



FORCE FILED

NO. S - 245121  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, C. 57, AS AMENDED

AND

IN THE MATTER OF ELEVATION GOLD MINING CORPORATION, ECLIPSE GOLD  
MINING CORPORATION, ALCMENE MINING INC., GOLDEN VERTEX CORP.,  
GOLDEN VERTEX (IDAHO) CORP., and HERCULES GOLD USA, LLC

PETITIONERS

**NOTICE OF APPLICATION**

**Name of Applicants:** Elevation Gold Mining Corporation, Eclipse Gold Mining Corporation, Alcmene Mining Inc., Golden Vertex Corp., Golden Vertex (Idaho) Corp., And Hercules Gold USA, LLC (collectively, the "**Petitioners**")

To: Those parties set out in **Schedule "A"** attached hereto.

TAKE NOTICE that an application will be made by the Petitioners to the Honourable Madam Justice Fitzpatrick at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on , August 12, 2024 at 10:00 a.m. for the orders set out in Part 1 below.

The Petitioners estimate that the application will take a half day.

- This matter is within the jurisdiction of an Associate Judge.
- This matter is not within the jurisdiction of an Associate Judge.

## Part 1: ORDERS SOUGHT

1. The Petitioners seek
  - (a) an amended and restated initial order (the “**ARIO**”) under the *Companies’ Creditors Arrangement Act*, R.S.C 1985, c. C-36, as amended (the “**CCAA**”), substantially in the form of the draft order attached hereto as **Schedule “B”**, which among other things, amends and restates the initial order pronounced August 1, 2024 (the “**Initial Order**”) providing the following relief, amongst other things:
    - (i) Abridging the time for service of the Notice of Application, filed herewith, and the 2<sup>nd</sup> Affidavit of Tim Swendseid sworn August 8, 2024, and dispensing with further service thereof other than in accordance with the ARIO;
    - (ii) Extending the Stay of Proceedings until and including October 25, 2024 (the “**Stay Extension**”);
    - (iii) Increasing the Administration Charge from \$300,000 to \$500,000;
    - (iv) Securing the Work Fee (as defined below) under the Administration Charge; and
    - (v) Granting a charge (the “**Sales Agent Charge**”) in favour of INFOR Financial Inc. (“**INFOR**”, or the “**Sales Agent**”) to secure payment of the Transaction Fee (as defined herein) and providing for its priority relative to the other court-ordered charges; and
  - (a) A “**SISP Approval Order**” substantially in the form attached as **Schedule “C”**, providing the following relief, among other things:
    - (i) Approving a sales and investment solicitation process in respect of all the assets, undertakings, and properties of the Petitioners (the “**SISP**”) to be undertaken by the Petitioners and the Sales Agent, under the oversight of the Monitor; and
    - (ii) Approving the Petitioners’ engagement of INFOR to help conduct the SISP pursuant to the terms of a letter agreement dated August 7, 2024, between the Sales Agent and Elevation Gold (the “**INFOR Engagement Letter**”);
  - (b) Such further and other relief as counsel may request and this Honourable Court may deem just.

## Part 2: FACTUAL BASIS

2. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the 1<sup>st</sup> Affidavit of Tim Swendseid sworn on July 29, 2024 (the “**First**”

Swendseid Affidavit”) or the 2<sup>nd</sup> Affidavit of Tim Swendseid sworn August 8, 2024 (the “Second Swendseid Affidavit”).

## I. THE ARIO

3. The Initial Order granted by this Court on August 1, 2024, among other things, appointed KSV Restructuring Inc. as monitor (in such capacity, the “**Monitor**”), granted the Stay of Proceedings until and including August 12, 2024, granted the Administration Charge, Directors’ Charge, and Intercompany Advance Charge (each as defined in the Initial Order), and set the date for the comeback hearing on August 12, 2024. .
4. The proposed ARIO seeks to:
  - (a) Extend the Stay of Proceedings from August 12, 2024 to October 31, 2024;
  - (b) Amend and restate the Initial Order to increase the Administration Charge from \$300,000 to \$500,000, and expand the scope of the Administration Charge to cover the Sales Agent’s Work Fee (as defined in the INFOR Engagement Letter); and
  - (c) Secure the Transaction Fee (as defined in the INFOR Engagement Letter) with the Sales Agent Charge, which shall rank *pari passu* with the Administration Charge.
5. In support of its application for the ARIO, the Petitioners rely on the factual basis set out in Part 2 of the Petition filed in these proceedings on July 30, 2024 (the “**Petition**”).
6. The Petitioners require an extension of the Stay of Proceedings in order to conduct the SISP. Without an extension of the Stay of Proceedings, the Petitioners will not be able to successfully conclude a transaction or otherwise restructure their affairs.
7. As part of the restructuring process, the Petitioners require INFOR’s expertise and advice to conduct the SISP effectively and efficiently. INFOR’s obligation to participate in the restructuring process is contingent on this Court’s the approval of the Sales Agent Charge and the Work Fee being secured by the Administration Charge.

## II. THE PROPOSED SISP

### A. The Pre-Filing SISP

8. As set out in the First Swendseid Affidavit and outlined in the Monitor’s Pre-Filing Report dated July 30, 2024, over the course of the past two years, the Petitioners have made a concerted effort to seek a buyer for, or an investor in, all or part of their assets and/or business. The Petitioners engaged Stifel GMP as their financial advisor in June 2022, and later, engaged INFOR in August 2023, to run the Pre-Filing SISP.
9. In conducting the Pre-Filing SISP, INFOR identified 45 potential purchasers and investors, narrowed the list of interested parties from 45 to 36, and ultimately received confidentiality agreements from 14 of those interested parties.

10. Certain of those parties remain interested in the opportunity offered through the Pre-Filing SISP, and some have advised INFOR that they are not prepared to complete a transaction for the assets or business of the Petitioners except in the context of a formal restructuring process. As such, the Petitioners are now seeking approval of the SISP in the context of these proceedings.

**B. The INFOR Engagement Letter**

11. On August 7, 2024, Elevation Gold entered into the INFOR Engagement Letter. The compensation payable to INFOR under the INFOR Engagement Letter includes the following (with defined terms as set out in the INFOR Engagement Letter):
- (a) a “**Work Fee**” of USD \$25,000 per month for a minimum of two (2) months and a maximum of four (4) months, with the first installment payable on the execution of the INFOR Engagement Letter, which is to be credited in full against any Asset Sale Transaction Fee and/or Restructuring Transaction Fee;
  - (b) an “**Asset Sale Transaction Fee**” equal to the greater of 2.25% of the Transaction Value and USD \$800,000 and payable in the event that any of the Petitioners completes an Asset Sale Transaction that includes a sale or disposition of the Moss Mine;
  - (c) a “**Restructuring Transaction Fee**” equal to the greater of 2.25% of the Gross Financing Proceeds and USD \$800,000 and only payable in the event that there is an investment, restructuring, recapitalization, or other form of restructuring of the business, property or affairs of the Petitioners,
12. As a requirement for the provision of services under the INFOR Engagement Letter, Elevation Gold has agreed to use commercially reasonable efforts to obtain court approval and authorization of the following:
- (a) authorization to retain INFOR pursuant to the INFOR Engagement Letter and to pay the Work Fee and the Transaction Fee contemplated therein;
  - (b) the Work Fee being secured by and being made part of the Administration Charge; and
  - (c) a court-ordered charge securing the Transaction Fee ranking *pari passu* with the Administration Charge but payable only from the proceeds of a transaction in accordance with Section 3.1 of the INFOR Engagement Letter (the “**Sales Agent Charge**”).

**C. The Proposed SISP**

13. The proposed SISP, which was developed in consultation with INFOR and the Monitor, is intended to solicit interest in and identify opportunities for:
- (a) one or more asset purchase transactions (an “**Asset Bid**”); or

- (b) some other restructuring, recapitalization, or other form of reorganization of the business, property, or affairs of the Petitioners, including but not limited to the debt, share or other capital structure of the Petitioners (a “**Restructuring Bid**”); or
  - (c) some combination of one or more Asset Bids and Restructuring Bids.
14. The SISP will be implemented by the Petitioners in consultation with the Monitor and with the assistance of INFOR.
  15. The SISP is divided into two phases. The timelines described in the SISP are as follows (with capitalized terms having the meanings ascribed to them in the SISP):

PHASE	STEPS	TARGET DATES
Phase 1	SISP to commence	August 12, 2024
	LOI Deadline	September 13, 2024
Phase 2	Final Bid Process Commences	September 19, 2024
	Final Bid Deadline	October 18, 2024
	Determination of Successful Bidder	October 25, 2024

16. There is flexibility in the SISP in that the proposed SISP timelines and criteria may be amended, extended, or waived by the Petitioners, with the consent of the Monitor, or by further order of the Court.
17. The SISP also provides that the Petitioners are entitled to enter into a stalking horse agreement at any time, subject to the Petitioners obtaining approval from this Court and the US Court approving the agreement for the purpose only of being the stalking horse agreement.
18. The Petitioners will review all Qualified Final Bids generated through the SISP, with the assistance of INFOR, and in consultation with the Monitor, to determine the highest or otherwise best Qualified Final Bid (a “**Winning Bid**”). The SISP affords flexibility to the Petitioners to select a Winning Bid that is not only the bid that provides the most cash consideration, but to also consider other factors as well, such as levels of conditionality and the timeline to closing of any bid.
19. In the circumstances, after consulting with INFOR and the Monitor, it is the Petitioners’ view that:
  - (a) the SISP will ensure the Petitioners’ assets are adequately exposed to the market;
  - (b) the SISP will allow for the assessment of the viability of Potential Bidders and their ability to ultimately close on a transaction;

- (c) the timelines set out in the SISP provide a reasonable opportunity for all interested parties to submit competing offers; and
  - (d) the process for determining Winning and Backup Bids (as defined in the SISP), including consultation with the Monitor, is fair and transparent.
20. The Petitioners therefore asks this Court to approve the SISP on the terms of the proposed SISP Order appended to this Notice of Application as Schedule “C”.

### **Part 3 LEGAL BASIS**

21. The Petitioners plead and rely on:
- (a) The CCAA;
  - (b) The *Business Corporations Act*, S.B.C. 2002, c. 57 (the “BCBCA”);
  - (c) The *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the “Rules”) in particular, and without limitation, Rules 2-1(2), 8-1, 8-2, 8-5, 16-1, 22-1, and 22-4;
  - (d) The inherent and equitable jurisdiction of this Honourable Court; and
  - (e) Such further and other legal basis as counsel may advise and this Honourable Court may allow.

#### **I. THE ARIO IS NECESSARY AND APPROPRIATE**

22. In support of the relief sought in the ARIO, the Petitioners rely upon the legal basis set out in Part 3 of the Petition, and upon the following additional submissions.
23. The additional relief sought to be included in the ARIO includes the Stay Extension and an increase in the Administration Charge., an order securing the Work Fee under the Administration Charge, and an order granting the Sales Agent Charge

##### **A. Stay Extension**

24. The granting of the Stay Extension as part of the ARIO is authorized by section 11.02(2) of the CCAA, which provides that this Court may extend a stay for any period that the Court considers necessary provided that (a) the extension sought is appropriate in the circumstances; and (b) the applicant has acted and are acting in good faith and with due diligence.

CCAA, s. 11.02(2)

25. The Petitioners submit that they are acting in good faith and with due diligence and that the Stay Extension is appropriate and necessary in the circumstances. The length of the proposed Stay Extension is appropriate having regard to, among other factors, the reasonable estimates for completing anticipated steps in the SISP, the Petitioners’ financial challenges and liquidity needs, and the costs associated with bringing forward any further stay extension applications pending the advancement of the SISP.

26. Based on the cash flow forecast filed by the Petitioners in support of their application for the Initial Order, and the updated cash flow forecast attached to the Monitor's First Report, the Petitioners are projected to have sufficient liquidity to fund their operations until October 25, 2024.
27. Accordingly, the Petitioners' submit that the proposed extension is reasonable and appropriate, in addition to being necessary to implement the SISP.

**B. Increase in Administration Charge**

28. The Petitioners seek an increase in the Administration Charge in the amount of CAD \$200,000, from CAD \$300,000 to CAD \$500,000, both to further secure the fees and disbursements of the Monitor, the Monitor's counsel, and the Petitioners' counsel, and to secure the Work Fee as contemplated in the INFOR Engagement Letter. As set out in the Petition, s. 11.52 of the CCAA authorizes the court to grant a priority charge in respect of professional fees and disbursements on notice to affected secured creditors. The factors to consider in determining whether to approve an administration charge include:
- (a) the size and complexity of the businesses being restructured;
  - (b) the proposed role of the beneficiaries of the charge;
  - (c) whether there is an unwarranted duplication of roles;
  - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
  - (e) the position of the secured creditors likely to be affected by the charge; and
  - (f) the position of the Monitor.

CCAA, s. 11.52

*Re JTI-Macdonald Corp*, 2019 ONSC 1625, at para 20

*Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037, at para 58

*Re Canwest Publishing Inc.*, 2010 ONSC 222, at para 54

29. This Court has previously ordered that the monthly work fees of sales advisors may be secured by an administration charge.

*Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107, at paras 32, 37, 38, 39 and 48.

30. The requested increase in the Administration Charge is warranted, given the size, complexity and illiquidity of the Petitioners' operations and business, and the complexity of these proceedings (including the cross-border nature of this matter). The risk to the Petitioners' professional advisors (including their counsel, the Sales Agent, the Monitor, and the Monitor's counsel) is exacerbated by the fact that the Petitioners do not have interim financing to support their operations.

31. In light of the foregoing concerns and factors, the inclusion of the Sales Agent under the Administration Charge in the circumstances and the quantum is reasonable and appropriate of the proposed increase is fair and reasonable.

**C. The Sales Agent Charge Should be Approved**

32. Courts have recognized that financial advisors can play a vital role in assisting existing management and bring experience and expertise to a restructuring proceeding, including during a sales process.

*Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107, at paras 25-48

*Canwest Publishing Inc.*, 2010 ONSC 222 at paras. 52-55

33. The Petitioners require a sales agent with requisite expertise and knowledge as they implement the SISP and pursue their restructuring efforts more broadly so as to maximize the value of their business and assets, for the benefit of their stakeholders. INFOR is familiar with the Petitioners' business and its assets, particularly after having run the Pre-Filing SISP. The Petitioners' view INFOR's recent experience with the Petitioners, and its significant experience in the mining sector, as beneficial to running an efficient and effective SISP, particularly given the timelines set out above and the company's financial and liquidity challenges.

34. This Court has jurisdiction under s 11.52(1) of the CCAA to approve the Sales Agent Charge to provide the Sales Agent with a reasonable level of assurance that they will be paid the Transaction Fee under the INFOR Engagement Letter.

CCAA, s. 11.52(1)

*US Steel Canada Inc. (Re)*, 2014 ONSC 6145 at para 22.

35. As noted above in paragraph 28 hereof, CCAA courts have set out several non-exhaustive factors to consider when granting a charge under 11.52(1).

*Canwest Publishing Inc.*, 2010 ONSC 222 at paras. 54

36. Having regard to those factors, the Petitioners submit that the Sales Agent Charge, which provides security for the Transaction Fee, is necessary and appropriate having regard to, among other things, the size and complexity of the Petitioners' business and the proposed role of INFOR in the SISP. There would not be any unwarranted duplication of roles as the Sales Agent's role in these proceedings is unique to it alone.

**II. THE SISP IS NECESSARY AND APPROPRIATE**

37. The CCAA sets out the factors that this Court must consider on an application to approve a sale of a debtor's assets or business but does not codify the factors that are to be considered on an application to approve a sales process.

38. While the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of a proposed sales process



may also be assessed with reference to the non-exhaustive factors out in the CCAA for the approval of a sale, including:

- (a) whether it is reasonable in the circumstances;
- (b) whether the Monitor approves of the process;
- (c) whether the Monitor considers the proposed sale more beneficial than a sale or disposition in a bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale on stakeholders; and
- (f) whether the consideration is reasonable and fair.

CCAA, s. 36

*CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para 6

*Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1464, at paras 52-54

*In the Matter of 0081092 B.C. Ltd., In Liquidation*, 2024 BCSC 1245 at para 8

39. Canadian courts regularly grant orders approving sales processes in CCAA proceedings, recognizing that such approvals are consistent with the remedial nature of the CCAA, which confers broad powers to approve sales in relation to a CCAA debtor's business and assets either prior to or in the absence of a plan of arrangement and compromise.

*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 59

40. The Court has set out the following three factors for determining whether to approve a CCAA sales process, which the Petitioners submit are the appropriate factors to consider on this application:

- (a) the fairness, transparency, and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the applicant debtors; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

*CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para 6

*Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1464, at paras 52-54

*Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107, at paras 20-21

*In the Matter of 0081092 B.C. Ltd., In Liquidation*, 2024 BCSC 1245 at para 8

41. The SISF, which was developed with the assistance of INFOR, in consultation with the Monitor, is a fair and transparent process that will provide the Petitioners with an

opportunity to attempt to maximize value for their business and assets to the benefit of their stakeholders.

42. In particular:
- (a) a sale process with respect to the Petitioners and/or their business and assets at this time is necessary given the Petitioners' ongoing financial challenges and liquidity needs;
  - (b) the marketing and advertisement contemplated in the SISP will assist the Petitioners' ability to expose their business assets to the market;
  - (c) the SISP will allow for the assessment of the legitimacy of the bidders and their ability to ultimately close on a transaction; and
  - (d) the timelines set out in the SISP will provide a reasonable opportunity for all interested parties to submit competing offers, and the process for determining the Winning Bid, including consultation with the Monitor, is fair and transparent.
43. The SISP will provide an expedient and efficient means of soliciting offers, and is intended to canvass the market for a transaction, or combination of transactions, that would satisfy the CCAA factors listed above. Accordingly, the Petitioners respectfully submit that the SISP ought to be approved and that the SISP is both appropriate and necessary in the circumstances.
44. Any Winning Bid arising from the SISP will be subject to further application to this Court for approval.

**Part 4: MATERIAL TO BE RELIED ON**

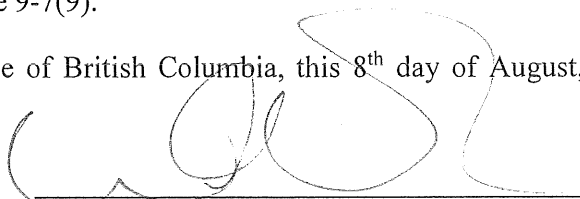
- 45. Affidavit #1 of Tim Swendseid, sworn July 29, 2024;
- 46. Affidavit #2 of Tim Swendseid, sworn August 8, 2024;
- 47. The Pre-Filing report of KSV Restructuring Inc., dated July 30, 2024;
- 48. The First Report of KSV Restructuring Inc., to be filed; and
- 49. Such further and other materials as counsel may advise and this Honourable Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that

- (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
- (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 8<sup>th</sup> day of August, 2024.



Lawson Lundell LLP  
Solicitors for the Applicants Elevation Gold Mining Corporation, Eclipse Gold Mining Corporation, Alcmene Mining Inc., Golden Vertex Corp., Golden Vertex (Idaho) Corp., And Hercules Gold USA, LLC

This Notice of Application is filed by William L. Roberts, Alexis Teasdale and Angad Bedi, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: [wroberts@lawsonlundell.com](mailto:wroberts@lawsonlundell.com); telephone number: 604-631-1620.

*To be completed by the court only:*

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Associate Judge

**APPENDIX**

The following information is provided for data collection purposes only and is of no legal effect.

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

## SCHEDULE "A"

### Respondents

TRIPLE FLAG PRECIOUS METALS CORP. and MAVERIX METALS INC.	PATRIOT GOLD CORP.
ROYAL BANK OF CANADA	JPMORGAN CHASE BANK, N.A.
MOHAVE ELECTRIC COOPERATIVE INCORPORATED	CATERPILLAR FINANCIAL SERVICES CORPORATION
ASAHI REFINING USA, INC.	

**SCHEDULE "B"**  
**Form of Amended and Restated Initial Order**

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF ELEVATION GOLD MINING CORPORATION, ECLIPSE  
GOLD MINING CORPORATION, ALCMENE MINING INC., GOLDEN VERTEX  
CORP., GOLDEN VERTEX (IDAHO) CORP., and HERCULES GOLD USA, LLC

PETITIONERS

ORDER MADE AFTER APPLICATION

(AMENDED AND RESTATED INITIAL ORDER)

BEFORE THE HONOURABLE )  
MADAM JUSTICE FITZPATRICK ) August 12, 2024

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on this day (the “**Order Date**”); AND ON HEARING Alexis Teasdale of Lawson Lundell LLP, counsel for the Petitioners, and those other counsel listed on Schedule “A” hereto; AND UPON READING the material filed, including the First Affidavit of Tim Swendseid, sworn July 29, 2024 (the “**First Swendseid Affidavit**”), the Second Affidavit of Tim Swendseid, sworn August 8, 2024 (the “**Second Swendseid Affidavit**”), the Pre-Filing Report of KSV Restructuring Inc. (“**KSV**”), in its capacity as proposed monitor dated July 30, 2024, the First Report of KSV, in its capacity as monitor, dated August 8, 2024, and the consent of KSV to act as monitor of the Petitioners; AND UPON BEING ADVISED that the primary secured creditor and others who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “**CCAA**”), the British Columbia *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Petition and materials filed in support of the application for this Order (collectively, the “**Application**”) is hereby abridged such that service of the

Application is deemed to be timely and sufficient and the Application is properly returnable today.

## JURISDICTION

2. The Petitioners are companies to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on their respective businesses (in aggregate, the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.
5. The Petitioners shall be entitled to continue to utilize the central cash management system currently in place as described in the First Swendseid Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioners of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioners, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
6. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:
  - (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the



ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “Wages”);

- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners’ restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
    - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
    - (ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the Order Date; and
    - (iii) any related corporate matters; and
  - (c) with the consent of the Monitor, amounts owing for goods and services actually provided to the Petitioners prior to the Order Date by third party suppliers, if, in the opinion of the Monitor:
    - (i) the supplier or service provider is essential to the Business and ongoing operations of the Petitioners and the payment is required to ensure ongoing supply;
    - (ii) making such payment will preserve, protect or enhance the value of the Property or the Business or is required to address regulatory concerns; and
    - (iii) the particular supplier or service provider seeking payment for goods and services provided prior to the Order Date is required to continue to provide goods or services to the Petitioners after the Order Date, including pursuant to this Order.
7. Except as otherwise provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors’ and officers’ insurance), maintenance and security services;
  - (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners’ obligations incurred prior to the Order Date); and

- (c) fees and disbursements of the kind referred to in paragraph 5(b)– Assistants’ fees, which may be incurred after the Order Date.
8. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
  - (b) all goods and services or other applicable sales taxes (collectively, “Sales Taxes”) required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
  - (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.
9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time (“Rent”), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.
10. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:
- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of its creditors as of the Order Date except as authorized by this Order;
  - (b) to make no payments in respect of any financing leases which create security interests;
  - (c) to grant no security interests, trusts, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor

otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;

- (d) to not grant credit except in the ordinary course of the Business and only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
  - (e) to not incur liabilities except in the ordinary course of Business.
11. The Petitioners are, with the consent of the Monitor, authorized to continue on and after the date of this Order, to: (a) enter into transactions, including, without limitation, intercompany funding transactions amongst the Petitioners, (b) buy and sell goods and services, including, without limitation, head office and shared services; and (c) allocate to, collect from and pay costs, expenses and other amounts of each other (collectively, the “**Intercompany Transactions**”) in the ordinary course of business. All ordinary course Intercompany Transactions shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures that the Monitor approves, or subject to further Order of this Court. Any Petitioner making an advance approved by the Monitor from and after the date of this Order with respect to intercompany funding to another Petitioner (collectively, the “**Intercompany Advances**”) shall be entitled to the benefit of and is hereby granted a charge and security as against the applicable property of such Petitioner receiving such Intercompany Advance (the “**Intercompany Advance Charge**”), which shall have the priority set out in paragraphs 36 and 38 of this Order.

## RESTRUCTURING

12. Subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right to:
- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$750,000 in the aggregate.
  - (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate;
  - (c) pursue all avenues of refinancing for their Business or Property, in whole or part; and
  - (d) all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the “**Restructuring**”).
13. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners’ intention to remove any fixtures from any leased premises at least seven (7) days prior to

the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.
15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, and all equivalent privacy laws and regulations in other jurisdictions, including the United States of America (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties

may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners. Notwithstanding the foregoing or any other term of this Order, this provision shall be of no force and effect in any foreign jurisdiction unless and until a court in such foreign jurisdiction orders that such provision is to be given force and effect in such jurisdiction.

#### **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

16. Until and including October 25, 2024, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.
17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.
18. Nothing in this Order, including paragraphs 15 and 16, shall: (i) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

#### **NO INTERFERENCE WITH RIGHTS**

19. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

#### **CONTINUATION OF SERVICES**

20. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility

or other services to the Business or the Petitioners, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the former, current or future directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

23. The Petitioners shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
24. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$520,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

25. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioners' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

#### APPOINTMENT OF MONITOR

26. KSV Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
27. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Petitioners' receipts and disbursements;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
  - (c) assist the Petitioners in their preparation of the Petitioners' cash flow statements'
  - (d) advise the Petitioners in their development of the Plan and any amendments to the Plan;
  - (e) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
  - (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
  - (h) perform such other duties as are required by this Order or by this Court from time to time.
28. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by

fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

29. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder, and all equivalent environmental laws and regulations in other jurisdictions, including the United States of America, as applicable (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession. Notwithstanding the foregoing or any other term of this Order, this provision shall be of no force and effect in any foreign jurisdiction unless and until a court in such foreign jurisdiction orders that such provision is to be given force and effect in such jurisdiction.
30. The Monitor shall provide any creditor of the Petitioners with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.
31. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

#### ADMINISTRATION CHARGE

32. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby



authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

33. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.
34. The Petitioners are hereby authorized and directed to pay the fees of INFOR Financial Inc. (the “**Sales Agent**”) under the terms of the letter agreement dated August 7, 2024 between Elevation Gold Mining Corporation (“**Elevation Gold**”) and the Sales Agent (the “**INFOR Engagement Letter**”).
35. The Monitor, counsel to the Monitor, counsel to the Petitioners, and the Sales Agent shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$500,000, and which shall have the priority set out in paragraphs 35 and 37 hereof, to secure the following amounts:
  - (a) in the case of the Monitor, counsel to the Monitor and the Petitioners, their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners’ restructuring; and
  - (b) in the case of the Sales Agent, the Work Fee (as defined in the INFOR Engagement Letter).

#### **SALES AGENT CHARGE**

36. The Sales Agent shall be entitled to the benefit of and is hereby granted a charge (the “**Sales Agent Charge**”) on the Property as security for the payment of the Transaction Fee (as defined in the INFOR Engagement Letter). The Sales Agent Charge shall have the priority set out in paragraphs 36 and 38 hereof, but shall only be payable from the proceeds of a transaction in accordance with Section 3.1 of the INFOR Engagement Letter.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

37. The priorities of the Administration Charge, the Directors’ Charge, the Sales Agent Charge, and the Intercompany Advance Charge, as among them, shall be as follows:
  - (a) First – ranking *pari passu*, the Administration Charge (to the maximum amount of \$500,000) and the Sales Agent Charge;
  - (b) Second – Directors’ Charge (to the maximum amount of \$520,000); and

## (c) Third – Intercompany Advance Charge.

38. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Directors' Charge, the Sales Agent Charge, and the Intercompany Advance Charge (together, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.
39. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.
40. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent of the Monitor and the beneficiaries of the applicable Charges.
41. The Charges shall not be rendered invalid or unenforceable, and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:
- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;
  - (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
  - (c) the payments made by the Petitioners pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners' interest in such real property leases.

#### ALLOCATION

43. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge and the Directors' Charge amongst the various assets comprising the Property.

#### RELIEF FROM FILING AND REPORTING OBLIGATIONS

44. Elevation Gold is hereby authorized to cease making any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 and all applicable securities laws, rules, regulations, policies and other instruments promulgated by the securities regulators or other securities regulatory authorities in each of the provinces of Canada, and the rules, regulations and policies of the TSX Venture Exchange (collectively, the "**Securities Provisions**"), provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of Elevation Gold failing to make any Securities Filings required by the Securities Provisions.
45. None of the directors, officers, employees, and other representatives of Elevation Gold or any of the Petitioners nor the Monitor shall have any personal liability for any failure by Elevation Gold to make any Securities Filings required by the Securities Provisions.

#### SERVICE AND NOTICE

46. The Monitor shall (i) without delay, publish in *The Globe and Mail*, *The Mohave Valley Daily*, *The Las Vegas Review Journal*, and *The Arizona Business Gazette*, a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.
47. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be

received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

48. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at the following URL (the “**Website**”):

[www.ksvadvisory.com/experience/case/elevation-gold-mining-corporation-inc](http://www.ksvadvisory.com/experience/case/elevation-gold-mining-corporation-inc)

49. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels’ email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Website.
50. Notwithstanding paragraphs 46 and 48 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

#### **GENERAL**

51. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.
52. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.
53. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign courts, tribunal, regulatory or administrative bodies, including any court or administrative tribunal of any federal or State Court or administrative body in the United States of America (each a “**Foreign Court**”), to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.
54. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the

Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended (“**Chapter 15**”);

55. THIS COURT DECLARES that, without prejudice to the determination to be made by any Foreign Court as to the Petitioners’ centre of main interest, this Court has jurisdiction over the Petitioners on the basis that the Petitioners’ centre of main interest is Vancouver, British Columbia, Canada.
56. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determines that such a filing is appropriate.
57. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.
58. Leave is hereby granted to hear any application in these proceedings on two (2) clear days’ notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.
59. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days’ notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
60. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.
61. The Initial Order is hereby amended and restated pursuant to this Order, and this Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of Alexis Teasdale

Party  Lawyer for the Petitioners

---

Signature of

Party  Lawyer for <name of party(ies)>

BY THE COURT

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REGISTRAR

**Schedule "A"****List of Counsel**

<b>Name of Counsel</b>	<b>Party Representing</b>
Kibben Jackson	KSV Restructuring Inc.
David Bish	Triple Flag Precious Metals Corp., Maverix Metals Inc.

**SCHEDULE "C"**  
**Form of SISP Approval Order**



IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF ELEVATION GOLD MINING CORPORATION, ECLIPSE  
GOLD MINING CORPORATION, ALCMENE MINING INC., GOLDEN VERTEX  
CORP., GOLDEN VERTEX (IDAHO) CORP., and HERCULES GOLD USA, LLC

PETITIONERS

ORDER MADE AFTER APPLICATION

(SISP APPROVAL ORDER)

BEFORE THE HONOURABLE )  
 ) August 12, 2024  
MADAM JUSTICE FITZPATRICK )

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on this day; AND ON HEARING Alexis Teasdale of Lawson Lundell LLP, counsel for the Petitioners, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the First Affidavit of Tim Swendseid, sworn July 29, 2024, the Second Affidavit of Tim Swendseid, sworn August 8, 2024 (the "**Second Swendseid Affidavit**"), the Pre-Filing Report of KSV Restructuring Inc. in its capacity as the Court-appointed monitor of the Petitioners (in such capacity, the "**Monitor**"), dated July 30, 2024, the First Report of the Monitor dated August 1, 2024; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application for this Order and the supporting materials is hereby abridged and this application is properly returnable today, and service

upon any interested party other than those parties on the service list maintained in these proceedings is hereby dispensed with.

2. Capitalized terms used but not otherwise defined in this Order shall have the meanings given to them in the Sales and Investment Solicitation Process, in substantially the form attached as Schedule "B" hereto (the "SISP"), or in the Amended and Restated Initial Order granted as of the date of this Order (the "ARIO"), as applicable.

#### SALES AND INVESTMENT SOLICITATION PROCESS

3. The SISP is hereby approved, and the Petitioners and the Monitor, and their respective advisors, employees, agents and contractors, are authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and this Order.
4. The Petitioners are hereby authorized to retain INFOR Financial Inc. (the "Sales Agent") pursuant to the letter agreement between the Sales Agent and Elevation Gold Mining Corporation dated August 7, 2024.
5. Neither the Monitor nor the Sales Agent, nor any of their respective affiliates, partners, directors, employees, agents, consultants, advisors, experts, accountants, counsel and controlling persons, shall incur any liability as a result of carrying out their duties under the SISP in accordance with this Order unless such liability arises as a result of the gross negligence or wilful misconduct of either such party, as determined by this court. In carrying out its duties under the SISP, the Monitor shall continue to have all protections afforded to it under the Amended and Restated Initial Order of this court granted herein on this date and under the CCAA.

#### PIPEDA AND PERSONAL INFORMATION

6. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, section 18(10(o)) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, and all equivalent privacy laws and regulations in other jurisdictions, including the United States of America, as applicable, the Petitioner, the Sales Agent, and the Monitor and their respective advisors and agents are hereby authorized and permitted to disclose to Potential Bidders and their advisors, personal information of identifiable individuals, but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "Transaction"). Any Successful Bidder shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated by the Winning Bid(s), shall be entitled to use the personal information provided to it that is related to the Business or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Petitioners, and shall return all other personal information to the Sales Agent, the Monitor or the Petitioners, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Sales Agent, the Monitor or the Petitioners. Notwithstanding the foregoing, this provision shall be of no force and effect

in any foreign jurisdiction unless and until a court in such foreign jurisdiction orders that such provision is to be given force and effect in such jurisdiction.

**GENERAL**

- 7. The Petitioners, the Monitor, and the Sales Agent may from time to time apply to this Court for advice and directions in the discharge of their powers and duties under this Order.
- 8. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.
- 9. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign courts, tribunals, and regulatory or administrative bodies having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court overseeing the Petitioners' proceedings under Chapter 15 in Case No. 2:24-bk-06359, or in any other foreign jurisdiction, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Alexis Teasdale  
 Party  Lawyer for the Petitioners

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Signature of  
 Party  Lawyer for <name of party(ies)>

BY THE COURT

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REGISTRAR

**Schedule "A"****List of Counsel**

<b>Name of Counsel</b>	<b>Party Representing</b>
Kibben Jackson	KSV Restructuring Inc.
David Bish	Triple Flag Precious Metals Corp., Maverix Metals Inc.

**Schedule "B"**

**Sales and Investment Solicitation Process**

## Schedule "B" to SISP Approval Order

### ELEVATION GOLD MINING CORPORATION CCAA SALES AND INVESTMENT SOLICITATION PROCESS

#### INTRODUCTION

1. Elevation Gold Mining Corporation ("**Elevation Gold**"), Golden Vertex Corp., Golden Vertex (Idaho) Corp., Eclipse Gold Mining Corporation, Alcmene Mining Inc., and Hercules Gold USA, LLC (collectively, the "**Debtors**") obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an Order issued by the British Columbia Supreme Court (the "**Court**") on August 1, 2024, as amended and extended by an Amended and Restated Initial Order dated August 12, 2024 (the "**ARIO**"). KSV Restructuring Inc. ("**KSV**") was appointed as monitor (in such capacity, the "**Monitor**") in the CCAA proceedings.
2. Proceedings have been commenced in the United States Bankruptcy Court for the District of Arizona (the "**US Court**") under Chapter 15 of the United States Code (the "**Chapter 15 Proceedings**") to recognize the CCAA proceedings.
3. All capitalized terms used and not otherwise defined in this Sale and Investment Solicitation Process (the "**SISP**") shall have the meanings ascribed to them in the ARIO.
4. On August 12, 2024, the Court issued an Order (the "**SISP Approval Order**") which, among other things, approved this SISP involving the Debtors and the Property, including without limitation the interests of Golden Vertex Corp. in the Moss Gold Mine located in Arizona. The objective of the SISP is to maximize recoveries for the Debtors' creditors.
5. This SISP describes the way the Debtors, with the assistance of the Sales Agent (defined herein), and under the supervision of the Monitor, will advance the SISP and how interested parties may gain access to due diligence materials concerning the Debtors and the Property, how bids involving the Property, or any part or parts thereof, or Debtors, or any of them, will be submitted and dealt with, and how Court approval will be sought in respect of any transaction or transactions involving the Property or the Debtors.
6. The terms of this SISP, including the requirements, criteria, and timelines set out herein, may be amended, extended, or waived by the Debtors with the consent of the Monitor or by further order of this Court.
7. Elevation Gold has selected INFOR Financial Inc. (the "**Sales Agent**") to assist the Debtors in carrying out this SISP.

#### "AS IS, WHERE IS" BASIS

8. Any transaction involving the Property or the Debtors will be subject only to such representations, warranties, covenants, or indemnities as are expressly included in a Final Agreement (as defined herein), but will otherwise be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Debtors, or any of their agents, estates, advisors, or professionals, including but not limited to the Sales Agent, the Monitor and its counsel,

and the Debtors' counsel, or otherwise, and in the event of a sale, all of the right, title and interest of the Debtors in and to the Property to be acquired will be, subject to the Court granting approval and any other required orders in the form contemplated by the relevant transaction, sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests therein and thereon, except: (a) those that cannot be vested off title to the Property by law; and (b) those assumed pursuant to a Final Agreement.

### TIMELINE

9. The following table sets out the target dates for the submission of letters of intent ("LOIs") and Final Bids under the SISP:

PHASES	TARGET DATES
SISP to commence	August 12, 2024
LOI Deadline	September 13, 2024
Final Bid Process Commences	September 19, 2024
Final Bid Deadline	October 18, 2024
Determination of Successful Bidder	October 25, 2024

10. The Debtors, with the assistance of the Sales Agent and in consultation with the Monitor, shall determine the timeline for court approval(s) and closing(s) following review of the Final Bids.

### PHASE 1 OF THE SISP PROCESS

#### A. Initial Solicitation of Interest

11. The Debtors and Sales Agent, in consultation with the Monitor, may, but are not required to, cause a notice regarding this SISP to be published in any publication that the Debtors or Sales Agent choose.
12. The Debtors and Sales Agent, in consultation with the Monitor, will prepare a list of potential bidders (the "**Known Potential Bidders**") who may be interested in a transaction involving the Property or the Debtors. Such list will include parties who, in the Debtors' and Sales Agent's reasonable judgment, may be interested in acquiring an interest in the Property or the Debtors, or any part or parts thereof, whether pursuant to an asset purchase transaction (an "**Asset Bid**") or some other investment, restructuring, recapitalization or other form of reorganization of the business, property or affairs of the Debtors, including but not limited to the debt, share, or capital structure of any of the Debtors (a "**Restructuring Bid**").

13. The Debtors and Sales Agent will prepare and distribute an initial marketing or offering summary (a "**Teaser Letter**") to the Known Potential Bidders together with any additional marketing materials the Debtors and Sales Agent consider appropriate, as well as a draft form of confidentiality agreement (the "**Confidentiality Agreement**").
14. Any Known Potential Bidder or other person wishing to submit an Asset Bid and/or a Restructuring Bid who (a) executes a Confidentiality Agreement in form and substance satisfactory to the Debtors, (b) in the judgment of the Debtors and Sales Agent, in consultation with the Monitor, appears to have a bona fide interest in submitting an Asset Bid and/or Restructuring Bid, and (c) in the judgment of the Debtors and Sales Agent, in consultation with the Monitor, appears to have the financial capabilities and the technical, managerial, and operational expertise and capabilities to make a viable Asset Bid or Restructuring Bid, shall be deemed to be a potential bidder (each such person so deemed, a "**Potential Bidder**") and shall be permitted to submit an Asset Bid or a Restructuring Bid. For clarity, no person other than a Potential Bidder may submit an Asset Bid or a Restructuring Bid.

#### **B. Initial Due Diligence**

15. The Debtors and Sales Agent may prepare such marketing or other materials in addition to the Teaser Letter as they deem appropriate describing the opportunity to make an Asset Bid or a Restructuring Bid for distribution to Potential Bidders.
16. Following execution of a Confidentiality Agreement, the Debtors and Sales Agent shall provide Potential Bidders with access to an electronic data room that will contain information in the possession or control of the Debtors that in their reasonable business judgment will allow these parties to evaluate their interest in submitting an Asset Bid or a Restructuring Bid.

#### **C. Qualified LOI Process**

17. Any Potential Bidder who wishes to submit an Asset Bid or a Restructuring Bid must deliver a written, non-binding letter of intent in respect of the Property or the Debtors (each, an "**LOI**") to the Sales Agent and to the Monitor in the manner and at the addresses specified in **Appendix "A"** so as to be received by the Sales Agent, with a copy to the Monitor, not later than 5:00 p.m. (Pacific time) on September 13, 2024 (the "**LOI Deadline**"). An LOI shall be a qualified LOI (each, a "**Qualified LOI**"), provided that it contains:
  - (a) an acknowledgment of receipt of a copy of this SISP, the SISP Approval Order, and agreement to accept and be bound by the provisions contained therein;
  - (b) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, and full disclosure of the direct and indirect owners of the Potential Bidder and their principals (without needing to disclose non-controlling interests, in the case of public companies only);
  - (c) an indication of whether the Potential Bidder wishes to tender (i) an Asset Bid; (ii) a Restructuring Bid; or (iii) both;



- (d) a specific indication of the anticipated sources of capital for such Potential Bidder and information regarding the Potential Bidder's financial, managerial, operational, technical, and other capabilities to consummate an Asset Bid or a Restructuring Bid, as applicable, and such additional information as may be requested by the Debtors, the Sales Agent, or the Monitor;
  
- (e) in the case of an Asset Bid, it identifies:
  - (i) the purchase price or price range in US dollars as well as the form of consideration for the proposed sale and details of any liabilities to be assumed;
  - (ii) the Property included as part of the Asset Bid, any of the Property expected to be excluded, and/or any additional assets desired to be included in the transaction;
  - (iii) the structure and financing of the transaction including, but not limited to, the sources of financing to fund the acquisition, preliminary evidence of the availability of such financing or such other form of financial disclosure and credit-quality support or enhancement that will allow the Debtors, the Sales Agent, and the Monitor to make a reasonable business or professional judgment as to the Potential Bidder's financial or other capabilities to consummate the transaction and to perform all obligations to be assumed in such transaction and the steps necessary and associated timing to obtain financing and any related contingencies, as applicable;
  - (iv) any anticipated corporate, shareholder, internal, or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments to obtaining such approvals;
  - (v) additional due diligence required or desired to be conducted by the Potential Bidder, if any;
  - (vi) any conditions to closing that the Potential Bidder requires; and
  - (vii) any other terms or conditions of the Asset Bid which the Potential Bidder believes are material to the transaction;
  
- (f) in the case of a Restructuring Bid, it identifies:
  - (i) an outline of the type of transaction or structure of the bid including with respect to any proposed restructuring, recapitalization, or other form of reorganization of the business, property, or affairs of the Debtors (or any of them), including but not limited to the debt, share, or capital structure of the Debtors (or any of them), as applicable;
  - (ii) the aggregate amount of the equity and debt investment to be made in the Debtors, including liabilities to be assumed by the Potential Bidder, if applicable;

- (iii) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights, or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);
  - (iv) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of the Debtors;
  - (v) the financing of the transaction including, but not limited to, the sources of financing to fund the acquisition, preliminary evidence of the availability of such financing or such other form of financial disclosure and credit-quality support or enhancement that will allow the Debtors, the Sales Agent, and the Monitor to make a reasonable business or professional judgment as to the Potential Bidder's financial or other capabilities to consummate the transaction and to perform all obligations to be assumed in such transaction and the steps necessary and associated timing to obtain financing and any related contingencies, as applicable;
  - (vi) any anticipated corporate, shareholder, internal, or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments to obtaining such approvals;
  - (vii) anticipated tax planning, if any;
  - (viii) additional due diligence required or desired to be conducted by the Potential Bidder, if any;
  - (ix) any conditions to closing that the Potential Bidder requires; and
  - (x) any other terms or conditions of the Restructuring Bid which the Potential Bidder believes are material to the transaction; and
- (g) such other information as may be reasonably requested by the Debtors, Sales Agent, or the Monitor.
18. The Debtors, Sales Agent, and Monitor shall retain full discretion and authority to discuss any LOIs received, and their terms, with the applicable Potential Bidders.
19. Following the LOI Deadline, the Debtors and the Sales Agent, in consultation with the Monitor, will assess the Qualified LOIs. If it is determined by the Debtors and the Sales Agent, with the approval of the Monitor, that a Potential Bidder that has submitted a Qualified LOI: (a) has a *bona fide* interest in consummating an Asset Bid or a Restructuring Bid, as applicable; and (b) has the financial, managerial, operational, technical, and other capabilities to consummate an Asset Bid or a Restructuring Bid, as applicable, then such Potential Bidder will be deemed a "**Qualified Bidder**", provided that the Debtors and the Sales Agent may, in their reasonable business judgment and with the approval of the Monitor, limit the number of Qualified Bidders (and thereby eliminate some Potential Bidders who have submitted Qualified LOIs from this SISP) taking into account the factors identified in paragraphs 23 and 24 of this

SISP. For greater certainty, no Potential Bidder who has submitted a Qualified LOI by the LOI Deadline will be deemed to be a Qualified Bidder without the approval of the Monitor.

20. The Debtors, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified above and deem non-compliant Potential Bidders to be Qualified Bidders.

## **PHASE 2 OF THE SISF PROCESS**

### **D. Due Diligence**

21. The Debtors and the Sales Agent, in consultation with the Monitor, will in their reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property and the Debtors as they or the Monitor deem appropriate. Due diligence access may include management presentations, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Debtors and the Sales Agent, in their reasonable business judgment and after consulting with the Monitor, may agree. For the avoidance of doubt, and without limiting the terms of applicable Confidentiality Agreements, selected due diligence materials may be withheld from certain Qualified Bidders if the Debtors and the Sales Agent, with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information.
22. All Qualified Bidders will be provided with a form of draft asset purchase agreement (the "**Draft APA**") that will serve as the basis for the submission of a final Asset Bid.

### **E. Final Bid Process**

23. Any Qualified Bidder may submit a final Asset Bid or a final Restructuring Bid (each, a "**Final Bid**") to the Sales Agent and to the Monitor at the address specified in **Appendix "A"** hereto on or before 5:00 pm (Pacific Time) on October 18, 2024 (the "**Final Bid Deadline**").
24. A Final Bid submitted as a final Asset Bid shall be a "**Qualified Asset Bid**" if:
- (a) it includes a duly authorized and executed purchase and sale agreement specifying all consideration payable, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto, together with a blackline to the Draft APA provided to all Qualified Bidders;
  - (b) it includes a letter stating that the Final Bid is irrevocable until the earlier of (i) the approval by the Court, and (ii) thirty (30) days following the Final Bid Deadline; provided, however, that if such Asset Bid is selected as a Winning Bid (as defined below) or a Backup Bid (as defined below), it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
  - (c) it does not include any request or entitlement to any break fee, expense reimbursement, or similar type of payment;

- (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction that will allow the Debtors, the Sales Agent and the Monitor to make a determination as to the Qualified Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Final Bid;
  - (e) it includes an acknowledgement and representation that the Qualified Bidder (i) has had an opportunity to conduct any and all required due diligence prior to making its Final Bid; (ii) has relied solely on its own independent review, investigation and inspection of any documents, the assets to be acquired and the liabilities to be assumed; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied, except as expressly stated in the asset purchase agreement and any other definitive documentation associated with the Final Bid; and (iv) unless prior written consent of the Monitor has been obtained, has not coordinated its Final Bid or any aspect of its participation in this SISP, with any Potential Bidder, Qualified Bidder, or any party with an existing contractual relationship with the Debtors, has kept and will continue to keep its Final Bid confidential, and has not entered into any agreement or arrangement with any Potential Bidder, Qualified Bidder, or any party with an existing contractual relationship with the Debtors which has affected or may, directly or indirectly, affect the bidder's Final Bid or the Final Bid of any other bidder and/or the SISP process generally.
  - (f) it fully discloses the identity of each person that is bidding or otherwise that will be sponsoring or participating in the Final Bid, including the identification of the bidder's direct and indirect owners and their principals (without needing to disclose non-controlling interests, in the case of public companies only), and the complete terms of any such participation;
  - (g) it provides for closing of the proposed transaction by no later than **December 31, 2024** (the "**Outside Closing Date**");
  - (h) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to five percent (5%) of the total value of all cash and non-cash consideration to be paid in respect of the Final Bid, to be held and dealt with in accordance with this SISP;
  - (i) it contains other information reasonably requested by the Debtors or Sales Agent or the Monitor; and
  - (j) it is received by no later than the applicable Final Bid Deadline.
25. A Final Bid submitted as a final Restructuring Bid shall be a "**Qualified Restructuring Bid**" if:
- (a) it includes definitive documentation, duly authorized, and executed by the Qualified Bidder, setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and debt investment, assumption of

debt, if any, and details regarding the proposed equity and debt structure of the Debtors following completion of the proposed transaction;

- (b) it includes a letter stating that the Final Bid is irrevocable until the earlier of (i) the approval by the Court, and (ii) thirty (30) days following the applicable Final Bid Deadline; provided, however, that if such Final Bid is selected as a Winning Bid or a Backup Bid, it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
- (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
- (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction that will allow the Debtors, the Sales Agent and the Monitor to make a determination as to the Qualified Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Final Bid;
- (e) it includes an acknowledgement and representation that the Qualified Bidder (i) has had an opportunity to conduct any and all required due diligence prior to making its Final Bid; (ii) has relied solely on its own independent review, investigation and inspection of any documents, the assets to be acquired and the liabilities to be assumed; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied, except as expressly stated in the definitive documentation associated with the Final Bid; and (iv) unless prior written consent of the Monitor has been obtained, has not coordinated its Final Bid or any aspect of its participation in this SISP with any Potential Bidder, Qualified Bidder, or any party with an existing contractual relationship with the Debtors, has kept and will continue to keep its Final Bid confidential, and has not entered into any agreement or arrangement with any Potential Bidder, Qualified Bidder, or any party with an existing contractual relationship with the Debtors which has affected or may, directly or indirectly, affect the bidder's Final Bid or the Final Bid of any other bidder and/or the SISP process generally.
- (f) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Final Bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals (without needing to disclose non-controlling interests, in the case of public companies only), and the complete terms of any such participation;
- (g) it provides for closing of the proposed transaction by no later than the Outside Closing Date (being **December 31, 2024**);
- (h) it is accompanied by a refundable Deposit in the form of a wire transfer (payable to a trust account specified by the Monitor) in an amount equal to five percent (5%)

of the total value of all cash and non-cash consideration to be paid or provided pursuant to the Final Bid, to be held and dealt with in accordance with this SISP;

- (i) it contains other information reasonably requested by the Debtors or Sales Agent or the Monitor; and
  - (j) it is received by no later than the applicable Final Bid Deadline.
26. All Qualified Asset Bids and Qualified Restructuring Bids shall constitute “**Qualified Final Bids**”.
27. The Debtors, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified above and deem non-compliant Final Bids to be Qualified Final Bids.

#### F. **Stalking Horse Offer**

28. The Debtors are permitted to enter into a stalking horse agreement at any time provided any such agreement is subject to the Debtors obtaining an order of the Court approving the agreement for the purpose only of being the stalking horse agreement, and amending the terms of the SISP accordingly, including its timelines. Should the Court grant such approval, the Debtors shall seek an order from the US Court giving effect to that approval.

#### G. **Selection of Winning Bid**

29. In reviewing the Qualified Final Bids and before determining a Winning Bid or Backup Bid (both as defined below), the Debtors, Sales Agent, and Monitor shall retain full discretion and authority to discuss the bids received, and their terms, with the applicable Qualified Bidders.
30. The Debtors shall review all Qualified Final Bids, in consultation with the Monitor, to determine the highest or otherwise best Qualified Final Bid(s). Evaluation criteria will include, but are not limited to, matters such as: (a) the purchase price or net value being provided by such bid; (b) the conditionality of any bid; (c) the terms of and commitment for any required financing, including whether the commitment is firm and irrevocable; (d) the timeline to closing of any bid; (e) the identity, circumstances, and ability of the proponents of the Qualified Final Bids to successfully complete the transaction; (f) the costs associated with the bid and its consummation; (g) the terms of the proposed transaction documents; (h) the ability of the Qualified Bidder to comply with any regulatory requirements associated with the Property or the Debtors; and (i) whether the Qualified Bid requires any approval under applicable anti-combines, anti-competitive or anti-trust legislation.
31. The Debtors shall, in consultation with the Monitor, identify the highest or otherwise best Qualified Final Bid received for the Property, or part or parts thereof, as applicable (each, a “**Winning Bid**”) and the next highest or otherwise best Qualified Final Bid received for the Property, or part or parts thereof, as applicable (each, a “**Backup Bid**”). A person or persons who make a Winning Bid shall be a “**Successful Bidder**” and a person or person who makes a Backup Bid shall be a “**Backup Bidder**”.

32. The Debtors or Sales Agent, after consulting with the Monitor, shall notify a Successful Bidder, if any, a Backup Bidder, if any, and any other bidders of their respective status as soon as reasonably practicable in the circumstances, or may engage in such further rounds of bidding as the Debtors and the Sales Agent, in consultation with the Monitor, consider necessary and appropriate to maximize the value of the Winning Bid.
33. The Debtors or Sales Agent will notify a Backup Bidder, if any, that their bid is a successful Backup Bid and the Backup Bid shall remain open and capable of acceptance by the Debtors until the earlier of (i) the consummation of the transaction contemplated by a Winning Bid; and (ii) the date that is 30 days after the applicable Final Agreement Deadline, as defined below, (the "**Backup Bid Release Date**"). For greater certainty, the Monitor shall be entitled to continue to hold the Deposit in respect of a Backup Bid until the Backup Bid Release Date.
34. The Debtors may, but shall have no obligation to, enter into an agreement or agreements with a Successful Bidder (each, a "**Final Agreement**"). Any Final Agreement entered into with a Successful Bidder shall be executed on or before **November 15, 2024** (the "**Final Agreement Deadline**").
35. The Debtors have the right not to accept any Qualified Final Bid. The Debtors further have the right to negotiate with any Qualified Bidders, deal with one or more Qualified Bidders to the exclusion of other Persons, to accept a Qualified Final Bid or Qualified Final Bids for some or all of the Property, to accept multiple Qualified Final Bids and enter into multiple Final Agreements.

#### COURT APPROVAL

36. If the Debtors enter into a Final Agreement in respect of a Winning Bid, a Backup Bid, or any other bid, the Debtors shall apply for orders from the courts overseeing these proceedings approving the transaction contemplated by that Final Agreement and any necessary or appropriately related relief required to consummate the transaction contemplated by that Final Agreement. Court approval in Canada, and the US Court giving effect to that approval, shall be a condition precedent to the consummation of any transaction or transactions contemplated by a Final Agreement. The Debtors may also (i) concurrently obtain relief approving the transaction contemplated by a Backup Bid and any necessary related relief required to consummate the transaction contemplated by a Backup Bid and (ii) if deemed necessary or advisable, seek approval of or other relief in respect of the Winning Bid and/or Backup Bid from the courts or governmental bodies in other relevant jurisdictions.

#### DEPOSITS

37. All Deposits paid pursuant to this SISP shall be held in trust by the Monitor in an interest-bearing account, if possible. In the event the Deposits are held in an interest-bearing account, interest shall be to the account of the party to whom the Deposit is ultimately paid in accordance with this SISP. The Monitor shall hold Deposits paid by each Winning Bidder and Backup Bidder in accordance with the terms of the Final Agreement with the Successful Bidder and the Backup Bidder, or as may be ordered by the Court.
38. If a Deposit is paid pursuant to this SISP, and the Debtors elect not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the person that paid such deposit, the Monitor shall return the Deposit to that Person.

39. If (a) a Successful Bidder or Backup Bidder breaches any of its obligations under its Qualified Final Bid, any Final Agreement or the terms of this SISP (including the Confidentiality Agreement), or (b) a Qualified Bidder breaches its obligations under the terms of this SISP (including the Confidentiality Agreement) or under the terms of its Qualified Final Bid if such breach prevents the Qualified Bidder from completing the transaction contemplated by its Qualified Final Bid, then, in each case, such Qualified Bidder's Deposit will be forfeited as liquidated damages and not as a penalty.

#### **SUPERVISION AND CONDUCT OF THE SISP**

40. The Debtors, in consultation with the Monitor, may engage such other consultants, agents, or experts and such other persons from time to time as may be reasonably necessary to assist the Debtors in carrying out this SISP.
41. The Monitor will oversee, in all respects, the conduct of the SISP by the Debtors and the Sales Agent.
42. To the extent that any Potential Bidders wish to engage, discuss or communicate with any party with an existing contractual relationship with the Debtors in relation to this SISP or the business or assets of the Debtors, such Potential Bidder may only do so after advising the Monitor and obtaining the Monitor's consent. In considering any specific request, the Monitor shall impose such restrictions, if any, or participation by the Monitor, as the Monitor deems appropriate.
43. The Debtors and Sales Agent shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations under this SISP and provide the Monitor with the assistance, information, and documentation that is reasonably necessary to enable the Monitor to adequately carry out the Monitor's functions herein.
44. The Debtors, the Sales Agent, the Monitor, and any of their agents, estates, advisors, and professionals are not responsible for, and will have no liability with respect to, any information provided to or obtained by any Potential Bidder in connection with the Debtors or the Property.
45. The Debtors, Sales Agent, and Monitor shall keep confidential the names, details, and all other non-public information related to Potential Bidders, LOIs, Qualified Bidders, Final Bids, Qualified Final Bids, the Successful Bidder, the Winning Bid, the Backup Bidder, the Backup Bid, and the Final Agreement, and any other information provided to them and marked as confidential, and shall only use such information to conduct this SISP, or as is reasonably necessary to seek directions from or make submissions to the Court, or to obtain, oppose, or otherwise make submissions regarding the approval of any Winning Bid or Back Up Bid all while taking such steps as may be reasonably necessary so as to preserve the confidentiality of such information and protect the integrity of the SISP.

#### **TERMINATION OF THE SISP**

46. If,
- (a) there are no Qualified LOI(s) by the applicable LOI Deadline, or no LOIs are deemed commercially reasonable; or



- (b) there are no Final Bid(s) by the applicable Final Bid Deadline; or
- (c) there is no Qualified Asset Bid or Qualified Restructuring Bid by the applicable Final Bid Deadline, or the Debtors determine that no Qualified Final Bids should be accepted; or
- (d) a Final Agreement is not executed by the applicable Final Agreement Deadline; or
- (e) the Canadian Court does not approve any Winning Bid; or
- (f) the Debtors, in consultation with the Sales Agent, and with the approval of the Monitor, decide to terminate this SISP,

then this SISP shall terminate, unless any amendments, extensions or waivers are made or granted in accordance with the terms hereof.

## APPENDIX "A"

### Addresses for Deliveries

Any delivery made to the Sales Agent pursuant to this SISP shall be made to:

INFOR Financial Inc.  
Royal bank Plaza, South Tower  
200 Bay Street, suite 2350  
Toronto, Ontario, M5J 2J2

Attention: Neville Dastoor  
Email: ndastoor@inforfg.com

Attention : Paul Liebovitz  
Email : pliebovitz@inforfg.com

Any delivery made to the Monitor pursuant to this SISP shall be made to:

KSV Restructuring Inc.  
220 Bay Street, 13<sup>th</sup> Floor Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman  
Email: bkofman@ksvadvisory.com

Attention: Jason Knight  
Email: jknight@ksvadvisory.com

Deliveries pursuant to this SISP by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SISP shall be deemed to be received when delivered to the address as identified above.

NO. S- 245121  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS*  
*CORPORATIONS ACT*, S.B.C. 2002,  
C. 57, AS AMENDED

AND

IN THE MATTER OF ELEVATION GOLD  
MINING CORPORATION, ECLIPSE GOLD  
MINING CORPORATION, ALCMENE MINING  
INC., GOLDEN VERTEX CORP., GOLDEN  
VERTEX (IDAHO) CORP., and HERCULES  
GOLD USA, LLC

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**NOTICE OF APPLICATION**

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Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2

Phone: (604) 685-3456 / 218-7564

Attention: William L. Roberts / Alexis Teasdale / Angad Bedi