



NO. S E 2 4 5 1 2 1  
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

**PETITION TO THE COURT**

**ON NOTICE TO:**

Those parties set out in **Schedule "A"** attached hereto

The address of the Registry is 800 Smithe Street, Vancouver, British Columbia.

The Petitioners estimate that the hearing of the Petition will take 2 hours.

- This matter is an application for judicial review.
- This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by

- the persons named as Petitioners in the style of proceedings above

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and
- (b) serve on the Petitioners
  - (i) 2 copies of the filed Response to Petition; and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

**Time for Response to Petition**

A Response to Petition must be filed and served on the Petitioners,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (c) if you were served with the Petition anywhere in the United States of America, within 35 days after that service
- (d) if you were served with the Petition anywhere else, within 49 days after that service, or
- (e) if the time for Response has been set by order of the court, within that time.

The ADDRESS FOR SERVICE of the Petitioners is c/o:

Lawson Lundell LLP  
Barristers & Solicitors  
925 West Georgia Street, Suite 1600 Cathedral Place  
Vancouver BC V6C 3L2  
Attention: William L. Roberts, Alexis Teasdale and Angad Bedi

E-mail address for service (if any) of the Petitioners: [wroberts@lawsonlundell.com](mailto:wroberts@lawsonlundell.com);  
[ateasdale@lawsonlundell.com](mailto:ateasdale@lawsonlundell.com); [abedi@lawsonlundell.com](mailto:abedi@lawsonlundell.com)

The name and office address of the Petitioners' lawyer is:

Lawson Lundell LLP  
Barristers & Solicitors  
925 West Georgia Street, Suite 1600 Cathedral Place  
Vancouver BC V6C 3L2  
Attention: William L. Roberts, Alexis Teasdale and Angad Bedi

## CLAIM OF PETITIONERS

### Part 1: ORDERS SOUGHT

1. The Petitioners, Elevation Gold Mining Corporation (“**Elevation Gold**”), Eclipse Gold Mining Corporation (“**Eclipse Gold**”), Alcmene Mining Inc. (“**Alcmene Mining**”), Golden Vertex Corp. (“**Golden Vertex**”), Golden Vertex (Idaho) Corp. (“**Golden Idaho**”), and Hercules Gold USA, LLC (“**Hercules Gold**”, and together with Eclipse Gold, Alcmene Mining, Golden Vertex, Golden Idaho, the “**Subsidiaries**”), seek an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C 1985, c. C-36, as amended (the “**CCAA**”), substantially in the form of the draft Initial Order attached hereto as **Schedule “B”**, providing the following relief, amongst other things:
  - (a) Abridging the time for service of this Petition and the First Affidavit of Tim Swendseid sworn July 29, 2024 and dispensing with further service thereof other than in accordance with the Initial Order;
  - (b) Declaring that the Petitioners are entities to which the CCAA applies;
  - (c) Staying all proceedings and remedies taken or that might be taken in respect of the Petitioners, the Petitioners’ respective officers and directors acting in such capacity, and any and all of the present and after acquired assets, properties and undertakings of the Petitioners (the “**Property**”), except as set forth in the Initial Order or as otherwise permitted by law, for 10 days (as may be extended by the Court thereafter, the “**Stay of Proceedings**”);
  - (d) Authorizing the Petitioners to carry on business in a manner consistent with the preservation of the Property;
  - (e) Appointing KSV Restructuring Inc. (“**KSV**”) as the monitor of the Petitioners (the “**Proposed Monitor**” and, if appointed, the “**Monitor**”);
  - (f) Authorizing the Petitioners to continue to utilize the cash management system currently in place;
  - (g) Granting the following priority charges over all of the Property, such charges to rank ahead of all existing security interests of any person in the following relative priorities:
    - (i) First – an “**Administration Charge**” in favour of legal counsel to the Petitioners, the Monitor, and legal counsel to the Monitor in the initial amount of CAD\$300,000 to secure payment of their fees and disbursements incurred in connection with these CCAA proceedings, including services rendered to the Petitioners both before and after the commencement of the CCAA proceedings, up to and including the date of the Comeback Hearing (defined below), subject to the Petitioners’ right to

seek an increase of the Administration Charge at the Comeback Hearing;  
and

- (ii) Second – a “**Directors’ Charge**” to the maximum amount of CAD \$520,000, being the amount of the aggregate payroll obligations of the Petitioners for one pay period, in favour of the directors and officers of the Petitioners (the “**Directors and Officers**”), as security for the Petitioners’ obligation to indemnify such directors and officers for obligations and liabilities which they may incur in such capacities after the commencement of these proceedings, subject to the Petitioners exhausting any insurance coverage in respect of such obligations and liabilities; and
  - (iii) Third – an “**Intercompany Advance Charge**” as security for intercompany funding approved by the Monitor and made by any Petitioner to another Petitioner or Petitioners;
- (h) Scheduling a comeback hearing (the “**Comeback Hearing**”) at a date and time to be set by this Honourable Court, but in any event no later than August 11, 2024;
  - (i) Authorizing and empowering the Monitor to apply to any court, wherever located, for recognition of these proceedings and enforcement of the Initial Order and further orders of this Honourable Court in a jurisdiction outside Canada, and authorizing and empowering the Monitor to act as the Petitioners’ foreign representative to apply to the United States Bankruptcy Court (the “**U.S. Court**”) for relief pursuant to Chapter 15 (“**Chapter 15**”) of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended (the “**US Code**”);
  - (j) Declaring that for the purposes of this Court’s jurisdiction over the Petitioners, the Petitioners’ centre of main interest is Vancouver, British Columbia, Canada; and
  - (k) Granting such further and other relief as counsel may request and this Honourable Court may deem just.

## Part 2: **FACTUAL BASIS**

### I. **INTRODUCTION / OVERVIEW**

2. The Petitioners are seeking an initial order under the CCAA because of their current liquidity challenges. The Petitioners’ liquidity position is the result of a combination of financial and other factors. These factors include ongoing losses, a recent and unexpected loss of production capacity, a heavy debt burden and significant operating expenses arising from a streaming agreement and multiple payment obligations associated with their mineral properties, and recent enforcement actions taken by an unsecured creditor.
3. The Petitioners have been carrying out a sale and investment solicitation process (the “**Pre-Filing SISF**”) with the assistance of their financial advisor, INFOR Financial Group Inc. (“**INFOR**”), a financial services firm based in Toronto, Ontario. To date, market factors have frustrated the Petitioners’ ability to complete a sale and/or refinancing; however, the Petitioners intend to seek authorization to continue the Pre-

Filing SISP at the Comeback Hearing as there is ongoing interest in a transaction for some or all of the Petitioners' business.

4. A stay of proceedings will provide the Petitioners the time and breathing room required to continue the Pre-Filing SISP and explore other strategic alternatives in a Court-supervised process. The Petitioners believe that entering into these proceedings will enhance their prospects of completing a going-concern transaction, with the goal of maximizing value for all affected stakeholders.
5. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Affidavit of Tim Swendseid sworn on July 29, 2024 (the "**Swendseid Affidavit**").

## II. BUSINESS OPERATIONS AND CORE BUSINESS FUNCTIONS

6. Elevation Gold is a publicly listed gold and silver producer, incorporated pursuant to the laws of British Columbia, with a head office in Vancouver, BC. Its shares are listed on the TSX-V under the symbol "ELVT", and on the Over-The-Counter market in the United States under the symbol "EVGDF". Elevation Gold is engaged in the operation, acquisition, exploration and development of mineral properties in the United States through its direct or indirect wholly owned subsidiaries, Golden Vertex and Hercules Gold.
7. Elevation Gold's principal operation is the production of gold and silver from the Moss Gold Mine in the Oatman District in Mohave County, Arizona (the "**Moss Mine**"), through its wholly owned subsidiary, Golden Vertex, using a leach pad or "heap leach" mining system involving chemical processes used to dissolve metals of interest from mined ore. Elevation Gold began operating the Moss Mine as an open pit mine in September 2018. An ongoing exploration program is targeting further expansion of the mineral resources at Moss Mine.
8. The two principal operational aspects of the Moss Mine are the open pit mine (comprised of several pits) coupled with the crushing plant and the conveyor distribution system (ore is mined from the various mineral claims comprising the mine, crushed and delivered to the leach pad), and the leach pads coupled with the process plant (ore placed on leach pads is irrigated with reagents to extract the metals of interest from the raw ore into solutions). In the process plant, metals in solution are extracted and formed into a saleable product. The leach pad and process plant are collectively known as the "beneficiation facilities", and the processes that take place there, the "beneficiation processes".
9. To enable the Petitioners to remain cash flow positive throughout these proceedings without requiring interim financing, Elevation Gold's management has determined that an interim cessation of active mining from the open pits at the Moss Mine should take place, and that the operation of the beneficiation facilities must continue, to provide continued production of gold and silver from the ore held in the leach pads at the Moss Mine, thus generating the funds projected to be necessary for the Petitioners' continued operation.

10. Through Golden Vertex, Elevation Gold also has an interest in certain exploration land adjacent to the Moss Mine, one tract of approximately 145 square kilometers in size and another tract (the “**Silver Creek Property**”) of approximately 15 square kilometers in size. The Silver Creek Property is subject to a Mineral Lease and Option Agreement with La Cuesta International (the “**La Cuesta Option**”).
11. Finally, through Hercules Gold, Elevation Gold has an interest in a mineral property of approximately 100 square kilometers of land in Lyon County, Nevada, about 40 kilometers to the southeast of Reno, Nevada (the “**Hercules Project**”). Pursuant to an option agreement with Great Basin Resources, Inc. and Iconic Minerals Ltd. dated August 9, 2019 (the “**Iconic Option Agreement**”), Hercules Gold also has an option to obtain a 100% interest in certain unpatented mining claims comprising the “**Hercules Property**”.
12. The Petitioners together comprise an integrated business, with Elevation Gold providing management oversight and core business functions and services, as follows.
13. Corporate decision-making and strategy for all of the Petitioners is undertaken by Elevation Gold’s executive leadership team. Elevation Gold allocates approximately 75% of its senior officers’ compensation to itself, with the balance allocated to Golden Vertex. This allocation reflects the senior officers’ overall executive management responsibility for all aspects of the Petitioners’ business and operations.
14. Consistent with the fact that the Petitioners operate as an integrated group controlled and managed by Elevation Gold, Elevation Gold hosts and maintains a single website where all of the Petitioners’ mining assets and projects are outlined as assets and projects of Elevation Gold, rather than being identified as connected with any individual Petitioner.
15. Elevation Gold manages the banking, treasury functions, and accounting for all entities, including for Golden Vertex. Payments made by Golden Vertex, Golden Idaho and Hercules Gold are drawn on CIBC accounts located in Canada, and are prepared and initiated by Elevation Gold’s Canadian staff.
16. Although Golden Vertex, Golden Idaho and Hercules Gold have registered offices at US law firms, as is legally required, all correspondence pertaining to the business and affairs of these entities at the corporate level is directed to, and handled by, Elevation Gold.
17. A number of the Petitioners’ secured and unsecured creditors are also Canadian entities, and Canadian law governs many of the Petitioners’ significant contracts and policies. In particular, The Petitioners’ primary secured creditor is Maverix Metals Inc. (“**Maverix**”). Maverix is a Canadian company and is a wholly owned subsidiary of Triple Flag Precious Metals Corp. (“**Triple Flag**”), an Ontario corporation. Maverix represents 83% of the Petitioners’ debt on a consolidated basis and nearly all of their secured debt. The loan and security documents between Maverix and the Petitioners are governed by Canadian law.

18. In addition to the foregoing:

- (a) the Chairman of the Board of Elevation Gold is a Canadian national who resides in British Columbia;
- (b) the Annual General Meeting for Elevation Gold is held in Vancouver, British Columbia;
- (c) the Petitioners' external auditors are PricewaterhouseCoopers LLP of Canada, the Petitioners' US and Canadian tax filings are prepared and filed out of Canada, and all such tax returns are addressed with the Vancouver office address;
- (d) the Petitioners' principal bank is CIBC in Canada;
- (e) the Convertible Debentures, which were issued by Elevation, are held in Canada and Europe, and are governed by Canadian law, represent the Petitioners' second largest debt obligation; and
- (f) INFOR, the Petitioners' financial advisor, is a Canadian firm.

### **III. FINANCIAL POSITION OF THE PETITIONERS**

19. Most of the financial information below is stated in US dollars because Elevation Gold's reporting currency is US dollars. Revenue is based on gold and silver sales, and gold and silver markets quote prices in USD/ounce by world-wide convention.

#### **A. Current Financial Statements**

20. The Petitioners' Condensed Interim Consolidated Statements of Financial Position for the three months ending March 31, 2024 show total assets of USD\$107.242 million and total liabilities of USD\$77.72 million. While the Petitioners' assets exceed their liabilities, this is due to the Petitioners' significant investment in mining properties.
21. As of March 31, 2024, Elevation Gold has an accumulated deficit of approximately USD\$110 million, representing recurring losses since incorporation, which has generated potentially valuable tax losses in Elevation Gold.
22. Further, the Petitioners are unable to pay all of their obligations as they come due. In particular, the Petitioners' current cash flow is not sufficient to pay both ordinary course operating expenses, and make payments due to under various agreements tied to the Petitioners' mineral properties. As a result, the Petitioners are not presently servicing their indebtedness to various parties, including amounts accrued and owing to Maverix, contractual royalty interest holders, and Patriot Gold.

#### **B. Assets**

23. The Petitioners' principal assets, apart from their mineral properties, are owned by Elevation Gold and Golden Vertex, and are comprised of cash and restricted cash balances, metal inventory, supplies inventory, and fixed assets.

24. As at March 31, 2024, Elevation Gold had approximately CAD \$99,000 in available cash, and the book value of its fixed assets (comprised of computer equipment, software, furniture, leasehold improvements and lease rights) was CAD\$67,000.
25. As of March 31, 2024, Golden Vertex had the following assets (all values in USD):
- (a) approximately \$226,000 in available cash and approximately \$3,486,000 in restricted cash;
  - (b) metal inventory with a total value of \$33,005,000, and supplies inventory totalling approximately \$480,000;
  - (c) capital assets with a book value of \$36,369,000;
  - (d) non-depletable mineral properties and associated assets valued at \$6,079,000; and
  - (e) capital work in progress valued at approximately \$648,000.
26. As at March 31, 2024, Hercules Gold had approximately USD\$2,000 in restricted cash, owned fixed assets with no value and owned non-depletable mineral properties of a value of approximately USD\$25,810,000.

### **C. Mineral Properties**

27. Golden Vertex owns, controls and leases numerous mineral claims and other mineral tenures or properties at and surrounding the Moss Mine Property, including patented claims owned in fee simple, exploration permits in state land issued by the Arizona State Land Department, a significant number of unpatented mining claims on federal lands, a leasehold option of several hundred unpatented claims and one related state mineral exploration permit. In total, these interests in and to the patented and unpatented claims and state mineral exploration permits give Golden Vertex control over approximately 160 square kilometers of land in Arizona.
28. With respect to the Hercules Property, as of June 2024, Hercules Gold owns, controls rights in, or has a lease of or option to acquire, approximately 1,300 mining claims.

### **D. Liabilities**

#### *i. Indebtedness to Maverix*

29. As noted, Maverix represents 83% of the Petitioners' debt on a consolidated basis, and nearly all of their secured debt. The total indebtedness owing by the Petitioners to Maverix as at March 31, 2024 was USD\$32,342,560, pursuant to the following documents:
- (a) a Silver Purchase and Sale Agreement dated effective October 1, 2018 (the "**Silver Stream Agreement**");



- (b) A loan agreement, dated August 15, 2022, which provides for a revolving credit facility (the “**Credit Facility**”);
  - (c) A short-term promissory note dated September 25, 2023, which has been amended and restated twelve times (as amended and restated, the “**Short-Term Note**”); and
  - (d) A demand grid promissory note dated February 26, 2024 (the “**Grid Note**”).
30. Golden Vertex’s obligations under the Silver Stream Agreement, the Credit Facility, and the Short-Term Note are secured by security interests in all of its after acquired property and assets, and a secured guarantee from Elevation Gold.
31. The Grid Note is secured separately by a Security Agreement and a Pledge and Security Agreement and a Deed of Trust, Assignment of Production, Leases and Rents, Security Agreement, Fixture Filing and Financing Statement granted by Golden Vertex, as well as a secured guarantee from Elevation Gold.

*ii. Other Indebtedness*

32. Golden Vertex also has a term loan from an Arizona utility provider with a balance of approximately USD\$2.1 million and secured by the infrastructure for which the loan was provided, and is indebted to Caterpillar Financial Services Corporation under a Master Finance Lease Agreement, with a balance of less than USD\$1 million.
33. Finally, in June 2020, Elevation Gold issued certain subordinated unsecured convertible debentures (the “**Convertible Debentures**”) with principal totalling approximately CAD\$6,710,000, bearing interest at 5% per annum, payable semi-annually and maturing on June 30, 2025. The Convertible Debentures are held in Canada and Europe. Elevation Gold may satisfy its obligation to pay interest under the Convertible Debentures by issuing common shares, subject to certain conditions and regulatory approval. The total balance of the Convertible Debentures as at March 31, 2024 was CAD\$6,710,000 (USD\$4,248,000).

*ii. Payment Obligations Associated with Mineral Properties*

I. The Moss Mine

34. Golden Vertex’s 100% ownership interest in the Moss Mine Project is subject to the following burdens:<sup>1</sup>
- (a) a letter-agreement-based net smelter return (“**NSR**”) royalty in favour of Nomad Royalty Company Limited, a company incorporated in British Columbia (“**Nomad**”), ranging between 0.5% and 3% NSR, depending on specified claim attributes;

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<sup>1</sup> The Petitioners reserve all rights to assert their position regarding the nature of the burdens (e.g., in rem versus in personam) and scope of payment obligations under each of the respective agreement terms and conditions.

- (b) a 3.0% NSR payable on gold and silver production from a patented claim known as the Greenwood Claim;
- (c) a finder's fee payable to Hartmut W. Baitis, Robert B. Hawkins and Larry L. Lackey, comprised of a sliding fee scale based on gold and silver production; and
- (d) a payment due to Patriot Gold Corp. ("**Patriot Gold**") equal to 3.0% NSR on all gold and silver production from certain patented and unpatented claims under an option agreement with Patriot Gold (the "**Patriot Option Agreement**").

## II. The Silver Creek Property

- 35. Pursuant to the La Cuesta Option, Golden Vertex agreed to pay La Cuesta two royalties over the 35-year term of the option: a 1.5% NSR royalty on any gold or silver production on claims leased to Golden Vertex, and a 0.5% NSR on certain third-party claims.

## III. The Hercules Property

- 36. Under the Iconic Option Agreement, Elevation Gold has an option to obtain a 100% interest in 116 unpatented mining claims within the Hercules Project. Elevation Gold and Hercules Gold both have ongoing monetary obligations under the Iconic Option Agreement. After the satisfaction of these obligations, all mineral titles and permits under the agreement will be transferred to Hercules Gold. The Hercules Property is also subject to NSR royalties over certain claims ranging between 1.25% and 3%.

### *iii. Reclamation Obligations*

- 37. As of March 31, 2024, the total undiscounted amount of Golden Vertex's estimated reclamation obligation, based on the current status of the Moss Mine, was approximately USD\$11.76 million. Golden Vertex's reclamation obligations as at end of mine life are estimated at just over USD\$15 million. The Petitioners have funded approximately USD\$3 million of this amount to a bonding company through a combination of cash and letter of credit.

## IV. CASH MANAGEMENT

- 38. The Petitioners' cash is managed centrally, by Elevation Gold, but it is segregated by entity, with each entity having its own bank accounts. All but two bank accounts for the Petitioners are at CIBC in Canada.
- 39. Funds received by the Petitioners from debt financing are typically placed in the CIBC account of the Petitioner named as the borrower under the relevant debt instrument. From there, for all Petitioners other than Golden Vertex, funds flow from the CIBC account of the original recipient to the CIBC account of the Petitioner that needs the funds. Funds for Golden Vertex are deposited into its Chase (U.S.) bank account.
- 40. Of the Petitioners, the only revenue generation occurs within Golden Vertex. Most revenues from Golden Vertex sales are paid into an account with Chase bank in the United States, with the exception of small amounts generated by slag sales, which are

paid into Golden Vertex's CIBC account in Canada. Golden Vertex revenues paid into the Chase account are used to cover Golden Vertex's payables, after which all excess cash is paid into Golden Vertex's Canadian CIBC account. From there, cash is transferred to the Petitioners, as needed, into their respective Canadian bank accounts. Decisions with respect to this process are made by Elevation Gold's management team, and the entire process is managed by Elevation Gold's Canadian staff.

41. Subject to due authorization by the court, during the CCAA proceedings, the Petitioners intend to continue to use the cash management system described above, with the Monitor's oversight, and will continue to maintain the bank accounts and arrangements already in place during the CCAA proceedings. This approach will minimize any disruption to business operations as the Petitioners seek to restructure.
42. The Petitioners are also seeking authorization from this Court to continue to with ordinary course intercompany funding transactions amongst themselves – i.e. the transfer of cash from debt financing and revenue between the Petitioners as needed to cover expenses.

## **V. FINANCIAL ISSUES AND ATTEMPTS TO RESTRUCTURE**

### **A. Current Liquidity Challenges**

43. The Petitioners are presently suffering liquidity challenges due to a combination of factors, including ongoing losses coupled with significant investments in capital over the longer term, and more recently, an unexpected loss of production capacity and enforcement actions taken by an unsecured creditor.
44. The loss of production capacity arose from a series of sudden and unforeseen operational issues at the Moss Mine, which had a negative impact on production in the second half of Q4 2023 and the first half of Q1 2024. This, in conjunction with the heavy royalty and streaming burdens on the Moss Mine, resulted in the Petitioners being unable to meet both their operational costs and royalty and streaming obligations as they came due.
45. The Petitioners have temporarily suspended their royalty and finder fee payments and silver stream delivery obligations to preserve sufficient liquidity for the continued operation of the Moss Mine. The Petitioners have to date been focusing on keeping their trade payables current so that they could continue to operate in the ordinary course.
46. In addition to the production issues outlined above, Patriot Gold recently filed an application for the appointment of a receiver over certain property associated with the Moss Mine, scheduled to be heard on August 15, 2024. This has created significant pressure on the Petitioners to seek creditor protection, particularly given a pending discovery deadline on August 2, 2024, which will distract the Petitioners from maintaining operations and preserving assets for the benefit of their stakeholders.

## **B. Previous Attempts Made to Restructure Obligations**

47. Since approximately June 2022, the Petitioners have been considering all available options to preserve liquidity for their ongoing operations, including finding an investor or purchaser, debt restructuring, and obtaining further debt or equity financing.
48. The Petitioners have been in ongoing discussions with Maverix and with holders of royalties in relation to the Moss Mine to negotiate a restructuring of the Petitioners' obligations to those parties, with the goal of reducing the heavy burden of payments under the royalty and streaming agreements to which the Petitioners are party.
49. While Maverix has permitted the Petitioners to delay certain obligations under the Silver Stream Agreement, it is not interested in negotiating a restructuring of the Petitioners' indebtedness. None of the Petitioners' other royalty holders or Patriot Gold have yet indicated that they will accept a restructuring, reduction, or suspension of the obligations due to them.
50. Together with their efforts to restructure their existing debt, the Petitioners have made efforts to raise equity and/or attract a strategic investor to take a significant equity position with Elevation Gold. However, over the past two years, the equity markets for junior mining companies have been largely stagnant, and Elevation Gold's share price has deteriorated, such that the Petitioners' efforts to raise equity financing have been unsuccessful.

## **C. The Pre-Filing SISP**

51. Over the past two years, the Petitioners have made concerted efforts to seek a buyer or investors.
52. The Petitioners engaged Stifel Nicolaus Canada Inc. ("**Stifel**") in June 2022 as its financial advisor to provide financial and strategic advice in connection with a marketing process for a potential business transaction involving Elevation Gold. This process was not successful and Stifel's engagement terminated by its own terms in June 2023. Subsequently, on August 9, 2023, Elevation Gold engaged INFOR as financial advisor to assist it with preparing and implementing a formal sale and investment solicitation process (the "**Pre-Filing SISP**").
53. In conducting the Pre-Filing SISP, INFOR identified and engaged with several potential purchasers or investors, some of whom remain interested in the opportunity. Certain of these potential purchasers or investors indicated they were not prepared to enter into a transaction for investment in or purchase of the Petitioners' assets and business other than in the context of a formal restructuring process. Given the advanced state of the Pre-Filing SISP and the possibility of an offer to complete a transaction or strategic investment in one or more of the Petitioners, the Petitioners intend to continue the Pre-Filing SISP under INFOR's supervision.
54. INFOR intends to consider all options to maximize the value of the Petitioners' assets, including a restructuring of Elevation Gold and its share capital, a sale of Golden

Vertex's shares, and/or a sale or investment in the business and/or assets of any of the Petitioners.

## VI. NEED FOR CCAA PROTECTION

55. These CCAA proceedings are necessary to provide the Petitioners protection from their creditors and thus create a stabilized environment in which the Petitioners can both continue the Pre-Filing SISP and continue with their plan of undertaking an interim cessation of active mining activities, while supporting continued beneficiation and production of minerals. It is imperative that sufficient financial and management resources are available to the Petitioners to monitor and maintain the leach pad system and processing plant to ensure the safe and environmentally sound operation of the beneficiation processes.

### Part 3: LEGAL BASIS

56. 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, Rule 8-5;
  - (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 REMEDIAL PURPOSE OF THE CCAA

57. The CCAA is remedial legislation, conferring broad jurisdiction on Canadian courts to approve and implement restructuring arrangements:

The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.

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

58. With the benefit of the protection afforded by the CCAA, the Petitioners will be able to stabilize their business operations for the continued benefit of their stakeholders as the Petitioners attempt to maximize the value of their business through a restructuring or sale of some of all of their property and business as a going concern.

59. In the absence of the granting of the relief sought by the Petitioners, including the imposition of a stay of proceedings, there is a significant risk that the Petitioners' operations will be disrupted, which will negatively impact their viability and, ultimately, asset value.
60. Importantly, the Petitioners' primary senior secured creditor, Triple Flag, has confirmed that it does not object to the Petitioners' application under the CCAA and to the recognition of the CCAA proceedings under Chapter 15 of the US Code.

## II. THE CCAA APPLIES TO THE PETITIONERS

61. The CCAA applies to a "debtor company" or "affiliated debtor companies" where the total amount of claims against the debtor or its affiliates exceeds \$5 million. The CCAA defines the term "company" as a company, corporation or legal person incorporated by or under an Act of Parliament or the legislature of a province.

CCA, ss. 2(1), 3(1) and 3(2)

62. A "debtor company" is any company that is bankrupt or insolvent. Whether or not a company is insolvent under the CCAA is assessed with reference to the definition of "insolvent person" under the BIA, as follows:

[A] person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

BIA, s. 2

*Re Stelco Inc.*, 2004 CarswellOnt 1211, at paras 21-22 and 28, leave to appeal ref'd 2004 CarswellOnt 2936 (CA), leave to appeal ref'd 2004 CarswellOnt 5200 (SCC). [*Stelco*]

63. This test is interpreted expansively in the context of the CCAA, such that an insolvent company is one that is "reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring."

*Stelco*, at para 26

*Lemare Holdings Ltd., Re*, 2014 BCSC 893 at para 18

64. Under this test, the Petitioners as a group are insolvent — they are already unable to meet their obligations as they generally come due. In particular, they have ceased paying their obligations to Maverix, Patriot Gold, and other payment obligations associated with mineral claims owned by the Petitioners as those obligations come due.
65. Therefore, the Petitioners are either “debtor companies” or “affiliated debtor companies” within the meaning of the CCAA: Elevation Gold, Eclipse Gold and Alcmene Mining are incorporated under BC law, and thus are “companies” within the meaning of the CCAA. The term “affiliated debtor companies” is defined in the CCAA to include subsidiaries of a “debtor company”. As Golden Vertex, Golden Idaho and Alcmene Mining are direct or indirect wholly owned subsidiaries of Elevation Gold, they are “affiliated debtor companies.”

CCAA, ss. 2(1), 3(1), 3(2) and 3(3)

66. The Petitioners have complied with the obligations under section 10(2) of the CCAA, which outlines the documentation required in connection with the Initial Order as follows:
- (a) A statement indicating, on a weekly basis, the projected cash flow of the debtor company;
  - (b) A report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
  - (c) Copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

CCAA, s. 10(2)

### III. THIS COURT IS THE APPROPRIATE FORUM

67. Pursuant to section 9(1), an application under the CCAA may be made to the court that has jurisdiction in the province within which the “head office” or “chief place of business” of the company in Canada is situated, or if the company has no place of business in Canada, in any province in which any assets of the company are situated.

CCAA, s. 9(1)

68. The test under section 9(1) is disjunctive, so if a company satisfies any of the three criteria set out above (i.e. has a head office in British Columbia, has its chief place of business in British Columbia, or has assets in British Columbia), this Court may take jurisdiction over the CCAA proceedings of the company.
69. Regarding the “head office” requirement, case law interpreting section 9(1) of the CCAA has interpreted “head office” to mean registered office as determined by corporate law.

*Oblats de Marie Immaculee du Manitoba, (Re)*, 2002 SKQB 161 at para. 13  
citing *Royal Bank v Perfection Foods Ltd*, 1991 CarswellPEI 116

70. The registered offices of Elevation Gold, Eclipse Gold, and Alcmene Mining, are located in Vancouver, British Columbia; thus, this Court is authorized to take jurisdiction over these entities.

71. Further, this and other Canadian courts have held that having only nominal assets in Canada, such as funds on deposit in a Canadian bank account, brings a foreign incorporated company within the definition of company under the CCAA. Elevation Gold, Golden Vertex and Eclipse Gold all have funds on deposit in Canadian Bank accounts, thus bringing those entities within the jurisdiction of this Court.

*Cinram International Inc. (Re)*, 2012 ONSC 3767, at Sch. C, para 47

*Re Global Light Telecommunications Inc. et al.*, 2004 BCSC 745 at para 17

*Canwest Global Communications Corp., Re*, 2009 CarswellOnt 6184, at para 30

72. Canadian CCAA courts have taken jurisdiction over cross-border restructurings involving Canadian entities with foreign affiliates, to facilitate the global restructuring of the enterprise. These Courts have recognized that where the business of a group of companies that includes foreign affiliates is fully integrated, it is critical to the restructuring of the group that the entire group of companies is included in the CCAA proceeding.

*Ghana Gold Corp., (Re)*, 2013 ONSC 3284 paras 55-56

*Just Energy Corp. (Re)*, 2021 ONSC 1793

73. This is the case here. The Petitioners are a highly integrated corporate group, for which corporate decision-making and strategy is undertaken by Elevation Gold. Elevation Gold allocates 75% of its senior officers' compensation to itself, which reflects the senior officers' overall executive management responsibilities for all aspects of the Petitioners' business and operations.

74. The business and operations of the U.S-based Petitioners cannot operate independently of the management oversight and key business functions and services provided by Elevation Gold for the benefit of the entire group. It is therefore critical to the global restructuring of the Petitioners that they all be included in these CCAA proceedings.

75. This Court is also the appropriate forum for these proceedings because any sale of Elevation Gold's tax losses, restructuring of its share capital (which is subject to Canadian securities laws) or sale of the shares of Golden Vertex is best facilitated – and perhaps only capable of being completed – by way of orders made by the Canadian court.

76. Some Canadian CCAA courts have considered the debtor's centre of main interest ("COMI") to establish that they are permitted to take jurisdiction over a proceeding involving corporations or corporate groups with significant business activities in a foreign jurisdiction.

*Just Energy, supra*, at paras 40-47

77. The following factors point to Canada as the Petitioners' COMI:



- (a) many of the Petitioners' core business functions are performed in, directed from, or attributed to Elevation Gold's corporate head office in Vancouver, BC;
- (b) corporate decision-making and strategy for all of the Petitioners is undertaken at the Elevation Gold level;
- (c) Elevation Gold manages the Petitioners' banking, cash management, and treasury functions, and many key accounting functions are undertaken by Elevation Gold's Canadian staff;
- (d) payments for Golden Vertex, Golden Idaho and Hercules Gold are drawn on CIBC accounts located in Canada, and are prepared and initiated by Elevation Gold's Canadian staff;
- (e) all correspondence pertaining to the business and affairs of the Petitioners at the corporate level is directed to, and handled by, Elevation Gold's Vancouver office;
- (f) a number of the Petitioners' significant secured and unsecured creditors are Canadian entities or entities which have a nexus to Canada, including Maverix and its parent, Triple Flag, which represents 83% of all of the Petitioners' debt on a consolidated basis, and almost all of its secured debt, and Patriot Gold, which is listed on a Canadian securities exchange;
- (g) Canadian law governs many of the Petitioners' debt and security instruments (including the Maverix loans and security and the Convertible Debentures), and other significant contracts and policies;
- (h) the Chairman of the Board of Elevation Gold is a Canadian national who resides in British Columbia;
- (i) the Annual General Meeting for Elevation Gold is held in Vancouver;
- (j) the Petitioners' external auditors are PricewaterhouseCoopers LLP of Canada and all US and Canadian tax filings are prepared and filed out of Canada, and the address on all such tax returns is Elevation Gold's Vancouver office address;
- (k) all but two of the Petitioners' bank accounts are maintained at CIBC in Canada; and
- (l) INFOR, the Petitioners' financial advisor, is a Canadian firm.

78. For all of the foregoing reasons, this Court has jurisdiction over these proceedings and all of the Petitioners, and this Court is the proper forum for the administration of these CCAA proceedings.

#### **IV. URGENCY**

79. This petition may be provided on short notice to certain creditors and stakeholders. The CCAA provides that:

[I]f an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

CCAA, s. 11

80. The Rules provide that a Court may make an Order without notice in the case of urgency.

The Rules, r. 8-5(6)

81. In this case, the Petitioners require urgent relief due to their inability to pay their liabilities as they come due, and the pending Receivership Application by Patriot Gold. The Petitioners seek to have this application heard on short notice to preserve and stabilize their operations and prevent enforcement steps from being taken through the Receivership Application in order to preserve the opportunity to complete a sale and/or restructuring of their business.

#### IV. A STAY OF PROCEEDINGS SHOULD BE GRANTED

82. The Petitioners request that this Court impose a stay of proceedings in their favour.

83. The CCAA provides that a court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days, among other things, restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

CCAA, s. 11.02(1)

84. A stay order under section 11.02(1) is the first step in all CCAA proceedings as it maintains the status quo while the debtor company consults with its creditors and stakeholders, allowing breathing room for reorganization. Courts may order a stay when it furthers the remedial purpose of the CCAA (emphasis added):

The Court may grant a stay of proceedings pursuant to s. 11.02 of the CCAA in respect of a debtor company if it is satisfied that circumstances exist that make the order appropriate. In order to determine whether a stay order is appropriate the Court should consider the purpose behind the CCAA. The primary purpose of the CCAA is to maintain the *status quo* for a period while the debtor company consults with its creditors and stakeholders with a view to continuing the company's operations for the benefit of the company and its creditors.

*Re JTI-Macdonald Corp*, 2019 ONSC 1625, at para 12 [*JTI-Macdonald*]

*Century Services*, at paras 58-60

85. Consistent with the purpose of the CCAA, a stay of proceedings preserves the *status quo*, facilitates the ongoing operations of the debtor company's business to preserve its value, and prevents any creditor from gaining an unfair advantage over other creditors.

*Re Lehndorff General Partner Ltd.*, 1993 CarswellOnt 183, at paras 5-7

*Century Services*, at paras 58-60

86. In the circumstances, given their present financial challenges and their looming liquidity issues, the Petitioners urgently require a stay of proceedings under the CCAA to maintain the status quo in terms of their beneficiation processes and avoiding creditor action, and to obtain the breathing room required to continue the Pre-Filing SISP, consider strategic restructuring alternatives, and pursue and implement a restructuring strategy. It is imperative for the success of any such strategy that current and potential actions against the Petitioners be stayed.
87. With the benefit of the protection afforded by the CCAA, the Petitioners will be able to maintain the value of their assets, and generally stabilize their business operations for the continued benefit of their stakeholders as various alternatives are considered.
88. As noted above, in the absence of the imposition of a stay of proceedings and the granting of other relief afforded by the CCAA, there is the risk that the pending receivership application filed by Patriot Gold will harm any chance of a successful sales and investment solicitation process, which would be to the serious detriment of all stakeholders.
89. Moreover, the Petitioners require a stabilized environment in which to continue their beneficiation processes at the Moss Mine in order to fund their business during the CCAA proceedings, and ensure that the beneficiation processes can continue to be carried out in a safe and environmentally sound manner.
90. An applicant under the CCAA must satisfy the court that it has at least a “germ of a plan” presenting a “reasonable possibility of restructuring,” and that the initial order will usefully further the applicant’s efforts towards attempted reorganization.

*Royal Bank of Canada v Camwest Aerospace Inc.*, 2023 BCSC 514, at paras 15-16, citing *Regina Limited v Copper Sands Land Corp.*, 2018 SKCA 36, at para 20

91. This Court, and other Canadian CCAA courts, have recognized that it is appropriate for a company to use the CCAA to effect the sale of the company’s business as a going concern, and have referenced commentary that liquidation can be a “vehicle to restructure a business” by allowing the business to survive, albeit under a different corporate form or ownership.

*North American Tungsten Corporation Ltd. (Re)*, 2015 BCSC 1376, at para 27

*935409186 Quebec inc. v Callidus Capital Corp.*, 2020 SCC 10, at para 45

92. As stated, the Petitioners are seeking relief under the CCAA in part to achieve the breathing room required to continue the Pre-Filing SISP, consider strategic restructuring alternatives, and pursue and implement a restructuring strategy. This demonstrates that

the Petitioners have a plan that presents a reasonable possibility of a restructuring, which will be usefully furthered by the proposed Initial Order.

#### **IV. THE MONITOR**

93. The CCAA provides that the court shall appoint a person to monitor the business and affairs of a debtor company granted relief under the CCAA, and it provides restrictions on who may be appointed as a monitor.

CCAA, s. 11.7

94. KSV is a licensed trustee within the meaning of the BIA and is not subject to any of the restrictions on who may be appointed as monitor set out in of the CCAA. KSV is qualified to act as Monitor in these CCAA proceedings.

BIA, s. 2

CCAA, s. 11.7(2)

95. KSV has been involved with the Petitioners in advance of and in preparation for this filing, and has gained significant insight into with the Petitioners' business. As such, it will be in a position to perform its duties as monitor effectively and without delay. Furthermore, KSV has prior experience in the mining sector, including the recent CCAA proceedings of Pure Gold Mining Inc.

#### **V. THE COURT ORDERED CHARGES ARE APPROPRIATE**

##### **A. The Administration Charge is Appropriate**

96. The Petitioners seek an Administration Charge of CAD\$300,000 to secure the collective fees and disbursements, incurred both before and after the commencement of these proceedings, for legal counsel for the Petitioners, the Monitor, and legal counsel for the Monitor. The Petitioners may seek an increase in the amount of the Administration Charge at the Comeback Hearing.
97. 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.

98. Courts have recognized that unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA would be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically, any failure to provide protection for professional fees will “result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings”.

*Re Timminco Ltd.*, 2012 ONSC 506, at para 66.

99. The Petitioners require the specialized expertise, knowledge, and continuing participation of the proposed beneficiaries of the Administration Charge to complete the restructuring, and the Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.
100. The Petitioners believe that an initial Administration Charge in the amount sought is fair and reasonable and will provide the level of appropriate protection for the payment of the Petitioners’ essential professional services given the size and complexity of the Petitioners’ business.
101. There will be no duplication of the roles of the beneficiaries of the Administration Charge. Each of these professionals will have a unique and distinct focus in the restructuring, and their joint efforts will produce a better result overall.
102. The proposed Monitor has reviewed the underlying assumptions upon which the Petitioners have based the quantum of the proposed Administration Charge, the anticipated complexity of these CCAA proceedings, and the services to be provided by the beneficiaries of the Administration Charge, and is of the view that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.
103. If the Initial Order is granted, the Petitioners may seek an increase in the Administration Charge at the Comeback Hearing, given the size and complexity of the anticipated proceedings, and the illiquidity of the Petitioners’ business.

**B. The Directors’ Charge is Appropriate**

104. The Petitioners seek the Directors’ Charge in the amount of CAD\$520,000 to secure the indemnity of each the Directors and Officers that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings.
105. The CCAA provides that, on notice to the secured creditors who are likely to be affected by the security or charge, this Court is vested with the power to grant a charge over the

assets of a debtor company with respect to directors' and officers' indemnification against obligations that they may incur as a director or officer after the commencement of proceedings under the CCAA on a priority basis. The Court must be satisfied with the amount of the proposed charge. The Court will consider the following factors:

- (a) Whether the charge is essential to the successful restructuring of the debtor;
- (b) Whether the continued participation of the directors and officers is critical to the restructuring; and
- (c) Whether the amount of the charge is reasonable and appropriate in light of the obligations and liabilities that may be incurred by the directors and officers. The proposed charge must not provide coverage for the wilful misconduct or gross negligence of any director or officer of the debtor company.

CCAA, s. 11.51

*Canwest*, at para. 56

*Canwest Global Communications Corp., Re*, 2009 CarswellOnt 6184, at paras 44-48

106. The Directors' Charge is not intended to duplicate coverage already in place under the Petitioners' existing directors' and officers' liability insurance policies, but rather, to supplement such coverage in the event that any particular claim is not insured under those policies.
107. The Directors' Charge is vital to encouraging the continued participation of the Directors and Officers in these CCAA proceedings. The directors and officers will provide necessary experience and stability to the Petitioners' business and guide the Petitioners' restructuring efforts. It is critical that a level of continuity be maintained for the Petitioners to ensure focus on achieving a restructuring plan that will benefit the Petitioners' stakeholders.
108. The request of the Petitioners' directors and officers to receive adequate protection in the form of the Directors' Charge is fair and reasonable and advances the integral need of the Petitioners to have fully functional, experienced and qualified advisors, directors and officers. The specialized knowledge held by the directors and officers, and their relationships with various key creditors and their representatives gained throughout the growth of the Petitioners' business, cannot be replicated or easily replaced.
109. The proposed Monitor has reviewed the underlying assumptions upon which the Petitioners have based the estimate of the potential liability in respect of the directors' and officers' statutory obligations and is of the view that the Directors' Charge is reasonable in the circumstances and that the continued involvement of the directors and officers is beneficial to the Petitioner's stakeholders and the advancement of these proceedings.

### C. The Intercompany Advance Charge is Appropriate

110. The Petitioners are seeking an order granting the Intercompany Advance Charge to secure advances made by one Petitioner to another Petitioner against the property of the recipient, which as noted, is consistent with the ordinary course of the Petitioners' business.
111. This charge is appropriate as it will ensure continuity of the manner in which the Petitioners' managed their business before these proceedings were commenced. Maintaining the status quo is to the benefit of the Petitioners' stakeholders as it will avoid inadvertently altering relative priorities or rights of creditors of different Petitioners within the group. Where the operations and expenses of debtor companies are funded in the ordinary course through intercompany advances, as is the case here, CCAA courts have found it appropriate to approve the continuation of those arrangements and to grant a corresponding charge.

*Pride Group Holdings Inc. et al.*, 2024 ONSC 2026, at paras 39-42

*Walter Energy Canada Holdings, Inc., (Re)*, 2016 BCSC 107 at paras 62-67

### VI. RELIEF FROM FILING OBLIGATIONS

112. Elevation Gold is seeking to be relieved from incurring any further expenses in relation to certain securities filings, including financial statements and other disclosures that may be required by any federal, provincial or other law respecting securities or capital markets in Canada (the "**Securities Filings**"). Elevation Gold and the Monitor and their respective directors, officers, employees and other representatives are seeking to be relieved from any personal liability resulting from a failure to make any Securities Filings.
113. This relief is necessary given Elevation Gold's status as a publicly-traded company and reporting issuer listed on the Canadian Securities Exchange and the TSX. It would be a distraction and unnecessary expense for Elevation Gold to make the Securities Filings in the circumstances where it is insolvent. The shareholders and stakeholders of Elevation Gold will have the benefit of a significant amount of financial and other information that is being, and will continue to be, disclosed in the CCAA Proceedings.

### VII. FOREIGN RECOGNITION

114. The Initial Order contemplates the Monitor being authorized to act as the foreign representative and to apply for foreign recognition and approval of this CCAA proceeding, as necessary, in any jurisdiction outside of Canada, including the United States, pursuant to chapter 15 of the Bankruptcy Code.
115. The Court has jurisdiction to make an order that allows the Monitor to act as a representative in respect of any proceeding under the CCAA for the purpose of having them recognized in a jurisdiction outside of Canada.


CCAA, s. 56.

116. As set out above, it is clear that this Court is the proper forum for these proceedings, given the Petitioners' numerous connections to Canada, and the fact that the Petitioners are a highly-integrated corporate group that is managed and controlled by Elevation Gold, a Canadian company. However, certain Petitioners are incorporated and have operations and assets in the United States. In addition, the Petitioners have assets and contractual relationships with parties located in the United States. Accordingly, authorizing the Monitor to seek recognition of the orders of this Court in the United States is appropriate and in the best interests of stakeholders.

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

- 117. Affidavit #1 of Tim Swendseid, sworn July 29, 2024;
- 118. The Pre-Filing report of KSV Restructuring Inc., to be filed; and
- 119. Such further and other materials as counsel may advise and this Honourable Court may allow.

Dated at the City of Vancouver, in the Province of British Columbia, this 30th day of July, 2024.

  
Lawson Lundell LLP  
Solicitors for the Petitioners

This Petition to the Court is filed by William L. Roberts, 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.



**To be completed by the court only:**

Order made

in the terms requested in paragraphs \_\_\_\_\_  
of Part 1 of this Petition

with the following variations and additional terms:

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Date:

\_\_\_\_\_  
Signature of  Judge  Associate Judge

**SCHEDULE "A"**

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"

No. \_\_\_\_\_  
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

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

BEFORE THE HONOURABLE )  
 ) August 1, 2024  
MADAM JUSTICE FITZPATRICK )

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on this day (the "**Order Date**"); AND ON HEARING William Roberts and 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 on July 29, 2024, the pre-filing report dated July [●], 2024 of KSV Restructuring Inc. ("**KSV**") in its capacity as the proposed monitor of the Petitioners, 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:

**JURISDICTION**

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

## SUBSEQUENT HEARING DATE

2. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph 16 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at \_\_\_\_\_.m. on \_\_\_\_\_, the \_\_\_\_ day of August, 2024 or such other date as this Court may order.

## 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 Affidavit of Tim Swendseid sworn July 29, 2024 (the "**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 6(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 35 and 37 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, as applicable (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.

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

16. Until and including August 11, 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 16 and 17, 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 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 35 and 37 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 23 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 and the United States Bankruptcy 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 applicable environmental law and regulation in other jurisdictions including the United States of America (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.
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 Monitor, counsel to the Monitor, if any, and counsel to the Petitioners 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 \$300,000, as security for 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. The Administration Charge shall have the priority set out in paragraphs 35 and 37 hereof.

## VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

35. The priorities of the Administration Charge, the Directors' Charge, and the Intercompany Advance Charge, as among them, shall be as follows:
- (a) First – Administration Charge (to the maximum amount of \$300,000);
  - (b) Second – Directors' Charge (to the maximum amount of \$520,000); and
  - (c) Third – Intercompany Advance Charge.
36. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Directors' 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.
37. 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.

38. 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.
39. 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.
40. 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**

41. 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**

42. 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.

43. 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**

44. 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.
45. 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.
46. 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:  
[www.ksvadvisory.com/experience/case/elevation-gold-mining-corporation-inc](http://www.ksvadvisory.com/experience/case/elevation-gold-mining-corporation-inc)
47. 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.

48. Notwithstanding paragraphs 46 and 45 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

49. 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.
50. 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.
51. 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.
52. 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**").
53. 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.
54. 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.

- 55. 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.
- 56. 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.
- 57. 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.
- 58. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.
- 59. 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

\_\_\_\_\_  
REGISTRAR

**Schedule "A"**

**List of Counsel**

<b>Name of Counsel</b>	<b>Party Representing</b>

NO.                       
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

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**PETITION TO THE COURT**

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

Phone: (604) 685-3456  
Attention: William L. Roberts