the same shall be in writing and be signed by each of DIP Lenders and Borrower. No waiver of any provision of this Agreement nor any consent to any departure by a DIP Lender therefrom, shall be effective unless the same shall be in writing and signed by each of DIP Lender and Borrower, and then, such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

12.4. No Waiver by DIP Lenders. The failure of any DIP Lender at any time to require strict performance by Borrower of any provision of this Agreement or the Note or any other DIP

Facility Document shall not waive, affect, or diminish any right of DIP Lenders thereafter to demand strict compliance and performance therewith. Any suspension or waiver by DIP Lender of an Event of Default by Borrower under this Agreement, the Note, or any other DIP Facility Document shall not suspend, waive, or affect any other Event of Default by Borrower under this Agreement, the Note, or any other DIP Facility Document whether the same are prior or subsequent thereto and whether of the same or of a different type. None of the undertakings, agreements, warranties, covenants, and representations of Borrower contained in this Agreement shall be deemed to have been suspended or waived by DIP Lenders, unless such suspension or waiver is by an instrument in writing signed by DIP Lenders and directed to Borrower specifying such suspension or waiver.

12.5. Additional Remedies. Each DIP Lender's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that DIP Lenders may have under any other agreement, including any other DIP Facility Document or the Financing Order, the Bankruptcy Code, by operation of law or otherwise. This Agreement is without prejudice to any rights of DIP Lenders under the Bankruptcy Code or under applicable non-bankruptcy law.

12.6. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12.7. Parties. This Agreement, the Note, and the other DIP Facility Documents shall be binding upon and the parties hereto and their respective successors, and shall inure to the benefit of the parties and their assigns, transferees and endorsees. The Replacement DIP Lenders shall be third party beneficiaries of Section 2.10 of this Agreement, and the DIP Lenders and the Borrower acknowledge and agree that each Replacement DIP Lender shall have the right to seek enforcement of the terms and conditions contained in such section.

12.8. Conflict of Terms. Except as otherwise provided in this Agreement or the Note by specific reference to the applicable provisions of this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in the Note, the provision contained in this Agreement shall govern and control.

12.9. Governing Law; Litigation. Except as otherwise expressly provided in any of the DIP Facility Documents, in all respects, including all matters of construction, validity and performance, this Agreement and the DIP Obligations arising hereunder shall be governed by, and be construed and enforced in accordance with, the laws of the State of Utah applicable to contracts made and performed in such state, without regard to the principles thereof regarding conflict of laws, and any applicable laws of the United States of America. Service of process on Borrower or a DIP Lender in any action arising out of or relating to any of the DIP Facility Documents shall be effective if mailed to such party at the address listed in **Section 11.11**.

12.10. Venue. Borrower and DIP Lender hereby agree that the Bankruptcy Court or, if the Bankruptcy Case has closed or the Bankruptcy Court refuses or declines jurisdiction for any

reason, any state or federal court located in the State of Utah, shall have jurisdiction to hear and determine any claims or disputes between Borrower and DIP Lender, pertaining directly or indirectly to this Agreement, the DIP Loan or to any matter relating thereto. The parties expressly submit and consent in advance to such jurisdiction in any action or proceeding commenced in such courts, hereby waiving personal service of the summons and complaint, or other process or papers issued therein, and agreeing that service of such summons and complaint, or other process or papers may be made by registered or certified mail addressed to Borrower or DIP Lender, as the case may be, at their respective addresses set forth in **Section 11.11**. Should a party fail to appear or answer any summons, complaint, process or papers so served within thirty (30) days after the mailing thereof, it shall be deemed in default and an order or judgment may be entered against it as demanded or prayed for in such summons, complaint, process or papers. The choice of forum set forth in this section shall not be deemed to preclude the enforcement of any judgment obtained in such forum or the taking of any action under this Agreement to enforce same in any other jurisdiction.

12.11. Notices. All notices, consents, waivers and communications hereunder given by any party to the other shall be in writing (including facsimile transmission and electronic mail) and delivered personally, facsimile, by electronic mail, by a recognized overnight courier, or by dispatching the same by certified or registered mail, return receipt requested, with postage prepaid, in each case addressed:

If to Borrower, to:

CS Mining, LLC
1208 South 200 West
P.O. Box 608
Milford, UT 84751
Attention: David McMullin
Facsimile: (435) 387-5088
Email: dmcmullin@csmining.com

with copies to:

Pepper & Hamilton LLP
Hercules Plaza, Suite 5100
1313 N. Market Street
P.O. Box 1709
Wilmington, Delaware 19899-1709
Attention: Donald J. Detweiler, Esq.
Facsimile: (800) 343-6137
Email: detweild@pepperlaw.com

If to Wellington, to:

Wellington Financing Partners, LLC
Attn: Galtney Enterprises, Inc.
820 Gessner Rd, Ste 1850
Houston, TX 77024-4289
Attention: Robert F. Galtney
Email: rgaltney@galtney.com

with a copy to:

Durham Jones & Pinegar, P.C.
111 East Broadway, Suite 900
P O Box 4050
Salt Lake City, UT 84110-4050
Attention: Kenneth L. Cannon II
Facsimile: (801) 297-1201
Email: kcannon@djplaw.com

If to St. Cloud, to:

St. Cloud Capital Partners, II, L.P.
10866 Wilshire Blvd., Suite 1450
Los Angeles, CA 90024
Attention: Robert Lautz
Facsimile: (310) 475-0550
Email: rlautz@stcloudcapital.com

with a copy to:

Hogan Lovells US LLP
One Tabor Center, Suite 1500
1200 Seventeenth Street
Denver, CO 80202
Attention: Andrew Lillie, Esq.
Facsimile: (303) 899-7333
Email: andrew.lillie@hoganlovells.com

If to Oxbow, to:

Oxbow Carbon LLC
1450 Lake Robbins Drive, Suite 500
The Woodlands, TX 77380
Attention: Peter Lyons
Email: peter.lyons@oxbow.com

with a copy to:

Oxbow Carbon LLC
1601 Forum Place, 12th Floor
West Palm Beach, FL 33401
Attention: Pierre Azzi
Email: pierre.azzi@oxbow.com

or to such other address or addresses as Borrower or the relevant DIP Lender may from time to time designate by notice as provided herein, except that notices of changes of address shall be effective only upon receipt. All such notices, consents, waivers and communications shall be effective: (a) when posted by certified or registered mail, postage prepaid, return receipt requested, three (3) Business Days after dispatch, (b) when facsimiled or sent by electronic mail, upon transmission, or (c) when delivered by a recognized overnight courier or in person, upon receipt when hand delivered.

12.12. Reimbursement of Expenses other than DIP Lender's Third-Party Advisor Fees. Borrower shall reimburse the DIP Lenders for all reasonable and documented fees, costs and expenses (including the reasonable fees and expenses of all of its counsel, advisors, consultants and auditors) incurred in connection with the DIP Loan or DIP Facility Documents in an amount not to exceed $200,000 (the "DIP Lenders' Fees"). Borrower agrees that DIP Lenders may in their discretion either credit or reserve against DIP Loan disbursements or be paid on demand out of the first proceeds from the sale of Borrower's assets or, if there is no sale, from funding under a confirmed plan of reorganization and without application to the Bankruptcy Court). The DIP Lenders' Fees shall include and are limited to:

(a) the negotiation, preparation and filing and/or recordation of the DIP Facility Documents and related documents, motions and filings;

(b) any amendment, modification or waiver of, consent with respect to, or termination of, this Agreement or any other DIP Facility Document;

(c) any litigation, contest, dispute, suit, proceeding or action (whether instituted by DIP Lender, Borrower or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the DIP Facility Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against Borrower or any other Person that may be obligated to DIP Lender by virtue of the DIP Facility Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the DIP Loan during the pendency of one or more Events of Default;

(d) advice in connection with the administration of the DIP Loan made pursuant hereto or its rights hereunder or thereunder;

(e) any attempt to enforce any remedies of DIP Lender against Borrower or any other Person that may be obligated to DIP Lender by virtue of any of the DIP Facility Documents, including any such attempt to enforce any such remedies in the course of any work-

out or restructuring of the DIP Loan during the pendency of one or more Events of Default; (provided, however, that these fees and any fees incurred by the DIP Lenders in connection with a foreclosure on the DIP Collateral are not subject to the $200,000 cap);

(f) any workout or restructuring of the DIP Loan during the pendency of one or more Events of Default;

(g) the obtaining of approval of the DIP Facility Documents by the Bankruptcy Court;

(h) the preparation and review of pleadings, documents and reports related to the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code, and general monitoring of the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code; and

(i) efforts to (x) monitor the DIP Loan, Tailings Budget, Borrower operations or any DIP Obligations, (y) evaluate, observe or assess Borrower or its affairs, and (z) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral; including, as to each of **Sections 11.12(a)** through **(i)**, all reasonable attorneys' and other professional and service providers' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this **Section 11.12**, all of which shall be payable as set forth above by Borrower to DIP Lender, on demand out of the first proceeds from the sale of Borrower's assets. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, attorneys, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram or telecopy charges; secretarial overtime charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services.

The DIP Lenders' Fees shall be payable on the Maturity Date, unless the DIP Loan is refinanced prior to the Maturity Date with a facility in which DIP Lenders provide at least 50% of the refinancing facility, in which event the DIP Lenders' Fees will be paid at the time the DIP Obligations are due.

12.13. Payment of DIP Lenders' Third-Party Advisor Fees. DIP Lenders anticipate engaging an industry-experienced third-party advisor (the "Third-Party Advisor") to monitor the Resource Development Plan and other value-enhancing initiatives of Borrower. The Third-Party Advisor will be entitled to receive a monitoring fee, with part to be paid $10,000 per month out of the Resource Development line item in the Tailings Budget and the other part, of $100,000, payable as part of the DIP Lenders' Fees *pari passu* with repayment of the DIP Loan on the Maturity Date and secured as part of the DIP Obligations. The amounts payable or reimbursable

to the Third-Party Advisor specified in this Section are in addition to any amounts specified in **Section 11.12.**

12.14. Indemnity. Borrower agrees to defend, indemnify, and hold harmless each DIP Lender and such DIP Lender's directors, officers, employees, advisors, affiliates, representatives, attorneys and agents (each an "Indemnified Person") from and against any and all penalties, fines, liabilities, damages, costs, or expenses of whatever kind or nature asserted against any such Indemnified Person, arising out of, or in any way related to this Agreement or any other DIP Facility Document, or the transactions contemplated hereby or thereby, including by reason of the violation of any law or regulation relating to the protection of the environment or the presence, generation, disposal, release, or threatened release of any hazardous materials in connection with Borrower's business on, at or from any property at any time owned or operated by Borrower, including reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses actually incurred. Borrower shall have no obligation to indemnify DIP Lenders, or provide contribution or reimbursement to DIP Lenders, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from any of the DIP Lender's gross negligence, fraud, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtor alleges the breach of any DIP Lender's contractual obligations unless the Court determines that indemnification is permissible; (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing to be a claim or expense for which a DIP Lender should not receive indemnity.

12.15. Reversal of Payments. To the extent that Borrower makes a payment or payments to a DIP Lender that are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver, or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then, to the extent of such payment or proceeds received, the DIP Obligations or part thereof intended to be satisfied shall be revived and shall continue in full force and effect, as if such payment or proceeds had not been received by such DIP Lender.

12.16. No Control. By agreeing to and executing this Agreement, by making advances or extending financial accommodations of any type, kind or nature under this Agreement, the Tailings Budget or the Financing Order, DIP Lender shall not be deemed (i) to be in control of Borrower's operations or business or (ii) to be acting as a "responsible person," "managing agent" or "owner or operator" with respect to the operation or maintenance of Borrower.

12.17. Survival. The representations and warranties of Borrower and DIP Lenders in this Agreement shall survive the execution, delivery and acceptance hereof by the parties hereto and the closing of the transactions described herein or related hereto.

12.18. Section Titles. The section titles and table of contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever.

12.19. Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall, collectively and separately, constitute one agreement.

[signature page follows]

IN WITNESS WHEREOF, this Agreement have been duly executed as of the date first written above.

"**Borrower**":

CS MINING, LLC

By:_____

Name: _____

Title: _____

"**DIP Lenders**"

"**Wellington**"

WELLINGTON FINANCING PARTNERS, LLC

By:_____

Name:_____

Title:_____

"**St. Cloud**"

ST. CLOUD CAPITAL PARTNERS II. L.P.

By:_____

Name:_____

Title:_____

"Oxbow"

OXBOW CARBON, LLC

By:_____

Name:_____

Title:_____

Exhibit A

Tailings Budget

CS Mining, LLC
Cash Forecast
Prepared as of November 15, 2016

Tailings Processing Scenario

($000s)

For the week beginning	November	December	January	February	March	April	May	June	Nov - Jun Total
Cash Flows from Operations									
Net Receipts	**-**	**497**	**1,862**	**1,758**	**2,181**	**2,181**	**2,181**	**2,181**	**12,840**
Operating Costs									
Labor	(142)	(252)	(309)	(309)	(309)	(309)	(309)	(309)	(2,247)
Benefits	(47)	(84)	(92)	(92)	(92)	(92)	(92)	(92)	(684)
Consumables and Supplies	(1,481)	(391)	(1,006)	(870)	(1,044)	(1,044)	(1,044)	(1,044)	(7,926)
Holding Costs	-	(0)	(0)	(20)	(38)	(36)	(55)	(45)	(195)
Other	(131)	(113)	(113)	(143)	(198)	(113)	(108)	(118)	(1,038)
Total Operating Costs	**(1,801)**	**(840)**	**(1,520)**	**(1,435)**	**(1,682)**	**(1,595)**	**(1,608)**	**(1,608)**	**(12,089)**
Cash Flows from Operations	**(1,801)**	**(343)**	**341**	**323**	**499**	**586**	**573**	**573**	**751**
Cash Flows from Investing Activities									
Capital Expenditures	(185)	(212)	(187)	(72)	(79)	(79)	(44)	(56)	(915)
Transition to C&M	-	-	-	-	-	-	-	-	-
Exploration Cost	(400)	(400)	(475)	(475)	(475)	(475)	(220)	(154)	(3,074)
Cash Flows from Investing Activities	**(585)**	**(612)**	**(662)**	**(547)**	**(554)**	**(554)**	**(264)**	**(210)**	**(3,989)**
Cash Flows from Financing Activities									
DIP Draws	2,300	-	-	-	-	-	-	-	2,300
DIP Servicing	-	-	-	-	-	-	-	-	-
Equipment	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(71)
Cash Flows from Financing Activities	**2,291**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**2,229**
Process Related Disbursements									
Utility Deposits / Other	-	-	-	-	-	-	-	-	-
Cash Debtor Bankruptcy Advisors	(270)	(430)	(290)	(270)	(270)	(270)	(270)	(290)	(2,360)
Cash Unsecured Creditor Committee Fees	(32)	(42)	(32)	(32)	(56)	(32)	(32)	(32)	(290)
US Trustee Fees	-	-	(30)	-	-	(30)	-	(30)	(90)
Cash Flows from Process Related	**(302)**	**(472)**	**(352)**	**(302)**	**(326)**	**(332)**	**(302)**	**(352)**	**(2,740)**
Net Cash Flows	**$ (397)**	**$ (1,436)**	**$ (682)**	**$ (535)**	**$ (390)**	**$ (309)**	**$ (2)**	**$ 1**	**$ (3,749)**
Cumulative Cash Flows	*(397)*	*(1,833)*	*(2,515)*	*(3,050)*	*(3,440)*	*(3,748)*	*(3,751)*	*(3,749)*	
Beginning Cash Balance	**$ 3,754**	**$ 3,357**	**$ 1,921**	**$ 1,239**	**$ 704**	**$ 314**	**$ 5**	**$ 3**	**$ 3,754**
Net Cash Flows	(397)	(1,436)	(682)	(535)	(390)	(309)	(2)	1	(3,749)
Ending Cash Balance	**$ 3,357**	**$ 1,921**	**$ 1,239**	**$ 704**	**$ 314**	**$ 5**	**$ 3**	**$ 5**	**$ 5**
Prefunded Account									
Funding	-	*160*	*160*	*160*	*160*	*160*	*160*	*160*	*1,120*
Payment to Debtor Professionals	-	-	*(160)*	*(160)*	*(160)*	*(160)*	*(160)*	*(160)*	*(960)*
Account Balance	**-**	***160***	***160***	***160***	***160***	***160***	***160***	***160***	***160***

Exhibit B

Schedule of Documents

1. Second DIP Credit Agreement and Schedules to DIP Credit Agreement
2. Tailings Budget (Exhibit A to Second DIP Credit and Security Agreement)
3. Third Amendment to Sulfuric Acid Supply Agreement (Exhibit C to Second DIP Credit and Security Agreement)
4. Notes (Exhibit D to Second DIP Credit and Security Agreement)
5. Financing Order
6. Certification of CRO Requesting DIP Financing Draw

Exhibit C

Third Amendment to Sulfuric Acid Supply Agreement

OXBOW SULPHUR INC.
1450 Lake Robbins Drive, Suite 500
The Woodlands, Texas 77380
Phone: 1 (281) 907-9500 Fax: 1 (281) 907-9400

THIRD AMENDMENT TO SULFURIC ACID SUPPLY AGREEMENT

DATE: November ___, 2016
TO: CS Mining, LLC
FROM: Oxbow Sulphur Inc.
REF #: Third Amendment to Sulfuric Acid Supply Agreement #2554

This Third Amendment ("**Amendment**") to that certain Sulfuric Acid Supply Agreement dated May 5, 2015, as amended September 1, 2015 and further amended December 8, 2015 (the "**Agreement**") is made and entered into as of the ____ day of November 2016 (the "**Effective Date**") by and between CS Mining, LLC, a Delaware limited liability company ("**Buyer**") and Oxbow Sulphur Inc., a Delaware corporation ("**Seller**"). Seller and Buyer each are referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Buyer defaulted under the terms of Agreement;

WHEREAS, Buyer requested that Seller not seek to terminate the Supply Agreement;

WHEREAS, Buyer has requested and Seller has agreed to resume the interim supply of sulfuric acid to Buyer under the terms set forth herein; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree to amend the Agreement as follows:

1. Except as specifically defined herein, capitalized terms used in this Amendment shall have the meaning ascribed to them in the Agreement.

2. The Agreement is hereby amended by adding the following sentences to Section 3, "QUANTITY":

   "Seller shall make two (2) deliveries of Product into storage, each equal to approximately 4,200 ST (the "**Interim Quantity**")."

3. The Agreement is hereby amended by adding the following sentences to Section 5, "SCHEDULE/DELIVERY":

   "The Interim Quantity of Product shall be delivered during on a DAP basis at Buyer's Facility. The first shipment is anticipated to arrive to Buyer's Facility following the Bankruptcy Court's final approval of the DIP Financing and this Amendment."

4. The Agreement is hereby amended by adding the following sentence to Section 7,

"PRICE":

"The Price for the Interim Quantity of Product shall be $139/ST DAP Buyer's Facility."

5. The Agreement is hereby amended by adding the following two paragraphs to Section 8, "PAYMENT":

"Pre-Payment. Buyer shall pre-pay for the Interim Quantity of Product prior to Seller loading the Product on Seller's designated railcars at Seller's supply source.

Additional Quantities. Following the shipment of the Interim Quantity of Product, the price for subsequent shipments shall be Base Price + Transportation Price + $11/ST until the parties have mutually agreed upon a new supply agreement or a further amendment to this Agreement. Buyer shall pre-pay for all shipments in accordance with the above Pre-Payment terms. The schedule for delivery shall be mutually agreed upon."

6. Except as specifically set forth in this Amendment, all terms and conditions of the Agreement are hereby ratified and confirmed by the Parties.

7. In connection with seeking Bankruptcy Court approval of the DIP Financing and associated business plan, Buyer shall request and diligently pursue Bankruptcy Court approval of this Amendment.

8. Seller's obligations under this Amendment are conditioned on the Bankruptcy Court's final approval of the DIP Financing terms agreed to by Seller in a separate term sheet, which shall fund the security deposit and initial two deliveries described herein.

9. This Amendment is not intended to constitute an assumption or rejection of the pre-petition Agreement, and nothing in this Amendment, or any order of the Court approving this Amendment shall be construed as an assumption of the Agreement by the Debtor. Buyer shall request and diligently pursue Bankruptcy Court approval of this Amendment on terms to be agreed between Seller and Buyer. In the event that Buyer does not timely request and diligently pursue such approval, or if the Bankruptcy Court does not approve assumption of this Amendment on terms acceptable to Seller, Seller may terminate any interim supply of Product to Buyer under this Amendment without further order of the Bankruptcy Court.

10. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original copy, and all of which, when taken together, shall be deemed to constitute one and the same instrument. Signatures transmitted by facsimile or other electronic means shall be accepted as originals for all purposes.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the Effective Date.

CS MINING, LLC

By: _____
Name: _____
Title: _____

OXBOW SULPHUR INC.

By: _____
Name: _____
Title: _____

Exhibit D

Notes

PROMISSORY NOTE

$2,000,000.00 December __, 2016

FOR VALUE RECEIVED, the undersigned, CS MINING, LLC, a Delaware limited liability company ("Maker"), hereby promises to pay to the order of OXBOW CARBON, LLC, a Delaware limited liability company, or its assigns ("Holder"), the principal amount of TWO MILLION DOLLARS ($2,000,000.00) (the "Loan"), together with interest accrued thereon and any additional amounts which may be payable to Holder pursuant to the terms set forth in the Credit Agreement or this Promissory Note (the "Note"). Maker and Holder are each sometimes referred to herein as a "Party" and together, the "Parties."

1. Delivery of the Note. This Note is a promissory note referred to in, and is entitled to the benefits of, that certain Second Debtor in Possession Credit and Security Agreement, dated as of December__, 2016 (as the same may be amended, amended and restated, restated, supplemented, modified or otherwise in effect from time to time, the "Credit Agreement") by and among Maker, Holder and the other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meaning given them in the Credit Agreement.

2. Final Payment; Optional Prepayments.

(a) Final Payment Date. The aggregate unpaid principal amount of the Loan, all accrued and unpaid interest and all other amounts payable under this Note shall be due and payable on the Maturity Date.

(b) Optional Prepayment. Maker may prepay the Loan in whole or in part pursuant to Section 2.3 of the Credit Agreement.

3. Interest.

(a) Interest Rate. Except as otherwise provided herein, the outstanding principal amount of the Loan made hereunder shall bear interest at 7% per annum from the date the Loan was made until the Loan is paid in full, whether upon the Maturity Date, by prepayment or otherwise. In no event will the rate of interest hereunder exceed the maximum rate under applicable law.

(b) Interest Payment. Interest on the Loan shall be due and payable in full in arrears on the Maturity Date.

(c) Default Interest. If any amount payable hereunder is not paid when due, such overdue amount shall bear interest at 7.8% per annum from the date of such non-payment until such amount is paid in full.

(d) Computation of Interest. All computations of interest shall be made on the basis of a year of 365 days or 366 days, as the case may be, and the actual number of days elapsed. Interest shall accrue on the Loan on the day on which such Loan is made, and shall not accrue on the Loan on the day on which it is paid.

4. Payment Mechanics.

(a) Manner of Payment. All payments of interest and principal shall be made in lawful money of the United States of America no later than 12:00 p.m., Mountain Time, on the Maturity Date by wire transfer of immediately available funds to the Holder's account at a bank specified by the Holder in writing to the Maker.

(b) Application of Payments. All payments made hereunder shall be applied first, to the payment of any fees or charges outstanding hereunder, second, to accrued interest and third, to the payment of the principal amount outstanding under the Note. Any payments received by Holder after any default hereunder, shall be applied in such order as Holder may, in its sole discretion, elect.

(c) Business Day Convention. Whenever any payment to be made hereunder shall be due on a day that is a Saturday, Sunday or legal holiday in the State of Utah, such payment shall be made on the next succeeding business day and such extension will be taken into account in calculating the amount of interest payable under this Note.

5. Remedies. Upon the occurrence of an Event of Default, the holder of this Note may pursue the remedies set forth in Section 10.2 of the Credit Agreement.

6. Use of Proceeds. Maker shall use the proceeds of the Loan solely in accordance with Section 2.4, Section 12.12 and Section 12.13 of the Credit Agreement.

7. Fees and Expenses. Maker shall reimburse the Holder for all reasonable and documented out-of-pocket costs, expenses and fees (including reasonable expenses and fees of its counsel) incurred by the Holder in connection with the transactions contemplated hereby including the negotiation, documentation and execution of this Note (subject to the limitations set forth in Section 12.2 and Section 11.12 of the Credit Agreement) and the enforcement of the Holder’s rights hereunder or under the Credit Agreement.

8. Successors and Assigns. This Note may be assigned, transferred or negotiated by the Holder to (a) any affiliate of Holder at any time without notice to or the consent of Maker and (b) any other person with the prior written consent of Maker. Maker may not assign or transfer this Note or any of its rights hereunder without the prior written consent of the Holder. This Note shall inure to the benefit of and be binding upon the Parties and their permitted assigns.

9. Cumulative Rights. No delay on the part of any holder of this Note in the exercise of any power or right under this Note, or under any document or instrument executed in connection herewith, shall operate as a waiver thereof, nor shall a single or partial exercise of any other power or right.

10. Waivers. Maker, and any other party ever liable for the payment of any sum of money payable on this Note, jointly and severally waive demand, presentment, protest, notice of nonpayment, notice of intention to accelerate, notice of acceleration, notice of protest, and any and all lack of diligence or delay in collection or the filing of suit hereon which may occur; agree that their liability on this Note shall not be affected by any renewal or extension in the time of

payment hereof, or by any indulgences, and hereby consent to any and all renewals, extensions, indulgences, releases, or changes hereof or hereto, regardless of the number of such renewals, extensions, indulgences, releases, or changes. Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision of this Note.

11. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict of law principles.

12. Severability. If any provision of this Note shall be held to be unenforceable by a court of competent jurisdiction, such provisions shall be severed from this Note and the remainder of this Note shall continue in full force and effect.

13. Notices. Notices shall be given to Holder or Maker pursuant to Section 12.11 of the Credit Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Maker has executed this Note as of the date and year first above written.

"MAKER"

CS MINING, LLC,
a Delaware limited liability company,

By:_____
Name:
Title:

ACKNOWLEDGED AND AGREED:

"HOLDER"

OXBOW CARBON, LLC
a Delaware limited liability company,

By:_____
Name:
Title:

PROMISSORY NOTE

$500,000.00 December __, 2016

FOR VALUE RECEIVED, the undersigned, CS MINING, LLC, a Delaware limited liability company ("Maker"), hereby promises to pay to the order of WELLINGTON FINANCING PARTNERS, LLC, a Delaware limited liability company, or its assigns ("Holder"), the principal amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) (the "Loan"), together with interest accrued thereon and any additional amounts which may be payable to Holder pursuant to the terms set forth in the Credit Agreement or this Promissory Note (the "Note"). Maker and Holder are each sometimes referred to herein as a "Party" and together, the "Parties."

14. Delivery of the Note. This Note is a promissory note referred to in, and is entitled to the benefits of, that certain Second Debtor in Possession Credit and Security Agreement, dated as of December__, 2016 (as the same may be amended, amended and restated, restated, supplemented, modified or otherwise in effect from time to time, the "Credit Agreement") by and among Maker, Holder and the other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meaning given them in the Credit Agreement.

15. Final Payment; Optional Prepayments.

(a) Final Payment Date. The aggregate unpaid principal amount of the Loan, all accrued and unpaid interest and all other amounts payable under this Note shall be due and payable on the Maturity Date.

(b) Optional Prepayment. Maker may prepay the Loan in whole or in part pursuant to Section 2.3 of the Credit Agreement.

16. Interest.

(e) Interest Rate. Except as otherwise provided herein, the outstanding principal amount of the Loan made hereunder shall bear interest at 7% per annum from the date the Loan was made until the Loan is paid in full, whether upon the Maturity Date, by prepayment or otherwise. In no event will the rate of interest hereunder exceed the maximum rate under applicable law.

(f) Interest Payment. Interest on the Loan shall be due and payable in full in arrears on the Maturity Date.

(g) Default Interest. If any amount payable hereunder is not paid when due, such overdue amount shall bear interest at 7.8% per annum from the date of such non-payment until such amount is paid in full.

(h) Computation of Interest. All computations of interest shall be made on the basis of a year of 365 days or 366 days, as the case may be, and the actual number of days elapsed. Interest shall accrue on the Loan on the day on which such Loan is made, and shall not accrue on the Loan on the day on which it is paid.

17. Payment Mechanics.

(a) Manner of Payment. All payments of interest and principal shall be made in lawful money of the United States of America no later than 12:00 p.m., Mountain Time, on the Maturity Date by wire transfer of immediately available funds to the Holder's account at a bank specified by the Holder in writing to the Maker.

(b) Application of Payments. All payments made hereunder shall be applied first, to the payment of any fees or charges outstanding hereunder, second, to accrued interest and third, to the payment of the principal amount outstanding under the Note. Any payments received by Holder after any default hereunder, shall be applied in such order as Holder may, in its sole discretion, elect.

(c) Business Day Convention. Whenever any payment to be made hereunder shall be due on a day that is a Saturday, Sunday or legal holiday in the State of Utah, such payment shall be made on the next succeeding business day and such extension will be taken into account in calculating the amount of interest payable under this Note.

18. Remedies. Upon the occurrence of an Event of Default, the holder of this Note may pursue the remedies set forth in Section 10.2 of the Credit Agreement.

19. Use of Proceeds. Maker shall use the proceeds of the Loan solely in accordance with Section 2.4, Section 12.12 and Section 12.13 of the Credit Agreement.

20. Fees and Expenses. Maker shall reimburse the Holder for all reasonable and documented out-of-pocket costs, expenses and fees (including reasonable expenses and fees of its counsel) incurred by the Holder in connection with the transactions contemplated hereby including the negotiation, documentation and execution of this Note (subject to the limitations set forth in Section 12.2 and Section 12.12 of the Credit Agreement) and the enforcement of the Holder’s rights hereunder or under the Credit Agreement.

21. Successors and Assigns. This Note may be assigned, transferred or negotiated by the Holder to (a) any affiliate of Holder at any time without notice to or the consent of Maker and (b) any other person with the prior written consent of Maker. Maker may not assign or transfer this Note or any of its rights hereunder without the prior written consent of the Holder. This Note shall inure to the benefit of and be binding upon the Parties and their permitted assigns.

22. Cumulative Rights. No delay on the part of any holder of this Note in the exercise of any power or right under this Note, or under any document or instrument executed in connection herewith, shall operate as a waiver thereof, nor shall a single or partial exercise of any other power or right.

23. Waivers. Maker, and any other party ever liable for the payment of any sum of money payable on this Note, jointly and severally waive demand, presentment, protest, notice of nonpayment, notice of intention to accelerate, notice of acceleration, notice of protest, and any and all lack of diligence or delay in collection or the filing of suit hereon which may occur; agree that their liability on this Note shall not be affected by any renewal or extension in the time of

payment hereof, or by any indulgences, and hereby consent to any and all renewals, extensions, indulgences, releases, or changes hereof or hereto, regardless of the number of such renewals, extensions, indulgences, releases, or changes. Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision of this Note.

24. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict of law principles.

25. Severability. If any provision of this Note shall be held to be unenforceable by a court of competent jurisdiction, such provisions shall be severed from this Note and the remainder of this Note shall continue in full force and effect.

26. Notices. Notices shall be given to Holder or Maker pursuant to Section 11.11 of the Credit Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Maker has executed this Note as of the date and year first above written.

"MAKER"

CS MINING, LLC,
a Delaware limited liability company,

By:_____
Name:
Title:

ACKNOWLEDGED AND AGREED:

"HOLDER"

WELLINGTON FINANCIAL PARTNERS, LLC
a Delaware limited liability company,

By:_____
Name:
Title:

PROMISSORY NOTE

$100,000.00 December __, 2016

FOR VALUE RECEIVED, the undersigned, CS MINING, LLC, a Delaware limited liability company ("Maker"), hereby promises to pay to the order of ST. CLOUD CAPITAL PARTNERS II, L.P., or its assigns ("Holder"), the principal amount of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) (the "Loan"), together with interest accrued thereon and any additional amounts which may be payable to Holder pursuant to the terms set forth in the Credit Agreement or this Promissory Note (the "Note"). Maker and Holder are each sometimes referred to herein as a "Party" and together, the "Parties."

27. Delivery of the Note. This Note is a promissory note referred to in, and is entitled to the benefits of, that certain Second Debtor in Possession Credit and Security Agreement, dated as of December__, 2016 (as the same may be amended, amended and restated, restated, supplemented, modified or otherwise in effect from time to time, the "Credit Agreement") by and among Maker, Holder and the other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meaning given them in the Credit Agreement.

28. Final Payment; Optional Prepayments.

(a) Final Payment Date. The aggregate unpaid principal amount of the Loan, all accrued and unpaid interest and all other amounts payable under this Note shall be due and payable on the Maturity Date.

(b) Optional Prepayment. Maker may prepay the Loan in whole or in part pursuant to Section 2.3 of the Credit Agreement.

29. Interest.

(i) Interest Rate. Except as otherwise provided herein, the outstanding principal amount of the Loan made hereunder shall bear interest at 7% per annum from the date the Loan was made until the Loan is paid in full, whether upon the Maturity Date, by prepayment or otherwise. In no event will the rate of interest hereunder exceed the maximum rate under applicable law.

(j) Interest Payment. Interest on the Loan shall be due and payable in full in arrears on the Maturity Date.

(k) Default Interest. If any amount payable hereunder is not paid when due, such overdue amount shall bear interest at 7.8% per annum from the date of such non-payment until such amount is paid in full.

(l) Computation of Interest. All computations of interest shall be made on the basis of a year of 365 days or 366 days, as the case may be, and the actual number of days elapsed. Interest shall accrue on the Loan on the day on which such Loan is made, and shall not accrue on the Loan on the day on which it is paid.

30. Payment Mechanics.

(a) Manner of Payment. All payments of interest and principal shall be made in lawful money of the United States of America no later than 12:00 p.m., Mountain Time, on the Maturity Date by wire transfer of immediately available funds to the Holder's account at a bank specified by the Holder in writing to the Maker.

(b) Application of Payments. All payments made hereunder shall be applied first, to the payment of any fees or charges outstanding hereunder, second, to accrued interest and third, to the payment of the principal amount outstanding under the Note. Any payments received by Holder after any default hereunder, shall be applied in such order as Holder may, in its sole discretion, elect.

(c) Business Day Convention. Whenever any payment to be made hereunder shall be due on a day that is a Saturday, Sunday or legal holiday in the State of Utah, such payment shall be made on the next succeeding business day and such extension will be taken into account in calculating the amount of interest payable under this Note.

31. Remedies. Upon the occurrence of an Event of Default, the holder of this Note may pursue the remedies set forth in Section 10.2 of the Credit Agreement.

32. Use of Proceeds. Maker shall use the proceeds of the Loan solely in accordance with Section 2.4, Section 12.12 and Section 12.13 of the Credit Agreement.

33. Fees and Expenses. Maker shall reimburse the Holder for all reasonable and documented out-of-pocket costs, expenses and fees (including reasonable expenses and fees of its counsel) incurred by the Holder in connection with the transactions contemplated hereby including the negotiation, documentation and execution of this Note (subject to the limitations set forth in Section 12.2 and Section 12.12 of the Credit Agreement) and the enforcement of the Holder’s rights hereunder or under the Credit Agreement.

34. Successors and Assigns. This Note may be assigned, transferred or negotiated by the Holder to (a) any affiliate of Holder at any time without notice to or the consent of Maker and (b) any other person with the prior written consent of Maker. Maker may not assign or transfer this Note or any of its rights hereunder without the prior written consent of the Holder. This Note shall inure to the benefit of and be binding upon the Parties and their permitted assigns.

35. Cumulative Rights. No delay on the part of any holder of this Note in the exercise of any power or right under this Note, or under any document or instrument executed in connection herewith, shall operate as a waiver thereof, nor shall a single or partial exercise of any other power or right.

36. Waivers. Maker, and any other party ever liable for the payment of any sum of money payable on this Note, jointly and severally waive demand, presentment, protest, notice of nonpayment, notice of intention to accelerate, notice of acceleration, notice of protest, and any and all lack of diligence or delay in collection or the filing of suit hereon which may occur; agree that their liability on this Note shall not be affected by any renewal or extension in the time of

payment hereof, or by any indulgences, and hereby consent to any and all renewals, extensions, indulgences, releases, or changes hereof or hereto, regardless of the number of such renewals, extensions, indulgences, releases, or changes. Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision of this Note.

37. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict of law principles.

38. Severability. If any provision of this Note shall be held to be unenforceable by a court of competent jurisdiction, such provisions shall be severed from this Note and the remainder of this Note shall continue in full force and effect.

39. Notices. Notices shall be given to Holder or Maker pursuant to Section 11.11 of the Credit Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Maker has executed this Note as of the date and year first above written.

"MAKER"

CS MINING, LLC,
a Delaware limited liability company,

By:_____
Name:
Title:

ACKNOWLEDGED AND AGREED:

"HOLDER"

ST. CLOUD CAPITAL PARTNERS, L.P.,

By:_____
Name:
Title:

Schedule 5.1(i): Litigation

CS Mining Case No. 16-24818 List of Pending Litigation

Case Title	Case Number	Jurisdiction
BRAHMA GROUP, INC., etc., Pltf. Vs. CS MINING, LLC, etc., et al., Dfts	160500005	Fifth Judicial District Court, Beaver County,Beaver Department, UT
RE: Parcel ID: 07-0700-0235 // To: CS Mining, LLC	None specified	n/a
MATTHEW CHENAULT on behalf of himself and all others similarly situated, Plaintiff, v. CS MINING, LLC, Defendant.	Bankruptcy Case #1624818WTT; Adversary Case #1602095WTT	US Bankruptcy Court, District of Utah
COOKE & ROYLANCE, INC., etc., Pltf. Vs. CS Mining, LLC, et al., Dfts.	160901635	Third District Court, Salt Lake County, Salt Lake Department, UT
RE: Ferguson Enterprises, Inc., Claimant // To: CS Mining, LLC	None Specified	n/a
RE: Pipe Valve and Fitting Co., Claimant // To: CS Mining, LLC	None Specified	n/a
RELIANCE STEEL & ALUMINUM, etc., pltf. Vs.CS Mining, LLC, etc., Dft.	160903484	Third District Court, Salt Lake County, Salt Lake Department, UT
RPS CAMPBELL COMPANIES LLC, etc., Pltf. Vs. CS Mining LLC, etc., Dft.	160901612	Third District Court, Salt Lake County, Salt Lake Department, UT
In Re: CS MINING, LLC, Debtor Matthew Chenault on behalf of himself and all others similarly situated, Pltf. vs. CS MINING, LLC, Dft.	Bankruptcy Case #1624818WTT; Adversary Case #1602095WTT	US Bankruptcy Court, District of Utah
Augusta Fiberglass Coatings, Inc., Pltf. vs. CS Mining, LLC, Dft.	2016CP0600311	The Honorable Rhonda Dale McElveen Barnwell County Clerk of Court (SC)
J&M STEEL SOLUTIONS, INC., etc., Pltf. vs.BRAHMA GROUP, INC., et al., Dfts. // To: CS MINING, LLC	160500005	Fifth Judicial District Court, Beaver County, Beaver Department, UT
DXS Capital (U.S.) Limited et. al. v. David J. Richards, LLC et. al.	652681/2016	N.Y. Sup. Ct, HON. EILEEN ANN RAKOWER
Clarity Copper, LLC et. al. v. DXS Capital (U.S.) Limited et. al.		Beaver County, UT Fifth District
DXS Capital (U.S.) Limited v. Skye Mineral Investors, LLC	12381-VCS	Honorable Joseph R. Slights III, Delaware Court of Chancery, Kent County Courthouse
Waterloo Street Limited v. David J. Richards, LLC	650741/2016	N.Y. Sup. Ct
David J. Richards, LLC d/b/a Western US Mineral Investors, LLC	Entry # 258075, Book# 499, Page 292 Entry # 258074, Book# 499, Page 287 Entry # 258077, Book# 499, Page 388 Entry # 258076, Book# 499, Page 296	Beaver County Corporation
Plasticon North America	01-16-0000-5390 100321	American Arbitration Association International Centre for Dispute Resolution Ms. Yanett Quiroz, LL.M. Houston, TX 77027

Schedule 5.1 (j): Taxes

SCHEDULE 5.1 - TAXES

- 2015 property tax
- 2016 property tax
- Q1 2016 sales and use tax
- Amounts owed from a sales and use tax audit (periods 2012 to 2014)

Schedule 5.1(k): Ownership of Property

SCHEDULE 5.1(k) – OWNERSHIP OF PROPERTY

1. Waterloo Street Limited (All assets of the Debtor)
2. David J. Richards, LLC d/b/a Western US Mineral Investors, LLC (All assets of the Debtor)
3. Skye Mineral Partners, LLC (All assets of the Debtor)
4. Wells Fargo Bank, N.A. (Equipment)
5. Navitas Lease Management Group (Equipment)
6. Caterpillar Financial Services Corporation (Equipment)
7. Komatsu Financial Limited Partnership (Equipment)
8. H&E Equipment Services, Inc. (Equipment)
9. Revco Leasing Corporation (Equipment)
10. Noble Americas Corp. (Potential Claims Re Inventory)
11. Thermo Electron North America, LLC (Equipment)
12. First National Capital, LLC (Equipment)
13. Lexon Insurance Company, as trustee (Cash Collateral Account for Bonding)
14. Mechanics Liens
    a. Agate, Inc.
    b. J&M Steel Solutions LLC
    c. International Lining Technology, Inc. (a Nevada Corp.)
    d. Brahma Group, Inc.
    e. Schmueser & Associates, Inc.
    f. Ferguson Enterprises
    g. Pipe Valve and Fitting Co.
15. Taxes
    a. Utah State Tax Commission
    b. Beaver County Assessor

Schedule 5.1(1)(b): Environmental

Schedule 5.1(l)(b)

To the best of Borrower's knowledge, Borrower is not in violation of any of its approved activities or permits with respect to Environmental Laws, and no conditions exist that would give rise to a violation of any Environmental Laws. In one area of the operation regarding the intermediate tailings dam, the pH of solutions is believed to be markedly below what is allowed by the current permit. However, the regulating entities, Utah Division of Water Quality (DWQ) and Utah Division of Oil, Gas and Mining (UDOGM) are both updated and aware on this issue and have agreed to the proposed Borrower plan to address this issue.

Schedule 8.3: Liens

SCHEDULE 8.3 - PREPETITION LIENS

Creditor Name and Address	Description of Debtor's Property That is Subject to a Lien	Describe the Lien	Amount of Claim Do Not Deduct the Value of Collateral
Agate, Inc. P.O. Box 117 Scotsdale, AZ 85252	Phase II Project Assets	Mechanics Lien	$ 142,386.00
Beaver County Treasurer P.O. Box 432 Beaver, UT 84713	Property Tax	Tax Lien	$ 544,478.07
Brahma Group, Inc. 1132 South 500 West Salt Lake City, UT 84101	Phase II Project Assets	Mechanics Lien	$ 1,369,915.79
Caterpillar Financial Services Corporation 2120 West End Avenue Nashville, TN 37203	Cat 777 Haul Trucks	Purchase Money Security Interests	$ 1,335,477.80
Caterpillar Financial Services Corporation 2120 West End Avenue Nashville, TN 37203	Cat TL 12, Cat 349	Purchase Money Security Interests	$ 308,130.94
Ferguson Enterprises, Inc. 1422 South 4450 West Salt Lake City, UT 84104	Phase II Project Assets	Mechanics Lien	$ 55,905.20
International Lining Technology, Inc. (a Nevada Corp.) 850 Maestro Drive, Suite 101 Reno, NV 89511	Phase II Project Assets	Mechanics Lien	$ 156,969.00
J&M Steel Solutions LLC 894 West State Street Lehi, UT 84157	Phase II Project Assets	Mechanics Lien	$ 20,450.00
Komatusu Financial Lp 1701 West Golf Road Suite1-300 Rolling Meadows, IL 60008	Manitou Forklift, LK8 Forklift, RS519 Telehandler, S185 Skidsteer, Yale Forklift, GS2632 Scissorlift, 600AJ Boomlift	Purchase Money Security Interests	$ 94,714.45
Pipe Valve and Fitting Co. 2505 East 79th Avenue P.O. Box 5806 Denver, CO 80217	Phase II Project Assets	Mechanics Lien	$ 24,470.04

Schmueser & Associates, Inc. 1901 Railroad Avenue Rifle, CO 81650	Phase II Project Assets	Mechanics Lien	$ 310,531.99
Skye Mineral Partners, LLC 500 South Front Street Suite 1200 Columbus, OH 43215	All Assets of the Company	Subordinated Senior Debt	$ 27,309,249.78
SMA Surety, Inc. d/b/a Smith Manus, Lexon Insurance Company 2307 River Road Suite 200 Louisville, KY 40206	Cash Collateral	Surety Bond	$ 4,944,348.00
Thermo electron North America, LLC 770 Northport Parkway Suite 100 West Palm Beach, FL 33407	ARL 4460 Metals Analyzer	Purchase Money Security Interests	$ 77,365.91
Utah Independent Bank 195 North Main Beaver, UT 84713	2006 Ford F150	Equipment Loan	$ 4,144.57
Waterloo Street Limited 2307 River Road Suite 200 Louisville, KY 40206	Phase II Project Assets	Senior Debt	$ 34,755,133.23
Wells Fargo Equipment Finance 300 Tri-State International Suite 400 Lincolnshire, IL 60069	Cat P5000 forklift	Purchase Money Security Interests	$ 41,111.03
Western US Mineral Investors, LLC 500 South French Street Suite 1200 Columbus, OH 43215	Pre-Phase II Assets	Senior Debt	$ 24,407,274.00
		TOTAL	**$ 95,902,055.80**

Schedule 8.4: Indebtedness

SCHEDULE 8.4 - INDEBTEDNESS

Creditors who have claims Secured by Property	**$**	**95,902,055.80**
Creditors who have Unsecured Claims		
Total claim amounts of priority unsecured claims		205,749.00
Total amount of claims of nonpriority amounts of unsecured claims		22,199,526.84
Total Unsecured Claims		**22,405,275.84**
Total Indebtedness	**$**	**118,307,331.64**

EXHIBIT B

TAILINGS BUDGET

CS Mining, LLC
Cash Forecast
Prepared as of November 15, 2016

Tailings Processing Scenario

($000s)

For the week beginning	November	December	January	February	March	April	May	June	Nov - Jun Total
Cash Flows from Operations									
Net Receipts	**-**	**497**	**1,862**	**1,758**	**2,181**	**2,181**	**2,181**	**2,181**	**12,840**
Operating Costs									
Labor	(142)	(252)	(309)	(309)	(309)	(309)	(309)	(309)	(2,247)
Benefits	(47)	(84)	(92)	(92)	(92)	(92)	(92)	(92)	(684)
Consumables and Supplies	(1,481)	(391)	(1,006)	(870)	(1,044)	(1,044)	(1,044)	(1,044)	(7,926)
Holding Costs	-	(0)	(0)	(20)	(38)	(36)	(55)	(45)	(195)
Other	(131)	(113)	(113)	(143)	(198)	(113)	(108)	(118)	(1,038)
Total Operating Costs	**(1,801)**	**(840)**	**(1,520)**	**(1,435)**	**(1,682)**	**(1,595)**	**(1,608)**	**(1,608)**	**(12,089)**
Cash Flows from Operations	**(1,801)**	**(343)**	**341**	**323**	**499**	**586**	**573**	**573**	**751**
Cash Flows from Investing Activities									
Capital Expenditures	(185)	(212)	(187)	(72)	(79)	(79)	(44)	(56)	(915)
Transition to C&M	-	-	-	-	-	-	-	-	-
Exploration Cost	(400)	(400)	(475)	(475)	(475)	(475)	(220)	(154)	(3,074)
Cash Flows from Investing Activities	**(585)**	**(612)**	**(662)**	**(547)**	**(554)**	**(554)**	**(264)**	**(210)**	**(3,989)**
Cash Flows from Financing Activities									
DIP Draws	2,300	-	-	-	-	-	-	-	2,300
DIP Servicing	-	-	-	-	-	-	-	-	-
Equipment	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(71)
Cash Flows from Financing Activities	**2,291**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**2,229**
Process Related Disbursements									
Utility Deposits / Other	-	-	-	-	-	-	-	-	-
Cash Debtor Bankruptcy Advisors	(270)	(430)	(290)	(270)	(270)	(270)	(270)	(290)	(2,360)
Cash Unsecured Creditor Committee Fees	(32)	(42)	(32)	(32)	(56)	(32)	(32)	(32)	(290)
US Trustee Fees	-	-	(30)	-	-	(30)	-	(30)	(90)
Cash Flows from Process Related	**(302)**	**(472)**	**(352)**	**(302)**	**(326)**	**(332)**	**(302)**	**(352)**	**(2,740)**
Net Cash Flows	**$ (397)**	**$ (1,436)**	**$ (682)**	**$ (535)**	**$ (390)**	**$ (309)**	**$ (2)**	**$ 1**	**$ (3,749)**
Cumulative Cash Flows	*(397)*	*(1,833)*	*(2,515)*	*(3,050)*	*(3,440)*	*(3,748)*	*(3,751)*	*(3,749)*	
Beginning Cash Balance	**$ 3,754**	**$ 3,357**	**$ 1,921**	**$ 1,239**	**$ 704**	**$ 314**	**$ 5**	**$ 3**	**$ 3,754**
Net Cash Flows	(397)	(1,436)	(682)	(535)	(390)	(309)	(2)	1	(3,749)
Ending Cash Balance	**$ 3,357**	**$ 1,921**	**$ 1,239**	**$ 704**	**$ 314**	**$ 5**	**$ 3**	**$ 5**	**$ 5**
Prefunded Account									
Funding	-	*160*	*160*	*160*	*160*	*160*	*160*	*160*	*1,120*
Payment to Debtor Professionals	-	-	*(160)*	*(160)*	*(160)*	*(160)*	*(160)*	*(160)*	*(960)*
Account Balance	**-**	***160***	***160***	***160***	***160***	***160***	***160***	***160***	***160***

EXHIBIT B

AMENDMENT TO FINAL DIP CREDIT FACILITY

AMENDMENT TO DEBTOR IN POSSESSION CREDIT AND SECURITY AGREEMENT

THIS AMENDMENT TO DEBTOR IN POSSESSION CREDIT AND SECURITY AGREEMENT (this "Amendment"), dated as of December__, 2016, by and between CS MINING, LLC, a Delaware limited liability company, as debtor and debtor in possession ("Borrower" or "Debtor"), and WELLINGTON FINANCING PARTNERS, LLC, a Delaware limited liability company ("Wellington"), BROADBILL PARTNERS, L.P., a Delaware limited partnership ("Broadbill"), and ST. CLOUD CAPITAL PARTNERS II. L.P. ("St. Cloud," and collectively with Wellington, and Broadbill, and each of their successors, assigns and participants, "DIP Lenders"; each of Wellington, Broadbill, and St. Cloud, together with its respective successors, assigns and participants, a "DIP Lender").

A. On October 11, 2016, the DIP Lenders and Borrower entered into that certain Debtor in Possession Credit and Security Agreement ("Replacement DIP Credit Agreement") pursuant to which the DIP Lenders extended credit to Borrower not to exceed $7,675,000. Capitalized terms used but not defined herein shall have the meaning given to them in the Replacement DIP Credit Agreement.

B. Wellington, St. Cloud and Oxbow Carbon, LLC (collectively, the "Second DIP Facility Lenders") are now making available to Borrower a priming secured superpriority line of credit pursuant to that certain Second Debtor In Possession Credit and Security Agreement dated as of the date hereof ("Second DIP Credit Agreement").

C. Borrower and DIP Lenders now desire to amend the Replacement DIP Credit Agreement consistent with certain terms of the Second DIP Credit Agreement on the terms and conditions herein.

NOW, THEREFORE, in consideration of the premises and the other mutual covenants contained herein, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

1. Amendments to Replacement DIP Credit Agreement.

1.1 Definition of Maturity Date. The definition of Maturity Date is amended as follows:

> "(a) June 30, 2017 which date may be extended by sixty (60) days by Borrower without DIP Lender approval if (a) recommended by Borrower's CROs as appropriate to maximize value to all stakeholders and (b) Borrower has sufficient cash to operate during such additional 60-day period;"

1.2 Definition. The following new definitions shall be added to Section 1.1 in applicable alphabetical order:

"Second DIP Credit Agreement" shall mean that certain Second Debtor In Possession Credit and Security Agreement dated as of December __, 2016, by and among Borrower, Wellington, St. Cloud and Oxbow Carbon, LLC."

"Second DIP Facility Lenders" shall mean Wellington, St. Cloud and Oxbow Carbon, LLC."

1.3 Section 4.1. Liens. The first full paragraph of Section 4.1 is hereby amended and restated in its entirety as follows:

"To secure the DIP Obligations and subject to the Carve-Out, Borrower hereby unconditionally grants, assigns, and pledges to DIP Lenders valid, continuing, enforceable and fully perfected: (a) first priority Liens and security interests (held *pari passu* with the Second DIP Facility Lenders) in accordance with Section 364(c)(2) of the Bankruptcy Code on all unencumbered property of Borrower; (b) excluding the Prepetition Liens of Waterloo, WUMI and SMP, which the Borrower intends to provide DIP Lenders with valid, perfected and unavoidable first priority priming Lien (held *pari passu* with the Second DIP Facility Lenders) over, junior Liens and security interests in accordance with Section 364(c)(3) of the Bankruptcy Code on all property of Borrower that is subject to valid, perfected and unavoidable Liens in existence at the time of the Petition Date, and (c) a priming first priority Lien ((held *pari passu* with the Second DIP Facility Lenders) pursuant to Section 364(d) of the Bankruptcy Code on all property of Borrower that is subject to the valid, perfected and unavoidable Prepetition Liens of Waterloo, WUMI and SMP, in each case whether now owned or hereafter acquired or arising and wherever located, including Borrower's right, title and interest in and to the following , whether now owned or hereafter acquired or arising and wherever located (the Liens granted in favor of DIP Lenders pursuant to this Agreement and the Financing Order will be referred to as the "DIP Liens"):"

1.4 Section 7.11. Exit Milestones. Section 7.11 is hereby amended and restated in its entirety as follows:

"7.11. Sale Process and Plan of Reorganization. Borrower will comply with the following schedule and milestones (the "Exit Milestones"):

(a) on or before March 1, 2017, Borrower will recommence a formal sale process by filing an appropriate motion for approval of an asset sale or by filing a plan of reorganization which provides for such an asset sale;

(b) if the Debtor seeks to sell its assets outside of a plan of reorganization, then on or before May 31, 2017, the Bankruptcy Court will approve the proposed sale of assets and such sale shall close on or before June 30, 2017; and

(c) if the Debtor seeks to sell its assets as part of a plan of reorganization, or otherwise seeks to restructure its debt obligations through a plan of reorganization, the Bankruptcy Court will approve such plan of reorganization on or before June 30, 2017.

After consultation with DIP Lenders, the foregoing Exit Milestones may be extended upon the reasonable request of Borrower's CROs for up to sixty (60) days if, in their business judgment, such an extension is necessary to maximize the value of Borrower's assets and/or improve the prospects of the sale process and/or an alternative resolution such as a plan of reorganization, provided Borrower has sufficient cash to operate during such additional 60-day period."

1.5 Section 10.1. Events of Default. A new section (x) shall be added to Section 10.1 as follows:

"(x) failure to pay any principal or interest due in respect of the Second DIP Credit Agreement when due, and such failure continues after the applicable grace period, if any, specified therein."

2. Extension of Deadlines; Timing. The DIP Lenders and the Second DIP Facility Lenders hereby agree that to the extent the Second DIP Credit Agreement grants additional time for Borrower to perform its obligations under Section 7.10 and Section 7.11 of the Second DIP Credit Agreement (collectively "Deadlines") such Deadlines shall apply *mutatis mutandis* to the Replacement DIP Credit Agreement.

3. Replacement DIP Credit Agreement and DIP Facility Documents Remain in Full Force and Effect as Amended by this Amendment. Except as specifically amended by or otherwise provided in this Amendment, the Replacement DIP Credit Agreement and the other DIP Facility Documents shall remain in full force and effect and hereby are ratified and confirmed as so amended.

4. Representations. Borrower hereby represents and warrants to the DIP Lenders as follows: (i) Borrower has the power and authority to enter into this Amendment and to perform all its obligations hereunder, (ii) this Amendment has been duly executed and delivered by Borrower, (iii) this Amendment constitutes the legal, valid and binding obligation of Borrower enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability, regardless of whether considered in a proceedings in equity or at law and (iv) the execution, delivery and performance of this Amendment is within the limited liability company powers of the Borrower have been duly authorized by all necessary organizational action.

5. Miscellaneous.

5.1 Except as expressly provided in this Amendment, the execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, be deemed to be an amendment or modification of, or operate as a waiver of, any provision of the Replacement DIP Credit Agreement or any other DIP Facility Document or any right, power or remedy of the DIP Lenders, nor constitute a waiver of any provision of the Replacement DIP Credit Agreement or any other DIP Facility Document, or any other document, instrument and/or agreement executed or delivered in connection therewith.

5.2 This Amendment may be executed in any number of counterparts (including by facsimile or in electronic ("pdf" or "tif") format), and by the different parties hereto or thereto on the same or separate counterparts, each of which shall be deemed to be an original instrument but all of which, as applicable, together shall constitute one and the same agreement.

5.3 This Amendment may not be changed, amended, restated, waived, supplemented, discharged, canceled, terminated or otherwise modified orally or by any course of dealing or in any manner other than as provided in the Replacement DIP Credit Agreement or the other applicable DIP Facility Documents to which they relate or are a part. This Amendment shall be deemed to be a "DIP Facility Document" and considered part of the Replacement DIP Credit Agreement for all purposes.

5.4 The Loan Agreement as amended by this Amendment constitutes the final, entire agreement and understanding between the parties with respect to the subject matter thereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the parties, and shall be binding upon and inure to the benefit of the successors and assigns of the parties thereto and supersede all other prior agreements and understandings, if any, relating to the subject matter thereof. There are no unwritten oral agreements between the parties with respect to the subject matter thereof.

5.5 THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE CHOICE OF LAW PROVISIONS SET FORTH IN, AND SHALL BE SUBJECT TO THE WAIVER OF JURY TRIAL, JURISDICTION, VENUE, SERVICE OF PROCESS, AND NOTICE PROVISIONS OF, THE REPLACEMENT DIP CREDIT AGREEMENT.

5.6 Borrower may not assign, delegate or transfer this Amendment or any of its rights or obligations hereunder without the prior consent of the DIP Lenders and any delegation, transfer or assignment in violation hereof shall be null and void.

5.7 Borrower shall execute and deliver such other documents, certificates and/or instruments and take such other actions or cause such other actions to be taken as the DIP Lenders may reasonably request in order more effectively to consummate the transactions contemplated hereby.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

"Borrower"

CS MINING, LLC

By:_____
Name: _____
Title: _____

"DIP Lenders"

"Wellington"

WELLINGTON FINANCING PARTNERS, LLC

By:_____
Name:_____
Title:_____

"Broadbill"

BROADBILL PARTNERS, L.P.

By:_____
Name:_____
Title:_____

"St. Cloud"

ST. CLOUD CAPITAL PARTNERS II. L.P.

By:_____
Name:_____
Title:_____

For purposes of Sections 1.3 and 1.5 only:

OXBOW CARBON, LLC

By:_____
Name:_____
Title:_____

EXHIBIT C

SULFURIC ACID AGREEMENT

OXBOW SULPHUR INC.
1450 Lake Robbins Drive, Suite 500
The Woodlands, Texas 77380
Phone: 1 (281) 907-9500 Fax: 1 (281) 907-9400

THIRD AMENDMENT TO SULFURIC ACID SUPPLY AGREEMENT

DATE: November ___, 2016
TO: CS Mining, LLC
FROM: Oxbow Sulphur Inc.
REF #: Third Amendment to Sulfuric Acid Supply Agreement #2554

This Third Amendment ("**Amendment**") to that certain Sulfuric Acid Supply Agreement dated May 5, 2015, as amended September 1, 2015 and further amended December 8, 2015 (the "**Agreement**") is made and entered into as of the ____ day of November 2016 (the "**Effective Date**") by and between CS Mining, LLC, a Delaware limited liability company ("**Buyer**") and Oxbow Sulphur Inc., a Delaware corporation ("**Seller**"). Seller and Buyer each are referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Buyer defaulted under the terms of Agreement;

WHEREAS, Buyer requested that Seller not seek to terminate the Supply Agreement;

WHEREAS, Buyer has requested and Seller has agreed to resume the interim supply of sulfuric acid to Buyer under the terms set forth herein; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree to amend the Agreement as follows:

1. Except as specifically defined herein, capitalized terms used in this Amendment shall have the meaning ascribed to them in the Agreement.

2. The Agreement is hereby amended by adding the following sentences to Section 3, "QUANTITY":

   "Seller shall make two (2) deliveries of Product into storage, each equal to approximately 4,200 ST (the "**Interim Quantity**")."

3. The Agreement is hereby amended by adding the following sentences to Section 5, "SCHEDULE/DELIVERY":

   "The Interim Quantity of Product shall be delivered during on a DAP basis at Buyer's Facility. The first shipment is anticipated to arrive to Buyer's Facility following the Bankruptcy Court's final approval of the DIP Financing and this Amendment."

4. The Agreement is hereby amended by adding the following sentence to Section 7,

"PRICE":

"The Price for the Interim Quantity of Product shall be $139/ST DAP Buyer's Facility."

5. The Agreement is hereby amended by adding the following two paragraphs to Section 8, "PAYMENT":

"Pre-Payment. Buyer shall pre-pay for the Interim Quantity of Product prior to Seller loading the Product on Seller's designated railcars at Seller's supply source.

Additional Quantities. Following the shipment of the Interim Quantity of Product, the price for subsequent shipments shall be Base Price + Transportation Price + $11/ST until the parties have mutually agreed upon a new supply agreement or a further amendment to this Agreement. Buyer shall pre-pay for all shipments in accordance with the above Pre-Payment terms. The schedule for delivery shall be mutually agreed upon."

6. Except as specifically set forth in this Amendment, all terms and conditions of the Agreement are hereby ratified and confirmed by the Parties.

7. In connection with seeking Bankruptcy Court approval of the DIP Financing and associated business plan, Buyer shall request and diligently pursue Bankruptcy Court approval of this Amendment.

8. Seller's obligations under this Amendment are conditioned on the Bankruptcy Court's final approval of the DIP Financing terms agreed to by Seller in a separate term sheet, which shall fund the security deposit and initial two deliveries described herein.

9. This Amendment is not intended to constitute an assumption or rejection of the pre-petition Agreement, and nothing in this Amendment, or any order of the Court approving this Amendment shall be construed as an assumption of the Agreement by the Debtor. Buyer shall request and diligently pursue Bankruptcy Court approval of this Amendment on terms to be agreed between Seller and Buyer. In the event that Buyer does not timely request and diligently pursue such approval, or if the Bankruptcy Court does not approve assumption of this Amendment on terms acceptable to Seller, Seller may terminate any interim supply of Product to Buyer under this Amendment without further order of the Bankruptcy Court.

10. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original copy, and all of which, when taken together, shall be deemed to constitute one and the same instrument. Signatures transmitted by facsimile or other electronic means shall be accepted as originals for all purposes.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the Effective Date.

CS MINING, LLC

By: _____
Name: _____
Title: _____

OXBOW SULPHUR INC.

By: _____
Name: _____
Title: _____

EXHIBIT D

TAILINGS BUDGET

CS Mining, LLC
Cash Forecast
Prepared as of November 15, 2016

Tailings Processing Scenario

($000s)

For the week beginning	November	December	January	February	March	April	May	June	Nov - Jun Total
Cash Flows from Operations									
Net Receipts	**-**	**497**	**1,862**	**1,758**	**2,181**	**2,181**	**2,181**	**2,181**	**12,840**
Operating Costs									
Labor	(142)	(252)	(309)	(309)	(309)	(309)	(309)	(309)	(2,247)
Benefits	(47)	(84)	(92)	(92)	(92)	(92)	(92)	(92)	(684)
Consumables and Supplies	(1,481)	(391)	(1,006)	(870)	(1,044)	(1,044)	(1,044)	(1,044)	(7,926)
Holding Costs	-	(0)	(0)	(20)	(38)	(36)	(55)	(45)	(195)
Other	(131)	(113)	(113)	(143)	(198)	(113)	(108)	(118)	(1,038)
Total Operating Costs	**(1,801)**	**(840)**	**(1,520)**	**(1,435)**	**(1,682)**	**(1,595)**	**(1,608)**	**(1,608)**	**(12,089)**
Cash Flows from Operations	**(1,801)**	**(343)**	**341**	**323**	**499**	**586**	**573**	**573**	**751**
Cash Flows from Investing Activities									
Capital Expenditures	(185)	(212)	(187)	(72)	(79)	(79)	(44)	(56)	(915)
Transition to C&M	-	-	-	-	-	-	-	-	-
Exploration Cost	(400)	(400)	(475)	(475)	(475)	(475)	(220)	(154)	(3,074)
Cash Flows from Investing Activities	**(585)**	**(612)**	**(662)**	**(547)**	**(554)**	**(554)**	**(264)**	**(210)**	**(3,989)**
Cash Flows from Financing Activities									
DIP Draws	2,300	-	-	-	-	-	-	-	2,300
DIP Servicing	-	-	-	-	-	-	-	-	-
Equipment	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(71)
Cash Flows from Financing Activities	**2,291**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**2,229**
Process Related Disbursements									
Utility Deposits / Other	-	-	-	-	-	-	-	-	-
Cash Debtor Bankruptcy Advisors	(270)	(430)	(290)	(270)	(270)	(270)	(270)	(290)	(2,360)
Cash Unsecured Creditor Committee Fees	(32)	(42)	(32)	(32)	(56)	(32)	(32)	(32)	(290)
US Trustee Fees	-	-	(30)	-	-	(30)	-	(30)	(90)
Cash Flows from Process Related	**(302)**	**(472)**	**(352)**	**(302)**	**(326)**	**(332)**	**(302)**	**(352)**	**(2,740)**
Net Cash Flows	**$ (397)**	**$ (1,436)**	**$ (682)**	**$ (535)**	**$ (390)**	**$ (309)**	**$ (2)**	**$ 1**	**$ (3,749)**
Cumulative Cash Flows	*(397)*	*(1,833)*	*(2,515)*	*(3,050)*	*(3,440)*	*(3,748)*	*(3,751)*	*(3,749)*	
Beginning Cash Balance	**$ 3,754**	**$ 3,357**	**$ 1,921**	**$ 1,239**	**$ 704**	**$ 314**	**$ 5**	**$ 3**	**$ 3,754**
Net Cash Flows	(397)	(1,436)	(682)	(535)	(390)	(309)	(2)	1	(3,749)
Ending Cash Balance	**$ 3,357**	**$ 1,921**	**$ 1,239**	**$ 704**	**$ 314**	**$ 5**	**$ 3**	**$ 5**	**$ 5**
Prefunded Account									
Funding	-	*160*	*160*	*160*	*160*	*160*	*160*	*160*	*1,120*
Payment to Debtor Professionals	-	-	*(160)*	*(160)*	*(160)*	*(160)*	*(160)*	*(160)*	*(960)*
Account Balance	**-**	***160***	***160***	***160***	***160***	***160***	***160***	***160***	***160***

EXHIBIT E

CREDIT AGREEMENT

SECOND DEBTOR IN POSSESSION CREDIT AND SECURITY AGREEMENT

Dated as of December __, 2016

between

CS MINING, LLC
Debtor and Debtor-in-Possession,

as Borrower

and

WELLINGTON FINANCING PARTNERS, LLC,
ST. CLOUD CAPITAL PARTNERS, II, L.P.
OXBOW CARBON LLC

as DIP Lenders

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EXHIBITS AND SCHEDULES

This SECOND DEBTOR IN POSSESSION CREDIT AND SECURITY AGREEMENT ("Agreement") is entered into as of November ___, 2016, by and between CS MINING, LLC, a Delaware limited liability company, as debtor and debtor in possession ("Borrower" or "Debtor"), and WELLINGTON FINANCING PARTNERS, LLC, a Delaware limited liability company ("Wellington"), ST. CLOUD CAPITAL PARTNERS II. L.P. ("St. Cloud,") and OXBOW CARBON LLC, a Delaware limited liability company ("Oxbow,") and collectively with Wellington, and St. Cloud and each of their successors and assigns, "DIP Lenders"; each of Wellington, St. Cloud and Oxbow, together with its respective successors and assigns, a "DIP Lender"), and is in addition to that Debtor in Possession Credit and Security Agreement dated as of October __, 2016 (the "Replacement Credit Agreement").

RECITALS

A. On June 2, 2016 (the "Petition Date"), Case No. 16-24818 (the "Bankruptcy Case") was commenced against Borrower by the filing of an involuntary petition (the "Involuntary Petition") for relief against Borrower under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court").

B. On August 4, 2016 (the "Relief Date"), Borrower consented to the Involuntary Petition and an order for relief was entered by the Bankruptcy Court in the Bankruptcy Case.

C. Borrower continues to operate its business and manage its property as a debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

D. On August 8, 2016, Debtor filed the Motion for Interim and Final Orders (i) Authorizing the Debtor to Obtain Superpriority Secured Debtor-In-Possession Financing; (ii) Authorizing Debtor to Use Cash Collateral; (iii) Granting Adequate Protection to the Prepetition Secured Parties; (iv) Scheduling a Final Hearing and (v) Granting Related Relief (the "Original DIP Financing Motion") with the Bankruptcy Court pursuant to Bankruptcy Rules 2002, 4001 and 9014.

E. On August 9, 2016 the Bankruptcy Court entered the Interim Order Pursuant to Sections 105, 361, 362, 363, 364, 365 and 507 of the Bankruptcy Code (i) Authorizing Debtor to Obtain Superpriority Secured Debtor-In-Possession Financing, (ii) Authorizing Debtor to Use Cash Collateral, (iii) Granting Adequate Protection to the Prepetition Secured Parties, (iv) Scheduling a Final Hearing, and (v) Granting Related Relief (the "Interim Financing Order") wherein the Bankruptcy Court found, among other things, that the Debtor has an immediate and critical need to obtain up to the amount of the Interim DIP Loan and access to "cash collateral" as that term is used in section 363(a) of the Bankruptcy Code, including all "cash collateral" that constitutes Prepetition Collateral subject to the Prepetition Liens (as each of these terms are defined below) (collectively, the "Cash Collateral"). The Interim Financing Order approved by the Bankruptcy Court on an interim basis, involving approval of $2,675,000 of an approximately $7,675,000 priming, superpriority debtor-in-possession proposed facility to be made by Wellington, Broadbill and Waterloo Street Limited, a British Virgin Islands limited company ("Waterloo").

F. On September 7, 2016, the Bankruptcy Court entered the Order Approving Stipulation by and between Debtor, DIP Lenders and Committee Increasing the Interim DIP Loan and Extending Term of Interim Financing (the "Interim Financing Extension Order"). The Interim Financing Extension Order authorized Wellington and Broadbill to advance $500,000 of additional lending to Borrower under the Interim Financing Order and Wellington, Broadbill, and/or Waterloo to advance an additional $500,000 to Borrower under the Interim Financing Order as needed. On September 12, 2016, Wellington and Broadbill advanced a combined $1,000,000 to the Debtor pursuant to the Interim Financing Extension Order, with Wellington funding $467,637.32 and Broadbill $532,362.68.

G. As set forth more fully in the DIP Financing Motion (as defined below), Debtor requested, and Waterloo, Wellington and Broadbill agreed to advance, subject to mutually-acceptable detailed loan documents, a secured superpriority financing facility in the aggregate principal amount of $7,675,000 comprised of (i) a new money fully committed and funded multi draw term loan (the "Proposed Waterloo DIP Facility") in an aggregate principal amount of $3,675,000 (the "Interim DIP Loan") funded by Waterloo, Wellington and Broadbill on August 10, 2016, of which Waterloo advanced $1,000,000, Wellington advanced $2,002,911.96 and Broadbill advanced $672,088.04 on an interim basis and (ii) up to an additional $4,000,000 (and together with the Interim DIP Loan, the "Proposed Waterloo DIP Loans").

H. Waterloo, Wellington and Broadbill were unable to reach agreement on a final form of the loan documents for the Proposed Waterloo DIP Facility and Proposed Waterloo Loans. Given the Borrower's needs for post-petition financing on terms equal to or better than the terms set forth in the term sheet appended to the Interim Financing Order, the DIP Lenders submitted this Agreement to Borrower, which has been approved by Borrower's CROs.

I. On September 30, 2016, the Bankruptcy Court approved a priming secured superpriority line of credit (the "Replacement DIP Facility"), under which Wellington, Broadbill and St. Cloud are the "Replacement DIP Lenders." The Bankruptcy Court entered a final Order approving the Replacement DIP Facility on October 11, 2016 (the "Replacement DIP Order"). The Replacement DIP Facility provides for a loan not to exceed $7,675,000 (subject to adjustment for payment of interest and fees and expenses under the Interim Financing Order) and for the Debtor and the Replacement DIP Lenders to enter into the Replacement DIP Credit Agreement. On October 11, 2016, the Replacement DIP Facility closed and was funded by the Replacement DIP Lenders. Proceeds of the Replacement DIP Facility were used to repay (or with respect to the Replacement DIP Lenders, to roll over), obligations under the Interim DIP Facility in full. Wellington funded $4,909,857.83 (either through new moneys or amounts rolled over), Broadbill funded $2,513,629.99 (either through new moneys or amounts rolled over), and St. Cloud funded $500,000.

J. DIP Lenders are willing to make available to Borrower a second priming secured superpriority line of credit (the "DIP Facility") pursuant to which this Agreement is entered into. To provide security for the repayment of the DIP Loan made available pursuant hereto and payment of any other DIP Obligations of Borrower under the DIP Facility Documents, Borrower has agreed to provide DIP Lenders with the following:

(1) with respect to the obligations of Borrower hereunder and under the other DIP Facility Documents, and subject to the Carve-Out (as defined below), an allowed administrative expense claim in the Bankruptcy Case pursuant to Section 364(c)(1) of the Bankruptcy Code having priority over all administrative expenses of the kind specified in or arising under any Section of the Bankruptcy Code (including Sections 105, 326, 328, 330, 331, 503(b) 507(a), 507(b), 546(c) or 726 thereof) but *pari passu* with the superpriority claim held by the Replacement DIP Lenders;

(2) a perfected first priority Lien *pari passu* with the Liens held by the Replacement DIP Lenders, pursuant to Section 364(c)(2) of the Bankruptcy Code, on all property of Borrower that was unencumbered by any Lien as of the Petition Date, and the proceeds thereof; and

(3) excluding the prepetition liens of Waterloo, David J. Richards, LLC d/b/a Western US Mineral Investors LLC ("WUMI") and Sky Mineral Partners, LLC ("SMP") (together, the "Prepetition Liens"), which the Borrower intends to provide DIP Lenders with valid, perfected and unavoidable first priority priming Lien (held *pari passu* with the Replacement DIP Lenders) over, a perfected junior Lien, pursuant to Section 364(c)(3) of the Bankruptcy Code, upon all property of Borrower, that was subject to valid, perfected and unavoidable Liens as of the Petition Date and the proceeds thereof (the "Other Prepetition Liens"). (For the avoidance of doubt, Borrower proposes to provide a valid, perfected and unavoidable priming lien in favor of DIP Lenders over the Prepetition Liens of Waterloo, WUMI and SMP, and only a junior valid, perfected and unavoidable Lien under all Other Prepetition Liens). A schedule of Other Prepetition Liens known to Borrower, which may or may be validly existing or properly perfected, is attached hereto as **Schedule 8.3**.

(4) a perfected first priority Lien (held *pari passu* with the Replacement DIP Lenders), pursuant to Section 364(d) of the Bankruptcy Code, upon all property of Borrower and the proceeds thereof, that primes the valid, perfected and unavoidable Prepetition Liens as of the Petition Date of Waterloo, WUMI and SMP. (For the avoidance of doubt, Borrower proposes to provide a valid, perfected and unavoidable priming lien in favor of DIP Lenders over the Prepetition Liens of Waterloo, WUMI and SMP, but does not intend to provide, and is not providing, the DIP Lenders with a valid, perfected and unavoidable priming Lien over Other Prepetition Liens.)

DIP Lenders will also be granted a superpriority administrative claim pursuant to the Financing Order and described in **Section 4.3**.

K. DIP Lenders have agreed to make available to Borrower the secured, priming superpriority line of credit upon the terms and conditions set forth in this Agreement. DIP Lenders agree that they will hold the Liens *pari passu* with the Replacement DIP Lenders and understand that the Replacement Credit Agreement will be amended to permit this *pari passu* holding of the Liens and modifications to the Maturity Date, Budget, Exit Milestones, and any other changes necessitated by this Agreement, and Bankruptcy Court approval will be sought for these amendments.

L. Debtor is filing a Motion for a Final Order (i) Authorizing the Debtor to Obtain an Second Superpriority Secured Debtor-In-Possession Financing and to Utilize the Tailings Inventory to Operate Its Business ; (ii) Authorizing Debtor to Use Cash Collateral; (iii) Granting Adequate Protection to the Prepetition Secured Parties; (iv) Scheduling a Final Hearing and (v) Granting Related Relief (the "Second DIP Financing Motion") with the Bankruptcy Court pursuant to Bankruptcy Rules 2002, 4001 and 9014. Debtor is also filing a Motion to Amend the Replacement DIP Facility to accommodate the *pari passu* treatement of Liens between the DIP Lenders and the Replacement DIP Lenders.The Debtor's utilization of the tailings inventory is defined below as the Tailings Processing.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

I. DEFINITIONS

1.1. Defined Terms. As used in this Agreement, the following terms shall have the respect meanings set forth below:

"Advances" means the advances pursuant to this Agreement.

"Agreement" has the meaning set forth in the introductory paragraph of this Agreement.

"Bankruptcy Case" has the meaning set forth in the recitals of this Agreement.

"Bankruptcy Code" has the meaning set forth in the recitals of this Agreement.

"Bankruptcy Court" has the meaning set forth in the recitals of this Agreement.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure.

"Borrower" has the meaning set forth in the introductory paragraph of this Agreement.

"Borrower's CROs" means Michael Buenzow, David J. Beckman and Randy Davenport of FTI Consulting, Inc.

"Business Day" means any day other than a Saturday, a Sunday, any day which is a legal holiday under the laws of the State of Utah, or any day on which banking institutions located in the State of Utah are required by law or other governmental action to close.

"Carve-Out" means (i) allowed, accrued, but unpaid Professional Fees and expenses of Borrower and the Committee, prior to the delivery by DIP Lenders of a Carve-Out Notice (as defined below), whether allowed prior to or after the delivery of such notice, provided that such fees and expenses are consistent with cash payments provided for in the Tailings Budget in effect at the time such fees and expenses are incurred and such fees and expenses are allowed by the Bankruptcy Court; (ii) allowed, accrued, but unpaid fees and expenses of any trustee under section 726(b) of the Bankruptcy Code, not to exceed $25,000 in the aggregate; (iii) allowed, accrued, but unpaid Professional Fees of Borrower and the Committee after the delivery of a Carve-Out Notice, not to exceed $100,000 in the aggregate; and (iv) the payment of fees pursuant to 28 U.S.C. § 1930, plus any interest pursuant to 31 U.S.C. § 3717; in each case, up to the amounts specified in the Tailings Budget or as otherwise required to be paid pursuant to the Bankruptcy Code. For the avoidance of any doubt, Allowed Professional Fees of up to the amounts specified in the Tailings Budget will be paid in cash from the DIP Loan proceeds, consistent with and on the schedule specified to be paid in cash under the Tailings Budget. As long as no Default or Event of Default shall have occurred and be continuing, the Borrowers shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code up to the amounts specified to be paid in cash under the Tailings Budget, as the same may be due and payable. Any and all amounts of the Carve-Out (subsection (i) through (iv) above) that are not paid in cash from the DIP Loan proceeds shall be payable from the proceeds of any sale of the Borrower's assets or the sale of the Collateral, and such payments shall be made before the satisfaction of the DIP Obligations, the DIP Lenders' claims, the Prepetition Liens, or Other Prepetition Liens.

"Carve-Out Notice" shall mean a written notice delivered by DIP Lenders to Borrower, counsel to Borrower, counsel to the Committee, and the United States Trustee, which notice may be delivered after an Event of Default has occurred and is continuing (and specifying the relevant provisions of Article VIII under which Event of Default occurred).

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"CERCLIS" means the Comprehensive Environmental Response Compensation Liability Information System List.

"Closing Date" means November __, 2016.

"Collateral" has the meaning set forth in **Section 4.1**.

"Committee" means the Official Committee of Unsecured Creditors appointed by the Bankruptcy Court in the Bankruptcy Case.

"Completion Fee" means a completion fee with respect to Borrower's CROs in the event of a successful sale of the Borrower's assets or reorganization of Borrower in the same form as

Borrower's CROs existing completion fee agreement and approved by the Interim Financing Order.

"Contingent Liability" means, relative to any Person, any agreement, undertaking or arrangement by which such 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 Borrower, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection or standard contractual indemnities entered into in the ordinary course of business), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall be deemed to be the outstanding principal amount of the debt obligation or other liability guaranteed thereby.

"Credit Exposure" means, as to any DIP Lender or Replacement DIP Lender at any time, the aggregate principal amount of the loans made under the the DIP Facility and Replacement DIP Facility outstanding at such time.

"Cure Period" means a time period equal to five Business Days following DIP Lenders providing a written notice of an Event of Default to Borrower.

"Default Rate" means a per annum interest rate equal to seven and eight-tenths percent (7.8%).

"DIP Facility" has the meaning set forth in the recitals of this Agreement.

"DIP Facility Documents" means this Agreement, the Note(s) and all other agreements, instruments, documents and certificates identified in the Schedule of Documents executed and delivered to, or in favor of, DIP Lenders and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of Borrower, or any employee of Borrower, and delivered to DIP Lenders in connection with this Agreement or the transactions contemplated hereby, including the Financing Order. Any reference in this Agreement or any other DIP Facility Document to a DIP Facility Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such DIP Facility Document as the same may be in effect at any and all times such reference becomes operative. The term DIP Facility Documents does not include any loans, advances, debts, liabilities and obligations, howsoever arising, owed by Borrower to the DIP Lenders prior to June 2, 2016.

"DIP Lender" or "DIP Lenders" has the meaning set forth in the introductory paragraph of this Agreement.

"DIP Liens" has the meaning set forth in **Section 4.1**.

"DIP Loan" means the loan(s) provided for in this Agreement.

"DIP Obligations" means the DIP Loan, the interest thereon, and all other advances, debts, liabilities, obligations, fees, charges, expenses, covenants and duties owing by Borrower to DIP Lenders arising under this Agreement and the other DIP Facility Documents, including any fees, charges, or expenses incurred by a DIP Lender in connection with the enforcement of any rights or remedies under this Agreement. Any reference in this Agreement or in the other DIP Facility Documents to the DIP Obligations shall include all or any portion thereof and any extensions, modifications, renewals or alterations thereto.

"Environmental Law" means any applicable federal, state, or local statutes, laws, ordinances, codes, rules, regulations, and guidelines (including consent decrees and administrative orders) relating to public health and safety and protection of the environment.

"Event of Default" has the meaning set forth in **Section 10.1**.

"Exit Milestones" has the meaning set forth in **Section 7.10**.

"Financing Order" means the order or orders of the Bankruptcy Court entered in the Bankruptcy Case after a final hearing under Bankruptcy Rule 4001, which order or orders shall be satisfactory in form and substance to DIP Lenders, and shall approve and authorize on a final basis (including the expiration or all appeals and extension periods), the DIP Facility.

"GAP Facility" means a $700,000.00 principal loan extended by certain of DIP Lenders to Borrower to fund amounts due and owing to attorneys, advisors and other parties necessary for the Borrower during the time period after the filing of the Involuntary Petition but prior to the Relief Date of which $675,000 has been repaid pursuant to the Original DIP Facility.

"Hazardous Substances" means:

(a) any "hazardous substance," as defined by CERCLA;

(b) any "hazardous waste," as defined by the Resource Conservation and Recovery Act, as amended; or

(c) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance (including any petroleum product) within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended.

"Indebtedness" of any Person means (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (including reimbursement and all other obligations with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured, (b) all obligations evidenced by notes, debentures, bonds, or similar instruments, (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (d) all indebtedness referred to in clauses (a) through (d)

above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, (e) the DIP Obligations, (f) Contingent Liabilities of such Person in respect of any of the foregoing, and (g) any guaranty of such Person relating to any Indebtedness set forth in clauses (a) through (f) above.

"Indemnified Person" is defined in **Section 11.14**.

"Interest Rate" means a per annum interest rate equal to seven percent (7.0%).

"Involuntary Petition" has the meaning set forth in the recitals of this Agreement.

"Interim Financing Order" has the meaning set forth in the recitals of this Agreement.

"Interim Financing Extension Order" has the meaning set forth in the recitals of this Agreement.

"Interim DIP Loan" has the meaning set forth in the recitals of this Agreement.

"Key Metrics" means cumulative Cash Flows (as defined in the Tailings Budget) from Operations (as defined in the Tailings Budget) pursuant to the Tailings Budget.

"Lender's Environmental Liability" means any and all losses, liabilities, obligations, penalties, claims, litigations, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages),, disbursements, or expenses of any kind or nature whatsoever (including reasonable attorneys' fees at trial and appellate levels and reasonable consultants' and experts' fees, disbursements, and expenses incurred in investigating, defending against or prosecuting any litigation, claim, or proceeding) which may at any time be imposed upon, incurred by, or asserted or awarded against, any DIP Lender:

(a) any Hazardous Substances on, in, under or affecting all or any portion of any property of Borrower, the groundwater thereunder, or any surrounding areas thereof to the extent caused by Releases from Borrower or any of its properties;

(b) any misrepresentation, inaccuracy, or breach of any warranty, contained in **Section 5.12**;

(c) any violation or claim of violation by Borrower of any Environmental Laws; or

(d) the imposition of any Lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Substances by Borrower or in connection with any property owned or formerly owned by Borrower.

"Lien" means any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the

same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the law of any jurisdiction).

"Material Adverse Effect" means a material adverse effect on: (a) the business, assets, operations or financial condition of Borrower; (b) Borrower's ability to pay the DIP Loan or any of the other DIP Obligations in accordance with the terms of this Agreement; (c) the Collateral or DIP Liens on the Collateral or the priority of such Liens; or (d) DIP Lenders' rights and remedies under this Agreement and the other DIP Facility Documents.

"Maturity Date" means earliest to occur of:

(a) June 30, 2017 which date may be extended by sixty (60) days by Borrower without DIP Lender approval if (a) recommended by Borrower's CROs as appropriate to maximize value to all stakeholders and (b) Borrower has sufficient cash to operate during such additional 60-day period;

(b) the effective date of a confirmed plan of reorganization in the Bankruptcy Case;

(c) the effective date of the closing of a sale of all or substantially all of the assets of Debtor; or

(d) the date of acceleration of the DIP Facility following the occurrence and during the continuance of an Event of Default pursuant to **Section 10.1**.

"Maximum Amount" means an aggregate amount equal to $2,650,000.

"NI 43-101 Reports" means the National Instrument 43-101 Standards ("NI 43-101") for Disclosure for Mineral Projects for reporting of resources and reserves as estimated by a Qualified Person.

"Note(s)" has the meaning set forth in **Section 2.2**.

"Original DIP Financing Motion" has the meaning set forth in the recitals of this Agreement.

"Other Prepetition Liens" has the meaning set forth in the recitals of this Agreement.

"Person" means any individual, sole proprietorship, partnership, firm, association, joint venture, trust, limited liability company, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government body (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"Permitted Liens" means any of the following types of Liens:

(a) Liens securing payment of the DIP Obligations and Indebtedness permitted under subsections (ii) and (iv) of **Section 8.4**;

(b) Liens in favor of carriers, warehousemen, mechanics, materialmen and landlords granted in the ordinary course of business for amounts not overdue or being diligently contested in good faith by appropriate proceedings;

(c) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (excluding, however, obligations for the payment of borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(d) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other similar encumbrances not interfering in any material respect with the value or use of the property to which such Lien is attached;

(e) Liens for Taxes not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves shall have been set aside on its books;

(f) customary rights of set-off, revocation, refund or charge back under deposit agreements or under the UCC of banks or other financial institutions; and

(g) Liens permitted under the prepetition loan documents existing as of the Petition Date.

"Permitted Variance" means an amount not to exceed the product of (a) the total budgeted disbursements (without regard to the specific line items therein) following the Effective Date and (b) fifteen percent (15.0%) on a cumulative basis.

"Petition Date" has the meaning set forth in the recitals of this Agreement.

"Prepetition Collateral" means collateral subject to the Prepetition Liens.

"Prepetition Creditors" means lenders, lienholders, liens, creditors and parties who were creditors of Borrower before the Petition Date and their affiliates, officers, directors, members, employees, accountants, agents, partners, attorneys, advisors, successors in interest, and representatives.

"Prepetition Liens" has the meaning set forth in the recitals of this Agreement.

"Professional Fees" means the fees and expenses of Professionals as approved by the Bankruptcy Court.

"Professionals" means, collectively, any and all professional Persons, retained by the Debtor or the Committee.

"Proposed Waterloo DIP Facility" has the meaning set forth in the recitals of this Agreement.

"Proposed Waterloo DIP Documents" has the meaning set forth in the recitals of this Agreement.

"Proposed Waterloo DIP Loan" has the meaning set forth in the recitals of this Agreement.

"Qualified Person" means an independent engineer or geoscientist who meets requirements set forth in current National Instrument 43-101 rules and policies.

"Release" means a "release," as such term is defined in CERCLA.

"Relief Date" has the meaning set forth in the recitals of this Agreement.

"Replacement DIP Facility" has the meaning set forth in the recitals of this Agreement.

"Required DIP Lenders" means at the relevant time, DIP Lenders having with 66% of Credit Exposures.

"Resource Development Milestones" has the meaning set forth in **Section 7.09**.

"Resource Development Plan" means a resource development program with reasonable contingencies and options, including all aspects of data acquisition, sampling and analysis that is intended to achieve a defined outcome with respect to conducting an estimation of certain of Borrower's mineral assets and its measured, indicated and inferred resources and, if appropriate, proven and probable reserves.

"Restricted Payment" means, with respect to any Person, (a) any dividend or other payment or distribution, direct or indirect, on account of any shares of any class of Stock of such Person, now or hereafter outstanding, or to the holders, in their capacity as such, of any shares of any class of Stock of such Person, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Stock of such Person, now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Stock of such Person, now or hereafter outstanding.

"Schedule of Documents" means the schedule of documents, including all appendices, exhibits or schedules thereto, listing certain documents and information to be delivered in connection with this Agreement, the other DIP Facility Documents and the transactions contemplated thereunder, in the form attached hereto as **Exhibit A**.

"Second DIP Financing Motion" has the meaning set forth in the recitals of this Agreement.

"Stock" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership

interests and (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Tailings Budget" means the monthly operating budget of Borrower for the period from the Closing Date through the Maturity Date which budget shall be in the form attached hereto as **Exhibit B** and provide, among other things, for the payment of (i) postpetition operating expenses and other working capital requirements of the Borrower in connection with its Tailings Processing and Resource Development Plan (as defined in Section 1.1) as initially recommended by the Borrower's CROs and subsequently agreed by the Borrower's CROs and Lenders, as the plan and budget that maximizes value for all stakeholders of Debtor, (ii) repayment of Replacement DIP Facility, and (iii) budgeted costs and expenses incurred in administering the Bankruptcy Case, including, without limitation, payment of transaction costs, fees, and expenses in connection with the Loans. Funds to be used under the Tailings Budget come from proceeds of the DIP Loan and proceeds from the sale of copper cathode produced from the Tailings Processing. The Tailings Budget will initially include $4,000,000 to be expended in the Resource Development Plan.

"Tailings Processing" means a restart of copper cathode production from processing of the existing tailings inventory scheduled to commence approximately 30 days after the Financing Order to further optimize the production facilities, provide feedback on key metallurgical assumptions, and generate cash flow from the sale of copper cathode. The Key Metrics are outlined in the Tailings Budget with a general goal of processing up to approximately 2,200 tons per day of tailings.

"Third-Party Advisor" has the meaning set forth in **Section 11.13** of this Agreement.

"UCC" means the Uniform Commercial Code in effect in the State of Utah; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, DIP Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of Utah, the term "UCC" shall mean the Uniform Commercial Code in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

1.2. Rules of Construction. With reference to this Agreement and each other DIP Facility Document, unless otherwise specified herein or in such other DIP Facility Document:

(a) All undefined terms contained in this Agreement or any of the DIP Facility Documents shall, unless the context indicates otherwise, have the meanings provided for by the UCC to the extent the same are used or defined therein; in the event that any term is defined differently in different Articles or Divisions of the Code, the definition contained in Article or Division 9 shall control.

(b) The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including any exhibits attached hereto, as the same may from time to time be amended, modified or supplemented and not to any particular section, subsection or clause contained in this Agreement. Each reference to a Section or Exhibit are to a

section or exhibit of or to this Agreement, unless otherwise specified or the context otherwise requires.

(c) Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

II. AMOUNT AND TERMS OF DIP LOAN

2.1. Advances. Subject to the terms and conditions hereof, including the satisfaction by Borrower or waiver by DIP Lenders of all relevant conditions precedent provided in this Agreement, DIP Lenders agree to make additional Advances to the Borrower up to an aggregate of the Maximum Amount (without taking into account an increase to the Maximum Amount), in addition to amounts advanced to Borrower under the Replacement DIP Facility which shall be funded to Borrower within five (5) business days of entry of the Financing Order.

(a) Wellington agrees to make an additional Advance up to an aggregate principal amount of $300,000 plus $250,000 of any Advance pursuant to Section 7.12(a).

(b) St. Cloud agrees to pay $100,000 of any Advance pursuant to Section 7.12(a).

(c) Oxbow agrees to Advance $2,000,000, subject to the execution of a corresponding sulfuric acid supply agreement between Oxbow Sulphur Inc. ("Oxbow Sulphur") and Borrower on the terms specified in such agreement (the "Sulfuric Acid Agreement"), which is attached hereto as **Exhibit C**. Borrower will earmark $1,680,000 of this Advance to prepay for the purchase of sulfuric acid pursuant to the Sulfuric Acid Agreement.

Each Advance noted in subsections 2.1(a) through (c) shall be made upon irrevocable written notice from one or more of the Debtor's Chief Restructuring Officers, David Beckman, Michael Buenzow or Randy Davenport, to Lender, which notice shall be in writing and must be received by Lenders not later than 12:00 noon (Mountain Time) on the Business Day prior to the requested date of such Advance. Nothing contained in this Agreement shall obligate DIP Lenders to advance funds for any purpose not set forth in the Tailings Budget. DIP Lenders may agree to advance any additional necessary funds and/or to modifications to the Tailings Budget, in each case as provided in this Agreement or as otherwise approved by the Bankruptcy Court.

An additional Advance of up to $350,000 may be requested pursuant to Section 7.12(a) by Borrower (after review and approval by Borrower's CROs).

2.2. Notes. The Advances made by DIP Lenders shall constitute the DIP Loan and shall be evidenced by promissory notes made payable to the applicable DIP Lender(s) and substantially in the form attached hereto as **Exhibit D** (the "Note(s)"). The Notes on an aggregate basis shall be in the original principal amount equal to the sum of the Maximum Amount, with interest thereon as prescribed in **Section 2.5**.

2.3. Repayment and Prepayment.

(a) The entire unpaid principal amount of the DIP Loan, together with all accrued and unpaid interest thereon, and all other Obligations, shall be due and payable to DIP Lenders on the Maturity Date, and

(b) Subject to the Carve-Out, Borrower may prepay the DIP Loan at any time, in whole or in part, for any reason including but not limited to availability of alternative financing or refinancing, without premium or penalty. Each partial prepayment shall be in an amount not less than $25,000, and all prepayment amounts paid to DIP Lenders shall be paid pro rata to each DIP Lender in accordance with the DIP Loan made by such DIP Lender relative to the total amount of DIP Loan made hereunder by all DIP Lenders.

(c) The DIP Loan shall be prepaid in an amount equal to 100% of the net cash proceeds of any sale or other disposition (including as a result of casualty or condemnation and including any purchase price adjustment or earn-out in respect of any acquisition) by Borrower of any asset in excess of $50,000 (and excluding sales of product in the ordinary course), until payment in full of all outstanding DIP Obligations, in each case subject to the Carve-Out.

(d) Any prepayments shall be first applied to any interest, fees, costs and expenses due to DIP Lenders, and thereafter to principal of the DIP Loan.

2.4. Use of Proceeds. The proceeds from the Advances may be used only to pay postpetition operating and care and maintenance expenses of Borrower in accordance with the provisions of the Tailings Budget (subject to the Permitted Variance), including the administrative expenses of the Bankruptcy Case (to the extent approved by the Bankruptcy Court). Nothing contained in this Agreement shall obligate DIP Lenders to advance funds for any purpose whatsoever not set forth in the Tailings Budget, and no proceeds of the DIP Loan shall be used by any party or Professional to assert causes of action against any DIP Lender with respect to DIP Lenders' rights and remedies hereunder and under the other DIP Facility Documents; provided that only up to $200,000 in the aggregate of the proceeds of the DIP Facility may be used by the Borrower or any committee appointed in the Bankruptcy Case to investigate any potential claims or causes of action in connection with the Prepetition Creditors. The foregoing provisions shall not limit or preclude Borrower's right to enforce or assert its rights pursuant to this Agreement. Excluding repayment of the Interim DIP Facility, GAP Facility, and or Replacement DIP Facility, as applicable, no proceeds of the DIP Loan may be used to pay any obligation arising prior to the Petition Date unless such payment is provided for in the Tailings Budget and approved by order of the Bankruptcy Court acceptable to DIP Lenders.

(a) Professional Fees. Allowed Professional Fees of up to the amounts specified to be paid in cash under the Tailings Budget will be paid in cash from the DIP Loan proceeds, consistent with and on the schedule specified in the Tailings Budget. The amount of the Professionals Fees of Pepper Hamilton and Snell & Wilmer identified in the Tailings Budget shall be funded into a separate escrow account on a monthly basis (with 50% on the first of the month and 50% on the 15th of the month) to and for the benefit of the Professionals. All other amounts specified to be paid in cash under the Tailings Budget that are not paid in cash from the DIP Loan proceeds shall be subject to the provisions of the Carve-Out, if applicable. All other Allowed Professional Fees in excess of amounts specified in the Tailings Budget will be paid on a *pari passu* basis with the DIP Loan. as administrative expense claims under Section 507(a)(2) of the Bankruptcy Code in the Bankruptcy Case. All Professional Fees shall be subject to the allowance and approval of the Bankruptcy Court. In the event of a plan of reorganization, the Completion Fee will be paid in cash. The Debtor and DIP Lenders further agree that any order approving the sale of the Debtor's assets shall include the requirement that any acceptable bid must include a cash component adequate to cover all of the Debtor's administrative expenses.

(b) Certain Fees of Borrower's CROs. $150,000 of Borrower's CROs' fees accrued during the gap period will be paid from first proceeds of a sale of Debtor's assets. The Completion Fee of Borrower's CROs (which is also an administrative claim in the Bankruptcy Case) is not included in the allowed professional fees and expenses addressed above and will be paid from the proceeds of a sale of the Borrower's assets following satisfaction of the DIP Obligations but before other secured claims.

(c) Allowed Fees of Petitioning Creditors. Fees and expenses incurred by the petitioning creditors in the Debtor's case that are allowed by the Court will be paid *pari passu* with the DIP Loan provided that such fees and expenses shall not exceed $50,000.

2.5. Interest on DIP Loan.

(a) Subject to the provisions of **Sections 2.5(b)**, the DIP Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date until paid at a rate equal to the Interest Rate.

(b) If any Event of Default occurs, at DIP Lender's option, the DIP Loan shall bear interest on the outstanding principal amount thereof from the date of such Event of Default and for so long as such Event of Default is continuing, at a rate equal to the Default Rate to the fullest extent permitted by applicable laws and shall be due and payable upon demand.

(c) Interest on the DIP Loan shall be due and payable in full in arrears on the Maturity Date.

2.6. Facility Fee. Borrower shall pay DIP Lenders a facility fee equal to 0.75% of the funded amount on or before the Maturity Date.

2.7. Payment of DIP Obligations. Upon the maturity (whether by acceleration or otherwise) of any of the DIP Obligations under this Agreement or any of the other DIP Facility Documents, DIP Lenders shall be entitled to immediate payment of such DIP Obligations without further application to or order of the Bankruptcy Court.

2.8. No Discharge; Survival of Claims. Borrower agrees that (a) the DIP Obligations shall not be discharged by the entry of an order confirming a plan of reorganization in the Bankruptcy Case (and Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and the superpriority administrative claim granted to DIP Lenders pursuant to the Financing Order and described in **Section 4.3**, and the Liens granted to DIP Lenders pursuant to **Section 4.1** and the Financing Order shall not be affected in any manner by the entry of an order confirming a plan of reorganization in the Bankruptcy Case.

2.9. Separate DIP Loans. Each Advance and DIP Loan from a DIP Lender shall be treated as a separate and individual DIP Loan made hereunder by the respective DIP Lender making such Advance and DIP Loan hereunder, pursuant to the terms hereof and this Agreement shall govern the operation of the DIP Loans. Borrower's agreement with each DIP Lender hereunder is and shall be deemed and treated as a separate agreement with each DIP Lender, and each respective DIP Loan hereunder shall be a separate DIP Loan made by the respective DIP Lender that funds such DIP Loan. No DIP Lender shall be liable or responsible for the actions of any other DIP Lender hereunder with respect to its obligations, rights or performance under this Agreement.

2.10. Priority of DIP Obligations. Notwithstanding any other provision in this Agreement to the contrary, the DIP Lenders each acknowledge and agree that the Borrower's obligations under the Replacement DIP Facility (the "Replacement DIP Obligations") rank equally in right of payment with the DIP Obligations. The DIP Lenders further acknowledge and agree that no payment shall be made to the DIP Lenders on the DIP Obligations unless, at the time of such payment, the Borrower also makes a *pro rata* payment to the Replacement DIP Lenders on account of the Replacement DIP Obligations. If any DIP Lender receives a payment on account of the DIP Obligations that is greater than the proportion received by a Replacement DIP Lender on account of the Replacement DIP Obligations, such DIP Lender shall: (a) notify the other DIP Lenders and the Replacement DIP Lenders of the receipt of such payment and (b) return such payment to the Borrower for distribution to the Replacement DIP Lenders in accordance with the terms of this Section 2.10.

III. CONDITIONS PRECEDENT

The obligation of each DIP Lender to make the Advances on the Closing Date and thereafter as specified in **Section 2.1** shall be subject to and conditioned upon the full satisfaction by Borrower or the written waiver by DIP Lenders (at their sole discretion) of each of the following conditions:

3.1. This Agreement shall have been duly executed by, and delivered to, Borrower and DIP Lenders; and DIP Lenders shall have received such other DIP Facility Documents as DIP Lenders shall require in connection with the transactions contemplated by this Agreement, including all those designated as being completed prior to the Closing Date in the Schedule of Documents;

3.2. The automatic stay shall have been modified to permit the creation and perfection of DIP Lenders' Liens and the enforcement of rights and remedies in accordance with **Section 10.2**;

3.3. DIP Lenders shall be satisfied with the corporate structure, material contracts, and governing documents of Borrower, and the tax effects resulting from the commencement of the Bankruptcy Case and the DIP Loan;

3.4. All motions and other documents to be filed with the Bankruptcy Court relating to the DIP Loan shall be complete and in form and substance satisfactory to DIP Lenders;

3.5. The interest of DIP Lenders in the Collateral shall constitute a superpriority secured first lien, ahead of all other liens on the Collateral, as provided in **Section 4** below;

3.6. The Tailings Budget in form and substance satisfactory to DIP Lenders shall have been approved by the Bankruptcy Court;

3.7. With respect to Oxbow, the entry of a final order by the Bankruptcy Court authorizing and approving the sulfuric acid supply agreement between Oxbow Sulphur Inc. and Borrower on the terms specified in such agreement (the "Sulfuric Acid Agreement"), which is attached hereto as **Exhibit D**; and

3.8. (i) The Financing Order shall include a finding that DIP Lenders are entitled to the protections of 11 U.S.C. § 364(e), (ii) the Financing Order shall not have been vacated, reversed, modified or amended without DIP Lenders' consent, (iii) a motion for reconsideration of any such order shall not have been timely filed or (iv) an appeal of any such order shall not have been timely filed and if such order is the subject of a pending appeal in any respect, either the making of any Advance, the granting of superpriority claim status with respect to the DIP Obligations, the granting of the Liens described herein, or the performance by Borrower of any of its obligations under this Agreement or any other DIP Facility Document shall be the subject of a presently effective stay pending appeal; or

3.9. If not provided in the Financing Order, the Bankruptcy Court shall have entered an order that, fees and expenses which are payable from proceeds of sale pursuant to the Replacement Financing Order will be paid from proceeds of sale.

3.10. If Borrower has determined, in consultation with Borrower's CRO's and the DIP Lenders, that it needs to retain certain executory contracts and/or unexpired leases to comply with the Tailings Budget or to preserve the value of Borrower or its assets, the Bankruptcy Court shall have approved an extension of time within which to assume those contracts and leases or the modification of those contracts and leases or the assumption of those contracts and leases.

The request and acceptance by Borrower of the proceeds of any Advance shall be deemed to constitute, as of the date thereof, (i) a representation and warranty by Borrower that the conditions in this **Section 3.2** have been satisfied and (ii) a reaffirmation by Borrower of the granting and continuance of DIP Lenders' Liens on the Collateral.

IV. SECURITY

4.1. DIP Liens. To secure the DIP Obligations and subject to the Carve-Out, Borrower hereby unconditionally grants, assigns, and pledges to DIP Lenders valid, continuing, enforceable and fully perfected: (a) first priority Liens and security interests (held *pari passu*

with the Replacement DIP Lenders) in accordance with Section 364(c)(2) of the Bankruptcy Code on all unencumbered property of Borrower; (b) excluding the Prepetition Liens of Waterloo, WUMI and SMP, which the Borrower intends to provide DIP Lenders with valid, perfected and unavoidable first priority priming Lien (held *pari passu* with the Replacement DIP Lenders) over, junior Liens and security interests in accordance with Section 364(c)(3) of the Bankruptcy Code on all property of Borrower that is subject to valid, perfected and unavoidable Liens in existence at the time of the Petition Date, and (c) a priming first priority Lien ((held *pari passu* with the Replacement DIP Lenders) pursuant to Section 364(d) of the Bankruptcy Code on all property of Borrower that is subject to the valid, perfected and unavoidable Prepetition Liens of Waterloo, WUMI and SMP, in each case whether now owned or hereafter acquired or arising and wherever located, including Borrower's right, title and interest in and to the following , whether now owned or hereafter acquired or arising and wherever located (the Liens granted in favor of DIP Lenders pursuant to this Agreement and the Financing Order will be referred to as the "DIP Liens"):

(a) all of Borrower's right, title and interest in all owned or leased real properties, including all minerals and other substances of value that may be extracted from such properties (including copper and copper ore) and all copper cathode sheets and other products processed or obtained therefrom;

(b) all of Borrower's accounts;

(c) all of Borrower's books and records (including all of its records indicating, summarizing or evidencing its assets (including the Collateral) or liabilities, all of its records relating to its business operations or financial condition);

(d) all of Borrower's chattel paper and, in any event, including tangible chattel paper and electronic chattel paper;

(e) all of Borrower's right, title and interest with respect to any deposit account;

(f) all of Borrower's equipment and fixtures;

(g) all of Borrower's inventory;

(h) all of Borrower's investment property;

(i) all of Borrower's letter of credit rights, instruments, promissory notes, drafts and documents;

(j) all of Borrower's general intangibles, including intellectual property;

(k) all of Borrower's right, title and interest in respect of supporting obligations, including letters of credit and guaranties issued in support of accounts, chattel paper, documents, general intangibles, instruments, or investment property;

(l) all of Borrower's money, cash, cash equivalents, securities and other property held directly or indirectly by DIP Lender; and

(m) all of the proceeds, products, accessions or substitutions, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering or relating to any of the foregoing.

For the avoidance of doubt, the DIP Lenders shall not have any first priority lien, or any superpriority lien or claim, on any potential claims or causes of action, or proceeds of any such causes of action the Debtor may assert under chapter 5 of the United States Bankruptcy Code.

(For the avoidance of doubt, Borrower proposes to provide a valid, perfected and unavoidable priming lien in favor of DIP Lenders over the Prepetition Liens of Waterloo, WUMI and SMP, but does not intend to provide, and is not providing, the DIP Lenders with a valid, perfected and unavoidable priming Lien over any other valid, perfected and unavoidable Other Prepetition Liens.) All of the foregoing, and any other assets or property of Borrower in which DIP Lenders shall be granted a Lien, shall be referred to collectively as the "Collateral."

4.2. Effectiveness of Liens. Notwithstanding anything to the contrary contained herein or elsewhere, DIP Lenders' Liens on the Collateral shall be deemed valid and perfected by entry of the Financing Order, as the case may be. DIP Lenders shall not be required to file, register or publish any financing statements, mortgages, deeds of trust, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or perfect the Liens on Collateral granted by or pursuant to this Agreement, the Financing Order or any other DIP Facility Document. If DIP Lenders shall, in their sole discretion, from time to time elect to file, register or publish any such financing statements, mortgages, deeds of trust, notices of Lien or similar instruments, take possession of any Collateral or take any other action to validate, render enforceable or perfect all or any portion of DIP Lenders' Liens on Collateral, all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date of entry of the Financing Order is entered.

4.3. Superpriority Nature of DIP Obligations and DIP Lenders' Liens. Subject to the Carve-Out, all DIP Obligations shall constitute administrative expenses of Borrower in the Bankruptcy Case, with administrative priority and senior secured status under Sections 364(c)(i) of the Bankruptcy Code. Such administrative claim shall have priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 330, 331, 503(b), 507(a), 507(b), 726 or any other provision of the Bankruptcy Code and shall at all times be senior to the rights of Borrower, Borrower's estate, and any successor trustee or estate representative in the Bankruptcy Case or any subsequent proceeding or case under the Bankruptcy Code. The Liens granted to DIP Lenders on the Collateral shall have the priority and senior secured status afforded by Sections 364(c)(2), (c)(3), and (d) of the Bankruptcy Code (all as more fully set forth in the Financing Order).

4.4. DIP Lenders' Priority. The interests of each DIP Lender in DIP Lenders' Liens granted hereunder as provided in this Section 4 and rights therein shall be pro rata or *pari passu* in accordance with the DIP Loan made by each respective DIP Lender relative to the total

amount of DIP Loan made hereunder, subject in each case to any internal or intercreditor agreements that may be agreed amongst DIP Lenders.

4.5. Credit Bidding. Borrower irrevocably authorizes each DIP Lender to credit bid up to its *pro rata* share of the DIP Obligations in connection with (a) any sale of all or substantially all of Borrower's assets and property pursuant to any sale occurring pursuant to Bankruptcy Code Section 363, or (b) including without limitation, any sale occurring as part of any plan of reorganization subject to confirmation under Bankruptcy Code Section 1129(b), or (c) a sale or disposition by a chapter 7 trustee for any debtor under Bankruptcy Code section 725; provided that sufficient cash funds are provided to the estate in connection with any credit bid to pay the Carve-Out, all outstanding administrative claims and the Completion Fee of the CRO.

V. REPRESENTATIONS AND WARRANTIES

5.1. Borrower's Representations and Warranties. Borrower hereby represents and warrants, as of the Closing Date and as of the date of each Advance, that:

(a) Authorization. Subject to the entry of the Financing Order, the execution, delivery and performance by Borrower of this Agreement has been duly authorized in good faith by all necessary corporate and organizational action, and do not and will not contravene the terms of Borrower's organizational documents; and has been duly authorized and approved by the Debtor's Chief Restructuring Officer and the Bankruptcy Court.

(b) Enforceability. This Agreement and each of the DIP Facility Documents has been duly executed and delivered by Borrower and constitutes a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to the Bankruptcy Code.

(c) Existence, Qualification and Power. Borrower (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) subject to the entry and effectiveness of the Financing Order, as applicable, execute, deliver and perform its obligations under the DIP Facility Documents, and (c) is duly qualified and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in **clause (c)**, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(d) Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any governmental authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Borrower of any DIP Facility Document, except for the approval of the Bankruptcy Court in the Financing Order, and such other consents or approvals that have been obtained and that are still in force and effect.

(e) Compliance with Laws. Borrower is in compliance in all material respects with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or

to its properties, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(f) Tailings Budget. The Tailings Budget is consistent in all material respects with the provisions of the DIP Facility Documents and the Orders and has been prepared in good faith based upon assumptions believed by Borrower to be reasonable as of the date delivered, and to the best knowledge of Borrower, fairly represents Borrower's current expectation as to the matters covered thereby.

(g) Financial Information. The financial statements of Borrower furnished or to be furnished to DIP Lenders pursuant to **Section 6.1** or otherwise have been consistently applied, and present fairly the financial condition of Borrower as at the dates thereof and the results of their operations for the periods then ended. All balance sheets, all statements of operations, equity amounts, cash flow and all other financial information of Borrower furnished or to be furnished pursuant to Section 6.1 or otherwise have been and will for periods following the Closing Date, and do or will present fairly the financial condition of Borrower as at the dates thereof and the results of their operations for the periods then ended. Notwithstanding anything herein to the contrary, it being understood that historical financial statements, balance sheets, all statements of operations, equity amounts, cash flow and all other financial information of Borrower furnished prior to the Petition Date were prepared in accordance with GAAP to the best of Borrower's knowledge and in accordance with past practice.

(h) No Material Adverse Effect. No Material Adverse Effect has occurred since the date of the financial statements of Borrower most recently delivered to DIP Lenders pursuant to **Section 6.1**.

(i) Litigation, Controversies, etc. Except as set forth on **Schedule 5.1(i)**, there is no pending material litigation, action, proceeding, or labor controversy which could reasonably be expected to result in a Material Adverse Effect or which purports to affect the legality, validity or enforceability of this Agreement or any other DIP Facility Document.

(j) Taxes. Other than certain property and sales and use taxes identified on **Schedule 5.1(j),** Borrower has filed, or caused to be filed, all material Tax and informational returns that are required to have been filed by it or them in any jurisdiction and/or has timely sought an extension of such time to file taxes, and have paid all material Taxes shown to be due and payable on such returns and all other Taxes and assessments payable by it or them, to the extent the same have become due and payable (other than those Taxes that it is contesting in good faith and by appropriate proceedings, with adequate, segregated reserves established for such Taxes) and, to the extent such Taxes are not due, has established reserves therefor by allocating amounts that are adequate for the payment thereof.

(k) Ownership of Properties. Except as set forth on **Schedule 5.1(k)**, Borrower owns (i) in the case of owned real property, good and marketable fee title to, and (ii) in the case of owned personal property, good and valid title to, or, in the case of leased real or personal property, valid and enforceable leasehold interests (as the case may be) in, all of its

properties and assets, tangible and intangible, of any nature whatsoever, free and clear in each case of all Liens or claims, except for Permitted Liens. Borrower is not party to any agreement which grants an option to any such Person to purchase or lease any real property or personal property.

(l) Environmental Warranties. To Borrower's actual knowledge, based on reasonable inquiry,

(i) all facilities and property (including underlying groundwater) owned or leased by Borrower has been, and continue to be, owned or leased by such Person in material compliance with all Environmental Laws;

(ii) except as disclosed on **Schedule 5.1(l)(b)**, no conditions exist at, on or under any property owned or leased by Borrower which, with the passage of time, or the giving of notice or both, would give rise to material liability under any Environmental Law.

(m) Intellectual Property. Borrower owns or licenses (as the case may be) or will own or hold licenses for all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights and copyrights as Borrower considers necessary for the conduct of the businesses of Borrower without any infringement upon rights of other Persons and, to the best of Borrower's knowledge, there is no individual patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right or copyright the loss of which could reasonably be expected to result in a Material Adverse Effect.

(n) Accuracy of Information. None of the factual written information, taken as a whole, heretofore or contemporaneously furnished by or on behalf of Borrower to DIP Lenders for the purposes of, or in connection with, the DIP Facility Documents contains any untrue statement of a material fact on the date as if which such information is dated or certified, or omits to state any material fact necessary to make such information, taken as a whole, not misleading on the date as if which such information is dated or certified. No factual written information, taken as a whole, hereafter furnished in connection with any DIP Facility Document by Borrower to DIP Lenders will contain any untrue statement of a material fact on the date as if which such information is dated or certified or will omit to state any material fact necessary to make such information not misleading on the date as if which such information is dated or certified.

(o) Contingent Liabilities. Borrower has not incurred any material Contingent Liabilities in respect of Indebtedness or obligations except those authorized under or contemplated by the DIP Facility Documents and not prohibited by this Agreement.

(p) Prepetition Liens and Security. For the avoidance of doubt, nothing in this Agreement shall be deemed as a stipulation by Borrower or any other party as to the nature, extent, validity or priority of Borrower's prepetition debts or prepetition liens against Borrower's property, and any and all claims, challenges, rights, defenses, and causes of action with respect to such prepetition debts and liens are hereby preserved to the fullest extent.

(q) Bankruptcy Case. The Bankruptcy Case was commenced on the Petition Date and the order for relief was entered on the Relief Date, each in accordance with applicable law, and the proper notice for the hearing for the approval of the Financing Order has been given.

5.2. DIP Lenders' Representations and Warranties. On the Closing Date, each DIP Lender will have sufficient funds to enable such DIP Lender to make the Advance(s) and to consummate the transactions contemplated by this Agreement.

VI. REPORTING REQUIREMENTS

Borrower covenants and agrees that, from and after the Closing Date and until the repayment in full of the DIP Obligations and termination of this Agreement, Borrower shall deliver the following to DIP Lenders:

6.1. by no later than Friday of each week (commencing with the first Wednesday following the Closing Date) with a weekly variance report showing actual receipts and disbursements from operations on a weekly basis and comparing actual results (including at least bi-weekly a general estimate of accrued but not yet billed fees and expenses for all Professionals) compared to the line items in the most recently-delivered Tailings Budget for all prior periods in form and substance satisfactory to DIP Lenders.

6.2. as soon as practicable, but in any event within one (1) Business Day after Borrower becomes aware of the existence of any Event of Default, written notice specifying the nature of such Event of Default, including the anticipated effect thereof;

6.3. promptly, all pleadings, motions, applications, financial information and other papers and documents filed by Borrower in the Bankruptcy Case, including the monthly operating reports required by the Bankruptcy Court;

6.4. promptly, all written reports given by Borrower to the U.S. Trustee or to the Committee in the Bankruptcy Case; and

6.5. such other information with respect to Borrower's business, operations, financial condition, use of Advances, collection of accounts receivable or otherwise, as may be reasonably requested by DIP Lenders.

VII. AFFIRMATIVE COVENANTS

The following covenants shall be binding on Borrower from and after the Closing Date and until the repayment in full of the DIP Obligations and termination of this Agreement:

7.1. Compliance with Laws. Borrower shall comply with all federal, state, local and foreign laws and regulations applicable to it, including:

(a) those relating to ERISA, labor laws, and Environmental Laws, except to the extent that the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(b) the maintenance and preservation of the corporate or other organizational existence of Borrower and its material rights, privileges and postpetition contractual obligations; and

(c) the payment, before the same become delinquent, of all material postpetition obligations, including material taxes, assessments and charges imposed.

7.2. Insurance. Borrower shall, at its sole cost and expense, maintain the policies of insurance as in effect on the Closing Date or otherwise in form and amounts and with insurers reasonably acceptable to DIP Lender. Such policies of insurance (or the loss payable and additional insured endorsements delivered to DIP Lender) shall contain provisions pursuant to which the insurer agrees to provide thirty (30) days' prior written notice to DIP Lenders in the event of any non-renewal, cancellation or amendment of any such insurance policy. If Borrower at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above, or to pay all premiums relating thereto, DIP Lenders may at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto that DIP Lenders deems advisable. DIP Lenders shall have no obligation to obtain insurance for Borrower or pay any premiums therefor. By doing so, DIP Lenders shall not be deemed to have waived any Event of Default arising from Borrower's failure to maintain such insurance or pay any premiums therefor. All sums so disbursed, including reasonable attorneys' fees, court costs and other charges related thereto, shall be payable on demand by Borrower to DIP Lenders and shall be additional DIP Obligations hereunder secured by the Collateral.

7.3. Supplemental Disclosure. From time to time as may be necessary (in the event that such information is not otherwise delivered by Borrower to DIP Lenders pursuant to this Agreement), so long as there are DIP Obligations outstanding, Borrower covenants and agrees to supplement or amend each representation herein with respect to any matter hereafter arising which, if existing or occurring as of the Closing Date, would have been required to be set forth or described in an exception to such representation or which is necessary to correct any information in such representation which has been rendered inaccurate thereby.

7.4. Access. Each DIP Lender and any of its officers, employees or agents shall have the right, during normal business hours (or at such other times as may reasonably be requested by such parties), to inspect Borrower's facilities and to inspect, audit and make extracts from any and all of Borrower's records, files and books of account. Subject to the execution of a Non-Disclosure and Confidentiality Agreement, Borrower shall deliver to each DIP Lender any non-privileged document or instrument as such DIP Lender may reasonably request. Each DIP Lender shall take the steps reasonably necessary to protect the secrecy of and avoid disclosure or use of any information furnished to such DIP Lender pursuant to this **Section 7.4** and to prevent such information from becoming publicly available or entering the possession of persons other than each DIP Lender, its affiliates, directors, officers, employees, consultants, attorneys, advisors, investors and agents. Such measures shall include the same degree of care that utilizes to protect its own confidential information of a similar nature.

7.5. Financing Order and Exit from Bankruptcy or Sale. Borrower shall cause the Financing Order approving the DIP Loan and Agreement and DIP Facility Documents to be

entered by the Bankruptcy Court on or before 11:59 P.M. (ET) on or before November __, 2016. Borrower shall also comply with the Exit Milestones. Nothing in this Agreement, or the Financing Order shall preclude or limit the Debtor from proposing a plan of reorganization acceptable to DIP Lenders prior to the Maturity Date, provided the DIP Obligations are indefeasibly paid in full in cash upon the effective of such plan.

7.6. Asset Dispositions. Absent the written consent of DIP Lenders, Borrower shall not sell, transfer or otherwise dispose of any of Borrower's assets in excess of $50,000 (excluding sales in the ordinary course) that is not in accordance with the Exit Milestones set forth in **Section 7.10** of this Agreement.

7.7. Preserving the DIP Collateral; Further Assurances. Borrower shall undertake all actions and execute all further documents, financing statements, agreements and instruments which are necessary or appropriate in the reasonable judgment of DIP Lenders or as may be required by other applicable law to (x) effectuate the transactions contemplated by the DIP Facility Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the DIP Facility Documents; (y) maintain DIP Lenders' respective security interests under the DIP Facility Documents in the DIP Collateral in full force and effect at all times (including the priority thereof) and (z) preserve and protect the DIP Collateral and protect and enforce such Person's rights and title and the respective rights of each DIP Lender to the DIP Collateral, including the making or delivery of all filings and recordations (including filing UCC and other financing statements and mortgages in form and substance satisfactory to DIP Lenders), the delivery to DIP Lenders of all such instruments and documents (including title insurance policies and lien searches) as DIP Lenders shall reasonably request to evidence compliance with this Section, the payments of fees and other charges, the issuance of supplemental documentation, the discharge of all claims or other Liens (other than the Permitted Liens) adversely affecting the rights of DIP Lenders to and under the DIP Collateral (except to the extent same is being contested in good faith by appropriate governmental proceedings promptly instituted and diligently contested, so long as (1) such reserve or other appropriate provision, if any, shall have been made therefor and (2) in case of any charge or claim which has or may become a Lien against any of the DIP Collateral, such Lien shall be subject and subordinate in all respects to the Liens held by DIP Lenders (unless bonded) and such contested proceedings conclusively operate to stay the sale of any portion of the DIP Collateral to satisfy such charge or claim which has or may become a Lien against any of the DIP Collateral) and the publication or other delivery of notice to third parties. Borrower agree to provide such evidence as DIP Lenders shall reasonably request as to the perfection and priority status of each such security interest and Lien.

7.8. Cash Management. Subject to the Tailings Budget, Borrower shall maintain a cash management system substantially identical to the cash management system that they maintained immediately prior to the Petition Date, provided, however, Borrower may open, in addition to a DIP operating account, a separate checking account for the payment of any utility deposits that may be established by order of this Court (the "Utility Deposit Account") and an escrow account for the payment of fees scheduled to be paid in cash in the Tailings Budget subject to the provisions related to payment of Professional Fees. In connection with the foregoing, Borrower shall seek the entry of an order of the Bankruptcy Court, satisfactory to the DIP Lenders in its discretion, providing for the continuation of the cash management system.

7.9. Resource Development. Borrower will continue to execute the Resource Development Plan and will regularly consult with the Qualified Person, Borrower's CROs, the Third-Party Advisor, DIP Lenders and the Committee to monitor the Resource Development Plan. Subject to a review of the Key Metrics and the approval of the DIP Lenders, which approval will not be unreasonably withheld, Borrower's CRO's may adjust the amount budgeted to maximize Resource Development by increasing that amount by up to $1,000,000 (provided the Key Metrics support such increase and Borrower has sufficient funds, time, and appropriate targets (as recommended by the Qualified Person) to expend that amount and Debtor, DIP Lenders and Committee recommend this adjustment) or by decreasing that amount up to $704,000. Borrower will provide to DIP Lenders a bi-monthly analysis of the activities undertaken in the Resource Development Plan.

7.10. Resource Development Milestones. Borrower will comply with the resource development milestones set forth below (collectively, the "Resource Development Milestones"):

(a) within fifteen (15) days of the execution of this Agreement, Borrower will provide DIP Lenders with an updated Resource Development Plan based on the Tailings Budget after consultation between the Qualified Person, Borrower's CRO's, Third-Party Advisor and the DIP Lenders; and

(b) Borrower agrees to utilize its best efforts to complete appropriate resource development tasks and reports which may include a N43-101 Report prior to the request for final bids for related to the Section 363 asset sale process.

7.11. Sale Process and Plan of Reorganization. Borrower will comply with the following schedule and milestones (the "Exit Milestones"):

(a) on or before March 1, 2017, Borrower will recommence a formal sale process by filing an appropriate motion for approval of an asset sale or by filing a plan of reorganization which provides for such an asset sale;

(b) if the Debtor seeks to sell its assets outside of a plan of reorganization, then on or before May 31, 2017, the Bankruptcy Court will approve the proposed sale of assets and such sale shall close on or before June 30, 2017; and

(c) if the Debtor seeks to sell its assets as part of a plan of reorganization, or otherwise seeks to restructure its debt obligations through a plan of reorganization, the Bankruptcy Court will approve such plan of reorganization on or before June 30, 2017.

After consultation with DIP Lenders, the foregoing Exit Milestones may be extended upon the reasonable request of Borrower's CROs for up to sixty (60) days if, in their business judgment, such an extension is necessary to maximize the value of Borrower's assets and/or improve the prospects of the sale process and/or an alternative resolution such as a plan of reorganization, provided Borrower has sufficient cash to operate during such additional 60-day period.

7.12. Additional Advances and Adjustments if Tailings Processing Does Not Reach Cash Flow Benchmark. If, by March 1, 2017, cash flow contributions from the Tailings Processing do not meet at least 80% of the projected Cash Flow from Operations, projected by

the Tailings Budget, Borrower's CROs may take the following actions (and DIP Lenders are obligated to make Advances as set forth below):

(a) Borrower's CROs may request that Wellington and St. Cloud make an additional Advance of $350,000 to Borrower and Wellington and St. Cloud shall make such Advance, prorated among them, within 10 days of receipt of such request for an additional Advance;

(b) Borrower's CROs may determine, in consultation with Borrower, DIP Lenders and the Committee to reallocate the entire remaining amounts for expenditures for the Resource Development Plan under the Tailings Budget for April, May and June 2017 of $849,000 to other expenses as determined by Borrower's CROs.

(c) In addition, if cash flow contributions from the Tailings Processing are between 80% and 100% of Cash Flow from Operations projected by the Tailings Budget and, if Borrower's CROs believe that there is not sufficient cash available to support the Tailings Budget, Borrower's CROs, in their discretion, may reallocate expenditures in April, May and June 2017 for the Resource Development Plan to other expenses up to a maximum of $450,000 in Cash Flows from Operations. However, before reallocating the expenses, Borrower's CROs will first provide written notice to DIP Lenders and give DIP Lenders the option to contribute the additional advance of up to $350,000. DIP Lenders shall have three (3) business days' notice to decide whether or not to contribute the additional advance of $350,000, or allow the Borrower's CROs to reallocate the resource development expenditures.

VIII. NEGATIVE COVENANTS

The following covenants shall be binding on Borrower from and after the Closing Date and until the repayment in full of the DIP Obligations and termination of this Agreement:

8.1. Mergers, and Other Material Transactions. Borrower shall not directly or indirectly, by operation of law or otherwise, merge with, consolidate with, acquire all or substantially all of the assets or capital stock of, or otherwise combine with, any Person.

8.2. Sales of Assets. Borrower shall not sell, lease, transfer, convey, abandon or otherwise dispose of any of Borrower's assets or properties or attempt or contract to do so, except as provided in Section 7.7 or for the sale of inventory in the ordinary course of business.

8.3. Liens. Borrower shall not create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens in favor of DIP Lenders arising pursuant to the DIP Facility Documents or the Financing Order;

(b) Liens securing the Prepetition Creditors and other liens existing on the Petition Date and listed in **Schedule 8.3**;

(c) Liens for taxes, assessments or governmental charges, levies or other similar amounts (i) that are not yet due, (ii) that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, or (iii) with respect to which Borrower has made adequate payment with respect to the underlying obligation to release such Lien and is awaiting release of such Lien;

(d) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of Borrower;

(e) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions; and

(f) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business;

8.4. Indebtedness.

(a) Borrower shall not create, incur, assume or suffer to exist any Indebtedness, except:

(i) Indebtedness under the DIP Facility Documents;

(ii) Indebtedness of Borrower outstanding on the Petition Date and listed in **Schedule 8.4**;

(iii) Indebtedness incurred as set forth in the Tailings Budget.

(iv) Indebtedness owed to depositary banks or any of their banking affiliates in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with automated clearing house transfers of funds; or

(v) Indebtedness in the ordinary course of the Borrower's operations.

(b) Except pursuant to a confirmed plan of reorganization and except as specifically permitted hereunder, Borrower shall not, without the express prior written consent of DIP Lenders or pursuant to an order of the Bankruptcy Court entered after notice and a hearing, make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the filing of the Bankruptcy Case that is subject to the automatic stay provisions of the Bankruptcy Code, whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

8.5. Restricted Payments. Borrower shall not declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so.

8.6. Advances Not to Exceed Maximum Amount. Without the written approval of the DIP Lenders, the funding of a requested Advance shall not cause the aggregate outstanding amount of the Loan to exceed either (i) the Maximum Amount or (ii) any of the limitations set forth in the Tailings Budget (subject to the Permitted Variance);

8.7. Revision of Orders; Applications to Bankruptcy Court. Borrower shall not:

(a) seek, consent to or suffer to exist any modification, stay, vacation or amendment of the Financing Order except for any modifications and amendments agreed to in writing by DIP Lender; or

(b) apply to the Bankruptcy Court for authority to take any action prohibited by **Section 8** (except to the extent such application and the taking of such action is conditioned upon the receiving the written consent of DIP Lender, or unless such action proposes to pay the DIP Lenders in full).

8.8. Claims in the Bankruptcy Case. Borrower shall not incur, create, assume, suffer to exist or permit any administrative expense, unsecured claim, superpriority claim or other claim or Lien which is *pari passu* with or senior to the claims or Liens, as the case may be, of DIP Lenders against Borrower hereunder, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out.

IX. TERM

9.1. Termination. Subject to the provisions of **Section 10**, the DIP Loan shall be in effect from the Closing Date until the Maturity Date.

9.2. Survival of DIP Obligations upon Termination of this Agreement. No termination or cancellation of any financing arrangement under this Agreement (regardless of the cause or procedure) shall in any way affect or impair the duties and obligations of Borrower or the rights and powers of DIP Lenders relating to any transaction or event occurring prior to such termination and all claims granted to DIP Lenders hereunder shall continue in full force and effect until all DIP Obligations are fully and finally paid in full. All undertakings, agreements, covenants, warranties, and representations of Borrower contained in the DIP Facility Documents shall survive such termination or cancellation and shall continue in full force and effect until all of the DIP Obligations have been fully and finally paid in full in accordance with the terms of the agreements creating such DIP Obligations.

X. EVENTS OF DEFAULT; RIGHTS AND REMEDIES

10.1. Events of Default. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to the Bankruptcy Court or any notice to Borrower, and subject to **Section 10.2(b)**, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

(a) Borrower (i) fails to make any payment of principal of, or interest on, the DIP Loan or any of the other DIP Obligations when due and payable, or (ii) fails to pay or

reimburse DIP Lenders for any expense reimbursable hereunder or under any other DIP Facility Document.

(b) Borrower fails or neglects to perform, keep or observe any provision of this Agreement, the Note, or any other DIP Facility Document, in any material respect;

(c) any representation or warranty made by Borrower herein or in any of the DIP Facility Documents, any financial statement, or any statement or representation made in any other certificate, report or opinion delivered in connection herewith or therewith proves to have been incorrect or misleading in any material respect when made;

(d) Borrower's failure to pay any principal or interest due in respect of the Replacement DIP Facility when due and such failure continues after the applicable grace period, if any, specified therein;

(e) there occurs any uninsured damage to or loss, theft or destruction of any portion of the Collateral that could reasonably be expected to have a Material Adverse Effect;

(f) Borrower breaches or violates any material term of the Financing Order;

(g) Borrower uses the proceeds of the DIP Facility for purposes not authorized under the Tailings Budget (subject to the Permitted Variance);

(h) the funding of the requested Advance would cause the aggregate outstanding amount of the DIP Loan to exceed the amount then authorized by the Financing Order, as the case may be, or any order modifying or vacating the Final Financing Order shall have been entered, or any appeal of the Financing Order shall have been timely filed;

(i) the funding of a requested Advance would cause the aggregate outstanding amount of the DIP Loan to exceed either (i) the Maximum Amount, subject to any adjustments in this Agreement, or (ii) any of the limitations set forth in the Tailings Budget (subject to the Permitted Variance);

(j) the creation, existence or allowance of any Indebtedness, whether recourse or nonrecourse, and whether superior or junior, resulting from borrowings, DIP Loan, advances, or the granting of credit, whether secured or unsecured, except (i) Indebtedness to DIP Lenders arising under or as a consequence of this Agreement or the other DIP Facility Documents and (ii) Indebtedness existing on the Petition Date or otherwise expressly permitted under this Agreement, the Financing Order or the other DIP Facility Documents;

(k) other than potential Liens arising from any unpaid Taxes, the creation, existence or allowance of any Liens on any of Borrower's properties or assets except the Liens existing as of the Petition Date and the Liens created or permitted under this Agreement, the Financing Order or the other DIP Facility Documents;

(l) except as occasioned by the commencement of the Bankruptcy Case and the actions, proceedings, and investigations related thereto, any event or circumstance having a Material Adverse Effect shall have occurred since the Closing Date;

(m) any material representation or warranty by Borrower contained herein or in any other DIP Facility Document is untrue or incorrect as of such date as determined by DIP Lender, except to the extent that such representation or warranty expressly relates to an earlier date and except for changes therein expressly permitted or expressly contemplated by this Agreement; and

(n) The occurrence of any of the following in the Bankruptcy Case:

(i) the bringing of a motion or the filing of any plan of reorganization or disclosure statement attendant thereto by Borrower: (w) to sell assets of Borrower (other than as provided in Section 7.7; (x) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (y) to grant any Lien upon or affecting any Collateral; or (z) or any other action or actions adverse to DIP Lenders or its rights and remedies hereunder or its interest in the Collateral, unless the DIP Obligations are indefeasibly paid pursuant to such motion, plan of reorganization.

(ii) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the DIP Facility Documents or the Financing Order in any material manner without the written consent of DIP Lender, or the filing of a motion for reconsideration with respect to the Financing Order;

(iii) the payment of, or application for authority to pay, any prepetition claim without DIP Lenders' prior written consent or pursuant to an order of the Bankruptcy Court after notice and hearing unless otherwise permitted under this Agreement;

(iv) the appointment of an interim or permanent trustee in the Bankruptcy Case or the appointment of a receiver or an examiner in the Bankruptcy Case with expanded powers to operate or manage the financial affairs, the business, or reorganization of Borrower without DIP Lenders' consent; or the sale without DIP Lenders' consent, of all of Borrower's assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Bankruptcy Case, or otherwise that does not provide for payment in full of the DIP Obligations and termination of DIP Lenders' commitment to make the Advances;

(v) the dismissal of the Bankruptcy Case, or the conversion of the Bankruptcy Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or the filing of a motion or other pleading by Borrower seeking the dismissal of the Bankruptcy Case under Section 1112 of the Bankruptcy Code or otherwise;

(vi) 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 to execute upon or enforce a Lien on any Collateral;

(vii) the commencement of a suit or action against DIP Lenders and, as to any suit or action brought by any Person other than Borrower or a subsidiary, officer or employee of Borrower, the continuation thereof without dismissal for thirty (30) days

after service thereof on DIP Lender, that asserts by or on behalf of Borrower, the Environmental Protection Agency, any state environmental protection or health and safety agency, or the Committee in the Bankruptcy Case, any claim or legal or equitable remedy which seeks subordination of the claim or Lien of DIP Lender;

(viii) the failure to file a plan of reorganization or motion for asset sale pursuant to Section 363 of the Bankruptcy Code on or before the Maturity Date;

(ix) the entry of an order in the Bankruptcy Case granting any other superpriority administrative claim or Lien equal or superior to the claims and Liens granted to DIP Lender.

10.2. Remedies.

(a) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, if any Event of Default occurs and is continuing, DIP Lenders holding Credit Exposures representing more than 50% of the aggregate amount of Credit Exposures at that time may take any or all of the following actions without further order of or application to the Bankruptcy Court, following the Cure Period:

(i) declare its commitment to make Advances to be terminated, whereupon such commitments shall be terminated;

(ii) declare the unpaid principal amount of the DIP Loan, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other DIP Facility Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower;

(iii) increase the rate of interest from the Interest Rate to the Default Rate; or

(iv) take any other action or exercise any other right and remedy available to it under the DIP Facility Documents or otherwise available at law or in equity;

provided, that with respect to **Section 10.2(a)(iv)**, such DIP Lender shall provide Borrower (with copies to counsel for the Committee, the United States Trustee for the District of Utah, and all holders of Prepetition Liens with ten (10) days' prior written notice (in any hearing after giving effect to such notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing, provided, however, that notwithstanding any Cure Period, if action is required to be taken by DIP Lenders to preserve the value of their security Collateral pursuant to this Agreement, DIP Lenders may take such action prior to expiration of the Cure Period.

(b) Solely with respect to an Event of Default that occurs and is continuing under **Section 10.1(a)** of this Agreement, acting on its own or for the benefit of all DIP Lenders, may take the remedial actions set forth in **Section 10.2(a)** of this Agreement or the Replacement

DIP Agreement, as applicable, following the expiration of the Cure Period unless the Required DIP Lenders have agreed to extend the Cure Period by up to thirty (30) days. The Required DIP Lenders shall not agree to such an extension unless it is in the best interest of the DIP Lenders and/or necessary to maximize the value of the Borrower's assets. DIP Lenders acknowledge and agree that the Cure Period may not be extended beyond a single thirty (30) day period without the unanimous consent of the DIP Lenders.

(c) Upon the occurrence and during the continuance of an Event of Default, the automatic stay arising pursuant to Bankruptcy Code Section 362 shall be vacated and terminated in accordance with the Financing Order so as to permit DIP Lenders' full exercise of all of its rights and remedies based on the occurrence of an Event of Default, including all of its rights and remedies with respect to the Collateral. With respect to DIP Lenders' exercise of its rights and remedies, Borrower agrees and warrants as follows:

(i) Borrower waives and releases and shall be enjoined from attempting to contest, delay, or otherwise dispute the exercise by each DIP Lender of its rights and remedies before the Bankruptcy Court or otherwise; except only as expressly stated in **Section 10.2(b)(ii)**; and

(ii) when a DIP Lender seeks to enforce its rights and remedies based on an Event of Default, and if Borrower disputes that an Event of Default has occurred, Borrower will be entitled to file an emergency motion with the Bankruptcy Court disputing whether an Event of Default has occurred. Unless otherwise agreed in writing by DIP Lender, any such motion shall be heard within ten (10) days after it is filed, subject to the availability of the Bankruptcy Court. At the hearing on the emergency motion, the only issue that will be heard by the Bankruptcy Court will be whether an Event of Default has occurred and has not been cured, and, if an Event of Default has occurred and has not been cured, each DIP Lender will be entitled to continue to exercise all of their rights and remedies without the necessity of any further notice or order. Furthermore, nothing herein shall be construed to impose or reimpose any stay or injunction of any kind against DIP Lender.

(d) If an Event of Default has occurred and is continuing: (i) each DIP Lender shall have, in addition to all of its other rights, the rights and remedies of a secured party under the UCC; (ii) DIP Lenders may, at any time, take possession of the Collateral and keep it on Borrower's premises, at no cost to DIP Lender, or remove any part of it to such other place or places as DIP Lenders may desire, or Borrower shall, upon DIP Lenders' demand, at Borrower's cost, assemble the Collateral and make it available to DIP Lenders at a place or places reasonably convenient to DIP Lenders; and (iii) DIP Lenders may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as DIP Lenders deem advisable, in its reasonable discretion, and may, if DIP Lenders deem it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, Borrower agrees that any notice by DIP Lenders of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to Borrower if such notice is mailed by registered or certified mail, return receipt

requested, postage prepaid, or is delivered personally against receipt to Borrower, at least ten (10) days prior to such action to Borrower's address specified herein. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the DIP Obligations until DIP Lenders receives payment, and if the buyer defaults in payment, DIP Lender may resell the Collateral without further notice to Borrower. In the event DIP Lender seeks to take possession of all or any portion of the Collateral by judicial process, Borrower irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that DIP Lenders retain possession and not dispose of any Collateral until after trial or final judgment. Borrower agrees that DIP Lenders have no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. DIP Lenders are hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property, in completing production of, advertising or selling any Collateral, and Borrower's rights under all licenses and all franchise agreements shall inure to DIP Lenders' benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including reasonable attorneys' fees, and then to the DIP Obligations. After the DIP Obligations have been fully and finally satisfied in full in cash, DIP Lenders will return any excess proceeds of the Collateral Borrower or as otherwise directed by the Bankruptcy Court. Borrower shall remain liable for any deficiency.

XI. COOPERATION AMONG THE DIP LENDERS

11.1. With respect to all decisions to be made or actions to be taken by the DIP Lenders with respect to or in connection with this Agreement or any of the DIP Facility Documents other than with respect to remedies under section 10.2(a) and (b), the DIP Lenders shall act by unanimous agreement.

11.2. Without limiting the scope of section 11.1 above, no DIP Lender may modify, extend or waive any terms of its Note, without the affirmative consent of all DIP Lenders.

11.3. No DIP Lender is authorized or empowered to act for or bind another DIP Lender because of this Agreement alone. Any such authority or power shall be the subject of a subsequent agreement between the granting DIP Lender and the grantee DIP Lender with advance notice to all DIP Lenders.

11.4. Any recovery by a DIP Lender of an amount in excess of its proportionate share of the DIP Obligation recovered by all DIP Lenders shall be held in trust for the other DIP Lenders and shall be re-distributed as necessary to achieve a proportionate recovery for all DIP Lenders.

11.5. Each DIP Lender shall be entitled to retain counsel and other professionals as of its choice, and to recover from the Borrower any expenses associated therewith as part of that DIP Lender's share of the DIP Obligations.

11.6. No DIP Lender may sell, assign or transfer all or any part of its interest in the DIP Loan or this Agreement to a proposed non-DIP Lender purchaser without prior notice to and the

consent of the other DIP Lenders, which consent shall not be unreasonably withheld. Any proposed assignee of all or any part of such interest will have to assume expressly all of assignor's obligations under this Agreement.

11.7. Each DIP lender grants to each other DIP Lender the right to purchase the former's Note and interest in each of the DIP Facility Documents in return for payment of the selling DIP Lender's share of the DIP Obligations. In the event that more than one DIP Lender offers to purchase the selling DIP Lender's Note and interest in each of the DIP Facility Documents, the selling DIP Lender, in its sole and absolute discretion, may choose the purchaser.

11.8. The DIP Lenders each shall be responsible for keeping themselves informed of (a) the financial condition of the Borrower and (b) all other circumstances bearing upon the risk of nonpayment of the DIP Obligations, and have made and shall continue to make, independently and without reliance upon each other, their own credit analysis and decision in entering into the DIP Facility Documents to which they are parties and taking or not taking any action thereunder. No DIP Lender shall have a duty to advise any other DIP Lender of information known to it regarding such condition or any such other circumstances, and no disclosure of any such information shall create any obligation to provide any further information or be deemed to constitute or require any representation or warranty from the disclosing DIP Lender regarding that or any other information.

XII. MISCELLANEOUS

12.1. Complete Agreement. This Agreement, the Financing Order and the other DIP Facility Documents constitute the complete agreement between the parties with respect to the subject matter hereof.

12.2. Sale of Interests. Borrower may not sell, assign or transfer this Agreement or any of the other DIP Facility Documents or any portion thereof, including Borrower's duties and obligations thereunder. Borrower hereby consents to each DIP Lender's sale of participation, assignment, transfer or other dispositions, at any time or times, of any of the DIP Facility Documents or of any portion thereof or interest therein, including such DIP Lender's rights, title, interest, remedies, powers, or duties thereunder, whether evidenced by a writing or not. No rights are intended to be created hereunder for the benefit of any third party or creditor or any direct or indirect incidental beneficiary, except as specifically provided herein.

12.3. Modification of Agreement. No amendment, modification or alteration to this Agreement, the Note or any other DIP Facility Document shall be effective unless the same shall be in writing and be signed by each of DIP Lenders and Borrower. No waiver of any provision of this Agreement nor any consent to any departure by a DIP Lender therefrom, shall be effective unless the same shall be in writing and signed by each of DIP Lender and Borrower, and then, such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

12.4. No Waiver by DIP Lenders. The failure of any DIP Lender at any time to require strict performance by Borrower of any provision of this Agreement or the Note or any other DIP

Facility Document shall not waive, affect, or diminish any right of DIP Lenders thereafter to demand strict compliance and performance therewith. Any suspension or waiver by DIP Lender of an Event of Default by Borrower under this Agreement, the Note, or any other DIP Facility Document shall not suspend, waive, or affect any other Event of Default by Borrower under this Agreement, the Note, or any other DIP Facility Document whether the same are prior or subsequent thereto and whether of the same or of a different type. None of the undertakings, agreements, warranties, covenants, and representations of Borrower contained in this Agreement shall be deemed to have been suspended or waived by DIP Lenders, unless such suspension or waiver is by an instrument in writing signed by DIP Lenders and directed to Borrower specifying such suspension or waiver.

12.5. Additional Remedies. Each DIP Lender's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that DIP Lenders may have under any other agreement, including any other DIP Facility Document or the Financing Order, the Bankruptcy Code, by operation of law or otherwise. This Agreement is without prejudice to any rights of DIP Lenders under the Bankruptcy Code or under applicable non-bankruptcy law.

12.6. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12.7. Parties. This Agreement, the Note, and the other DIP Facility Documents shall be binding upon and the parties hereto and their respective successors, and shall inure to the benefit of the parties and their assigns, transferees and endorsees. The Replacement DIP Lenders shall be third party beneficiaries of Section 2.10 of this Agreement, and the DIP Lenders and the Borrower acknowledge and agree that each Replacement DIP Lender shall have the right to seek enforcement of the terms and conditions contained in such section.

12.8. Conflict of Terms. Except as otherwise provided in this Agreement or the Note by specific reference to the applicable provisions of this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in the Note, the provision contained in this Agreement shall govern and control.

12.9. Governing Law; Litigation. Except as otherwise expressly provided in any of the DIP Facility Documents, in all respects, including all matters of construction, validity and performance, this Agreement and the DIP Obligations arising hereunder shall be governed by, and be construed and enforced in accordance with, the laws of the State of Utah applicable to contracts made and performed in such state, without regard to the principles thereof regarding conflict of laws, and any applicable laws of the United States of America. Service of process on Borrower or a DIP Lender in any action arising out of or relating to any of the DIP Facility Documents shall be effective if mailed to such party at the address listed in **Section 11.11**.

12.10. Venue. Borrower and DIP Lender hereby agree that the Bankruptcy Court or, if the Bankruptcy Case has closed or the Bankruptcy Court refuses or declines jurisdiction for any

reason, any state or federal court located in the State of Utah, shall have jurisdiction to hear and determine any claims or disputes between Borrower and DIP Lender, pertaining directly or indirectly to this Agreement, the DIP Loan or to any matter relating thereto. The parties expressly submit and consent in advance to such jurisdiction in any action or proceeding commenced in such courts, hereby waiving personal service of the summons and complaint, or other process or papers issued therein, and agreeing that service of such summons and complaint, or other process or papers may be made by registered or certified mail addressed to Borrower or DIP Lender, as the case may be, at their respective addresses set forth in **Section 11.11**. Should a party fail to appear or answer any summons, complaint, process or papers so served within thirty (30) days after the mailing thereof, it shall be deemed in default and an order or judgment may be entered against it as demanded or prayed for in such summons, complaint, process or papers. The choice of forum set forth in this section shall not be deemed to preclude the enforcement of any judgment obtained in such forum or the taking of any action under this Agreement to enforce same in any other jurisdiction.

12.11. Notices. All notices, consents, waivers and communications hereunder given by any party to the other shall be in writing (including facsimile transmission and electronic mail) and delivered personally, facsimile, by electronic mail, by a recognized overnight courier, or by dispatching the same by certified or registered mail, return receipt requested, with postage prepaid, in each case addressed:

If to Borrower, to:

CS Mining, LLC
1208 South 200 West
P.O. Box 608
Milford, UT 84751
Attention: David McMullin
Facsimile: (435) 387-5088
Email: dmcmullin@csmining.com

with copies to:

Pepper & Hamilton LLP
Hercules Plaza, Suite 5100
1313 N. Market Street
P.O. Box 1709
Wilmington, Delaware 19899-1709
Attention: Donald J. Detweiler, Esq.
Facsimile: (800) 343-6137
Email: detweild@pepperlaw.com

If to Wellington, to:

Wellington Financing Partners, LLC
Attn: Galtney Enterprises, Inc.
820 Gessner Rd, Ste 1850
Houston, TX 77024-4289
Attention: Robert F. Galtney
Email: rgaltney@galtney.com

with a copy to:

Durham Jones & Pinegar, P.C.
111 East Broadway, Suite 900
P O Box 4050
Salt Lake City, UT 84110-4050
Attention: Kenneth L. Cannon II
Facsimile: (801) 297-1201
Email: kcannon@djplaw.com

If to St. Cloud, to:

St. Cloud Capital Partners, II, L.P.
10866 Wilshire Blvd., Suite 1450
Los Angeles, CA 90024
Attention: Robert Lautz
Facsimile: (310) 475-0550
Email: rlautz@stcloudcapital.com

with a copy to:

Hogan Lovells US LLP
One Tabor Center, Suite 1500
1200 Seventeenth Street
Denver, CO 80202
Attention: Andrew Lillie, Esq.
Facsimile: (303) 899-7333
Email: andrew.lillie@hoganlovells.com

If to Oxbow, to:

Oxbow Carbon LLC
1450 Lake Robbins Drive, Suite 500
The Woodlands, TX 77380
Attention: Peter Lyons
Email: peter.lyons@oxbow.com

with a copy to:

Oxbow Carbon LLC
1601 Forum Place, 12th Floor
West Palm Beach, FL 33401
Attention: Pierre Azzi
Email: pierre.azzi@oxbow.com

or to such other address or addresses as Borrower or the relevant DIP Lender may from time to time designate by notice as provided herein, except that notices of changes of address shall be effective only upon receipt. All such notices, consents, waivers and communications shall be effective: (a) when posted by certified or registered mail, postage prepaid, return receipt requested, three (3) Business Days after dispatch, (b) when facsimiled or sent by electronic mail, upon transmission, or (c) when delivered by a recognized overnight courier or in person, upon receipt when hand delivered.

12.12. Reimbursement of Expenses other than DIP Lender's Third-Party Advisor Fees. Borrower shall reimburse the DIP Lenders for all reasonable and documented fees, costs and expenses (including the reasonable fees and expenses of all of its counsel, advisors, consultants and auditors) incurred in connection with the DIP Loan or DIP Facility Documents in an amount not to exceed $200,000 (the "DIP Lenders' Fees"). Borrower agrees that DIP Lenders may in their discretion either credit or reserve against DIP Loan disbursements or be paid on demand out of the first proceeds from the sale of Borrower's assets or, if there is no sale, from funding under a confirmed plan of reorganization and without application to the Bankruptcy Court). The DIP Lenders' Fees shall include and are limited to:

(a) the negotiation, preparation and filing and/or recordation of the DIP Facility Documents and related documents, motions and filings;

(b) any amendment, modification or waiver of, consent with respect to, or termination of, this Agreement or any other DIP Facility Document;

(c) any litigation, contest, dispute, suit, proceeding or action (whether instituted by DIP Lender, Borrower or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the DIP Facility Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against Borrower or any other Person that may be obligated to DIP Lender by virtue of the DIP Facility Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the DIP Loan during the pendency of one or more Events of Default;

(d) advice in connection with the administration of the DIP Loan made pursuant hereto or its rights hereunder or thereunder;

(e) any attempt to enforce any remedies of DIP Lender against Borrower or any other Person that may be obligated to DIP Lender by virtue of any of the DIP Facility Documents, including any such attempt to enforce any such remedies in the course of any work-

out or restructuring of the DIP Loan during the pendency of one or more Events of Default; (provided, however, that these fees and any fees incurred by the DIP Lenders in connection with a foreclosure on the DIP Collateral are not subject to the $200,000 cap);

(f) any workout or restructuring of the DIP Loan during the pendency of one or more Events of Default;

(g) the obtaining of approval of the DIP Facility Documents by the Bankruptcy Court;

(h) the preparation and review of pleadings, documents and reports related to the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code, and general monitoring of the Bankruptcy Case and any subsequent case under chapter 7 of the Bankruptcy Code; and

(i) efforts to (x) monitor the DIP Loan, Tailings Budget, Borrower operations or any DIP Obligations, (y) evaluate, observe or assess Borrower or its affairs, and (z) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral; including, as to each of **Sections 11.12(a)** through **(i)**, all reasonable attorneys' and other professional and service providers' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this **Section 11.12**, all of which shall be payable as set forth above by Borrower to DIP Lender, on demand out of the first proceeds from the sale of Borrower's assets. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, attorneys, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram or telecopy charges; secretarial overtime charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services.

The DIP Lenders' Fees shall be payable on the Maturity Date, unless the DIP Loan is refinanced prior to the Maturity Date with a facility in which DIP Lenders provide at least 50% of the refinancing facility, in which event the DIP Lenders' Fees will be paid at the time the DIP Obligations are due.

12.13. Payment of DIP Lenders' Third-Party Advisor Fees. DIP Lenders anticipate engaging an industry-experienced third-party advisor (the "Third-Party Advisor") to monitor the Resource Development Plan and other value-enhancing initiatives of Borrower. The Third-Party Advisor will be entitled to receive a monitoring fee, with part to be paid $10,000 per month out of the Resource Development line item in the Tailings Budget and the other part, of $100,000, payable as part of the DIP Lenders' Fees *pari passu* with repayment of the DIP Loan on the Maturity Date and secured as part of the DIP Obligations. The amounts payable or reimbursable

to the Third-Party Advisor specified in this Section are in addition to any amounts specified in **Section 11.12.**

12.14. Indemnity. Borrower agrees to defend, indemnify, and hold harmless each DIP Lender and such DIP Lender's directors, officers, employees, advisors, affiliates, representatives, attorneys and agents (each an "Indemnified Person") from and against any and all penalties, fines, liabilities, damages, costs, or expenses of whatever kind or nature asserted against any such Indemnified Person, arising out of, or in any way related to this Agreement or any other DIP Facility Document, or the transactions contemplated hereby or thereby, including by reason of the violation of any law or regulation relating to the protection of the environment or the presence, generation, disposal, release, or threatened release of any hazardous materials in connection with Borrower's business on, at or from any property at any time owned or operated by Borrower, including reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses actually incurred. Borrower shall have no obligation to indemnify DIP Lenders, or provide contribution or reimbursement to DIP Lenders, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from any of the DIP Lender's gross negligence, fraud, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtor alleges the breach of any DIP Lender's contractual obligations unless the Court determines that indemnification is permissible; (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing to be a claim or expense for which a DIP Lender should not receive indemnity.

12.15. Reversal of Payments. To the extent that Borrower makes a payment or payments to a DIP Lender that are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver, or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then, to the extent of such payment or proceeds received, the DIP Obligations or part thereof intended to be satisfied shall be revived and shall continue in full force and effect, as if such payment or proceeds had not been received by such DIP Lender.

12.16. No Control. By agreeing to and executing this Agreement, by making advances or extending financial accommodations of any type, kind or nature under this Agreement, the Tailings Budget or the Financing Order, DIP Lender shall not be deemed (i) to be in control of Borrower's operations or business or (ii) to be acting as a "responsible person," "managing agent" or "owner or operator" with respect to the operation or maintenance of Borrower.

12.17. Survival. The representations and warranties of Borrower and DIP Lenders in this Agreement shall survive the execution, delivery and acceptance hereof by the parties hereto and the closing of the transactions described herein or related hereto.

12.18. Section Titles. The section titles and table of contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever.

12.19. Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall, collectively and separately, constitute one agreement.

[signature page follows]

IN WITNESS WHEREOF, this Agreement have been duly executed as of the date first written above.

"**Borrower**":

CS MINING, LLC

By:_____

Name: _____

Title: _____

"**DIP Lenders**"

"**Wellington**"

WELLINGTON FINANCING PARTNERS, LLC

By:_____

Name:_____

Title:_____

"**St. Cloud**"

ST. CLOUD CAPITAL PARTNERS II. L.P.

By:_____

Name:_____

Title:_____

"Oxbow"

OXBOW CARBON, LLC

By:_____

Name:_____

Title:_____

Exhibit A

Tailings Budget

CS Mining, LLC
Cash Forecast
Prepared as of November 15, 2016

Tailings Processing Scenario

($000s)

For the week beginning	November	December	January	February	March	April	May	June	Nov - Jun Total
Cash Flows from Operations									
Net Receipts	**-**	**497**	**1,862**	**1,758**	**2,181**	**2,181**	**2,181**	**2,181**	**12,840**
Operating Costs									
Labor	(142)	(252)	(309)	(309)	(309)	(309)	(309)	(309)	(2,247)
Benefits	(47)	(84)	(92)	(92)	(92)	(92)	(92)	(92)	(684)
Consumables and Supplies	(1,481)	(391)	(1,006)	(870)	(1,044)	(1,044)	(1,044)	(1,044)	(7,926)
Holding Costs	-	(0)	(0)	(20)	(38)	(36)	(55)	(45)	(195)
Other	(131)	(113)	(113)	(143)	(198)	(113)	(108)	(118)	(1,038)
Total Operating Costs	**(1,801)**	**(840)**	**(1,520)**	**(1,435)**	**(1,682)**	**(1,595)**	**(1,608)**	**(1,608)**	**(12,089)**
Cash Flows from Operations	**(1,801)**	**(343)**	**341**	**323**	**499**	**586**	**573**	**573**	**751**
Cash Flows from Investing Activities									
Capital Expenditures	(185)	(212)	(187)	(72)	(79)	(79)	(44)	(56)	(915)
Transition to C&M	-	-	-	-	-	-	-	-	-
Exploration Cost	(400)	(400)	(475)	(475)	(475)	(475)	(220)	(154)	(3,074)
Cash Flows from Investing Activities	**(585)**	**(612)**	**(662)**	**(547)**	**(554)**	**(554)**	**(264)**	**(210)**	**(3,989)**
Cash Flows from Financing Activities									
DIP Draws	2,300	-	-	-	-	-	-	-	2,300
DIP Servicing	-	-	-	-	-	-	-	-	-
Equipment	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(71)
Cash Flows from Financing Activities	**2,291**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**(9)**	**2,229**
Process Related Disbursements									
Utility Deposits / Other	-	-	-	-	-	-	-	-	-
Cash Debtor Bankruptcy Advisors	(270)	(430)	(290)	(270)	(270)	(270)	(270)	(290)	(2,360)
Cash Unsecured Creditor Committee Fees	(32)	(42)	(32)	(32)	(56)	(32)	(32)	(32)	(290)
US Trustee Fees	-	-	(30)	-	-	(30)	-	(30)	(90)
Cash Flows from Process Related	**(302)**	**(472)**	**(352)**	**(302)**	**(326)**	**(332)**	**(302)**	**(352)**	**(2,740)**
Net Cash Flows	**$ (397)**	**$ (1,436)**	**$ (682)**	**$ (535)**	**$ (390)**	**$ (309)**	**$ (2)**	**$ 1**	**$ (3,749)**
Cumulative Cash Flows	*(397)*	*(1,833)*	*(2,515)*	*(3,050)*	*(3,440)*	*(3,748)*	*(3,751)*	*(3,749)*	
Beginning Cash Balance	**$ 3,754**	**$ 3,357**	**$ 1,921**	**$ 1,239**	**$ 704**	**$ 314**	**$ 5**	**$ 3**	**$ 3,754**
Net Cash Flows	(397)	(1,436)	(682)	(535)	(390)	(309)	(2)	1	(3,749)
Ending Cash Balance	**$ 3,357**	**$ 1,921**	**$ 1,239**	**$ 704**	**$ 314**	**$ 5**	**$ 3**	**$ 5**	**$ 5**
Prefunded Account									
Funding	-	*160*	*160*	*160*	*160*	*160*	*160*	*160*	*1,120*
Payment to Debtor Professionals	-	-	*(160)*	*(160)*	*(160)*	*(160)*	*(160)*	*(160)*	*(960)*
Account Balance	**-**	***160***	***160***	***160***	***160***	***160***	***160***	***160***	***160***

Exhibit B

Schedule of Documents

1. Second DIP Credit Agreement and Schedules to DIP Credit Agreement
2. Tailings Budget (Exhibit A to Second DIP Credit and Security Agreement)
3. Third Amendment to Sulfuric Acid Supply Agreement (Exhibit C to Second DIP Credit and Security Agreement)
4. Notes (Exhibit D to Second DIP Credit and Security Agreement)
5. Financing Order
6. Certification of CRO Requesting DIP Financing Draw

Exhibit C

Third Amendment to Sulfuric Acid Supply Agreement

OXBOW SULPHUR INC.
1450 Lake Robbins Drive, Suite 500
The Woodlands, Texas 77380
Phone: 1 (281) 907-9500 Fax: 1 (281) 907-9400

THIRD AMENDMENT
TO
SULFURIC ACID SUPPLY AGREEMENT

DATE: November ___, 2016
TO: CS Mining, LLC
FROM: Oxbow Sulphur Inc.
REF #: Third Amendment to Sulfuric Acid Supply Agreement #2554

This Third Amendment ("**Amendment**") to that certain Sulfuric Acid Supply Agreement dated May 5, 2015, as amended September 1, 2015 and further amended December 8, 2015 (the "**Agreement**") is made and entered into as of the ____ day of November 2016 (the "**Effective Date**") by and between CS Mining, LLC, a Delaware limited liability company ("**Buyer**") and Oxbow Sulphur Inc., a Delaware corporation ("**Seller**"). Seller and Buyer each are referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Buyer defaulted under the terms of Agreement;

WHEREAS, Buyer requested that Seller not seek to terminate the Supply Agreement;

WHEREAS, Buyer has requested and Seller has agreed to resume the interim supply of sulfuric acid to Buyer under the terms set forth herein; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree to amend the Agreement as follows:

1. Except as specifically defined herein, capitalized terms used in this Amendment shall have the meaning ascribed to them in the Agreement.

2. The Agreement is hereby amended by adding the following sentences to Section 3, "QUANTITY":

> "Seller shall make two (2) deliveries of Product into storage, each equal to approximately 4,200 ST (the "**Interim Quantity**")."

3. The Agreement is hereby amended by adding the following sentences to Section 5, "SCHEDULE/DELIVERY":

> "The Interim Quantity of Product shall be delivered during on a DAP basis at Buyer's Facility. The first shipment is anticipated to arrive to Buyer's Facility following the Bankruptcy Court's final approval of the DIP Financing and this Amendment."

4. The Agreement is hereby amended by adding the following sentence to Section 7,

"PRICE":

"The Price for the Interim Quantity of Product shall be $139/ST DAP Buyer's Facility."

5. The Agreement is hereby amended by adding the following two paragraphs to Section 8, "PAYMENT":

"Pre-Payment. Buyer shall pre-pay for the Interim Quantity of Product prior to Seller loading the Product on Seller's designated railcars at Seller's supply source.

Additional Quantities. Following the shipment of the Interim Quantity of Product, the price for subsequent shipments shall be Base Price + Transportation Price + $11/ST until the parties have mutually agreed upon a new supply agreement or a further amendment to this Agreement. Buyer shall pre-pay for all shipments in accordance with the above Pre-Payment terms. The schedule for delivery shall be mutually agreed upon."

6. Except as specifically set forth in this Amendment, all terms and conditions of the Agreement are hereby ratified and confirmed by the Parties.

7. In connection with seeking Bankruptcy Court approval of the DIP Financing and associated business plan, Buyer shall request and diligently pursue Bankruptcy Court approval of this Amendment.

8. Seller's obligations under this Amendment are conditioned on the Bankruptcy Court's final approval of the DIP Financing terms agreed to by Seller in a separate term sheet, which shall fund the security deposit and initial two deliveries described herein.

9. This Amendment is not intended to constitute an assumption or rejection of the pre-petition Agreement, and nothing in this Amendment, or any order of the Court approving this Amendment shall be construed as an assumption of the Agreement by the Debtor. Buyer shall request and diligently pursue Bankruptcy Court approval of this Amendment on terms to be agreed between Seller and Buyer. In the event that Buyer does not timely request and diligently pursue such approval, or if the Bankruptcy Court does not approve assumption of this Amendment on terms acceptable to Seller, Seller may terminate any interim supply of Product to Buyer under this Amendment without further order of the Bankruptcy Court.

10. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original copy, and all of which, when taken together, shall be deemed to constitute one and the same instrument. Signatures transmitted by facsimile or other electronic means shall be accepted as originals for all purposes.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the Effective Date.

CS MINING, LLC

By: _____
Name: _____
Title: _____

OXBOW SULPHUR INC.

By: _____
Name: _____
Title: _____

Exhibit D

Notes

PROMISSORY NOTE

$2,000,000.00 December __, 2016

FOR VALUE RECEIVED, the undersigned, CS MINING, LLC, a Delaware limited liability company ("Maker"), hereby promises to pay to the order of OXBOW CARBON, LLC, a Delaware limited liability company, or its assigns ("Holder"), the principal amount of TWO MILLION DOLLARS ($2,000,000.00) (the "Loan"), together with interest accrued thereon and any additional amounts which may be payable to Holder pursuant to the terms set forth in the Credit Agreement or this Promissory Note (the "Note"). Maker and Holder are each sometimes referred to herein as a "Party" and together, the "Parties."

1. Delivery of the Note. This Note is a promissory note referred to in, and is entitled to the benefits of, that certain Second Debtor in Possession Credit and Security Agreement, dated as of December__, 2016 (as the same may be amended, amended and restated, restated, supplemented, modified or otherwise in effect from time to time, the "Credit Agreement") by and among Maker, Holder and the other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meaning given them in the Credit Agreement.

2. Final Payment; Optional Prepayments.

(a) Final Payment Date. The aggregate unpaid principal amount of the Loan, all accrued and unpaid interest and all other amounts payable under this Note shall be due and payable on the Maturity Date.

(b) Optional Prepayment. Maker may prepay the Loan in whole or in part pursuant to Section 2.3 of the Credit Agreement.

3. Interest.

(a) Interest Rate. Except as otherwise provided herein, the outstanding principal amount of the Loan made hereunder shall bear interest at 7% per annum from the date the Loan was made until the Loan is paid in full, whether upon the Maturity Date, by prepayment or otherwise. In no event will the rate of interest hereunder exceed the maximum rate under applicable law.

(b) Interest Payment. Interest on the Loan shall be due and payable in full in arrears on the Maturity Date.

(c) Default Interest. If any amount payable hereunder is not paid when due, such overdue amount shall bear interest at 7.8% per annum from the date of such non-payment until such amount is paid in full.

(d) Computation of Interest. All computations of interest shall be made on the basis of a year of 365 days or 366 days, as the case may be, and the actual number of days elapsed. Interest shall accrue on the Loan on the day on which such Loan is made, and shall not accrue on the Loan on the day on which it is paid.

4. Payment Mechanics.

(a) Manner of Payment. All payments of interest and principal shall be made in lawful money of the United States of America no later than 12:00 p.m., Mountain Time, on the Maturity Date by wire transfer of immediately available funds to the Holder's account at a bank specified by the Holder in writing to the Maker.

(b) Application of Payments. All payments made hereunder shall be applied first, to the payment of any fees or charges outstanding hereunder, second, to accrued interest and third, to the payment of the principal amount outstanding under the Note. Any payments received by Holder after any default hereunder, shall be applied in such order as Holder may, in its sole discretion, elect.

(c) Business Day Convention. Whenever any payment to be made hereunder shall be due on a day that is a Saturday, Sunday or legal holiday in the State of Utah, such payment shall be made on the next succeeding business day and such extension will be taken into account in calculating the amount of interest payable under this Note.

5. Remedies. Upon the occurrence of an Event of Default, the holder of this Note may pursue the remedies set forth in Section 10.2 of the Credit Agreement.

6. Use of Proceeds. Maker shall use the proceeds of the Loan solely in accordance with Section 2.4, Section 12.12 and Section 12.13 of the Credit Agreement.

7. Fees and Expenses. Maker shall reimburse the Holder for all reasonable and documented out-of-pocket costs, expenses and fees (including reasonable expenses and fees of its counsel) incurred by the Holder in connection with the transactions contemplated hereby including the negotiation, documentation and execution of this Note (subject to the limitations set forth in Section 12.2 and Section 11.12 of the Credit Agreement) and the enforcement of the Holder’s rights hereunder or under the Credit Agreement.

8. Successors and Assigns. This Note may be assigned, transferred or negotiated by the Holder to (a) any affiliate of Holder at any time without notice to or the consent of Maker and (b) any other person with the prior written consent of Maker. Maker may not assign or transfer this Note or any of its rights hereunder without the prior written consent of the Holder. This Note shall inure to the benefit of and be binding upon the Parties and their permitted assigns.

9. Cumulative Rights. No delay on the part of any holder of this Note in the exercise of any power or right under this Note, or under any document or instrument executed in connection herewith, shall operate as a waiver thereof, nor shall a single or partial exercise of any other power or right.

10. Waivers. Maker, and any other party ever liable for the payment of any sum of money payable on this Note, jointly and severally waive demand, presentment, protest, notice of nonpayment, notice of intention to accelerate, notice of acceleration, notice of protest, and any and all lack of diligence or delay in collection or the filing of suit hereon which may occur; agree that their liability on this Note shall not be affected by any renewal or extension in the time of

payment hereof, or by any indulgences, and hereby consent to any and all renewals, extensions, indulgences, releases, or changes hereof or hereto, regardless of the number of such renewals, extensions, indulgences, releases, or changes. Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision of this Note.

11. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict of law principles.

12. Severability. If any provision of this Note shall be held to be unenforceable by a court of competent jurisdiction, such provisions shall be severed from this Note and the remainder of this Note shall continue in full force and effect.

13. Notices. Notices shall be given to Holder or Maker pursuant to Section 12.11 of the Credit Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Maker has executed this Note as of the date and year first above written.

"MAKER"

CS MINING, LLC,
a Delaware limited liability company,

By:_____
Name:
Title:

ACKNOWLEDGED AND AGREED:

"HOLDER"

OXBOW CARBON, LLC
a Delaware limited liability company,

By:_____
Name:
Title:

PROMISSORY NOTE

$500,000.00 December __, 2016

FOR VALUE RECEIVED, the undersigned, CS MINING, LLC, a Delaware limited liability company ("Maker"), hereby promises to pay to the order of WELLINGTON FINANCING PARTNERS, LLC, a Delaware limited liability company, or its assigns ("Holder"), the principal amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) (the "Loan"), together with interest accrued thereon and any additional amounts which may be payable to Holder pursuant to the terms set forth in the Credit Agreement or this Promissory Note (the "Note"). Maker and Holder are each sometimes referred to herein as a "Party" and together, the "Parties."

14. Delivery of the Note. This Note is a promissory note referred to in, and is entitled to the benefits of, that certain Second Debtor in Possession Credit and Security Agreement, dated as of December__, 2016 (as the same may be amended, amended and restated, restated, supplemented, modified or otherwise in effect from time to time, the "Credit Agreement") by and among Maker, Holder and the other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meaning given them in the Credit Agreement.

15. Final Payment; Optional Prepayments.

(a) Final Payment Date. The aggregate unpaid principal amount of the Loan, all accrued and unpaid interest and all other amounts payable under this Note shall be due and payable on the Maturity Date.

(b) Optional Prepayment. Maker may prepay the Loan in whole or in part pursuant to Section 2.3 of the Credit Agreement.

16. Interest.

(e) Interest Rate. Except as otherwise provided herein, the outstanding principal amount of the Loan made hereunder shall bear interest at 7% per annum from the date the Loan was made until the Loan is paid in full, whether upon the Maturity Date, by prepayment or otherwise. In no event will the rate of interest hereunder exceed the maximum rate under applicable law.

(f) Interest Payment. Interest on the Loan shall be due and payable in full in arrears on the Maturity Date.

(g) Default Interest. If any amount payable hereunder is not paid when due, such overdue amount shall bear interest at 7.8% per annum from the date of such non-payment until such amount is paid in full.

(h) Computation of Interest. All computations of interest shall be made on the basis of a year of 365 days or 366 days, as the case may be, and the actual number of days elapsed. Interest shall accrue on the Loan on the day on which such Loan is made, and shall not accrue on the Loan on the day on which it is paid.

17. Payment Mechanics.

(a) Manner of Payment. All payments of interest and principal shall be made in lawful money of the United States of America no later than 12:00 p.m., Mountain Time, on the Maturity Date by wire transfer of immediately available funds to the Holder's account at a bank specified by the Holder in writing to the Maker.

(b) Application of Payments. All payments made hereunder shall be applied first, to the payment of any fees or charges outstanding hereunder, second, to accrued interest and third, to the payment of the principal amount outstanding under the Note. Any payments received by Holder after any default hereunder, shall be applied in such order as Holder may, in its sole discretion, elect.

(c) Business Day Convention. Whenever any payment to be made hereunder shall be due on a day that is a Saturday, Sunday or legal holiday in the State of Utah, such payment shall be made on the next succeeding business day and such extension will be taken into account in calculating the amount of interest payable under this Note.

18. Remedies. Upon the occurrence of an Event of Default, the holder of this Note may pursue the remedies set forth in Section 10.2 of the Credit Agreement.

19. Use of Proceeds. Maker shall use the proceeds of the Loan solely in accordance with Section 2.4, Section 12.12 and Section 12.13 of the Credit Agreement.

20. Fees and Expenses. Maker shall reimburse the Holder for all reasonable and documented out-of-pocket costs, expenses and fees (including reasonable expenses and fees of its counsel) incurred by the Holder in connection with the transactions contemplated hereby including the negotiation, documentation and execution of this Note (subject to the limitations set forth in Section 12.2 and Section 12.12 of the Credit Agreement) and the enforcement of the Holder’s rights hereunder or under the Credit Agreement.

21. Successors and Assigns. This Note may be assigned, transferred or negotiated by the Holder to (a) any affiliate of Holder at any time without notice to or the consent of Maker and (b) any other person with the prior written consent of Maker. Maker may not assign or transfer this Note or any of its rights hereunder without the prior written consent of the Holder. This Note shall inure to the benefit of and be binding upon the Parties and their permitted assigns.

22. Cumulative Rights. No delay on the part of any holder of this Note in the exercise of any power or right under this Note, or under any document or instrument executed in connection herewith, shall operate as a waiver thereof, nor shall a single or partial exercise of any other power or right.

23. Waivers. Maker, and any other party ever liable for the payment of any sum of money payable on this Note, jointly and severally waive demand, presentment, protest, notice of nonpayment, notice of intention to accelerate, notice of acceleration, notice of protest, and any and all lack of diligence or delay in collection or the filing of suit hereon which may occur; agree that their liability on this Note shall not be affected by any renewal or extension in the time of

payment hereof, or by any indulgences, and hereby consent to any and all renewals, extensions, indulgences, releases, or changes hereof or hereto, regardless of the number of such renewals, extensions, indulgences, releases, or changes. Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision of this Note.

24. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict of law principles.

25. Severability. If any provision of this Note shall be held to be unenforceable by a court of competent jurisdiction, such provisions shall be severed from this Note and the remainder of this Note shall continue in full force and effect.

26. Notices. Notices shall be given to Holder or Maker pursuant to Section 11.11 of the Credit Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Maker has executed this Note as of the date and year first above written.

"MAKER"

CS MINING, LLC,
a Delaware limited liability company,

By:_____
Name:
Title:

ACKNOWLEDGED AND AGREED:

"HOLDER"

WELLINGTON FINANCIAL PARTNERS, LLC
a Delaware limited liability company,

By:_____
Name:
Title:

PROMISSORY NOTE

$100,000.00 December __, 2016

FOR VALUE RECEIVED, the undersigned, CS MINING, LLC, a Delaware limited liability company ("Maker"), hereby promises to pay to the order of ST. CLOUD CAPITAL PARTNERS II, L.P., or its assigns ("Holder"), the principal amount of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) (the "Loan"), together with interest accrued thereon and any additional amounts which may be payable to Holder pursuant to the terms set forth in the Credit Agreement or this Promissory Note (the "Note"). Maker and Holder are each sometimes referred to herein as a "Party" and together, the "Parties."

27. Delivery of the Note. This Note is a promissory note referred to in, and is entitled to the benefits of, that certain Second Debtor in Possession Credit and Security Agreement, dated as of December__, 2016 (as the same may be amended, amended and restated, restated, supplemented, modified or otherwise in effect from time to time, the "Credit Agreement") by and among Maker, Holder and the other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meaning given them in the Credit Agreement.

28. Final Payment; Optional Prepayments.

(a) Final Payment Date. The aggregate unpaid principal amount of the Loan, all accrued and unpaid interest and all other amounts payable under this Note shall be due and payable on the Maturity Date.

(b) Optional Prepayment. Maker may prepay the Loan in whole or in part pursuant to Section 2.3 of the Credit Agreement.

29. Interest.

(i) Interest Rate. Except as otherwise provided herein, the outstanding principal amount of the Loan made hereunder shall bear interest at 7% per annum from the date the Loan was made until the Loan is paid in full, whether upon the Maturity Date, by prepayment or otherwise. In no event will the rate of interest hereunder exceed the maximum rate under applicable law.

(j) Interest Payment. Interest on the Loan shall be due and payable in full in arrears on the Maturity Date.

(k) Default Interest. If any amount payable hereunder is not paid when due, such overdue amount shall bear interest at 7.8% per annum from the date of such non-payment until such amount is paid in full.

(l) Computation of Interest. All computations of interest shall be made on the basis of a year of 365 days or 366 days, as the case may be, and the actual number of days elapsed. Interest shall accrue on the Loan on the day on which such Loan is made, and shall not accrue on the Loan on the day on which it is paid.

30. Payment Mechanics.

(a) Manner of Payment. All payments of interest and principal shall be made in lawful money of the United States of America no later than 12:00 p.m., Mountain Time, on the Maturity Date by wire transfer of immediately available funds to the Holder's account at a bank specified by the Holder in writing to the Maker.

(b) Application of Payments. All payments made hereunder shall be applied first, to the payment of any fees or charges outstanding hereunder, second, to accrued interest and third, to the payment of the principal amount outstanding under the Note. Any payments received by Holder after any default hereunder, shall be applied in such order as Holder may, in its sole discretion, elect.

(c) Business Day Convention. Whenever any payment to be made hereunder shall be due on a day that is a Saturday, Sunday or legal holiday in the State of Utah, such payment shall be made on the next succeeding business day and such extension will be taken into account in calculating the amount of interest payable under this Note.

31. Remedies. Upon the occurrence of an Event of Default, the holder of this Note may pursue the remedies set forth in Section 10.2 of the Credit Agreement.

32. Use of Proceeds. Maker shall use the proceeds of the Loan solely in accordance with Section 2.4, Section 12.12 and Section 12.13 of the Credit Agreement.

33. Fees and Expenses. Maker shall reimburse the Holder for all reasonable and documented out-of-pocket costs, expenses and fees (including reasonable expenses and fees of its counsel) incurred by the Holder in connection with the transactions contemplated hereby including the negotiation, documentation and execution of this Note (subject to the limitations set forth in Section 12.2 and Section 12.12 of the Credit Agreement) and the enforcement of the Holder’s rights hereunder or under the Credit Agreement.

34. Successors and Assigns. This Note may be assigned, transferred or negotiated by the Holder to (a) any affiliate of Holder at any time without notice to or the consent of Maker and (b) any other person with the prior written consent of Maker. Maker may not assign or transfer this Note or any of its rights hereunder without the prior written consent of the Holder. This Note shall inure to the benefit of and be binding upon the Parties and their permitted assigns.

35. Cumulative Rights. No delay on the part of any holder of this Note in the exercise of any power or right under this Note, or under any document or instrument executed in connection herewith, shall operate as a waiver thereof, nor shall a single or partial exercise of any other power or right.

36. Waivers. Maker, and any other party ever liable for the payment of any sum of money payable on this Note, jointly and severally waive demand, presentment, protest, notice of nonpayment, notice of intention to accelerate, notice of acceleration, notice of protest, and any and all lack of diligence or delay in collection or the filing of suit hereon which may occur; agree that their liability on this Note shall not be affected by any renewal or extension in the time of

payment hereof, or by any indulgences, and hereby consent to any and all renewals, extensions, indulgences, releases, or changes hereof or hereto, regardless of the number of such renewals, extensions, indulgences, releases, or changes. Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision of this Note.

37. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict of law principles.

38. Severability. If any provision of this Note shall be held to be unenforceable by a court of competent jurisdiction, such provisions shall be severed from this Note and the remainder of this Note shall continue in full force and effect.

39. Notices. Notices shall be given to Holder or Maker pursuant to Section 11.11 of the Credit Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Maker has executed this Note as of the date and year first above written.

"MAKER"

CS MINING, LLC,
a Delaware limited liability company,

By:_____
Name:
Title:

ACKNOWLEDGED AND AGREED:

"HOLDER"

ST. CLOUD CAPITAL PARTNERS, L.P.,

By:_____
Name:
Title:

Schedule 5.1(i): Litigation

CS Mining Case No. 16-24818 List of Pending Litigation

Case Title	Case Number	Jurisdiction
BRAHMA GROUP, INC., etc., Pltf. Vs. CS MINING, LLC, etc., et al., Dfts	160500005	Fifth Judicial District Court, Beaver County,Beaver Department, UT
RE: Parcel ID: 07-0700-0235 // To: CS Mining, LLC	None specified	n/a
MATTHEW CHENAULT on behalf of himself and all others similarly situated, Plaintiff, v. CS MINING, LLC, Defendant.	Bankruptcy Case #1624818WTT; Adversary Case #1602095WTT	US Bankruptcy Court, District of Utah
COOKE & ROYLANCE, INC., etc., Pltf. Vs. CS Mining, LLC, et al., Dfts.	160901635	Third District Court, Salt Lake County, Salt Lake Department, UT
RE: Ferguson Enterprises, Inc., Claimant // To: CS Mining, LLC	None Specified	n/a
RE: Pipe Valve and Fitting Co., Claimant // To: CS Mining, LLC	None Specified	n/a
RELIANCE STEEL & ALUMINUM, etc., pltf. Vs.CS Mining, LLC, etc., Dft.	160903484	Third District Court, Salt Lake County, Salt Lake Department, UT
RPS CAMPBELL COMPANIES LLC, etc., Pltf. Vs. CS Mining LLC, etc., Dft.	160901612	Third District Court, Salt Lake County, Salt Lake Department, UT
In Re: CS MINING, LLC, Debtor Matthew Chenault on behalf of himself and all others similarly situated, Pltf. vs. CS MINING, LLC, Dft.	Bankruptcy Case #1624818WTT; Adversary Case #1602095WTT	US Bankruptcy Court, District of Utah
Augusta Fiberglass Coatings, Inc., Pltf. vs. CS Mining, LLC, Dft.	2016CP0600311	The Honorable Rhonda Dale McElveen Barnwell County Clerk of Court (SC)
J&M STEEL SOLUTIONS, INC., etc., Pltf. vs.BRAHMA GROUP, INC., et al., Dfts. // To: CS MINING, LLC	160500005	Fifth Judicial District Court, Beaver County, Beaver Department, UT
DXS Capital (U.S.) Limited et. al. v. David J. Richards, LLC et. al.	652681/2016	N.Y. Sup. Ct, HON. EILEEN ANN RAKOWER
Clarity Copper, LLC et. al. v. DXS Capital (U.S.) Limited et. al.		Beaver County, UT Fifth District
DXS Capital (U.S.) Limited v. Skye Mineral Investors, LLC	12381-VCS	Honorable Joseph R. Slights III, Delaware Court of Chancery, Kent County Courthouse
Waterloo Street Limited v. David J. Richards, LLC	650741/2016	N.Y. Sup. Ct
David J. Richards, LLC d/b/a Western US Mineral Investors, LLC	Entry # 258075, Book# 499, Page 292 Entry # 258074, Book# 499, Page 287 Entry # 258077, Book# 499, Page 388 Entry # 258076, Book# 499, Page 296	Beaver County Corporation
Plasticon North America	01-16-0000-5390 100321	American Arbitration Association International Centre for Dispute Resolution Ms. Yanett Quiroz, LL.M. Houston, TX 77027

Schedule 5.1 (j): Taxes

SCHEDULE 5.1 - TAXES

- 2015 property tax
- 2016 property tax
- Q1 2016 sales and use tax
- Amounts owed from a sales and use tax audit (periods 2012 to 2014)

Schedule 5.1(k): Ownership of Property

SCHEDULE 5.1(k) – OWNERSHIP OF PROPERTY

1. Waterloo Street Limited (All assets of the Debtor)
2. David J. Richards, LLC d/b/a Western US Mineral Investors, LLC (All assets of the Debtor)
3. Skye Mineral Partners, LLC (All assets of the Debtor)
4. Wells Fargo Bank, N.A. (Equipment)
5. Navitas Lease Management Group (Equipment)
6. Caterpillar Financial Services Corporation (Equipment)
7. Komatsu Financial Limited Partnership (Equipment)
8. H&E Equipment Services, Inc. (Equipment)
9. Revco Leasing Corporation (Equipment)
10. Noble Americas Corp. (Potential Claims Re Inventory)
11. Thermo Electron North America, LLC (Equipment)
12. First National Capital, LLC (Equipment)
13. Lexon Insurance Company, as trustee (Cash Collateral Account for Bonding)
14. Mechanics Liens
    a. Agate, Inc.
    b. J&M Steel Solutions LLC
    c. International Lining Technology, Inc. (a Nevada Corp.)
    d. Brahma Group, Inc.
    e. Schmueser & Associates, Inc.
    f. Ferguson Enterprises
    g. Pipe Valve and Fitting Co.
15. Taxes
    a. Utah State Tax Commission
    b. Beaver County Assessor

Schedule 5.1(1)(b): Environmental

Schedule 5.1(l)(b)

To the best of Borrower's knowledge, Borrower is not in violation of any of its approved activities or permits with respect to Environmental Laws, and no conditions exist that would give rise to a violation of any Environmental Laws. In one area of the operation regarding the intermediate tailings dam, the pH of solutions is believed to be markedly below what is allowed by the current permit. However, the regulating entities, Utah Division of Water Quality (DWQ) and Utah Division of Oil, Gas and Mining (UDOGM) are both updated and aware on this issue and have agreed to the proposed Borrower plan to address this issue.

Schedule 8.3: Liens

SCHEDULE 8.3 - PREPETITION LIENS

Creditor Name and Address	Description of Debtor's Property That is Subject to a Lien	Describe the Lien	Amount of Claim Do Not Deduct the Value of Collateral
Agate, Inc. P.O. Box 117 Scotsdale, AZ 85252	Phase II Project Assets	Mechanics Lien	$ 142,386.00
Beaver County Treasurer P.O. Box 432 Beaver, UT 84713	Property Tax	Tax Lien	$ 544,478.07
Brahma Group, Inc. 1132 South 500 West Salt Lake City, UT 84101	Phase II Project Assets	Mechanics Lien	$ 1,369,915.79
Caterpillar Financial Services Corporation 2120 West End Avenue Nashville, TN 37203	Cat 777 Haul Trucks	Purchase Money Security Interests	$ 1,335,477.80
Caterpillar Financial Services Corporation 2120 West End Avenue Nashville, TN 37203	Cat TL 12, Cat 349	Purchase Money Security Interests	$ 308,130.94
Ferguson Enterprises, Inc. 1422 South 4450 West Salt Lake City, UT 84104	Phase II Project Assets	Mechanics Lien	$ 55,905.20
International Lining Technology, Inc. (a Nevada Corp.) 850 Maestro Drive, Suite 101 Reno, NV 89511	Phase II Project Assets	Mechanics Lien	$ 156,969.00
J&M Steel Solutions LLC 894 West State Street Lehi, UT 84157	Phase II Project Assets	Mechanics Lien	$ 20,450.00
Komatusu Financial Lp 1701 West Golf Road Suite1-300 Rolling Meadows, IL 60008	Manitou Forklift, LK8 Forklift, RS519 Telehandler, S185 Skidsteer, Yale Forklift, GS2632 Scissorlift, 600AJ Boomlift	Purchase Money Security Interests	$ 94,714.45
Pipe Valve and Fitting Co. 2505 East 79th Avenue P.O. Box 5806 Denver, CO 80217	Phase II Project Assets	Mechanics Lien	$ 24,470.04

Schmueser & Associates, Inc. 1901 Railroad Avenue Rifle, CO 81650	Phase II Project Assets	Mechanics Lien	$ 310,531.99
Skye Mineral Partners, LLC 500 South Front Street Suite 1200 Columbus, OH 43215	All Assets of the Company	Subordinated Senior Debt	$ 27,309,249.78
SMA Surety, Inc. d/b/a Smith Manus, Lexon Insurance Company 2307 River Road Suite 200 Louisville, KY 40206	Cash Collateral	Surety Bond	$ 4,944,348.00
Thermo electron North America, LLC 770 Northport Parkway Suite 100 West Palm Beach, FL 33407	ARL 4460 Metals Analyzer	Purchase Money Security Interests	$ 77,365.91
Utah Independent Bank 195 North Main Beaver, UT 84713	2006 Ford F150	Equipment Loan	$ 4,144.57
Waterloo Street Limited 2307 River Road Suite 200 Louisville, KY 40206	Phase II Project Assets	Senior Debt	$ 34,755,133.23
Wells Fargo Equipment Finance 300 Tri-State International Suite 400 Lincolnshire, IL 60069	Cat P5000 forklift	Purchase Money Security Interests	$ 41,111.03
Western US Mineral Investors, LLC 500 South French Street Suite 1200 Columbus, OH 43215	Pre-Phase II Assets	Senior Debt	$ 24,407,274.00
		TOTAL	**$ 95,902,055.80**

Schedule 8.4: Indebtedness

SCHEDULE 8.4 - INDEBTEDNESS

Creditors who have claims Secured by Property	**$**	**95,902,055.80**
Creditors who have Unsecured Claims		
Total claim amounts of priority unsecured claims		205,749.00
Total amount of claims of nonpriority amounts of unsecured claims		22,199,526.84
Total Unsecured Claims		**22,405,275.84**
Total Indebtedness	**$**	**118,307,331.64**

EXHIBIT F

BECKMAN DECLARATION

David Leta (1937)
Troy Aramburu (10444)
Jeff Tuttle (14500)
SNELL & WILMER L.L.P.
15 W South Temple, Suite 1200
Salt Lake City, Utah 84101
Telephone: 801-257-1900
Facsimile: 801-257-1800
Email: dleta@swlaw.com
taramburu@swlaw.com
jtuttle@swlaw.com

Donald J. Detweiler, Esq. (admitted *pro hac vice*)
Francis J. Lawall, Esq. (admitted *pro hac vice*)
John H. Schanne, II (admitted *pro hac vice*)
PEPPER HAMILTON LLP
Hercules Plaza, Suite 5100
1313 N. Market Street
Wilmington, DE 19899-1709
Telephone: (302) 777-6500
Facsimile: (302) 656-8865
E-mail: detweild@pepperlaw.com
lawallf@pepperlaw.com
schannej@pepperlaw.com

Counsel for CS Mining, LLC

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **CS MINING, LLC** Debtor.	Bankruptcy Case No. 16-24818 (Chapter 11) Judge William T. Thurman

DECLARATION OF DAVID J. BECKMAN IN SUPPORT OF MOTION FOR FINAL ORDER (I) AUTHORIZING DEBTOR TO ENTER INTO ADDITIONAL $2.65 MILLION POSTPETITION FINANCING AGREEMENT WITH VENDOR AND EXISTING DIP LENDER; (II) AUTHORIZING AMENDMENT TO EXISTING DEBTOR-IN-POSSESSION FINANCING FACILITY; (III) APPROVING SULFURIC ACID SUPPLY AGREEMENT; (IV) AUTHORIZING THE USE OF CASH COLLATERAL AND (V) GRANTING ADEQUATE PROTECTION

I, David J. Beckman, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am a Senior Managing Director of FTI Consulting, Inc. ("FTI"), a financial advisory services firm with an office located at, among other locations, 1101 K Street NW, Suite B100, Washington DC 20005.

2. I am duly authorized to make and submit this declaration (this "Declaration") on behalf of CS Mining, LLC ("Debtor") in my capacity as one of Debtor's Chief

Restructuring Officers ("CROs") appointed pursuant to the *Order Approving Motion For Entry Of An Order Authorizing The Retention And Employment Of FTI Consulting, Inc. Under 11 U.S.C. § 363 And The Designation Of Michael Buenzow, David J. Beckman, And Randy Davenport As Chief Restructuring Officers For CS Mining, LLC For Period Following Entry Of Order For Relief* (Docket No. 206) (the "Retention Order").

3. I submit this Declaration in support of the *Motion For Final Order (I) Authorizing Debtor To Enter Into Additional $2.65 Million Postpetition Financing Agreement With Vendor And Existing Dip Lender; (II) Authorizing Amendment To Existing Debtor-In-Possession Financing Facility; (III) Approving Sulfuric Acid Supply Agreement; (IV) Authorizing The Use Of Cash Collateral And (V) Granting Adequate Protection* (the "Tailings DIP Financing Motion").[1] I am familiar with the operations, business affairs and financial conditions of Debtor. I have personal knowledge of, and am qualified to make statements regarding, the facts as declared herein. If called to testify, I would state the following.

4. Pursuant to the Tailings DIP Financing Motion, Debtor seeks authority to enter into the Tailings DIP Financing for a second secured financing credit facility, in the amount of $2.65 million, $2.0 million of which represents vendor financing provided by a member of the Official Committee of Unsecured Creditors. The proceeds of the Tailings DIP Financing will be used to pay postpetition operating and maintenance expenses incurred by Debtor in accordance with the Tailings Budget.

5. If approved, the Tailings DIP Financing will:

a. allow Debtor to restart its ore processing facilities for the dual purpose of (a) Tailings Processing through the Debtor's state-of-the-art copper cathode

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Tailings DIP Financing Motion.

production processing facility to extract and sell copper cathode and (b) providing additional information related to the operating parameters and cost components of Debtor's processing facilities which will be beneficial to any prospective bidders interested in participating in the sales process currently planned for the Debtor's operations ;

b. allow Debtor to provide feedback on key metallurgical assumptions, and generate positive operating cash flow from the sale of copper cathode, with a goal of processing up to approximately 2,200 tons per day of tailings inventory;

c. allow Debtor to expand on its Resource Development Plan, including providing greater certainty with respect to the estimated amount of Debtor's mineral asset, Debtor's reserves and resources;

d. allow Debtor to provide for, among other things, the payment of postpetition operating expenses and other working capital requirements of Debtor in connection with its "Tailings Processing" and ongoing "Resource Development Plan," all as initially recommended by Debtor's CROs;

e. allow Debtor to continue to pursue all value maximizing opportunities, including extending the Exit Milestones governing the potential sale of Debtor's assets as a going concern as well as continued development of potential restructuring alternatives of Debtor's liabilities;

f. likely increase the realizable value of Debtor's assets, both through proving up the profitable nature of Debtor's state-of-art ore processing facilities, but also through the continued development and definition of Debtor's mining rights, mining claims and mineral assets; and

g. likely create additional market value for the benefit of all of Debtor's stakeholders.

6. As one of the Debtor's CROs, I have been authorized and directed, through the FTI engagement letter approved by the Court pursuant to the Retention Order, to "identify and consult on key copper mining and processing issues," "advise the Company on operating plan, liquidity management, and restructuring alternatives," "assist with the DIP financing process," "assist the Company with a sale and/or restructuring process," and "assist the Company with the preparation and confirmation of a value optimizing plan of reorganization." As one of the Debtor's CROs, I recommend the Tailings DIP Financing and Tailing Budget before the Court in accordance with my court approved responsibilities, and as being in the interest of maximizing value for Debtor and its stakeholders.

7. I believe that the Debtor's estate will benefit from an expanded Sale Process and expanded Resource Development Plan. For example, the Resource Development Plan is currently limited to a localized portion of Debtor's mining claims due to the constraints of the Existing DIP Credit Facility. Expanding the Resource Development Plan to other areas of Debtor's property, including performing a variety of additional geophysical studies of Debtor's real property and Debtor's existing mining and mineral rights and claims, further metallurgical testing and economic mine planning, will provide a better understanding about the true extent of Debtor's existing mineral assets, Debtor's reserves and resources.

8. While it is obvious that Debtor's existing equity holders and secured creditors anticipated the availability of extensive mineral deposits that could be profitably extracted and refined to provide a return on their investment of over $110 million, it is quite another thing for third party bidders and potential purchasers to pay fair market value for

Debtor's assets based on speculation and conjecture, no matter how probable or likely the results may be. Thus, to insure a robust, competitive and successful sale process that maximizes the value of the estate, it is necessary to fully develop both the resource development model as well as prove up the processing capabilities of Debtor's plant and equipment.

9. I believe that extending the Sale Process an additional few months, coupled with an expanded Resource Development Plan and obtaining additional operating performance information relative to the Debtor's facilities, will allow Debtor to attract additional bidders to the Sale Process, as well as potentially provide Debtor with access to additional capital markets and financing sources.

10. The interests of Debtor's prepetition secured lenders are more than adequately protected if the Tailings DIP Financing is approved by the Court because, (a) absent this additional information, they are not likely to recover the fair value of their collateral in connection with any subsequent sale, (b) they would have to conduct similar analyses, at their own expense, in order to realize the fair value of their collateral and sell it in a commercially reasonable manner, and (c) the value added to their collateral from obtaining this information is expected to exceed the amount of the additional financing.

11. As such, I believe that the Debtor's entry into the DIP Documents and obtaining the Tailings DIP Financing represents the sound exercise of informed and good-faith business judgment.

I declare under penalty of perjury that all of the statements contained herein are true and correct to the best of my knowledge, information and belief.

Dated: December 5, 2016

David J. Beckman
Chief Restructuring Officer

EXHIBIT G

DAVENPORT DECLARATION

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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re **CS MINING, LLC** Debtor.	Bankruptcy Case No. 16-24818 (Chapter 11) Judge William T. Thurman

DECLARATION OF RANDY DAVENPORT IN SUPPORT OF MOTION FOR FINAL ORDER (I) AUTHORIZING DEBTOR TO ENTER INTO ADDITIONAL $2.65 MILLION POSTPETITION FINANCING AGREEMENT WITH VENDOR AND EXISTING DIP LENDER; (II) AUTHORIZING AMENDMENT TO EXISTING DEBTOR-IN-POSSESSION FINANCING FACILITY; (III) APPROVING SULFURIC ACID SUPPLY AGREEMENT; (IV) AUTHORIZING THE USE OF CASH COLLATERAL AND (V) GRANTING ADEQUATE PROTECTION

I, Randy Davenport, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am a Managing Director of FTI Consulting, Inc. ("FTI"), a financial advisory services firm with an office located at, among other locations, 1101 K Street NW, Suite B100, Washington DC 20005.

2. I am duly authorized to make and submit this declaration (this "Declaration") on behalf of CS Mining, LLC ("Debtor") in my capacity as one of Debtor's Chief

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I declare under penalty of perjury that all of the statements contained herein are true and correct to the best of my knowledge, information and belief.

Dated: December 5, 2016

Randy Davenport
Chief Restructuring Officer

EXHIBIT H

HEARING TRANSCRIPT

times and striking them if parties agree, and that would work.

How about staff, do we have staff?

THE CLERK: Yes, we can have staff.

THE COURT: I would have to operate the ECRO system and be the courtroom deputy in some instances.

Okay. Are there other parties who wish to be heard with respect to the proposal addressed by counsel for the debtor?

Mr. Jimenez.

MR. JIMENEZ: Your Honor?

THE COURT: Yes, please.

MR. JIMENEZ: If it please the court, Pedro Jimenez of Jones Day on behalf of DXS Capital, PacNet Capital, and Waterloo. And I'll try to be brief, Your Honor, I just did want to provide some additional background of some of the events and actions that have taken place over the last several months and what has led us to today, and hopefully the consensual resolution of some financing that I think everybody agrees the company needs.

So we are where we are, and I'll work backwards because the budget that's been agreed to is the only budget that was consistent with the amount of DIP financing, the best DIP financing proposal that the

company received. As Mr. Lawall mentioned, FTI in one of its roles as CRO went out and canvassed the market to see what other parties would be interested in providing debtor-in-possession financing, and through that process quickly discovered that the best financing proposal that the company was going to have was the financing proposal that is before Your Honor today. That proposal was for $7 million. After the fact, that increased to $7.675 million to cover this gap funding period, as Mr. Lawall mentioned. But as we sit here in front of Your Honor today, as I stand in front of Your Honor today, that's the best financing proposal that's available to the debtor.

So what happened once it became clear that that was the best financing proposal? We had an initial budget that was presented that was over $10 million when the best financing proposal was only $7 million. Clearly, trying to act as a responsible manager, that budget proposal was rejected by DXS and PacNet because it was over $3 million more than the best financing proposal the company had. The professionals and the company went back, they revised the budget, they came back with a budget that was a little bit more than $9 million, and, again, since it significantly exceeded the best financing proposal that was available, that budget

was also rejected. The company went back a third time and this time proposed a $7 million budget, but really was a $9 million plus budget because what happened there were a bunch of fees that would just get paid on the back end of the case. And, again, we said no. It really needs to be consistent with the money that the company has available to use attendant to the case.

So now finally we get to a week ago, or almost a week ago when we were before Your Honor, where I represented over the phone that we were willing to adjourn our motion to appoint a Chapter 11 trustee based on the fact that we finally had a $7 million budget that got the company through hopefully a point that there's going to be some transactions that will maximize value for all of the constituents in the case. And from our perspective that included -- it needed to have some exit event. The exit event that got worked into the proposed financing is that there's going to be a sale process that's going to be run, and hopefully that's going to lead to a sale within a six-month time period.

Would it be great, Your Honor, if the parties had more time? Yes. The reality is that the more time we went, the more expensive the case got, the more fees that were going to be, the more costs were going to be, and frankly would be inconsistent with the

budget. So six months, given the estimates that we have from the company, is the best time period we have. So we have to work within what the company's provided as far as the most or maximal amount of time that it can be in Chapter 11 and still operate and try to create value within a time period. So six months is what we have.

So on that basis, Your Honor, and the understanding that a sale process would be run, DXS and PacNet approved the budget. We represented to Your Honor last week telephonically that we were willing to adjourn our motion to appoint a Chapter 11 trustee on that basis, and went forward and have been negotiating the terms of financing that would allow the company to voluntarily come into Chapter 11 and try to create a transaction that's going to maximize value for all constituents.

So what's happened since Wednesday? We put out an order that was consistent with the budget and the term sheet that had been agreed upon by all the parties, and for the first time, Your Honor, discovered on Sunday that the six-month budget, well, it really didn't include success fees that the financial advisor, or proposed financial advisor, FTI, was going to be requiring as part of the sale process, even though it was our understanding that the budget would cover the

company through a sale. So we obviously objected on that basis. We believed that the budget that had been approved included all the professional fees that it would take for the company to get through a sale, and that the three percent, or greater of three percent, or a million dollars, was inconsistent with that notion, so we rejected that, Your Honor. And that's led to the last couple of days trying to create a structure whereby the company can stay in Chapter 11, try to maintain some operations, including, Your Honor, importantly, the resource development. I mean let's not lose sight of the fact that the $7 million includes what I think most people would agree, if not all people would agree, the single event, or the single action that's going to try and increase the value of the company for the benefit of everybody, which is the resource development. Without that, we're effectively selling a business that's going to be worth a lot less. So it's very important to preserve that, Your Honor. So I don't want to lose sight of the fact that the $7 million budget includes that.

What we have agreed to over the last 24 hours with a lot of work and a lot of pain is we're prepared to allow more than the $7 million to be expended by the company. What Mr. Lawall represented

was correct. What we've agreed is that an additional million dollars can be utilized by the company to pay any success fee, subject to Your Honor's approval on a fee application, but that we would be okay with that because we believe that that alternative was preferable to other potential alternatives, given where the company sits right now. So I wanted to make sure that that was clear because there may be issues with the order, there may be issues with the DIP financing, but what I think no one can seriously dispute before Your Honor is that that is the only path that exists today, Your Honor, to increase value for all constituents. So the sale's planned that Mr. Lawall referenced or sitting longer in Chapter 11, those are great things, Your Honor, but they just don't exist within the confines of the amount of money that we have available for the company.

THE COURT: Thank you for that, Mr. Jimenez.

MR. JIMENEZ: Thank you, Your Honor.

THE COURT: Are there other parties who wish to be heard?

MR. SILVERMAN: Good afternoon. I always have to check whether it's morning or afternoon. Good afternoon Your Honor, Ronald Silverman from Hogan Lovells, representing Western U.S. Mineral Investors, LLC. For the rest of the case we're going to call that