2022 01G 0709

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of Grant Thornton Limited, as Court-Appointed Monitor of Canada Fluorspar (NL) Inc., Canada Fluorspar Inc., and Newspar (collectively, "**CFI**" or the "**Company**");

AND IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. c-36, as amended (the "**CCAA**")

NOTICE OF MOTION

Grant Thornton Limited, as Court-Appointed Monitor of the Company (hereinafter the "**Applicant**") will make a motion before the presiding Judge in Bankruptcy and Insolvency on Thursday, the 18th day of May 2023 at 10:00 a.m., or so soon thereafter as the motion can be heard at the Courthouse, Duckworth Street, St. John's, Newfoundland and Labrador.

On the hearing of this Motion, the Applicant intends to apply for the following relief:

1. An order, *inter alia:*

   (a) Pursuant to the *Rules of the Supreme Court, 1986,* and in particular Rule 7.04(2) (b);

      (i) Approving the addition of CFI Newspar Holdings Inc., ("**CFI Newspar**") as a debtor company to which the CCAA applies, adding CFI Newspar to this Action styled 2022 01G 0709 and amending the Amended and Restated Initial Order (the "**ARIO**") dated the 18th of March, 2022, Amendment #1 to the ARIO (the "**Amended ARIO**") dated the 10th day of June, 2022, Amendment #2 to the ARIO dated the 30th day of August, 2022 ("**2nd Amended ARIO**"), Amendment #3 to the ARIO dated the 12th day of October, 2022 ("**3rd Amended ARIO**") and Amendment #4 to the ARIO dated the 21st day of February, 2023 ("**4th Amended ARIO**"), issued pursuant to section 11 of the CCAA to reflect the addition of CFI Newspar as a debtor company to which the CCAA applies and to add CFI Newspar to these proceedings;

(b) And further, an order pursuant to the CCAA;

(i) Amending the ARIO, the Amended ARIO, the 2nd Amended ARIO, the 3rd Amended ARIO and the 4th Amended ARIO issued pursuant to section 11 of the CCAA in order to extend the stay of proceedings issued thereunder until the 16th day of June, 2023;

(c) Abridging the notice periods pursuant to section 11 of the CCAA and the *Rules of the Supreme Court, 1986,* Rule 3.03 (1), Rule 6.04 (2) and Rule 6.06;

(d) Pursuant to Section 11 of the CCAA directing that the service on the service list set out in **Schedule "A"** hereto is sufficient for the purposes of this Application; and

(e) Such further and other relief as this Honourable Court deeds just and equitable.

THE GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:

BACKGROUND

2. As of February 21, 2022, the Company was insolvent and was unable to meet its debt obligations as they became due. As a result, PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc., and Bridging Income Fund LP ("**PWC**") applied for an interim receivership order pursuant to s. 47(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3 (the "**BIA**") over substantially all the assets and undertaking of the Company, which order was issued by this Honourable Court on the 21st day of February, 2022 (the "**Interim Receivership Order**"). Pursuant to the Interim Receivership Order, Grant Thornton Limited ("**GTL**") was appointed as Interim Receiver of all the assets and undertaking of the Company, with the exception of those assets and undertakings that were carved out of the receivership (defined therein as the "**Excluded Property**").

3. On the 8th day of March 2022, GTL as Interim Receiver made an application to this Honourable Court declaring that the Company was a company to which the CCAA applied and requesting protection under the CCAA. As a result of that application, the Court granted an initial CCAA Order on the 11th day of March 2022 (the "**Initial CCAA Order**"), and the Court subsequently granted the

Amended and Restated Initial Order (the "**ARIO**"). In both orders GTL was appointed and confirmed as CCAA Monitor.

4. In the Initial CCAA Order, this Honourable Court authorized the Monitor, on behalf of the Company, to enter into a DIP Financing Agreement with the DIP Lenders referenced in the Initial CCAA Order (the "**DIP Lenders**").

5. Since the 18th day of March 2022, the Monitor had been running a SISP as contemplated in the order of this Honourable Court issued on the same day as the ARIO (the "**SISP Order**").

6. On the 31st day of May 2022, the Monitor made an application to this Honourable Court seeking an extension of the stay period until the 2nd day of September 2022 and amending the SISP procedures to extend the dates of the Phase 2 Bid Deadline and each date thereafter in order to correspond with the CCAA stay period (the "**Amended SISP Order**"). The extension was requested to allow the Monitor to arrange the completion of a National Instruments 43-101 Technical Report with the expectation that it would assist in increasing the purchase price for the Company's assets. The court granted these amendments by Order dated the 10th day of June, 2022.

7. As outlined in the Monitor's Fifth Report, the Monitor received multiple bids on the Company's assets through the SISP process. The Monitor made a recommendation to the DIP Lenders as to its preferred choice with respect to the bids received. The DIP Lenders were in support of the Monitors recommendation and the Monitor therefore notified the successful Bidder (the "**Successful Bidder**") on August 18, 2022.

8. On the 30th day of August 2022, this Honourable Court issued the 2nd Amended ARIO extending the CCAA stay period until the 17th day of October 2022 and amended the SISP procedures in order to allow time to (i) complete the SISP; (ii) enter into a definitive agreement with the Successful Bidder; and (iii) obtain court approval.

9. As outlined in the Monitor's Fifth Report, the Monitor completed the SISP and awarded, with the consent and the agreement of the DIP Lenders, the sale of the Company's assets to the Successful Bidder.

10. As outlined in the Monitor's Sixth Report, the Monitor and the Company worked diligently to complete the definitive agreement. However, the Successful Bidder failed to top up the agreed

upon deposit as required by the SISP, and therefore failed to complete a key deadline as outlined in the SISP. As a result of this material adverse change, the agreement with the Successful Bidder was terminated. The Monitor then filed with this Court a Material Adverse Change Report.

11. On the 12th day of October 2022 this court issued the 3rd Amended ARIO extending the CCAA stay period until the 26th day of February, 2023 to allow the senior secured creditors and the DIP Lenders time to determine next steps as it related to the Company assets, including the possibility of another SISP or a different type of sale or liquidation process.

12. Since the 12th day of October 2022, the Monitor and the Company worked diligently to solicit bids from parties that previously submitted proposals during the SISP. As of January 26, 2023, the Monitor selected, and the DIP Lenders approved a new successful bidder (the "**Purchaser**").

13. On the 13th day of February 2023, the Monitor entered into a Letter of Intent with the Purchaser.

14. On the 21st day of February 2023, this court issued the 4th Amended ARIO extending the CCAA stay period until the 31st day of May, 2023 to allow the Purchaser to (i) complete its due diligence; (ii) enter into a Definitive Agreement; and (iii) obtain court approval and close the transaction.

15. The Monitor and the Purchaser have been diligently working to complete the Definitive Agreement. During the negotiation, the Purchaser confirmed its intention to acquire the assets of Newspar, a general partnership, and maintain the existing corporate structure of Canada Fluorspar Inc., Canada Fluorspar (NL) Inc., and Newspar. CFI Newspar is one of the partners of Newspar, with the other partner being Canada Fluorspar (NL) Inc., which is already a party to these proceedings. Newspar holds assets that the Purchaser would like to acquire, including an environmental indemnity from the Province of Newfoundland and Labrador in relation to the activities of the mine, certain mining licenses and leases, and certain legacy equipment. The Purchaser therefore requires that CFI Newspar be added to these proceedings so that the Purchaser can acquire all of the assets of both partners in Newspar.

16. The Monitor is therefore requesting that CFI Newspar be added to these proceedings.

17. In addition, the Monitor and the Purchaser require additional time to complete the Definitive Agreement, obtain court approval and close the proposed transaction.

ADDING CFI NEWSPAR

18. CFI Newspar is not currently a debtor company in these proceedings.

19. CFI Newspar is insolvent and is an entity to which the CCAA applies. The claims against CFI Newspar exceed Five Million Dollars ($5,000,000.00).

20. The Applicant is requesting that CFI Newspar be added as a debtor company to which the CCAA applies, and to this Action styled 2022 01G 0709. In addition, the Applicant is requesting that the 4th Amended ARIO be amended ("**5th Amended ARIO**") to add CFI Newspar to the CCAA proceedings, a copy of which is hereto attached as Schedule "**B**";

21. As set out in the Clarke Affidavit, the Monitor supports the addition of CFI Newspar to the within proceedings as it would be in the best interest of the Company and its stakeholders, including the senior secured creditors, as it would allow for the completion of the proposed transaction with the Purchaser, and that it would not materially prejudice any stakeholder or creditor.

22. The senior secured creditors and the DIP Lenders have consented to the addition of CFI Newspar as a party to these proceedings pursuant to Rule 7.04(2) (b) of the *Rules of the Supreme Court, 1986.*

EXTENSION TO STAY

23. The stay of Proceedings will currently expire on the 31st day of May, 2023;

24. The Applicant is requesting the Stay Period be extended until June 16, 2023.

25. As set out in the Clarke Affidavit, the Monitor believes the extension to the stay of proceedings would be in the best interest of the Company and its stakeholders, including the senior secured creditors, and that it would not materially prejudice any stakeholder or creditor.

26. The senior secured creditors and the DIP Lenders have consented to the extension of the stay of proceedings under section 11 of the CCAA until June 15, 2023.

27. As set out in the in the cash flow projection, the Monitor expects that it will have sufficient cash to fund its projected operating costs during the proposed stay extension period.

28. The Monitor and the Company have continued to act in good faith and with due diligence throughout these CCAA Proceedings.

OTHER GROUNDS

29. The *Rules of the Supreme Court, 1986*, particularly Rule 7.04(2)(b); the provisions of the CCAA, including section 11, section 11.02 and section 36 thereof; and the inherent equitable jurisdiction of this Honourable Court;

30. The following documentary evidence will be used at the hearing of this Application;

(a) The affidavit of Phil Clarke, sworn as of the 9th day of May 2023;

(b) The Monitor's Eighth Report; and

(c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

All of which is respectfully submitted.

DATED AT St. John's, in the Province of Newfoundland and Labrador, this 12th day of May, 2023.

Geoffrey Spencer
McInnes Cooper
Solicitors for the Applicant
Whose address for service is:
P. O. Box 5939
5th Floor, Baine Johnston Centre
10 Fort William Place
St. John's, NL
A1C 5X4

TO: O'KEEFE & COMPANY
Solicitors for the Company
Whose address for service is:
80 Elizabeth Avenue, Suite 202
St. John's, NL A1A 1W7
Attn: Darren D. O'Keefe

AND TO: **The Service List attached as Schedule "A" to the Application**

SCHEDULE "A"
SERVICE LIST

1. Canada Fluorspar Inc., Canada Fluorspar (NL) Inc., and Newspar
   1 Clarks Pond Road
   St. Lawrence, NL A0E 2V0

2. Grant Thornton as Interim Receiver
   Phil Clarke
   Sean MacNeil
   Nova Centre, North Tower, Suite 1000
   1675 Grafton Street
   Halifax, NS B3J 0E9
   Phil.Clarke@ca.gt.com
   Sean.MacNeil@ca.gt.com

3. Counsel for Canada Fluospar Inc., Canada Fluorspar (NL) Inc., and Newspar
   Darren O'Keefe
   O'Keefe & Company
   84B Airport Road
   St. John's, NL
   A1A 4Y3
   darren@okeefeandcompany.com

   Allison Philpott
   Cox & Palmer
   235 Water Street
   St. John's, NL A1C 1B6
   aphilpott@coxandpalmer.com

4. Counsel for Pricewaterhousecoopers Inc., on behalf of Bridging Finance Inc.
   Joe Thorne
   Stewart McKelvey
   P.O. Box 5038
   11th Floor, Cabot Place
   100 New Gower Street
   St. John's, NL A1C 5V3
   joethorne@stewartmckelvey.com

5. Graham Page
   Michael McTaggart
   Pricewaterhousecoopers Inc., on behalf of Bridging Finance Inc.

18 York Street, Suite 2600
Toronto, ON M5J 0B2
Graham.page@pwc.com
Michael.mctaggart@pwc.com

6. Counsel for Golden Gate Capital
Brendan O'Neill
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
boneill@goodmans.ca

7. Government of Newfoundland and Labrador
Department of Industry, Energy and Technology
Julia Tomson
Jamie O'Dea
Micheal Day
Andrew Wheeler
Liane Price
P.O. Box 8700, 2nd Floor
Confederation Building (West Block)
St. John's, NL A1B 4J6
DavidRodgers@gov.nl.ca
JamieODea@gov.nl.ca
LianePrice@gov.nl.ca
MichaelDay@gov.nl.ca
awheeler@gov.nl.ca

8. Counsel for HSBC
Robert Kennedy
Dennis Wiebe
Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
robert.kennedy@dentons.com
dennis.wiebe@dentons.com

9. Brian Pettit
HSBC Bank Canada
205 Water Street, NL A1C 1B4
Brian_pettit@hsbc.ca

10. Court Appointed Receiver for HSBC
James Foran
Kurt MacLeod

Phil Reynolds
Deloitte
Suite 800 1741 Lower Water Street
Halifax, NS B3J 0J2
jforan@deloitte.ca
kmacleod@deloitte.ca
philreynolds@deloitte.ca

11. Workplace NL
    P.O. Box 9000
    St. John's, NL A1A 3B8
    Fax: 709-738-1714

12. ACOA
    John Cabot Building, 11th Floor
    P.O. Box 1060 Stn. C
    St. John's, NL A1C 5M5
    Karine.Leblanc@ACOA-APECA.GC.CA

13. Bank of Montreal
    100 King St. West, 11th Floor
    Toronto, ON M5X 1A1

14. Bank of Montreal Transport Finance
    5750 Explorer Drive
    2nd Floor, Mississauga, ON L4W 0A9

15. Komatsu International (Canada) Inc.
    3755 blvd Matte Suite E
    Brossard, QC J4Y 2P4
    judy.langlais@global.komatsu

16. Sonya Warren
    Credit Manager
    Hickman Leasing Limited
    85 Kenmount Road, St. John's, NL A1B 3P8
    swarren@hickmanmotors.ca

17. Ford Credit Canada Leasing, Division of Canadian Road Leasing Company
    P.O. Box 2400
    Edmonton, AB T5J 5C7
    bbankrup@ford.com

18. Caterpillar Financial Service Limited
    3457 Superior Court, Unit 2
    Oakville ON L6L 0C4
    sherry.pottie@cat.com

19. De Lage Landen Financial Services Canada Inc.
    3450 Superior Court, Unit 1
    Oakville ON, L6L 0C4
    corporateca@dllgroup.com

20. Meridian Onecap Credit Corp.
    3185 Willingdon Green, #204
    Burnaby BC V5G 4P3
    Fax: 1-604-646-2222

21. Counsel for Equipment SMS Inc.
    Sean Pittman
    215 Water Street
    St. John's, NLA1C 5N8
    spittman@bensonbuffett.com

22. Mitsubishi HC Capital Canada Leasing, Inc.
    301-3390 South Service Rd.
    Burlington ON L7N 3J5

23. Counsel for Arkema France
    Scott Bomhof
    Torys LLP
    79 Wellington St. W, 30th Floor, Box 270
    TD South Tower
    Toronto, ON M5K 1N2
    sbomhof@torys.com

24. Counsel for Newfoundland Power
    Beth McGrath
    McInnes Cooper
    10 Fort William Place
    5th Floor, Baine Johnston Centre
    St. John's, NL A1C 5X4
    beth.mcgrath@mcinnescooper.com

25. David L. Hounsell
    Western Petroleum Newfoundland Limited
    P.O. Box 1167
    7 Main Street
    Corner Brook, NL A2H 6T2
    david@hounsell.ca

26. Dave Elliott
    Pennecon Grand Banks Warehousing Inc.
    1309 Topsail Road
    Paradise, NL A1L 1N8
    delliott@pennecon.com

Geoffrey Boyd- French & Associates
gboyd@french-associates.com

27. Derek Pardy
Pardy's Waste Management and Industrial Services Limited
West End Industrial Park
25 Stentaford Avenue
Pasadena, NL A0L 1K0
derekpardy@pardyswaste.com

28. Lynn M. Korbak
General Counsel & Corporate Secretary
Toromont Industries Ltd./Industries Toromont Ltee
3131 Highway 7 West
Concord ON, L4K 5E1
lkorbak@toromont.com

29. Benjamin Pitcher
Valmin Fire Protection Limited
1338 Random Island Road
Weybridge, NL A5A 3A1
info@valminfireprotection.com

30. Dormody Engineering Incorporated
c/o O'Dea Earle
323 Duckworth Street
St. John's, NL
Attention: David Williams
dwilliams@odeaearle.ca

31. Hitech Communications Ltd.
15 Glencoe Drive, Mount Pearl NL
c/o Law Firm Murphy & Watton
17 West Street, P.O. Box 815
Corner Brook, NL A2H 2Y6
bmurphy@monmar.nf.net
dwatton@monmar.nf.net

32. Epiroc Canada
1025 Tristar Drive
Mississauga, ON L5T 1W5
raluca.pop@epiroc.com

33. George Benchetrit
Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON
M2N 7E9

george@chaitons.com

34. Keith Morgan
Browne Fitzgerald Morgan Avis & Wadden
Terrace on the Square, Level 2
P.O. Box 23135
St. John's, NL A1B 4J9
kmorgan@bfma-law.com

35. Canada Revenue Agency
Sudbury Tax Centre
Post Office Box 20000, Station A
Sudbury ON P3A 5C1
c/o Maeve Baird, Counsel
maeve.baird@justice.gc.ca

36. Lee E. Ballett
Duffy Law Office
640 Torbay Road
St. John's, NL
A1A 5G9
lballett@duffylawyers.com

37. Peter Kiewit Sons ULC
Attention: Director of Real Estate
1550 Mike Fahey Street
Omaha, NE 68102
pam.smith@kiewit.com
SEND BY EMAIL AND BY COURIER

38. Service Canada
100 Hebron Way
St. John's, NL
A1A 0L9
Stephanie.a.leroux@servicecanada.gc.ca
Johannar.howes@labour-travail.gc.ca
Julie.l.matte@servicecanada.gc.ca

39. Deborah Hutchings, KC
MacNab Fagan & Murphy
dhutchings@yourlegalteam.ca

40. Shane Belbin
Curtis Dawe
sbelbin@curtisdawe.com

41. Aaron Morrow
Department of Justice and Public Safety
aaronmorrow@gov.nl.ca

Schedule "B"

2022 01G 0709

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of Canada Fluorspar (NL) Inc., and Canada Fluorspar Inc., by their Court Appointed Interim Receiver, Grant Thornton Limited.

AND IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. c-36, as amended

AMENDED AND RESTATED INITIAL ORDER – AMENDMENT #5

BEFORE THE HONOURABLE JUSTICE MACDONALD

THIS APPLICATION, made by Grant Thornton Limited, in its capacity as Court-Appointed Interim Receiver of Canada Fluorspar (NL) Inc., and Canada Fluorspar Inc., (the "**Interim Receiver**" or the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form filed with the Application was heard this 11th day of March, 2022.

ON READING the affidavit of Phil Clarke sworn the 8th day of March, 2022 (the "**Clarke Affidavit**") and the Exhibits thereto, the consent of Grant Thornton Limited ("**GTL**") to act as Court-appointed monitor of Canada Fluorspar (NL) Inc. Canada Fluorspar Inc., and Newspar (a General Partnership) (in such capacity, the "**Monitor**"), and the Pre-Filing Report of GTL as Interim Receiver;

ON READING, the report of GTL as Monitor dated the 15th day of March, 2022;

ON READING the affidavits of Phil Clarke sworn the 30th day of May, 2022 (the "**Clarke Affidavit**") and the Exhibits thereto, and of Melissa Spearns sworn on the 26th day of May, 2022 (the "**Spearns Affidavit**") and the Exhibits thereto, and the Monitors First Second and Third Reports;

ON READING the affidavit of Phil Clarke sworn the 24th day of August, 2022 (the "**Clarke Affidavit**") and the Exhibits thereto, and the Monitor's Fourth Report;

ON READING the affidavits of Phil Clarke sworn the 6th day of October 2022 and the 11th day of October 2022 (collectively the "**Clarke Affidavit**") and the Exhibits thereto, the Monitor's First Confidential Report and the Monitor's Fifth Report;

ON READING the affidavit of Phil Clarke sworn the 16th day of February, 2023 (the "Clarke Affidavit") and the Exhibits thereto, and the Monitor's Seventh Report and Second Confidential Report;

ON READING the affidavit of Phil Clarke sworn the 9th day of May, 2023 (the "Clarke Affidavit") and the Exhibits thereto, and the Monitor's Eighth Report;

ON HEARING the submissions of counsel for the Applicant, legal counsel for the Company (as defined herein), and such other counsel that were present, no one else appearing for any party although duly served as outlined in the affidavit of service dated the 10th day of March, 2022, and on reading the consent of GTL to act as Monitor;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Materials filed, as set out in the affidavit of service is hereby deemed adequate notice so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that Canada Fluorspar (NL) Inc., Canada Fluorspar Inc., Newspar (a General Partnership) and CFI Newspar Holdings Inc., (collectively the "**Company**") is a company to which the CCAA applies.

3. Capital terms not otherwise defined herein shall have the meaning ascribed to them in Schedule "A"

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, shall have the authority to file and may, if deemed appropriate and subject to further order of this Court, file with this Court a plan of compromise and arrangement (hereinafter referred to as the "**Plan**".

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Company shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, save and except the Excluded Property (the "**Property**"). Subject to further Order of this Honourable Court, the Monitor on behalf of the Company, shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Monitor is authorized and empowered to continue to retain and employ the employees, consultants, independent contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of its Business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants retained or employed by the Company in respect of these proceedings, at their standard rates and charges; and

(c) in consultation with the DIP Lender, amounts owing for goods and services supplied to the Company, if in the opinion of the Monitor, the supplier or vendor of such goods or services is necessary for the operation and preservation of the Business or Property.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Monitor, on behalf of the Company, shall be entitled but not required to pay all reasonable expenses incurred by the Company in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services and lease payments for mining equipment used in the operation of the Business; and

(b) payment for goods or services actually supplied to the Company following the date of this Order.

8. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Company in connection with the sale of goods and services by the Company, but only where such Sales Taxes are accrued or collected after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Company.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Monitor, on behalf of the Company, 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 to the landlord under the lease) or as otherwise may be negotiated between the Company and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order. The Monitor, on behalf of the Company, may pay such Rent twice

monthly in equal payments on the first and fifteenth day of each 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 the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Monitor, on behalf of the Company, is 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 Company to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Monitor, on behalf of the Company shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined hereinafter), have the right to:

(a) Permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $500,000 in any one transaction or $2,500,000 in the aggregate;

(b) Terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

(c) Pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing.

All of the foregoing to permit the Monitor, on behalf of the Company, to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, shall provide each of the relevant landlords with notice of the Company's 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 Company's 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, such landlord and the Monitor, on behalf of the Company, or by further Order of this Court upon application by the Monitor on at least two (2) days notice to such landlord and any such secured creditors. If the Monitor disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (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 Company's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer [or resiliation], the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Company in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including the 16th day of June, 2023 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Company or the Monitor, or affecting the Business or the Property,(save and except the Excluded Property), except with the written consent of the Monitor and the Company, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Company or affecting the Business or the Property (save and except the Excluded Property) are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that 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 Company or the Monitor, or affecting the Business or the Property, (save and except the Excluded Property), are hereby stayed and suspended except with the written consent of the Monitor and the Company, or leave of this Court, provided that nothing in this Order shall (i) empower the Monitor, on behalf of the Company, to carry on any business which the Company is 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 security interest, or (iv) prevent the registration of a claim for lien.

16. **THIS COURT ORDERS** that nothing in this Order shall prevent HSBC from exercising any rights or remedies, taking any enforcement steps, actions or commencing any proceedings against the Company with respect to the Excluded Property.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that 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 Company, except with the written consent of the Monitor and the Company, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Company or statutory or regulatory mandates 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 Company, 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 Company, and that the Monitor, on behalf of the Company, shall be entitled to the continued use of its 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 date of this Order are paid by the Monitor,

on behalf of the Company, in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and each of the Monitor and the Company, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Company. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Company with the powers and obligations set out in the CCAA, (save and except in relation to the Excluded Property) or set forth herein and that the Company and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Company pursuant to this Order, and shall co-operate 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.

21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Company's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor or Court 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, with consultation with the Company, in its dissemination of reports and other information to the DIP Lender (as defined herein) and their respective counsel, pursuant to and in accordance with the Definitive Documents (as defined herein), or as may otherwise be reasonably requested by the DIP Lender;

(d) execute the DIP Financing Agreement (as defined herein) on behalf of the Company;

(e) advise, in consultation with the Company, in its preparation of the Company's cash flow statements and reporting required by the DIP Lender under the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP Lender and their respective counsel in accordance with the Definitive Documents;

(f) execute any and all documentation, on behalf of the Company, as reasonably necessary or required by the DIP Financing Agreement and the SISP;

(g) run the SISP pursuant to the SISP Order;

(h) advise, in consultation with the Company, in its development of the Plan and any amendments to the Plan, if applicable;

(i) 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 Company, to the extent that is necessary to adequately assess the Company's business and financial affairs or to perform its duties arising under this Order;

(j) 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;

(k) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other Persons (as defined below) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including those conferred by this Order;

(l) enter into any agreements;

(m) exercise any rights of the Company;

(n) apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and in the name of the Company;

(o) take any and all steps of the Company authorized by any Order made in these proceedings, including making distributions or payments;

(p) purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the Business, or any part or parts thereof; and

(q) perform such other duties as are required by this Order or by this Court from time to time.

22. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property but as Monitor shall take part in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business, or any part thereof.

23. **THIS COURT ORDERS** that nothing herein contained shall require 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* and regulations thereunder (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. 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.

24. **THIS COURT ORDERS** that nothing herein contained shall make the Monitor liable for any mine closure or environmental and land rehabilitation-related liabilities or obligations

in respect of or in any way related to the Property (or caused by or resulting from any matter or thing originating on or coming from the Property). For greater certainty:

(a) Notwithstanding anything in any Environmental Legislation, the Monitor is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

(i) before the Monitor's appointment; or

(ii) after the Monitor's appointment unless it is established that the condition arose or the damage occurred as a result of the Monitor's gross negligence or wilful misconduct.

(b) Nothing in sub-paragraph (a) exempts the Monitor from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.

(c) Notwithstanding anything in any Environmental Legislation, but subject to subparagraph (a) hereof, where an order is made which has the effect of requiring the Monitor to remedy any environmental condition or environmental damage affecting the Property, the Monitor is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Monitor, if the order is in effect when the Monitor is appointed, or during the period of the stay referred to in clause (ii) below, the Monitor:

(A) complies with the order, or

(B) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Monitor, if the order is in effect when the Monitor is appointed, by,

(A) the court or body having jurisdiction under the law pursuant to which the order was made to enable the Monitor to contest the order; or

(B) the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(iii) if the Monitor had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

25. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Company and the DIP Lender with information provided by the Company 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 Company 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 Company may agree.

26. **THIS COURT ORDERS** that, 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 protections afforded the Monitor by the CCAA or any applicable legislation.

27. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Company on a weekly basis and, in addition, the Company is hereby authorized to pay to the Monitor, counsel to the Monitor, and

counsel to the Company reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

28. **THIS COURT ORDERS** that 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 Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Company's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, (save and except the Excluded Property and Excluded Inventory), which charge shall not exceed an aggregate amount of $250,000.00 (which includes the amount provided for in the Interim Receivership Order), as security for their professional fees and disbursements incurred at their respective standard rates and charges of the Monitor and such counsel, both before and after the making of this Order and the Amended and Restated Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 41 and 43 herein.

ENHANCEMENT OF MONITOR'S POWERS

30. **THIS COURT ORDERS** that, without in any way limiting the powers and duties of the Monitor, the Monitor is hereby empowered and authorized, but not obligated, to do any of the following in the name and on behalf of the Company, where the Monitor considers it necessary or desirable:

(a) take any and all actions and steps to manage, operate and carry on the Business, including, without in any way limiting the generality of the foregoing:

(i) any actions or steps the Monitor considers necessary or desirable to proceed with an orderly restructuring or liquidation of the Business;

(i) permanently or temporarily ceasing, downsizing or shutting down any of the Company's operations;

(ii) terminating the employment of or temporarily laying off employees of the Company;

(iii) pursuing all avenues of refinancing the Business or Property, except the Excluded Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

(iv) preparing a Plan of Compromise and Arrangement on behalf of one or more of the Applicants;

(v) settling, extending or compromising any indebtedness owing to or by the Company;

(vi) initiating, prosecuting and continuing the prosecution of any and all proceedings and defending all proceedings now pending or hereafter instituted with respect to the Company, the Business, the Property or the Monitor and to settle or compromise any such proceeding;

(vii) taking any and all corporate governance actions for the Company; and

(viii) providing instruction and direction to the advisors of the Company;

(b) preserve, protect and exercise control over the Property, (with the exception of the Excluded Property), or any parts thereof, including, without in any way limiting the generality of the foregoing:

(i) receive, collect and exercise control over all monies and accounts held by or owing to the Company; including any proceeds of the sale of any of the Property (save and except the Excluded Property);

(ii) exercise all remedies of the Company in collecting monies owed or hereafter owing to the Company and to enforce any security held by the Company;

(iii) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property (save and except the Excluded Property) for any purpose pursuant to this Order;

(iv) to market, sell convey, transfer, lease or assign the Property, including running a sales solicitation process, or any part or parts of the Property out of the ordinary course of business;

(A) without the approval of this Court, in respect of any one transaction not exceeding $500,000 or $2,500,000 in the aggregate;

(B) without the approval of this Court in respect of the sale of Fluorspar inventory; and

(C) with the approval of this Court in respect of any other transaction;

(c) to report to, meet with and discuss with such affected persons as the Monitor deems appropriate on all matters relating to the Business and the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

(d) oversee and direct the preparation and dissemination of financial and other information of the Company in these proceedings, including cash flow statements;

(e) apply to the court for advice and direction or for any further orders in these proceedings, including, without in any way limiting the generality of the foregoing, sale approval and vesting orders and orders extending or terminating the stay of proceedings;

(f) perform such other duties or take any steps reasonably incidental to the exercise of these powers;

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the Company and without interference from any other person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

31. **THIS COURT ORDERS** that the Company and all its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other

persons acting on their instructions or behalf shall fully co-operate with the Monitor in the exercise its powers under this Order or any other Order of the Court, including by:

(a) advising the Monitor of the existence of any Property of which such party has knowledge of;

(b) providing the Monitor with immediate and continued access to any Property in such party's possession or control;

(c) advising the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information ("**Records**") of which such party has knowledge of; and

(d) providing access to and use of the Records, including any accounting, computer, software and physical facilities relating thereto, and including providing the Monitor with instructions on the use of any computer or other system as requested by the Monitor and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the Records, provided however that nothing in this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor client communication or due to statutory provisions prohibiting such disclosure.

LIMITATION ON THE MONITOR'S LIABILITY

32. **THIS COURT ORDERS THAT** the Monitor is not and shall not, for any purposes, be deemed to be a director, officer, employee, receiver, receiver-manager, or liquidator of the Company.

33. **THIS COURT ORDERS THAT** the Monitor is not and shall not for the purposes of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) be deemed to be a legal representative or person to whom s. 150(3) of that Act applies.

34. **THIS COURT ORDERS THAT** that the rights, protections, indemnities, charges, priorities and other provisions in favour of the Monitor set out in the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, any other applicable legislation, and any other Order granted in these proceedings, all shall apply and extend to the Monitor in connection with the Monitor carrying out the provisions of this Order, amended as necessary to give effect to the terms of this Order.

DIP FINANCING

35. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, is hereby authorized and empowered to execute, enter into and deliver the DIP Facility Loan Agreement (the "**DIP Financing Agreement**") dated the 7th day of March, 2022 between, the Company, as borrower, and Bridging Finance Inc., Bridging Income Fund LP, Bridging Private Debt Institutional LP, Bridging Mid-Market Debt Fund LP, Bridging Private Debt Lending Master Fund I, LP (Cayman), Bridging SMA 1 LP. Bridging SMA 2 LP, and Her Majesty in Right of Newfoundland and Labrador, as represented by the Minister of Industry, Energy and Technology as lender (collectively the "**DIP Lender**"), and to borrow, in accordance with the terms and conditions of the DIP Financing Agreement, up to Four Million Seven Hundred Thousand ($4,700,000.00) (the "**DIP Facility**") to, among other things, fund the Company's working capital requirements, the SISP and other general corporate purposes of the Company during the Stay Period.

36. **THIS COURT ORDERS** that, in addition to the DIP Financing Agreement, the Company is also hereby authorized and empowered to execute and deliver such other credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Financing Agreement, the "**Definitive Documents**"), as are contemplated by the DIP Financing Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Monitor, on behalf of the Company is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Financing Agreement and the other Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. **THIS COURT ORDERS** that, as security for the Company's obligations under the Definitive Documents, the DIP Lender shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lender's Charge**") on the Property, (save and except the Excluded Property and Excluded Inventory), which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 41 and 43 herein. Notwithstanding the foregoing, the Interim Receiver's Borrowing Charge contained in Paragraph 27 of the Interim Receivership Order, being the 1.8 Million advanced pursuant to the Interim Receivership Order, shall continue to be in full force and effect during the term of this Order. The Interim Receiver's Borrowing Charge shall rank pari passu with the DIP Lender's Charge.

38. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the DIP Financing Agreement, the other Definitive Documents or the DIP Lender's Charge, upon five (5) days notice to the Monitor and the Company, the DIP Lender may exercise any rights and remedies against the Company or the Property, (save and except the Excluded Property), under or pursuant to the DIP Financing Agreement, the other Definitive Documents and the DIP Lender's Charge, including, without limitation, to cease making advances to the Company and set off and/or consolidate any amounts that may be owing by the DIP Lender against the obligations of the Company to the DIP Lender under the DIP Financing Agreement, the other Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Company and for the appointment of a trustee in bankruptcy of the Company; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Company or the Property (save and except the Excluded Property).

39. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Company under the CCAA, or any proposal filed by the Company under the BIA, with respect to any advances made under the DIP Financing Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Financing Agreement, the other Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**") whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the DIP Financing Agreement or the other Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made and other obligations set out in the DIP Financing Agreement and the other Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

41. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender's Charge, and the Interim Receiver's Borrowing Charge on the Property (save and except the Excluded Property and Excluded Inventory), (collectively, the "**Charges**"), as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of $250,000.00);

Second– the DIP Lender's Charge and the Interim Receiver's Borrowing Charge, on a pari passu basis.

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property, (save and except the Excluded Property and Excluded Inventory), and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except for any secured creditor of the Company who did not receive notice of the application for this Order. The Company shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrances over which the Charges have not obtained priority pursuant to this Order.

44. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Charges, unless the Company also obtains the prior written consent of the Monitor and of the applicable chargee(s) entitled to the benefit of the Charges (collectively, the "**Chargees**"), or further Order of this Court.

45. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

(a) Neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Financing Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Company of any Agreement to which it is 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 Company entering into the DIP Financing Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and

(c) The payments made by the Company pursuant to this Order, the DIP Financing Agreement or the other Definitive Documents, 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.

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

SERVICE AND NOTICE

47. **THIS COURT ORDERS** that the Monitor shall (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner by electronic means, a notice to every known creditor who has a claim against the Company of more than $1,000, 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.

GENERAL

48. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from subsequently acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Company, the Business or the Property.

50. **THIS COURT ORDERS** that each of the Company 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 that 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.

Schedule "A"

Defined Terms

"**Excluded Inventory**" means inventory representing a value in the amount of USD2,500,000

"**Excluded Property**" means: (i) any and all Receivables and/or Financed Receivables, as such terms are defined pursuant to the RFA, together with all rights and remedies arising thereunder, insurance policies and proceeds resulting therefrom, and proceeds generally, and (ii) all Export Development Canada insurance policies or support in favor of HSBC,

"**HSBC**" means HSBC Bank Canada; and

"**RFA**" means the Trade Invoice Recourse Financing Facility Agreement between HSBC and Canada Fluorspar (NL) Inc., dated May 25, 2018, as amended.